

Council Business Meeting

October 6, 2020

Agenda Item	Pioneer Hall and Community Center Facility Improvements Proposal	
From	Scott Fleury PE	Interim Public Works Director
Contact	scott.fleury@ashland.or.us ; (541) 552-2412	

SUMMARY

This item was originally on the August 18 Council meeting but had to be moved due to a lack of time and moved again due to Council's focus on Alameda Fire related discussions at the September 15, 2020 Business Meeting. Based on prior Council direction, staff has developed a plan to actively initiate the design, cost estimating and construction administration phases in order to perform the necessary construction rehabilitation work on the Community Center and Pioneer Hall. This work will return both buildings to their former operating capacity and provide enhanced accessibility.

POLICIES, PLANS & GOALS SUPPORTED

N/A

PREVIOUS COUNCIL ACTION

Reference June 16, 2020 Staff Report for all previous Council actions.

BACKGROUND AND ADDITIONAL INFORMATION

Following Council direction at the June 16, 2020 Business meeting to proceed forward and develop a plan to address deficiencies for the Community Center and Pioneer Hall, Public Works and Administration have developed an appropriate path forward. ([Minutes](#), [Staff Report](#))

Staff recommends a formal public solicitation for professional engineering and architectural services via a Qualifications Based Selection (QBS) Request for Proposal (RFP). The RFP would break the process into the typical three stages and include, preliminary engineering/cost estimating, final engineering/cost estimating and construction administration. The design phases would develop appropriate architectural and engineering designs to improve the structural deficiencies of each building, improve the mechanical, electrical and plumbing (MEP) systems for each building and ensure Americans with Disabilities compliance.

1. Phase 1: Preliminary Engineering (4 months), Requires Council authorization
2. Phase 2: Final Engineering (4 months), Requires Council authorization
3. Phase 3: Construction Administration (6 months), Requires Council authorization

Staff has developed the RFP solicitation document and it has been approved by the Legal Department. The solicitation was developed to provide the City with the most flexibility through a phased approach. This allows Council to award each contract phase separately and at each phase there will be a formal scope and fee developed for each building, which will allow the City to either proceed with design phases and associated tasks for either or both facilities at the same time depending on priorities developed by Council. In addition, the RFP requires presentations to Council at the completion of both the preliminary and final design phases to ensure staff is meeting the expectations of Council and the Community with respect to the final construction project.

Preliminary Timeline:

	EVENT	DAILY COUNT (CALENDAR DAYS)	DATE
1.	Request for Proposal Released	0	10/8/2020
2.	Last Date for Request for changes/Protest for Specifications/Questions	10 days prior to Proposal Closing	11/2/2020
3.	Last Date for City to Post Addenda	3 days prior to Proposal Closing	11/9/2020
4.	Closing Date (last day to submit Proposals)	~30 days after Proposal Release	11/10/2020
5.	Responses Evaluated	~15 days after Closing Date	11/25/2020
6.	Interviews Held (if necessary)	~25 days after Closing Date	12/7/2020
7.	Intent to Award Announced	~30 days after Closing Date	12/14/2020
8.	Contract Negotiations	~40 days after Closing Date	12/28/2020
9.	Expected Project Completion (all phases)	14 months after Contract Award	5/31/2022

Formal solicitation documents require a team of at least three people to score the responses per the evaluation criteria. Staff recommends at least two individuals from the Engineering Division along with Administration or Community Development staff, a member of the Historic Commission and a citizen at large participate in the evaluations.

Both buildings have had a structural evaluation and Pioneer Hall has had an architectural code evaluation. This information will be utilized by the selected consultant firm(s) to develop preliminary and final design documents along with updating cost estimates.

Grant Opportunities:

Staff will continue to research potential grant and low interest loan opportunities to assist with funding the complete improvement for both buildings.

FISCAL IMPACTS

The proposed RFP process will provide staff and Council with accurate cost estimates for the project. When those costs are identified, staff will also include potential funding mechanisms, likely timelines for expenditures and potential impacts on other projects within the City’s facilities budget.

STAFF RECOMMENDATION

Staff recommends approval of the proposed plan to address the existing deficiencies with Pioneer Hall and the Community Center. The incorporation of external participation in the RFP review is a key addition to the process that staff feels provides significant value and sets the table for future expanded involvement with the community as the process moves forward.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

- 1) I move approval of the development of a three phased qualifications-based selection request for proposal for engineering and architectural services for required repairs and reconstruction of both Pioneer Hall and Community Center.
- 2) I move to direct staff to explore and report back to Council different project approaches to the require repair and reconstruction of Pioneer Hall and Community Center.

REFERENCES & ATTACHMENTS

Attachment 1: Request for Proposal

**REQUEST FOR PROPOSALS
QUALIFICATIONS BASED SELECTION**

**Professional Architectural & Engineering Services
for
PROJECT NO. 2020-15:
ASHLAND COMMUNITY CENTER AND PIONEER HALL IMPROVEMENTS**

PROJECT NO: **2020-15:**
PROJECT TYPE: **Professional Architectural & Engineering
Services**
PROPOSALS DUE: **November 10, 2020, not later than 2:00
PM PST**
SUBMIT PROPOSALS TO: **City of Ashland Public Works -
Engineering, at 51 Winburn Way,
Ashland OR 97520;
or by mail to:
20 E. Main Street, Ashland, OR 97520
Scott Fleury P.E., Interim Public Works
Director**
CITY PROJECT MANAGER:
PROJECT DURATION: **Phase 1: Preliminary Design &
Engineering (4 months)
Phase 2: Final Engineering (4 months)
Phase 3: Construction Management
Services (6 months)**



**CITY OF
ASHLAND**

**PUBLIC WORKS ENGINEERING
20 E. MAIN STREET
ASHLAND OR 97520
541/488-5587**

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ADVERTISEMENT
CITY OF ASHLAND PUBLIC WORKS – REQUEST FOR PROPOSALS
QUALIFICATIONS BASED SELECTION
for
PROFESSIONAL ARCHITECTURAL & ENGINEERING SERVICES

The City of Ashland (City) is seeking Proposals for professional architectural and engineering services for **Project 2020-15: ASHLAND COMMUNITY CENTER AND PIONEER HALL IMPROVEMENTS**. The purpose of this project is for a consultant team to provide preliminary and final design plans, specifications, and estimates (PS&E) along with construction management services for the functional and structural improvements for both facilities. This project will include the following phases:

PHASE 1: Preliminary Engineering and Cost Estimating

PHASE 2: Final Engineering, Cost Estimating, Specification Development and Bidding Services

PHASE 3: Construction Management Services

Proposals must be physically received by **November 10, 2020, not later than 2:00 PM PST** (main lobby clock), in the City of Ashland Public Works Engineering Office located at 51 Winburn Way, Ashland OR, 97520, or by mail at 20 E. Main Street, Ashland, OR 97520. Proposers mailing Proposals should allow normal delivery time to ensure the timely receipt of their Proposals. Any Proposal received after the date and time set for receipt of Proposals will not be considered and will be returned to the proposer unopened. For further information, contact the City's Project Manager, Scott Fleury P.E., Interim Public Works Director at 541/488-5587 or by email at scott.fleury@ashland.or.us. Consultant selection is anticipated to result in the issuance of a contract for professional architectural and engineering services in a form substantially similar to the one provided in this RFP.

