



## City of Tigard

### FINANCE AND INFORMATION SERVICES QUALIFICATION BASED REQUEST FOR PROPOSAL (QBS)

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#### DERRY DELL CREEK AT 118<sup>TH</sup> COURT STREAMBANK STABILIZATION AND OUTFALL REPAIR ENGINEERING, STREAM RESTORATION, AND CONSTRUCTION MANAGEMENT SERVICES

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Proposals Due: November 15, 2016 - 2:00 p.m. local time

Proposer must include one (1) original and one (1) electronic copy on a portable USB drive (thumb drive) of their submittal.

**Submit Proposals To:** City of Tigard – Contracts & Purchasing Office  
Attn: Joe Barrett, Sr. Management Analyst  
13125 SW Hall Blvd.  
Tigard, Oregon 97223

**Direct Questions To:** Joe Barrett, Sr. Management Analyst  
Phone: (503) 718-2477  
Email [joseph@tigard-or.gov](mailto:joseph@tigard-or.gov)

**PUBLIC NOTICE**  
**QUALIFICATION BASED REQUEST FOR PROPOSAL**  
**DERRY DELL CREEK AT 118<sup>TH</sup> COURT**  
**STREAMBANK STABILIZATION AND OUTFALL REPAIR**

**ENGINEERING, STREAM RESTORATION, AND CONSTRUCTION MANAGEMENT SERVICES**

The City of Tigard is seeking sealed proposals from firms qualified to provide professional services to assist with Engineering, Stream Restoration, and Construction Services. Proposals will be received until 2:00 pm local time, November 15, 2016, at Tigard City Hall's Utility Billing Counter at 13125 SW Hall Blvd., Tigard, Oregon 97223. Proposals will be scored and ranked on a qualification basis and the City will enter into negotiations with the top ranking firm.

A non-mandatory pre-proposal meeting will be held on site adjacent to 13890 118<sup>th</sup> Court, Tigard, Oregon 97223, on Wednesday, November 2, 2016 at 3:30 pm. Key City staff will be attending this meeting to answer questions and discuss this project.

No proposal will be considered unless fully completed in a manner provided in the RFP packet. Facsimile and electronic (email) proposals will not be accepted nor will any proposal be accepted after the stated due date and time. Any proposal received after the closing time will be returned to the submitting firm unopened after a contract has been awarded for the required services.

RFP packets may be downloaded from [www.tigard-or.gov/bids](http://www.tigard-or.gov/bids) or obtained in person at Tigard City Hall's Utility Billing Counter located at 13125 SW Hall Blvd., Tigard, Oregon 97223.

Proposers are required to certify non-discrimination in employment practices and identify resident status as defined in ORS 279A.120. Pre-qualification of proposers is not required. All proposers are required to comply with the provisions of Oregon Revised Statutes and Local Contract Review Board (LCRB) Policy.

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

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DATE: Friday, October 21, 2016

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**SECTION 1**  
**INTRODUCTION**

The City of Tigard is seeking sealed proposals from firms qualified to provide professional services to stabilize a sliding streambank, re-design a problem outfall, and provide stream restoration and mitigation design for multiple locations on Derry Dell Creek between 118<sup>th</sup> Court and 115<sup>th</sup> Avenue. Proposals will be received until 2:00 pm local time, November 15, 2016, at Tigard City Hall’s Utility Billing Counter at 13125 SW Hall Blvd., Tigard, Oregon 97223. Proposals will be scored and ranked on a qualification basis and the City will enter into negotiations with the top ranking firm.

No proposal will be considered unless fully completed in a manner provided in the RFP packet. Facsimile and electronic (email) proposals will not be accepted nor will any proposal be accepted after the stated due date and time. Any proposal received after the closing time will be returned to the submitting firm unopened after a contract has been awarded for the required services.

Proposers are required to certify non-discrimination in employment practices and identify resident status as defined in ORS 279A.120. Pre-qualification of proposers is not required. All proposers are required to comply with the provisions of Oregon Revised Statutes and Local Contract Review Board (LCRB) Policy.

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

**SECTION 2**  
**PROPOSER’S SPECIAL INSTRUCTIONS**

**A. PROPOSED TIMELINES**

<u>Friday, October 21, 2016</u>	Advertisement and Release of Project Packet
<u>Wednesday, November 3, 2016 – 3:30 pm</u>	Preproposal Meeting
<u>November 15, 2016 – 2:00 pm</u>	Deadline for Submission of Proposals
<u>December 1, 2016</u>	Interviews (if necessary)
<u>December 8 – 22, 2016</u>	Negotiations
<u>January 24, 2017</u>	Award of Contract by LCRB
<u>January 31, 2017</u>	Commencement of Services

**NOTE:** The City reserves the right to modify this schedule at the City’s discretion

**B. GENERAL**

By submitting a proposal, the Proposer certifies that the Proposal has been arrived at independently and has been submitted without any collusion designed to limit competition.

**C. PROPOSAL SUBMITTAL**

The Proposal and all amendments must be signed and submitted no later than 2:00 pm, November 15, 2016, to the address below. Each proposal must be submitted in a sealed envelope and designated with proposal title. Proposer must include one (1) original and one (1) electronic copy on a portable USB drive. To assure that your proposal receives priority treatment, please mark as follows.

**QBS – Derry Dell Creek @ 118<sup>th</sup> Court Engineering, Stream Restoration, and Construction Services**

City of Tigard – Utility Billing Counter  
Attn: Joe Barrett, Sr. Management Analyst  
13125 SW Hall Blvd.  
Tigard, Oregon 97223

Proposer shall put their name and address on the outside of the envelope. It is the Proposer's responsibility to ensure that proposals are received prior to the stated closing time. The City shall not be responsible for the proper identification and handling of any proposals submitted incorrectly. Late proposals, late modification, or late withdrawals shall not be considered accepted after the stated bid opening date and time and shall be returned unopened. Facsimile and electronic (email) proposals will not be accepted.

