



## Request for Proposals

For

### Investment Management Services

**Deadline for Receipt of Proposal:** January 15, 2016 at 5:00 p.m.  
Late proposals will not be accepted.

**Location for Receipt of Proposal:** Megan Phelan, Assistant City Manager  
(Risk of delay in delivery is on Proposer) Lake Oswego City Hall  
380 A Avenue  
P.O. Box 369  
Lake Oswego, OR 97034

**Electronic Submission:**

E-mail: Submit quote in PDF format to [mphelan@ci.oswego.or.us](mailto:mphelan@ci.oswego.or.us).

The submitter is urged to submit the electronic proposal at least 2 business hours prior to the deadline for submission. If a “reply confirmation” of receipt of quotation is not received by the submitter 1 business hour prior to the deadline for submission, it is the submitter’s responsibility to telephone the person named above to assure receipt of quotation.

**Mail (\*Early Submission Deadline):**

Mailed proposals must be received and in the below PO Box by the time the City collects the mail from the PO Box (at or shortly after 8 am.). Proposals not in the PO Box when the City collects the mail from the PO Box will be deemed a late submission. It is the submitter’s risk on when post office personnel will place mailed quotations in the PO Box.

**Mailing Address:** P.O. Box 369  
Lake Oswego, OR 97034

**Physical Address:** Third Floor Receptionist  
380 A Avenue  
Lake Oswego, OR

**Note:** The risk of error or loss in delivery is upon the person submitting the quotation.

**RFP Addenda:** The City may issue addenda to this RFP until up to 2 business days prior to the deadline for submission of proposals. Proposers should confirm that they have provided their electronic email contact information at the time of obtaining this Request for Proposal OR check the following web page for any addenda less than 2 business days prior to the submission deadline: <http://www.ci.oswego.or.us/hr>

**Scope of Work:** Scope of work is outlined in Exhibit A.

### **Duration of Services**

The term of the awarded Contract will be for five (5) years.

### **Submittal Requirements**

Proposals should be prepared simply, providing a straightforward, concise delineation of the approach and capabilities necessary to satisfy the requirements of the RFP. Provide complete responses to the Proposal Questions in the order provided (Attachment A). Proposals are submitted on double sided typed pages, excluding cover, evidence of insurance, and other attachments.

Submission of a proposal will signify the Proposer's agreement that its proposal and the content thereof are valid for 180 days following the submission deadline unless otherwise extended in writing by both parties.

**Ranking of Proposals / Determination of Successful Proposer:** Proposals will be reviewed and ranked by the Project Manager and other selected persons, based on the following evaluation criteria:

Describe the manner in which proposals will be evaluated, including the relative importance of price and other factors used to evaluate and rate the proposals:

Example:

- Price – 30%
- References – 20%
- Experience of Proposer: in type of project – 20%
- Experience of Proposer: with governments and specifically local municipalities – 20%
- Proposal: straightforward, concise responses to requirements of the RFP – 10%

Subject to the City's right to cancel this Request for Proposals and to reject any and all proposals, and to the procedure for Objections to Proposed Contract, City will award the

contract to the responsible proposer whose proposal the City determines is the most advantageous to the City based on the evaluation process and evaluation factors described in this Request for proposals, applicable preferences described in ORS 279A.120 and 279A.125 and, the outcome of any negotiations authorized by this Request for Proposals.

**Objections to Proposed Contract:** The form of Contract that the successful Contractor will be expected to execute if awarded the contract is included as Attachment B. The Proposer should include in the proposal any objections to the form or terms of the Contract. Any objections shall be considered after a determination of the apparent highest ranked responsive, responsible bidder is made, and the terms shall be subject to negotiation. 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 apparent highest ranked responsive, responsible bidder, that bidder shall be declared not to be responsive, and the next apparent highest ranked responsive, responsible bidder's proposal and objections to form of Contract, if any, shall be considered, and so forth in order, until a responsive, responsible bidder agreeable to execution of a form of Contract acceptable to the City and to the bidder is ascertained.

