



# CITY OF TIGARD

## REQUEST FOR PROPOSALS

### City Attorney Services

**DATE DUE:** Tuesday, October 18, 2016

**TIME DUE:** 2:00 pm local time

Envelopes must be sealed and marked with the Project Title.

Proposers must submit one (1) original copy of their proposal and one (1) one electronic copy on a portable USB drive (thumb drive).

<b>PROJECT MANAGER</b>	<b>RFP QUESTIONS:</b>
Marty Wine, City Manager City of Tigard, City Management Phone: 503-718 2486 Email: <a href="mailto:marty@tigard-or.gov">marty@tigard-or.gov</a>	Joseph Barrett, Sr. Management Analyst City of Tigard, FIS – Contracts & Purchasing Phone: 503-718 2477 Email: <a href="mailto:joseph@tigard-or.gov">joseph@tigard-or.gov</a>

### SUBMIT PROPOSAL TO:

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

**PUBLIC NOTICE  
REQUEST FOR PROPOSALS  
CITY ATTORNEY SERVICES**

The City of Tigard will receive sealed proposals from firms qualified to perform city attorney services until 2:00 pm local time on Tuesday, October 18, 2016. Bid must be delivered to Tigard City Hall's Utility Billing Desk located at 13125 SW Hall Blvd., Tigard, Oregon 97223 before the due date and time. Firms are invited to submit a proposal outlining their experience and qualifications in performing work directly related to the services required as detailed in the Request for Proposal packet. RFP packets may be downloaded from [www.tigard-or.gov](http://www.tigard-or.gov) or obtained in person at Tigard's Utility Billing Counter located at the aforementioned address.

The City has also issued a separate request for proposals for specialized legal services in the areas of labor, real estate, prosecutor, and franchise law. Proposers may choose to submit proposals for any or all of those services in addition to the City Attorney services described in this Request for Proposal.

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(b). 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.

PUBLISHED: The Daily Journal of Commerce  
DATE: Friday, September 23, 2016

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**SECTION 1**  
**INTRODUCTION**

The City of Tigard will receive sealed proposals from firms qualified to perform city attorney services until 2:00 p.m. local time on Tuesday, October 4, 2016, at Tigard City Hall’s Utility Billing Desk located at 13125 SW Hall Blvd., Tigard, Oregon 97223. Firms are invited to submit a proposal outlining their experience and qualifications in performing work directly related to the services required as detailed in the Request for Proposal packet.

The City has also issued a separate request for proposals for specialized legal services in the areas of labor, real estate, prosecutor, and franchise law. Proposers may choose to submit proposals for any or all of those services in addition to the City Attorney services described in this Request for Proposal.

While the City is requesting proposals for city attorney services, this action should not be seen as a negative reflection on the services currently being provided. The City’s purchasing rules encourage the request for proposal (RFP) process at least once every five years.

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(b). 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**

Friday, September 23, 2016	Advertisement and Release of Proposals
Tuesday, October 18 – 2:00 pm	Deadline for Submission of Proposals
October 24 through October 31, 2016	Interviews (if necessary)
Tuesday, December 13, 2016	Award of Contract by LCRB
Tuesday, January 3, 2017	Commencement of Services

**NOTE:** The City reserves the right to modify this schedule at the City’s discretion. Proper notification of changes in the will be made to all interested parties.

**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 October 18, 2016 by 2:00 pm, to the address below. Each proposal must be submitted with one (1) original copy and one (1) electronic copy on a portable USB drive (thumb drive) in a sealed envelope and designated with proposal title. To assure that your proposal receives priority treatment, please mark as follows.

**City Attorney Services**

Due: October 18, 2016 at 2:00 pm  
City of Tigard – Utility Billing Counter  
Attn: Joseph 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 Joseph Barrett, Sr. Management Analyst, and be marked as follows:

**RFP Specification/Term Protest**

City of Tigard  
Attn: Joseph Barrett, Sr. 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 Joseph 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 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 TAX/FEDERAL TAX ID REQUIRED**

The City of Tigard Business Tax 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 Tax. No contracts shall be signed prior to the obtaining of the City of Tigard Business Tax. Upon award of proposal, contractor shall complete a W-9 form for the City.

