

City of McMinnville



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Finance Department

AUDIT SERVICES

Request for Proposal (RFP)

RFP number: 2021-01

Date of Issue: Friday, Feb 5, 2021

Closing Date and Time: Monday, Mar 22, 2021 at 5pm

Single Point of Contact (SPC): Jennifer Cuellar, Finance Director

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SECTION 1: General Information

1.1 INTRODUCTION

The City of McMinnville, acting by and through the authority of the City of McMinnville City Council “City,” is requesting proposals from qualified independent certified public account firms to perform the annual audits of the financial statements for the fiscal years ending June 30, 2021, 2022, 2023, 2024 and 2025.

Additional details on the Scope of the Services are included in the Scope of Work/Specifications section.

The City anticipates the award of one Contract as a result of this RFP.

The initial term of the Contract is anticipated to be 5 years with options for annual renewals up to a cumulative maximum of 10 years.

1.2 SCHEDULE

The table below represents a tentative schedule of events. All times are listed in Pacific Time. All dates listed are subject to change.

Event	Date	Time
Questions / Requests for Clarification Due	February 22, 2021	5:00 PM
Answers to Questions / Requests for Clarification Issued (approx.)	February 26, 2021	
RFP Protest Period Ends	10 calendar days prior to RFP Closing	
RFP Closing (Proposal Due)	March 22, 2021	
Initial Scoring and ranking complete	April 7, 2021	
Audit Committee Meeting: status and scoring review	Week of April 12, 2021	
Presentations, Demonstrations, or Interviews with Audit Committee (if needed)	Week of April 19, 2021	
Issuance of Notice of Intent to Award (approx.)	April 26, 2021	
Award Protest Period Ends	7 calendar days after Notice of Intent to Award	
Contract approved by City Council	May 25, 2021	

1.3 SINGLE POINT OF CONTACT (SPC)

The SPC for this RFP is identified on the Cover Page, along with the SPC’s contact information.

Proposer shall direct all communications related to any provision of the RFP only to the SPC, whether

about the technical requirements of the RFP, contractual requirements, the RFP process, or any other provision.

SECTION 2: AUTHORITY, OVERVIEW, AND SCOPE

2.1 AUTHORITY AND METHOD

This RFP is issued under the authority of the McMinnville City Council.

The City is using the Competitive Sealed Proposal method, pursuant to Oregon Revised Statutes (ORS) 279B.060 and Oregon Administrative Rules (OAR) 137-047-0260. City may use a combination of the methods for Competitive Sealed Proposals, including optional procedures: a) Competitive Range; b) Discussions and Revised Proposals; c) Revised Rounds of Negotiations; d) Negotiations; e) Best and Final Offers; and f) Multistep Sealed Proposals.

2.2 OVERVIEW AND PURPOSE

2.2.1 Project Overview and Background

City of McMinnville

The City of McMinnville is a municipal government that operates under a council-manager form of government. The City provides a full range of services, including police and fire protection; ambulance services; municipal court; wastewater treatment, system construction, and maintenance; street construction and maintenance; engineering and planning services; building inspection services; library services, parks and recreation activities, and cultural activities; and a municipal airport.

Currently the City employs approximately 175 full-time employees and 150 part-time staff.

The City's budget for the fiscal year ending June 30, 2021 is \$117,570,000 and the General Fund appropriation is \$35,130,000.

The City does not always spend sufficient funds in federal awards to require a single audit. The City will need a Single Audit in FY2019-20 and FY2020-21 due to the level of CARES Act funding received over those two fiscal year periods.

The City fiscal organization includes the general fund, nine governmental funds (special revenue and capital funds), one debt service fund, two proprietary funds (Wastewater Services and Wastewater Capital Fund), two internal service funds, one blended component unit and one discretely presented component unit (McMinnville Water and Light).

The CPA firm of Merina and Company have been the City's auditor since 2016; the full extent of the contract extensions have been exhausted, thus the City is issuing this RFP.

Prior year financial reports may be found on the city's website:

www.mcminnvilleoregon.gov/finance/page/financial-reports

City of McMinnville Component Units

The McMinnville Urban Renewal Agency (URA) is the City's urban renewal agency. The URA relies

on tax increment revenue (TIF) based on the value of the property in the designated urban renewal area which is primarily industrial property. Tax increment revenue is restricted to the repayment and administration of debt. The URA is a legally separate entity governed by the City Council. Its FY2020-21 adopted budget totals just under \$1 million.