Proposal documents may be downloaded from the Oregon Procurement Information Network (ORPIN). Any addenda that may be issued relating to this RFP will be available from ORPIN, and potential proposers are cautioned to continuously monitor the site for updates and addenda.

All Proposals shall be submitted as set forth in Section 7 - Instructions to Proposers. The City is not responsible for Proposals submitted in any manner, format, or to any delivery point other than as required by this RFP. Proposals shall be limited to eight (8) pages and must include the services of a Professional Engineer registered in the State of Oregon.

Consultant selection will be based upon weighed criteria as set forth in this Request for Proposals and will include criteria including, but not limited to: similar project experiences, general experience, staffing availability, schedule, and response time.

The City of Ashland reserves the right to cancel this procurement or reject any and all Proposals in accordance with ORS 279B.100.

Scott Fleury, PE, Interim Public Works Director

First date of solicitation: October 8, 2020
RFP for Project No. 2020-15

**CITY OF ASHLAND
DEPARTMENT OF PUBLIC WORKS
REQUEST FOR PROPOSALS – QUALIFICATIONS BASED SELECTION**

PROJECT NO. 2020-15:
ASHLAND COMMUNITY CENTER AND PIONEER HALL IMPROVEMENTS

SECTION 1 - PROJECT OVERVIEW

1.1 Objectives

The City of Ashland (City) is seeking written Proposals from professional engineering/architectural consultants for Project No. **2020-15: ASHLAND COMMUNITY CENTER AND PIONEER HALL IMPROVEMENTS**. The purpose of this project is for a consultant team to provide preliminary and final design plans, specifications and estimates (PS&E) along with construction management services for the project. The project will include, but is not specifically limited to, the following tasks and phases:

The project will include, but is not specifically limited to, the following tasks and phases*:

1.1.1 PHASE 1: Preliminary Engineering and Cost Estimating

- Provide a project manager to oversee project and all contractual phases
- Review existing facility documentation
- Develop an updated code assessment for both facilities based on zoning and facility use
- Develop preliminary design documents for structural improvement to the facility including MEP and ADA improvements
- Review and refine construction cost estimates
- Attend City Council meetings for discussion and approval of preliminary design

1.1.2 PHASE 2: Final Engineering, Cost Estimating, Specification Development and Bidding Assistance

- Incorporate preliminary design comments generated by review team
- Review and refine construction cost estimates
- Attend City Council meetings for discussion and approval of final engineering design
- Prepare final civil document package for construction along with complete bid documents (final design drawings, specifications, bid quantities, etc.) and assist City in the bidding of the project.
- Prepare a construction schedule and engineers cost estimate (AACE Class 1)
- Facilitate Pre-Bid conference and provide meeting minutes as necessary
- Issue necessary addenda
- Provide technical assistance during bidding
- Review bids, bonds, insurance certificates, construction schedules, alternative bids and other documentation included with the contractors bid
- Prepare bid abstract and unit price comparison and in consultation with City staff, make recommendations for contract award.
- Assist City in contract approval presentation to the City Council.

1.1.3 Phase 3: Construction Management Services

- Provide technical assistance and coordination with the City during construction
- Conduct pre-construction conference
- Provide a project inspector to be on site when needed to monitor and ensure compliance with the design and specification documents
- Assist the City with preparation of any necessary change orders
- Provide review and approval of all required submittals
- Develop construction inspection records as necessary and submit copies to City

- Conduct construction meetings with project manager, contractor, inspectors, and City personnel as needed
- Prepare as-constructed drawings and complete all required project close-out documentation.
- Prepare all necessary operations manuals and provide operator training for new ancillary systems (HVAC, etc.)

***A final, comprehensive task-specific scope and fee schedule will be negotiated between City and the selected consulting firm. Each facility will have its own independent scope and fee schedule for the project. The City will determine priorities and authorize work specifically for each facility at its sole discretion.**

It is anticipated that the same approved consultant team will complete all phases of the project. Each phase will be negotiated and awarded separately through a City of Ashland Contract for Personal Services. However, award of Phase I, does not specifically **guarantee** award of Phase 2 or 3 to the same engineer/architectural, firm or team. If the City so chooses, the City may select a different consultant for subsequent phases through a separate formal selection process.

1.2 Background Information

The Community Center and Pioneer Hall are both civic buildings owned by the City of Ashland and utilized for numerous community events. Both buildings require structural improvements and functional improvements to the mechanical, electrical and plumbing systems (MEP). In addition, each facility should be designed to accommodate individuals with disabilities and comply with the ADA.

Pioneer Hall is a log cabin structure that was originally constructed in 1890 and has had minor additions and improvements over the years. Pioneer Hall is rented and utilized for both public and private events. A structural evaluation and architectural code evaluation have been performed on Pioneer Hall and are available through the reference documents section.

The Community Center is a National Registered Historic Building that was originally constructed in 1921-1922 as a Women's Civic Improvement Club. The building was remodeled in 1985. The Community Center is rented and utilized for both public and private events. A structural evaluation for the facility has been completed and is available through the reference documents section.

1.3 Reference Documents

The City has several documents available on its website for review:

https://www.ashland.or.us/SIB/files/061620_CityHall_FacilitiesUpdate_CCFinal.pdf

Additional information will be provided to the selected consultant through a request for information process.

SECTION 2 - SCHEDULE

The schedule of events listed below represent City's estimated schedule for this request for proposal. This schedule is SUBJECT TO CHANGE and will be adjusted as required.

	EVENT	DAILY COUNT (CALENDAR DAYS)	DATE
1.	Request for Proposal Released	0	10/8/2020
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7.	Intent to Award Announced	~30 days after Closing Date	12/14/2020
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9.	Expected Project Completion (all phases)	14 months after Contract Award	5/31/2022

SECTION 3 - SCOPE OF SERVICES

3.1 General Requirements

- Personnel, Materials, & Equipment: The Consultant shall provide qualified and competent personnel and shall furnish all supplies, equipment, tools and incidentals required to accomplish the work. All materials and supplies shall be of good quality and suitable for the assigned work.
- Safety Equipment: The Consultant shall provide and use all safety equipment including, and not limited to hard hats, safety vests and clothing required by State, Federal regulations and Department policies and procedures.
- Professional Responsibilities: The Consultant shall perform the work using the standards of care, skill and diligence normally provided by a professional in the performance of such services in respect to similar work and shall comply will all applicable codes and standards.
- Project Management: The Consultant and the City staff will meet as required during project duration. The objectives of the meeting will include reviewing the scope, budget, schedule and deliverables. The Consultant will organize and manage the consultant project team and coordinate with city project manager and City staff.
- Monthly Invoices and Progress Reports: The Consultant shall prepare monthly invoices and progress reports including the following:
 - Work Completed during the month by work task as a percentage of completion.
 - Needs for Additional Information, Reviews, or Changes to the Scope of Work.
 - Scope, Schedule, and Budget Issues and Changes.