**I. CITY’S PROJECT MANAGER**

The City’s Project Manager for this work will be Marty Wine, City Manager, who can be reached by phone at (503) 718-2486 or by email at [marty@tigard-or.gov](mailto:marty@tigard-or.gov).

**J. PROPOSAL VALIDITY PERIOD**

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

**K. FORM OF CONTRACT**

A copy of the City's standard attorney services contract, 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 waived.

**L. TERM OF CONTRACT**

The term of the contract shall be a period of one (1) year with the option to renew for four (4) additional one (1) year terms. The total term of the contract cannot exceed five (5) years.

**M. TERMINATION**

The contract may be terminated by mutual consent of both parties or by the City at its discretion with a 90 days’ written notice. If the agreement is so terminated, Contractor shall be paid in accordance with the terms of the agreement.

**N. 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.

**O. 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.

**P. 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**

Tigard was incorporated in 1961 and today, is a friendly, livable and affordable community located just minutes southwest of Portland in Washington County. Approximately 50,780 residents make their home in this centrally located community in Washington County, 10 miles southwest of downtown Portland, just minutes from 1-5, Highway 217 and Highway 99W. The City is governed by a City Council with the City Manager responsible for the daily administration of all City functions. This includes general management, personnel administration, labor relations, risk and information technology, and community relations. As a community, Tigard strives to manage this growth and blend the amenities of a modern city with the friendliness and community spirit of a small town.

The City's "open door" policy encourages citizens to attend weekly City Council meetings and observe the four-member Council and Mayor make important decisions. Tigard is a community building for today and its future. Local government and school leaders, citizen groups, businesses and individuals work hard to build upon Tigard's significant community attributes. The City promotes citizen participation through an extensive program that utilizes Boards & Committees, Neighborhood Networks, and other forms of outreach. This encourages residents to become part of the decision making process.

The City is currently seeking to retain the services of a firm to provide City Attorney services. The firm that is awarded a contract under this RFP will report to City Council and work closely with City staff, Mayor, and City Councilors, on various City issues including, but not limited to: providing legal aspects of general administration of City business, including preparing and providing legal opinions, assist with establishment of correct procedures, drafting and reviewing ordinances, resolutions, contracts, orders, agreements, and other legal documents; and any other aspects of legal needs as detailed in this RFP packet.

**SECTION 4  
SCOPE AND SCHEDULE OF WORK**

**INTRODUCTION**

Legal Counsel will be responsible for City legal representation as authorized by City Council. Authorization to perform specific tasks will come from the Mayor, City Council, City Manager, or other persons directly authorized by the Mayor, City Council, or the City Manager. Awarded Counsel shall appoint an attorney to act as lead attorney. The lead attorney will be required to attend all City Council Business meetings. In the event that the lead attorney is not available for a meeting, Awarded Counsel shall further designate a backup lead attorney to attend the meetings. Legal Counsel will advise the City Manager with appropriate notice if neither the lead attorney nor the backup lead attorney is available for a City Council meeting.

