



# City of Tigard

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

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### ENGINEERING SERVICES DESIGN AND CONSTRUCTION MANAGEMENT SW WALL STREET IMPROVEMENT PROJECT

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Proposals Due: Wednesday, November 4, 2015 - 2:00 p.m. local time

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

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

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

**Direct Technical  
Work & Scope  
Questions To:** Andrew Newbury, PE, Sr. Project Engineer  
Phone: (503) 718-2472  
Email: [andrewn@tigard-or.gov](mailto:andrewn@tigard-or.gov)

**PUBLIC NOTICE**  
**QUALIFICATION BASED REQUEST FOR PROPOSAL**  
**ENGINEERING SERVICES**  
**DESIGN AND CONSTRUCTION MANAGEMENT**  
**SW WALL STREET IMPROVEMENTS**

The City of Tigard is seeking sealed proposals from firms qualified to provide professional services to assist with the SW Wall Street Improvement Project. Proposals will be received until 2:00 p.m. local time, Wednesday, November 4, 2015, at Tigard City Hall's Utility Billing Counter at 13125 SW Hall Blvd., Tigard, Oregon 97223. Proposals will be scored and ranked on a qualification basis and the City will enter into negotiations with the top ranking firm.

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

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

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

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

PUBLISHED: Daily Journal of Commerce  
DATE: October 16, 2015

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**SECTION 1**  
**INTRODUCTION**

The City of Tigard is seeking sealed proposals from firms qualified to provide professional services to assist with the SW Wall Street Improvement project. Proposals will be received until 2:00 p.m. local time, November 4, 2015, at Tigard City Hall's Utility Billing Counter at 13125 SW Hall Blvd., Tigard, Oregon 97223. Proposals will be scored and ranked on a qualification basis and the City will enter into negotiations with the top ranking firm.

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

**SECTION 2**  
**PROPOSER'S SPECIAL INSTRUCTIONS**

**A. PROPOSED TIMELINES**

<u>Friday, October 16, 2015</u>	Advertisement and Release of Project Packet
<u>Thursday, October 22, 2015 – 10:00 a.m.</u>	Non-Mandatory Pre-Proposal Meeting
<u>Wednesday, November 4, 2015 – 2:00 p.m.</u>	Deadline for Submission of Proposals
<u>Monday, November 16, 2015</u>	Interviews (if necessary)
<u>Thursday, November 19, 2015</u>	Negotiations
<u>Tuesday, January 26, 2015</u>	Award of Contract by LCRB
<u>Tuesday, February 9, 2015</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. NON-MANDATORY PRE-PROPOSAL MEETING**

A non-mandatory pre-proposal meeting will be held at the City's Public Works Auditorium, 8777 SW Burnham Street, on October 22, 2015 at 10:00 AM.

**D. PROPOSAL SUBMITTAL**

The Proposal and all amendments must be signed and submitted no later than 2:00 p.m., November 4, 2015, to the address below. Each proposal must be submitted in a sealed envelope and designated with proposal title. Proposer must include one (1) original hard copy and one (1) electronic copy on a portable USB drive of their submittal. To assure that a proposal receives priority treatment, please mark as follows.

**QBS – SW Wall Street Improvements**

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

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

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

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

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

**RFP Specification/Term Protest**

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

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

**F. PROPOSAL SUBMISSION AND SIGNING**

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

**G. 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.

**H. INTERPRETATIONS AND ADDENDA**

All questions regarding this project proposal shall be directed to Joe Barrett, Sr. Management Analyst. If necessary, interpretations or clarifications in response to such questions will be made by issuance of an “Addendum” to all prospective Proposers within a reasonable time prior to proposal closing, but in no case less than 72 hours before the proposal closing. If an addendum is necessary after that time, the City, at its discretion, can extend the closing date.

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

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

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

**J. CITY’S PROJECT MANAGER**

The City’s Project Manager for this work will be Andrew Newbury, PE, Senior Project Engineer, who can be reached by phone at (503) 718-2472 or by email at [andrewn@tigard-or.gov](mailto:andrewn@tigard-or.gov).

**K. PROPOSAL VALIDITY PERIOD**

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

**L. FORM OF CONTRACT**

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

**M. TERM OF CONTRACT**

The contract for this work is anticipated to commence on or around January 2015. All work stemming from the contract is anticipated to be completed no later than August 2017.