The CPA firm of Merina and Company has audited the URA's financials since 2016; the full extent of the contract extensions have been exhausted, thus the City is issuing this RFP.

Prior year financial reports for the UR may be found on the city's website:

www.mcminnvilleoregon.gov/planning/page/urban-renewal

A discretely presented component unit of the City (McMinnville Water & Light) will be included as part of the City's basic financial statements. McMinnville Water & Light's financial statements will be audited by the component unit's auditor.

2.2.2 Purpose

The successful Proposer will be responsible for examining the financial statements of the City of McMinnville, Oregon, and its one blended component unit for five consecutive years, beginning fiscal year 2020-21 through, and including, fiscal year 2024-25. The City may amend the resulting Contract for up to five annual extensions. The selected audit firm will provide the following services for the City and its one blended component unit:

For City of McMinnville:

- a. Examination of financial statements of the City as required by Oregon Revised Statutes
- b. Examination covering the City's federal funds for the year as required by Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) and any other applicable federal regulations
- c. Preparation of the basic financial statements of the City (which will be part of a Comprehensive Annual Financial Report)
- d. Assistance to City staff on various accounting, internal control and reporting questions

Note: the City is considering implementation of a financial statement module tied to its accounting software and preparation of the financial statements may not be needed for the entire engagement period.

For the McMinnville Urban Renewal Agency (City Component Unit):

- a. Examination of financial statements of the URA as required by Oregon Revised Statutes
- b. Preparation of the basic financial statements of the URA
- c. Assistance to City staff that carry out URA work on various accounting, internal control and reporting questions

Note: the City is considering implementation of a financial statement module tied to its accounting software and preparation of the financial statements may not be needed for the entire engagement period.

The successful audit firm shall draft an annual Engagement Letter. Such engagement letters may not conflict with or be inconsistent with the terms of the Personal Services Contract. The initial year's Engagement Letter will be included as an exhibit to the executed Personal Services Contract.

It is the expectation of the City that the selected audit firm will conduct its engagement consistent with generally accepted accounting principles (GAAP) and the evolving requirements and standards for audits and the production of financial statements of relevant bodies including, but not limited to, the State of Oregon, the federal government, the American Institute of CPAs, the Governmental Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

2.3 SCOPE OF WORK

2.3.1 Comprehensive Annual Financial Report – City of McMinnville

The City prepares a Comprehensive Annual Financial Report (CAFR), consistent with generally accepted accounting principles (GAAP), in full compliance with the pronouncements of the Governmental Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB), and including disclosures required by State regulations.

The selected audit firm will produce the basic financial statements, unless the City implements a financial reporting software solution.

City staff will produce the Management Discussion and Analysis, Transmittal letter and additional statistical information. The audit firm will consolidate the information and produce the CAFR document.

The purpose of the auditors' examination is to audit and express an opinion on the fairness of presentation, in accordance with GAAP, of the general purpose financial statements taken as a whole. The additional information section of the CAFR will be examined "in relation to" the general purpose financial statements.

The audit firm, as part of the audit, shall perform an evaluation of the internal accounting controls and communicate any weaknesses and recommendations as required in the CAFR and in a separate letter to management.

The audit firm shall have conducted an examination of, and have issued its opinion on, the financial statements, including auditor's comments and disclosures required by the Minimum Standards for Audits of Oregon Municipal Corporations, no later than December 15 after the close of each fiscal year ending June 30. Each year the audit firm will propose a testing, document review and production schedule in order to meet this deadline which will be reviewed by and agreed to by the City.

2.3.2 Basic Financial Statements – Urban Renewal Agency

The selected audit firm will produce basic financial statements for URA.

City staff will produce the Management Discussion and Analysis for the URA. The audit firm will then consolidate the information for the component unit and produce the audit document.

The deadline for the completion of the production of the basic financial statements for the component unit is no later than December 15 after the close of the fiscal year ending June 30. URA specific items will be included in the above noted audit schedule.

2.3.3 Report on the Single Audit – City of McMinnville

A report on the results of a single audit of the City’s grants as required by Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) will be included as a component of the CAFR document. City staff will prepare the Schedule of Federal Financial Assistance.

The City anticipates single audits will not be required every year for the City but should never be a factor for the URA.

The audit firm will provide advice to the City regarding any discrepancies in the City Financial policies to comply with Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) or other relevant federal awards requirements.

2.3.4 Manner that activities will be carried out

The City prefers to conduct its work in the most efficient and environmentally sensitive manner possible, including minimizing the amount of paper utilized in operations and maximizing the ability of staff and auditor ability to access records remotely.

