

CITY OF WOODBURN, OREGON

Request for Proposals

**FOR PROFESSIONAL ENGINEERING SERVICES TO PREPARE A
RISK AND RESILIENCY PLAN FOR THE CITY OF WOODBURN
WATER SUPPLY SYSTEM**

DATE & TIME DUE: DECEMBER 15, 2020 AT 4:00 PM

SUBMIT PROPOSAL TO CITY OF WOODBURN:

Eric Liljequist

Public Works Projects & Engineering Director

190 Garfield Street

Woodburn, OR 97071

Email: eric.liljequist@ci.woodburn.or.us

503-982-5241



PROPOSAL ADVERTISEMENT

Request for Proposals

FOR PROFESSIONAL ENGINEERING SERVICES TO PREPARE A RISK AND RESILIENCY PLAN FOR THE CITY OF WOODBURN WATER SUPPLY SYSTEM

The City of Woodburn requests proposals, from qualified firms or individuals, for furnishing professional services to execute a comprehensive all-hazards physical and cyber security risk and resiliency assessment of all City of Woodburn water system assets. The intent is to maintain compliance with §2013 of America’s Water Infrastructure Act of 2018. The risk and resiliency assessment will use the ANSI/AWWA J100 standard to examine City of Woodburn Water Supply System assets and to develop a prioritized program for risk and resilience management and inform emergency response planning activities. The City may elect to enter into a contract amendment with the selected proposer for implementation of an Emergency Response Plan, which is also required under §2013 of America’s Water Infrastructure Act of 2018.

The selected firm(s) must demonstrate the ability to provide a majority of the services required and clearly identify those services which will need to be provided by a sub-consultant.

Proposals will be received until **4:00 PM on December 15, 2020**. These should be delivered to Eric Liljequist, Public Works Projects & Engineering Director, 190 Garfield Street, Woodburn, OR 97071, and/or via email at eric.liljequist@ci.woodburn.or.us in order to facilitate State of Oregon Covid-19 directives. All mailed or hand-delivered proposals should be marked “Woodburn Public Works Department, Attn: Engineering Services for Water System Risk & Resiliency Assessment, 190 Garfield Street, Woodburn, Oregon 97071.” Hand Delivered Proposals must be coordinated in advance by appointment only since the office is currently closed to the public due to the pandemic.

The City **will not accept** facsimile proposals. The City **will not accept** any proposals after the stated opening date and time. The City will return all late proposals unopened to the submitting firm.

Prospective proposers are encouraged to examine the solicitation document by viewing it in a PDF format, available over the Internet from the City’s website at <http://www.ci.woodburn.or.us/?q=blog-categories/bids-and-rfps>. The Request for Proposals may also be viewed or obtained from the City of Woodburn, Public Works Office located at 190 Garfield Street, Woodburn, Oregon 97071 by appointment only; or by emailing eric.liljequist@ci.woodburn.or.us. All questions should be directed to the Public Works Projects & Engineering Director at phone number 503-982-5241 or by emailing eric.liljequist@ci.woodburn.or.us.

A successful firm will be selected based upon the following criteria: 1) Qualifications to perform the scope of services; 2) Prior work experience performing the scope of services; 3) Demonstrated understanding of the scope of services required; 4) Organization and Staffing of

project team.

Proposers are required to certify non-discrimination in employment practices and identify resident status as defined in ORS 279A.120. All Proposers are required to comply with the provisions of Oregon Revised Statutes Chapters 279 A, B, and C for Public Contracts and Purchasing and the City of Woodburn Public Contracting Rules. The Woodburn City Council is the local contract review board.

The City of Woodburn reserves the right (1) to reject any or all proposals not in compliance with all prescribed public bidding procedures and requirements, (2) to postpone award of the contract for a period not to exceed sixty (60) days from date of proposal opening, (3) to waive informalities in the proposals, (4) to select the proposal which appears to be in the best interest of the City, and (5) to reject for good cause any or all proposals upon a finding that it is the public interest to do so.