**D. PROTEST OF SCOPE OF WORK OR TERMS**

A Proposer who believes any details in the scope of work or terms detailed in the proposal packet and sample contract are unnecessarily restrictive or limit competition may submit a protest in writing, to the Purchasing Office. A protest may be submitted via facsimile. Any such protest shall include the reasons for the protest and shall detail any proposed changes to the scope of work or terms. The Purchasing Office shall respond to any protest and, if necessary, shall issue any appropriate revisions, substitutions, or clarification via addenda to all interested Proposers.

To be considered, protests must be received at least five (5) days before the proposal closing date. The City shall not consider any protest against award due to the content of proposal scope of work or contract terms submitted after the established protest deadline. All protests should be directed to the attention of Joe Barrett, Sr. Management Analyst, and be marked as follows:

**RFP Specification/Term Protest**

City of Tigard – Contracts and Purchasing Office  
Attn: Joe Barrett, Sr. Management Analyst  
13125 SW Hall Blvd.  
Tigard, Oregon 97223

If a protest is received in accordance with the section above, the proposal opening date may be extended if necessary to allow consideration of the protest and issuance of any necessary addenda to the proposal documents.

**E. PROPOSAL SUBMISSION AND SIGNING**

All requested forms and attachments (Signature Page, Acknowledgment Addenda, Statement of Proposal, etc.) must be submitted with the Proposal and in the required format. The submission and signing of a proposal shall indicate the intention of the firm to adhere to the provisions described in this RFP.

**F. COST OF PREPARING A PROPOSAL**

The RFP does not commit the City to paying any costs incurred by Proposer in the submission or presentation of a proposal or in making the necessary studies for the preparation thereof.

**G. INTERPRETATIONS AND ADDENDA**

All questions regarding this project proposal shall be directed to Joe Barrett, Sr. Management Analyst. If necessary, interpretations or clarifications in response to such questions will be made by issuance of an "Addendum" to all prospective Proposers within a reasonable time prior to proposal closing.

but in no case less than 72 hours before the proposal closing. If an addendum is necessary after that time, the City, at its discretion, can extend the closing date.

Any Addendum issued, as a result of any change in the RFP, must be acknowledged by submitting the “Acknowledgment of Addenda” with proposal. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

**H. BUSINESS LICENSE/FEDERAL TAX ID REQUIRED**

The City of Tigard Business License is required. Chapter 5.4 of the Tigard Municipal Code states any business doing business in the City of Tigard shall pay a City of Tigard Business License. Successful Contract will be required to present a copy of their City of Tigard Business License at the time of contract execution. Successful Contractor shall also complete a W-9 form for the City at the time of contract execution.

**I. CITY’S PROJECT MANAGERS**

The City’s Project Managers for this work will be Carla Staedter, Project Coordinator, who can be reached by phone at (503) 718-2788 or by email at [carla@tigard-or.gov](mailto:carla@tigard-or.gov).

**J. PROPOSAL VALIDITY PERIOD**

Each proposal shall be irrevocable for a period of sixty (60) days from the Proposal Opening Date.

**K. FORM OF CONTRACT**

A copy of the City's standard engineering services agreement, which the City expects the successful firm or individual to execute, is included as “Attachment C”. The contract will incorporate the terms and conditions from this RFP document and the successful proposer’s response documents. Firms taking exception to any of the contract terms shall submit a protest or request for change in accordance with Section 2.D “Protest of Scope of Work or Terms” or their exceptions will be deemed immaterial and waived.

**L. TERM OF CONTRACT**

The contract for this work is anticipated to commence on or around January 31, 2017. All work stemming from the contract is anticipated to be completed no later than June 30, 2018.

**M. TERMINATION**

The contract may be terminated by mutual consent of both parties or by the City at its discretion with a 30 days’ written notice. If the agreement is so terminated, Contractor shall be paid in accordance with the terms of the agreement.

**N. NON-COLLUSION**

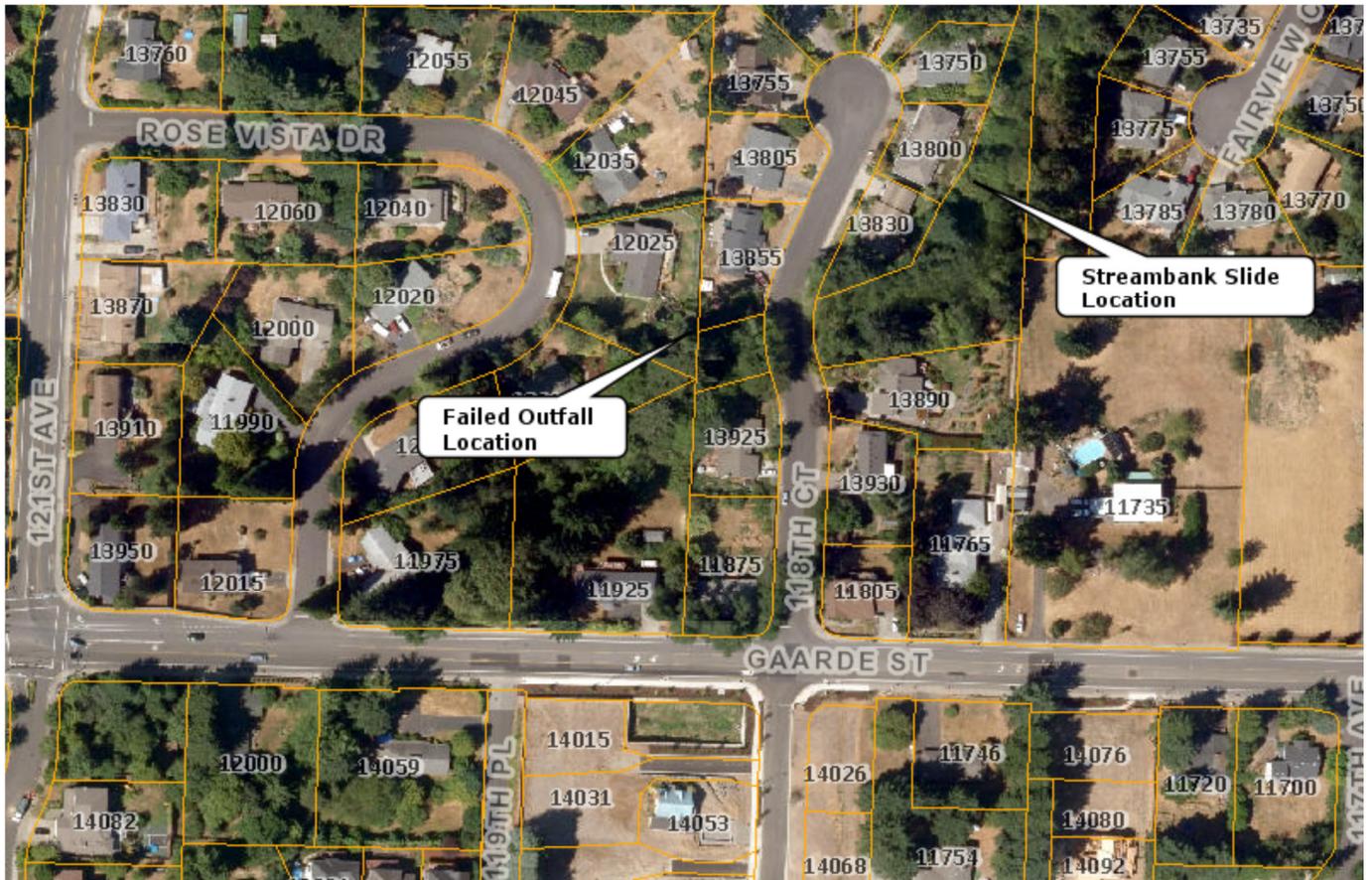
Proposer certifies that this proposal had been arrived at independently and has been submitted without collusion designed to limit independent bidding or competition.