3.2 Specific Requirements

The City of Ashland (City) is seeking professional consultant services for **Project No. 2020-15: ASHLAND COMMUNITY CENTER AND PIONEER HALL IMPROVEMENTS**. The purpose of this project is for a consultant team to provide preliminary and final design plans, specifications and estimates (PS&E) along with construction management services for the project.

3.2.1 PHASE 1: Preliminary Engineering and Cost Estimating

This phase includes preparation of preliminary engineering documents and associated cost estimates for each facility.

- Provide a project manager to oversee project and all contractual phases
- Review existing facility documentation
- Develop an updated code assessment for both facilities based on zoning and facility use
- Develop preliminary design documents for structural improvement to the facility including MEP and ADA improvements
- Review and refine construction cost estimates
- Attend City Council meetings for discussion and approval of preliminary design

3.2.2 PHASE 2: Final Engineering, Cost Estimating, Specification Development and Bidding Assistance

This phase includes preparation of final engineering design plans, specifications and complete bid documents (bid quantities, etc.) to enable a separate construction bidding process. This phase concludes with assisting the City during project bidding; attending any necessary formal meetings, preparation of bid documents, advertising for bids, bidding assistance, bid analysis, and assisting staff with a recommendation for construction contract award:

- Incorporate preliminary design comments and respond, as necessary, to requests for additional information.
- Review and refine construction cost estimates.
- Attend City Council meetings for discussion and approval of final engineering design.
- Prepare final drawings of the site layout, utilities and grading plans.
- Prepare civil documents for construction along with complete bid documents (final design drawings, specifications, bid quantities, etc.) and assist City in the bidding of the project.
- Develop final comprehensive construction scope and timeline.
- Prepare a construction schedule and engineers cost estimate (AACE Class 1).
- Prepare a final engineering report.
- Facilitate Pre-Bid conference and provide meeting minutes as necessary.
- Issue necessary addenda.
- Provide technical assistance during bidding.
- Review bids, bonds, insurance certificates, construction schedules, alternative bids and other documentation included with the contractors bid.
- Prepare bid abstract and unit price comparison and in consultation with City staff, make recommendations for contract award.
- Assist City in contract approval presentation to the City Council.

3.2.3 PHASE : Construction Management Services

During the construction phase of the project, the consultant will assist the City in monitoring and documenting all construction performed by the contractor. The following duties will be performed by the consultant:

- Provide technical assistance and coordination with the City during construction.
- Conduct pre-construction conference.
- Provide a project manager to oversee all phases of the construction and to:
 - a. Coordinate with City on a regular and continuing basis.
 - b. Monitor and document construction progress.
 - c. Confirm conformance with schedules, plans, and specifications.

- d. Measure and document construction pay quantities.
 - e. Manage and respond to RFIs.
 - f. Document and process required design changes and change orders.
- Provide a project inspector to be on site on when needed to monitor all phases of construction and document all quality control testing.
 - Prepare any necessary change orders.
 - Provide review and approval of all submitted shop drawings and equipment submittals.
 - Maintain continuous construction inspection records and submit copies to City.
 - Conduct weekly construction meetings with project manager, contractor, inspectors, and City personnel.
 - Prepare as-constructed drawings and complete all required project close-out documentation.
 - Prepare all necessary operations manuals and provide operator training for new ancillary systems (HVAC, etc.).

SECTION 4 - EVALUATION CRITERIA

Written Proposals will be evaluated and scored and a contract may be awarded based upon the proposer's qualifications and experience as described below:

4.1 Project Approach **(20 Points Possible)**

Provide a description of your firm's approach to completing renovations and repairs to civic buildings. Include a summary of prior partnerships with the City of Ashland if any. Include a summary of your quality control program.

4.2 Project Experience **(20 Points Possible)**

- a. Describe how your firm is organized and how its resources will be utilized to complete the work.
- b. Provide a summary of relevant work experience associated with Civic Building renovations and repair.
- c. Provide a concise description of at least three (3) projects in the last ten (10) years, involving similar work to those listed in the scope of work.
- d. Indicate which members of the proposed project team, if any, who worked on the example projects, and their involvement. These team members should be included in the Key Persons list submitted in 4.3(b) below.
- e. Submit references for three of the projects described above. Include the Owners name, organization name, contact name, contact email and phone.

4.3 Project Team Experience **(30 Points Possible)**

- a. Provide a description of the proposed organizational structure to be used for the project.
- b. Provide a list of the key staff proposed for this project ("Key Person(s)"). Be specific on the individuals that will play primary roles in development of the required engineering and their experience working with municipalities on building renovations and repair projects. Provide a concise summary of each key person(s)'s role, and a description of their relevant experience for this project.
- c. Submit resumes that support each Key Person's relevant experience. *No more than five resumes should be submitted as Appendix A and will not count against page limit.*
- d. Indicate which individual will manage the project and be the primary contact. Indicate the specific experience this individual has managing project similar to the proposed civic building improvement project.
- e. State the estimated proportion of each Key Person's time that will be spent on City's project vs. total time spent on all Key Person's projects during the term of contract.

4.4 Proposer’s Demonstrated Ability to Successfully Complete Similar Projects on Time and Within Budget (30 Points Possible)

For each of the three (3) projects listed in response to 4.2(c), provide a discussion of whether the project was completed on time and on budget or needed to be revised. Briefly explain the reason for any revisions, and what attempts were made to bring the project back on schedule and within budget.

4.5 Termination for Default (Pass or Fail)

Proposers shall indicate if they have had a contract terminated for default in the last five years. Termination for default is defined as notice to stop performance that was delivered to the Proposer due to the Proposer’s non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and determined that the Proposer was in default.

NOTE: If a Proposer has had a contract terminated for default in this period, then the Proposer shall submit full details including the other party’s name, address and phone number. City of Ashland will evaluate the facts and may, at its sole discretion, reject the Proposal on the grounds of past performance.

4.6 Scoring

	CATEGORY	POSSIBLE POINTS	POINTS SCORING
1.	Project Approach	20	
2.	Project Experience	20	
3.	Project Team Experience	30	
4.	Demonstrated Ability to Successfully Complete Projects on Time and Within Budget	30	
6.	Termination for Default	<u>P/F</u>	
	Total	100	

SECTION 5 - EVALUATION PROCESS AND CONSULTANT SELECTION

Proposals will be reviewed and evaluated by an evaluation committee of reviewers consisting of at least three City employees. The total number of points possible for written Proposals is 100, and an additional 100 points may be scored through the interview process.

5.1 Review and Acknowledgment of Defective Proposals

Due to limited resources, City generally will not completely review or analyze Proposals that on their faces fail to comply with the minimum mandatory requirements of the solicitation documents nor will City generally investigate the references or qualifications of such proposals. Therefore, City will not acknowledge whether or not an unsuccessful Proposal was complete, responsive, responsible, sufficient, or lawful in any respect. This is a public solicitation, the processes and procedures which are established and required by Oregon law and City-adopted rules. Proposers are advised to strictly follow the process, procedures, and requirements as set forth in this RFP and not anticipate or rely on any opportunity to negotiate, beyond such limitations that are identified herein.