2.3.5 Communication to the Governing Body

The audit firm shall prepare, in letter form, a Communication to the Governing Body to include recommendations to management. The Communication to the Governing Body shall include any findings, observations, opinions, comments or recommendations, relating to internal control, accounting systems, data processing, compliance with laws, rules and regulations, and any other matters that come to the attention of the audit firm during the course of the examination and, in the opinion of the audit firm, warrant the attention of management. Such recommendations shall not be construed as special or additional studies, and shall be limited to those recommendations usually associated with the study of internal control systems and procedures as a part of an examination of financial statements. The Communication to the Governing Body and management’s written responses shall be discussed with City officials prior to publication. The audit firm will prepare copies of the final report to the City following the same schedule as for the CAFR.

2.3.6 Modifications to Original Audit Scope and Contract Amount

Should audit or relevant accounting standards change during the Contract term, it is the City’s expectation that the audit firm will make the appropriate changes to its testing, examination and areas of its expressed opinions, etc. In the event that the scope of work identified herein is significantly changed due to unanticipated audit or accounting standard changes, the audit firm may propose a reasonable fee adjustment based on the actual cost to provide the additional

work. Any such request must be accompanied by substantiating documentation.

In the event that circumstances disclosed by the audit in any year indicate that a more extensive and detailed examination is required, in addition to that which would be sufficient under normal circumstances, the audit firm shall provide all pertinent facts relative to the extraordinary circumstances together with the firm's cost estimate of the additional services to the City. Any fees relating to such extensions of examination procedures are to be considered additional fees and subject to negotiation. Any change to the scope of work or dollar amount of the Contract must be approved by written amendment to the Contract and signed by all parties.

The City retains the right to reduce the scope of work, and Contract amount accordingly, in the City's sole discretion in the event sufficient funds are not appropriated to pay the total Contract amount.

2.3.7 Other Required Services

The selected audit firm shall provide a variety of technical assistance throughout the term of the Contract. This assistance shall include answers to accounting, reporting or internal control questions; and assistance and guidance in implementing GASB pronouncements and updating reporting standards.

The audit firm will be asked to provide recommendations to the City to better utilize technology and update practices to add transparency, improve operational efficiency, strengthen internal controls and minimize negative environmental impacts due to its activities.

Materials and sets of working papers developed during the Contract term will be maintained for a minimum of five (5) years from the date of the audit reports, at the auditor's expense, and will be made available for examination by authorized representatives of the federal audit agency, Oregon Secretary of State, the U.S. General Accounting Office, and the City.

In addition, the firm shall respond to the inquiries of successor auditors and allow successor auditors to review work papers related to matters of accounting significance and internal control.

Audit firm management or other representatives will be present at meetings of the Audit Committee and City Council when matters regarding the audit or related reports are discussed. Meetings with individual city councilors or managers may also be requested.

SECTION 3: PROCUREMENT REQUIREMENTS

3.1 MINIMUM QUALIFICATIONS

To be considered for evaluation, Proposer must provide written evidence within the Proposal to verify that Proposer meets all requirements of this section:

1. Audit firm (Proposer) must be properly licensed for public practice as an independent auditor and be qualified as a municipal auditor.
2. Audit firm must not have a record of substandard work. The City will verify this requirement by communication with the Oregon State Board of Accountancy.

3. Audit firm must meet the independent standards of the GAO Standards for Audit of Government Organizations, Programs, Activities, and Functions, Latest Revision.

3.2 MINIMUM SUBMISSION REQUIREMENTS

3.2.1 Proposal Format and Quantity

Proposal should follow the format information in this section. Proposals may be submitted in the following formats:

- fully electronic version sent via email to the PCS
- partial paper (one paper original) **plus** one electronic copy of the complete Proposal on electronic media (USB drive) delivered to the City Hall to the attention of the PCS

Electronic components are acceptable in the following formats: Adobe Acrobat (pdf), Microsoft Word (docx), or Microsoft Excel (xlsx). The total combined size of the Proposal should be compressed so it does not exceed 10 megabytes.

Font used should be at least 12 point in a standard body text font (ex Calibri, Times New Roman, Arial).

Proposals shall address each of the sections listed in the 3.3 Proposal Content Requirements section, labeling the responses with the RFP titles so that it is clear to City evaluators the proposal's response to each required content item.