**Public Contract Rules:** Except as modified by the terms of this Request for Proposal, the terms and procedures of the Lake Oswego Public Contract Rules (LOPCRs) shall apply. A copy of the LOPCR may be obtained by contacting the Project Manager or at the Lake Oswego City Attorney's Office website, [www.ci.oswego.or.us/cityatty/](http://www.ci.oswego.or.us/cityatty/), Resources / "Lake Oswego Public Contract Index."

**Notice of Intent to Award / Protest:** Unless otherwise specified in the Request for Proposals, Notice of Intent to Award the contract shall be issued to each Proposer as provided in LOPCR 102-0610. Any protest of the intended award of contract must be submitted in accordance with LOPCR 102-0740.

**Confidentiality of Proposals:** Proposals will be confidential until either a contract is awarded, or a notice of intent to award a contract is issued, whichever occurs first. If any part of the proposal is proprietary and is claimed exempt from disclosure, the Proposer should separately submit that material along with the Proposal, in an envelope marked "Proprietary Information Enclosed; Confidentiality Requested".

**Cancellation / Rejection of Proposals.** The City may cancel this Request for Proposals or reject any or all proposals, in accordance with ORS 279B.100.

## **Exhibit A: Scope of Work**

[Note: this Exhibit shall be made a part of the Contract following Award of Contract].

### **Detailed Description of Service**

Perform the following Fiduciary Services:

- 1) Review the Plan's Statement of Investment Objective and Policy Guidelines and recommend any changes thereto. The Statement of Investment Objective and Policy Guidelines is attached as Exhibit B.
- 2) Act as an "investment manager" as defined in ERISA § 3(38), exercising discretion over the management of assets within the constraints set forth in the Plan's Statement of Investment Objective and Policy Guidelines
- 3) Act as the investment manager of designed custodial accounts consisting of current cash, cash equivalents, fixed income securities or insurance accounts, equity securities and mutual funds or which shall become part of the designated custodial account as a result of transactions with respect thereto.
- 4) Select, monitor, remove and replace the investment options to be offered to participants in the Plan. In performing this service, act and have discretion to change the investment options within the platform selected and consistent with the Plan's Statement of Investment Objective and Policy Guidelines.
- 5) Provide quarterly reports reviewing all Plan investments to assist the Investment Committee in monitoring the performance of the investment manager. Such reports will include fund performance and analysis sufficient to determine compliance with the Plan's Statement of Investment Objective and Policy Guidelines.
- 6) Have the responsibility and discretion to vote proxies and shall exercise such rights, powers and privileges in accordance with the requirements of ERISA and solely in the best interest of the Plan and its participants and beneficiaries, considering only those factors that are permitted or required by ERISA.
- 7) Agree to meet at least semi-annually with the Investment Committee for a comprehensive review of investment activity and analysis.
- 8) If desired by City, schedule an annual participant review with Plan participants. This could include a group meeting of all employees/participants and individual employee meetings.

Perform the following Non-Fiduciary Services:

- 1) Assist in participant investment education within the scope of section 2(d) (i.e., the definition of investment education) of Interpretive Bulletin 96-1, issued by the Department of Labor. Participants are under no obligation to act on our guidance or education, nor will they implement such decisions.
- 2) Agree to provide a broad review of plan administration and compliance with plan documents and policy statements.
- 3) Provide regulatory and legislative updates as deemed necessary by us or as requested.
- 4) If desired by the City, agree to meet annually to provide an in-depth fiduciary training session.

## **Exhibit B: Statement of Investment Objective and Policy Guidelines**

### **Statement of Investment Objectives and Policy Guidelines for the City of Lake Oswego 457 Deferred Compensation Plan (“Plan”)**

#### **Part I: The Plan**

The City of Lake Oswego (The City) sponsors the 457(b) Deferred Compensation Plan (the Plan) for the benefit of its employees. The Plan is intended to provide eligible employees with the long-term accumulation of retirement savings through employee to individual participant accounts and the earnings thereon.

