



City of Tigard

FINANCE AND INFORMATION SERVICES

Request for Proposal (RFP)

FINANCIAL ADVISOR SERVICES

Proposals Due: Wednesday, March 27, 2019 - 2:00 p.m. local time

Submit Proposals To: City of Tigard – Contracts & Purchasing Office
Attn: Jamie Greenberg, Purchasing Assistant
13125 SW Hall Blvd.
Tigard, Oregon 97223

Direct Questions To: Toby LaFrance, Finance and Information Services Director
Phone: (503) 718-2406
Email: toby@tigard-or.gov

**PUBLIC NOTICE
REQUEST FOR PROPOSAL
FINANCIAL ADVISOR SERVICES**

The City of Tigard is seeking sealed proposals from firms qualified to provide financial advisor services for the City's Finance and Information Services Department. Proposals will be received until 2:00 p.m. local time on Wednesday, March 27, 2019, at Tigard City Hall's Utility Billing Counter at 13125 SW Hall Blvd., Tigard, Oregon 97223.

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

RFP packets may be downloaded from www.tigard-or.gov or obtained in person at Tigard City Hall's Utility Billing Counter located at 13125 SW Hall Blvd., Tigard, OR 97223.

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

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

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DATE: Wednesday, March 13, 2019

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SECTION 1
INTRODUCTION

The City of Tigard is seeking sealed proposals from firms qualified to provide financial advisor services for the City’s Finance and Information Services Department. Proposals will be received until 2:00 p.m. local time on Wednesday, March 27, 2019, at Tigard City Hall’s Utility Billing Counter at 13125 SW Hall Blvd., Tigard, Oregon 97223.

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SECTION 2
PROPOSER’S SPECIAL INSTRUCTIONS

A. PROPOSED TIMELINES

<u>Wednesday, March 13, 2019</u>	Advertisement Posting – Daily Journal of Commerce
<u>Wednesday, March 27, 2019 – 2:00 p.m.</u>	Deadline for Submission of Proposals
<u>Week of April 1, 2019</u>	Interviews (if necessary)
<u>Tuesday, April 23, 2019</u>	Award of Contract by LCRB
<u>Monday, April 29, 2019</u>	Commencement of Services

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

B. GENERAL

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

C. PROPOSAL SUBMITTAL

The Proposal and all amendments must be signed and submitted no later than 2:00 p.m., Wednesday, March 27, 2019 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 – Financial Advisor Services

City of Tigard – Utility Billing Counter
Attn: Jamie Greenberg, Purchasing Assistant
13125 SW Hall Blvd.
Tigard, Oregon 97223

Proposer shall put their name and address on the outside of the envelope. It is the Proposer’s responsibility to ensure that proposals are received prior to the stated closing time. The City shall not be responsible for the proper identification and handling of any proposals submitted incorrectly. Late

proposals, late modification or late withdrawals shall not be considered accepted after the stated bid opening date and time and shall be returned unopened. Facsimile and electronic (email) proposals will not be accepted.

D. PROTEST OF SCOPE OF WORK OR TERMS

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

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

RFP Specification/Term Protest

City of Tigard – Contracts and Purchasing Office
Attn: Jamie Greenberg, Purchasing Assistant
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 Jamie Greenberg, Purchasing Assistant. 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 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 Consultant shall also complete a W-9 form for the City at the time of contract execution.

I. CITY'S PROJECT MANAGER

The City's Project Manager for this work will be Toby LaFrance, Finance and Information Services Director, who can be reached by phone at (503) 718-2406 or by email at toby@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 contract, which the City expects the successful firm or individual to execute, is included as "Attachment C". The contract will incorporate the terms and conditions from this RFP document and the successful proposer's response documents. Firms taking exception to any of the contract terms shall submit a protest or request for change in accordance with Section 2.D "Protest of Scope of Work or Terms" or their exceptions will be deemed immaterial and 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 up to four (4) additional one-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, Consultant shall be paid in accordance with the terms of the agreement.

N. INTERGOVERNMENTAL COOPERTIVE PURCHASING

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

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

O. NON-COLLUSION

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

P. PUBLIC RECORD

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

ORS 192. The above restrictions may not include cost or price information, which must be open to the public.