The Proposer Information and Certification Sheet (Attachment C) must bear the Proposer's authorized representative's Signature. If Proposer believes any of its Proposal is exempt from disclosure under Oregon Public Records Law (ORS 192.410 through 192.505), Proposer shall complete and submit the Affidavit of Trade Secret (Attachment B) and submit one complete fully redacted version of its Proposal, clearly identified as the redacted version.

3.2.2 Authorized Representative

Failure of the authorized representative to sign the Proposer Information and Certification Sheet may subject the Proposal to rejection by the City.

3.3 PROPOSAL CONTENT REQUIREMENTS

Proposal must address each of the items listed in this section and all other requirements set forth in this RFP. Proposer shall describe the Services to be performed. A Proposal that merely offers to provide the goods or services as stated in this RFP may be considered non-Responsive to this RFP and will not be considered further.

Proposal should not include extensive art work, unusual printing or other materials not essential to the utility and clarity of the Proposal. Do not include marketing or advertising material in the Proposal. Proposal should be straightforward and address the requirements of the RFP. Proposals containing excess marketing or advertising material may receive a lower evaluation score if specific information is difficult to locate.

3.3.1 Proposer Information and Certification Sheet

Proposer shall complete and submit the Proposer Information and Certification Sheet (Attachment C).

Failure to demonstrate compliance with Oregon Tax Laws and sign the Proposer Information and Certification Sheet may result in a finding of non-Responsibility.

3.3.2 References

References must be able to verify the quality of previous, related Work. The City may contact references to determine whether they support Proposer's ability to comply with the requirements of this RFP. City may use references to obtain additional information, or verify any information needed. City may contact any reference (submitted or not) to verify Proposer's qualifications.

Include jurisdiction or entity, contact name, phone number and email address. At least one Oregon local government jurisdiction should be included in the references provided.

3.3.3 Proposed Work Plan and Timeline

Describe how Proposer would carry out the major activities of the audit in context with the Scope of Work. Provide a comprehensive management plan that the Proposer intends to follow. Illustrate how the plan will serve to coordinate and accomplish the Work defined in this RFP.

Given the length of the potential contract, please describe the Proposer's recommendation for a rotation schedule of audit partners leading the engagement and/or other measures to that can mitigate the potential erosion of an arms-length relationship between Proposer and City staff.

The work plan should include audit milestones, schedules, time estimates (in hours) for each significant segment of the audit and the staff level to be assigned. Where possible, individual staff members should be named and their titles provided. The planned use of specialists, if any, should be described.

Also include a work plan and description of any additional data collection or work that your firm performs in the first year with new local government audit clients. Attach examples of any tools or forms your firm will use for this process.

Indicate your best estimate of time that City personnel will need to contribute to the audit work effort and additional first year activities.

Please differentiate the work required for the legal entities to be audited – City and URA.

Please also include the following documents (redacted or generic forms used by your firm are acceptable) as part of your Proposal:

- a. sample(s) of a recent audit testing preparation list for a similar local government
- b. sample(s) of a recent audit calendar (testing dates, document production deadlines, anticipated filing dates) for a similar local government
- c. sample(s) of a recent engagement letter for a similar local government

Proposers may attach any other documents or descriptions of the tools Proposer frequently uses to perform local government audits that might give the City a better feel for Proposer's use of technology and audit methodology as well as insight into the staffing commitment, and proposed timing that the City can expect during the initial and subsequent Contract terms.

Provide any other information - in this or any other section of the Proposal that you feel may help the Proposal Evaluation Committee evaluate your firm for this engagement.

3.3.4 Qualifications and Experience

Describe why Proposer is qualified to provide the audit services to the City of McMinnville as described in this RFP. Proposer should describe the firm's experience and qualifications in the following specific areas:

- a. Production of CAFR documents
- b. Drafting basic financial statements
- c. Single audit
- d. Assisting clients in retaining the GFOA Certificate of Achievement in Financial Reporting award
- e. Engagements with primary governments and their component units

Disclose any disciplinary or other corrective action taken by the Oregon State Board of Accountancy (or similar authorities) related to your firm in the last five years. Describe what has changed at your firm as a result.

Provide a list of the municipal audits Proposer has performed in the past three (3) years. Briefly describe the range of activities provided by Proposer such as auditing, drafting of basic financial statements, accounting, tax service, or management services. For three (3) of the municipal audits listed, provide the name, title, telephone number and email of the client official responsible for the audit. These jurisdictions may or may not be included in your references.