**N. 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.

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

**SECTION 3  
BACKGROUND**

Tigard’s Hunziker Industrial core is a 138 acre industrial zoned district where higher levels of employment can be achieved through private investment. Public infrastructure in the Hunziker Industrial Core can be a catalyst for development and redevelopment of employment lands and ultimately job creation. To address this need, public infrastructure improvements to SW Wall Street, providing a connection from SW Hunziker Road to Tech Center Drive, will be constructed. The anticipated total project costs (design, construction, ROW acquisition, permitting) is estimated to be \$5.5 – 6.0 million. The City has been awarded \$1.5 million in State earmark funding for part of the project which will be awarded to the City in 2017. Development of the adjacent undeveloped property is also expected to provide funding for part of the street improvements. The City is additionally applying for a Federal Economic Development Grant. The awarded consultant will be expected to follow applicable rules in form SF 424D – Assurances for Construction Programs (attached in Exhibit B).

This project and contract will be executed in three phases: 1. Preliminary Design, 2. Final Design/Contract Documents/Permitting/ROW Acquisition, and 3. Construction Administration. The City intends to proceed with Phase 1 as a base contract package as funding currently exists for this phase. Phases 2 and 3 shall be dependent upon acquisition of additional funding. The City is currently in the application phase of a federal grant that will help the City proceed with the additional phasing for the overall project. The City would like to retain one Consultant through all possible phases and intends to enter negotiations with the top ranking Consultant with Phase 1 as a base contract and treat the additional phases as add-on tasks. The City makes no guarantees that the additional phases will occur.

**SECTION 4  
SCOPE AND SCHEDULE OF WORK**

**A. PURPOSE**

Engineering design of SW Wall Street, a new local industrial road, from SW Hunziker Road to Tech Center Drive with utility infrastructure to support development. The following are design parameters to be used in the street design:

- SW Wall Street is classified as an industrial collector in City of Tigard’s Transportation System Plan. This street section to be used will have 70’ ROW, 46’ curb to curb width with a center lane and bike lanes, 5’ sidewalks and a landscape planter. Total estimated length is 1,750 LF.
- SW Wall Street will transition to a new section as it runs along the existing railroad right-of-way to the south. The street section will require a 50’ ROW, 36’ curb to curb width with no center lane and no sidewalk along the south side. Total estimated length is 1,570 LF.
- Within the new landscape planters, green street type facilities to be installed for detention and water quality treatment of the new road impervious areas. The Low Impact Development Approaches Handbook by Clean Water Services to be used in design of the green street facilities.
- A new 12” waterline within Wall Street will be installed from Hunziker to Tech Center Dr.

- A new 8” sanitary sewer within Wall Street will be installed to serve the lower portions of the undeveloped land to the east and will connect to the new East Tigard Sewer Project that is currently in design. An additional sanitary sewer service will extend from the Tech Center Drive sanitary sewer main to service any development along the south portion of the undeveloped land.
- A new storm drainage line to be designed according to City and Cleanwater Services standards. Storm drain line to tie into existing facilities in Hunziker Road and existing drainage outfalls along the southern portion of the site. Storm line to be sized to handle basin runoff.
- Along the east side and north side of the new Wall Street alignment, walls may need to be placed due to deep cuts. Provide wall design services within the geotechnical scope and wall layout with elevations within the civil scope.
- There is an existing wetland at the southwest corner of the site that will be impacted by the new road alignment. The wetland was identified in the wetland fill application submitted by the private developer of the adjacent undeveloped land. The application can be viewed at [www.statelandsonline.com](http://www.statelandsonline.com) under application no. APP0058455.
- Access to the existing industrial sites and City owned Potso dog park site must be incorporated into the design and construction access plans.
- Project schedule is a priority for this project due to the future development of the adjacent site which is expected to be completed in August 2017.