**O. PUBLIC RECORD**

All bid material submitted by bidder shall become the property of the City and is public record unless otherwise specified. A bid that contains any information that is considered trade secret under ORS 192.501(2) should be segregated and clearly identified as such. This information will be kept confidential and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS 192. The above restrictions may not include any subsequent cost or price information, which must be open to the public.

### SECTION 3 BACKGROUND

Two sections of streambank on Derry Dell Creek will be repaired as part of this project. The first, is located just downstream of 118<sup>th</sup> Court on city-owned property. The streambank stabilization at this location will protect private property at the top of the bank and a sanitary line and public trail at the bottom of the slope. The second area is located just upstream of 118<sup>th</sup> Court. It is a severely eroded streambank at a public stormwater outfall. This problem outfall will be replaced with one designed to deliver stormwater to the creek without eroding the streambank or causing additional channel erosion. See the air photo below for the project locations.



**Location of Streambank Repair and Failed Outfall on Derry Dell Creek**

The northern streambank of Derry Dell creek, just downstream of 118<sup>th</sup> Court, has produced 2 significant landslides, one in 2005 and a recent slide in December of 2015. This continued bank failure is threatening private property at the top of the slope and threatening existing sewer infrastructure on city owned property at the base of the slope. If additional sliding is allowed, the stream will damage a popular trail and the backyards of adjacent private property owners. These slides have also delivered significant silt into the creek. The goal of the project at this site is to stabilize the steep streambank so no additional damage is done to private property, public sewer infrastructure, or the Pathfinder Trail. The project will also create a more stable stream channel at the base of the slope and will revegetate the area with native riparian plantings.

Wetland and stream mitigation will likely be required by local, state, and federal regulatory agencies. Tigard hopes to stabilize and improve stream banks and channels downstream of the project area to address any mitigation requirements. This strategic planning of mitigation sites will allow the project to address additional erosion issues on Derry Dell Creek between 118<sup>th</sup> Court and 115<sup>th</sup> Avenue.



**Length of Derry Dell Creek to be Evaluated for Channel Restoration and Stream Mitigation**

## **SECTION 4**

### **SCOPE AND SCHEDULE OF WORK**

#### **Purpose**

The purpose of this project is two-fold. First the project will repair two severely eroding and sliding streambanks on Derry Dell Creek as described above. Second, and equally as important is to evaluate stream conditions between 115<sup>th</sup> Avenue and 118<sup>th</sup> Court. This includes identifying and inventorying significant channel incision and streambank instability issues, identifying threatened sanitary, stormwater, and trail infrastructure, evaluating risks to private property, and using this information to choose stream channel mitigation sites that will address the most serious of these problems. The project should also, if needed, provide a report that identifies, prioritizes, and describes projects needed to stabilize channel incision and eroding streambanks which threaten public and privately owned infrastructure along the creek between 118<sup>th</sup> Court and 115<sup>th</sup> Avenue. The following general overview describes items the City has identified are necessary for this project. This is not intended to be a full list of the services that the Consultant may deem necessary to complete this project but it offered as a guideline in developing a scope for the project.

#### **Task 1. Project Management**

- Start-up meeting with city staff
- One public information meeting.
- Review engineering design with City Staff at 30%, 60%, 90%, and 100% submittals.
- Preparation of project schedule to be updated monthly.

- Monthly project status reports submitted with invoices should show work performed by task, % spent vs % complete for tasks & whole project, ongoing and upcoming work tasks, and any issues/needs/concerns.
- Weekly email and phone check-ins with city project manager

#### Task 2. Bank Stabilization and Outfall Project Research/Data Collection

- Survey Research. Obtain existing utility and as-built information from the City and Clean Water Services.
- Complete utility locates for survey.
- Set up the base map of the project areas.
- Prepare and confirm preliminary project schedule
- Geotechnical Investigation. Evaluate the subsurface conditions at the site and provide geotechnical recommendations for the outfall retrofit and the slope stabilization. The investigation will provide conclusions and recommendations regarding: geology, subsurface conditions, groundwater, anticipated dewatering requirements, excavating conditions, and backfill requirements as needed for the project.

#### Task 3. Field Reconnaissance & Exploration Derry Dell Creek - 115<sup>th</sup> Avenue to 200' Upstream of 118<sup>th</sup> Court

- Review geologic literature i.e. geologic mapping, well logs, landslide database, geotechnical reports, and LIDAR imagery of the project areas.
- Identify key watershed characteristics and drivers as well as specific areas of current instability along the creek. Identify potential future areas of concern within the creek.
- Develop a prioritized plan to address key areas of stream instability that are or will impact public sanitary and park infrastructure, and private property. Identify potential stream and wetland mitigation sites.