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Attachments:

- Attachment “A” 2017 Water Master Plan Update (By Reference)
- Attachment “B” Personal Services Contract Example
- Attachment “C” Certificate of Non-Discrimination
- Attachment “D” Proposer Residency Statement

PART 1

OVERVIEW

**RISK AND RESILIENCY PLAN
FOR
WOODBURN WATER SUPPLY SYSTEM**

The City of Woodburn will be executing a comprehensive all-hazards physical and cyber security risk and resiliency assessment of all City of Woodburn water system assets. The intent is to maintain compliance with §2013 of America’s Water Infrastructure Act of 2018. The risk and resiliency assessment will use the ANSI/AWWA J100 standard to examine City of Woodburn Water Supply System assets and to develop a prioritized program for risk and resilience management and inform emergency response planning activities. The City may also elect to enter into a contract amendment with the selected proposer for the development of an Emergency Response Plan, which is also required under §2013 of America’s Water Infrastructure Act of 2018.

The American Water Infrastructure Act (“AWIA”) of 2018 is the basis of this solicitation. The law requires community (drinking) water systems serving more than 3,300 people to develop or update risk assessments and emergency response plans (ERPs). The law specifies the components that the risk assessments and ERPs must address, and establishes deadlines by which water systems must certify to EPA completion of the risk assessment and ERP. Risk Resiliency Assessments and Emergency Response Plan information and requirements can be found at the following website: <https://www.epa.gov/waterresilience/americas-water-infrastructure-act-risk-assessments-and-emergency-response-plans>

CERTIFICATION DEADLINES:

Agency	Population Served	Risk Assessment	Emergency Response Plan
City of Woodburn	3,301-49,999	June 30, 2021	December 30, 2021

PART 2

TIMELINE

November 20, 2020	Publication of Solicitation for Request for Proposals
December 15, 2020	Deadline for Submission of Proposals
December 21, 2020	Complete Proposal Review Process
December 22-29, 2020	Negotiations with Proposer(s)
January 4, 2021	Notice of Intent to Award
January 11, 2021	Contract Award
January 12, 2021	Commencement of Services
June 15, 2021	Completion of all Risk & Resiliency Plan Deliverables

THE CITY RESERVES THE RIGHT TO MODIFY THIS SCHEDULE AT THE CITY'S DISCRETION.

PART 3

SCOPE OF WORK

**RISK AND RESILIENCY PLAN
FOR
WOODBURN WATER SUPPLY
FACILITIES**

The City of Woodburn will be executing a comprehensive all-hazards physical and cyber security risk and resiliency assessment of all City of Woodburn water system assets. The intent is to maintain compliance with §2013 of America’s Water Infrastructure Act of 2018. The risk and resiliency assessment will use the ANSI/AWWA J100 standard to examine City of Woodburn Water Supply System assets and to develop a prioritized program for risk and resilience management and inform emergency response planning activities. The City may also elect to enter into a contract amendment with the selected proposer for the development of an Emergency Response Plan, which is also required under §2013 of America’s Water Infrastructure Act of 2018.

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CERTIFICATION DEADLINES:

Agency	Population Served	Risk Assessment	Emergency Response Plan
City of Woodburn	3,301-49,999	June 30, 2021	December 30, 2021

Perform & Document Risk and Resilience Assessment

The successful firm shall complete a risk and resilience analysis of the water supply system. ANSI/AWWA J100 standard and the EPA baseline threat analysis guidance referenced below shall be used to determine the all-hazards risk and resilience of all Physical and Cyber Agency assets located throughout the Watery Supply Facilities and watershed properties to develop a prioritized program of risk and resilience measures with a cost benefit analysis.

The Assessment shall include the following analyses:

1. The risk to the system from malevolent acts and natural hazards;
2. The resilience of the pipes and constructed conveyances, physical barriers, source water, water collection and intake, pretreatment, treatment, storage and distribution facilities, electronic, computer, or other automated systems (including the security of such systems) which are utilized by the system;
3. The monitoring practices of the system;
4. The financial infrastructure of the system;
5. The use, storage, or handling of various chemicals by the system; and
6. The operation and maintenance of the system. The assessment may include an evaluation of capital and operational needs for risk and resilience management for the system.

