



City of Tigard

FINANCE AND INFORMATION SERVICES

Request for Proposal (RFP)

PERFORMANCE AUDIT SERVICES

Proposals Due: Wednesday, August 29, 2018 - 2:00 pm local time

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

**PUBLIC NOTICE
REQUEST FOR PROPOSAL
PERFORMANCE AUDIT SERVICES**

The City of Tigard is seeking sealed proposals from firms qualified to provide performance audit services for various departments, division, and programs within the City. The City will receive proposals until 2:00 pm local time, Wednesday, August 29, 2018, at Tigard City Hall's Utility Billing Counter at 13125 SW Hall Blvd., Tigard, Oregon 97223.

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 <http://www.tigard-or.gov> 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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TABLE OF CONTENTS

TITLE	PAGE
Title Page.....	1
Public Notice.....	2
Table of Contents.....	3
 <u>SECTIONS</u>	
Section 1 Introduction.....	4
Section 2 Proposer’s Special Instructions.....	4
Section 3 Background.....	7
Section 4 Scope and Schedule of Work.....	7
Section 5 Proposal Content and Format.....	8
Section 6 Proposal Evaluation Procedures.....	10
Section 7 Proposal Certification.....	12
Section 8 Signature Page.....	13
 <u>ATTACHMENTS</u>	
Attachment A Acknowledgement of Addendum.....	14
Attachment B Statement of Proposal.....	15
Attachment C City of Tigard General Services Agreement.....	16

SECTION 1
INTRODUCTION

The City of Tigard is seeking sealed proposals from firms qualified to provide performance audit services for various departments, division, and programs within the City. The City will receive proposals until 2:00 pm local time, Wednesday, August 29, 2018, at Tigard City Hall’s Utility Billing Counter at 13125 SW Hall Blvd., Tigard, Oregon 97223.

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SECTION 2
PROPOSER’S SPECIAL INSTRUCTIONS

A. PROPOSED TIMELINES

<u>Friday, August 3, 2018</u>	Release of Proposals
<u>Wednesday, August 22, 2018 – 2:00 pm</u>	Submission Deadline
<u>Week of September 3, 2018</u>	Presentations (if necessary)
<u>Tuesday, October 9, 2018</u>	Award of Contract by LCRB (if necessary)
<u>Monday, October 22, 2018</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, Wednesday, August 29, 2018, to the address below. Each proposal must be submitted in a sealed envelope and designated with proposal title. To assure that your proposal receives priority treatment, please mark as follows.

RFP – Performance Audit Service

City of Tigard – Utility Billing Counter
Attn: Joe Barrett, Principal 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

Any 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, Principal Management Analyst
13125 SW Hall Blvd.
Tigard, Oregon 97223

If a protest is received in accordance with 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 Addendum, 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, Principal 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, because of any change in the RFP, must be acknowledged by submitting the “Acknowledgment of Addendum” 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 Consultants will be required to present a copy of their City of Tigard Business License at the time of contract execution. Successful Consultants will also need to complete a W-9 form for the City at the time of contract execution.

I. PROPOSAL VALIDITY PERIOD

Each proposal shall be irrevocable for a period of ninety (90) days from the Proposal opening date.

J. FORM OF CONTRACT

A copy of the City's standard personal 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.

K. TERM OF CONTRACT

The City anticipates that all work under this project will be completed by June 30, 2019.

L. 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.

M. INTERGOVERNMENTAL COOPERATIVE PURCHASING

The bidder submitting this proposal agrees to extend identical prices and services under the same terms and conditions to all public agencies in the region. Quantities stated in this solicitation reflect the City of Tigard usage only.

Each participating agency shall execute its own contract with the lowest responsible/responsive bidder for its requirements. Any bidder(s), by written notification included with their bid, may decline to extend the prices and terms of this solicitation to any and/or all other public agencies.

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 cost or price information, which must be open to the public.

