



City of Tigard

FINANCE AND INFORMATION SERVICES

Request for Proposal (RFP)

HYDROGEOLOGICAL SERVICES AQUIFER STORAGE AND RECOVERY PROGRAM

Proposals Due: Thursday, September 29, 2011 - 2:00 p.m. local time

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

Direct Questions To: John Goodrich, Utility Division Manager
Phone: (503) 718-2609
Email: johng@tigard-or.gov

**PUBLIC NOTICE
REQUEST FOR PROPOSAL
HYDROGEOLOGICAL SERVICES
AQUIFER STORAGE AND RECOVERY PROGRAM**

The City of Tigard is requesting proposals from firms qualified in providing hydrogeological services related to Tigard's aquifer storage and recovery program. Firms are invited to submit a proposal outlining their experience and qualifications in performing work directly related to the services required.

Sealed proposals will be received until 2:00 p.m. local time on Thursday, September 29, 2011, to the attention of Joe Barrett, Sr. Management Analyst, at Tigard City Hall's Utility Billing Counter located at 13125 SW Hall Blvd., Tigard, Oregon 97223. There will be no formal opening of the received proposals. Facsimile and electronic (email) proposals will not be accepted. Proposals will not be accepted after the stated opening date and time. Late proposals will be returned to the vendor unopened.

Proposal packets may be downloaded from www.tigard-or.gov, obtained in person at Tigard's Utility Billing Counter at 13125 SW Hall Blvd., Tigard, Oregon 97223, or obtained by calling Joe Barrett at (503) 718-2477.

Proposers are required to certify non-discrimination in employment practices, and identify resident status as defined in ORS 279.029. Pre-qualification of Proposer 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 of Tigard reserves the right to:

1. Reject any or all proposal not in compliance with public bidding procedures;
2. Postpone award of the contract for a period not to exceed sixty (60) days from date of proposal opening;
3. Waive informalities in the proposals; and
4. Select the proposal which appears to be in the best interest of the City.

PUBLISHED: Daily Journal of Commerce

DATE: September 1, 2011

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SECTION 1
INTRODUCTION

The City of Tigard is requesting proposals from firms qualified in providing hydrogeological services related to Tigard’s aquifer storage and recovery program. Firms are invited to submit a proposal outlining their experience and qualifications in performing work directly related to the services required.

Sealed proposals will be received until 2:00 p.m. local time on Thursday, September 29, 2011, to the attention of Joe Barrett, Sr. Management Analyst, at Tigard City Hall’s Utility Billing Counter located at 13125 SW Hall Blvd., Tigard, Oregon 97223. There will be no formal opening of the received proposals. Facsimile and electronic (email) proposals will not be accepted. Proposals will not be accepted after the stated opening date and time. Late proposals will be returned to the vendor unopened.

The selected consultant(s) will provide the City with hydrogeological on-call services and project-specific services related to the ongoing monitoring and expansion of its ASR program. The City currently has an ASR limited license issued by the Oregon Water Resources Department (OWRD), and current operation and future ASR development will be completed under this license. Therefore, the selected consultant(s), providing hydrogeological services and acting as the Hydrogeologist for the City, will be responsible for all necessary reporting and coordination with OWRD, and potentially other state agencies for developing and operating the City’s ASR program.

The individual or firm selected to provide hydrogeological services for the City will be awarded a contract for up to 5 years. However, the hydrogeological services contractor will be required to negotiate individual scopes of work and budgets that will be reviewed by the City during the course of the contract. For example, the City will request a proposal from the selected hydrogeological services contractor to perform operational support for the existing ASR program. The proposal, which will include a budget and defined scope of work, will be reviewed by the City and must be approved before the hydrogeological services contractor initiates work. The City could select more than one hydrogeological services contractor and request proposals from each for a specific project, but the City reserves the right to use, at its discretion, the hydrogeological services contractor of its choice for the life of the contract.