SECTION 3 BACKGROUND

The City of Tigard was incorporated in 1961 and today is a clean, livable, and affordable community. Tigard is located in southeast Washington County, 15 minutes from downtown Portland. Tigard's population estimate for 2018 is 53,697 residents. As a community, Tigard strives to blend the amenities of a modern city with the friendliness and community spirit of a small town.

The City of Tigard has a strong Aa1/AA+ GO bond rating and a history of making fiscally sound decisions. The city has various dept obligations for city infrastructure, most notably for the Lake Oswego – Tigard Water Project, and its urban renewal districts.

Information in regards to the City of Tigard's debt can be found within the city's budget, Comprehensive Annual Financial Report, and Urban Renewal financial report.

SECTION 4 SCOPE AND SCHEDULE OF WORK

The City is seeking proposals to act as Tigard Financial Advisor to act as financial advisor in conjunction with bond issues and/or other financing issuances.

Tigard's Urban Downtown Urban Renewal District will need to issue debt prior to September 2, 2019. The purpose of this debt will be to fund the urban renewal project and refund existing debt, including a final balloon payment of \$791,680.93 due on September 2, 2019.

Tigard has an interest in financing a potential campus improvement, most likely a new Police Department and a facility for an Emergency Operations Center (EOC). The goal will be to finance part of the improvement through a voter approved GO Bonds using the city's current tax rate. The city is interested

SECTION 5 PROPOSAL CONTENT AND FORMAT

A. FORMAT

To provide a degree of consistency in review of the written proposals, firms are requested to prepare their proposals in the standard format specified below.

1. Title Page

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

2. Transmittal Letter

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

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

3. Table of Contents

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

4. Firm and Team Qualifications

- a.** Background of the firm. This should include a brief history of the firm and types of services the firm is qualified to perform. Total number of years the firm has been in business, the general scope of services the firm provides, the current number of employees, and current principal areas of expertise
- b.** Qualifications of the firm in performing this type of work. This should include examples of related experience and references for similar studies and projects. A narrative description of the firm's organization and its relationship to any larger business entity. Include an organizational chart depicting the information provided
- c.** Proposers must identify the anticipated members of their firm that will be assigned to meet the City's needs. Proposers should identify individuals and subconsultants who will provide the services, their experience, and their individual qualifications. Pertinent resumes of assigned personnel should be included. Identify by name and title, the key staff members who will be assigned to work with the City, if the City awards the proposer the contract contemplated by the RFP. Key staff members are those people who provide substantive work for the City. Provide a brief biography for each identified key staff person. Biography must include, but need to be limited to, a description of the education, qualifications, experience, and training of each key staff person. The description would likely include information about the key staff person's work history, range of duties, key responsibilities for clients and any professional designations, licenses or certifications appropriate to this work. Under this heading, include the following information: A resume for the key personnel to be assigned for these services, showing such education and experience as may be relevant to this particular project. A description of each key personnel's proposed roles and responsibilities on the project team. An organizational chart of the proposed project team.
- d.** Proposers should also identify a succession plan in the event the firm experiences turnover. Proposers should detail how the succession plan will ensure the City's service needs will continue to be met.
- e.** A description of similar work performed involving the items called out in the Scope of Work. Name the Oregon local government jurisdictions that you presently or recently serve with annual budgets in excess of \$75 million. Please include the number and volume of debt issuance transactions completed by the firm for those jurisdictions during the period 2014-2018, by type of debt (i.e. General Obligation, Revenue or Urban Renewal).
- f.** A summary of the firm's management and organizational capabilities, particularly regarding organizational resources to deliver quality analytical information and innovative debt mechanisms
- g.** Describe any Securities and Exchange Commission regulatory censure or litigation related to services that your firm provides
- h.** Furnish disclosure statement of involvement of any civil or criminal litigation or investigation regarding your business practices during the past five years.
- i.** Knowledge of Oregon local government debt issuance statutes, model municipal debt policies and best practices.