SECTION 3
BACKGROUND

With a diverse economy, strong schools and outstanding parks, Tigard is one of the most livable cities in Oregon. Since its incorporation in 1961, the city has grown to become a desirable and affordable community in the Portland metro area. Tigard's 51,902 (2016 census estimate) enjoy access to more than 16 miles of paved trails and nearly 550 acres of parks and open spaces. As a community, Tigard strives to blend the amenities of a modern city with the friendliness and community spirit of a small town. Residents have a range of public transportation choices to nearby Portland, Beaverton and Hillsboro. Other amenities include shopping at Bridgeport Village and Washington Square Mall as well as easy access to multiple full-service medical facilities. The Cascade Mountains, Oregon's famed beaches and the Columbia Gorge are all accessible as day trips.

The City of Tigard, through community surveys, focus groups, and social media comments during recent elections, has received comments from some members of the community that the public does not know or does not trust that the city is spending and operating city services effectively and efficiently. To provide objective data about these questions, the Tigard City Council wishes to conduct independent performance audits of the city services that are funded by the General Fund.

SECTION 4
PURPOSE AND SCOPE OF SERVICES

A. PURPOSE

A performance audit is an independent examination of a program, function, operation or the management systems and procedures of a government to assess whether it is achieving economy, efficiency and effectiveness in the employment of available resources, in accordance with professional standards. In June 2018, a majority of the city Council asked that Tigard begin to conduct performance audits for all city services funded by the general fund. These service departments include

1. Tigard Public Library
2. Community Development
3. Public Works
 - a. Recreation
 - b. Parks Maintenance
 - c. Engineering
4. City Management
5. Human Resources
6. Tigard Police Department;
7. Central Services
8. Finance
9. Information Technology Systems

Audits may be conducted at lower levels within the organization other than departments.

B. SCOPE OF SERVICES

The audits should seek to measure performance against pre-designated metrics, best practices, professional standards, or benchmarks as appropriate to the program or discipline. The consultant(s) would assist with the development of these metrics based on their professional experience. The City is seeking audit results centered around the following questions:

1. What are the services provided by this department/division/program and how are those services delivered?

2. Evaluate and assess the effectiveness of the programs and services provided.
3. Is the department/city spending funds and employing resources to provide the service efficiently? How efficient is the service delivery?
4. What are performance improvements that could be made or leading practices that should be considered in providing the service?
5. Are there organizational, staffing or management changes that are recommended that would lead to improved performance?
6. What performance improvements would be made or wastes that could be avoided by changing what or how the work is done (from Lean management, wastes include: defects; overproduction; waiting; not utilizing talent; transportation; inventory excess; motion waste; excess processing)?

The focus of the audits should be designed to answer these questions for each city department's processes, programs and outcomes. The City anticipates that it will likely select multiple proposers to conduct the audits, depending on the nature of the city service and the expertise of the proposer to design an audit responsive to the questions. Responses should clearly describe the area of expertise or what type of city services they can provide for audit services, or for all general fund services, in their submittal.

The product of the audit and reporting phase of each audit will include a written report with summary and detail preliminary findings. Audit findings will be reported to the City Council and City Manager who will jointly receive, review and respond to audit findings, and determine the audit response and action or improvement plan as indicated based on the audit findings. The City may expand the current function of the citizen volunteer Audit Committee to also review audit findings.

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.

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. **Firm/Project Team Qualifications**
- a. Background of the firm. This should include a brief history of the firm and types of performance audit services the firm is qualified to perform.
 - b. Qualifications of the firm in performing this type of work. This should include examples of related experience and references for similar studies and projects.
 - c. Proposers must identify the anticipated members of their firm that will be assigned to meet the City's needs. Proposers should identify individuals and subcontractors who will provide the services, their experience, and their individual qualifications. Pertinent resumes of assigned personnel should be included.