The Plan is a qualified employee benefit plan intended to comply with all applicable federal laws and regulations, including the Internal Revenue Code of 1986, as amended.

The City has appointed an Investment Committee, hereinafter referred to as the “Committee”, responsible for implementing the provisions of this Statement of Investment Policy, either directly or through delegation to qualified service providers.

The Plan’s participants and beneficiaries (Participants) are expected to have different investment objectives, time horizons, and risk tolerances. To meet these varying investment needs, Participants will be permitted to direct their account balances among a range of core investments offerings (Investment Alternatives) in order to construct prudently diversified portfolios of substantially different aggregate risk and return characteristics within the range normally appropriate for a Participant. Participants alone bear the risk associated with the Investment Alternatives they select. Investment Alternatives may consist of individual funding vehicles—investment companies registered under the provisions of the Investment Company Act of 1940, and/or other vehicles subject to established investment criteria.

#### **Part II: The Purpose of this Statement**

This Statement is intended to assist the Plan’s fiduciaries in making investment-related decisions in a prudent manner. It outlines the underlying philosophies and processes for the selection, monitoring and evaluation of the investments utilized by the Plan. Specifically, this Statement documents the decisions of the Committee defining:

- The Plan’s investment objectives
- Roles and responsibilities of the Committee and Investment Consultant
- The criteria and procedures for selecting Investment Alternatives
- The Plan’s investment selection and monitoring processes and performance measurement standards.

### **Part III: Plan Investment and Structural Objectives**

Implementation of the Plan's Investment Policy has as its objectives the following:

- Prudent investment management
- Access by Participants to Investment Alternatives whose returns are commensurate with the risk associated with their respective management style and asset class characterization.
- Competitive investment performance of each Investment Alternative relative to other similarly categorized investment vehicles.
- Reasonable expenses associated with the services necessitated by Plan investment management.

### **Part IV: Roles and Responsibilities**

The Committee has designated \_\_\_\_\_ as a fiduciary in its role as Investment Consultant. HPA is registered with the Securities and Exchange Commission (IARD/CRD# 108091; SEC# 801-56420) under the Investment Advisors Act of 1940 and agrees that it will maintain all fiduciary bonding required under ERISA Section 412.

As fiduciaries to the Plan, the Committee and the Investment Consultant will, discharge their duties with respect to the Plan solely in the interests of the Participants, for the exclusive purpose of providing benefits to Participants and of defraying reasonable expenses, and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

The Committee is responsible for establishing and maintaining this Statement of Investment Policy, and for selecting and overseeing the Trustee, Investment Consultant, Custodian, and Recordkeeper and Third Party Administrator.

The Investment Consultant will have responsibility to regularly review the performance of the Plan's Investment Alternatives and recommend to the Committee any action that may be appropriate given the terms of this Statement. The Investment Consultant will monitor the performance, fees, and characteristics of all Investment Alternatives, reporting to the Committee on no less than a quarterly basis.

By separate communication, the Committee will delegate to specific Plan service providers the creation of, and delivery of disclosure notices required under various IRC and DOL rules and regulations. Similarly, the Committee can arrange for investment education and assistance to the Plans' Participants in an effort to further their understanding of the investment choices they will be making. All such education and assistance will be provided consistent with the safe

harbor requirements of the Department of Labor's *Interpretative Bulletin 96-1: Participant Education; Final Rule* to insure that such education and assistance cannot be construed as "investment advice" provided by the Plan or Committee.

#### **Part V: Investment Alternatives**

The Plan will provide a variety of "Core" Investment Alternatives—each of which are diversified and have materially different risk and return characteristics—into which Participants may direct the investment of their Plan balances and contributions for their benefit. Through various combinations of Investment Alternatives, a Participant is to have the ability to construct a portfolio with aggregate risk and return characteristics within a range normally appropriate for a Participant saving for retirement.