- j. Any other relevant data that would indicate significant competitive edge over other firms in your industry

5. Project Approach and Schedule

Proposers should provide the City with an outline of the steps the proposer would take Tigard through issuing debt to cover the two issues outlined in Section 4.

- a. Who performs each step, the Financial Advisor or Tigard
- b. If the Financial Advisor performs the step, identify who in the firm will do the work
- c. Provide the dates to start and complete each step to meet the timeframe identified for Tigard’s Urban Renewal District.

Proposers should demonstrate a general understanding of the needs of a municipality in the State of Oregon from a financial advisor. Proposers should provide written assurance that the firm has, and will maintain, the availability to meet the City’s timing constraints and targets.

6. Cost Structure

The proposed fee structure should include the complete breakout for the proposed hourly rates for all team members that will work on this project.

B. ADDITIONAL SERVICES

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

C. ADDITIONAL INFORMATION

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

D. REFERENCES

Consultant must demonstrate successful past performance of the firm’s ability to provide services as set forth in this specification. Consultants must detail three (3) references to document experience. References must be detailed in Attachment B “Statement of Proposal”

E. DISPUTES

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

F. CITY PERSONNEL

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

SECTION 6

PROPOSAL EVALUATION PROCEDURES

A. SELECTION AND EVALUATION PROCESS

A Selection Committee assembled by the City will review the written proposals. Proposals will be evaluated to determine which ones best meet the needs of the City. After meeting the mandatory requirements, the proposals will be evaluated on both their technical and fee aspects. The Selection

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

1.	<u>Completed Proposal submitted on time</u>	<u>Pass/Fail</u>
2.	<u>Original copy plus one (1) electronic copy of the complete proposal</u>	<u>Pass/Fail</u>
3.	<u>Transmittal letter</u>	<u>Pass/Fail</u>
4.	<u>Firm and team qualifications</u>	<u>50 points</u>
5.	<u>Project approach and schedule</u>	<u>35 points</u>
6.	<u>Cost structure</u>	<u>15 points</u>
	<u>TOTAL EVALUATION POINTS</u>	<u>100 POINTS</u>

B. PRESENTATION/INTERVIEW

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

C. INVESTIGATION OF REFERENCES

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

D. CLARIFICATION OF PROPOSALS

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

E. RESERVATION IN EVALUATION

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

F. INTENT OF AWARD

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

G. PROTEST OF AWARD

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

H. PROPOSAL REJECTION

The City reserves the right to:

1. Reject any or all proposals not in compliance with all public procedures and requirements;
2. Reject any proposal not meeting the specifications set forth herein;

3. Waive any or all irregularities in proposals submitted;
4. In the event two or more proposals shall be for the same amount for the same work, the City shall follow the provisions of LCRB 30.095 and Section 137-095 of the Oregon Attorney General's Model Public Contract Manual;
5. Reject all proposals;
6. Award any or all parts of any proposal; and
7. Request references and other data to determine responsiveness.

**SECTION 7
PROPOSAL CERTIFICATIONS**

Non-discrimination Clause

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

Agreed by: _____

Firm Name: _____

Address: _____

Resident Certificate

Please Check One:

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

Or

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

Officer's signature: _____

Type or print officer's name: _____

**SECTION 8
SIGNATURE PAGE**

The undersigned proposes to perform all work as listed in the Specification section, for the price(s) stated; and that all articles supplied under any resultant contract will conform to the specifications herein,

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

The undersigned, by submitting a proposal, represents that:

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

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

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

Addenda: No. _____ through No. _____ inclusive.

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

Name of firm: _____

Address: _____

Telephone Number: _____ Fax Number: _____

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

Typed Name/Title: _____

If corporation, attest: _____
(Corporate Officer)

Corporation Partnership Individual

Federal Tax Identification Number (TIN): _____

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

Project Title: Financial Advisor Services

Close: Wednesday, March 27, 2019 - 2:00 p.m.