#### Task 4. Design Survey

- Establish Horizontal and Vertical Survey Control. Setup control and tie existing monumentation necessary to establish the existing right-of-ways, property lines, and easement locations within the project limits. Run vertical control from nearest City/County bench mark. Survey to be on City of Tigard datum.
- Complete topographic design survey including existing topographic features, trees, utilities, etc. within the project area.

#### Task 5. Preliminary Design and Layout

- Prepare design development drawings (approximately 30% complete) in one submittal for both project sites and any recommended mitigation sites. The design development drawings will utilize all field information obtained from the previous activities and will also carefully evaluate issues surrounding environmental permitting and access for construction.

#### Task 6. Wetland Delineation, Wildlife Assessment, and Permitting

- Conduct wetland and stream delineation, delineation report, and solicit concurrence from applicable State Agencies.
- Prepare wetland and stream mitigation plans as required.
- Determine the Vegetated Corridor condition based on the Natural Resource Assessment guidelines contained in the Clean Water Services (CWS) Design and Construction Standards. Prepare and submit a Standard Site Assessment to CWS. Prepare and submit a Tier 2 Alternatives Analysis for buffer encroachment meeting Design and Construction Standards if applicable. Prepare and provide vegetated corridor enhancement plans meeting CWS requirements. Solicit Service Provider Letter (SPL) from Clean Water Services.
- Develop Wetland/Stream Mitigation Plan.
- Prepare a Joint Permit Application (JPA) for submittal to the Oregon DSL and USACE. Quantify the volume of removal/fill resulting from the project and the types of habitat impacted.

- Hold a pre-application meeting with the City and jurisdictional agencies at the beginning stages of the project to discuss agency requirements and approximate timelines for the project. Coordinate with other state and federal agencies, including the State Historic Preservation Office, the Oregon Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service during informal or formal consultation, to obtain necessary approvals and authorizations for the project.
- Provide permit application forms to the City in draft format for review and comment. Comments received from the City will be incorporated in the final version for submittal to DSL and USACE.
- Prepare an historic and archaeological resources report if required by permitting agencies.
- Note: All fees for permitting will be paid by the City of Tigard.

Task 7. Engineering Design, Construction Plans for the Project and Mitigation Sites and Cost Estimates

- Prepare 60% construction documents to include: Title sheet; existing conditions plans, bank stabilization and outfall retrofitting plan and profile sheets, and any needed details. Include outfall retrofitting design, slide stabilization design and any needed structure design, grading and erosion control plans and details as needed. Vegetated corridor, stream, and wetland mitigation plans and details as required. Prepare construction cost estimate.
- Prepare 90% construction documents, specifications and cost estimate: Include revisions to the 60% plans based on comments received from the City.
- Prepare 100% construction documents, specifications and cost estimates. Include revisions to the 90% plans based on comments received from the City.

Task 8. Bidding Assistance

- Conduct a Pre-bid meeting at the City of Tigard. Respond to bidder inquiries. Prepare Addenda during the bidding process as necessary. Review bid pricing with City project manager during the protest period.

Task 9. Construction Services

- Provide submittal review, comments, and approval to the City within 3 business days of receipt of submittal.
- Respond to RFI's during construction process and provide responses to RFI's within 3 business days of submittal.
- Construction Administration/Site Observation: (1) Review contractor pay requests, quantity verification, and provide recommendations to the City project manager; (2) Review change orders and provide recommendations to the City project manager; (3) Provide periodic construction consultation on on-call basis;
- Record Drawings: Prepare record drawings showing the as constructed facilities and any mitigation sites. Provide drawings in PDF and AutoCAD format;
- Project Closeout: Final walk through with City staff and contractor. Provide project files as required by City.

**PROJECT SCHEDULE**

City Council award of contract	January 24, 2017
Wetland and Stream Delineation/Survey	January 31 to February 9, 2017
Preliminary Design	January 31 to March 6, 2017
Environmental Permit Submittal	March 1, 2017
90% PS&E + Tigard Review	May 1, 2017
Final PS&E	May 5, 2017
Advertise for Construction Services	May 22, 2017
Notice to Proceed	July 25, 2017
Complete Grading/Structures/Channel Work	October 30, 2017
Planting of Site and Mitigation Areas	November 15, 2017 – March 15, 2017
End of Project and Plant Establishment	March 18, 2018
Project Complete	June 1, 2018

**SECTION 5**  
**PROPOSAL CONTENT AND FORMAT**

**A. FORMAT**

To provide a degree of consistency in review of the written proposals, firms are requested to prepare their proposals in the standard format specified below. Proposal to be limited to 15 pages (not including title page, transmittal letter, table of contents, or appendices), with each side counting as a page, 8-1/2 x 11 paper size, 11-point minimum font.

**1. Title Page**

Proposer should identify the RFP Title, name and title of contact person, address, telephone number, fax number, email address, and date of submission.

**2. Transmittal Letter**

The transmittal letter should be not more than two (2) pages long and should include as a minimum the following:

- a. A brief statement of the Proposer's understanding of the project and services to be performed;
- b. A positive commitment to perform the services within the time period specified, starting and completing the project within the deadlines stated in this RFP; and the names of persons authorized to represent the Proposer, their title, address, and telephone number (if different from the individual who signs the transmittal letter).

**3. Table of Contents**

The table of contents should include a clear and complete identification by section and page number of the materials submitted.

**4. Project Understanding, Approach, and Interest**

Describe in narrative form, with tables or other figures as desired, the Proposers understanding of the type of work required for this project, the proposed approach and technical plan for accomplishing the work within the schedule provided. Discuss approach for evaluating the Derry Dell stream corridor from 115<sup>th</sup> Avenue to 118<sup>th</sup> Court and determining what can be addressed during construction of this project and what should be done in the future. Explain why the proposed team is interested in this work.

**5. Consultant Project Team**

Describe the proposed project team, including sub-consultants. Provide a proposed project team organization chart and clearly delineate areas of work responsibility. Explain why this team and organization is well-suited to our project.