**B. PROJECT RESEARCH / DATA COLLECTION:**

**PHASE 1**

1. Project Kick-off Meeting. Meet with project team, review project schedule and deliverables.
2. Survey Research. Obtain existing utility and as-built information from the City. Set up the base map of the project area. Provide a preliminary alignment for the proposed sewer improvements.
3. Prepare preliminary project schedule.
4. Geotechnical Investigation. Evaluate the subsurface conditions at the site, representative of the preliminary alignment, and provide geotechnical recommendations for the road and utility construction. The investigation will provide conclusions and recommendations regarding: geology and seismicity, subsurface conditions, groundwater, anticipated dewatering requirements, excavating conditions, and trench backfill requirements. The report will include soil/design parameters the contractor can use for trench safety design. The testing will include 3 borings up to 15 feet deep, a piezometer and two test pits. Provide retaining wall design and details for road construction after wall layout, elevations & wall type is known as part of Phase 2.
5. Traffic Report Investigation. Evaluate the proposed traffic from the adjacent undeveloped property and anticipated future redeveloped adjacent areas. Traffic engineer to coordinate with adjacent property developer and review completed traffic report for site. Traffic report results may indicate a need for a new signalized intersection at SW Tech Center Drive and SW 72<sup>nd</sup> Avenue. Proposer to include optional design services for a new signalized intersection.

**C. DESIGN SURVEY:**

1. Establish Horizontal and Vertical Survey Control. Setup conventional control and tie existing monumentation necessary to establish the existing right-of-way, property lines and easement locations within the project limits. Run vertical control from nearest City/County bench mark. Datum will be based on the City of Tigard’s datum.

2. Topographic Survey. Topographic design survey will include existing topographic features, contours, trees, utilities, etc. within the project area to complete the road design. A topographical survey of the area was completed in 2008. Existing conditions have changed since this survey was completed due to a majority of the trees shown being removed. An AutoCAD format file of this survey is available to use upon request.

**D. ENGINEERING DESIGN:**

**1. Construction Plans:**

30% Construction Documents & Cost Estimate

Preliminary drawings to include:

- Title sheet
- Existing conditions plan
- Preliminary road finish grade plan and profile sheets
- Plan layout of proposed utilities (water, sewer and storm)

**PHASE 2**

60% Construction Documents & Cost Estimate

Preliminary drawings to include:

- Title sheet
- Existing conditions plans
- 1200C Erosion Control Plans
- Composite road and utility plan, wall layout with spot elevations.
- Road and utility plan and profile sheets
- Major Construction Details
- Stormwater Report

Incorporate comments from the 30% City Plan Review.

90% Construction Documents, Cost Estimate, and Project Specifications

Sheet Index to Include but not limited to:

- Title sheet
- Existing conditions plans
- 1200C Erosion Control Plans
- Composite road and utility plan, wall layout with spot elevations
- Road and utility plan and profile sheets
- Construction Detail Sheets
- Stormwater Report

Incorporate comments from the 60% City Plan Review.

100% Construction Documents, Cost Estimate, and Project Specifications

Sheet Index to Include but not limited to:

- Title sheet
- Existing conditions plans
- 1200C Erosion Control Plans
- Composite road and utility plan, wall layout with spot elevations
- Road and utility plan and profile sheets
- Construction Detail Sheets

Incorporate comments from 90% City Plan Review.

Stormwater report to be submitted for review as part of the 60% plan submittal. Revised storm reports to be included with the 90% submittal and 100% submittal as needed.

**2. Permitting** - Consultant to prepare and submit the following applications to local, state, and federal agencies. Plans and calculations are to meet current jurisdictional requirements. Permit fees to be paid by the City. Permitting to include but may not be limited to the following:

- a. Submit Pre-Screen Application to CWS. (Deliverable: Submittal to be determined by schedule. Prior to 30%)
- b. Prepare and submit 1200-C permit to DEQ. (Deliverable: at 90%)
- c. Prepare wetland fill application and obtain permits from DSL/Corps.
- d. Assist with preparation of Tree Removal Application, exhibits, if applicable. City staff to prepare narrative and submit to Community Development for approval. (Deliverable: 90%)
- e. Coordination with franchise utility providers to obtain conduit and vault design. Plans to be submitted to franchise utility providers at the 60% plan submittal date.