5.2 Right of Rejection

Proposers must comply with all terms of this RFP and all applicable federal, state, and local laws, administrative rules, and regulations. The City may reject any Proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of this RFP.

Proposers may not qualify the Proposal nor restrict the rights of the City. If a Proposer does so, the City may determine the Proposal to be a non-responsive counter-offer, and the Proposal may be rejected.

Minor informalities that may be waived include those that:

- do not affect responsiveness,
- are merely a matter of form or format,
- do not change the relative standing or otherwise prejudice other offers,
- are trivial, negligible, or immaterial in nature,
- do not reflect a material change in the work, or,
- do not constitute a reservation against a requirement or provision.

The City reserves the right to refrain from making an award if the City determines that to be in its best interest.

A Proposal from a debarred or suspended Proposer shall be rejected.

5.3 References

The City reserves the right to investigate any and all references and the past performance information provided in the Proposal with respect to the proposer's successful performance of similar projects, compliance with specifications and contractual obligations, completion or delivery of a project on a schedule, and lawful payment of employees and workers.

The City reserves the right to check any and all sources for information on a proposer's past performance, including sources other than the references provided in the proposer's Proposal. The City may consider information available from any source, including government bodies and regulatory authorities.

5.4 Responsibility

The City reserves the right to investigate and evaluate, at any time prior to award and execution of the contract, the apparent successful Proposer's responsibility for performing the contract. Submission of a signed Proposal shall constitute approval for City to obtain any information City deems necessary to conduct evaluation. City reserves the right to request additional information or documentation from the successful Proposer prior to award of contract. Such information may include, but is not limited to, current and recent balance sheets, income statements, cash flow statements, or a performance bond from an acceptable surety. Failure to provide this information will result in rescission of City's Intent to Award.

City may postpone the award of contract after announcement of the apparent successful Proposer in order to complete its investigation and evaluation. Failure of the apparent successful Proposer to demonstrate responsibility shall render the Proposer non-responsible and shall constitute grounds for rejection of the proposal.

5.5 Clarification of Response

City reserves the right to request clarification of any item in any Proposal, or to request additional information necessary to properly evaluate a particular Proposal. All request for clarification and responses shall be in writing.

During the evaluation of Proposals, Proposers must respond to any request for clarification from the Evaluation Committee within 24 hours of request (Monday through Friday). Inability of the Evaluation Committee to reach a Proposer for clarification and/or failure of a Proposer to respond within the time stated may result in rejection of the Proposer's Proposal.

5.6 Interviews

The outcome of the Proposal evaluations *may* result in placement on an interview (short-listed) with time and date of the interview. Should City elect to hold interviews, the total additional points possible for the interview will be **100**.

City may invite up to three (3) of the highest-ranked firms (or at a natural break in scoring) to interview. The Firm's Key Persons, as identified by City shall be prepared to attend the interview within five (5) business days of notification by City, and shall be prepared to answer questions provided with the Interview Invite letter, and questions that will be provided at the time of the interview, and discuss the Firm's proposed project approach.

5.7 Finalist Selection

The firm with the highest total score as a result of written Proposal scoring and interview scoring, if conducted, will be considered the Finalist, and all other firms will be ranked according to next highest score, etc.

5.8 Ties among Proposers

If City determines after the ranking of potential firms, that two or more of them are equally qualified to be the Finalist, City may select a candidate through any process that the City believes will result in the best value for taking into account the scope, complexity and nature of the Work. The process shall instill public confidence through ethical and fair dealing, honesty and good faith on the part of City and Proposers and shall protect the integrity of the Public contracting process.

As part of the procedure for choosing the Finalist between two or more equally qualified candidates, City may elect to give a preference to a local consulting firm.

5.9 Notice of Intent to Award

After the completion of the evaluation and ranking, the City will issue a written Notice of Intent to Award, naming the Finalist, and will send copies to all Proposers.

5.10 Contract Negotiation

City will begin negotiating the fees for the project, along with expanded scope of work detail, with the highest ranked Proposer and specifically, conduct direct negotiations toward obtaining written agreement on:

- a) Contractor's performance obligations and schedule; and any expansion of the Scope of Work.
- b) Contractor's fees, payment methodology, and a maximum amount payable to Contractor for the Work required under the Contract that is fair and reasonable to City determined solely by City, taking into account the value, scope, complexity and nature of work.
- c) Any other provisions City believes to be in the City's best interest to negotiate.
- d) Initial negotiations will be based upon Contract Phase 1.

City shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if City and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. City may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, as determined solely by City, City may end the particular formal solicitation. Nothing in the rule precludes City from proceeding with a new formal solicitation for the same Work described in the RFP that failed to result in a Contract.

5.11 Protest Procedures

City shall provide to all Proposers a copy of the selection notice that City sent to the highest ranked Proposer. A Qualified Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the City. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, or Land Surveying Services, or Related Services described in this RFP.

Eligible Proposers protesting award shall follow the procedures described herein. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Proposers.

- a) Protests must be received within seven (7) days after issuance of the notice of intent to award the Contract. City will not consider late protests.
- b) All protests must be in writing, signed by the protesting party or an authorized Agent. The protest must specify the grounds for the protest to be considered by the City
- c) Protests based on procedural matters will not be considered.
- d) The City's Public Works Director will review the protest and will fax and mail the protesting party a written response within three (3) business days of receipt of the written protest to the fax number and address provided in the proposal. Any written response may be comprised of a determination of the protest, a notice to the protesting party of the need for additional time in which to evaluate the matter, or other notice to the protesting party.
- e) If the Public Works Director's determination (response) is adverse to the protester, any further appeal of the Public Works Director's determination by the party must be submitted in writing to the City Administrator within three (3) business days of issuance of the Public Works Director's determination (response).
- f) The City Administrator will review any appeal of the Public Works Director's determination and shall fax and mail, in accordance with the fax number and address provided in the proposal, the protesting party a written response within three (3) business days of receipt of written appeal.
- g) If the determination of the City Administrator is adverse to the protesting party's interest, the protesting party may only appeal to the City Council by filing a written notice of appeal to the Council with the City Administrator within two (2) business days of issuance of the City Administrator's written determination.
- h) The Council, in considering the protest, shall review the documentation presented to the Public Works Director and the City Administrator on the next regularly scheduled Council Meeting, but in no event shall they be required to review in less than ten (10) business days, and thereafter, base their decision on such material. The Council review will be limited to the evaluation of compliance with City's policies and procedures, requirements of the RFP and the equal and fair application of City's contracting rules. The City Council's determination shall be City's final decision.

An adversely affected or aggrieved proposer must exhaust all avenues of administrative remedies before seeking judicial review of City's Consultant selection or Notice of Intent to Award.

5.12 Resulting Contract

Upon reaching final agreement in regards to fees and a final scope of work with an awarded Proposer, the City will issue a Personal Services Agreement ("PSA"), in substantially the form as found in the Appendix of this RFP. The PSA will include the City's Standard Terms and Conditions and the final scope of work and fees.