On August 1, 2019, the US EPA released a baseline threat document to provide community water systems with additional information concerning risk assessment requirements. This document, located at <https://www.epa.gov/waterriskassessment/baseline-information-malevolent-acts-community-water-systems> shall be utilized as a guide by the successful firm to conduct the baseline threat analysis of the water system. ***The Risk and Resilience Assessment is due no later than June 15, 2021.***

Optional Task that may be executed via a Contract Amendment:

Development of an Emergency Response Plan

Woodburn will require major updates to address new requirements in the implementation of the Emergency Response Plan. This plan is exclusive to the City of Woodburn and the water supply system.

No later than six months after certifying completion of its risk and resilience assessment, the system must prepare or revise, where necessary, the emergency response plan that incorporates the findings of the assessment. ***The emergency response plan is due no later than December 15, 2021.*** If executed via contract amendment, the plan shall include:

1. Strategies and resources to improve the resilience of the system, including the physical security and cybersecurity of the system;
2. Plans and procedures that can be implemented, and identification of equipment that can be utilized, in the event of a malevolent act or natural hazard that threatens the

- ability of the community water system to deliver safe drinking water;
3. Actions, procedures and equipment which can obviate or significantly lessen the impact of a malevolent act or natural hazard on the public health and the safety and supply of drinking water provided to communities and individuals, including the development of alternative source water options, relocation of water intakes and construction of flood protection barriers; and
 4. Strategies that can be used to aid in the detection of malevolent acts or natural hazards that threaten the security or resilience of the system.

Community water systems shall coordinate with the respective local emergency planning committees established under the Emergency Planning and Community Right-To-Know Act of 1986 when preparing or revising an assessment or emergency response plan under the AWIA. Further, systems must maintain a copy of the assessment and emergency response plan for five years after certifying the plan to the EPA.

Proposer shall provide a detailed Scope of Work with a timeline for each part of the proposal that establishes an understanding of the nature and scope of the project by including a detailed discussion of the risk and resiliency requirements of the AWIA including reference guidance where applicable such as the American Water Works Association's J100 Risk Analysis and Management for Critical Asset Protection (RAMCAP) for Water and Waste Water Systems, AWWA G340-2014 Security Practices For Operation and Management, and AWWA G440-17 Emergency Preparedness Practices. The Scope of Work ("SOW") should also include the Proposer's methodology to meet this criterion.

This section contains a brief outline of the required project scope of services for the development of a Woodburn Water Supply Risk and Resiliency Assessment and updated Emergency Response Plan. It is not intended to be a complete list of all work activities required to complete the work but is intended to highlight some key elements of work that need to be included in the consultant's complete SOW.

The City requires a timeframe that will complete the SOW within the federally mandated timeframe for certification described in the earlier Certification Table. City staff are ready to attend/assist in workshop settings and to assist with data gathering, as required. The Proposer shall provide a detailed SOW that incorporates all federally mandated requirements, and details, at a minimum, the following:

1. Project Management

Consultant (the selected Proposer) shall perform project management, coordination, and contract administration tasks relative to the execution of this SOW. Consultant shall coordinate and communicate with the Project Manager concerning progress, budget, schedule, key issues, and planned responses. Monthly invoices and status reports will be prepared and submitted to the Project Manager. Consultant shall prepare a baseline schedule including key milestones to meet the certification deadline, and submit that schedule for acceptance. Consultant shall update the schedule as needed and submit the

progress status updates with Consultant's invoice. Consultant shall coordinate quality management practices and implement quality reviews of project deliverables prior to submittal to the City of Woodburn for review. Consultant shall maintain an electronic and hard project file to include contract information, correspondence and communications, risk and resiliency assessment information, and record documents.

Assumptions:

- Monthly invoices shall include a detailed breakdown of staff member hours billed by task and subtask. Include a summary of expenditures to date, percentage complete by task and subtask, and budget amount remaining.
- Provide bi-weekly status meetings by phone and one in person meeting once a month (if feasible based on Covid-19 work restrictions).
- Develop and implement quality assurance and quality control measures for all aspects of the work.
- Document decisions as they occur during the progression of the work. Maintain a decision log throughout the project.

Deliverables:

- Baseline schedule.
- Monthly project invoices, progress schedules, and progress reports for the duration of the Program
- Provide agenda and meeting summaries for all meetings or workshops held and included in the proposed SOW.
- Coordinate, track, and implement Woodburn plan review comments.
- Submit Project files and documents to Woodburn within thirty (30) calendar days of completion of the project.