Identify the state of Proposer's incorporation and the city(ies) in Oregon where staff are located.

Identify whether your firm is minority or women owned.

3.3.5 Key Persons and Resumes

Identify the audit managers, field supervisors and other key staff who will work on the audit, including staff from other than the local office (organizational chart). Resumes describing certifications, degrees, professional association memberships, relevant experience and continuing education for the auditor-in-charge up through the individual with final responsibility for the engagement should be included. For other proposed staff, including consultants to be assigned to the audit, please attach either a description of their qualifications and prior governmental auditing experience (ex: years of experience in performing single audits, familiarity with Oregon Local Budget Law, etc.) or their current professional resume.

Provide a description of the Proposer's policies on:

- a. Senior staff rotation for long term contracts once assigned to audit the City

- b. Notification of changes in key personnel assigned to the engagement
- c. Disclosure to clients of disciplinary action or other similar events during the course of the Contract

3.3.6 Cost Proposal

1. Services and associated costs must be provided separately for both legal entities and for each year of the initial 5-year term of the Contract.
 - a. City
 - Annual Audit Services associated with CAFR
 - Annual Audit Services in years when Single Audit is required
 - Production of Basic Financial Statements (which may end during contract period)
 - Communication to the Governing Body
 - Other Required Services
 - Initial Engagement Costs (if required for first year Contract term)
 - b. URA
 - Annual Audit Services
 - Production of Basic Financial Statements (which may end during contract period)
 - Communication to the Governing Body
 - Other Required Services
 - Initial Engagement Costs (if required for first year Contract term)
2. For each activity described in the Scope of Work, the Cost Proposal must include identifiable costs, time estimates for completing each activity, and a summary of all proposed costs for each legal entity.
3. The Cost Proposal must include separate line items for personnel, travel, supplies, and any other anticipated reimbursable costs.
4. Describe any subsequent year cost differences by category as applicable.

SECTION 4: SOLICITATION PROCESS

4.1 PUBLIC NOTICE

The RFP, including all Addenda and attachments, is published on the city's website www.mcminnvilleoregon.gov/rfps. RFP documents will not be mailed to prospective Proposers.

Prospective Proposer is solely responsible for checking the City website to determine whether or not any Addenda have been issued. Addenda are incorporated into the RFP by this reference.

4.2 PRE-PROPOSAL CONFERENCE

A pre-Proposal conference will not be held for this RFP.

4.3 QUESTIONS / REQUESTS FOR CLARIFICATIONS

All inquiries, whether relating to the RFP process, administration, deadline or method of award, or to the intent or technical aspects of the RFP must:

- Be delivered to the SPC via email or hard copy
- Reference the RFP number
- Identify Proposer's name and contact information
- Refer to the specific part of the RFP being questioned (i.e. page, section and paragraph number); and
- Be received by the due date and time for Questions/Requests for Clarification identified in the Schedule

4.4 SOLICITATION PROTESTS

4.4.1 Protests to RFP

Prospective Proposer may submit a written protest of anything contained in this RFP, including but not limited to, the RFP process, Scope of Work, and the proposed Sample Personal Services Contract. The protest must be received by the SPC no later than 10 days before Closing. This is prospective Proposer's only opportunity to protest the provisions of the RFP, except that Proposer may protest Addenda as provided below and Proposer may take exception to the terms and conditions of the Sample Personal Services Contract as set forth in the Negotiations Section.

4.4.2 Protests to Addenda

Prospective Proposer may submit a written protest of anything contained in the respective Addendum. Protests to Addenda, if issued, must be submitted by the date/time specified in the respective Addendum, or they will not be considered. Protests of matters not added or modified by the respective Addendum will not be considered.

4.4.3 Protest Process

Protest of the RFP or subsequent Addenda must:

- Be delivered to the SPC via email or hard copy
- Reference the RFP number
- Identify prospective Proposer's name and contact information
- Be sent by an authorized representative
- State the reason for the protest, including:
 - the grounds that demonstrate how the Procurement Process is contrary to law, Unnecessarily Restrictive, legally flawed, or improperly specifies a brand name; and
 - evidence or documentation that supports the grounds on which the protest is based

- State the proposed changes to the RFP provisions or other relief sought
- Protests to the RFP must be received 10 days before the RFP Close date identified in the Schedule
- Protests to Addenda must be received by the due date identified in the respective Addendum

4.5 PROPOSAL DELIVERY OPTIONS

Proposer is solely responsible for ensuring its Proposal is received by the SPC in accordance with the RFP requirements before Closing. The City is not responsible for any delays in mail or by common carriers or by e-mail transmission errors or delays, or for any mis-delivery for any reason. A Proposal submitted by any means not authorized below may be rejected.

