



*City of Tualatin*

## REQUEST FOR PROPOSALS

*Legislative Representation and Lobbying Services*

RFP 2023-08

Proposal Due Date & Time:	March 20, 2024 by 3:00 pm, PST <b>Late proposals will not be accepted or considered</b>
Submit Proposals Via Email To:	City of Tualatin Attn: Contracts & Procurement Richard Contreras <a href="mailto:rcontreras@tualatin.gov">rcontreras@tualatin.gov</a>
Direct Questions To:	Richard Contreras Contracts & Procurement Analyst Email: <a href="mailto:rcontreras@tualatin.gov">rcontreras@tualatin.gov</a> Phone: (503) 691-3080
Pre-Qualification:	<input type="checkbox"/> Required <input checked="" type="checkbox"/> Not Required
<b>Optional</b> Pre-Proposal Meeting:	Wednesday, March 20, 2024 at 3:00 pm, PST

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# CITY OF TUALATIN REQUEST FOR PROPOSALS

## Introduction

The City of Tualatin (“City”) invites consultants to submit sealed proposals to provide legislative representation and lobbying services. A complete description of services is provided under Section 1 of the Request for Proposals (“RFP”).

The City, incorporated in 1913, is a dynamic, vibrant community of approximately 27,942 residents (2020 census estimate). Tualatin is conveniently located just 12 miles south of Portland and 30 miles north of Salem, the state capital. Minority, Women, and Emerging Small Businesses (“MWESB”) are encouraged to respond. When subcontracting, all proposers are encouraged to contact and consider MWESBs. Businesses or individuals will not be discriminated against on the grounds of race, color or national origin, in the awarding of a contract or contracts resulting from this RFP.

## Point of Contact

Members of the evaluation committee or the City Council may not be contacted or solicited by any firm intending to submit a proposal. The sole point of contact for the City for all process and contract questions as well as protests is:

City of Tualatin  
Richard Contreras, Contracts & Procurement Analyst  
18880 SW Martinazzi Avenue  
Tualatin OR 97062  
Phone: (503) 691-3080  
E-mail: [rcontreras@tualatin.gov](mailto:rcontreras@tualatin.gov)

## Anticipated RFP Schedule

The City anticipates the following general timeline for this RFP. The City reserves the right to modify this timeline at the City’s discretion.

Issuance of RFP documents: February 21, 2024  
Optional Pre-Proposal Meeting: February 28, 2024  
Deadline for Protests of RFP Contents: ??  
Deadline for Questions / Clarifications: ??  
Deadline for Proposal Submission: March 20, 2024, at 3:00 pm  
Notice of Intent to Award: April 5, 2024  
Commencement of Contract: May 1, 2024

## Submission Date and Method

Each proposer shall provide one (1) electronic copy of their complete proposal via email to [rcontreras@tualatin.gov](mailto:rcontreras@tualatin.gov) by October 4, 2023, at 3:00 pm PST. Proposals received after the specified date and time will not be given consideration.

To ensure that your proposal is received, please use the following Subject Line when submitting via email:

## RFP 2023-08 Submission By [Name of Proposer]

It is the Proposer's responsibility to ensure that proposals are emailed prior to the stated closing time. **No other method of delivery will be allowed.**

The City will acknowledge, via email, receipt of all submitted proposals. Promptly after the bid submission deadline, the City will post a preliminary list of proposal submitters on its bid management website. If a proposer who submitted their proposal on time does not find their name on the preliminary list of submitters, they must notify the City by email at [rcontreras@tualatin.gov](mailto:rcontreras@tualatin.gov) within seventy-two hours after the bid closing deadline, excluding weekends and holidays. The City will not be responsible for evaluating proposals from any proposers not listed on the preliminary list who failed to contact the City in a timely manner to rectify an omission.

### **Published**

The City published the RFP on September 18, 2023, in the *Daily Journal of Commerce* and on the City website at <http://bids.tualatinoregon.gov>.

### **Pre-Proposal Meeting**

A Pre-Proposal Meeting will be held virtually at 3:00 pm PST on February 28, to provide information and respond to questions about the project, [INSERT Zoom INFO]

### **Questions and Requests for Clarification**

All solicitation documents can be viewed at the City of Tualatin's online Bid Management System <http://bids.tualatinoregon.gov/>. Please contact the Contracts & Procurement Analyst at (503) 691-3080 or [rcontreras@tualatin.gov](mailto:rcontreras@tualatin.gov) with any technical problems viewing solicitation documents.

Any clarifications or revisions will be addressed and issued in addenda via the website and will be posted a minimum of three (3) business days prior to the deadline for submitting proposals; the City must receive requests for changes in writing by the deadline stated in the RFP schedule above.