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

1. _____ 3. _____

2. _____ 4. _____

Date

Signature of Proposer

Title

Corporate Name

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

Name of Consultant: _____

Mailing Address: _____

Contact Person: _____

Telephone: _____ Fax: _____ Email: _____

accepts all the terms and conditions contained in the City of Tigard's Request for Proposal for financial advisor services and the attached personal service 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
PROFESSIONAL SERVICES AGREEMENT
FINANCIAL ADVISOR SERVICES

THIS AGREEMENT, made and entered into this (Day) day of (Month), (Year), by and between the City of Tigard, a municipal corporation, hereinafter referred to as the "City," and (Name of Firm), hereinafter referred to as the "Consultant."

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 program of the City; and

WHEREAS, the City desires to engage the Consultant to render professional services for the project described in this Agreement, and the Consultant 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. Consultant's Scope of Services

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

2. Effective Date and Duration

This agreement shall become effective upon the date of execution by the City's Local Contract Review Board, and shall expire, unless otherwise terminated or extended, on completion of the work or June 30, (Year) whichever comes first. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. Consultant's Fee

A. Basic Fee

- 1) As compensation for Basic Services as described in Exhibit A of this Agreement, and for services required in the fulfillment of Paragraph 1, the Consultant shall be paid on an hourly rate based upon the "Schedule of Rates" in Exhibit B of this agreement, which shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement. The Basic Fee shall not exceed the amount of (Amount of dollars expressed in words) dollars (\$Amount of dollars expressed numerically) 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 Consultant. The Consultant's compensation will not be adjusted unless the Scope of Services to be provided by the Consultant 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 Consultant periodically, but not more frequently than monthly. Payment by the City shall release the City from any further obligation for payment to the Consultant 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 Consultant shall furnish or acquire for the City the professional and technical services based on the hourly rate schedule as described in Exhibit B of this contract for minor project additions and/or alterations.

D. Certified Cost Records

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

4. Ownership of Plans and Documents: Records

- A. The City shall have unlimited authority to use the materials received from the Financial Advisor in any way the City deems necessary.

- B.** The City shall make copies, for the use of and without cost to the Financial Advisor, data pertinent to the work to be performed by the Financial Advisor pursuant to this Agreement, and also make any materials available to the City from any other public agency or body.

5. Assignment/Delegation

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

6. Consultant is Independent Contractor

- A.** The City's project director, or designee, shall be responsible for determining whether Consultant's work product is satisfactory and consistent with this agreement, but Consultant is not subject to the direction and control of the City. Consultant 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.** Consultant is an independent contractor and not an employee of City. Consultant acknowledges Consultant's status as an independent contractor and acknowledges that Consultant 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 Consultant to provide services under this contract are employees of Consultant and not of City. Consultant 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 Consultant 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 Consultant under the terms of the agreement, to the full extent of any benefits or other remuneration Consultant receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Consultant or to a third party) as a result of said finding.
- C.** The undersigned Consultant hereby represents that no employee of the City or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Consultant, 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, Consultant 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.** Consultant and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- F.** Consultant shall obtain, prior to the execution of any performance under this Agreement, a City of Tigard Business License. The Tigard Business License is based on a calendar year with a December 31st expiration date. New businesses operating in Tigard after June 30th of the current

year will pay a pro-rated fee through the end of the calendar year.

G. Consultant 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 Consultant as a material inducement to enter into this Agreement. Consultant 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 Consultant's 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 Consultant's work by the City shall not operate as a waiver or release. Acceptance of documents by City does not relieve Consultant of any responsibility for design deficiencies, errors or omissions.
- B.** Claims for other than Professional Liability. Consultant 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 Consultant 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. Consultant 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 Consultant or its subcontractors, sub-consultants, agents or employees in performance of professional services under this agreement. Any work by Consultant 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 Consultant, 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 Consultant unrelated to the quality of professional services provided by Consultant in performance of this contract.