2. Meetings

Facilitate a series of meetings with the Water System Staff from relevant departments, including one kick-off meeting. Meetings shall be held to collect information on water system procedures and practices that are relevant to the risk and resilience of the system. This may include a number of different areas of expertise, including IT support, operations system staff, and others, as necessary to address the requirements set forth in the AWIA J 100 standards. Attend and participate in one Woodburn City Council meeting, as needed, after the Risk & Resiliency effort, and before the commencement of the Emergency Response Plan.

Meeting Deliverables:

Provide agenda and meeting summaries for all meeting or workshops held and included in the proposed SOW.

3. Project Documentation Deliverables:

A draft Risk and Resiliency Assessment for the City to review by **May 15, 2021**; and a final Risk and Resiliency Assessment, completed by **June 15, 2021**.

If executed, a draft Emergency Response Plan for the City to review by **October 30, 2021**; and the final Emergency Response Plan, completed by **December 15, 2021**.

Each draft and final version of the documents will be reviewed by the City staff.

All submittals for the draft and the final documents, shall be provided to the project manager in electronic format in both Word and PDF versions.

CITY STAFF INVOLVEMENT

Tasks Performed by City Staff:

1. Provide Consultant with a copy of the 2017 Water System Master Plan and Seismic Study.
2. Provide Consultant with relevant maps, documents, reports and other information related to the supply of water.
3. Attend and staff meetings and workshops in coordination with Consultant.

PART 4

PROPOSAL CONTENT

Proposals should contain and include all information and documentation listed below:

- A.)** Provide three (3) hard copies (if submitting the proposal by mail or in person) and one (1) electronic copy of the proposal to the City. Please limit the size of the proposal to pertinent information, however it shall include the following:
- A short cover letter
 - Executive Summary
 - Firm background information (Items B, K, L & M)
 - Resumes of team members and personnel references
 - Time line spread sheet
- B.)** List firm size and years in business
- C.)** Status as a “Resident” or “Non-Resident” proposer under ORS 279A.120 (Required form included as “Attachment D.”)
- D.)** Documentation of independent consultant status,(i.e., tax ID number, evidence of incorporation, legal status of entity providing service).
- E.)** Completed Non-Discrimination Form: The successful submitting vendor agrees that, in performing the work called for by this proposal, and in securing and supplying materials, consultant will not discriminate against any person based on race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap. The submitting vendors must certify on the appropriate form that they have not and will not discriminate against a subconsultant or the awarding of a subcontract because the subconsultant is a minority, women, or SBE certified under ORS 200.055. (Required form included as “Attachment C.”)
- F.)** The submitting firm should include an Executive Summary of relevant background and ability to successfully complete the described project.
- G.)** Provide a proposal section that describes the submitting firm’s understanding of the project.
- H.)** Provide a detailed scope of work with a timeline for completion of all major task work.
- I.)** Indicate or specify whether the firm is interested and has the capability and experience to also complete the optional Emergency Response Plan following completion of the risk and resilience assessment.
- J.)** Demonstrate that the firm and team have experience in conducting water system resilience assessments by providing a list of projects completed in the last five (5) years of similar scope as this project. Identify the scope of team member’s participation in those water system resilience assessment projects.
- K.)** Demonstrate that the firm has experience in municipal water supply systems and permitting in Oregon, and that required relationships with potential regulatory agencies exist.
- L.)** List three references, preferably within Oregon, which can attest to the quality and variety of services provided by your firm. Include a contact name and telephone number with each reference.
- M.)** Describe your firm’s pending work schedule and impacts of availability on your firm’s ability to work on the project following the notice of award.

- N.)** When outlining the competence and experience of individuals proposed for assignment to this project, include a description of skill, level of responsibility in the project, education, certifications and licenses held, training, experience, and membership in professional organizations. Also, identify the project manager who will direct the work.
- O.)** If any sub-consultants are proposed, provide a list of tasks, the names, level of responsibility, and qualifications of those sub-consultants.