SECTION 6 - CONTRACT

6.1 Contract Form

The consultant selected by the City will be expected to enter into a written contract in substantially the same form as attached to this RFP. The Proposal should indicate acceptance of the City's contract provisions. Suggested reasonable alternatives that do not substantially impair City's rights under the contract may be submitted as outlined under Section 5.11. Unconditional refusal to accept contract provisions will result in Proposal rejection.

Contract Duration –

Phase 1: Preliminary Engineering (4 months)

Phase 2: Final Engineering (4 months)

Phase 3: Construction Management Services (6 months)

Contract Payment – Contingent upon City's need, consultant's performance and availability of approved funding, City reserves the right to amend the contract (within the scope of the project described in this RFP) for additional tasks, project phases and compensation as necessary to complete a particular project. Proposers are advised that the award and potential dollar amount of the contract under this RFP will be contingent upon approval by the Ashland City Council acting as the Contract Review Board.

Payment will be made for completion of, or acceptable monthly progress on, tasks and deliverables in conformance with contract requirements and applicable standards. The method of compensation will be determined by the City and may be based upon any one or combination of the following methods:

- Cost plus fixed-fee, up to a maximum NTE amount
- Fixed price for all services. Fixed price per deliverable. Fixed price per milestone
- Time and materials, up to a maximum NTE amount (City preferred method)
- Price per unit

Ashland Living Wage Requirements – Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying at least the living wage as established by the City of Ashland on June 30, 2020 (\$15.74 per hour):

- For all hours worked under a service contract between their employer and the City if the contract exceeds \$22,002.43 or more.
- For all hours worked in a month if the employee spends 50% or more of the employee's time in that month working on a project or portion of business of their employer, if the employer has ten or more employees and has received financial assistance for the project or business from the City in excess of \$22,002.43.
- Contractor is also required to post the notice included in the appendix predominantly in areas where it will be seen by all employees.
- In calculating the living wage for full time employees, employers may add the value of health care, retirement, 401K and IRS eligible cafeteria plans, and other benefits to the employee's wages. The City of Ashland Living Wage Statement is appended to the sample contract included in the appendix.

6.2 Business License Required

The selected consultant must have or acquire a current City of Ashland business license prior to conducting any work under the contact.

6.3 Insurance Requirements

Contacto shall at its own expense provide the following insurance:

- a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers.

- b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 per occurrence. This is to cover damages caused by any error, omission, or negligent act related to the professional services to be provided under the contract.
- c. General Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 per occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under the contract.
- d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for each accident for bodily injury and property damage, including coverage for owned, hired or non-owned vehicles, as applicable.
- e. Notice of Cancellation or Change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days' written notice from the contractor or its insurer(s) to the City.

Additional Insured/Certificates of Insurance. Contractor shall name The City of Ashland, Oregon, and its elected officials, officers and employees as additional insurers on any insurance policies required herein but only with respect to contractor's services to be provided under this contract. As evidence of the insurance coverage required by this contract, the contractor shall furnish acceptable insurance certificates prior to commencing work under this contract. The certificate will specify all of the parties who are additional insureds. The consultant's insurance is primary and non-contributory. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City. The contractor shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance.

6.4 Laws and Regulations

The proposer is assumed to be familiar with all Federal, State, County or City laws or regulations, which in any manner affect those engaged or employed in the work or the materials or equipment used or which in any way affect the conduct of the work, and no pleas of misunderstanding will be considered on account of ignorance thereof. If the proposer shall discover any provision in these specifications or project information, plans or contract documents which is contrary to or inconsistent with any law or regulations, they shall report it to the City of Ashland in writing.

All work performed by the contractor shall be in compliance with all Federal, State, County and local laws, regulations and ordinances. Unless otherwise specified, the contractor shall be responsible for applying for applicable permits and licenses.

SECTION 7 - INSTRUCTIONS TO PROPOSERS

7.1 General

All Proposals and any resulting contracts are subject to the provisions and requirements of Oregon Revised Statutes Chapters 279A and 279B and to the Ashland Municipal Code (AMC) Chapter 2.50. Engineering contracts are further subject to ORS Chapter 279C.

7.2 Information of Record

This Request for Proposal (RFP) will be distributed through the Oregon Procurement Information Network (ORPIN). All updates, addendum, and related communications will be published through ORPIN. All prospective proposers are advised to continuously monitor the website for information regarding this proposal. It is the sole responsibility of the proposer to check the website on a timely basis for critical information regarding the proposal.

7.3 Proposal Preparation and Format

- Proposals shall be typewritten in 12 point font minimum.
- Except for proposer attachments, proposal form, cover letter and resumes, the Proposal shall contain no more than 8 pages.
- Cover Letter, proposal form and resumes do not count against the 8 page limit.

- Proposal narrative must follow along with scoring criteria sections
- No oral, telegraphic, telephone or facsimile Proposals shall be accepted.
- The electronic submission of a Proposal will not be permitted.
- To be considered, all Proposals must be received by the City prior to the date and time set for Proposal closing.
- A total of six original (wet signatures), complete Proposals shall be submitted to the City prior to the date and time set for closing.
- One (1) digital copy of the complete Proposal shall be submitted on a CD or thumb drive.

7.4 Signature on Proposal

Proposals shall be signed in ink by an authorized representative of the Proposer. Signature on a Proposal certifies that the Proposal is made without connection with any person, firm or corporation making a proposal for the same goods and/or services and is in all respects fair and made without collusion or fraud. Signature on a Proposal also certifies that the proposer has read, fully understands and agrees with all solicitation requirements, terms and conditions. No consideration will be given to any claim resulting from proposing without fully comprehending all requirements of this Request for Proposals.

7.5 Preparation Costs

The City may cancel a solicitation, whether informal or formal, or reject all Proposals, without liability incurred by City at any time after issuing an RFP, if City believes it is in City's best interest to do so. Consultants responding to RFPs are responsible for all costs they may incur in connection with submitting Proposals and responses to RFPs, which includes, but is not limited to: preparation, submittal, travel expenses, interviews, presentations, or evaluation of any Proposal.

7.6 Conformance to Solicitation Requirements

Proposals shall conform to the requirements of this Request for Proposals. All necessary attachments (Independent Contractor Certification, etc.) shall be submitted with the Proposal and in the required format. Failure to comply with all requirements may result in Proposal rejection.

7.7 Definitions

For the purpose of this RFP:

"Agency" or **"City"** means City of Ashland.

"Business days" means calendar days, excluding Saturdays, Sundays and all City recognized holidays.

"Calendar days" or **"days"** means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State holiday or other day.

"Council" means City of Ashland Council

"Department" means the City of Ashland Engineering Department.

"Manager" means the City of Ashland Project Manager.

"Proposers"- All firms submitting proposals are referred to as Proposers in this document; after negotiations, an awarded Proposer will be designated as "Consultant".