**6. Consultant Team Qualifications and Experience**

Proposers are required to give sufficient information of their experience, past performance and resulting products to permit the City to understand and verify the exact nature of the contributions made by project team members (including key individuals as well as firms). Provide the details of experience and past performance of the Proposers on comparable projects. Include a table summarizing relevant projects, specific relevant work types/products, which key members worked on these projects and year(s) in which project was conducted. Include brief biographies for key team members (these can be supplemented by full resumes in the appendix). Include descriptions of 3 to 6 past or current projects that

have particular relevance to Tigard’s project. Include client contract reference information for each (name, title, address, phone number and email address).

**7. Consultant Team Project Management and Availability**

Describe the proposed consultant project manager’s experience with relevant projects. Explain the project manager’s experience and approach to managing a design and construction project that requires additional analysis before defining the final construction project. Describe the proposed approach to communications with the city, and schedule, budget and scope management. How does the designated project manager propose to document, discuss and provide change management? A locally-based project manager is mandatory.

**B. ADDITIONAL SERVICES**

Provide a brief description of any other services that your firm could provide the City. Such services would be contracted for on an “as needed” basis likely via an amendment to the contract so long a not drastically altering the scope of work.

**C. ADDITIONAL INFORMATION**

Please provide any other information you feel would help the Selection Committee evaluate your firm for this project.

**D. DISPUTES**

Should any doubt or difference of opinion arise between the City and a Proposer as to the items to be furnished hereunder or the interpretation of the provisions of this RFP, the decision of the City shall be final and binding upon all parties.

**E. CITY PERSONNEL**

No Officer, agent, consultant or employee of the City shall be permitted any interest in the contract.

**SECTION 6  
PROPOSAL EVALUATION PROCEDURES**

**A. SELECTION AND EVALUATION PROCESS**

A Selection Committee assembled by the City will review the written proposals. Proposals will be evaluated to determine which ones best meet the needs of the City. After meeting the mandatory requirements, the proposals will be evaluated on their technical qualification based aspects. Proposals will be evaluated in accordance with the following:

<b>1. <u>Completed proposal submitted on time</u></b>	<b><u>Pass/Fail</u></b>
<b>2. <u>An original plus three (3) copies of the complete proposal</u></b>	<b><u>Pass/Fail</u></b>
<b>3. <u>Transmittal letter</u></b>	<b><u>Pass/Fail</u></b>
<b>4. <u>Project Understanding, Approach, and Interest</u></b>	<b><u>30 points</u></b>
<b>5. <u>Consultant Project Team</u></b>	<b><u>15 points</u></b>
<b>6. <u>Consultant Team Experience Qualification and Experience</u></b>	<b><u>30 points</u></b>
<b>7. <u>Consultant Team Project Management and Availability</u></b>	<b><u>25 points</u></b>
<b><u>TOTAL EVALUATION POINTS</u></b>	<b><u>100 POINTS</u></b>

**B. PRESENTATION/INTERVIEW**

At the option of the City, the top two or three Proposers may be requested to make a presentation of their proposal. This will provide an opportunity to clarify or elaborate on the proposal. The project manager will schedule the time and location of these presentations (if necessary) and notify the selected

firms. Should one or more firms be selected for oral interviews, an additional 50 points in scoring will be assigned to the interview process.

**C. 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.

**D. CLARIFICATION OF PROPOSALS**

The City reserves the right to obtain clarification of any point in regards to a proposal or to obtain additional information necessary to properly evaluate a particular proposal. Failure of a Proposer to respond to such a request for additional information or clarification could result in rejection of their proposal.

**E. NEGOTIATIONS WITH TOP RANKED FIRM**

Upon review of the proposals submitted, the City will enter into negotiations with the top ranked firm on a price for the work. If the City and the top ranked firm are unable after good faith negotiations to agree to a price, the City will move to the second ranked firm and enter into negotiations. The process shall repeat until either the City and a firm come to an agreed upon price or the City determines the project unfeasible at this time and elects to re-scope and resolicit the work.

**F. PROTEST OF AWARD**

In accordance with Tigard Public Contracting Rule 30.135, any adversely affected Proposer has seven (7) calendar days from the date of the written notice of award to file a written protest.

**G. PROPOSAL REJECTION**

The City reserves the right to:

1. Reject any or all proposals not in compliance with all public procedures and requirements;
2. Reject any proposal not meeting the specifications set forth herein;
3. Waive any or all irregularities in proposals submitted;
4. In the event two or more proposals shall be for the same amount for the same work, the City shall follow the provisions of LCRB 30.095 and Section 137-095 of the Oregon Attorney General's Model Public Contract Manual;
5. Reject all proposals;
6. Award any or all parts of any proposal; and
7. Request references and other data to determine responsiveness.

**SECTION 7  
PROPOSAL CERTIFICATIONS**

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**Non-discrimination Clause**

The Contractor agrees not to discriminate against any client, employee or applicant for employment or for services, because of race, color, religion, sex, national origin, handicap or age with regard to, but not limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; selection for training; rendition of services. It is further understood that any contractor who is in violation of this clause shall be barred from receiving awards of any purchase order from the City, unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such acts is unlikely.

Agreed by: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

**Resident Certificate**

Please Check One:

**Resident Vendor:** Vendor has paid unemployment taxes and income taxes in this state during the last twelve calendar months immediately preceding the submission of this proposal.

**Or**

**Non-resident Vendor:** Vendor does not qualify under requirement stated above.  
(Please specify your state of residence: \_\_\_\_\_)

Officer's signature: \_\_\_\_\_

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

**SECTION 8  
SIGNATURE PAGE**

The undersigned proposes to perform all work as listed in the Specification section and that all articles supplied under any resultant contract will conform to the specifications herein,

The undersigned agrees to be bound by all applicable laws and regulations, the accompanying specifications, and by City policies and regulations.

The undersigned, by submitting a proposal, represents that:

- A) The Proposer has read and understands the specifications.
- B) Failure to comply with the specifications or any terms of the Request for Proposal may disqualify the Proposer as being non-responsive.

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 has been received and duly considered and that all costs associated with all addenda have been included in this proposal:

Addenda: No. \_\_\_\_\_ through No. \_\_\_\_\_ inclusive.