### **Registration**

Proposers should register with the City of Tualatin's Bid Management System as a plan holder to receive addenda notifications. Viewers are responsible for checking the City web site for the issuance of any addenda prior to submitting a proposal. If the proposer does not register with the City's Bid Management System, the proposer will still be held responsible for all addenda/changes to the documents and may be considered non-responsive if their proposal does not reflect those addenda/changes. Proposal results will also be posted on the City's Bid Management System.

### **Protests**

Any complaints or perceived inequities related to this RFP shall be in writing and directed to the Point of Contact at the address listed in the RFP. Protests related to the

solicitation shall be received no later than seven (7) calendar days after issuance of the RFP.

Protests of the Award must be made within seven (7) calendar days after the City's issuance of an Intent to Award letter.

For the purposes of this RFP, working days / business days will be defined as Monday through Friday excluding City recognized holidays.

### **Rejection of Proposals**

The City of Tualatin may reject any proposal not in compliance with all prescribed public proposal procedures and requirements, and may reject any or all proposals in accordance with ORS 279B.100.

No proposal will be considered complete unless fully completed in the manner required by this RFP document. No proposal will be accepted after the stated due date and time.

### **Modification / Withdrawal**

Unless otherwise specified, modification of the Proposal will not be permitted; however, a proposer may withdraw their Proposal at any time prior to the scheduled closing time for receipt of Proposals; any proposer may withdraw their Proposal, either personally or by written request to the Point of Contact. Withdrawal of Proposal shall not disqualify the proposer from submitting another Proposal provided the time for receipt of Proposals has not expired.

### **Cancellation**

Per ORS 279B.100, the City of Tualatin reserves the right to cancel award of this contract at any time before execution of the contract by both parties if cancellation is deemed to be in the City of Tualatin's best interest. In no event shall the City of Tualatin have any liability for the cancellation of award.

### **Duration of Proposals**

Unless otherwise specified, proposals must remain valid for at least 60 days. Proposals must be signed by an official authorized to bind the proposer.

### **Availability of Proposals**

The City will not conduct a public proposal opening. Proposers shall not be open to public inspection until after the City's issuance of an Intent to Award Letter.

### **Public Record**

All proposals submitted are the property of the City of Tualatin and are public records. All documents received by the City are subject to public disclosure after the City selects a Consultant. Information deemed by the proposer as exempt under Oregon's public records law should be clearly marked by the proposer as "Proprietary". Marked pages should be placed in a group separate from the remainder of the proposal. The City will make an independent determination regarding exemptions applicable to information that

has been properly marked and segregated.

Proposers are cautioned that pricing and cost information generally is not considered a trade secret under Oregon Public Records Law and identifying the submission, in whole, as exempt from disclosure is not acceptable.

### **Incurring Costs**

The City of Tualatin is not liable for any cost incurred by Consultants prior to issuance of a Contract.

### **Terms and Conditions**

All proposers are required to comply with the provisions of Oregon Revised Statutes and the City of Tualatin Municipal Code.

The City of Tualatin reserves the right to:

1. Seek clarifications of each proposal.
2. Reject any or all proposals not in compliance with public bidding procedures.
3. Postpone award of the contract for a period not to exceed 60 days from the date of proposal opening.
4. Waive informalities or technical irregularities in the proposals.
5. Select the proposal which appears to be in the best interest of the City.
6. Negotiate with the highest-ranking proposer to obtain agreement on:
  - Consultant's performance obligations and performance schedule
  - Compensation to the Consultant for services outlined in the Scope of Work

If negotiations with the highest-ranking proposer fail to proceed to agreement on Contract terms, the Evaluation Committee will formally terminate negotiations with that candidate, and begin negotiations with the second highest scoring Consultant.

Any proposed modifications to the Personal Services Agreement must be submitted as part of the Proposal.

### **Proposer Certifications**

By the act of submitting a Proposal in response to this RFP, the Proposer certifies that:

1. Proposer has carefully examined all RFP documents, including the draft Personal Services Agreement (attached as Exhibit B), all addenda, and all other attachments, fully understands the RFP intent, is able to perform all tasks as

described in the Scope of Work of this RFP, and the Proposal is made in accordance therewith.

2. Proposer is familiar with the local conditions under which the work will be performed.
3. The Proposal is based upon the requirements described in the RFP, without exception, unless clearly stated in the response.
4. Proposer accepts all of the terms of the City's Personal Services Agreement and warrants that Proposer will fully meet all of the insurance requirements contained therein. If Proposer wishes to amend or modify any terms of the Personal Services Agreement, such amendment or modification must be stated in particularity in the Proposal. Proposed changes to the draft Personal Services Agreement not stated at the time of proposal submission will not be considered. Changes stated will be considered but may not be agreed upon by the City for contract award. If the City does not agree with such noted changes, Proposer may withdraw the proposed change or the entire Proposal and the City may elect to award to the next highest ranked Proposer.
5. Proposer certifies, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, that to the best of Proposer's knowledge and belief, no elected official, employee, or person whose salary is payable in whole or part by the City has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof, other than as fully described in the Proposer's response to this solicitation.
6. Proposer, if an individual, is of lawful age; is the only one interested in this Proposal; and no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.
7. Proposer has quality experience providing the types of services and duties as described within the Scope of Work of this RFP.