**3. Property Owner Contact:**

Meet with affected property owners to review potential impacts and gather input. The City will prepare and send a letter to set up a meeting and detail the project scope, property impacts, and solicit right-of-entries to perform design services. Consultant to attend 5 meeting(s). (Deliverable: City to arrange after Kick-off Meeting)

**4. Right-of-Way Acquisition Services:**

Provide title coordination and appraisal services. Negotiate acquisition of ROW and temporary construction easements for the new street alignment. Prepare legal descriptions and maps for permanent and temporary easements. Provide survey staking for ROW and temporary and permanent easements. (Deliverable: Between 60% and 90%. If the Federal Grant is awarded to the City the schedule for the acquisition services may begin sooner). There are approximately six properties that will need acquisition services. Three properties (Tax ID2S101CA00800, 2S101CA00100, 2S1010001100) are the Fields Trust Property. The Fields Trust has agreed to the required ROW dedication along their property frontage. The other three properties that need acquisition services are tax lot 2S101CA0020 (flag portion to Hunziker), 2S101CA0040 (possible corner radius at Hunziker/Wall) and 2S101DC04500 (connection to Tech Center).

**5. Coordination and Meetings with City Project Team:**

- Review engineering design with City Staff at 30%, 60% and 90%, and 100% submittals.
- Weekly email updates and phone call to City staff
- Monthly project status reports \*
- Schedule updated monthly
- Monthly invoices
- Coordination with developer of the Fields Trust Property (undeveloped land east of Wall Street) for driveway and utility stub locations.

\* - Monthly project status reports to identify work completed, percent complete vs percent spent, for all project tasks and phases and identify ongoing and upcoming work items and any issues/concerns.

**6. Bidding Assistance:**

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

**E. CONSTRUCTION SERVICES:**

**PHASE 3**

1. Provide submittal review – comments and approval to be provided to the City within 3 business days.
2. Respond to RFI's during construction process – Provide responses to RFI's within 3 business days.
3. Construction Staking (typical staking for a road construction project):
  - Verify existing control monuments
  - Set horizontal control points in the project area as necessary.
  - Set project benchmarks as necessary.
  - Stake project clearing limits.
  - Stake curb lines.
  - Provide grade staking.
  - Stake locations of manholes, cleanouts, connection points, and provide offsets with cuts to flow line.
4. Construction Administration/Site Observation:
  - Review contractor pay requests, quantity verification, and provide recommendations to the City project manager.
  - Review change orders and provide recommendations to the City project manager.
  - Provide periodic construction on an on-call basis. Estimate one visit per week.
5. Record Drawings: Prepare record drawings showing the as constructed facilities based on construction observation, contractor provided notes, and survey verification. Survey verification to include the following:

- Provide horizontal locations of manholes and cleanouts.
- Provide location and invert elevation of all service stubs.
- Provide horizontal data on all new surface features.
- Provide vertical data including rims, invert elevations of pipes at manholes and cleanouts.
- Provide finish manhole diagrams (including pipe locations, steps, and bench).
- Provide drawings in PDF format and AutoCad format.

6. Project Closeout: Final walk through with City staff and contractor. Provide project files as required by City.

**F. PROPOSED PROJECT SCHEDULE:**

Survey & Geotechnical Report	February, 2016
30% Design	April, 2016
60% Design	June, 2016
90% Design	August, 2016
Final Design	September, 2016
Obtain Permits (PFI, CWS, 1200C, DSL, Corps)	October, 2016
Request for Proposal – Construction Services	October, 2016
Bid and Award	December, 2016
Begin Construction	January, 2017
End Construction and Project Closeout	August, 2017

**SECTION 5  
PROPOSAL CONTENT AND FORMAT**

**A. FORMAT**

To provide a degree of consistency in review of the written proposals, firms are requested to prepare their proposals in the standard format specified below. Proposal to be limited to 10 pages (not including cover letter, table of contents, or appendices and each side counts as a page) and shall be 8 1/2” x 11” paper size, 11 pt. min. font.

**1. Title Page**

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

**2. Transmittal Letter**

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

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

**3. Table of Contents**

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

**4. Project Understanding and Approach**

Describe in narrative form the Proposers approach and technical plan for accomplishing the work listed herein. Include approach and methods for ensuring project meets the listed time table.

**5. Design Consultant Team Qualifications**

Proposers are required to give sufficient information of their relative past experience to permit the City to understand and verify the exact nature of the contributions made by the consultant team members.

**6. Design Consultant Team Experience with Similar Projects**

Provide the details of experience and past performance of the proposed team members on comparable projects. This item should cover, at a minimum, the substantive nature of comparable projects and which team members worked on these projects.