**SCOPE OF WORK**

**A.** Unless otherwise specified by the Mayor or City Council the Awarded Counsel will be responsible for:

1. Legal aspects of general administration of City business, including preparing and providing legal opinions, assist with establishment of correct procedures, drafting and reviewing ordinances, resolutions, contracts, orders, agreements, and other legal documents, and related tasks needed to support City personnel, Mayor, Council, and City Manager.
  2. Providing sound legal direction on all forms of City business, including but not limited to, the following:
    - a. Public Financing (excluding bond counsel)
    - b. Land Use Law
    - c. Local Budget Law
    - d. Codification of Ordinances
    - e. Election Laws
    - f. Open Meeting Laws
    - g. Public Record Laws
    - h. Public Contracting
    - i. Annexation Law
    - j. Public/Private Partnerships
    - k. Oregon Revised Statutes
    - l. Public Meeting Law
    - m. General Business Law
  3. Training of contractor's non-legal personnel in the performance of legally related tasks in order to reduce legal expenses.
  4. Regular attendance at City Council meetings and attendance at other municipal meetings on request.
  5. Represent the City during litigation.
  6. Review City Council packets and provide advice prior to meetings. Review Planning Commission packets when requested and provide timely advice prior to meetings.
  7. Notify City of changes in state and federal laws that require changes in city codes, ordinances, regulations or policies to remain in compliance with applicable laws.
- B.** Legal activities such as complex litigation and special project assignments which fall outside of the above categories, and which would include costs exceeding the projections of the city's budget for city attorney services, must be authorized by the City Council. Awarded Counsel and the City Manager will regularly review the level of expenditures on city attorney services and will prioritize projects in order to stay within budgeted amounts.
- C.** The awarded Counsel will coordinate with the City Manager and department heads, but within the chain of command shall report directly to the City Council. In this regard, in the event a conflict develops between the Council and City Manager, the Awarded Counsel will represent the Council but will notify the City Manager at first knowledge of a conflict.
- D.** The City reserves the right in appropriate situations to retain separate outside counsel. It is recognized that the City presently utilizes other law firms to provide representation in personnel issues, labor relations, bond Counsel, and water related matters (i.e., water rights, water supply).

### **PERIODIC ATTORNEY EVALUATIONS**

- A.** The City will conduct an internal survey periodically to evaluate the internal satisfaction with the city attorney's performance. The survey will focus on:

1. Accessibility
2. Timeliness (Initial Response)
3. Timeliness (Overall)
4. Understanding and addressing staff needs
5. Communicating with staff on legal information
6. Clarity of the work product
7. Assistance to staff in preventing legal problems

**B.** Performance measures will also be used as an evaluation tool to guide management’s decision-making. The measures will be based on the following criteria:

1. Be based on goals and objectives related to organization’s mission, or purpose
2. Measure both the efficiency and effectiveness of programs
3. Be based on what is most useful, relevant, and valid to management
4. Be complete, but limited in number and complexity
5. Be supported by data that is relevant, timely, and reliable
6. Be comparable to other periods, targets, and similar programs
7. Be reported both internally and publicly, and used both for decision-making and accountability
8. Examples of such measures include:
  - a. Number of work requests completed (by department).
  - b. Percent of ordinances and resolutions prepared within 21 business days
  - c. Percent of routine agreements review within three business days.
  - d. Percent of contract amendments reviewed with 7 business days.
  - e. Percent of responses to all legal requests (including contracts) completed by the designated due date.
  - f. Survey data may be used to develop additional performance measures.

## **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 subject, 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 services to be performed;
- b. A positive commitment to perform the services 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 Qualifications**

- a. Background of the firm. This should include a brief history of the firm and types of 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 services performed.

**5. Assigned Firm Member Qualifications**

Proposers must identify the anticipated members of their firm that will be assigned to meet the City's needs. Proposers should identify individuals and subconsultants who will provide the services, their experience, and their individual qualifications. Pertinent resumes of assigned personnel should be included.

**6. Service Understanding and Firm Availability**

Proposers should provide the City with information regarding their understanding of the City's needs with regards to the Scope and Schedule of Work. Proposers should demonstrate a general understanding of the needs of a municipality in the State of Oregon from an attorney firm. As part of their service understanding documentation, Proposer's should address their Firm's availability to meet the City's needs.

**7. Fee Structure**

The proposed fee structure should include the rates for each member of the team and fees for out-of-pocket costs for non-legal services.

**8. References**

Please list three (3) references, preferably local governmental agencies, with, at the minimum, the follow information:

- a. Client Name
- b. Client Address
- c. Contact Individual Name and Title
- d. Contact Phone
- e. General Description of Services Provided to the Client

Include an additional entity that terminated the contract for services within the last three years and explain why the contract was terminated.