### **Contract Requirements**

The successful consultant will complete a standard City contract in the form of a Personal Services Agreement, see example in Exhibit B.

## **SECTION 1: STATEMENT OF PROJECT**

### **1.1 Project Background**

The City of Tualatin operates under the council-manager form of government. Policymaking and legislative authority are vested in a City Council consisting of the mayor and six other members. The City Council is responsible, among other things, for passing ordinances, adopting the budget, appointing committees, and hiring the City Manager. The City Manager is responsible for carrying out the policies and ordinances of the City Council, for overseeing the day-to-day operations of the City and for appointing the heads of the various departments. The Council is elected on a non-partisan basis. Council members serve four-year staggered terms. The Mayor is elected to serve a four-year term.

Municipal services are provided by City employees and headed by the City Manager. The City operates its own police department, a municipal court, community development, water, sewer and stormwater utilities, street operations, fleet, building and parks maintenance, administrative services, Parks and Recreation, and a library.

Tualatin's City Council and staff advocate at the state and federal for various policy priorities and funding, as capacity exists. The City of Tualatin is looking for state and federal government affairs and lobbying services from individuals or firms to advocate, support, and connect the City as listed in the below scope of services.

### **1.2 Scope of Services**

The following will serve as a guide as the City has the right to include or not include any of these services to develop the project. The awarded Consultant shall meet the highest standards prevalent in the industry when providing these services.

The Consultant will:

1. Provide strategic and tactical advice and counsel on areas of political influence, government issues, municipal priorities, as well as grants and new funding at the state and federal level. Issues areas include, but are not limited to: housing, transportation, land use, public safety, climate and environment, employee workplace management, and local control.
2. Facilitate a process to identify and prioritize bills introduced during the annual legislative session. Monitor, track, and communicate updates on key legislation.
3. Provide advice on engagement including opportunities for testimony, meetings, and requests of state and federal leaders. Assist in preparing position papers, exhibits, testimony, correspondence, and proposed bill text and amendments as necessary.
4. Assist the City in identifying, pursuing, and securing federal, state, and local program funding.
5. Assist City officials and electeds in developing and sustaining long-term relationships with elected and appointed officials; including accompanying and/or developing talking points for City representatives and providing meaningful follow up.
6. Provide timely responses to inquiries from City staff and electeds on legislative



activities.

7. Coordinate and facilitate strategy calls with City staff during the Oregon Legislative session and on an as-needed basis throughout the rest of the year.
8. Coordinate and facilitate meetings held between the City Council and the City's local legislative delegation throughout each legislative session.

These services will be performed under the authority of the City Council and under the direction of the City Manager or designee.

### **1.3 Deliverables and Schedule**

Deliverables are considered those tangible resulting work products that are to be delivered to the City such as reports, draft documents, data, interim findings, documents, schematics, training, meeting presentations, final drawings, and reports.

Deliverables and schedule for this project include:

1. Advise on development of the City's legislative agenda materials. Provide support in meeting with officials on topics related to the City's set agenda. Help to distribute and circulate these materials.
2. Presentation to the Tualatin City Council on legislative efforts underway, accomplishments, and upcoming efforts annually in December.
3. Develop and provide a written end of session report with accomplishments and key actions for both state and federal sessions.
  - a. State: Annual by the end of July
  - b. Federal: Annually by the end of November (accompanies annual presentation to the Tualatin City Council).
4. Prepare and submit quarterly lobbying expenditure reports on behalf of the City of Tualatin, the City Manager, and other staff as required.

All deliverables and resulting work products from this contract will become the property of the City of Tualatin. As such, the Contractor grants the City the right to copy and distribute (in any and all media and formats) project deliverables for regulatory, project certification/recognition, program development, public education, and/or for any purposes at the sole discretion of the City.

### **1.4 Term of Service**

The agreement resulting from this RFP will commence on or about May 1, 2024, and be effective for one (1) year. The City will also reserve the right to extend the term of the contract for four (4) additional one-year periods. The City will negotiate the extended years separately as to price and work performed.

## **SECTION 2: PROPOSAL REQUIREMENTS**

### **2.1 Proposal Content**

Proposals are to include, but not necessarily be limited to, the content listed below. Concise proposals without needless duplication are encouraged.