SECTION 2
PROPOSER’S SPECIAL INSTRUCTIONS

A. PROPOSED TIMELINES

<u>Thursday, September 1, 2011</u>	Advertisement and Release of Proposals
<u>2:00pm, Thursday, September 29, 2011</u>	Deadline for Submission of Proposals
<u>Week of October 3, 2011</u>	Interviews (if necessary)
<u>Tuesday, October 25, 2011</u>	Award of Contract by LCRB
<u>November 1, 2011</u>	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 2:00 p.m. on Thursday, September 29, 2011 to the address below. Each proposal must be submitted in a sealed envelope and designated with proposal title. To assure that your proposal receives priority treatment, please mark as follows.

RFP – Hydrogeological services - Aquifer Storage and Recovery Program

September 29, 2011

City of Tigard – Utility Billing Counter

Attn: Joe Barrett, Sr. Management Analyst

13125 SW Hall Blvd.

Tigard, Oregon 97223

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

D. PROTEST OF SCOPE OF WORK OR TERMS

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

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

RFP Specification/Term Protest

RFP Name and Closing Date

City of Tigard

Attn: Joe Barrett, Buyer

13125 SW Hall Blvd.

Tigard, Oregon 97223

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

E. PROPOSAL SUBMISSION AND SIGNING

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

F. COST OF PREPARING A PROPOSAL

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

G. INTERPRETATIONS AND ADDENDA

All questions regarding this project proposal shall be directed to Joe Barrett, Sr. Management Analyst, at either (503) 718-2477 or joseph@tigard-or.gov. 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. PROJECT ADMINISTRATOR

The City’s Project Administrator for these services will be John Goodrich, Utility Division Manager, who can be reached either by phone at (503) 718-2609 or by email at johng@tigard-or.gov.

J. PROPOSAL VALIDITY PERIOD

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

K. FORM OF CONTRACT

A copy of the City's standard personal services agreement, which the City expects the successful firm or individual to execute, is included as “Attachment C”. The contract will incorporate the terms and conditions from this RFP document and the successful proposer’s

response documents. Firms taking exception to any of the contract terms shall submit a protest or request for change in accordance with Section 2.D “Protest of Scope of Work or Terms” or their exceptions will be deemed waived.

L. TERM OF CONTRACT

The term of the contract shall be a period of one (1) year with the mutual option to renew for four (4) additional one (1) year periods. 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 30 days’ written notice. If the agreement is so terminated, Contractor shall be paid in accordance with the terms of the agreement.

N. NON-COLLUSION

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

O. PUBLIC RECORD

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

**SECTION 3
BACKGROUND**

The City receives the water used for ASR primarily from the City of Portland (Portland Water Bureau) with lesser amounts from the City of Lake Oswego. The water is stored in the basalt aquifer beneath the City’s service area during the winter and spring months (December through June) when demands are low. This stored water is recovered during the summer and fall months (July through November) to augment system capacity during peak demand periods or during an emergency condition.

ASR pilot testing for the City is being conducted under ASR Limited License #005, which was issued by OWRD on December 14, 2006. The limited license permits recovery of 95 percent of the stored water; however, because the City has water rights for the ASR wells, it has the option to pump native groundwater after the ASR account has been depleted. Limited License #005 expires on December 14, 2011. At that time, the City will either apply for a 5-year extension or apply for a full-scale ASR operation permit.

The City currently operates two ASR wells. ASR 1 is located at the southwest corner of Canterbury Lane and 103rd Avenue, and ASR 2 is located on the north side of Bull Mountain Road and 125th Avenue. Typically, about 100 MG are stored in the basalt aquifer using ASR 1 and the fully allowable amount authorized by the limited license is recovered each year. For example, a total of 107.5 MG of treated drinking water was injected in the basalt aquifer using ASR 1 from January 14 to May 17, 2010. ASR 1 water was stored from May 17 to June 22, 2010, and recovery was pumped from June 22 to

September 15, 2010. In the spring of 2006, ASR 2 was brought on-line. The well is equipped with a variable-frequency drive motor with a maximum pumping capacity of 2.5 mgd. ASR 2 injection was 219.8 MG from December 1, 2009 to January 14, 2010. ASR 2 water was stored from January 14 to June 30, 2010, and recovery was pumped June 30 to August 17, 2010. ASR 2 stored water is approximately 200 MG.

