CITY OF LAKE OSWEGO

REQUEST FOR STATEMENT(S) OF INTEREST

TO BE INCLUDED ON CONSULTANT LIST FOR FUTURE DIRECT APPOINTMENT OR INFORMAL SELECTION OF ENGINEERING, ARCHITECTURAL CONSULTANT, PHOTOGRAMMETRIC MAPPING, TRANSPORTATION PLANNING SERVICES, LAND SURVEYING, AND OTHER RELATED SERVICES FOR FUTURE PUBLIC IMPROVEMENT PROJECTS

Date Due: November 15, 2018
Time Due: 4:00 pm

City of Lake Oswego
Engineering Department
380 A Avenue
Post Office Box 369
Lake Oswego, Oregon 97034
City of Lake Oswego

Request for Statement(s) of Interest
to be Included on Consultant List for Future Direct Appointment
or Informal Selection of Engineering, Architectural Consultant,
Photogrammetric Mapping, Transportation Planning Services,
Land Surveying, and Other Related Services for
Future Public Improvement Projects

The City of Lake Oswego (City) and Lake Oswego Redevelopment Agency (LORA) are jointly soliciting Statements of Interest from “Consultants” to be included on a City / LORA list of prospective Consultants for future public improvement projects.

“Consultant” means persons or firms engaged in the lawful practice of their profession and who are interested in providing one or more of the following categories of Consultant Services:

**Engineering**
Specific and Separate categories in:
- Public utility designs including water, wastewater, and stormwater systems.
- Roadway design, including geometric, curb ramps, sidewalks, and paving.
- Geotechnical analysis, including landslides, wall backfill, and paving analysis.
- Structural analysis, including bridges and walls.
- Traffic engineering for traffic signal design and timing, signing, traffic control plans and striping, and street light design.
- Electrical Design.
- Railway Systems Engineering.

**Architecture Services**
Architecture services including planning, programming, building design, construction documents, and construction administration.

**Transportation Planning Services**
Specifically for compliance with the National Environmental Policy Act (NEPA).

**Photogrammetric Mapping Services**
Evaluating and measuring of land that is limited to the determination of the topography, area, contours and location of planimetric features, by using photogrammetric methods or similar remote sensing technology, including but not limited to using existing ground control points incidental to the photogrammetric or remote sensing mapping process.

**Land Surveying**
Surveying services for parks, water, sewer, surface water, and transportation systems improvements.
**Related Services:**
Specific and Separate categories in:
- Landscape Architectural
- Facilities Planning
- Energy Planning
- Space Planning
- Hazardous Substances, Hazardous Waste, or Toxic Substances Testing
- Cost Estimating
- Appraising
- Material Testing
- Mechanical System Balancing
- Project Management
- Construction Management
- Owners’ Representation
- Land Use Planning
- Arborist Consultation
- Pipeline Inspection Services
- Environmental/Natural Resources Assessment

**Other Related Services:** Consultant may submit a Statement of Interest for Related Services not listed above, by indicating in the Consultant Category Form what Related Services, as defined in ORS 279C.100(8), the consultant provides.

Consultants interested in being considered for Direct Appointment or Informal Selection pursuant to ORS 279C.110 and OAR 137-048-0200 and -0210 for future public improvement projects shall submit a statement describing their qualifications for the classes of Consultant Services listed above or, for Related Services, also as declared. The list of interested Consultants will be used for not more than two years, or until a successor Notice is published and a successor list of Consultants is obtained, whichever occurs first (“period of validity”). The City / LORA reserves the right to seek Consultants for a public improvement project by the Formal Selection method. There is no assurance that a public improvement project needing the services of a Consultant will be undertaken within the List’s period of validity.
CONTRACTING INFORMATION

Standard Contract Form:

The form of Contract that a successful Consultant will be expected to execute if awarded a contract is included with this packet (Personal Service Contract). Any objections shall be considered during the negotiation phase. The Project Manager, in consultation with the City Attorney, shall determine if any proposed modifications to the form of Contract are acceptable to the City and that they do not present material risk to the City or increase the City’s costs. If the final negotiated terms are not acceptable to the Proposer that is negotiating with the City, the Proposer shall be declared not to be responsive, and the next following ranked Proposer’s shall be considered pursuant to the selection and negotiation phases.