At minimum, the Plan will provide one or more diversified investment Alternatives (including, where appropriate, an indexed Investment Alternative) that are representative of each of the following asset classes:

- U.S. Large Cap Stocks
- U.S. Mid Cap Stocks
- U.S. Small Cap Stocks
- Life cycle or target retirement date funds
- International Stocks
- Intermediate-Term Bonds
- Cash equivalents

Within each of the aforementioned asset classes, the Investment Consultant may recommend, as appropriate, additional Investment Alternatives to provide diversity of management style within each asset class, such as "value", "growth", and "indexed".

The Plans will allow, at the sole determination of, and selection by, the Committee, Investment Alternatives that will be referred to as "Specialty Options." Specialty Options will offer Participants access to diverse investment management style, asset class, regional exposure, and/or sector strategies that may not be available within the Core Investment Alternatives, but are believed to be beneficial in constructing portfolios. Examples of Specialty Options include high yield bonds, diversified global bonds, long duration bonds, Asian stock, healthcare stock, all-cap domestic equity, emerging market stock, real estate, commodities, multi-asset/balanced and target-date funds.

#### **Part VI: Investment Alternative Selection Criteria**

Within each asset category, the Investment Consultant will identify appropriate Investment Alternatives, subject to the following Investment Alternative Selection Criteria:



- Each Investment Alternative will be managed by an investment adviser who meets certain minimum criteria. The adviser will be a bank, insurance company, or investment management company or investment adviser registered under the Investment Advisors Act of 1940, in good standing with regulators. An Investment Alternative may be a registered mutual fund, collective trust, or a separately managed account. The Investment Consultant is to secure information on the history of the advisor's firm, its investment philosophy and approach, its principals, portfolio composition, fee schedules, and other relevant information.
- When selecting an Investment Alternative, the Investment Consultant may rely upon industry-standard databases in addition to its own research and judgment to identify the management style of a particular Investment Alternative. For the purposes of categorization and performance reporting, the Investment Consultant may assume that the asset category of all securities purchased by an Investment Alternative is that of the particular vehicle's industry-standard classification even though some of the securities purchased by the Investment Alternative may actually be of a different asset class.
- All Investment Alternatives selected must have a readily ascertainable market value and must be readily marketable. The Plan must be able to purchase each Investment Alternative without an upfront sales charge. No Investment Alternative may be subject to a contingent deferred sales charge. However, an Investment Alternative may be subject to a short-term redemption fee. No restrictions on the purchase or sale of an Investment Alternative shall preclude a Participant from exercising those exchange privileges as detailed in procedures agreed to between the Committee and the Recordkeeper. (Stable value funds generally restrict exchange capability without notice to competing funds. If a stable value fund is to be an Investment Alternative, the provisions must be made to insure recordkeeping procedures will comply with rules for restricting exchanges from a stable value funds to a "competing" Alternative.)

Additional Criteria for the initial selection of an Investment Alternative include the following:

- An Investment Alternative should have at least a three-year track record. In making this and similar performance-based determinations, the Investment Consultant may include the performance of an Investment Alternative's manager whose investment performance at another fund is "portable" as defined by the SEC in its No-Action Letter of 9/13/96, or of a different share class of the same Investment Alternative, or the Investment Alternative manager's relevant strategy performance composite.
- Except in the instance of a market index fund, the Investment Alternative's investment performance should be in the upper 35% of those with similar management styles over either the most recent 3-year or 5-year trailing period. Except in the instance of a

market index fund, no Investment Alternative's performance over a 3-year or 5-year trailing period should rank in the bottom 25% of Investment Alternatives with similar investment objectives.

- The Investment Alternative should show a consistency of equaling or bettering its assigned Benchmark Index over trailing time periods of three and more years.
- The Investment Alternative should have demonstrated a consistency of management style based on its security holdings or a returns-based style analysis.

The Investment Consultant and Committee may exercise some judgment in the selection of Investment Alternatives, even if the investment does not comply with all of the criteria identified above as Additional Criteria. In such instances, the Investment Consultant must present to the Committee its reasons for having selected the Investment Alternative.