**7. Firms Availability**

A description of the Proposer's overall capability and assurance that it can meet its commitment to successfully complete these services in the time frame listed shall be provided. A locally-based project manager is mandatory.

**8. Project Manager Experience**

List experience managing similar projects and meeting schedules. Include any additional relevant experience such as working with state/federal grants or familiarity with the City of Tigard and Clean Water Services design requirements.

**9. References**

Provide at least 3 references for projects similar to the work described in this RFP packet that the firm has performed in the past 10 years. List contact name, address, phone number, and e-mail address for each reference and provide a brief description of the project if not already provided in the experience section above.

The City reserves the right to investigate the references and the past performance of any applicant with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, and its completion of a project on schedule.

**10. Appendices**

Include full resumes, relevant additional project descriptions and required forms.

**B. ADDITIONAL INFORMATION**

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

**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 which best meets the City's needs based upon its evaluation of a Proposer proposal. Proposals will be evaluated in accordance with the following:

1.	<u>Completed proposal submitted on time</u>	<u>Pass/Fail</u>
2.	<u>An original plus three (3) copies of the complete proposal</u>	<u>Pass/Fail</u>
3.	<u>Transmittal letter</u>	<u>Pass/Fail</u>
4.	<u>Project Understanding and Approach</u>	<u>20 points</u>
5.	<u>Design Consultant Team Qualifications</u>	<u>20 points</u>
6.	<u>Design Consultant Team Experience with Similar Projects</u>	<u>25 points</u>
7.	<u>Firms Availability &amp; Ability to Meet Project Schedule</u>	<u>10 points</u>
8.	<u>Project Manager Experience</u>	<u>15 points</u>
9.	<u>References</u>	<u>10 points</u>
<u>TOTAL EVALUATION POINTS</u>		<u>100 POINTS</u>

**B. PRESENTATION/INTERVIEW**

At the option of the City, the top two or three Proposers may be required to make a presentation of their proposal. This will provide an opportunity to clarify or elaborate on the proposal. The project manager will schedule the time and location of these presentations (if necessary) and notify the selected firms. Should one or more firms be selected for oral interviews, an additional 25 points in scoring will be assigned to the interview process.

**C. INVESTIGATION OF REFERENCES**

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

**D. CLARIFICATION OF PROPOSALS**

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

**E. NEGOTIATIONS WITH TOP RANKED FIRM**

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

**F. PROTEST OF AWARD**

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

**G. PROPOSAL REJECTION**

The City reserves the right to:

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

**SECTION 7  
PROPOSAL CERTIFICATIONS**

\*\*\*\*\*

**Non-discrimination Clause**

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

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

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

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

\*\*\*\*\*

**Resident Certificate**

Please Check One:

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

Or

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

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

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

**SECTION 8  
SIGNATURE PAGE**

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

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

The undersigned, by submitting a proposal, represents that:

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

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

The undersigned certifies that all addenda to the specifications has been received and duly considered and that all costs associated with all addenda have been included in this proposal:

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

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

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

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

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

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

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

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

Corporation                       Partnership                       Individual

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

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

**Project Title:** SW Wall Street Improvements

**Close:** November 4, 2015 – 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  
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 Qualification Based Request for Proposal for Planning, Design, and Construction Management Services - Water System Improvements and the attached engineering services agreement template (Attachment C):

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

\_\_\_\_\_  
Date

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

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

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

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

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

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

**RECITALS**

**WHEREAS**, the City's Fiscal Year            budget provides for            services for the            project; and

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

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

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

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

The Engineer shall perform professional engineering services relevant to the Project in accordance with the terms and conditions set forth herein, and as provided in Exhibit 1, which is attached hereto and by this reference made a part of this Agreement.

**2.     Effective Date and Duration**

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

**3.     Engineer's Fee**

**A.     Basic Fee**

**1)**     As compensation for Basic Services as described in Exhibit 1 of this Agreement, and for services required in the fulfillment of Paragraph 1, the Engineer shall be paid on an hourly rate based upon the "Schedule of Rates" in Exhibit 1 of this agreement, which shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement. The Basic Fee shall not exceed the amount of            and            /100 Dollars (\$            ) without prior written authorization.