"Qualification Based Selection" or **"QBS"** (for the purposes of this RFP) means evaluations and scoring of proposals based on qualifications, experiences and project approach, without considering cost.

"RFP" means Request for Proposals.

"Scope of Work" means the general character and range of services and supplies needed to complete the work's purpose and objectives, and an overview of the performance outcomes expected by Agency.

"Services" means the services to be performed under the Contract by the Consultant.

"Statement of Work" means the specific provision in the final contract which sets forth and defines in detail (within the identified Scope of Work) the agreed-upon objectives, expectations, performance standards, services, deliverables, schedule for delivery and other obligations.

7.8 Questions and Clarifications

All inquiries, whether relating to the RFP process, administration, deadline or award, or to the intent or technical aspects of the services, must be submitted in writing to the City's Project Manager listed in the advertisement for this RFP, at 20 East Main Street, Ashland, Oregon 97520. All questions must be received not later than ten (10) calendar days prior to the date and time set for closing.

Answers to questions received by City, which are deemed by City to be substantive, will be issued as official addenda to this RFP to ensure that all proposers base their proposals on the same information. When appropriate, as determined by City in its sole discretions, revisions, substitution or clarification of the RFP or attached terms and conditions, an official addendum to this RFP will be issued. Proposer shall indicate receipt of all issued addenda by indicating the number of addendum received on the Proposal Form.

Any addendum or addenda issued by the City which may include changes, corrections, additions, interpretations or information, and issued seventy-two (72) hours or more before the scheduled closing time for submission of bids, Saturday, Sunday and legal holidays not included, shall be binding upon the proposer. The City may elect to email addendum to registered proposers but will do so as a courtesy only. All official addendums will be issued through ORPIN and it shall be the proposer's sole responsibility to acquire any and all addendum pertaining to RFP. The proposer is strongly cautioned to monitor this site on a continual basis.

7.9 Protest of Requirements

Proposers may submit a written protest of any provision, specification or contract term contained in this RFP and may request a change to any provision, specification or contract term contained in this RFP, not later than ten (10) calendar days prior to the advertised proposal closing date.

A proposer's written protest must meet the following requirements:

- A detailed statement of the legal and factual grounds for the protest.
- The reason for the protest or request for change.
- A statement of the form of relief requested or any proposed changes to the specifications or contract document.

All protests shall be mailed or otherwise delivered to the City marked as follows:

PROPOSAL PROTEST

Proposal No. **2020-15**:

City of Ashland Public Works Dept.

ATTN: Scott Fleury P.E., Interim Public Works Director

20 East Main St

Ashland, OR 97520

City Response: The City may reject without consideration a proposer's protest after the deadline established for submitting protest. The City shall provide notice to the applicable proposer if it entirely rejects a protest. If the City agrees with the proposer's protest, in whole or in part, the City shall either issue an addendum reflecting its determination or cancel the solicitation.

Extension of Closing: If the City receives a written protest from a proposer in accordance with this rule, the City may extend closing if the City determines an extension necessary to consider the protest and to issue addenda, if any, to the solicitation of document.

Judicial review of the City's decision relating to a specification protest shall be in accordance with ORS. 279B.405.

7.10 Protest of Contract Award

Every Proposer who submits a proposal shall be notified of its selection status. Any Proposer who claims to have been adversely affected or aggrieved by the selection of another or any Proposer who contends that the provisions of this RFP or any aspect of the procurement process has promoted favoritism in the award of the contract or has substantially diminished competition, must file a written protest to this RFP within seven (7) calendar days after the date of the notice of intent to award. Failure to file a protest will be deemed a waiver of any claim by an offeror that the procurement process violates any provision of ORS Chapters 279A, 279B, or 279C, the City of Ashland Municipal Code, or the City's procedures for screening and selection of persons to perform personal services.

7.11 Proposal Modification

Modifications or erasures made before proposal submission shall be initialed in ink by the person signing the proposal. Proposals, once submitted, may be modified in writing before the time and date set for proposal closing. Any modification shall be prepared on company letterhead, shall be signed by an authorized representative, and shall state that the new document supersedes or modifies prior proposal submissions and any other prior proposal modifications. Proposal modifications shall be submitted in a sealed envelope clearly marked "Proposal Modification," identifying the RFP number and closing date and time. Proposers may not modify proposals after proposal closing date and time.

7.12 Proposal Withdrawals

Proposals may be withdrawn in writing on company letterhead signed by an authorized representative and received by the Engineering Services Manager prior to the date and time set for closing. Proposals may be withdrawn in person before closing time upon presentation of appropriate identification.

7.13 Proprietary Information

The City is subject to the Oregon Public Records Laws (ORS 192.311 to 192.478), which require the City to disclose all records generated or received in the transaction of City business, except as expressly exempted. The City will not disclose records submitted by a Proposer that are exempt from disclosure under the Oregon Public Records Law, subject to the following procedures and limitations.

The entire Proposal cannot be marked confidential; nor shall any pricing be marked confidential.

All pages containing the records exempt from disclosure shall be marked "confidential" and segregated in the following manner:

- It shall be clearly marked in bulk and on each page of the confidential document.
- It shall be kept separate from the other Proposal documents in a separate envelope or package
- Where the specification conflicts with other formatting and response instruction specifications, this specification shall prevail.
- Where such conflict occurs, the Proposer is instructed to respond with the following: "Refer to confidential information enclosed." This statement shall be inserted in the place where the requested information was to have been placed.

Proposers who desire that additional information be treated as confidential must mark those pages as "confidential." Proposers shall also cite the specific statutory basis for the exemption and give the reasons why the public interest would be served by the confidentiality. Should a Proposal be submitted as described in this section, no portion of it will be held confidential unless that portion is segregated as described in the criteria above.

Notwithstanding the above procedures, the City reserves the right to disclose information that the City determines, in its sole discretion, is not exempt from disclosure or that the City is directed to disclose by the City's Attorney, the District Attorney, or a court of competent jurisdiction.

7.14 Terms and Conditions

Unless an official addendum has modified or reserved the right to negotiate any terms contained in the contract or exhibits thereto, the City will not negotiate any term or condition after the protest deadline, except the statement of work, pricing, and calendar with the selected proposer. By submitting a Proposal, the selected proposer agrees to be bound by the terms and conditions as set forth in this RFP and as such terms and conditions may have been modified or reserved by the City for negotiation. Any Proposal that is received conditioned upon City's acceptance of any other terms and conditions or rights to negotiate will be rejected.

7.15 Proposal Opening

Unless otherwise provided by law, Proposals received in response to this RFP shall be opened at the date and time set for closing at the Engineering Services Building at 51 Winburn Way, Ashland, Oregon 97520. Proposers who attend the Proposal opening shall be informed only of the names of the Proposers submitting Proposals. No other information shall be available, and no copies of the Proposals shall be made. Award decisions will NOT be made at that time.

SECTION 8 - PROPOSAL FORM

Proposals should be prepared and organized in a clear and concise manner and must include all information required by this RFP. Headers, Titles or Tabs should be used to identify required information. Responses to the Evaluation Criteria found in Section 4 shall be organized in the same order listed in that Section, preferably by re-stating the criteria and then responding below the restated criteria.