#### **Part VII: Investment Alternative Oversight**

The Investment Consultant shall regularly review the performance of each Investment Alternative to determine if it should continue to be retained within the Plan, and communicate its findings in its Quarterly Performance Report to the Committee.

For each Investment Alternative, the Investment Consultant will identify an investment benchmark and peer group to be used for the purpose of ongoing monitoring. In its Quarterly Performance Reports to the Committee, the Investment Consultant will provide the Committee with up-to-date benchmark and peer group identification. To the extent practicable, investment benchmarks will be predefined, passive, and reflective of the Fund's current investment strategy.

The Investment Consultant shall use an industry-accepted database of mutual funds for the compilation of peer group universes. The Investment Consultant may rely upon the database's identification of each Investment Alternative's category when compiling the universe. The Investment Consultant, however, may override the database's characterization of one or more Investment Alternatives and also may create its own set of universes.

From time to time, asset class designations, Investment Alternative selections, data sources, benchmarks, and peer groups may change. Such changes, as they occur, will be reflected in the Quarterly Performance Report.

Except in the instance of a market index fund, events or criteria that may indicate an Investment Alternative is to be removed and/or replaced as a Plan Investment Alternative include, but are not limited to, the following:

- There has been a material change in the Investment Alternative’s management, or the Alternative is subject to sanctions for noncompliance with laws or regulations affecting the Alternative’s investment performance.
- Performance of the Investment Alternative over a 3-year or 5-year period ranks within the lowest 35% of performance of vehicles with similar investment style.
- The Investment Alternative over a trailing time period of 3 years or more is consistently and materially underperforming its Benchmark Index.
- The Investment Alternative fails to demonstrate a consistency of management style based on a returns-based style analysis.

With each Quarterly Performance Report to the Committee, the Investment Consultant shall certify as to each Investment Alternative one of the following statements:

- The Investment Alternative remains suitable as the funding vehicle for an asset class;
- The Investment Alternative is under Watch and might need to be replaced, or it should remain as the funding vehicle for an asset class for reasons to be enunciated within the Investment Consultant’s report to the Plan.
- The Investment Alternative should be Replaced;

Each quarter, an authorized representative of the Committee will acknowledge receipt of the Investment Consultant’s certification.

An Investment Alternative may continue to serve within the Plan even if it fails to meet all of the criteria identified herein if the Investment Consultant believes there are compelling reasons for the Plan to hold the Investment Alternative. In such an event, the Investment consultant shall communicate such reasons within its Quarterly Performance Report to the Committee.

#### **Part VIII: Default Investment**

The Vanguard Target Date Fund corresponding with the date closest to a participant’s normal retirement age will be the “default” investment election in the event a Participant fails to make an affirmative investment election for his or her account balance. The Committee shall direct a Plan service provider to provide all of the notices required to meet the conditions of the DOL’s regulations regarding a Qualified Default Investment Alternative.

#### **Part IX: Portfolio Risk**

At times, some of the funds to be selected for the day-to-day management of the Investment Alternatives may experience high degrees of price volatility and periods of substantial, negative performance. The Committee views the existence of market volatility as necessary to achieve each Investment Alternative’s long-term investment objectives and understands that future

market conditions may result in a negative performance that could fall below the historic experience of the Investment Alternative or its Benchmark Index.

The historical and/or prospective volatility of each Investment Alternative will be communicated to Participants as an indication of the degree of risk that may be experienced in the future. The Investment Consultant's assessment of prospective volatility may be based upon Investment Alternative or asset class experience, or the Investment Consultant's long-term risk expectation thereof.

**Part X: Power to Amend**

Nothing in this Statement shall preclude the Committee from modifying the scope or content of this Statement, or changing or imposing additional investment restrictions. Any such modifications will be delivered to the Investment Consultant's and other service providers for acknowledgement of receipt and acceptance.

**Part XI: Adoption of Statement of Investment Policy**

The Committee met and reviewed this Statement of Investment Policy on this 28 day of August, 2015. By unanimous consent, it was resolved to adopt the Policy in the form herein described.

