



City of Coburg, Oregon

FORMAL REQUEST FOR PROPOSALS (RFP)

for

Engineer of Record Firm “City Engineer”

Release Date: April 26, 2024

Due Date & Time: May 28, 2024 at 4:00 PM



REQUEST FOR PROPOSALS

1. INTRODUCTION

The City of Coburg (“City”) is soliciting proposals for an Engineer of Record firm (“City Engineer”) to provide engineering services as an independent contractor to the City. The services to be provided under the City Engineer contract include, but are not limited to, the services listed in section 2A of Attachment A of this Request for Proposals (“RFP”). The work of the City Engineer must be provided to the City either on an ongoing or on an as-needed basis authorized by City task orders. Such services will be assigned based upon the successful firm’s availability, qualifications, specializations, and cost.

The City expects the contract resulting from this RFP to be for a three-year initial term, with options to renew for at least two additional one-year terms beginning as soon as July 1, 2024. During the contract term, at the end of each fiscal year, the City and the City Engineer will agree to adjust billing rates as necessary to accommodate inflation.

As a rough estimate, the City estimates that the City Engineer firm will average a total of between \$25,000 and \$50,000 per month in billable service hours in FY 24/25. Responsive Proposers must be licensed to practice engineering by the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS). The City will consider proposals from individual licensed engineers as well as engineering firms with multiple licensed practitioners.

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3. RFP PROCEDURES

Proposals properly submitted and received will be opened immediately following the time proposals are due, and a list of the names of persons submitting proposals will be sent to all proposers, along with such other information as the public officer may consider appropriate at the time.

To be considered, proposals must be submitted electronically to the email address stated in the Advertisement, in accordance with all the following instructions:

1. Proposals must be submitted as an attachment to an email, submitted to the email address stated in the Advertisement,
2. The subject line of the email must clearly identify the submission as a response to this RFP, and
3. Unless otherwise stated in the Proposal Requirements, proposal documents may be submitted in PDF format only.



The City may issue an addendum to modify or add to the terms of the RFP, or to change the time or date for submission of proposals. Any such addendum will be posted and may be downloaded from the same location on the City of Coburg website where the RFP is posted. Each proposer is responsible to verify for itself if any addendum has been issued prior to submission of its proposal; the City is not responsible to notify individual prospective proposers of the issuance of an addendum. The requirements or clarifications contained in any addendum issued must be included in the proposals received and will become part of any resulting contract.

The City may reject any proposal not in compliance with the proposal procedures set forth in this RFP, applicable Oregon Administrative Rules, or Oregon law, and may reject for good cause any and all proposals upon the City's finding that it is in the public interest to do so.

4. PREPARATION AND SUBMISSION OF PROPOSALS

4.1 Proposal Preparation. Persons responding to this RFP (“**Proposers**”) are responsible to read and understand all portions of the RFP documents, including attachments and addenda (if any), and to include all RFP requirements in their proposals. To be responsive, proposals must be made in writing, and address the background, information, questions, criteria, and requests for information contained in the RFP. Proposals must be submitted in the required form and must contain all other required documents and responses, be signed by the proposer or the proposer’s authorized representative, and submitted in the manner stated in this RFP.

4.2 Proposals Subject to Oregon Public Records Law. Proposals submitted in response to this RFP become public records under Oregon law and, following contract award, will be subject to disclosure to any person or organization that submits a public records request. Proposers are required to acknowledge that any proposal may be disclosed in its entirety to any person or organization making a records request, except for such information as may be exempt from disclosure under the law.

Each proposer must clearly identify all information included in its proposal that is claimed to be exempt from disclosure. The proposer is responsible to only mark material that legitimately qualifies for an exemption to disclosure under ORS 192.311 through 192.478. If the City receives a records request, or a subpoena, covering information the bidder believes is covered by an applicable public records exemption, it will be the proposer’s responsibility to defend and indemnify the City for any costs associated with establishing such an exemption.

4.3 Proposal Submission. Proposals must be received by the time and date stated for receipt in the Advertisement. To be considered, proposals must be submitted in the form and manner stated in the Invitation for Proposals, complete with a Proposer’s Statements & Certifications Form signed by the proposer or its authorized representative, responses to all criteria and requirements included in the RFP, other documents required to be submitted, if any, and contain the number of copies required.

By submitting a proposal, the Proposer acknowledges that it has read and understands the terms and conditions applicable to this RFP, and accepts and agrees to be bound by the terms and conditions of the contract, except as stated in the proposal, and including the obligation to perform the scope of work and meet the performance standards.

4.4 Correction, Withdrawal, and Late Submissions. A Proposer may withdraw its proposal at any time prior to the deadline set for receipt of proposals by email to the person identified for receipt of proposals, and may submit a new sealed proposal in the manner stated in the Request for Proposals. The City will not consider proposals received after the time and date indicated for receipt of proposals. A Proposer may not modify its proposal after it has been deposited with the public officer, other than to address minor informalities, unless the proposal is withdrawn and resubmitted as described above.



5. CLARIFICATION OR PROTESTS OF SOLICITATION DOCUMENTS

- 5.1 Clarifications.** If a Proposer finds discrepancies or omissions in the RFP documents, or is in doubt as to their meaning, the Proposer must immediately notify the public officer designated for receipt of proposals or other person identified for submission of questions.

If the public officer believes a clarification is necessary, an addendum will be issued in writing and available on the City's website where the RFP is posted. The addendum may postpone the date for submission of proposals. The requirements or clarifications contained in any addenda so issued must be included in the proposals received and will become part of any resulting contract.

The apparent silence of the RFP documents regarding any detail, or the apparent omission from the RFP of a detailed description concerning any point, means that only the best commercial or professional practice, material, or workmanship is to be used.

- 5.2 Protest of Solicitation Documents.** A prospective qualified Proposer may protest the competitive selection process or provisions set forth in the RFP documents, if the prospective Proposer believes the solicitation process is contrary to law or that a solicitation document is: (a) unnecessarily restrictive, (b) legally flawed, or (c) improperly specifies a brand name, pursuant to the requirements of ORS 279B.405(2). Any written protest must be submitted to the public officer identified for receipt of proposals not less than 10 days prior to the deadline for submission of proposals.

The City will consider a protest of the solicitation documents if the protest is timely filed and contains all the following items:

- a. The title of the RFP that is the subject of the protest;
- b. The grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unnecessarily restrictive, is legally flawed, or improperly specifies a brand name;
- c. Evidence or supporting documentation that supports the grounds on which the protest is based; and
- d. A statement of the changes to the procurement process or the RFP document that the prospective Proposer believes will remedy the conditions upon which the protest is based.

If the protest meets these requirements, the City will consider the protest and issue a decision in writing. If the protest does not meet these requirements, the City will promptly notify the prospective Proposer that the protest is untimely or that the protest failed to meet these requirements, and state the reasons for the failure. The City will issue its decision on the protest not less than 3 business days before proposals are due, unless the City makes a written determination that circumstances justify a shorter time limit.