PART 5

EVALUATION OF PROPOSALS

The City will utilize a Qualification Based Selection process, with scoring based upon the evaluation criteria listed below. Upon establishment of QBS based ranking of respondents, the City may or may not elect to interview the top candidates. The City will utilize evaluation criteria scores to provide a final ranking of respondents. The City will appoint a committee (the "Evaluation Committee") of at least two individuals to review, score, and rank proposals according to the criteria set forth below. Following the evaluation of proposals and ranking of consultants, the evaluation committee will prepare a final ranked list of respondents. The City will require **NO** prequalification and will use a single-tier competitive process to select the successful proposal.

Evaluation Criteria

- A.) **Qualifications of Team Members:** The Evaluation Committee will score the proposing firm's team member qualifications relating specifically to their ability to complete satisfactorily the items outlined in the Scope of Work. (Maximum Score is 20 Points)
- B.) **Firm Qualifications and Demonstrated Accomplishments:** The Evaluation Committee will score the demonstrated accomplishments of the proposing firm in the areas identified by the Scope of Work including the basic firm description, project list, experience, and references. (Maximum Score is 20 Points)
- C.) **Demonstrated Project Understanding:** The Evaluation Committee will score the proposing firm's demonstrated understanding of the project and its requirements as related to the objectives. (Maximum Score is 25 Points)
- D.) **Organization and Staffing of Proposing Firm's Project Team:** The proposing firm must demonstrate the availability of adequate staff to perform tasks within the allotted time schedule. The firm must provide a clear description of the relationship between project team members, lines of authority, and areas of responsibility for all key team members. This criterion will evaluate the team organization, roles of individual team members (including sub consultants), and availability of the team members to provide the designated services. (Maximum Score is 35 Points)

The Evaluation Committee will rank each firm based on the sum of points awarded. The evaluation committee will base points awarded solely on the Evaluation Criteria. A maximum total score of 100 points is possible.

PART 6

SELECTION PROCESS

The City shall use the following selection process:

- A.)** The Selection Committee made up of at least two members will evaluate the proposals based on the information submitted.
- B.)** The Selection Committee, at its sole discretion, may choose to interview short-listed firms prior to making their final recommendation.
- C.)** The Selection Committee shall engage in negotiations with the highest ranked proposal firm, the objective being to obtain written agreement on:
 - Consultant’s performance obligations and performance schedule
 - Payment methodology and maximum amount payable to the Consultant for services outlined in the Scope of Work
 - The City will make its own determination concerning the fairness and reasonability of the fee proposed by the Consultant.
- D.)** If negotiations with the highest-ranking proposer fail to proceed to agreement on Contract terms, the Selection Committee will formally terminate negotiations with that candidate, and begin negotiations with another candidate, or suspend the procurement process.
- E.)** The Selection Committee will submit its final recommendation to the Public Works Director for approval.
- F.)** The City will give The Notice of Intent to Award.
- G.)** The City will award the contract.
- H.)** The City and the Consultant will enter into a Personal Service Agreement for the work.

PART 7

SUBMITTAL REQUIREMENTS

The City must receive proposals no later than **4:00 p.m. on December 15, 2020**. The City **will return** proposals received after this deadline, unopened, to the proposer. The City **will not** accept faxed proposals.

- A.) Proposal:** The proposer will deliver three (3) hard copies of the Proposal to the address shown below (by appointment only), and/or an electronic copy at the email address shown below.

- B.) Cover Letter:** A Cover Letter shall accompany the proposal and it shall state that the proposer accepts all terms and conditions contained in the Request for Proposals and the sample Professional Services Contract (attached). A legal representative of the proposer, authorized to bind the firm in contractual matters, must sign the cover letter.

- C.) Submit one electronic copy in a PDF format.**

Direct all correspondence pertaining to this RFP to:

Eric Liljequist, P.E.
190 Garfield Street
Woodburn, OR 97071
Phone: 503-982-5241
E-mail: eric.liljequist@ci.woodburn.or.us

PART 8

OTHER REQUIREMENTS

A.) *Proposal Acceptance:*

- Proposal shall be legally binding as an offer for a period of 60 days after the closing date. If the City has not accepted a submitting firm's proposal within sixty-(60) days from the RFP closing date, then the firm may withdraw its proposal. The contents of the Proposal will become a contractual obligation upon acceptance by the City.