The City reserves the right to investigate references and the past performance of any Proposer with respect to its successful performance of similar services, compliance with contractual obligations, its completion or delivery of products and projects on schedule and its lawful payment of employees and workers.

**9. Presentation/Interview**

The City reserves the right to conduct interviews with finalists or select a firm without conducting interviews. **Note: It is possible that not all firms submitting a response will be selected for the interview phase.** If interviews are conducted, this will provide an opportunity to clarify or elaborate on the firm's proposal and respond to specific questions about the delivery

of the specific specialty legal services. It will not in any way provide an opportunity to change any rates or fee amounts originally proposed. The City will schedule the time and location of the interviews and notify the selected firms.

**B. ADDITIONAL INFORMATION**

Please provide any other information you feel would help the Selection Committee evaluate your firm for the specialized legal service responded to.

**C. 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.

**D. 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 for each specialized area which best meets the City's needs based upon its evaluation of a firms proposal. 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 five (5) 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>Firm qualifications</u></b>	<b><u>60 points</u></b>
<b>5. <u>Assigned firm member qualifications</u></b>	<b><u>40 points</u></b>
<b>6. <u>Service understanding and availability</u></b>	<b><u>50 points</u></b>
<b>7. <u>Fee structure</u></b>	<b><u>20 points</u></b>
<b>8. <u>References</u></b>	<b><u>30 points</u></b>
	<b><u>TOTAL EVALUATION POINTS 200 POINTS</u></b>

**9. IF INTERVIEWS ARE CONDUCTED, THEY WILL BE SCORED SEPARATELY FOR A POTENTIAL OF 100 ADDITIONAL POINTS.**

**B. 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.

**C. 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.

**D. INTENT OF AWARD**

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

**E. 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.

**F. 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 are 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 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, 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 scope of services and any specifications.
- B) Failure to comply with any of 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  
ACKNOWLEDGMENT OF ADDENDA  
City of Tigard, Oregon  
Request for Proposal  
City Attorney Services  
Close: Tuesday, October 18, 2016, 2:00 pm**

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  
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 Request for Proposal for City Attorney services and the attached attorney services contract (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**  
**ATTORNEY SERVICES CONTRACT**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Tigard, a municipal corporation of the State of Oregon, hereinafter called City, and \_\_\_\_\_, hereinafter called Legal Counsel.

**RECITALS**

WHEREAS, the City's 20\_\_\_\_ -20\_\_\_\_ Fiscal Year budget provides for services related to \_\_\_\_\_; and

WHEREAS City has need for the services of an attorney or attorney firm with a particular training, ability, knowledge, and experience possessed by Legal Counsel, and

WHEREAS City has determined that Legal Counsel 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. LEGAL SERVICES TO BE PROVIDED**

Legal Counsel shall initiate services immediately upon receipt of City's notice to proceed together with an executed copy of this Agreement. Legal Counsel 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 \_\_\_\_\_, 20\_\_\_\_. This Agreement may be extended at the written agreement of both parties, with sixty (60) days notice, for up to four (4) additional one (1) year terms. All work under this Agreement shall be completed prior to the expiration of this Agreement. In accordance with the City's best practice, the total duration of this agreement may not exceed five (5) years.

**3. COMPENSATION**

**A.** The City agrees to pay Legal Counsel in accordance with this section for performance of services described herein. Payment shall be based upon a detailed monthly billing showing work performed and identifying specific legal matters worked on.

**B. Hourly Rates**

Partners/Of Counsel	\$
Senior Associates	\$
Associates	\$
Law Clerks/Legal Assistants	\$
Secretarial	\$

The Parties may, by mutual agreement, adjust these rates each year upon written mutual acceptance of an extension year. Any proposed new price must be in writing sixty (60) days prior to a new contract year.