6. OPENING OF PROPOSALS

- 6.1 Proposals Held Until Time for Opening.** The City will not examine any proposal prior to the deadline for submitting proposals. The public officer designated for receipt of proposals may, as time allows, verify that the response document(s) attached to a submission was received intact, and may, but is not required to, notify a Proposer that an emailed submission was received in an incomplete or defective form.
- 6.2 Late Submissions.** Any proposal or modification received after the designated deadline will not be opened or considered.
- 6.3 Inspection of Proposals Submitted.** The proposals submitted will be open to public inspection immediately after the issuance of a notice of intent to award, with the exception of any information submitted that is exempt from disclosure.



7. PROPOSAL EVALUATION AND AWARD

- 7.1 Responsiveness.** Proposals will be reviewed by the public officer for responsiveness to the minimum requirements established by the RFP, which include at a minimum, but are not limited to:
- a. Submission of a completed Proposer Statements & Certifications Form in the form included as Attachment C to this RFP.
 - b. Compliance with the procedures and requirements set out in the RFP, Oregon Administrative Rules Chapter 137, Divisions 46 through 49, and Oregon Public Contracting Law.
 - c. Application of any applicable preferences for goods and services that have been manufactured, produced or performed in Oregon (ORS 279A.120), resident bidder status (ORS 279A.120), recycled materials (ORS 279A.125), or printing (ORS 282.210).

- 7.2 Proposal Evaluation.** The City will make contract award based on the responsiveness of the actual proposals received to the requirements established in the RFP, considering price, qualifications, experience, resources, proposed services, proposers' past record of performance, and other relevant factors, as well as responses received from references, interviews, post-RFP submissions, and follow-up questions, if any.

Each proposal will be evaluated by the City's evaluation committee on the basis of the process and scoring established in Attachment D. Based upon evaluation of the submitted proposals, the evaluation committee may choose to conduct further interviews or discussions with two or more proposers with the highest-scored proposals, as described in Attachment D. Any Interviews may include a requirement for presentation by the Proposer and questions from the City regarding the proposal and services to be provided. Specific criteria for selection interviews, if any, will be distributed at the time interviews are scheduled.

In evaluating the proposals and selecting a contractor, the City reserves the rights to:

- a. Reject any and all proposals,
 - b. Issue subsequent Requests for Proposals for the same or similar goods or services,
 - c. Not award a contract for the requested services,
 - d. Waive any irregularities or informalities,
 - e. Accept the proposal which the City deems to be the most beneficial to the City,
 - f. Award multiple contracts based on the RFP,
 - g. Negotiate with any proposer to further amend, modify, redefine or delineate its proposal,
 - h. Negotiate and accept, without re-advertising, the proposal of the next-highest scored proposer, in the event that a contract cannot be successfully negotiated with the selected proposer, and
 - i. Further question any proposer to substantiate claims of experience, background knowledge, and ability.
- 7.3 Mistakes in Proposals.** Minor informalities may be waived. Mistakes discovered after opening where the intended correct statement or amount is clearly evident or properly substantiated may be corrected. Where the intended correct statement or amount is not clearly evident or cannot be substantiated by accompanying documents, and where the statement or amount is material to determining compliance with the minimum requirements of the RFP, the proposal may be rejected. The City reserves the right to waive technical defects, discrepancies and minor irregularities, and to not award a contract when it finds such action to be in the public interest.
- 7.4 Notice of Award.** The City will provide written notice of its intent to award to a given proposer or proposers at least 7 days before the award, unless the City determines that a shorter notice period is more practicable. Unless otherwise stated in the RFP documents, the Notice of Intent to Award will be given by posting the notice on the City of Coburg webpage in the same location as the RFP posting.



- 7.5 Protest of Intent to Award.** Any Proposer that submitted a proposal in response to the RFP that is not recommended for award may protest the City's intention to award. To be considered, the protesting Proposer must be eligible to be awarded the contract in the event that the protest is successful. Determination on protests will be made by the decision maker, either the City Administrator or the City Council, depending upon which has authority to execute the contract. To be considered, a protest must be submitted in writing to the public officer and received within 7 calendar days after the Notice of Intent to Award is posted, and must contain the grounds for the protest, in accordance with OAR 137-047-0700 through 137-047-0745.
- 7.6 Rejection of Proposals.** If all proposals are rejected, new proposals may be called for in a new solicitation, or the proposals received may be considered with an opportunity for supplemental submission from those proposers that submitted proposals, if the City finds that it is unlikely that re-advertising would lead to greater competition. The public officer is delegated the authority to reject all proposals, prepare findings of best interests, and provide written notice of rejection of all proposals.



ATTACHMENT A – DESCRIPTION OF SERVICES REQUIRED

A1. BACKGROUND INFORMATION

The City of Coburg was founded in 1847 and incorporated in 1893. The current population is approximately 1,440 with an area of 1.03 square miles. The City is located in Lane County, approximately five miles north of Eugene, Oregon. The City Council consists of the mayor and six city councilors. The selected consultant will work under the direction of the City Administrator and Public Works Director.

Through the Public Works Department, the City owns and operates various utility systems and types of infrastructure that serve the residents of the City, including the water system, wastewater system, storm drainage system, and local streets and right of way. The Public Works Department also provides operation and maintenance of City parks City-owned buildings. Among the public facilities operated by the City are:

- Water wells (3), 2 storage reservoirs, and distribution system of 12.5 miles of pipe)
- Wastewater collection system, 11.5_(STEP) miles of gravity/pressure pipe).
- Wastewater treatment plant (MBR system).
- Storm water collection and disposal system (Limited curb/gutter, mostly none/infiltration systems).
- Road system (9.5 miles).
- Parks system (7 parks, about 28.8 total acres)

A2. SCOPE OF SERVICES

The following statement of work describes the on-going services that the City Engineer may be asked to provide to the City. These services will be assigned on an ongoing or on as-needed basis under individual task orders. The City will compensate the City Engineer for general engineering services based on standard hourly rates and a fee schedule to be included by exhibit in the executed contract. During the course of any task order, the City Engineer is expected to be available on a daily basis for consultation.

Proposers need not be able to provide all listed services, but should identify particular areas of expertise in their proposals. The scope of services for the City Engineer may include, but is not limited to, the following.

- Assist with budgeting, planning, and rate studies for all projects within City CIP.
- Suggest and comment on engineering related issues, ordinance modifications and public works design standards and construction specification modifications.
- Assist with GPS/GIS data gathering and information compilation relating to existing infrastructure.
- Work with City staff to review or complete federal, state or county permits, applications, or agency notification.
- Work with City staff, organizations and funding agencies to help develop competitive and complete grant applications or funding proposals.
- Act as the City's representative with other state, federal or local governmental agencies.
- Serve as the City's representative during the review, plan approval, construction management, and project closeout phases of any development or planning project prepared by other engineers and submitted to the City for approval. This includes land development projects such as subdivisions or site-specific developments.