B.) *Public Records:*

- All Proposals shall become the property of the City and are public records unless otherwise specified. A proposal that contains any information considered a trade secret under ORS 192.501(2) shall be segregated and clearly identified as such. This information shall not be disclosed except in accordance with the Oregon Public Records Law, ORS 192.

C.) *Clarification of Proposals:*

- The City reserves the right to obtain clarification of any point in a firm's proposal or to obtain additional information necessary to evaluate satisfactorily a particular proposal. Failure of a Proposer to respond to such a request for additional information or clarification could result in rejection of the firm's proposal.

D.) *Form of Agreement:*

- A copy of the standard Personal Service Agreement, which the City expects the successful firm or individual to execute, is included as "Attachment C." The agreement will incorporate the terms and conditions from this RFP document and the submitted proposal.

E.) *Reservation of Rights:*

- The City reserves the right:
 - To reject any or all proposals not in compliance with all public procedures and requirements;
 - To reject any proposal not meeting the specifications set forth herein;
 - To waive any or all irregularities in proposals submitted;
 - To reject all proposals;
 - To award any or all parts of any proposal; and
 - To request references and other data to determine responsiveness

F.) *Intent to Award*

- Notice of Intent to Award
 - The City shall give Notice of Intent to Award the contract via email and/or City Website to all Proposers at least 7 (seven) days prior to the contract award.

G.) *Protest Process:*

- Protests to this RFP must be in writing and must be submitted in the form and manner prescribed by the Oregon Attorney General's Public Contracting Rules and the City of Woodburn Public Contracting Rules.

ATTACHMENT "A"

2017 Water Master Plan Update (By Reference)

ATTACHMENT "B"
CITY OF WOODBURN
SAMPLE PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the City of Woodburn, an Oregon municipal corporation (hereinafter referred to as "CITY"), and _____ Inc., a corporation (hereinafter referred to as "CONSULTANT").

WHEREAS, CITY needs certain CONSULTANT services; and

WHEREAS, CITY wants to engage CONSULTANT to provide these services by reason of its qualifications and experience; and

WHEREAS, CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein,

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 – SCOPE OF SERVICES

The Scope of Work to be performed by CONSULTANT under this Agreement is described in **Exhibit A**, which is attached to this Agreement.

SECTION 2 – DUTIES OF CONSULTANT

A. CONSULTANT shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its work.

B. CONSULTANT represents that it is qualified to furnish the services described in this Agreement.

C. CONSULTANT shall be responsible for employing or engaging all persons necessary to perform its services.

D. It is understood that _____ will be designated by CONSULTANT as the person providing services to CITY under this Agreement and that this designated person shall not be replaced without CITY's approval.

SECTION 3 – DUTIES OF CITY

A. CITY shall provide CONSULTANT the pertinent information regarding CITY's requirements for the Project.

B. CITY shall examine documents submitted by CONSULTANT and shall render decisions promptly, to avoid unreasonable delay in the progress of CONSULTANT'S work.

C. CITY certifies that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.

D. The contact person on the Project for CITY is designated as Eric Liljequist or assigned delegate. CITY shall provide written notice to CONSULTANT if CITY changes its contact person.

SECTION 4 – TERM

The services to be performed under this Agreement shall commence upon execution of the Agreement by both parties and be completed on or before June 15, 2021 for the Water System Risk & Resiliency Assessment, and on or before December 15, 2021 for the Emergency Plan Response.

SECTION 5 – PAYMENT

Payment shall be made by CITY to CONSULTANT only for services rendered and upon submission of a payment request and CITY approval of the work performed. In consideration for the full performance of the services set forth in **Exhibit A**, CITY agrees to pay CONSULTANT a fee not to exceed \$_____. Compensation shall be only for actual services provided based on the rates specified in **Exhibit A**.

SECTION 6 – TERMINATION

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall have the right to terminate this Agreement or suspend work on the Project for any reason upon ninety (90) days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement upon receipt of said written notice.

Either party may terminate this Contract upon not less than thirty (30) calendar days written notice should the other party fail to substantially perform in accordance with the terms and/or conditions of this contract or any supplements thereof and if the performance is not cured within that 10-day period after written notice is given.