Public Contract Rules:

Except as modified by the terms of a specific contract or Request for Proposal, the terms and procedures of the Lake Oswego Public Contract Rules (LOPCRs) shall apply, except that OAR 137-048 shall apply to the procedure for solicitation of this RFP and selection of a Contractor. A copy of the LOPCR may be obtained by contacting the Project Manager or at the Lake Oswego City Attorney’s Office website, http://www.ci.oswego.or.us/cityattorney, City Attorney Resources: “Lake Oswego Public Contract Index”. A copy of OAR 137-048 may be obtained at: https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=299

QUESTIONS

Questions to clarify this Request may be submitted through the RFP/Bid site at http://www.ci.oswego.or.us/bids/, not less than five (5) days prior to the Date for Submission.
SUBMITTING STATEMENT OF INTERESTS

Statements of Interest: Submit one Statement of Interest that includes all selected / declared categories, along with one “Statement of Interest Consultant Category Form” and check all categories that apply. The Statement of Interest shall contain, at a minimum, the following information:

- Company name and contact information (mailing address, email contact, main telephone number, etc.)
- Fill out one “Statement of Interest Category Form” checking all categories of Consultant services that apply or as declared, as provided with this advertisement. (This does not count towards the maximum page limit)
- Principal office address and all office addresses in the State of Oregon.
- Qualifications and last five years’ experience of Lead Personnel that would be providing in the category of Consultant Services submitted.
- Qualifications and last five years’ experience of Firm in the category of Consultant Services, if different from Lead Personnel.
- Professional educational background of Lead Personnel relating to the category of Consultant Service submitted.
- If a professional licensed by the State of Oregon is required to provide the Consultant Service submitted, provide the Lead Personnel’s license number or proof of license to practice in the category of Consultant Service.
- Three references of Lead Personnel and Firm, if different from Lead Personnel, in the category of Consultant Service submitted, and respective contact information.

Submittal Packet Parameters:

1. The Statement of Interest must be a maximum of 15 pages (the “Statement of Interest Category Form” does not count towards this maximum); and should be formatted for 8.5” x 11” paper, where double-sided pages count as two pages, and no smaller than 10 pt. font
2. No confidential or proprietary information should be included in the Statement of Interest; all Statements are public records.
3. One Statement of Interest Category Form and Packet shall be submitted, checking all categories of Consultant services that apply, and providing relevant information on personnel, previous experience, and references in that category.

DEADLINES AND SUBMITTAL OPTIONS

Date for Submission and Submittal Requirements:

Statement(s) of Interest shall be submitted by November 15, 2018, 4:00 p.m., to the City of Lake Oswego by:

- EMAIL:
  Submit one PDF Statement of Interest for Consultant Services to the City to qbs-soi@ci.oswego.or.us.
  o Label subject of Email: “Consultant Statement of Interest”.
o Attach your Category Form (two pages) and Statement of Interest package (max. 15 pages)
o Email not deemed received until a confirmation reply email is received by submitting consultant.

**IN PERSON:**
Submit one Statement of Interest for Consultant Services to the Third Floor Receptionist, Attn: Erica Rooney, City Engineer, Lake Oswego City Hall, 380 A Avenue, Lake Oswego, OR. (This is NOT a mailing address).
- The Statement(s) of Interest shall be contained in a sealed envelope marked “Consultant Statement of Interest; Attn. Erica Rooney, City Engineer”.
- Include your Category Form (one page) and Statement of Interest package (max. 15 pages).
STATEMENT OF INTEREST
CONSULTANT CATEGORY FORM
(Fill out one Form checking all categories that apply)

Date: 

Company: 

Mailing Address: 

Authorized by: 
(Print name)
(Signature)

Category of Interest:

Engineering

☐ Public utility designs including water, wastewater, and stormwater systems
☐ Roadway design, including geometric, curb ramp, sidewalks and paving
☐ Geotechnical analysis, including for landslides, wall backfill, and paving analysis
☐ Structural analysis, including bridges and walls
☐ Traffic engineering for traffic signal design and timing, signing, traffic control plans and striping, and street light design
☐ Electrical Engineering
☐ Railway System Engineering

☐ Architecture Services

☐ Photogrammetric Mapping

☐ Transportation Planning Services for compliance with NEPA

☐ Land Surveying

Related Services

☐ Landscape Architectural
☐ Facilities Planning
☐ Energy Planning
☐ Space Planning
☐ Hazardous Substances, Hazardous Waste, or Toxic Substances Testing
☐ Cost Estimating
☐ Appraising
☐ Material Testing
☐ Mechanical System Balancing
☐ Project Management
☐ Construction Management
☐ Owners' Representation
☐ Land Use Planning
☐ Arborist Consultation
☐ Pipeline Inspection Services
☐ Environmental/Natural Resources Assessment
☐ Other Related Service(s): ________________________________ (per ORS 279C.100(8)).
CITY OF LAKE OSWEGO
PERSONAL SERVICE CONTRACT

Contractor: ___________________________ Date of Contract: __________

Mailing Address: ______________________ Date of Completion: __________

WITNESSETH:

Contractor and the City of Lake Oswego, a municipal corporation, mutually covenant and agree to and with each other as follows:

1. SCOPE OF WORK AND CONTRACT DOCUMENTS. The Contractor shall perform the Project as outlined in this Contract. The contract documents shall consist of, and any conflicts shall be resolved in the following priority:

   A. This Contract;
   B. The City of Lake Oswego Standard Public Contract Provisions, which are attached and hereby incorporated by reference;
   C. The exhibit(s) to this Contract in the following order of priority:

       Exhibit(s):

This contract shall supersede any prior representation or contract, written or oral.

2. DURATION OF CONTRACT. This Contract shall become effective on the date this Contract has been signed by every party hereto. Contractor acknowledges that no work has been or will be performed for the project under this Contract until this Contract is fully executed and effective. Contractor shall complete performance of this contract on or before the Date of Completion stated above.

3. PAYMENT.

   A. Amount and Manner of Payment. Payment below shall be for all goods, materials, expenses, and services. Payment will be made as follows, subject to Taxpayer Identification Report / Date and Method of Payment below, and acceptance of work by Public Contracting Officer.

<table>
<thead>
<tr>
<th>Method of Payment</th>
<th>Amount</th>
<th>When Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Not to Exceed: $</td>
<td></td>
</tr>
<tr>
<td>Monthly – Amt.</td>
<td>Monthly per Exhibit rate schedule</td>
<td>Submit monthly invoice for performance of work, paid at rates per Exhibit schedule</td>
</tr>
<tr>
<td>based on rates</td>
<td>Not to Exceed: $</td>
<td></td>
</tr>
</tbody>
</table>

   B. Taxpayer Identification Report / Date and Method of Payment. No payment shall be due to the Contractor until the Contractor has submitted to the City’s Finance Department IRS Form W-9 Request for Taxpayer Identification and Certification (http://www.irs.gov/pub/irs-pdf/fw9.pdf). The City
prefers to pay contractors by electronic fund transfer; the contractor may submit the EFT agreement (http://tinyurl.com/LO-EFT) to the City’s Finance Department. Payment shall be tendered, when due within 30 days from the date of receipt of the invoice.

4. **TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

5. **TERMINATION.**

   A. **Parties’ Right to Terminate for Convenience.** This Contract may be terminated at any time by mutual written consent of the parties.

   B. **City’s Right to Terminate for Convenience.** City may, at its sole discretion, terminate this Contract, in whole or in part, upon 10 days notice to Contractor.