- Review preliminary engineering design drawings and design calculations for general conformance with state, county, and city requirements and sound engineering practices.
- Review final submitted construction plans prepared by other professionals and, after acceptance, stamp and sign the drawings as "Approved for Construction" by the CITY ENGINEER.
- Attend pre-application, construction, Planning Commission, City Council or other meetings as requested by the City.
- Provide detailed design and construction specifications for successful bidding and construction coordination of city infrastructure improvement and maintenance projects.
- Provide project construction observations of public improvements installed as part of private development projects. Verify general conformance with city approved construction plans and specifications.
- Provide project management, engineering design, and construction observation for City public works construction projects.
- Perform final construction inspections and punch lists for completion of private developments and for City of Coburg project sites, including review of as-built drawings, testing results, as-built certification, project closeout and initiation of the required construction warranty period.
- Perform engineering work pertaining to public records, property acquisitions, condemnations, forfeiture activities, public improvements and improvement districts, public rights of ways, easements, code enforcement, and matters relating to special assessments and public utilities.
- Prepare utility master plans feasibility studies as requested.
- Perform additional basic engineering and special services which cannot be fully described at this time, as requested by the City.
- Prepare and lead monthly staff meetings to review and provide updates on current and upcoming projects, including progress status, costs to date, upcoming decision points, etc
- Prepare detailed monthly invoicing to City for services rendered organized by project/task order that includes current month invoice and project to date billings

For special projects, the City Engineers of Record will provide a written scope of work and proposal in response to a written request from the City. The scope and proposal must include a detailed statement of work, schedule, and cost estimate. Special projects may include, but are not limited to, design of city owned public works facilities including streets, water, sewer, storm drainage facilities, and City-owned parks and buildings.



ATTACHMENT B – REQUIRED ELEMENTS OF PROPOSALS

B1. PROPOSAL DOCUMENTS AND FORMAT.

B1.1 Documents to be Submitted. The proposal submitted must include all the following:

- a. Responses to each of the required items stated under 1.2 below,
- b. A completed and executed Proposer Statements and Certifications form, and
- c. A statement of any exceptions taken to the requirements of this RFP.

B1.2 Format Requirements. The proposal submitted must be in compliance with the following rules:

- a. Be in the order and numbering requested,
- b. Be submitted in the form and within the limitations stated in the Invitation to Submit Proposals,
- c. Contain primary text and headings in not less than 10 point type (with smaller text acceptable in notes, graphs, requested tables, and images), and
- d. Be limited to 20 pages, nominal 8.5" x 11" size. Pages used for a cover letter (which may not exceed two pages), section dividers, resumes, and exceptions are not included in the page limit.

B2. REQUIRED RESPONSE CRITERIA. The proposal must address each of the following:

B2.1 Qualifications.

- a. Give the name and qualifications of the licensed individual who will serve as the City Engineer.
- b. List the names and qualifications of the licensed individuals who will assist the City Engineer.
- c. Provide resumes of all licensed individuals named in this Qualifications section.
- d. Provide a narrative specifically addressing the Proposer's familiarity with laws and regulations governing public water, wastewater, stormwater, and road systems, including operations, construction and maintenance.

B2.2 Areas of Expertise. Describe Proposer's expertise in each of the following areas:

- a. Deep well groundwater pumps and water distribution systems,
- b. Municipal ground/surface water rights acquisition and maintenance,
- c. Pump station STEP system wastewater collection systems,
- d. MBR wastewater treatment with land applied effluent disposal,
- e. WPCF and NPDES permit regulations and compliance,
- f. Municipal transportation systems involving state and federal highways,
- g. Road maintenance techniques and applications,
- h. Oregon land use law/planning and development related infrastructure issues,
- i. Public improvement contracting and administration,
- j. Contract law and intergovernmental agreements,
- k. Public finance and infrastructure financing.
- l. Oregon and federal regulations relating to development activities in/near wetlands
- m. Standard and alternative storm water management infrastructure and operations/maintenance

B2.3 Capacity.

- a. Describe Proposer's workload capacity and experience and strategies accommodating the level of service required by the City with pre-existing client base.
- b. Describe Proposer's facilities, resources, and support staff available to assist licensed engineering staff.
- c. Describe existing subconsultant relationships that may provide support to assist licensed engineering staff.
- d. Discuss Proposer's experience with, involvement in, or ability to use resources from the local community.

B2.4 References. Provide not fewer than three individual references drawn from government clients for whom similar services have been provided, including at least one municipal government client. For all references, please include names, phone numbers, email addresses, and a description of work



performed, including the style/type of operating structure employed to serve each referenced municipal government client. Please ensure that contact information is current and that references are familiar with the work.

- B2.5 Rates.** Provide a schedule of hourly rates for reimbursable staff, and a description of any other reimbursable costs.
- B2.6 Exceptions.** If the Proposer takes exception to any requirements of this RFP, those exceptions must be listed here. Exceptions will not be scored, but will be evaluated to determine their effect on the responsiveness of the Proposal.



ATTACHMENT C – PROPOSER’S STATEMENTS & CERTIFICATIONS

Proposer's Name: _____

RFP Title: Engineer of Record (City Engineer)

PROPOSER STATEMENTS

Proposer's Offer. Proposer offers to provide the required services in accordance with the requirements of the Request for Proposals (RFP) named above and the enclosed proposal. The undersigned Proposer declares that the Proposer has carefully examined the above-named Request for Proposals, and that, if this proposal is accepted, Proposer will execute a contract with the City of Coburg to furnish the services included in the proposal submitted with this form. Proposer attests that the information provided in its Proposal is true and accurate to the best of the personal knowledge of the person signing the Proposal, and that the person signing has the authority to represent the individual or organization in whose name this proposal is submitted.

Proposer's Acceptance of Terms and Conditions. By execution of this Form, the undersigned Proposer accepts all terms and conditions of this Request for Proposals except as modified in writing in its proposal. Proposer agrees that the offer made in this proposal will remain irrevocable for a period of 60 days from the date proposals are due.

Proposer's Acknowledgement of Public Records Law. By execution of this Form, the undersigned Proposer acknowledges that its entire proposal is subject to Oregon Public Records Law (ORS 192.410–192.505), and may be disclosed in its entirety to any person or organization making a records request, except for such information as may be exempt from disclosure under the law. Proposer agrees that all information included in this proposal that is claimed to be exempt from disclosure has been clearly identified either in the proposal, or in an itemization attached hereto. Proposer further acknowledges its responsibility to defend and indemnify the City for any costs associated with establishing an exemption claim made by the Proposer.

ADDENDA

Proposer has received and considered, in the accompanying proposal, the terms of the following addenda, if any: _

CERTIFICATIONS

By signing this Proposer's Certification form, Proposer certifies that:

1. Certification of Resident Bidder Status. Proposer is _____ is not _____ (check one) a resident bidder, as defined in ORS 279A.120.
2. Certification of Non-Discrimination. Proposer has not discriminated and will not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns, or an emerging small business that is certified under ORS 200.055.
3. Certification of Non-Collusion. This proposal is made without connection or agreement with any individual, firm, partnership, corporation, or other entity making a proposal for the same services, and is in all respects fair and free from collusion or collaboration with any other proposer.
4. Certification of Compliance with Tax Laws. Proposer certifies that it has, to the best of Proposer's knowledge and under penalty of perjury, complied with Oregon tax laws in the period prior to the submission of this proposal, including:
 - (a) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318,
 - (b) Any tax provisions imposed by a political subdivision of this state that applied to Proposer or its property, goods, services, operations, receipts, income, performance of or compensation for any work performed, and



- (c) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

The undersigned, by signature here, acknowledges, accepts, and certifies to the statements and certifications as stated above.