In summary, the City has been testing the feasibility of ASR at the Canterbury Lane facility since 2002. To date, results have been favorable and ASR has played an important role in helping the City meet peak demand periods during the summer. The City intends to move forward with further ASR testing, which may include adding additional ASR wells beyond ASR 1, ASR 2, and ASR 3. Overall, the dynamic response of the aquifer system at ASR 1 has shown that up to 150 MG of water can be injected without a loss of stored water at the Canterbury Lane facility. Testing at ASR 2 shows that a similar amount of water can be banked at this location. The hydrogeological services contractor will assist the City in operating its current ASR wells, including reporting and regulatory interface, and will assist the City with expanding its ASR program to meet the goal of developing an ASR system capable of storing up to 500 MG and pumping up to 6 mgd, at a minimum.

In August 2008 the City and Lake Oswego signed a partnership agreement to share water resources by expanding the existing water supply system to serve both communities. This source water change will be chemically different than the current Portland supply. Changes include free chlorination instead of chloramines, and additional treatment with ozone. The City is scheduled to change source water for the service area in June 2016.

SECTION 4 **SCOPE AND SCHEDULE OF WORK**

Below is a generalized list of the anticipated scope of work that the Hydrogeology services contractor will complete under this contract. The City reserves the right to add additional tasks as needed during the course of this contract.

A. Task 1: ASR Operational Support

1. Track the performance of the City's ASR wells and track the response of the host aquifer to ASR operation.
2. Collect water quality samples per the requirements of the City's ASR limited license. Review water quality data as necessary.
3. Provide the City with periodic updates on the performance of the ASR program and advise the City, as needed, with regard to operation of the ASR wells. Updates should be submitted to the City once every two months, at a minimum.
4. Per the City's ASR limited license, perform all necessary reporting to the state and provide ASR operational updates to the state, as needed.
5. Provide training to the City's public works personnel, as needed, related to operating and understanding the ASR program.
6. Continued develop of ASR operational planning for City personnel and provide ongoing support as needed.
7. Provide technical support regarding water quality parameters related to the new joint water supply partnership with Lake Oswego, which will include the use of ozone for disinfection.
8. Complete all tasks and activities related to modifying the OWRD limited license due to source water injection changes anticipated before 2016.

B. Task 2: ASR Expansion

1. Review existing ASR data with regard to developing an ASR expansion program.
2. Work with the City staff and the Public Works Director and/or the City's engineering consultant to develop a short list of target ASR sites.
3. Develop a work plan for exploring and testing the short list of ASR sites.
4. Develop planning-level exploration and testing costs.
5. Working with the Public Works Director and/or the City's engineering consultant, develop planning-level development costs for one or more targeted ASR sites.
6. Present an ASR expansion plan to the City staff, as needed.

C. Task 3: ASR Drilling and Testing

1. Develop plans and specifications for drilling and testing one or more ASR sites.
2. Assist the City and the Public Works Director and/or the City's engineering consultant to develop the contract documents for the test well drilling and testing program.
3. Assist the City in bidding, reviewing, and awarding a test well drilling and testing contract for one or more targeted ASR sites.
4. Manage the test well drilling and aquifer testing program as the City's representative.
5. Review test well results and provide the City with a recommendation about developing the test well as an ASR production well. Work will include final well design recommendations and water quality evaluation.

D. Task 4: General Project Management

1. Provide general project management for the City's ASR program.
2. Provide permitting and regulatory support for the City's ASR program.
3. Provide general hydrogeologic support for the City's ASR program and well production system.
4. Attend meetings as requested by the City in support of the ASR program.
5. Provide planning support and cost estimating support to the City for the ASR program.
6. Attend regional meetings on behalf of the City in support of the ASR program as requested.

E. Task 5: Hydrogeologic Support for ASR Wellhead Design, Construction, and Startup

1. Provide the Public Works Director and/or the City's engineering consultant with support during pre-design and final design of the ASR pump station(s).
2. Provide the Public Works Director and/or the City's engineering consultant with support during construction of the ASR pump station(s).
3. Provide documentation and support as needed to ensure the ASR pump station is completed as designed.
4. Provide ASR start-up support of the newly constructed ASR pump station.