   C. **City’s Right to Terminate for Cause.** City may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as Public Contracting Officer may establish in such notice, upon the occurrence of any of the following events:

   (i) City fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor’s Work;

   (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited or City is prohibited from paying for such Work from the planned funding source;

   (iii) Contractor no longer holds any license or certificate that is required to perform the Work; or

   (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor’s performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 5 business days after delivery of Public Contracting Officer’s notice, or such longer period as Public Contracting Officer may specify in such notice.

   D. **Contractor’s Right to Terminate for Cause.** Contractor may terminate this Contract upon 30 days’ notice to Public Contracting Officer if City fails to pay Contractor pursuant to the terms of this Contract and City fails to cure within 30 business days after receipt of Contractor’s notice, or such longer period of cure as Contractor may specify in such notice.

   E. **Remedies.** In the event of termination pursuant to subsections B, C(i), C(ii) or D, Contractor’s sole remedy shall be a claim for:

   i. Fixed Fee Contract: cost of goods delivered to City and, if applicable, custom-made goods unreturnable or unusable by Contractor and delivered to City, and Contractor’s cost of labor incurred on the Project, plus overhead / profit not to exceed 10%; or

   ii. Monthly or payment upon Deliverables: for goods or labor invoiced prior to termination, the amount of the invoice; and for goods and labor not invoiced, then payment at the rate(s) set forth elsewhere in this Contract, or if no established rate(s), then the same method per subjection (i) above for the un-invoiced goods and labor; less any final determination on any disputed amount that City has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to the City upon demand.
In the event of termination pursuant to subsection C(iii) or C(iv), City shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under subsection C(iii) or C(iv), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to subsection B.

F. Contractor’s Tender upon Termination. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Public Contracting Officer expressly directs otherwise in such notice of termination.

Upon termination of this Contract, Contractor shall deliver to Public Contracting Officer all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon Public Contracting Officer's request, Contractor shall surrender to anyone Public Contracting Officer designates, all documents, research or objects or other tangible things needed to complete the Work.

6. INSURANCE. The Contractor will not perform any work under this contract until the City has received copies of applicable insurance policies or acceptable evidence that the insurance indicated as required in subsection D below is in force.

A. Scope of Insurance. The Contractor shall obtain prior to the commencement of the Contract, and shall maintain in full force and effect for the term of this contract, at the Contractor’s expense, the policies indicated below in subsection D for the protection of the Contractor. The Contractor shall not undertake any acts that shall affect the coverage afforded by the above policy. If the insurance policy is issued on a “claims made” basis, then the Contractor shall continue to obtain and maintain coverage for not less than three years following the completion of the contract.

If no automobile liability insurance policy is required in subsection D, Contractor expressly acknowledges and agrees that City is not providing any automobile insurance to Contractor and that as to the City and any third parties, Contractor bears sole liability for claims, damages, injury (including death) and losses, arising out of or resulting from Contractor’s operation of Contractor’s automobile or any other automobile, whether or not such use is related to Contractor’s work under this contract, and Contractor shall make no claim against the City for any claim, damage, injury, or loss resulting thereby.

B. Coverage Amount. The policies shall be issued by a company authorized to do business in the State of Oregon, protecting the Contractor or subcontractor or anyone directly or indirectly employed by either of them against liability for the loss or damage of personal and bodily injury, contractual liability, death and property damage, and any other losses or damages above mentioned with limits not less than as stated in subsection D below or the limit of public liability contained in ORS 30.260 to 30.300 for any policy, whichever is greater.

C. Certificate of Insurance / Additional Insured and Waiver of Subrogation Endorsement. The Contractor shall cause the insurance company to provide the City with: (i) a certificate of insurance and, (ii) if an additional insured endorsement is indicated as required in subsection D below, an endorsement thereto naming the City, its officers, agents, and employees as an additional insured for those policies indicated. The policies will be endorsed to provide a waiver of subrogation in favor of the City and all additional insureds. The Contractor shall provide the City written notice of cancellation or material modification (change in limits or coverages) of the insurance contract for not less than the following notice for the purposes stated: 30 days prior notice for reasons other than non-payment; 10 days prior notice for non-payment.
The Contractor shall further cause a certificate of insurance to be issued not less than 5 days prior to any policy expiration date by the Contractor’s insurance company or companies during the term of the Work, to assure that the required insurance is maintained.