PROPOSER

Authorized signature

Proposer's legal name

Name of authorized signer

Address

Title

Date

Federal Tax ID number

OPTIONAL CONTACT INFORMATION REGARDING THIS PROPOSAL

Contact name

Telephone number

Email address



ATTACHMENT D – SELECTION PROCEDURE AND SCORING

D1. EVALUATION PROCESS. The public officer and City of Coburg staff will conduct the selection process for this RFP, which will include the procedures checked here:

- Will include evaluation and scoring of initial proposal
- May Will Not (check one) include interviews of top-scored proposers
- May Will Not (check one) include a requirement for additional questions and responses from top-scored proposers May Will Not (check one) include competitive negotiations with top-scored proposers

Notwithstanding the selection procedures identified above, the City reserves the right to terminate the evaluation process after completion of any procedural stage when, in the City’s sole opinion, further evaluation procedures are not required to identify the proposer whose offer will best suit the City’s interests.

D2. PROPOSAL SCORING. Proposals will be scored according to the following criteria:

	Criterion	Points
1.	Qualifications	30
2.	Areas of Expertise	30
3.	Capacity	10
4.	References	10
5.	Rates	20
	Total Possible Points	100

D3. SHORTLIST DETERMINATION. If the City is unable to make a determination of the best proposal based upon the proposal scoring, the City may invite up to three proposers to proceed to a further stage of evaluation as identified in section D1 above. If further stages are required, the method adopted for the further stage may be used as the sole method for selecting a Proposer for contract award.



ATTACHMENT E – SAMPLE CONTRACT AND INSURANCE REQUIRED

- E1. SAMPLE CONTRACT FORM.** The contract resulting from this RFP will be prepared based upon the City's standard consultant contract form, unless specified otherwise. A copy of the contract form is included following this page.
- E2. INSURANCE REQUIREMENTS.** The insurance requirements for the contract are those attached to the sample contract form. Prior to commencement of the work, the selected Proposer must provide, at its own expense, all required insurance stated therein from companies authorized to do business in the State of Oregon, and obtain the City's approval of the limits, form, and amount.
- E3. PROPOSER COMMENTS ON CONTRACT FORM AND INSURANCE REQUIREMENTS.** Any proposer may take exception to conditions in the City's contract form or insurance requirements by including such exceptions and any proposed changes with the proposal submitted. The City will consider any such proposed modification, reduction, or exclusions in determining proposal responsiveness or in scoring the proposal.



SAMPLE

CITY OF COBURG CITY ENGINEERING SERVICES CONTRACT

This Contract is by and between the City of Coburg ("City") and _____ ("Engineer") for the performance of general city engineering services for City, on an as needed basis.

A. RECITALS

City has conducted a formal solicitation for proposals from engineering firms pursuant to City Public Contracting Rules Division 48.

Engineer submitted its proposal, having examined the Request for Proposals (RFP), and was chosen as the most highly qualified engineer, best suited to meet City's needs pursuant to the RFP criteria.

City has awarded this contract to Engineer.

B. CONTRACT EXHIBITS

The following exhibits are hereby incorporated by reference into this Contract:

Exhibit A – Scope of Work

Exhibit B – Task Order Form

Exhibit C – Oregon Personal Services Public Contracting Code Requirements

Exhibit D – Request for Proposal

Exhibit E – Engineer's Proposal and Schedule of Rates and Charges

In the event of a conflict between this Contract and its exhibits, the terms of this Contract shall prevail, followed by Exhibit B, C, A, D, then Exhibit E, in that order.

C. AGREEMENT

1. Term and Authorization to Proceed

1.1 The term of this Contract shall be from its execution to _____, 20____, for an initial three (3) year term. Thereafter, it may be extended for up to two (2) additional one (1) year terms upon written consent of both parties. Such extension(s) will consider adjustment to Engineer's schedule of charges attached within Exhibit E to this Contract.



- 1.2 Execution of this Contract by the parties authorizes Engineer to proceed with the work under the provisions of this Contract, upon issuance of one or more written task work orders by City.

2. Scope of Work

- 2.1 Engineer shall provide all services and deliver all materials as specified in the attached Exhibits A through E, which are hereby incorporated into this Contract by this reference, and as may be described by future task work order or addenda to this Contract.
- 2.2 Engineer will, in the rendering of its services to City, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered.
- 2.3 Task Orders. Task orders in the form attached as Exhibit B shall be used as the sole basis to authorize all Work related to this Agreement. Task orders are subject to all terms of this Contract and shall establish the assigned Scope of Work, delivery schedule, and total compensation that reflects an identified payment methodology, the rates set in Exhibit E, hours, and includes any reimbursables. Task orders that do not meet these requirements shall not bind the parties and no further compensation will be paid for any Work performed.

City shall have the right to request Work outside the scope of any task order to this Contract and to cancel a portion of the Work at any time. A task order amendment shall set compensation for all additional Work requested and a reduction thereto, in the event City cancels Work. City shall not be liable for profits lost due to cancelled Work. Engineer shall perform no Work outside the scope of any task order to this Contract until the parties have signed a modification to the task order that describes the Work and contains the terms of payment. Engineer shall not be entitled to payment for Work outside the scope of a task order, unless the parties signed a modification to the task order before Engineer performed that Work. Engineer shall not make modifications to the task orders or standard terms and conditions of this Contract except in writing, signed by both parties.

3. Compensation

- 3.1 Compensation. For the services described and performed by Engineer, the City agrees to pay, and the Engineer agrees to accept, compensation in accordance with the Schedule of Rates and Charges, attached within Exhibit E.



3.2 Invoices.

- a. Invoices for services of Engineer shall be billed to the City on a time and materials basis in summary form, itemized by projects and/or Task Orders, on or about the end of the first full business week of each month, for all services performed through the last day of the previous month.
- b. Engineer will provide in its invoices a detailed description of hours billed to assist City in correctly allocating costs to separate projects, or may modify the billing statement into a format that is agreeable to both parties. Reimbursable expenses shall be itemized and backup invoices provided if required by City.

3.3 Payments.

- a. City will review Engineer's invoice and within ten (10) days of receipt notify Engineer in writing if there is a disagreement or dispute with the invoice. If there are no such disputes with the invoice, City shall pay the invoice amount in full within thirty (30) days of invoice date.
- b. If City fails to make any payment due Engineer for services and expenses within thirty (30) days of the date on Engineer's invoice therefore, late fees will be added to amounts due Engineer at the rate of 1.0 percent (1%) per month from original invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute. In addition, Engineer may, after giving seven (7) days written notice to City, suspend services under this Contract until Engineer has been paid in full all amounts due for services, expenses, and charges, except any invoices in dispute.