8. Insurance

Consultant and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover risks arising directly or indirectly out of Consultant's activities or work hereunder, including the operations of its subcontractors of any tier. 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 Consultant and its subcontractors shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

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

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

B. Professional Liability

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

C. Commercial Automobile Insurance

Consultant shall also obtain, at Consultant’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 Consultant, 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. Consultants 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 Consultant’s insurer will provide such if less than 24 months. Consultant 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 Consultant must be underwritten by an insurance company deemed acceptable by the City. All policies of insurance must be written by companies having an A.M. Best rating of "A-VII" or better, or equivalent. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

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 Consultant shall furnish a Certificate of Insurance to the City. No contract shall be effective until the required Certificates of Insurance have been received and approved by the City. The certificate will specify and document all provisions within this contract and include a copy of Additional Insured Endorsement. A renewal certificate will be sent to the 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 Consultant’s coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

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 Consultant's liability hereunder. Notwithstanding said insurance, Consultant shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. Termination Without Cause

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

10. Termination With Cause

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

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

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

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

- 1) If Consultant fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Consultant fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten days or such other period as City may authorize.
- 3) If Consultant 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 Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (B), Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Consultant bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Consultant. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

11. Non-Waiver

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

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:

CITY OF TIGARD	(CONSULTANT)
Attn: (City's contact person's name)	Attn: (Consultant's contact person's name)
Address: 13125 SW Hall Blvd. Tigard, Oregon 97223	Address: (Consultant's mailing address)
Phone: (503) (Project Mgr's phone #)	Phone: (Project Mgr's phone #)
Email: (PM's email)@tigard-or.gov	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 who 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 Consultant, which does not represent clients on matters contrary to City interests. Further, Consultant shall not engage services of an Consultant and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests.

Should the Consultant represent clients on matters contrary to City interests or engage the services of an Consultant and/or other professional who individually, or through members of his/her same firm,

represents clients on matters contrary to City interests, Consultant shall consult with the appropriate City representative regarding the conflict.

After such consultation, the Consultant shall have (insert # of days) 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 Consultant shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten 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

Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Consultant also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. All facilities designed by Consultant under this contract shall be designed to be readily accessible to and usable by individuals with disabilities as required by the Americans with Disabilities Act.

17. Errors

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

18. Extra (Changes) Work

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

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. Choice of Law, Venue

The provisions of this Agreement are governed by Oregon Law. Venue will be the State of Oregon Circuit Court in Washington County or the US District Court for Oregon, Portland.

21. Compliance With Applicable Law

Consultant 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.

22. 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.

23. Access to Records

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

24. Audit

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

25. 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.

26. Intergovernmental Cooperative Purchasing

The Financial Advisor agrees to extend identical prices and services under the same terms and conditions to all public agencies in the region. Quantities stated in the Scope of Work or in the solicitation reflect the City of Tigard usage only. Each participating agency will execute its own contract with the lowest responsible/responsive bidder for its requirements.

27. Representations and Warranties

Consultant represents and warrants to the City that:

- A. Consultant has the power and authority to enter into and perform this Agreement.
- B. This Agreement, when executed and delivered, is a valid and binding obligation of Consultant, enforceable in accordance with its terms.
- C. Consultant (to the best of Consultant's knowledge, after due inquiry), for a period of no fewer than six calendar years (or since the firm's inception if less than that) preceding the effective date of this Agreement, faithfully has complied with:
 - 1) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
 - 2) Any tax provisions imposed by a political subdivision of this state that applied to Consultant, to Consultant's property, operations, receipts, or income, or to Consultant's performance of or compensation for any work performed by Consultant;
 - 3) Any tax provisions imposed by a political subdivision of this state that applied to Consultant, or to goods, services, or property, whether tangible or intangible, provided by Consultant; and
 - 4) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

D. Any intellectual property rights or such delivered to the City under this Agreement, and Consultant's services rendered in the performance of Consultant's obligations under this Agreement, shall be provided to the City free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

28. Compliance with Tax Laws

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

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

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

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

29. Complete Agreement

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

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

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Consultant has executed this Agreement on the date hereinabove first written.

Awarded by Tigard's Local Contract Review Board at their _____ meeting.

CITY OF TIGARD

(CONSULTANT)

By: Marty Wine, City Manager

By: Authorized Contractor Representative

Date

Date

ATTACHMENT C
EXHIBIT A (CONTRACT)
SERVICES TO BE PROVIDED

INTRODUCTION

SCOPE OF WORK

SCHEDULE

COST/RATE ESTIMATES