We therefore offer and make this proposal to furnish services herein in fulfillment of the attached requirements and specifications of the City.

Name of firm: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Authorized Official. If partnership, signature of one partner.)

Typed Name/Title: \_\_\_\_\_

If corporation, attest: \_\_\_\_\_  
(Corporate Officer)

Corporation                       Partnership                       Individual

Federal Tax Identification Number (TIN): \_\_\_\_\_

**ATTACHMENT A  
CITY OF TIGARD, OREGON  
ACKNOWLEDGMENT OF ADDENDA**

**Project Title:** Derry Dell Creek at 118<sup>th</sup> Court Streambank Stabilization and Outfall Repair

**Close:** \_\_\_\_\_

I/WE HAVE RECEIVED THE FOLLOWING ADDENDA (*If none received, write "None Received"*):

1. \_\_\_\_\_ 3. \_\_\_\_\_

2. \_\_\_\_\_ 4. \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Proposer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Corporate Name

**ATTACHMENT B  
CITY OF TIGARD, OREGON  
STATEMENT OF PROPOSAL**

Name of Consultant: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

accepts all the terms and conditions contained in the qualification-based Request for Proposals for services on the City's Derry Dell at 118<sup>th</sup> Court Streambank Stabilization and Outfall Repair project and the attached engineering services agreement template (Attachment C):

\_\_\_\_\_  
Signature of authorized representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type or print name of authorized representative

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Type or print name of person(s) authorized to negotiate contracts

\_\_\_\_\_  
Telephone Number

**ATTACHMENT C**  
**CITY OF TIGARD, OREGON**  
**ENGINEERING SERVICES AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the City of Tigard, a municipal corporation, hereinafter referred to as the "City," and \_\_\_\_\_, whose authorized representative is \_\_\_\_\_, and having a principal being a registered engineer of the State of Oregon, hereinafter referred to as the "Engineer."

**RECITALS**

**WHEREAS**, the City's \_\_\_\_\_ fiscal year budget provides for \_\_\_\_\_ services for the \_\_\_\_\_ project; and

**WHEREAS**, the accomplishment of the work and services described in this Agreement is necessary and essential to the public works improvement program of the City; and

**WHEREAS**, the City desires to engage the Engineer to render professional engineering services for the project described in this Agreement, and the Engineer is willing and qualified to perform such services;

**THEREFORE**, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

**1. Engineer's Scope of Services**

The Engineer shall perform professional engineering services relevant to the Project in accordance with the terms and conditions set forth herein, and as provided in Exhibit A, which is attached hereto and by this reference made a part of this Agreement.

**2. Effective Date and Duration**

This agreement shall become effective upon the date of execution and shall expire, unless otherwise terminated or extended, upon completion of the work or June 30, \_\_\_\_\_, whichever comes first. All work under this Agreement shall be completed prior to the expiration of this Agreement.

**3. Engineer's Fee**

**A. Basic Fee**

- 1)** As compensation for Basic Services as described in Exhibit A of this Agreement, and for services required in the fulfillment of Paragraph 1, the Engineer shall be paid on an hourly rate based upon the "Schedule of Rates" in Exhibit B of this agreement, which shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement. The Basic Fee shall not exceed the amount of \_\_\_\_\_ and \_\_\_\_\_ /100 Dollars (\$ \_\_\_\_\_) without prior written authorization.
- 2)** The parties hereto do expressly agree that the Basic Fee is based upon the Scope of Services to be provided by the Engineer and is not necessarily related to the estimated construction cost of the Project. In the event that the actual construction cost differs from the estimated construction cost, the Engineer's compensation will not be adjusted unless the Scope of Services to be provided by the Engineer changes and is authorized and accepted by the City.

**B. Payment Schedule for Basic Fee**

Payments shall be made upon receipt of billings based on the work completed. Billings shall be submitted by the Engineer periodically, but not more frequently than monthly. Payment by the City shall release the City from any further obligation for payment to the engineer for service or

services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

**C. Payment for Special Services**

Only when directed in writing by the City, the Engineer shall furnish or acquire for the City the professional and technical services based on the hourly rate schedule as described in Exhibit B of this contract for minor project additions and/or alterations.

**D. Certified Cost Records**

The Engineer shall furnish certified cost records for all billings pertaining to other than lump sum fees to substantiate all charges. For such purposes, the books of account of the Engineer shall be subject to audit by the City. The Engineer shall complete work and cost records for all billings on such forms and in such manner as will be satisfactory to the City.

**E. Contract Identification**

The Engineer shall furnish to the City its employer identification number, as designated by the Internal Revenue Service, or social security number, as the City deems applicable.

**F. Payment – General**

- 1) Engineer shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 2) Engineer shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime.
- 3) Engineer shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Engineer or all sums which Engineer agrees to pay for such services and all moneys and sums which Engineer collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- 4) The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.
- 5) Engineer shall make payments promptly, as due, to all persons supplying services or materials for work covered under this contract. Engineer shall not permit any lien or claim to be filed or prosecuted against the City on any account of any service or materials furnished.
- 6) If Engineer fails, neglects or refuses to make prompt payment of any claim for labor, materials, or services furnished to Engineer, sub-consultant or subcontractor by any person as such claim becomes due, City may pay such claim and charge the amount of the payment against funds due or to become due to the Engineer. The payment of the claim in this manner shall not relieve Engineer or their surety from obligation with respect to any unpaid claims.

**4. Ownership of Plans and Documents: Records**

- A.** The field notes, design notes, and original drawings of the construction plans, as instruments of service, are and shall remain, the property of the Engineer; however, the City shall be furnished, at no additional cost, one set of previously approved reproducible drawings as well as storage device such as thumb drive or sd card in “DWG” or “DXF” format, of the original drawings of the work. The City shall have unlimited authority to use the materials received from the Engineer in any way the City deems necessary.

- B.** The City shall make copies, for the use of and without cost to the Engineer, of all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the Engineer pursuant to this Agreement, and also make available any other maps, records, or other materials available to the City from any other public agency or body.
- C.** The Engineer shall furnish to the City, copies of all maps, records, field notes, and soil tests which were developed in the course of work for the City and for which compensation has been received by the Engineer at no additional expense to the City except as provided elsewhere in this Agreement.