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 City's ASR program 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 Approach

Provide a project understand and approach for the City's ASR program, inclusive of the ASR expansion plan.

5. Project Experience

Provide a description of the firm's experience in performing similar studies that address the key elements of the proposed scope of work. The respondent must have successfully completed at least two (2) projects of similar scope (e.g., ASR in basalt environments and managing deep basalt drilling projects), complexity, and nature.

6. Project Team Experience

Present qualifications for key personnel assigned to the project. Present a project manager with the depth and experience to be the primary point of contact for the City as the Hydrogeologist providing services. A locally based project manager is mandatory. Clearly show the level of commitment of each individual. The proposed project manager assigned to the project will be available for the proposed length of the contract (5 years) to provide continuity. The project manager also must be a registered geologist in Oregon.

7. **Rates**
Present fully loaded billing rates for individuals assigned to the project and for other team members. A consumer price index (CPI) adjustment will be allowed for billing rates each year over the duration of the project.
8. **References**
Provide a list of up to five references that can be contacted about the firm's qualifications and the experience of the individuals assigned to this project. Include the contact name(s), address, and telephone number for each reference. The City will call at least three references during its evaluation of the SOQ.
9. **Other Information**
Provide a statement outlining the firm's insurance policy. Present a statement that describes any litigation to which the firm is a party, any bankruptcy settlements, or unpaid judgments against the firm or its principals. Provide a statement as to whether the firm has defaulted on previous professional contracts.
10. **Resumes**
Provide resumes for individuals assigned to the project beginning with the project manager.

B. ADDITIONAL SERVICES

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

C. 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 engineering firm which best meets the City's needs based upon its evaluation of a firm's 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 approach</u>	<u>20 points</u>
5.	<u>Project experience</u>	<u>20 points</u>
6.	<u>Project Team experience</u>	<u>20 points</u>
7.	<u>Rates</u>	<u>20 points</u>
8.	<u>References</u>	<u>20 points</u>
<u>Total Evaluation Points</u>		<u>100 points</u>

B. INTERVIEW

At the option of the City, the top three (3) firms (or more if the City so chooses) may be required to make a presentation of their proposal. This will provide an opportunity to clarify or elaborate on the proposal, but will not, in any way provide an opportunity to change any fee amount originally proposed. The Project Administrator 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 20 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 a firm’s 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 the firm’s proposal.

E. RESERVATION IN EVALUATION

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

F. INTENT OF AWARD

Upon review of the submitted proposals and any interviews the City conducted, the City intends to negotiate a detailed final scope of work and a personal services agreement with one or more firms to perform the services. The City is reserving the right to award multiple contracts from this Proposal process if the City deems it in the public’s best interest to do so.

G. PROTEST OF AWARD

In accordance with the City's Model Public Contracting Rule 30.104, any adversely affected Proposer has fourteen (14) calendar days from the date of the written notice of award to file a written protest.

H. PROPOSAL REJECTION

The City reserves the right to:

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

**SECTION 7
PROPOSAL CERTIFICATIONS**

Non-discrimination Clause

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

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

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

Addenda: No. _____ through No. _____ inclusive.

We therefore offer and make this proposal to furnish services at the price(s) indicated herein in fulfillment of the attached requirements and specifications of the City.

Name of firm: _____

Address: _____

Telephone Number: _____ Fax Number: _____

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

Typed Name/Title: _____

If corporation, attest: _____
(Corporate Officer)

Corporation **Partnership** **Individual**

Federal Tax Identification Number (TIN): _____

ATTACHMENT A
ACKNOWLEDGMENT OF ADDENDA
City of Tigard, Oregon
Request for Proposal
Hydrogeologist of Record - Aquifer Storage and Recovery Program
Close: Thursday, (September 29, 2011 - 2:00pm)

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 Hydrogeological Services Aquifer Storage and Recovery Program and the attached personal services agreement (Attachment C):

Signature of authorized representative

Date

Type or print name of authorized representative

Telephone Number

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

Telephone Number

REFERENCES

Reference #1

Telephone Number

Project Title

Contact Individual

Reference #2

Telephone Number

Project Title

Contact Individual

Reference #3

Telephone Number

Project Title

Contact Individual

ATTACHMENT C
CITY OF TIGARD, OREGON
PERSONAL SERVICES AGREEMENT
(TITLE)

THIS AGREEMENT made and entered into this (Day) day of (Month), (Year) by and between the City of Tigard, a municipal corporation of the State of Oregon, hereinafter called City, and (Contractor's Name), hereinafter called Contractor.