<table>
<thead>
<tr>
<th>Required</th>
<th>Type of Insurance</th>
<th>Minimum Coverage</th>
<th>City named as Additional Insured</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Comprehensive general or commercial general liability</td>
<td>$2,000,000 per occurrence and $3,000,000 in the aggregate</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>Protection and Indemnity**</td>
<td>$2 million per accident</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>US L&amp;H**</td>
<td>$2 million per person per accident</td>
<td></td>
</tr>
<tr>
<td></td>
<td>** Admiralty endorsement in lieu of P&amp;I, and US L&amp;H endorsement on worker comp. coverage for required amounts is permissible</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>Automobile liability</td>
<td>$2,000,000 per accident-combined single limit or $2,000,000 bodily injury and $1,000,000 property damage</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes/No</td>
<td>Professional liability</td>
<td>$2,000,000 per claim/aggregate</td>
<td>No</td>
</tr>
<tr>
<td>Yes</td>
<td>Workers Compensation / Employer’s Liability</td>
<td>Statutory Coverage</td>
<td>No</td>
</tr>
<tr>
<td>Or</td>
<td>Contractor warrants and represents contractor does not employ any persons that would require contractor to provide workers compensation insurance benefits.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No (if initialed)</td>
<td>Initial if Exempt from Worker Comp Coverage</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* The amounts may be achieved by a combination of base coverage and umbrella coverage.

CONTRACTOR

By: ________________________________
Name: ________________________________
Title: ________________________________
Date: ________________________________

Check one:

- Sole Proprietor
- Partnership
- Corporation
- Limited Liability Company
- Limited Liability Partnership
- Other:

Domicile, if other than Oregon: ________________________________

CITY OF LAKE OSWEGO, an Oregon Municipal Corporation

PCO Name
Date: ________________________________
Public Contracting Officer
380 A Avenue
PO Box 369
Lake Oswego, OR 97034

Date Authorized by Council, if applicable: ________________________________.

APPROVED AS TO FORM:

______________________________.
Evan P. Boone, Deputy City Attorney
The following City of Lake Oswego Standard Public Contract provisions are made a part of the Contract between City and Contractor by reference. Where the Lake Oswego Redevelopment Agency (LORA) is the contracting party, “City” shall refer to LORA.

CHANGES
This contract, including all attachments and exhibits annexed hereto, shall not be subject to modification or amendment except in writing, executed by both parties. This contract and any substantive changes to the scope of work or changes to the contract costs will not be effective until approved in writing by the City’s Public Contracting Officer (PCO).

INDEPENDENT CONTRACTOR STATUS
The Contractor agrees and certifies that:
A. The Contractor is engaged as an independent contractor. Although the PCO reserves the right (i) to determine (and modify) the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, City cannot and will not control the means or manner of Contractor’s performance, nor provide any tools or equipment for the performance of the Work, except as provided elsewhere in this Contract. Contractor is responsible for determining the appropriate means and manner of performing the Work.
B. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor’s federal or state tax obligations.
C. The Contractor will not, on account of any payments made under this contract, be eligible for any benefit from federal social security, workers’ compensation, unemployment insurance, or the Public Employee’s Retirement System, except as a self-employed individual;
D. Contractor is not currently an employee of the federal government or the State of Oregon; and
E. The Contractor is not a contributing member of the Public Employee’s Retirement System.
F. Contractor is not an "officer," "employee," or "agent" of the City, as those terms are used in ORS 30.265.

OTHER CONTRACTORS
The City may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with such other contractors and with any City employees concerned with such additional or related work, and shall coordinate its performance under this contract with such additional or related work. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by City employees.