4. **Engineer Is an Independent Contractor**

- 4.1 Engineer shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under this Contract. While City reserves the right to set various schedules and evaluate the quality of Engineer's completed work, City cannot and will not control the means and manner of Engineer's performance. Engineer is responsible for determining the appropriate means and manner of performing work.
- 4.2 Engineer is responsible for all federal and state taxes applicable to compensation and payment paid to Engineer under this Contract and will not have any amounts withheld by City to cover Engineer's tax obligations.
- 4.3 Engineer is not eligible for any City fringe benefit plans.



4.4 No Authority to Bind City. Engineer shall have no authority to enter into contracts on behalf of City, its officers, agents and employees. This Agreement shall not create a partnership or joint venture of any sort between the parties.

5. Notices

All notices provided for hereunder shall be in writing and shall be deemed to be duly served on the date of delivery if delivered in person, when receipt of transmission is generated by the transmitting facsimile machine if delivered by facsimile transmission, on the day after deposit if delivered by overnight courier, or three days after deposit if delivered by placing in the U.S. mail, first-class, postage prepaid. Any notice delivered by facsimile transmission shall be followed by a hard copy. All notices shall be addressed as follows:

City: City of Coburg
91136 N Willamette Street

P.O. Box 8316

Coburg, Oregon 97408

Phone: 541- _____

Fax: 541- _____

Engineer: _____

Phone: _____

Fax: _____

6. Indemnification

Engineer shall indemnify, hold harmless, and defend District and its representatives, officers, directors, and employees from any loss or claim made by third parties, including legal fees and costs of defending actions or suits resulting directly or indirectly from Engineer's negligent performance and/or fault of Engineer, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of District and Engineer, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.



Engineer shall defend District from claims covered under this Section at Engineer's sole cost and expense until such time: (1) as an arbitration panel or a court of competent jurisdiction determines that District is liable in whole or in part for the loss or claim caused by District's negligence; or (2) until District and Engineer mutually agree to allocate the liability.

Engineer's indemnification obligations under this Section 6 shall survive the expiration or earlier termination of this Contract.

7. Insurance Requirements

7.1 During the term of this Contract, Engineer shall maintain, at its own expense, the following types of insurance in the following amounts:

- a. Occurrence form commercial general liability insurance, including coverage for premises operations, independent contractors, protected products, completed operations, contractual liability, personal injury, and broad form for property damage (including coverage for explosion, collapse, and underground hazards):

\$2,000,000 – each occurrence (bodily injury)

\$4,000,000 – general aggregate

\$1,000,000 – property damage, contractual, etc.

\$2,000,000 – umbrella liability coverage

Coverage shall also include contractual liability coverage for the indemnity provided under this Contract. (Proof of coverage will be attached to this Contract).

- b. Automobile Liability insurance limit shall not be less than \$1,000,000 combined single limit per accident. (Proof of coverage will be attached to this Contract).
- c. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence. (Proof of coverage will be attached to this Contract).
- d. Professional Errors and Omissions insurance covering Engineer's liability arising out of negligent acts, errors or omissions in its performance of work or services under this Contract. Such policy will have a combined single limit of not less than \$2,000,000 per each claim, incident or occurrence. Such policy will be either on a claims made basis and will



have an extended claims reporting period of five (5) years after final completion or on an occurrence basis. (Proof of coverage will be attached to this Contract).

- e. The limits required in this Section 7.1 may be met with a combination of underlying and umbrella coverage.
- 7.2 Except as required in 7.1(d) above, if any of the above required insurance is arranged on a "claims made" basis instead of an occurrence basis, "tail" coverage will be required at final completion or termination of this Contract for a duration of two (2) years.
- 7.3 Policies shall provide that City, its Council, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 7.1(a) and Section 7.1(b) and a waiver of subrogation against them shall be obtained for all coverages.
- 7.4 All coverages under Section 7.1 shall be primary over any insurance City may carry on its own. City shall procure and maintain general liability insurance during the full term of this contract which provides insurance coverage up to the limits of the Oregon Tort Claims Act, in connection with any actions suit, or claim from any third party caused by City's negligent acts, omissions, activities or services by City or its officers, employees or agents.
- 7.5 City shall be solely responsible for any loss, damage or destruction to its own property, equipment, and materials used in conjunction with the work or services under this Contract if the loss, damage or destruction is due to the City's negligence or fault.
- 7.6 All policies of insurance shall be issued by good, responsible companies that are qualified to do business in the State of Oregon and listed by A.M. Best as an A-VIII or above.
- 7.7 Engineer shall furnish City with certificates of insurance evidencing all required coverages prior to commencing any work or services under this Contract. If requested by City, Engineer shall furnish City with executed copies of such policies of insurance. Engineer shall furnish City with at least 30 days' written notice of cancellation of, or any modification to, the required insurance coverages. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract.



8. Workers' Compensation

- 8.1 Engineer, its subconsultants, if any, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all subject workers.
- 8.2 Engineer warrants that all persons engaged in Contract work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Engineer shall indemnify City for any liability incurred by City as a result of Engineer's breach of the warranty under this Section.

9. Hours of Employment

Engineer shall comply with all applicable state and federal laws regarding employment.

10. Assignment

Engineer may not assign any of its responsibilities under this Contract without City's prior written consent, which consent may not be withheld in City's sole discretion. Engineer may not subcontract for performance of any of its responsibilities under this Contract without City's prior written consent, which consent shall not be unreasonably withheld. Engineer's assigning or subcontracting of any of its responsibilities under the Contract without City's consent shall constitute a material breach of this Contract. Regardless of any assignment or subcontract, Engineer shall remain liable for all of its obligations under this Contract.

11. Labor and Material

Engineer shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of all Contract work, all at no cost to City other than the compensation provided in this Contract.

12. Ownership of Work and Documents

- 12.1 Ownership of Work, Unauthorized Use of Work. All work performed by Engineer and compensated by City pursuant to this Contract shall be the property of City upon full compensation for that work performed or document produced to Engineer, and it is agreed by the parties that such documents are works made for hire. Engineer hereby conveys, transfers and grants to City all rights of reproduction and the copyright to all such documents. However, in the event City reuses or modifies any engineering documents furnished to City by Engineer,



without Engineer's involvement or consent, then Engineer shall not be responsible for the materials.

12.2 Intellectual Property.

- a. The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this Contract shall vest in City, except for work exempted by Section 12.2.b below. Upon request, Engineer shall execute any assignment or other documents necessary to give effect to this Section. Engineer will retain a nonexclusive right to use intellectual property vested in City as part of this Contract.
- b. Engineer shall retain all intellectual property rights (including but not limited to copyrights and/or patents of any type) for work completed by Engineer prior to execution of this Contract, or completed for other clients or outside of the scope of this Contract. This includes but is not limited to design elements developed on previous projects, as well as standard contract documents, standard specifications, design standards manuals, standard details or other standard documents, details or drawings developed prior to execution of or outside the scope of this Contract.
- c. City will retain a nonexclusive right to utilize documents and materials provided to City by Engineer which are excluded under Section 12.2.b, but shall not profit from such use, and shall not provide these documents or materials for use by other jurisdictions without authorization from Engineer.