5. **Audit Approach –Individual Department Focus**
- Proposers should provide the City with information regarding their understanding of the City's needs with regards to the Purpose and Scope of Services. Proposers must address their approach to the specific questions the City is looking at the audits to center around. Approaches should also be addressed, where applicable, to specific departments or divisions, as the City is open to awarding the work to multiple firms if it results in a better result for the City. As part of their service understanding documentation, Proposer's should address their availability to meet the City's needs in a timely manner.

6. **Pricing Proposal**
- The proposed fee structure should include the complete breakout for the Consultant's costs to provide all of the services under the subsequent contract.

- B. **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.

- C. **ADDITIONAL INFORMATION**
- Please provide any other information you feel would help the Selection Committee evaluate your firm for this project.

- D. **REFERENCES**
- Consultant must demonstrate successful past performance of the firm's ability to provide services as set forth in this specification. Consultant s must detail three (3) references to document experience. References must be detailed in Attachment B "Statement of Proposal"

- E. **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.

- F. **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 both their technical and fee aspects. The Selection Committee will select the Proposer which best meets the City's needs based upon its evaluation of a firms proposal. Proposals will be evaluated in accordance with the following:

1. <u>Completed Proposal submitted on time</u>	<u>Pass/Fail</u>
2. <u>Original proposal plus electronic copy on a portable USB (thumb) drive</u>	<u>Pass/Fail</u>
3. <u>Transmittal letter</u>	<u>Pass/Fail</u>
4. <u>Firm/Project Team Qualifications</u>	<u>30 points</u>
5. <u>Audit Approach – Individual Department Focus</u>	<u>50 points</u>
6. <u>Pricing Proposal</u>	<u>20 points</u>
	<u>TOTAL EVALUATION POINTS 100 POINTS</u>

B. PRESENTATION/INTERVIEW

At the option of the City, the top scoring proposers (based on the criteria points) may be asked to make a presentation of their proposal. This will provide an opportunity to clarify or elaborate on the proposal, but will not, in any way provide an opportunity to change any fee amount originally proposed. The City's Project Manager will schedule the time and location of these presentations and notify the selected firms. If the City elects to conduct a presentation/interview process, 25 criteria points will be assigned to the process and will be added to the participating Proposers' total points.

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 or 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. RESERVATION IN EVALUATION

The Selection Committee reserves the right to either: (a) request "Best and Final Offers" from the two finalist firms and award to the lowest priced or (b) to reassess the proposals and award to the vendor determined to best meet the overall needs of the City.

F. INTENT OF AWARD

Upon review of the proposals submitted, the City may negotiate a scope of work and a general services agreement with one firm, or may select one or more firms for further consideration.

G. 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.

H. 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**

Non-discrimination Clause

The Consultant 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, for the price(s) stated; 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 at the price(s) indicated 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: Performance Audit Services

Close: Wednesday, August 22, 2018 - 2:00 p.m.

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 City of Tigard's Request for Proposal for Mechanical/HVAC Preventative Maintenance and Inspection Services and the attached general services agreement (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

REFERENCES

Reference #1

Telephone Number

Project Title

Contact Individual

Reference #2

Telephone Number

Project Title

Contact Individual

Reference #3

Telephone Number

Project Title

Contact Individual

**ATTACHMENT C
CITY OF TIGARD, OREGON
PERSONAL SERVICES CONTRACT**

THIS AGREEMENT made and entered into this _____ day of _____, _____ by and between the City of Tigard, a municipal corporation of the State of Oregon, hereinafter called City, and _____, hereinafter called Consultant.