**2)**     The parties hereto do expressly agree that the Basic Fee is based upon the Scope of Services to be provided by the Engineer and is not necessarily related to the estimated construction cost of the Project. In the event that the actual construction cost differs from the estimated construction cost, the Engineer's compensation will not be adjusted unless the Scope of Services to be provided by the Engineer changes and is authorized and accepted by the City.

- B.** Payment Schedule for Basic Fee  
Payments shall be made upon receipt of billings based on the work completed. Billings shall be submitted by the Engineer periodically, but not more frequently than monthly. Payment by the City shall release the City from any further obligation for payment to the engineer for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- C.** Payment for Special Services  
Only when directed in writing by the City, the Engineer shall furnish or acquire for the City the professional and technical services based on the hourly rate schedule as described in Exhibit 1 of this contract for minor project additions and/or alterations.
- D.** Certified Cost Records  
The Engineer shall furnish certified cost records for all billings pertaining to other than lump sum fees to substantiate all charges. For such purposes, the books of account of the Engineer shall be subject to audit by the City. The Engineer shall complete work and cost records for all billings on such forms and in such manner as will be satisfactory to the City.
- E.** Contract Identification  
The Engineer shall furnish to the City its employer identification number, as designated by the Internal Revenue Service, or social security number, as the City deems applicable.
- F.** Payment – General
- 1) Engineer shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - 2) Engineer shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime.
  - 3) Engineer shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Engineer or all sums which Engineer agrees to pay for such services and all moneys and sums which Engineer collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
  - 4) The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.
  - 5) Engineer shall make payments promptly, as due, to all persons supplying services or materials for work covered under this contract. Engineer shall not permit any lien or claim to be filed or prosecuted against the City on any account of any service or materials furnished.

- 6) If Engineer fails, neglects or refuses to make prompt payment of any claim for labor, materials, or services furnished to Engineer, sub-consultant or subcontractor by any person as such claim becomes due, City may pay such claim and charge the amount of the payment against funds due or to become due to the Engineer. The payment of the claim in this manner shall not relieve Engineer or their surety from obligation with respect to any unpaid claims.

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

- A. The field notes, design notes, and original drawings of the construction plans, as instruments of service, are and shall remain, the property of the Engineer; however, the City shall be furnished, at no additional cost, one set of previously approved reproducible drawings, on 3 mil minimum thickness mylar as well as diskette in “DWG” or “DXF” format, of the original drawings of the work. The City shall have unlimited authority to use the materials received from the Engineer in any way the City deems necessary.
- B. The City shall make copies, for the use of and without cost to the Engineer, of all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the Engineer pursuant to this Agreement, and also make available any other maps, records, or other materials available to the City from any other public agency or body.
- C. The Engineer shall furnish to the City, copies of all maps, records, field notes, and soil tests which were developed in the course of work for the City and for which compensation has been received by the Engineer at no additional expense to the City except as provided elsewhere in this Agreement.

**5. Assignment/Delegation**

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

**6. Engineer is Independent Contractor**

- A. The City’s project director, or designee, shall be responsible for determining whether Engineer’s work product is satisfactory and consistent with this agreement, but Engineer is not subject to the direction and control of the City. Engineer shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 3 of this Agreement.
- B. Engineer is an independent contractor and not an employee of City. Engineer acknowledges Engineer’s status as an independent contractor and acknowledges that Engineer is not an employee of the City for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Engineer to provide services under this contract are employees of Engineer and not of City. Engineer acknowledges that it is not entitled to benefits of any kind to which a City employee is entitled and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Engineer is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to

Engineer under the terms of the agreement, to the full extent of any benefits or other remuneration Engineer receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Engineer or to a third party) as a result of said finding.

- C.** The undersigned Engineer hereby represents that no employee of the City or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Engineer, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- D.** If this payment is to be charged against Federal funds, Engineer certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his/her normal charge for the type of service provided.
- E.** Engineer and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- F.** Engineer shall obtain, prior to the execution of any performance under this Agreement, a City of Tigard Business License. The Tigard Business License is based on a calendar year with a December 31st expiration date. New businesses operating in Tigard after June 30th of the current year will pay a pro-rated fee through the end of the calendar year.
- G.** Engineer is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

## **7. Indemnity**

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

of the professional negligent acts, errors or omissions of Engineer or its subcontractors, sub-consultants, agents or employees in performance of professional services under this agreement. Any work by Engineer that results in a design of a facility that is not readily accessible to and usable by individuals with disabilities shall be considered a professionally negligent act, error or omission.