#### **Proposer Requirements**

Any consultant submitting a proposal must meet the following minimum requirements for their proposal to be considered:

- Must be registered with the Oregon Secretary of State to perform business in the State of Oregon;
- Must be registered with the Oregon Government Ethics Commission to conduct lobbying with State legislators and public officials and be in good standing concerning standards of conduct and the filing of periodic expenditure and other required reports.
- Must have experience performing legislative representation and lobbying services for municipal government entities.

#### **A. Cover Letter**

Include a cover letter expressing interest in the project. Include full name of Consultant, RFP contact person, email address, mailing address, and telephone number. A statement in the cover letter shall specifically stipulate that all terms and conditions contained in the RFP are accepted by the Consultant. The letter must be signed by the person(s) authorized to represent the Consultant in any negotiations and sign any Contract which may result.

#### **B. Oregon Statutory Certifications**

Place a signed copy of Oregon Statutory (ORS) Certifications (Exhibit A) immediately behind the cover letter. The City may treat the failure to include this document by the submission deadline as a correctable clerical error.

#### **C. Pricing Proposal**

Provide an all-inclusive proposed fee for the services to be provided during the first year of the contract. In preparing the pricing proposal, you should incorporate any travel expenses as part of your fee. Mileage and travel expenditures will not be reimbursable.

#### **D. Qualifications & Experience**

Proposer's narrative must demonstrate its experience and knowledge providing lobbying services for municipalities as described in Section 1 above.

List the experience and qualifications of staff and team who will be overseeing the work. Provide relevant information about the project manager and key team members that demonstrates their ability to help the City. Describe the availability and commitment of the project manager and key staff throughout the duration of the project.

Provide project descriptions for three (3) recent projects similar in nature to the proposed project, including completion dates, measures that indicate quality and successful project completion, and a client reference name, email address, and phone number. Indicate the involvement of proposed key staff on those or similar projects. Indicate the team's familiarity with the local area. Provide any additional information you believe may be beneficial to the City for this project.

#### **E. Work Proposal**

Provide a statement of project understanding, including project objectives, issues to be addressed and potential complications or conflicts. Identify the most significant issues that could affect the project's success and describe your process for mitigating issues.

Describe the proposed approach to performing the work to accomplish the proposed project objectives and tasks listed in the scope of work. Describe how the approach will benefit the City and the implementation of this project. The tasks serve as a general guide for the work and other tasks or methods may be included.

Describe your internal procedures and/or policies associated or related to work quality and cost control.

#### **F. Communication and Availability**

Describe your Project Manager's approach to communicating with the City and leading the project. Describe their ability to establish and maintain functional and productive working relationships including their accessibility for interacting with the City of Tualatin's staff and any other tools needed for the project's success. Describe your approach to managing change and address conflicts that may arise during the project, such as scope change, budget changes, external influences, etc.

#### **G. References**

The City will check the references provided for the three (3) recent projects required in Section D above and shall award points based on responses received.

#### **H. W-9**

Please include a copy of your firm's W-9. The City may treat the failure to include this document by the submission deadline as a correctable clerical error.

#### **I. Writing Style, Completeness and Clarity of Documentation**

Present information in a clear, complete and concise manner, provide effective writing skills for presenting general and technical information, have experience in preparing complex written technical reports and other narrative documents, communicate effectively with both technical and non-technical City representatives and follow directions.

#### **ATTENTION:**

- Sections A, D, E and F total shall be limited to a total of 15 pages of text.

- 8.5 X 11 pages count as 1 page.
- Two sided pages counts as two pages.
- Each side of 11 X 17 pages count as two pages.
- The limitation does not apply to covers or dividers.

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## SECTION 3: EVALUATION & SCORING

### 3.1 Evaluation and Scoring

The evaluation will be based on the technical and administrative capabilities in relation to the needs of the project/task. The Evaluation Committee may hold interviews for this procurement with the highest-ranked proposers, and reserves the right to award a contract without conducting interviews. In the event the City conducts interviews, it shall notify all Proposers in writing, stating which Proposers will be invited to interview.

The number of interviews held and whether to hold interviews will be at the discretion of the Evaluation Committee. If held, the date, time and location of the Interview(s) will be included with the notice to those Proposers selected for interview.

The Evaluation Committee, after review of the proposals and/or Interviews may request clarifications on information submitted by any and all Proposers in a written format, with a specified deadline for response. The City reserves the right to select the proposal which appears to be in the best interest of the City.

I.	Price Proposal:	50 points
II.	Technical Proposal:	100 points (consisting of the following categories)
	Cover Letter	Pass/Fail
	Oregon Statutory Certifications	Pass/Fail
	W-9	Pass/Fail
	Qualifications & Experience	35 points
	Work Proposal	35 points
	Communication/Availability	20 points
	References	10 points
III.	Interviews (if held):	50 points
	<b>Total Possible Points</b>	<b>200 points</b>

### 3.2 Preference for Oregon Goods and Services

Per ORS 279A.120(2), the City shall:

- a) Give preference to goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal; and
- b) Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides.