13. Termination or Suspension for Convenience

- 13.1 This Contract may be terminated or suspended by mutual consent of the parties upon written notice.
- 13.2 In addition, City may terminate or suspend all or part of this Contract upon determining that such action is in the best interest of City by giving seven (7) days' prior written notice, without waiving any claims or remedies it may have against Engineer.
- 13.3 Upon termination under this Section, Engineer shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) City has against Engineer. Only if previously approved in writing by City will City pay Engineer's reasonable costs actually incurred in the orderly closing out of specific work tasks or projects underway under this Contract. Pursuant to this Section, Engineer shall submit an itemized invoice for all unreimbursed Contract work



completed before termination and any previously approved Contract closeout costs actually incurred by Engineer. City shall not be liable for any costs invoiced later than thirty (30) days after termination, unless Engineer can show good cause beyond its control for the delay.

14. Termination or Suspension for Cause

- 14.1 City may terminate or suspend this Contract effective upon delivery of written notice to Engineer, or at such later date as may be established by City, under any of the following conditions:
- a. If City funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.
 - b. 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 Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
 - c. If any license or certificate required by law or regulation to be held by Engineer to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

15. Termination for Default

- 15.1 If the City fails to perform in the manner called for in this Contract or if the City fails to comply with any other provisions of the Contract, the Engineer may terminate this Contract for default after giving the City the notice and opportunity to cure required by this Section. Prior to termination for default, Engineer must give City written notice of the breach and of Engineer's intent to terminate. If City has not entirely cured the breach within fifteen (15) days of the date of the notice, then Engineer may terminate the Contract at any time thereafter by giving a written notice of termination.
- 15.2 If Engineer fails to perform in the manner called for in this Contract or if Engineer fails to comply with any other provisions of the Contract, City may terminate this Contract for default. Termination shall be affected by serving a notice of termination on Engineer setting forth the manner in which Engineer is in default. Engineer shall be paid the Contract price only for services performed in accordance with the manner of performance as set forth in this Contract. Upon termination under Section 15.1, Engineer shall be entitled to payment in accordance with the terms under Section 13.3.



16. Remedies

In the event of termination or breach of this Contract the parties shall have the following remedies:

- 16.1 Any suspension of performance under Sections 13 or 14 of this Contract constitutes a temporary stoppage of performance of the Contract and does not constitute a termination of the Contract under those Sections. In the event that the condition(s) causing the suspension are rectified and suspension is no longer required, the Parties will take all actions necessary to reactivate performance of the Contract within seven (7) calendar days from written notice to resume. In the event that the City determines that the conditions causing suspension of the Contract are not likely to be rectified in a reasonable amount of time, the City retains the right to terminate this Contract, pursuant to Sections 13 or 14. In the event of a suspension of performance pursuant to Sections 13 or 14, Engineer agrees to remain contractually obligated to perform the Services under this Contract for the same compensation set forth in Section 3, "Compensation," of this Contract and any applicable Task Order for six months. If the Contract is reactivated and Engineer is required to perform under this Contract beyond this date or such other time period agreed to by the Parties, the Parties may negotiate updated hourly rates for Engineer and any Consultants and amend this Contract accordingly.
- 16.2 If terminated under Section 15 by City due to a breach by Engineer, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Engineer shall pay to City the amount of the reasonable excess.
- 16.3 In addition to the above remedies for a breach by Engineer, City also shall be entitled to any other equitable and legal remedies that are available.
- 16.4 If City breaches this Contract, Engineer's remedy shall be limited to termination of this Contract and receipt of Contract payments to which Engineer is entitled.
- 16.5 City shall not be liable for any indirect, incidental, consequential, or special damages under this Contract or any damages arising solely from terminating this Contract in accordance with its terms.



16.6 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Engineer shall immediately cease all activities related to the services and work under this Contract. As directed by City, Engineer shall, upon termination, deliver to City all then existing work product that, if the Contract had been completed, would be required to be delivered to City.

17. Nondiscrimination

During the term of this Contract, Engineer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

18. Governing Law; Jurisdiction; Venue

This Contract shall be governed by and construed in accordance with the laws of the state of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between City and Engineer that arises from or relates to this Contract which results in litigation shall be brought and conducted solely and exclusively within the Circuit Court of Lane County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. ENGINEER BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing herein shall be construed as a waiver of City's protections under the Oregon Tort Claims Act.

19. Compliance with Laws and Regulations

Engineer shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services under this Contract. Without limiting the generality of the foregoing, Engineer expressly agrees to comply with: (i) ORS 659A.142; and (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) City's performance under this Contract is conditioned upon Engineer's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit C and incorporated herein by this reference. Engineer, its subconsultants and all employers providing work, labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Engineer shall adhere to all safety standards and regulations established by City for work performed on its premises or under its auspices.



20. Experience, Capabilities and Resources; Standard or Care

By execution of this Contract, Engineer agrees that:

- 20.1. Engineer is an experienced engineering firm having the skill, legal capacity, and professional ability necessary to perform all the services required under this Contract to design or administer any work within the scope and complexity contemplated by this Contract.
- 20.2. Engineer has the capabilities and resources necessary to perform the obligations of this Contract.
- 20.3. Engineer is familiar with all current laws, rules, and regulations which are applicable to the design and construction of work which may fall within the scope of this Contract, and that all drawings, specifications, and other documents prepared by Engineer shall be prepared in accordance with the standard of care of other professionals performing similar services under similar conditions and in an effort to accurately reflect and incorporate all such laws, rules, and regulations.
- 20.4. City selected Engineer for award of this Agreement because of the special qualifications of Engineer's key personnel identified in Exhibit D (Key Personnel). Engineer must obtain City's consent prior to replacing any Key Personnel assigned to perform or support the work specified in this Agreement. In the event Engineer requests that City approve a reassignment or transfer of the Key Personnel, City shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s).

21. Drawings, Specifications and Other Documents

Engineer hereby agrees that it will, in a manner consistent with its standard of care defined above in Section 20, prepare all drawings, specifications, and other documents pursuant to this Contract so that they are complete and that any project, if constructed in accordance with the intent established by such drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility. As used in this Section 21:

- 1) "structurally sounds" means that the facility has been designed and engineered to meet all code standards required of this project by the authority having jurisdiction; and



- 2) "complete and properly functioning facility" means that the facility has been designed, utilizing the Standard of Care, to meet industry standards for similar facilities within Oregon.

22. Errors and Omissions

Engineer shall be responsible for correcting any errors or omissions in the drawings, specifications, and/or other documents which deviate from the standard of care set forth in Section 21. Engineer shall correct at no additional cost to City any and all such errors and omissions in the drawings, specifications, and other documents prepared by Engineer or its subconsultants. Engineer further agrees to assist City in resolving problems relating to any project designs or specified materials. Engineer's warranties and obligations under Sections 6, and 20-22 of this Contract shall survive the expiration or earlier termination of this Contract.

23. Contract Performance

Engineer and City shall at all times carry on the services diligently, without delay and punctually fulfill all requirements herein. Engineer shall not be liable for delays that are beyond Engineer's control. Contract expiration shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any breach of Engineer's warranties or a default or defect in performance by Engineer or City that has not been cured. Engineer agrees that time is of the essence under this Contract.