D. As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City’s alleged liability results directly or indirectly, in whole or in part, from the quality of the professional services provided by Engineer, regardless of the type of claim made against the City in performance of this contract. A claim for other than professional responsibility is a claim made against the City in which the City’s alleged liability results from an act or omission by Engineer unrelated to the quality of professional services provided by Engineer in performance of this contract.

**8. Insurance**

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

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

**A. Commercial General Liability Insurance**

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

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

**B. Professional Liability**

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

**C. Commercial Automobile Insurance**

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

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

**D. Workers' Compensation Insurance**

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

**E. Additional Insured Provision**

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

**F. Extended Reporting Coverage**

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

**G. Insurance Carrier Rating**

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

**H. Self-Insurance**

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

**I. Certificates of Insurance**

As evidence of the insurance coverage required by the contract, the Engineer shall furnish a Certificate of Insurance to the City. No contract shall be effective until the required Certificates of Insurance have been received and approved by the City. The certificate will specify and document

all provisions within this contract and include a copy of Additional Insured Endorsement. A renewal certificate will be sent to the address below prior to coverage expiration.

**J. Independent Contractor Status**

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

**K. Primary Coverage Clarification**

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

**L. Cross-Liability Clause**

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

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

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

At the discretion of the City, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company may be required to be forwarded to the above address.

Such policies or certificates must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit Engineer's liability hereunder. Notwithstanding said insurance, Engineer shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

**9. Termination Without Cause**

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

**10. Termination With Cause**

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

- 1)** If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2)** If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.

- 3) If any license or certificate required by law or regulation to be held by Engineer, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Engineer becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Engineer, if a receiver or trustee is appointed for Engineer, or if there is an assignment for the benefit of creditors of Engineer.

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

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

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

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

**11. Non-Waiver**

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

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

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

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

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

**13. Merger**

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

**14. Professional Services**

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

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

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

**15. Force Majeure**

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

**16. Non-Discrimination**

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

**17. Errors**

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

**18. Extra (Changes) Work**

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

**19. Governing Law**

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

**20. Compliance With Applicable Law**

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

**21. Conflict Between Terms**

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

**22. Access to Records**

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

**23. Audit**

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

**24. Severability**

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

**25. Representations and Warranties**

Engineer represents and warrants to the City that:

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

**26. Compliance with Tax Laws**

- A. Engineer must, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of the State of Oregon. For the purposes of this Section, “tax laws” includes all the provisions described in subsection 25.C. 1) through 4) of this Agreement.
- B. Any violation of subsection A of this section shall constitute a material breach of this Agreement. Further, any violation of Engineer’s warranty, in subsection 25.C of this Agreement, that the Engineer has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Agreement. Any violation shall entitle the City to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:
  - 1) Termination of this Agreement, in whole or in part;
  - 2) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Engineer, in an amount equal to State’s setoff right, without penalty; and
  - 3) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The City shall be entitled to recover any and all damages suffered as the result of Engineer's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing a replacement Engineer.

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

**27. Complete Agreement**

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

No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Engineer, by the signature of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

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

**CITY OF TIGARD**

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT A (Template Agreement)**  
**SCOPE OF SERVICES**

The Engineer shall render professional engineering services as described below:

**EXHIBIT B (Template Agreement)**  
**EDA GRANT FORM SF 424D**

## ASSURANCES - CONSTRUCTION PROGRAMS

OMB Number: 4040-0009  
Expiration Date: 06/30/2014

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE 
APPLICANT ORGANIZATION 	DATE SUBMITTED 

**EXHIBIT C (Template Agreement)**  
**SW WALL STREET EXHIBIT MAP**



**ENGINEERING DIVISION  
PUBLIC WORKS DEPARTMENT**  
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# SW WALL STREET PRELIMINARY LAYOUT

**FIGURE  
FIG-1**

**FILE NO  
95047**

**EXHIBIT D (Template Agreement)**  
**ENGINEER'S PROPOSAL**