**EXHIBIT A**  
**Oregon Statutory (ORS) Certification**  
**(Sign and include with proposal)**

**We Hereby Certify** to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. **We Certify** also that we shall comply with the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act (ADAAA) of 2008 and any subsequent amendments (42 U.S.C. § 12101, et seq.) (Pub L No. 101-336), ORS 659A, and all regulations and administrative rules established pursuant to those laws. **We Certify** also to nondiscrimination against any minority, women or emerging small business enterprises in obtaining any required subcontracts.

**We Hereby Certify**, in the performance of any contract issued from any proposal related to these documents, we will in all respects adhere to the City of Tualatin's policy of non-discrimination.

**We Hereby Certify** that this proposal has been arrived at independently and has been submitted without collusion designed to limit independent bidding or competition.

**We Hereby Certify** that we will and that our subcontractors will, acknowledging that our employers will be subject employers under the Oregon Workers' Compensation Law, comply with ORS 656.017, which requires contractors to provide all workers with compensation coverage.

**We Hereby Certify** that we accept all the terms and conditions contained herein and in the event of a forthcoming contract containing these same terms and conditions we would agree without exception. Any exception to these contract terms and conditions must be made before the proposal deadline.

**We Hereby Certify** that we \_\_\_\_\_ ARE \_\_\_\_\_ ARE NOT a "Resident Bidder" as defined by ORS 279A.120. As defined in ORS 279A.120, "Resident Bidder" means a bidder that has paid unemployment taxes or income taxes in this state in the twelve calendar months immediately preceding submission of the bid, has a business address in this state, and has stated in the bid whether the bidder is a "Resident Bidder".

Consultant \_\_\_\_\_ Date \_\_\_\_\_  
(Authorized Official)

**Exceptions** to the above Certifications. The Consultant will cross out those items they cannot certify to and then list the reasons for the exception (use additional pages if necessary).

**EXHIBIT B**  
**Sample Personal Services Agreement**

The following is provided only as an example of the Contract that will be completed with the selected Consultant.

**CITY OF TUALATIN**  
**PERSONAL SERVICES AGREEMENT**

THIS AGREEMENT is entered by and between the City of Tualatin, a municipal corporation of the State of Oregon ("City"), and \_\_\_\_\_ ("Provider"). The Parties

**Section 1 - Agreement Documents.** The Contract Documents, which together form the complete Contract between the parties, consist of the following documents in descending order of precedence: (i) this Agreement; (ii) any documents specifically referenced in this Agreement; (iii) the attached Scope of Work (Exhibit A); (iv) the invitation to bid/propose; and (v) Provider's bid/response. To the extent there is any conflict between the documents, the conflict is resolved by the order of precedence described above. There are no Contract Documents other than those listed.

**Section 2. Work.** Provider shall complete all Work that is generally described in the Scope of Work (Exhibit A). Provider shall be solely responsible for all Work under this Agreement, including all services, labor, materials and supplies, documents, permits and other requirements to complete the Work, whether produced by Provider or any of Provider's subcontractors or Providers, except for those items identified as the responsibility of the City.

**Section 3. Effective Date; Term; Renewal.**

- A. Effective Date.** The effective date of this Agreement is the date both Parties sign this Agreement ("Effective Date"). If the parties sign on separate dates, the latter date shall be the Effective Date.
- B. Term.** The term of this agreement begins on the Effective Date and terminates on \_\_\_\_, unless otherwise renewed.
- C. Renewal.** The Parties may renew this agreement for an additional term or terms upon the mutual written consent of both parties, provided that in no event may this agreement, including renewals, extend beyond three (3) years.

**Section 4. Standard of Care.** Provider shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession. If Provider is in an industry that requires a license to perform the work, Provider will perform all work in compliance with applicable licensing standards.

**Section 5. Independent Contractor; Responsibility for Taxes and Withholding; Anti-Kickback.**

- A. Independent Contractor.** Provider will perform all Work as an independent Provider. The City reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, the City may not and will not control the means or manner of Provider's performance. Provider is responsible for determining the appropriate means and manner of performing the Work.
- B. Not an Officer, Employee or Agent.** Provider is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.
- C. Federal and State Taxes.** Provider is responsible for all federal or state taxes applicable to compensation or payments paid to Provider under this Agreement and, unless Provider is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Provider's federal or state tax obligations. Provider is not eligible for any social security, unemployment insurance or workers' compensation benefits from City under this Agreement. Provider is not entitled to, and expressly waives all claims to City benefits, including but not limited to health and disability insurance, paid leave, and retirement.
- D. Anti-Kickback.** Contractor must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 847) as supplemented in Department of Labor regulations (29 CFR part 3).