**C.** The direct cost for such items as long distance charges, messenger services, printing, milage (at the contract year's IRS approved rate), copy charges, faxes, and the like will be billed to the City with no

markup or overhead charge added. Mileage for trips between Legal Counsel's office(s) and the City offices shall not be charged to the City.

- D. Payment will be made in installments based on Legal Counsel'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.
- E. Payment by City shall release City from any further obligation for payment to Legal Counsel, 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.
- F. Legal Counsel shall make payments promptly, as due, to all persons supplying labor or materials for the prosecution of this work.
- G. Legal Counsel shall not permit any lien or claim to be filed or prosecuted against the City on any account of any labor or material furnished.
- H. Legal Counsel shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- I. If Legal Counsel fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Legal Counsel 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 Legal Counsel. The payment of the claim in this manner shall not relieve Legal Counsel or their surety from obligation with respect to any unpaid claims.
- J. Legal Counsel 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.
- K. Legal Counsel 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 Legal Counsel or all sums which Legal Counsel agrees to pay for such services and all moneys and sums which Legal Counsel 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.
- L. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

#### **4. OWNERSHIP OF WORK PRODUCT**

City shall be the owner of and shall be entitled to possession of any and all work products of Legal Counsel which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Legal Counsel prior to termination of this Agreement by Legal Counsel 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, Legal Counsel 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 subcontractors nor anything contained herein shall be deemed to create any contractual relation between the subcontractors and City.

**6. STATUS OF LEGAL COUNSEL AS INDEPENDENT LEGAL COUNSEL**

Legal Counsel certifies that:

- A.** Legal Counsel acknowledges that for all purposes related to this Agreement, Legal Counsel is and shall be deemed to be an independent Legal Counsel as defined by ORS 670.700 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 Legal Counsel 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 Legal Counsel under the terms of this Agreement, to the full extent of any benefits or other remuneration Legal Counsel 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 Legal Counsel or to a third party) as a result of said finding.
- B.** The undersigned Legal Counsel 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 Legal Counsel, 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, Legal Counsel 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.

Legal Counsel 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.** Legal Counsel certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- D.** Legal Counsel 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 Legal Counsel as a material inducement to enter into this Agreement. Legal Counsel warrants that all 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 Legal Counsel's work by City shall not operate as a waiver or release.

Legal Counsel agrees to indemnify and defend the City, its officers, agents and employees 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 and (at both trial and appeal level,

whether or not a trial or appeal ever takes place) 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**

Legal Counsel and any subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Legal Counsel's activities or work hereunder, including the operations of its subcontractors of any tier.

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

**A. Commercial General Liability Insurance**

Legal Counsel shall obtain, at Legal Counsel'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 (1996 ISO 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. Legal Errors & Omissions/Lawyers Professional Liability Insurance**

Legal Counsel shall obtain, at Legal Counsel's expense, and keep in effect during the term of this contract, Legal Errors & Omissions/Lawyer's Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. This coverage shall include Annual Aggregate & Per Occurrence limits of \$3,000,000 per attorney.

**C. Commercial Automobile Insurance**

Legal Counsel shall also obtain, at Legal Counsel'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. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

**D. Workers' Compensation Insurance**

The Legal Counsel, 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. Legal Counsels 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.

**E. Additional Insured Provision**

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City, its officers, directors, and employees as additional insureds with respect to this contract.

**F. Extended Reporting Coverage**

If any liability insurance required by this contract 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 Legal Counsel's insurer will provide if less than 24 months. Legal Counsel will be responsible for furnishing certification of Extended Reporting 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.

**G. Notice of Cancellation**

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 days' notice of cancellation provision shall be physically endorsed on to the policy.

**H. Insurance Carrier Rating**

Coverages provided by the Legal Counsel must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

**I. Certificates of Insurance**

As evidence of the insurance coverage required by the contract, the Legal Counsel shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

**J. Independent Legal Counsel Status**

The service or services to be rendered under this contract are those of an independent Legal Counsel. Legal Counsel 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 Legal Counsel'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, professional liability, pollution and errors and omissions policies required by this contract.