SUBCONTRACTORS AND ASSIGNMENT
Except as set forth in Contractor’s proposal or otherwise in this Contract, no subcontract shall be made by the Contractor with any other party for furnishing any of the work or services herein contracted without obtaining the prior written consent of the City, which City may withhold without cause. In addition to any other provisions PCO may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by the following sections of this Contract as if the subcontractor were the Contractor: Independent Contractor Status; Other Contractors; Hours of Labor; Ownership of Work; Indemnity and Hold Harmless; Records; Attorney Fees; Compliance with Laws. PCO’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

This contract is not assignable by the Contractor, either whole or in part, unless Contractor has obtained the prior written consent of the City.

City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any enforceable benefit or right, whether directly, indirectly or otherwise, to third persons.

HOURS OF LABOR
For those employees of Contractor covered or subject to Oregon employment laws, the Contractor shall pay employees for overtime work performed under the public contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201 et seq.).

ERRORS
The Contractor shall perform such additional work as may be necessary to correct Contractor’s errors in the work required under this contract without undue delays and without additional cost.

REPRESENTATIONS AND COVENANTS
A. Contractor’s Representations. Contractor represents and covenants to City that:
(1) Contractor has the power and authority to enter into and perform this Contract,
(2) This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, and if Contractor is a partnership, corporation or other form of business entity, this contract was duly approved and executed pursuant to authority of the governing body or parties of the Contractor,
(3) Contractor is not in violation of any Oregon tax laws.
(4) Upon acceptance of each project, the Contractor warrants that it will carefully examine, as necessary, the site of the work contemplated and any plans, specifications, and contract documents pertaining to work, with the exception of unknown physical conditions at the work site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided herein.
(5) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work.
(6) Contractor will accomplish the work using a standard of performance and care that is currently accepted by other contractors engaged in similar work, under similar conditions and at the date the services are provided in the Portland metropolitan area (Standard of Care).
(7) Contractor’s invoices shall describe all work performed with particularity, by whom it was performed, and
shall itemize and explain all expenses for which reimbursement is claimed. Contractor shall send invoices to City's Project Manager.

8. Contractor’s completion shall not extinguish or prejudice City’s right to enforce this Contract with respect to any breach of Contractor warranty or any default or defect in Contractor performance (defect is defined herein as services that do not conform to the Standard of Care (Section 6) in the performance of the Contract).

9. Contractor has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of contractor’s services, and in the performance of this contract no person having any such interest shall be employed.

B. Cumulative. The representations and covenants set forth in this section are in addition to, and not in lieu of, any other representations and covenants provided.

OWNERSHIP OF WORK

All work products of the Contractor, including background data, documentation and staff work that is preliminary to final reports, which result from this contract are the exclusive property of the City. If this contract is terminated by either party or by default, the City following payment as required by the Contract, in addition to any other rights provided by this contract, may require the Contractor to transfer and deliver such partially completed reports or other documentation that the Contractor has specifically developed or specifically acquired for the performance of this contract.

The reports and all material contained in the reports (graphics, photos, etc.) shall become the property of the City; the City may reproduce and distribute the reports, or any part thereof, in such form as the City desires. Any reuse of completed documents or use of partially completed documents without written verification or concurrence by Contractor for the specific purpose intended will be at the City’s sole risk and without liability or legal exposure to Contractor.

ELECTRONIC CONTRACTING AND REPORTS;
PHOTOCOPY, ELECTRONIC, OR PDF VERSION OF CONTRACT

This contract and any amendments may be executed by a party electronically by use of a digital signature issued by a city-recognized certification authority (such as Symantec Digital ID), pursuant to the Oregon Uniform Electronic Transactions Act, ORS Ch. 84.001 – 84.063. Upon execution of this contract electronically, the party consents to conduct further communications and transactions under this Contract by electronic means.

Unless otherwise stated in the Scope of Work or separately waived in writing, all final reports, including reports of phases of the project and of the entire project, shall be provided in both written and electronic format. Electronic format shall be in a format coordinated with the PCO and shall be fully compatible with such software programs specified by the PCO, e.g. Microsoft Word, Microsoft Excel, Microsoft PowerPoint, Microsoft Access, Microsoft Publisher, Adobe Creative Suite, Adobe PDF, or such other software program as specified by the PCO.