**Section 6. Subcontracting.** Provider's services are unique and as such, will not enter into any subcontracts for any of the Work required by this Agreement without City's prior written consent.

**Section 7. Agreement Price.** City agrees to pay Provider the not to exceed price of \_\_\_\_\_, which is inclusive of all hours necessary to complete the Work. **(Check One Below)**

- City certifies that it has sufficient funds currently authorized to finance the full costs of this Agreement.
- Provider understand and agrees that City's payment of amounts under this Agreement is contingent on City receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow City, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

**Section 8. Payment Process.**

- A. Invoices.** Provider must furnish City an invoice for services on a monthly basis. The invoice must contain an itemized statement showing the number of hours worked on the project by Provider and the specific Work or portions of the Work performed.
- B. Reimbursable Expenses.** City's Payment for reimbursable expenses is limited to those reimbursable expenses set forth on Exhibit A, which are actually incurred by Provider and itemized on Provider's invoice for services.
- C. Payment for Services.** City will pay Provider for services invoiced within thirty (30) days of receiving an itemized invoice ("net thirty"), unless City disputes the invoice, in which case City will only pay for those services not in dispute.

**Section 9. Notice to Parties.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder must be given in writing by personal delivery, mail facsimile, or email.

- A. Notice by Personal Delivery.** Any communication or notice given by personal delivery is effective when actually delivered.
- B. Notice by Mail.** Notice given by mail must be by postage prepaid, to Provider or City at the address, set forth herein, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed is effective five (five) days after mailing.
- C. Notice by Email.** Any communication or notice given by email is effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- D. Party to be Notified.** Unless otherwise notified in writing as set forth above, notices must be given to the Project Managers. If a Party's Project Manager is changed, notification of the change must be promptly made in writing to the other party. If a party receives a communication from the other party not executed by the Project Manager, the party may request clarification by the other party's Project Manager, which must be promptly furnished.

- 1. **City's Project Manager**  
**Name, Title, Address, Phone, Email**
- 2. **Provider's Project Manager**  
**Name, Title, Address, Phone, Email**

**Section 10. City's Obligations.** In addition to obligations of City described in other parts of the Agreement Documents, City will respond in a timely manner to all properly submitted requests from Provider and cooperate with Provider to promptly review, comment on and approve all proposals and work that comply with the requirements of this Agreement.



**Section 11. Assignment of Agreement.** No assignment of any rights, duties, responsibilities, or interests in the Agreement will be binding on the other party without the written consent of the party sought to be bound. No assignment will release or discharge the assignor from any duty or responsibility under the Agreement Documents.

**Section 12. Successors and Assigns.** The provisions of this Agreement are binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

**Section 13. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties must be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**Section 14. Merger Clause; Waiver.** This Agreement, including all Agreement Documents, constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind the parties unless in writing and signed by both parties and all necessary City approvals have been obtained.

**Section 15. Agreement Construction.** This Agreement shall not be construed against either party regardless of which party drafted it. Other than as modified by this Agreement, the applicable rules of Agreement construction and evidence will apply.

**Section 16. Ownership of Intellectual Property.**

- A. Original Works.** All Work Product created by Provider pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of City. City and Provider agree that such original works of authorship are "work made for hire" of which City is the author and Provider hereby irrevocably assigns to City any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon City's reasonable request, Provider will execute such further documents and instruments necessary to fully vest such rights in City.
- B. Provider Intellectual Property.** All pre-existing trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights of Provider are and will remain the exclusive property of Provider. Notwithstanding the foregoing, Provider hereby grants to City an irrevocable, nonexclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Provider Intellectual Property, and to authorize others to do the same on City's behalf.
- C. Third Party Works.** In the event that Work Product is Third Party Intellectual Property, Provider must secure on the City's behalf and in the City's name, an irrevocable, nonexclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on City's behalf.

**Section 17. Records Maintenance; Access.** Provider must maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles, and any other records pertinent to this Agreement in such a manner as to clearly document Provider's performance, for a minimum period of three (3) years from the date of final payment or termination of this Agreement. City may have access to all documents, whether in paper, electronic, or other form, to perform examinations and audits and make excerpts and transcripts.

**Section 18. No Third-Party Beneficiaries.** There are no intended third-party beneficiaries to this Agreement. Provider and the City are the only parties to this Agreement and are intended to be the only entities entitled to exercise and enforce the rights and obligations created by this Agreement.

**Section 19. Nondiscrimination; Compliance with Applicable Law.** Provider agrees that no person shall, on the grounds of race, color, religion, sex, marital status, familial status, domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or veteran status suffer discrimination in the performance of this Agreement. Provider must comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement. Contractor will not discriminate against minority-owned, women-owned, or emerging small businesses. Contractor must include a provision in each subcontract requiring subcontractors to comply with the requirement of this provision.