REQUIRED RESPONSE DOCUMENTS

THE FOLLOWING INFORMATION MUST BE RETURNED WITH YOUR RESPONSE:

(Place a check in front of the item indicating inclusion in your response)

- RESPONSE TO ALL EVALUATION CRITERIA listed in Section 4
- SECTION 8 – Proposal Form
- Independent Contractor Certification

MWESB INFORMATION

The City encourages contracting with minority owned, woman owned, and emerging small business (MWESB). The State of Oregon offers a certification process. Indicate below if your business is a MWESB and if so, which categories have been state certified. MWESB certified? Yes___ No___. If yes, indicate which categories below:

Minority Owned___ Woman Owned___ Emerging Small Business___ Veteran Owned___

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA TO PROPOSAL DOCUMENTS:

Proposer acknowledges receipt of Addenda and agrees to be bound by their contents.

Circle each RFP addendum received: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10

Check if not applicable or if no addenda were received: _____

OSBEELS / OSBGE / ORBAE No.(s)

Provide name(s), title(s), and certification number(s) for each Key Person listed under Section 6.3 (b). Attach additional sheet if necessary)

Name: _____	Title: _____	Certification No: _____
Name: _____	Title: _____	Certification No: _____
Name: _____	Title: _____	Certification No: _____
Name: _____	Title: _____	Certification No: _____
Name: _____	Title: _____	Certification No: _____
Name: _____	Title: _____	Certification No: _____

PROPOSER INFORMATION:

Proposer Company Name

Company Address (from which work will be performed)

Telephone Number

Fax Number

FEDERAL ID NUMBER

Printed Name of Person Signing RFP: _____

Title: _____

Signature: _____

Email Address: _____

APPENDIX A – **CONTRACT FORM INCLUDING EXHIBIT B, EXHIBIT C**
APPENDIX B – **FORM W-9**

PERSONAL SERVICES AGREEMENT (greater than \$25,000.00)

<p>CITY OF ASHLAND</p> <p>20 East Main Street Ashland, Oregon 97520 Telephone: 541/488-XXXX Fax: 541/552-XXXX</p>	<p>CONSULTANT:</p> <p>CONSULTANT'S CONTACT:</p> <p>ADDRESS:</p> <p>TELEPHONE:</p> <p>EMAIL:</p>
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This Personal Services Agreement (hereinafter "Agreement") is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter "City") and XXXXXXXXXX, a (domestic professional corporation - for example) ("hereinafter "Consultant"), for (description of services to be provided.).

NOW THEREFORE, in consideration of the mutual covenants contained herein, the City and Consultant hereby agree as follows:

- 1. Effective Date and Duration:** This Agreement shall become effective on the date of execution on behalf of the City, as set forth below (the "Effective Date"), and unless sooner terminated as specifically provided herein, shall terminate upon the City's affirmative acceptance of Consultant's Work as complete and Consultant's acceptance of the City's final payment therefore, but not later than XXXXXXXXXX.
- 2. Scope of Work:** Consultant will provide (description of services to be provided) as more fully set forth in the Consultant's Proposal dated XXXXXXXXXX, which is attached hereto as "Exhibit A" and incorporated herein by this reference. Consultant's services are collectively referred to herein as the "Work."
- 3. Supporting Documents/Conflicting Provisions:** This Agreement and any exhibits or other supporting documents shall be construed to be mutually complementary and supplementary wherever possible. In the event of a conflict which cannot be so resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the exhibits or supporting documents.
- 4. All Costs Borne by Consultant:** Consultant shall, at its own risk, perform the Work described above and, unless otherwise specified in this Agreement, furnish all labor, equipment, and materials required for the proper performance of such Work.
- 5. Qualified Work:** Consultant has represented, and by entering into this Agreement now represents, that all personnel assigned to the Work to be performed under this Agreement are fully qualified to perform the service to which they will be assigned in a skilled and worker-like manner and, if required to be registered, licensed or bonded by the State of Oregon, are so registered, licensed and bonded.

6. **Compensation:** City shall pay Consultant the sum of \$XXXXXXX as full compensation for Consultant's performance of all Work under this Agreement. In no event shall Consultant's total of all compensation and reimbursement under this Agreement exceed the sum of \$XXXXXXXXXXXX without the express, written approval from the City official whose signature appears below, or such official's successor in office. Payments shall be made within thirty (30) days of the date of receipt by the City of Consultant's invoice. Should this Agreement be terminated prior to completion of all Work, payments will be made for any phase of the Work completed and accepted as of the date of termination.
7. **Ownership of Work/Documents:** All Work, work product, or other documents produced in furtherance of this Agreement belong to the City, and any copyright, patent, trademark proprietary or any other protected intellectual property right shall vest in and is hereby assigned to the City.
8. **Statutory Requirements:** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.
9. **Living Wage Requirements:** If the amount of this Agreement is \$22,002.43 or more, Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in that chapter, to all employees performing Work under this Agreement and to any Subcontractor who performs 50% or more of the Work under this Agreement. Consultant is also required to post the notice attached hereto as "Exhibit B" predominantly in areas where it will be seen by all employees.
10. **Indemnification:** Consultant hereby agrees to defend, indemnify, save, and hold City, its officers, employees, and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property, of whatsoever nature arising out of or incident to the performance of this Agreement by Consultant (including but not limited to, Consultant's employees, agents, and others designated by Consultant to perform Work or services attendant to this Agreement). However, Consultant shall not be held responsible for any losses, expenses, claims, subrogations, actions, costs, judgments, or other damages, caused solely by the negligence of City.
11. **Termination:**
 - a. Mutual Consent. This Agreement may be terminated at any time by the mutual consent of both parties.
 - b. City's Convenience. This Agreement may be terminated by City at any time upon not less than thirty (30) days' prior written notice delivered by certified mail or in person.
 - c. For Cause. City may terminate or modify this Agreement, in whole or in part, 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:
 - i. If City funding from federal, state, county or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;
 - ii. 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 or are no longer eligible for the funding proposed for payments authorized by this Agreement; or

- iii. If any license or certificate required by law or regulation to be held by Consultant to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.
- d. For Default or Breach.
 - i. Either City or Consultant may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and its intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, or within such other period as the party giving the notice may authorize in writing, then the Agreement may be terminated at any time thereafter by a written notice of termination by the party giving notice.
 - ii. Time is of the essence for Consultant's performance of each and every obligation and duty under this Agreement. City, by written notice to Consultant of default or breach, may at any time terminate the whole or any part of this Agreement if Consultant fails to provide the Work called for by this Agreement within the time specified herein or within any extension thereof.
 - iii. The rights and remedies of City provided in this subsection (d) are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- e. Obligation/Liability of Parties. Termination or modification of this Agreement pursuant to subsections a, b, or c above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to Subsection a, b, c, or d of this section, Consultant shall immediately cease all activities under this Agreement, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Consultant shall deliver to City all Agreement documents, information, works-in-progress and other property that are or would be deliverables had the Agreement been completed. City shall pay Consultant for Work performed prior to the termination date if such Work was performed in accordance with this Agreement.