### **Attachment A: Proposal Questions**

1. Describe your capability to provide the services listed in Exhibit A: Scope of Services.
2. Describe where you will be unable to provide the services listed in Exhibit A: Scope of Services, and your recommendation to the City to either obtain an alternative source for the service, or whether you believe the service is not necessary.
3. Describe your experience providing the services listed in Exhibit A: Scope of Services to other governments, and specifically local municipalities.
4. Describe any concerns or problems you may have with Exhibit B: Statement of Investment Objective and Policy Guidelines.
5. State the full name and address of the Proposer. For national firms, please indicate which office would serve our account.
6. Provide the name, title, address, e-mail address, and telephone number of the individuals responsible for responding to this request.
7. Provide the name, title, address, e-mail address, and telephone number of the individuals responsible for being the City's primary contact.
8. Detail the uniqueness that makes your firm different from other persons or firms that offer investment management services.
9. Describe your proposed fee schedule.
10. Please provide three references of clients within the last 3-5 years.



Attachment B: Service Contract

**CITY OF LAKE OSWEGO  
Standard Service / Personal Service Contract**

<b>Contractor:</b>	<b>Contractor Name</b>	<b>Date of Contract:</b>	<b>Begin date</b>
<b>Mailing Address:</b>	<b>Mailing Address City, State Zip</b>	<b>Date of Completion:</b>	<b>Completion date</b>

**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: Exhibits.
- D. Contractor’s proposal.

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 of Payment.** Contractor shall be compensated for all goods, materials, expenses, and services as follows: A fixed fee in the amount of \$\_\_\_\_\_.

**B. Manner of Payment.** Payment shall be due to the contractor, in accordance with the subsection Date of Payment below, upon the following:  
Monthly, with an invoice being submitted by contractor within the first 30 days of the start of Work and continuing each month thereafter until completion or termination.

**C. 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 day's 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 the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by Public Contracting Officer, less previous amounts paid and any claim(s) which 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 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 Contractor shall provide the City written notice of cancellation or material modification 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 prior to the renewal date of its insurance policies by the Contractor’s insurance company or companies during the term of the Work, to assure that the required insurance is maintained.

**D. Insurance Policy Requirements.**

Required?	Type of Insurance	Minimum Coverage	City named as Additional Insured
Yes	Comprehensive general or commercial general liability	\$2,000,000 per occurrence and \$3,000,000 in the aggregate	Yes
No	Protection and Indemnity US L&H	\$2 million per accident \$2 million per person per accident	Yes
Yes	Automobile liability	\$1,500,000 per accident-combined single limit or \$1,500,000 bodily injury and \$1,000,000 property damage	Yes
Yes	Professional liability	\$2,000,000 per claim/aggregate	No
Yes  Or  No (if initialed)	Workers Compensation Employer’s Liability  _____ [ ] Contractor Initial if Exempt from Worker Comp Coverage	Statutory Coverage \$1 million per person per accident  _____ Contractor warrants and represents contractor does not employ any persons that would require contractor to provide workers compensation insurance benefits.	No

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

**INSERT CONTRACTOR NAME HERE**

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**

\_\_\_\_\_  
Megan Phelan

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

**Attachment C: Standard Provisions**

**CITY OF LAKE OSWEGO STANDARD PUBLIC CONTRACT PROVISIONS FOR PERSONAL SERVICE / SERVICE CONTRACT  
(5/15)**

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 present interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its Work, and that in the performance of this contract no person having any such interest shall be employed.

(10) 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.

#### **ELECTRONIC CONTRACTING AND REPORTS**

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.

#### **INDEMNITY AND HOLD HARMLESS**

The Contractor shall defend, indemnify, and hold the City, its officers, agents and employees, harmless against all 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 negligent or willful 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 all 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.

**CITY OF LAKE OSWEGO STANDARD PUBLIC CONTRACT PROVISIONS FOR PERSONAL SERVICE / SERVICE CONTRACT  
(5/15)**

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.