**5. Assignment/Delegation**

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Engineer shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

**6. Engineer is Independent Contractor**

- A.** The City's project director, or designee, shall be responsible for determining whether Engineer's work product is satisfactory and consistent with this agreement, but Engineer is not subject to the direction and control of the City. Engineer shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 3 of this Agreement.
- B.** Engineer is an independent contractor and not an employee of City. Engineer acknowledges Engineer's status as an independent contractor and acknowledges that Engineer is not an employee of the City for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Engineer to provide services under this contract are employees of Engineer and not of City. Engineer acknowledges that it is not entitled to benefits of any kind to which a City employee is entitled and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Engineer is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Engineer under the terms of the agreement, to the full extent of any benefits or other remuneration Engineer receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Engineer or to a third party) as a result of said finding.
- C.** The undersigned Engineer hereby represents that no employee of the City or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Engineer, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- D.** If this payment is to be charged against Federal funds, Engineer certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his/her normal charge for the type of service provided.

- E.** Engineer and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- F.** Engineer shall obtain, prior to the execution of any performance under this Agreement, a City of Tigard Business License. The Tigard Business License is based on a calendar year with a December 31st expiration date. New businesses operating in Tigard after June 30th of the current year will pay a pro-rated fee through the end of the calendar year.
- G.** Engineer is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

**7. Indemnity**

- A.** The City has relied upon the professional ability and training of the Engineer as a material inducement to enter into this Agreement. Engineer represents to the City that the work under this contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the engineering profession under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of an Engineer's work by the City shall not operate as a waiver or release. Acceptance of documents by City does not relieve Engineer of any responsibility for design deficiencies, errors or omissions.
- B.** Claims for other than Professional Liability. Engineer agrees and shall indemnify, defend, save and hold harmless the City of Tigard, its officers, employees, agents, and representatives from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, of whatsoever nature, including intentional acts resulting from or arising out of the activities of Engineer or its subcontractors, sub-consultants, agents or employees in performance of this contract at both trial and appeal level, whether or not a trial or appeal ever takes place including any hearing before federal or state administrative agencies.. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.
- C.** Claims for Professional Liability. Engineer agrees and shall indemnify, defend, save and hold harmless the City of Tigard, its officers, employees, agents, and representatives from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, arising out of the professional negligent acts, errors or omissions of Engineer or its subcontractors, sub-consultants, agents or employees in performance of professional services under this agreement. Any work by Engineer that results in a design of a facility that is not readily accessible to and usable by individuals with disabilities shall be considered a professionally negligent act, error or omission.
- D.** As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly or indirectly, in whole or in part, from the quality of the professional services provided by Engineer, regardless of the type of claim made against the City in performance of this contract. A claim for other than professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Engineer unrelated to the quality of professional services provided by Engineer in performance of this contract.

**8. Insurance**

Engineer and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover risks arising directly or indirectly out of Engineer’s activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder.

The policy or policies of insurance maintained by the Engineer and its subcontractors shall provide at least the following limits and coverages:

**A. Commercial General Liability Insurance**

Engineer shall obtain, at Engineer’s expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an “occurrence” form (CG 2010 1185 or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$3,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$2,000,000
Fire Damage (Any one fire)	\$50,000

**B. Professional Liability**

Engineer shall obtain, at Engineer’s expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by any actual or alleged negligent act, error or omission in the rendering of or failure to render Professional Services. Combined single limit per claim shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$3,000,000 and filed on a “claims-made” form.

**C. Commercial Automobile Insurance**

Engineer shall also obtain, at Engineer’s expense, and keep in effect during the term of the contract (Symbol 1 or Symbols 8 and 9 as applicable) Commercial Automobile Liability coverage on an “occurrence” form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

If Contractor operates a personally-owned vehicle for business use under this contract, the Contractor shall obtain, at Contractor’s expense, and keep in effect during the term of the contract, business automobile liability coverage for all owned vehicles on an “occurrence” form. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

**D. Workers’ Compensation Insurance**

The Engineer, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers’ Compensation Law and 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 Oregon workers’ compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Engineers who perform work without the assistance or labor of any

employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$1,000,000 each accident.

**E. Additional Insured Provision**

All policies aforementioned, other than Workers' Compensation and Professional Liability, shall include the City its officers, employees, agents and representatives as additional insureds with respect to this contract. Coverage will be endorsed to provide a "per project" aggregate.

**F. Extended Reporting Coverage**

If any of the aforementioned liability insurance is arranged on a "claims-made" basis, Extended Reporting coverage will be required at the completion of this contract to a duration of 24 months or the maximum time period the Engineer's insurer will provide such if less than 24 months. Engineer will be responsible for furnishing certification of Extended Reporting coverage as described or continuous "claims-made" liability coverage for 24 months following contract completion. Continuous "claims-made" coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this contract. Coverage will be endorsed to provide a "per project" aggregate.

**G. Insurance Carrier Rating**

Coverage provided by the Engineer must be underwritten by an insurance company deemed acceptable by the City. All policies of insurance must be written by companies having an A.M. Best rating of "A-VII" or better, or equivalent. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

**H. Self-Insurance**

The City understands that some Contractors may self-insure for business risks and the City will consider whether such self-insurance is acceptable if it meets the minimum insurance requirements for the type of coverage required. If the Contractor is self-insured for commercial general liability or automobile liability insurance the Contractor must provide evidence of such self-insurance. The Contractor must provide a Certificate of Insurance showing evidence of the coverage amounts on a form acceptable to the City. The City reserves the right in its sole discretion to determine whether self-insurance is adequate.

**I. Certificates of Insurance**

As evidence of the insurance coverage required by the contract, the Engineer shall furnish a Certificate of Insurance to the City. No contract shall be effective until the required Certificates of Insurance have been received and approved by the City. The certificate will specify and document all provisions within this contract and include a copy of Additional Insured Endorsement. A renewal certificate will be sent to the address below prior to coverage expiration.