24. Access to Records

- 24.1 For not less than five (5) years after the Contract expiration and for the purpose of making audit, examination, excerpts, and transcripts, City, and its duly authorized representatives shall have access to Engineer's books, documents, papers, and records that are pertinent to this Contract.
- 24.2 If, for any reason, any part of this Contract, or any resulting construction contract(s) is involved in litigation, Engineer shall retain all pertinent records for not less than five (5) years or until all litigation is resolved, whichever is longer. Engineer shall provide full access to these records to City and its duly authorized representatives in preparation for and during litigation.

25. Representations and Warranties

- 25.1 Engineer represents and warrants to City that:
 - 25.1.1 Engineer has the power and authority to enter into and perform this Contract;



25.1.2 When executed and delivered, this Contract shall be a valid and binding obligation of Engineer enforceable in accordance with its terms;

25.1.3 Engineer shall, at all times during the term of this Contract, be duly licensed to perform the services, and if there is no licensing requirement for the profession or services, be duly qualified and competent; and

25.1.4 The services under this Contract shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions.

25.2 The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

26. Conflicts of Interest.

Engineer agrees not to accept or perform any work for clients other than City on projects located within the City without City's prior written approval, which may be granted or withheld in City's sole discretion.

27. City Obligations

27.1 City shall provide full information in a timely manner regarding requirements for and limitations on projects and Task Orders. With regard to subcontractor liens, City shall furnish to Engineer, within fifteen (15) days after receipt of a written request, information necessary and relevant for Engineer to evaluate, give notice of, or enforce lien.

27.2 City shall establish and update, if necessary, overall project budgets, including engineering and construction costs.

27.3 City shall furnish the services of consultants, including geotechnical engineers, when such services are requested by Engineer, reasonably required by the scope of a project, and agreed to by City.

27.4 City shall furnish all testing as required by law or the Contract documents.

27.5 City shall furnish all legal accounting, auditing and insurance services as necessary for projects to meet the City's needs and interests, after Engineer has performed requisite project management and oversight duties.

27.6 City shall provide prompt written notice to Engineer if City becomes aware of any fault or defect in a project, including any errors, omissions or inconsistencies in Engineer's design or performance under the Contract.



- 27.7 City shall pay Engineer in accordance with Section 3 and Exhibit D of this Contract, upon receipt of Engineer's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect work completed, or progress made on a project to date, on a pro rata basis.
- 27.8 City shall report the total amount of all payments to Engineer, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.
- 27.9 City shall guarantee access to, and make all provisions for Engineer to enter upon public and private property necessary for performance of the Scope of Work over which City exercises control.
- 27.10 Extra work or work on contingency tasks is not permitted unless authorized by the City in writing. Failure of Engineer to secure written authorization for extra work shall constitute a waiver of all rights to an adjustment in the Contract price or Contract time.

28. Arbitration

- 28.1 All claims, disputes, and other matters in question between the City and Engineer arising out of, or relating to this Contract, including rescission, reformation, enforcement, or the breach thereof, except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in City's sole discretion, in accordance with Oregon's Uniform Arbitration Act ORS 36.600 et seq. and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after the notice of demand, the presiding judge of the Lane County Circuit Court will establish rules to govern the arbitration. The City shall have the sole discretion as to whether or not dispute will be decided by arbitration rather than through the court process.
- 28.2 A claim by Engineer arising out of, or relating to this Contract must be made in writing and delivered to the City Administrator not less than 30 days after the date of the occurrence giving rise to the claim. Failure to file a claim with the City Administrator within 30 days of the date of the occurrence that gave rise to the claim shall constitute a waiver of the claim. A claim filed with the City Administrator will be considered by the Council at the Council's next regularly scheduled meeting. At that meeting the Council will render a written decision approving or denying the claim. If the claim is denied by the Council, the Engineer may file a written request for arbitration with the City Administrator. No demand for arbitration shall be effective until the Council has rendered a written decision denying the underlying claim. No demand for arbitration shall be made



later than thirty (30) days after the date on which the Council has rendered a written decision on the underlying claim. The failure to demand arbitration within said 30 days shall result in the Council's decision being binding upon the Council and Engineer.

28.3 Notice of demand for arbitration shall be filed in writing with the other party to the Contract. The demand for arbitration shall be made within the 30-day period specified above. The City, if not the party demanding arbitration, has the option of allowing the matter to proceed with binding arbitration or by written notice within five (5) days after receipt of a demand for arbitration, to reject arbitration and require the other party to proceed through the courts for relief. If arbitration is allowed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and the award will not be subject to modifications or appeal except to the extent permitted by Oregon law.

29. Joinder

Notwithstanding any contrary language in other documents or agreements related to services provided by Engineer pursuant to this Contract, including contracts for construction services, either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact arising out of or related to this Contract and whose presence is required if complete relief is to be accorded. This Section applies to any and all claims, disputes, and other matters arising out of, or relating to this Contract, including but not limited those claims, disputes, and other matters subject to litigation or arbitration.

30. Attorney Fees

If any suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this Contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the applicable costs and disbursements. Further, if it becomes necessary for City to retain the services of an attorney to enforce any provision of this Contract without initiating litigation, Engineer agrees to pay City's attorney fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by the losing party.

31. Successors and Assigns; Subcontractors and Assignments

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.



32. Limitation of Liabilities

City shall not be liable for (i) any indirect, incidental, consequential, or special damages under the Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. Engineer shall not be liable for any consequential damages under this Contract.

33. Foreign Contractor

If Engineer is not domiciled in or registered to do business in the State of Oregon, Engineer shall promptly provide to the Oregon Department of Revenue and the Corporations Division of the Oregon Secretary of State all information required by those agencies relative to this Contract. Engineer shall demonstrate its legal capacity to perform the work under this Contract in the State of Oregon prior to entering into this Contract.

34. Confidentiality

Engineer shall maintain the confidentiality of any of City's information that has been marked as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent Engineer from establishing a claim or defense in an adjudicatory proceeding. Engineer shall require similar agreements from City's and/or Engineer's subconsultants to maintain the confidentiality of information of City.

35. Force Majeure

Engineer shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war.

36. Waivers

No waiver by City of any provision of this Contract shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Engineer of the same or any other provision. City's consent to or approval of any act by Engineer requiring City's consent or approval shall not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by Engineer, whether or not similar to the act so consented to or approved.



37. Severability

Any provision of this Contract which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

38. Headings

The captions contained in this Contract are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

39. Integration and Modification

This Contract, including the attached exhibits referenced in Section B, contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters addressed by this Contract. Any modifications or amendments to this Contract will only be effective when made in writing and signed by authorized parties for each party to this Contract.

40. Authority

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to enter into this Contract.

41. Federal Form W-9

A completed Federal Form W-9 shall accompany this signed document when returned by the Independent Contractor.