A photocopy, electronically scanned (PDF), or electronic version of this Contract shall be deemed equivalent to an originally signed Contract for all purposes, including arbitration or litigation.

INDEMNITY AND HOLD HARMLESS

The Contractor shall defend, indemnify, and hold the City, its officers, agents and employees, harmless against any liability, loss, or expenses, including reasonable attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property, but only to the proportionate extent caused by or resulting from any act, error, or omission (excepting professional services performed under this Contract) of an act sustained in connection with the performance of this Contract or by conditions created thereby, or based upon Contractor's violation of any statute, ordinance or regulation.

With respect to professional services performed under this Contract, Contractor shall defend, indemnify, and hold the City, its officers, agents and employees, harmless against any liability, loss, or expenses, including reasonable attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property, but only to the proportionate extent caused by any negligent act, error, or omission of an act sustained in connection with the performance of this contract or by conditions created thereby, or based upon violation of any statute, ordinance or regulation.

RECORDS

Contractor shall have access to the books, documents, papers and records of the City as necessary for Contractor's performance of the work. The Contractor shall not disclose all or any part of such records to any other person, firm, corporation, association or other entity except as reasonably necessary to carry out the Work, without the consent of the Public Contracting Officer.

The Contractor agrees that the City and its authorized representatives shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcripts.

Contractor shall maintain all fiscal records directly relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor’s performance. Contractor acknowledges and agrees that City’s duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
PUBLICATION RIGHTS/RIGHTS IN DATA
To the extent the Work Product consists of material capable of publication, all publication rights in the product produced by the Contractor in connection with the work provided for under this contract, whether in preliminary draft or final form, shall be vested in the City.

The Contractor shall not publish any of the results of the work without the prior written permission of the City.

All original written material and other documentation, including background data, documentation, and staff work that is preliminary to final reports, originated and prepared for the City pursuant to this contract, shall become exclusively the property of the City. The ideas, concepts, know-how or techniques relating to data processing development during the course of this contract by the Contractor or City personnel, or jointly by the Contractor and City personnel, can be used by either party in any way it may deem appropriate.

Material already in the Contractor’s possession, independently developed by the Contractor outside the scope of this contract or rightfully obtained by the Contractor from third parties, shall belong to the Contractor. However, the Contractor grants to the City a nonexclusive, irrevocable and royalty-free license to use such material to the extent such material is incorporated into the Work.

This contract shall not preclude the Contractor from developing materials that are competitive, irrespective of their similarity to materials which might be delivered to the City pursuant to this contract. The Contractor will not, however, use any written materials developed under this contract in developing materials for others, except as provided in this section.

CONFIDENTIALITY
No reports, information and/or data given to or prepared or assembled by the Contractor under this contract shall be made available to any individual or organization by the Contractor without the prior written approval of the City.

MEDIATION / VENUE
In the event a dispute shall arise between the parties to this contract, and prior to the commencement of any suit or action, the parties agree to participate in mediation in accordance with the mediation procedures of the Oregon Mediation Service, or such other procedures as the parties agree. The parties agree to share equally in the costs of the mediator. The mediator shall be selected by the parties, either upon mutual agreement within 15 days written notice by one party to the other requesting mediation, or if the parties are not able to agree upon a mediator within said period, the mediator shall be chosen by the City Manager from the list of mediators maintained by the Oregon Mediation Service (http://omediate.org).

Any action or suits involving any question arising under this contract must be brought in Clackamas County Circuit Court.

SEVERABILITY
The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

COMPLIANCE WITH LAWS
The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon and ordinances of the City of Lake Oswego, Oregon.

The Contractor shall comply with all federal, state and local laws and ordinances, applicable to public contracts relating to Contractor’s obligations and performance, and to the work to be done under this contract.

The Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, gender identity, marital status, age, medical condition, or disability.

WAIVER
The failure of the City to enforce any provision of this contract shall not constitute a waiver by the City of that or any other provision.

INTEGRATION
This contract represents the entire and integrated agreement between the Contractor and the City, and supersedes all prior negotiations, representations or agreements, either written or oral.