RECITALS

WHEREAS, the City’s _____ fiscal year budget provides for services related to _____; and

WHEREAS, City has need for the services of a company with a particular training, ability, knowledge, and experience possessed by Consultant, and

WHEREAS, City has determined that Consultant is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth,

THEREFORE, the Parties agree as follows:

1. SERVICES TO BE PROVIDED

Consultant shall initiate services immediately upon receipt of City’s notice to proceed together with an executed copy of this Agreement. Consultant agrees to complete work that is detailed in Exhibit A and by this reference made a part hereof. Any and all work assigned by the City will be contained in subsequent scope of work as needed

2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, on _____. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. COMPENSATION

The City agrees to pay Consultant in accordance with the fee schedule outlined in Exhibit A for performance of those services described herein and in any subsequent agreements that arise from the work under this Agreement. The total amount paid to the Consultant by the City shall not exceed _____ and _____/100 Dollars (\$) if all tasks are completed. Any and all payments made to the Consultant shall be based upon the following applicable terms:

- A.** Payment by City to Consultant for performance of services under this Agreement includes all expenses incurred by Consultant, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- B.** Payment will be made in installments based on Consultant’s invoice, subject to the approval of the City Manager, or designee, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.
- C.** Payment by City shall release City from any further obligation for payment to Consultant, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

- D. Consultant shall make payments promptly, as due, to all persons supplying labor or materials for the prosecution of this work.
- E. Consultant shall not permit any lien or claim to be filed or prosecuted against the City on any account of any labor or material furnished.
- F. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- G. If Consultant fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Consultant or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Consultant. The payment of the claim in this manner shall not relieve Consultant or their surety from obligation with respect to any unpaid claims.
- H. Consultant 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.
- I. Consultant 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 Consultant or all sums which Consultant agrees to pay for such services and all moneys and sums which Consultant 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.
- J. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract during the current fiscal year. Funding during future fiscal years shall be subject to budget approval by Tigard's City Council.

4. OWNERSHIP OF WORK PRODUCT

City shall be the owner of and shall be entitled to possession of any and all work products of Consultant which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Consultant prior to termination of this Agreement by Consultant or upon completion of the work pursuant to 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, Consultant 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. STATUS OF CONSULTANT AS INDEPENDENT CONSULTANT

Consultant certifies that:

- A. Consultant acknowledges that for all purposes related to this Agreement, Consultant is and shall be deemed to be an independent Consultant as defined by ORS 670.600 and not an employee of

City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Consultant is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Consultant under the terms of this Agreement, to the full extent of any benefits or other remuneration Consultant 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 Consultant or to a third party) as a result of said finding.

- B.** The undersigned Consultant 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 Consultant, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, Consultant certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

Consultant 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.

- C.** Consultant 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 though the end of the calendar year.

- D.** Consultant is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. INDEMNIFICATION

City has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant represents that all of its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a Consultant's work by City shall not operate as a waiver or release.

Consultant agrees to indemnify and defend the City, its officers, employees, agents and representatives and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs (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) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except liability arising out of the sole negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal worker's compensation laws. 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.

8. INSURANCE

Consultant 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 Consultant's activities or work hereunder, including the operations of its subcontractors of any tier.

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

A. Commercial General Liability Insurance

Consultant shall obtain, at Consultant'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. Commercial Automobile Insurance

Consultant shall also obtain, at Consultant's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles on an "occurrence" form. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

If Consultant uses a personally-owned vehicle for business use under this contract, the Consultant shall obtain, at Consultant'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.

C. Workers' Compensation Insurance

The Consultant, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain workers' compensation coverage. All non-exempt employers shall provide Employer's Liability Insurance with coverage limits of not less than \$1,000,000 each accident.

D. 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.

E. Insurance Carrier Rating

Coverages provided by the Consultant 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.

F. Self-Insurance

The City understands that some Consultants 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 Consultant is self-insured for commercial general liability or automobile liability insurance the Consultant must provide evidence of such self-insurance. The Consultant 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.

G. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Consultant 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 below address prior to coverage expiration.

H. Independent Consultant Status

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

I. Primary Coverage Clarification

The parties agree that Consultant'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.

J. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions 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 Consultant's liability hereunder. Notwithstanding said insurance, Consultant shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND 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:

CITY OF TIGARD	
Attn:	Attn:
Address:	Address:
Phone: (503) 718-	Phone: ()
Fax: (503)	Fax: ()
Email:	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 who notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

10. 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.

11. PROFESSIONAL SERVICES

The City requires that services provided pursuant to this agreement shall be provided to the City by a Consultant that does not represent clients on matters contrary to City interests. Further, Consultant shall not engage services of an attorney and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests.

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

After such consultation, the Consultant 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 13 (B) (3) of this agreement.

12. 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 Consultant. If City terminates the contract pursuant to this paragraph, it shall pay Consultant for services rendered to the date of termination.

13. TERMINATION WITH CAUSE

A. City may terminate this Agreement effective upon delivery of written notice to Consultant, 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 Consultant, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Consultant becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Consultant, if a receiver or trustee is appointed for Consultant, or if there is an assignment for the benefit of creditors of Consultant.

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 Consultant, may terminate the whole or any part of this Agreement:

- 1) If Consultant fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Consultant 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 (10) days or such other period as City may authorize.
- 3) If Consultant fails to eliminate a conflict as described in Section 11 of this agreement.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Consultant 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), Consultant 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 Consultant 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 Consultant. 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.

14. ACCESS TO RECORDS

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

15. FORCE MAJEURE

Neither City nor Consultant 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 (10) 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-WAIVER

The failure of City to insist upon or enforce strict performance by Consultant 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.

17. NON-DISCRIMINATION

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

18. ERRORS

Consultant 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.

19. EXTRA (CHANGES) WORK

Only the City's Project Manager for this Agreement may authorize extra (and/or change) work. Failure of Consultant 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 Consultant thereafter shall be entitled to no compensation whatsoever for the performance of such work.

20. WARRANTIES

All work shall be guaranteed by Consultant for a period of one year after the date of final acceptance of the work by the owner. Consultant warrants that all practices and procedures, workmanship and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Consultant from liability under warranties contained in or implied by this Agreement.

21. ATTORNEY'S FEES

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

22. 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.

23. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Consultant shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors

and income tax withholding contained in ORS Chapters 279A, 279B and 279C, the provisions of which are hereby made a part of this agreement.

24. 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.

25. AUDIT

Consultant 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. Consultant 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.

26. 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.

27. CONDITIONS OF SUPPLYING A PUBLIC AGENCY

Where applicable, seller must make payment promptly as due to persons supplying Consultant labor or materials for the execution of the work provided by this order. Consultant shall not permit any lien or claim to be filed or prosecuted against Buyer or any subdivision of City on account of any labor or material to be furnished. Consultant further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

28. HOURS OF LABOR

If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279C.540. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC SS 201-209.

29. MEDICAL CARE AND WORKERS' COMPENSATION

Consultant 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 such Consultant, of all sums which the Consultant agrees to pay for such services and all moneys and sums which the Consultant collected or deducted from the wages of the employees pursuant to any law, Consultant agreement for the purpose of providing or paying for such service.

30. REPRESENTATIONS AND WARRANTIES

Consultant represents and warrants to the City that:

- A. Consultant 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 Consultant, enforceable in accordance with its terms.
- C. Consultant (to the best of Consultant’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 Consultant, to Consultant’s property, operations, receipts, or income, or to Consultant’s performance of or compensation for any work performed by Consultant;
 - 3) Any tax provisions imposed by a political subdivision of this state that applied to Consultant, or to goods, services, or property, whether tangible or intangible, provided by Consultant; 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 Consultant’s services rendered in the performance of Consultant’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.

31. COMPLIANCE WITH TAX LAWS

- A. Consultant 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 Consultant’s warranty, in subsection 25.C of this Agreement, that the Consultant 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 Consultant, 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 Consultant'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 Consultant.

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.

32. 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. Consultant, 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 Consultant 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 Agent of Consultant

Date

Date