CITY OF COBURG By: _____ Name: Adam Hanks Title: City Administrator Date: _____	ENGINEER By: _____ Name: _____ Title: _____ Date: _____
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Exhibit A

Scope of Work

SERVICES AND RESPONSIBILITY OF ENGINEER

- A. Services shall be provided pursuant to City Task Order requests or as otherwise requested by City in writing. When authorized by City, the specific services which the Engineer shall furnish will generally consist of, but not be limited to, the following itemized services:
1. Engineering services for municipal systems including studies, designs and construction administration.
 2. Consultation with the City Administrator, Public Works Director and staff members on specific problems related to the City's facilities.
 3. Assign one person to attend meetings. Participation in meetings by other employees or subcontractors of Independent Contractor must be requested and approved in advance if the person's time is to be billed either directly or indirectly to the City
 4. Attend meetings, when requested by the City Administrator or Public Works Director, or when necessitated by project work underway.
 5. Project reviews, construction observation, and field surveying services.
 6. Miscellaneous technical services requested by the City Administrator or Public Works Director.
 7. Preparation of Federal and State Funding applications, as authorized by the City Administrator.
 8. Plan review.
 9. Feasibility studies and facilities plans.
 10. Apprise City of applicable changes in state or federal law regarding engineering or design services where such changes in state and federal law directly affect the Engineer's work or the City's projects, and public works.
- B. Basic engineering services. When authorized by the City, Engineer will provide engineering services for improvement projects. These will generally consist of, but not be limited to, the following itemized services:
1. Preparation of plans and specifications ready for a call for bids.
 2. Submit solicitations for bids or proposals to City prior to advertising and publishing for City review and authorization. No documents shall be issued in the City's name without express prior written authorization from the City.
 3. Tabulation of bids at bid opening, report same to the City, and assist in awarding Contracts for Construction.
 4. Inform the City prior to initiating contract discussions with proposed sub-contractors.
 5. Submit subcontracts for review and approval by City, prior to execution. City retains the right in its sole discretion, to contract directly with subcontractors.
 6. General observation of the work by observation trips to the job site on a periodic basis, as agreed with the City.
 7. Preparation and submittal of proposed contract change orders.

8. Preparation of monthly progress payments to the Contractor.
9. Final review of the project by the Engineer.
10. Final acceptance of the project by the Engineer and recommendations accordingly to the City.
11. Submission to the City of final quantities and costs.
12. Furnish a set of "record" reproducible mylars, or other mutually agreed format suitable for long term preservation and storage.

C. Special Services. In addition to the basic services provided under Section B above, special services of varying types may be required upon City's written request. Included in these services, but not limited to, are:

1. Resident observation – Provide the services of an observer, acceptable to the City, as requested when contracts have been let by the City for construction. The Observer shall keep a daily diary of work progress. The Observer shall check and approve all construction work, prepare record drawings of the construction work, and prepare the monthly progress payments to the Contractor. As used in this document, the term "record drawings" means a set of documents consisting of record specifications and record drawings showing the reported location of the work. Record drawings are based on information provided by persons other than the Engineer, and the Engineer does not warrant their accuracy.
2. Redesigns – As ordered by the City after final plans have been completed.
3. Appearances before courts or boards on matters of litigation related to a project.
4. Preparation of operation and maintenance manuals and cost of duplication.
5. Printing of plans and specifications.
6. Preparation of planning studies or reports, including costs of duplication.
7. Coordinating and obtaining permits and arranging agency reviews. Fees for permits or agency review are excluded from Engineer's services, and will be paid by others.
8. Miscellaneous other technical services as may be assigned and for which Engineer has qualifications and/or expertise.
9. Consultant Services – (Various technical services for which City requires Engineer to manage, monitor or direct):
 - a. Field engineering – Survey crew to stakeout construction work, provide preliminary design surveys and design land surveys. Survey crew shall furnish all necessary equipment, instruments, transportation, stakes and subsistence required for field engineering.
 - b. Soils investigations – including test borings, related analysis and recommendations by the Engineer.
 - c. Laboratory tests, well tests, borings, specialized geological, or other studies recommended by the Engineer.
 - d. Other consultant services requested by City, such as mechanical, electrical, architectural, wetland, permitting and cost estimation services.

Exhibit B
Task Order Form

Task Order No. ____
City of Coburg
Engineer Work

Dated: _____

In accordance with the City Engineering Services Contract entered into between City of Coburg (City) and _____ (Engineer), dated _____, 20__ (Contract), Engineer is authorized to complete the scope of work defined in this Task Order according to the schedule and budget identified herein.

SCOPE OF WORK

The scope of work includes:

_____, as further outlined in Exhibit A to this Task Order.

BUDGET

The costs for Engineer's services as defined herein, including reimbursables, shall not exceed \$_____.

COMPENSATION

Compensation shall be paid up to the total maximum compensation set above in accordance with Section 3 of the Contract and the Engineer's Schedule of Rate and Charges attached to the Contract as Exhibit E.

In accordance with Section 2.3 of the Contract, if additional funds are required to complete the services defined herein beyond the limit set above, Engineer shall notify City in writing prior to reaching the authorized limit, and will not proceed with work in excess of the limit without the prior written approval of City.

SCHEDULE

Work shall be initiated within ____ days of issuance of this Task Order and completed within ____ days.

TERMS AND CONDITIONS

All work under this Task Order is governed by the terms and conditions of the Contract, unless otherwise specifically set forth herein.

Exhibit C
PUBLIC CONTRACTING CODE
REQUIREMENTS
For ORS 279C Personal Service Contract

1. Engineer shall pay promptly, as due, all persons supplying labor or materials for the performance of the Work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
2. Engineer shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Engineer or any Subcontractor in connection with the performance of the Contract shall promptly be paid.
3. Engineer shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
4. Engineer and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
5. Engineer shall employ no person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, Engineer shall pay the employee at least time and one-half pay for: 1) all overtime in 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater, except for individuals under personal service contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime; or 2) work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G).
6. Pursuant to ORS 279C.520(2), the Engineer must give notice to employees who work on this contract 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 the days per week that the employees may be required to work.
7. Pursuant to ORS 279C.530(2), all employers, including Engineer, that employ subject workers who work under this contract shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Engineer shall ensure that each of its subcontractors complies with these requirements.

8. All sums due the State Unemployment Compensation Fund from the Engineer or any Subcontractor in connection with the performance of the contract shall be promptly so paid.
9. The Contract may be canceled at the election of City for any willful failure on the part of Engineer to faithfully perform the contract according to its terms.
10. Engineer certifies that it has not discriminated against minorities, women or emerging small business enterprises or a business enterprise that is controlled by or that employs a veteran as defined in ORS 408.225 in obtaining any required subcontractors.
11. Engineer certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
12. In the performance of this Contract, the Engineer shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies, and shall compost or mulch yard waste material at an approved site, if feasible and cost effective.
13. Pursuant to City's Public Contracting Rule 137-049-0880, the City may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the records relating to the Contract.
14. Contractor shall ensure City's compliance with all applicable provisions of ORS 279C.527 and OAR Chapter 330 Division 135 regarding green energy technology requirements for new or major renovations of public buildings costing over \$5,000,000.
15. The following notice is applicable to Work involving excavation. "ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503) 232-1987."