Legal Counsel’s insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

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

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 Legal Counsel’s liability hereunder. Notwithstanding said insurance, Legal Counsel 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: Marty Wine, City Manager	Attn:
Address: 13125 SW Hall Blvd., Tigard, Oregon 97223	Address:
Phone: (503) 718-2486	Phone: ( )
Email Address: <a href="mailto:marty@tigard-or.gov">marty@tigard-or.gov</a>	Email Address:

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 Legal Counsel that does not represent clients on matters contrary to City interests. Further, Legal Counsel 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 Legal Counsel 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, Legal Counsel shall consult with the appropriate City representative regarding the conflict.

After such consultation, the Legal Counsel 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 Legal Counsel. If City terminates the contract pursuant to this paragraph, it shall pay Legal Counsel 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 Legal Counsel, 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 Legal Counsel, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Legal Counsel becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Legal Counsel, if a receiver or trustee is appointed for Legal Counsel, or if there is an assignment for the benefit of creditors of Legal Counsel.

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

- 1) If Legal Counsel fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Legal Counsel 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 Legal Counsel 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 Legal Counsel 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, Legal Counsel 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 Legal Counsel 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 Legal Counsel. 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 Legal Counsel as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

**15. BAR MEMBERSHIP/OCAA MEMBERSHIP REQUIREMENTS**

Legal Counsel is responsible for maintaining Legal Counsel's professional standing as a member of the Oregon State Bar Association and the Oregon City Attorney's Association.

**16. FORCE MAJEURE**

Neither City nor Legal Counsel 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 subLegal Counsel 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.

**17. NON-WAIVER**

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

**18. NON-DISCRIMINATION**

Legal Counsel agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules, and regulations. Legal Counsel also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

**19. ERRORS**

Legal Counsel 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.

**20. EXTRA (CHANGES) WORK**

Only the City's Project Manager for this Agreement, Brian Rager, Asst. Public Works Director, may authorize extra (and/or change) work. Failure of Legal Counsel 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 Legal Counsel thereafter shall be entitled to no compensation whatsoever for the performance of such work.

**21. WARRANTIES**

All work shall be guaranteed by Legal Counsel for a period of one year after the date of final acceptance of the work by the owner. Legal Counsel 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 Legal Counsel from liability under warranties contained in or implied by this Agreement.

**22. ATTORNEY 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.

**23. 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.

**24. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES**

Legal Counsel 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 contractors and income tax withholding contained in ORS Chapter 279B, the provisions of which are hereby made a part of this agreement.

**25. 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.

**26. AUDIT**

Legal Counsel 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. Legal Counsel 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.

**27. 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.

**28. CONDITIONS OF SUPPLYING A PUBLIC AGENCY**

Where applicable, seller must make payment promptly as due to persons supplying Legal Counsel labor or materials for the execution of the work provided by this order. Legal Counsel must pay all contributions or amounts due from Legal Counsel to the Industrial Accident Fund incurred in the performance of this order. Legal Counsel 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. Legal Counsel further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

**29. 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.

**30. MEDICAL CARE AND WORKERS' COMPENSATION**

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

**31. REPRESENTATIONS AND WARRANTIES**

Legal Counsel represents and warrants to the City that:

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

**32. COMPLIANCE WITH TAX LAWS**

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

Legal Counsel 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 Legal Counsel, 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 Legal Counsel'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 Legal Counsel.

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.

**33. COMPLETE AGREEMENT**

This Agreement and attached exhibits constitutes the entire Agreement between the parties. 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. Legal Counsel, by the signature of its authorized representative, hereby acknowledges that he 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 Legal Counsel has executed this Agreement on the date hereinabove first written. Authorized by Tigard's Local Contract Review Board: \_\_\_\_\_

**CITY OF TIGARD**

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

\_\_\_\_\_  
By: Authorized Agent of Legal Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date