RECITALS

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

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

THEREFORE the Parties agree as follows:

1. SERVICES TO BE PROVIDED

Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement. Contractor agrees to complete work that is detailed in Exhibit A and by this reference made a part hereof.

2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, on (Month - Day - Year) or June 30, (Year), whichever comes first. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. COMPENSATION

City agrees to pay Contractor not to exceed (Amount in written form) (\$Amount in numerical form) for performance of those services described herein, which payment shall be based upon the following applicable terms:

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

- D. Contractor shall make payments promptly, as due, to all persons supplying labor or materials for the prosecution of this work.
- E. Contractor shall not permit any lien or claim to be filed or prosecuted against the City on any account of any labor or material furnished.
- F. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- G. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor 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 Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- H. Contractor shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime.
- I. Contractor 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 Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- J. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this agreement during the City's current fiscal year. Funding for work performed under this agreement in subsequent fiscal years is dependent upon budget adoption by Tigard's City Council.

4. OWNERSHIP OF WORK PRODUCT

City shall be the owner of and shall be entitled to possession of any and all work products of Contractor which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Contractor prior to termination of this Agreement by Contractor 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, Contractor shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any

subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor certifies that:

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

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

Contractor 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

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

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

A. Commercial General Liability Insurance

Contractor shall obtain, at contractor'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	1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

B. Commercial Automobile Insurance

Contractor shall also obtain, at contractor'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 \$1,000,000.

C. Workers' Compensation Insurance

The contractor, 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. Contractors 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 \$500,000 each accident.

D. 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.

E. 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.

F. Insurance Carrier Rating

Coverages provided by the Contractor 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.

G. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Contractor 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.

H. 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.

I. Primary Coverage Clarification

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

J. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions policies required by this contract.

Contractor'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: (Name, Title of Person Letting Contract)
 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 contractor's liability hereunder. Notwithstanding said insurance, Contractor 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	(Contractor)
Attn: (name & title of person letting contract)	Attn: (insert contract manager's name)
13125 SW Hall Blvd.	(Street Address)
Tigard, Oregon 97223	(City, State Zip)
Phone: (503) 718-(insert #)	Phone: (insert #)
Fax: (503) (insert #)	Fax: (insert #)
Email Address: (insert address)@tigard-or.gov	Email Address: (insert 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 Contractor that does not represent clients on matters contrary to City interests. Further, Contractor 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 Contractor 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, Contractor shall consult with the appropriate CITY representative regarding the conflict.

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

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

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

15. FORCE MAJEURE

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

16. NON-WAIVER

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

17. NON-DISCRIMINATION

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor 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.

18. ERRORS

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

19. EXTRA (CHANGES) WORK

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

20. WARRANTIES

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

21. ATTORNEY'S FEES

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

22. GOVERNING LAW

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

23. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279B, the provisions of which are hereby made a part of this agreement.

24. CONFLICT BETWEEN TERMS

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

25. AUDIT

Contractor 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. Contractor agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

26. SEVERABILITY

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

27. CONDITIONS OF SUPPLYING A PUBLIC AGENCY

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

28. HOURS OF LABOR

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

29. MEDICAL CARE AND WORKERS' COMPENSATION

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

30. 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. Contractor, 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 Contractor has executed this Agreement on the date hereinabove first written.

City Of Tigard

Contractor

City Representative – Signature

Contractor’s Representative - Signature

City Representative – Printed Name

Contractor’s Representative – Printed Name

Date

Date

EXHIBIT A
SERVICES TO BE PROVIDED (TEMPLATE AGREEMENT)