**J. Independent Contractor Status**

The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

**K. Primary Coverage Clarification**

The parties agree that Engineer's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

**L. Cross-Liability Clause**

A cross-liability clause or separation of insureds clause will be included in all general liability and commercial automobile policies required by this contract.

A certificate in form satisfactory to the City certifying to the issuance of such insurance will be forwarded to:

City of Tigard  
Attn: Contracts and Purchasing Office  
13125 SW Hall Blvd  
Tigard, Oregon 97223

At the discretion of the City, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company may be required to be forwarded to the above address. Such policies or certificates must be delivered prior to commencement of the work. The procuring of such required insurance shall not be construed to limit Engineer's liability hereunder. Notwithstanding said insurance, Engineer shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

**9. Termination Without Cause**

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Engineer. If City terminates the contract pursuant to this paragraph, it shall pay Engineer for services rendered to the date of termination.

**10. Termination With Cause**

**A.** City may terminate this Agreement effective upon delivery of written notice to Engineer, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2) If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3) If any license or certificate required by law or regulation to be held by Engineer, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Engineer becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Engineer, if a receiver or trustee is appointed for Engineer, or if there is an assignment for the benefit of creditors of Engineer.

Any such termination of this agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**B.** City, by written notice of default (including breach of contract) to Engineer, may terminate the whole or any part of this Agreement:

- 1) If Engineer fails to provide services called for by this agreement within the time specified herein or any extension thereof, or

- 2) If Engineer fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten days or such other period as City may authorize.
- 3) If Engineer fails to eliminate a conflict as described in Section 14 of this agreement.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Engineer shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. If City terminates this Agreement under paragraph (B), Engineer shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Engineer bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Engineer. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

**11. Non-Waiver**

The failure of City to insist upon or enforce strict performance by Engineer of any of the terms of this Agreement or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

**12. Method and Place of Giving Notice, Submitting Bills and Making Payments**

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

<b>CITY OF TIGARD</b>	
Attn:	Attn:
Address: 13125 SW Hall Blvd. Tigard, Oregon 97223	Address:
Phone: (503) 718-	Phone: ( )
Email:	Email: (Contact person's email)

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

**13. Merger**

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

**14. Professional Services**

The City requires that services provided pursuant to this agreement shall be provided to the City by an Engineer, which does not represent clients on matters contrary to City interests. Further, Engineer shall

not engage services of an engineer and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests.

Should the Engineer represent clients on matters contrary to City interests or engage the services of an engineer and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests, Engineer shall consult with the appropriate City representative regarding the conflict.

After such consultation, the Engineer shall have seven (7) days to eliminate the conflict to the satisfaction of the City. If such conflict is not eliminated within the specified time period, the agreement may be terminated pursuant to Section 10 (B - 3) of this agreement.

**15. Force Majeure**

Neither City nor Engineer shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

**16. Non-Discrimination**

Engineer agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Engineer also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

**17. Errors**

Engineer shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

**18. Extra (Changes) Work**

Only the City's Project Manager may authorize extra (and/or change) work. Failure of Engineer to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Engineer thereafter shall be entitled to no compensation whatsoever for the performance of such work.

**19. Governing Law**

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

**20. Compliance With Applicable Law**

Engineer shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including those set forth in ORS 279A, 279B, and 279C.

**21. Conflict Between Terms**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

**22. Access to Records**

City shall have access to such books, documents, papers and records of Engineer as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

**23. Audit**

Engineer shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Engineer agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

**24. Severability**

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

**25. Representations and Warranties**

Engineer represents and warrants to the City that:

- A. Engineer has the power and authority to enter into and perform this Agreement.
- B. This Agreement, when executed and delivered, is a valid and binding obligation of Engineer, enforceable in accordance with its terms.
- C. Engineer (to the best of Engineer's knowledge, after due inquiry), for a period of no fewer than six calendar years (or since the firm's inception if less than that) preceding the effective date of this Agreement, faithfully has complied with:
  - 1) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
  - 2) Any tax provisions imposed by a political subdivision of this state that applied to Engineer, to Engineer's property, operations, receipts, or income, or to Engineer's performance of or compensation for any work performed by Engineer;
  - 3) Any tax provisions imposed by a political subdivision of this state that applied to Engineer, or to goods, services, or property, whether tangible or intangible, provided by Engineer; and
  - 4) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
- D. Any intellectual property rights or such delivered to the City under this Agreement, and Engineer's services rendered in the performance of Engineer's obligations under this Agreement, shall be provided to the City free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

**26. Compliance with Tax Laws**

**A.** Engineer must, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of the State of Oregon. For the purposes of this Section, “tax laws” includes all the provisions described in subsection 25.C. 1) through 4) of this Agreement.

**B.** Any violation of subsection A of this section shall constitute a material breach of this Agreement. Further, any violation of Engineer’s warranty, in subsection 25.C of this Agreement, that the Engineer has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Agreement. Any violation shall entitle the City to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

- 1) Termination of this Agreement, in whole or in part;
- 2) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Engineer, in an amount equal to State’s setoff right, without penalty; and
- 3) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The City shall be entitled to recover any and all damages suffered as the result of Engineer's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing a replacement Engineer.

These remedies are cumulative to the extent the remedies are not inconsistent, and the City may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**27. Complete Agreement**

This Agreement, including the exhibits, is intended both as a final expression of the Agreement between the Parties and as a complete and exclusive statement of the terms. In the event of an inconsistency between a provision in the main body of the Agreement and a provision in the Exhibits, the provision in the main body of the Agreement shall control. In the event of an inconsistency between Exhibit A and Exhibit B, Exhibit A shall control.

No waiver, consent, modification, or change of terms of this Agreement 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 Agreement. Engineer, by the signature of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

**IN WITNESS WHEREOF**, City has caused this Agreement to be executed by its duly authorized undersigned officer and Engineer has executed this Agreement on the date hereinabove first written. Awarded by Tigard’s Local Contract Review Board at their \_\_\_\_\_ meeting.

**CITY OF TIGARD**

\_\_\_\_\_  
By: Marty Wine, City Manager

\_\_\_\_\_  
By: Authorized Contractor Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date