- 12. **Independent Contractor Status:** Consultant is an independent contractor and not an employee of the City for any purpose. Consultant shall have the complete responsibility for the performance of this Agreement. Consultant shall provide workers' compensation coverage as required in ORS Chapter 656 for all persons employed to perform Work pursuant to this Agreement. Consultant is a subject employer that will comply with ORS 656.017.
- 13. **Assignment:** Consultant shall not assign this Agreement or subcontract any portion of the Work without the written consent of City. Any attempted assignment or subcontract without written consent of City shall be void. Consultant shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by them, and the approval by City of any assignment or subcontract of the Work shall not create any contractual relation between the assignee or subcontractor and City.
- 14. **Default.** The Consultant shall be in default of this Agreement if Consultant: commits any material breach or default of any covenant, warranty, certification, or obligation under the Agreement; institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general assignment for the benefit of creditors; or ceases doing business on a regular basis of the type identified in its obligations under the Agreement; or attempts to assign rights in, or delegate duties under, this Agreement.
- 15. **Insurance.** Consultant shall, at its own expense, maintain the following insurance:
 - a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers
 - b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence. This is to cover any damages caused by error, omission or negligent acts related to the Work to be provided under this Agreement.
 - c. General Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence for Bodily Injury, Death, and Property Damage.

- d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 (one million dollars) for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
- e. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days' prior written notice from the Consultant or its insurer(s) to the City.
- f. Additional Insured/Certificates of Insurance. Consultant shall name the City of Ashland, Oregon, and its elected officials, officers and employees as Additional Insureds on any insurance policies, excluding Professional Liability and Workers' Compensation, required herein, but only with respect to Consultant's services to be provided under this Agreement. The consultant's insurance is primary and non-contributory. As evidence of the insurance coverages required by this Agreement, the Consultant shall furnish acceptable insurance certificates prior to commencing the Work under this Agreement. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

16. Nondiscrimination: Consultant agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of any Work under this Agreement when employed by Consultant. Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Consultant agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.

17. Consultant's Compliance With Tax Laws:

17.1 Consultant represents and warrants to the City that:

17.1.1 Consultant shall, throughout the term of this Agreement, including any extensions hereof, comply with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

17.1.2 Consultant, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

18. Governing Law; Jurisdiction; Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between the City and the Consultant that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon. If, however, the 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

filed in Jackson County, Oregon. Consultant, by its signature hereon of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts.

- 19.** THIS AGREEMENT AND THE ATTACHED EXHIBITS CONSTITUTE THE ENTIRE UNDERSTANDING AND AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. CONSULTANT, BY 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.
- 20. Amendments.** This Agreement may be amended only by written instrument executed by both parties with the same formalities as this Agreement.
- 21. Nonappropriations Clause.** Funds Available and Authorized: City has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within the City's fiscal year budget. Consultant understands and agrees that City's payment of amounts under this Agreement attributable to Work performed after the last day of the current fiscal year is contingent on City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement. In the event City has insufficient appropriations, limitations or other expenditure authority, City may terminate this Agreement without penalty or liability to City, effective upon the delivery of written notice to Consultant, with no further liability to Consultant.

22. **Certification.** Consultant shall sign the certification attached hereto as “Exhibit C” and incorporated herein by this reference.

CITY OF ASHLAND:

XXXXXXXXXX (CONSULTANT):

By: _____
City Administrator

By: _____
Signature

Printed Name

Printed Name

Date

Title

Date

Purchase Order No. _____

(**W-9** is to be submitted with this signed Agreement)

APPROVED AS TO FORM:

Assistant City Attorney

Date

EXHIBIT B

CITY OF ASHLAND, OREGON

City of Ashland
LIVING
WAGE

ALL employers described below must comply with City of Ashland laws regulating payment of a living wage.



\$15.74 per hour, effective June 30, 2020.

The Living Wage is adjusted annually every June 30 by the Consumer Price Index.

Employees must be paid a living wage:

- For all hours worked under a service contract between their employer and the City of Ashland if the contract exceeds **\$22,002.43** or more.
- For all hours worked in a month if the employee spends 50% or more of the employee's time in that month working on a project or

portion of business of their employer, if the employer has ten or more employees, and has received financial assistance for the project or business from the City of Ashland in excess of **\$22,002.43**.

- If their employer is the City of Ashland, including the Parks and Recreation Department.
- In calculating the living wage, employers may add the value

of health care, retirement, 401K and IRS eligible cafeteria plans (including childcare) benefits to the amount of wages received by the employee.

- **Note:** For temporary and part-time employees, the Living Wage does **not** apply to the first 1040 hours worked in any calendar year. For more details, please see Ashland Municipal Code Section 3.12.020.

For additional information:

Call the Ashland City Administrator's office at 541-488-6002 or write to the City Administrator, City Hall, 20 East Main Street, Ashland, OR 97520, or visit the City's website at www.ashland.or.us.

Notice to Employers: This notice must be posted predominantly in areas where it can be seen by all employees.

CITY OF
ASHLAND

EXHIBIT C

CERTIFICATIONS/REPRESENTATIONS: Consultant, by and through its authorized representative, under penalty of perjury, certifies that (a) the number shown on the attached W-9 form is its correct taxpayer ID (or is waiting for the number to be issued to it and (b) Consultant is not subject to backup withholding because: (i) it is exempt from backup withholding, or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Consultant further represents and warrants to City that: (a) it has the power and authority to enter into this Agreement and perform the Work, (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Consultant enforceable in accordance with its terms, (c) the work under the Agreement shall be performed in accordance with the highest professional standards, and (d) Consultant is qualified, professionally competent, and duly licensed (if applicable) to perform the Work. Consultant also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, it is an independent contractor as defined in the Agreement, it is authorized to do business in the State of Oregon, and Consultant has checked four or more of the following criteria that apply to its business.

- _____ (1) Consultant carries out the work or services at a location separate from a private residence or is in a specific portion of a private residence, set aside as the location of the business.
- _____ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.
- _____ (3) Telephone listing is used for the business separate from the personal residence listing.
- _____ (4) Labor or services are performed only pursuant to written contracts.
- _____ (5) Labor or services are performed for two or more different persons within a period of one year.
- _____ (6) Consultant assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission (professional liability) insurance or liability insurance relating to the Work or services to be provided.

Consultant's signature

Date

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 35.	<p>1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p> <p>2 Business name/disregarded entity name, if different from above</p> <p>3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.</p> <p><input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate</p> <p><input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____</p> <p><small>Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</small></p> <p><input type="checkbox"/> Other (see instructions) ▶ _____</p>	<p>4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p><small>(Applies to accounts maintained outside the U.S.)</small></p>
	<p>5 Address (number, street, and apt. or suite no.) See instructions.</p> <p>6 City, state, and ZIP code</p> <p>7 List account number(s) here (optional)</p>	<p>Requestor's name and address (optional)</p>

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
OR									
Employer identification number									

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶ _____	Date ▶ _____
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)
 Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.
If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.