SECTION 7 – OWNERSHIP OF DOCUMENTS

All documents prepared by CONSULTANT in the performance of this Agreement, although instruments of professional service, are and shall be the joint property of CITY and CONSULTANT, whether the Project for which they are made is executed or not.

SECTION 8 – CONFIDENTIALITY

All reports and documents prepared by CONSULTANT in connection with the performance of this Agreement shall be considered as confidential by CONSULTANT until they are released by CITY to the public. CONSULTANT shall not make any such documents or information available to any individual or organization not employed by CONSULTANT or CITY without the written consent of CITY before any such release.

SECTION 9 – INTEREST OF CONSULTANT

CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 10 – CONSULTANT'S STATUS

It is expressly agreed that in the performance of the professional services required under this Agreement, CONSULTANT shall at all times be considered an independent consultant, under control of CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONSULTANT an agent or employee of CITY while providing services under this Agreement.

SECTION 11 – INDEMNITY

CONSULTANT agrees to hold harmless and indemnify CITY, its officers and employees from and against any and all claims, loss, liability, damage, and expense but only to the extent caused by the negligent acts, errors or omissions of Consultant, its officers or employees in the performance of Professional Services under this Agreement.

SECTION 12 – INSURANCE

CONSULTANT shall provide and maintain:

A. Commercial General Liability Insurance, occurrence form, with a limit of not less than \$1,000,000 for each occurrence.

B. Automobile Liability Insurance, occurrence form, with a limit of not less than \$1,000,000.00 for each occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles.

C. Workers Compensation in at least the minimum statutory limits.

D. All insurance shall:

1. Include CITY as an additional insured with respect to this Agreement and the performance of services in this Agreement (except for Workers Compensation and Professional Liability Insurance).
2. Be primary with respect to any other insurance or self-insurance programs of CITY.
3. Be evidenced, prior to commencement of services, by properly executed policy endorsements in addition to a certificate of insurance provided to CITY.
4. No changes in insurance may be made without the written approval of CITY.

SECTION 13 – NONASSIGNABILITY

Both parties recognize that this Agreement is for the personal services of CONSULTANT and cannot be transferred, assigned, or subcontracted by CONSULTANT without the prior written consent of CITY.

SECTION 14 – RELIANCE UPON PROFESSIONAL SKILL OF CONSULTANT

It is mutually understood and agreed by and between the parties hereto that CONSULTANT is skilled in the professional calling necessary to perform the work agreed to be done under this Agreement and that CITY relies upon the skill of CONSULTANT to do and perform the work using that degree of care and skill ordinarily exercised under similar circumstances by reputable members of the engineering profession practicing in the same or similar locations.

SECTION 15 –WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of same or of any other term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money, which may become due hereunder shall not be deemed to be a waiver of

any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement of any applicable law or ordinance.

SECTION 16 – STATE PUBLIC CONTRACT PROVISIONS

All requirements of ORS Chapters 279, 279A, 279B, and 279C including but not limited to the following, as applicable, are incorporated herein by reference.

A. If CONSULTANT fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Contract as such claim becomes due, CITY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due CONSULTANT by reason of the Contract. The payment of a claim in the manner authorized above shall not relieve the CONSULTANT or its surety from its obligation with respect to any unpaid claims.

B. CONSULTANT and its subconsultants, if any, are subject to Oregon Workers' Compensation Law, which requires all employers that employ subject workers who work under this Contract in the State of Oregon to comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. CONSULTANT shall ensure that each of its subconsultants, if any, complies with these requirements.

C. CONSULTANT shall, upon demand, furnish to the CITY, written proof of workers' compensation insurance coverage. CONSULTANT is required to submit written notice to the CITY thirty (30) days prior to cancellation of said coverage.

D. CONSULTANT shall use recyclable products to the maximum extent economically feasible in the performance of the contract.

E. CONSULTANT is engaged as an independent consultant and will be responsible for any federal or state taxes applicable to any payments made under this Contract.

F. CONSULTANT agrees and certifies that it is a corporation in good standing and licensed to do business in the State of Oregon. CONSULTANT agrees and certifies that it has complied and will continue to comply with all Oregon laws relating to the performance of CONSULTANT's obligations under this Contract.