**Section 20. Public Contracting Requirements.** Provider must comply with provisions of ORS 279A.110; 279B.220, 279B.225, 279B.230, and 279B.235, which are incorporated by reference herein. City's performance under the Agreement is conditioned upon Provider's compliance.

**Section 21. Certification of Compliance with Tax Laws.** As required by ORS 279B.110(2)(e), Provider represents and warrants that Provider has complied with the tax laws of this state, the City, and applicable political subdivisions of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318, hereafter ("Tax Laws"). Provider further covenants to continue to comply with the Tax Laws during the term of this Agreement and Provider covenants and acknowledges that the failure to comply with the Tax Laws is a default for which City may terminate this Agreement and seek damages.

**Section 22. Registered in Oregon and City of Tualatin.** If Provider is not domiciled in or registered to do business in the State of Oregon, Provider must promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement. Provider must demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon prior to entering into this Agreement. Provider must have or acquire a City business license prior to executing this Agreement.

**Section 23. Use of Recycled Products.** Provider shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

**Section 24. Force Majeure.** Neither City nor Provider will be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of City or Provider, respectively.

**Section 25. Survival.** All rights and obligations of the parties will cease upon termination or expiration of this Contract, except for the rights and obligations of a party for payment of completed Work, indemnity, dispute resolution, maintenance of insurance, and those provisions, including, but not limited to, provisions concerning property rights and governing laws which, by their nature, must survive termination to accomplish the intent of the parties as expressed in this Contract.

**Section 26. Joint and Several Liability.** In the event Provider includes more than one person or entity, all such persons or entities will be jointly and severally liable for all conditions herein.

**Section 27. Indemnification.** Provider must defend, save, hold harmless, and indemnify the City, its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys' fees, resulting from, arising out of, or relating to the activities of Provider or its officers, employees, subcontractors, or agents under this Agreement.

**Section 28. Insurance.** Provider must provide City with evidence of the following insurance coverage's prior to execution of this Agreement. A copy of each insurance policy, issued by a company currently licensed in the State of Oregon in a form satisfactory to City certifying to the issuance of such insurance, must be furnished to City. All policies must be written on an "occurrence basis." Provider must provide for not less than 30 days' written notice to City before they may be revised, non-renewed, canceled, or coverage reduced. If the policy lapses during performance, City may treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of Provider to proceed with work; pay an insurance carrier (either Provider's or a substitute) the premium amount and withhold the amount from payment to Provider; and use any other remedy provided by this Agreement or by law.

- A. General Liability.** Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any act or omission of Provider or of any of its employees, agents, or subcontractors, with at least \$500,000 per occurrence and in the aggregate.
- B. Professional Liability.** Professional Liability Insurance of \$1,000,000 per occurrence and in the aggregate, including contractual liability coverage. If Contractor proposes using subcontractors, City may require subcontractors to provide professional liability insurance, provided the amount and form of coverage complies with this Section.
- C. Policy Coverage.** Coverage provided by this policy(ies) must be primary and any other insurance carried by City is excess. Provider will be responsible for any deductible amounts payable under all policies of insurance.

- D. Workers Compensation.** Provider, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and must comply with ORS 656.017.

**Section 29. Default; Remedies; Termination.**

- A. Default by Provider.** Provider is in default under this Agreement if Provider commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Provider's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after City's notice, or such longer period as City may specify in such notice.
- B. City's Remedies for Provider's Default.** In the event Provider is in default, City may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity; including, but not limited to:
- (i) Termination of this Agreement;
  - (ii) Withholding all monies due for Work and Work Products that Provider has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
  - (iii) Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
  - (iv) Exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Provider was not in default, then Provider is entitled to the same remedies as if this Agreement was terminated.

- C. Default by City.** City is in default under this Agreement if:
- (i) City fails to pay Provider any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Provider's notice or such longer period as Provider may specify in such notice; or
  - (ii) City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within thirty (30) calendar days after Provider's notice or such longer period as Provider may specify in such notice.
- D. Provider's Remedies for City's Default.** In the event City terminates the Agreement, or in the event City is in default and whether or not Provider elects to exercise its right to terminate the Agreement, Provider's sole monetary remedy is (i) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Agreement but not yet billed, authorized expenses incurred and interest of two-thirds of one percent per month, but not more than eight percent per annum, and (ii) with respect to deliverable based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by City, less previous amounts paid and any claim(s) that City has against Provider. In no event will City be liable to Provider for any expenses related to termination of this Agreement or for any anticipated profits. If previous amounts paid to Provider exceed the amount due to Provider under this subsection, Provider must pay immediately any excess to City upon written demand provided.
- E. Termination by City.** At its sole discretion, City may terminate this Agreement:
- (i) For any reason upon thirty (30) days' prior written notice by City to Provider;
  - (ii) Immediately upon written notice if City fails to receive funding or expenditure authority at levels sufficient to pay for the Work or Work Products; or