G. CONSULTANT shall:

G.1 Make payment promptly, as due, to all persons supplying to the CONSULTANT labor and material for the prosecution of the work provided for in the contract documents;

G.2 Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Contract;

G.3 Not permit any lien or claim to be filed or prosecuted against the CITY on account of any labor or material furnished; and

G.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

H. The CONSULTANT shall promptly as due, make payment to any person, copartnership or association or corporation furnishing medical, surgical and hospital care or other needed care and

attention, incident to sickness or injury, to the employee of such CONSULTANT, of all sums which the CONSULTANT agrees to pay for such services and all moneys and sums which the CONSULTANT collected or deducted from the wages of employees pursuant to any law, contract or Agreement for the purpose of providing or paying for such service.

I. The CONSULTANT shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29USC201 et. seq.).

J. An employer must give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

K. CONSULTANT will comply with 279.835 et seq. in the procurement of products and services from a nonprofit agency for disabled individuals.

L. CONSULTANT will use recycled products, as defined in ORS 279A.010(1)(ii), to the maximum extent economically feasible in the performance of the Contract.

SECITON 17 – NON-DISCRIMINATION CLAUSE

CONSULATANT agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Consultant also shall comply with the Americans with Disabilities Act of 1990 (Pub I. No. 101-336) including Title II of that Act, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. CONSULTANT further agrees that:

1. During the performance of a contract, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, religion, color, sex or natural origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the consultant. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The CONSULTANT, in all solicitations or advertisements for employees placed by or on behalf of the consultant, will state that such CONSULTANT is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient to meet this requirement.
4. The CONSULTANT will include the provisions of the foregoing paragraphs in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subconsultant or vendor.

SECTION 18 – ATTORNEY FEES

In the event a suit or action is instituted to enforce any right guaranteed pursuant to this Agreement, the prevailing party shall be entitled to, in addition to the statutory costs and disbursements, reasonable attorney fees to be fixed by the trial and appellate courts respectively.

SECTION 19 – NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

TO CITY:

TO CONSULTANT:

SECTION 20 – AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated Agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, and agreements, either written or oral. This document may be amended only by written instrument, signed by both CITY and CONSULTANT.

SECTION 21 – GOVERNING LAW

This Agreement shall be governed by the laws of the State of Oregon.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement the day and year written.

CITY OF WOODBURN:

CONSULTANT:

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT "C"

CERTIFICATE OF NON-DISCRIMINATION

Pursuant to ORS 279A.110, discrimination in subcontracting is prohibited. Any consultant who contracts with a public contracting agency shall not discriminate against minority, women or emerging small business enterprises in the awarding of contracts.

By signature of the authorized representative of the bidder/proposer, the bidder/proposer hereby certifies to the City of Woodburn that this bidder/proposer has not discriminated against minority, women, or emerging small business enterprises in obtaining any subcontracts; and, further, that if awarded the contract for which this bid or proposal is submitted, shall not so discriminate.

Date: _____

Signature: _____

Printed or Typed Name: _____

Name of Firm: _____

ATTACHMENT "D"

BIDDER/PROPOSER RESIDENCY STATEMENT

Pursuant to ORS 279A.120, Oregon's Reciprocal Preference Law, public contracting agencies shall, for the purposes of determining the lowest responsible bidder/proposer and the awarding of a contract, add a percent increase on the bid of a non-resident bidder/proposer equal to the percent, if any, of the preference given to that bidder/proposer in the state in which the bidder/proposer resides.

As defined in ORS 279A.120, "Resident Bidder/proposer" means a bidder/proposer 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/proposer is a "Resident Bidder/proposer". A "Non-resident Bidder/proposer" is a bidder/proposer who does not meet the definition of a "Resident Bidder/proposer" as stated above.

1. Bidder/Proposer IS IS NOT a "Resident Bidder/proposer" as set forth above.
2. If a Resident Bidder/Proposer, enter your Oregon Business address below:

3. If a Non-resident Bidder/Proposer, enter state of residency:

Bidder/Proposer hereby certifies that the information provided is true and accurate.

Signature: _____

Date: _____

Printed or Typed Name: _____

Title: _____

Firm: _____

Telephone: _____