- (iii) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the City's purchase of the Work or Work Products under this Agreement is prohibited or City is prohibited from paying for such Work or Work Products from the planned funding source.
  - (iv) City may terminate this Agreement immediately upon written notice by City to Provider if Provider is in default of this Agreement.
- F. Termination by Provider.** Provider may terminate this Agreement with such written notice to City upon the occurrence of the following events.
  - (i) City is in default because City fails to pay Provider any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Provider's notice of the failure to pay or such longer period as Provider may specify in such notice; or
  - (ii) City is in default because City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and City fails to cure such failure within thirty (30) calendar days after Provider's notice or such longer period as Provider may specify in such notice.
- G. Return of Property upon Termination.** Upon termination of this Agreement for any reason whatsoever, Provider must immediately deliver to City all of City's property (including without limitation any Work or Work Products for which City has made payment in whole or in part) that is in the possession or under the control of Provider in whatever stage of development and form of recordation such City property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Provider must immediately cease all activities under this Agreement, unless City expressly directs otherwise in such notice of termination. Upon City's request, Provider must surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.
- H. City's Remedies Cumulative.** In the event of termination, in addition to the remedies provided herein, City shall have any remedy available to it in law or equity. City shall also have such remedies as are available to it in law or equity for Provider's breach without the requirement that City first terminate this Agreement.

### **Section 30. Dispute Resolution.**

- A. Process.** If Provider disagrees with a decision of the City under this Agreement, Provider must provide written notice to the City's Project Manager of Provider's disagreement, and include all relevant information and exhibits, within thirty (30) days of Provider's knowledge of the decision to which Provider disagrees. The City's Project manager will review the information and meet with Provider to attempt to come to resolution on the dispute and process any necessary Change Order. If City and Provider are unable to come to resolution, the City's Project Manager will issue a written decision outlining the City's reasons to decline Provider's request regarding the dispute.
- B. Complaint.** Any claim that cannot be resolved between the parties as set forth shall be initiated by filing a complaint in the appropriate court as provided in this Agreement. The claim and all cross and counter-claims filed in response to the complaint shall be submitted to mediation. If the parties cannot agree on a mediator, the Presiding Judge for Washington County will select the mediator. Only if the dispute cannot be resolved by mediation, will the parties proceed to litigate the claim in court.

**Section 31. Attorney Fees.** If any suit, action, arbitration or other proceeding is instituted upon this Agreement or to enforce any rights herein or otherwise pursue, defend or litigate issues related to this Agreement, each party will be liable for their own attorneys' fee and costs, including those on appeal. The parties each agree and hereby waive any right to attorney fees granted by statute or rule that conflicts with this provision.

**Section 32. Confidentiality and Protection of Personal Information.** Provider acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Agreement or its performance may consist of information that is exempt from disclosure to the public under Oregon's Public Records Laws, the Oregon Consumer Identity Theft Protection Act, ORS 646A.600- 646A.628, or other state or Federal statutes. Provider agrees to hold such information in strictest confidence and not to make use of such information for any purpose other than the performance of this Agreement, to release it only to authorized employees or subcontractors requiring such information for the purposes of carrying out this Agreement, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without City's

express written consent or as provided by law.

**Section 33. Execution of Agreement; Electronic Signature.** This Agreement may be executed in one or more counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original. A signature of a party provided by email, "pdf," or other electronic data file constitutes an original signature of that party.

**Section 34. Governing Law; Venue; Consent to Jurisdiction.** This Agreement is governed by and will be construed in accordance with the laws of the State of Oregon without regard to principles of law. Any claim, action, suit or proceeding (collectively, "Claim") between City and Provider that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Washington County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event will this Section be construed as a waiver of any form of defense or immunity from any Claim or from the jurisdiction of any court. Provider, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**Section 35. Authority to Bind.** City and Provider each represent and warrant that the individual(s) executing this Agreement have taken all steps necessary to secure full authority to bind the City and Provider, respectively, for the acts, expenditures, and obligations contemplated in this Agreement to be performed by each of them. BY EXECUTION OF THIS AGREEMENT, EACH PARTY HEREBY ACKNOWLEDGES THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**PROVIDER, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT PROVIDER HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

APPROVED AND ENTERED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
PROVIDER

CITY OF TUALATIN

By \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
INSERT CITY OFFICIAL,  
INSERT CITY TITLE

\_\_\_\_\_  
Provider's Federal ID Number or  
Social Security Number