Delivery through Mail or Parcel Carrier

A Proposal may be submitted through the mail or via parcel carrier, and must be clearly labeled and submitted in a sealed envelope, package or box. The outside of the sealed submission must clearly identify the Proposer's name and the RFP number and title. It must be addressed to the attention of the SPC at the address listed on the Cover Page.

Delivery via email

A Proposal may be sent via email to the SPC listed on the Cover Page by the deadline specified in the RFP. The subject line must include the RFP number and title. Proposals that do not arrive in time because it has been bounced back by the City email system due to its size or for any other reason, or it has been filtered/blocked by the city's virus protection system or it was routed to a junk mailbox, may be rejected.

The City recommends that Proposers send a separate email to the SPC prior to the deadline, with the RFP number and title in the subject line, to confirm that the Proposal document has been received by the City.

4.6 PROPOSAL MODIFICATION OR WITHDRAWAL

If a Proposer wishes to make modifications to a submitted Proposal it must submit its modification in one of the authorized methods listed in the Proposal Delivery Options section. To be effective, the notice must include the RFP number and title and be submitted to the SPC prior to Closing.

If a Proposer wishes to withdraw a submitted Proposal, it must submit a written notice signed by an authorized representative of its intent to withdraw to the SPC via email or hard copy prior to closing in accordance with OAR 137-047-0440. To be effective the notice must include the RFP number.

4.7 PROPOSAL DUE

A Proposal (including all required submittal items) must be received by the SPC on or before the closing deadline noted on the cover page of the RFP. All Proposal modifications or withdrawals must

be received prior to closing as well.

A Proposal received after closing is considered LATE and will NOT be accepted for evaluation.

4.8 PUBLIC OPENING

There will be no public Opening of Proposals. Pursuant to OAR 137-047-0630 Proposals received will not be available for inspection until after the evaluation process has been completed and the Notice of Intent to Award is issued. However, the City will record and make available the identity of all Proposers after Opening.

4.9 PROPOSAL REJECTION

The City reserves the right to reject any or all irregularities or omissions in Proposals submitted in response to this RFP to the extent it is determined to be in the best interest of the City to do so. Furthermore, the City reserves the right to reject any or all Proposals or portions thereof submitted in response to this RFP. Proposals may be rejected for one or more of the following reasons, including but not limited to:

1. Failure of the Proposer to adhere to one or more of the provisions established in the RFP.
2. Failure of the Proposer to submit a Proposal in the format specified herein.
3. Failure of the Proposer to submit a Proposal within the time requirements established herein.
4. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the Proposal process.
5. Failure to provide information that is specifically requested in this RFP.
6. Proposer fails to meet the responsibility requirements of ORS 279B.110.
7. Proposer makes any contact regarding this RFP with any City representatives such as City employees or officials other than the SPC or those the SPC authorizes, or inappropriate contact with the SPC.
8. Proposer attempts to influence a member of the Evaluation Committee.
9. Proposal is conditioned on the City's acceptance of any other terms and conditions or rights to negotiate any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP or Addenda.

The City may reject any Proposal not in compliance with all prescribed public procurement procedures and requirements, and may reject for good cause any or all Proposals upon a finding by the City that it is in the public interest to do so.

4.10 EVALUATION PROCESS

4.10.1 Responsiveness and Responsibility Determination

4.10.1.1 Responsiveness Determination

A Proposal received prior to Closing will be reviewed to determine if it is Responsive to all RFP requirements including compliance with Minimum Qualifications section and Minimum Submission Requirements section. If the Proposal is unclear, the SPC may request clarification from Proposer. However, clarifications may not be used to rehabilitate a non-Responsive proposal. If the SPC finds the Proposal non-Responsive, the Proposal may be rejected. However, the City may waive mistakes in accordance with OAR 137-047-0470.

4.10.1.2 Responsibility determination

The City will determine if an apparent successful Proposer is Responsible prior to award and execution of the Contract. At any time prior to award, the City may reject a Proposer found to be not Responsible.

4.10.2 Evaluation Criteria

Each Proposal meeting all Responsiveness requirements will be independently evaluated by members of an Evaluation Committee. Evaluation Committee members may change and the City may have additional or fewer evaluators for optional rounds of competition. Evaluators will assign a score for each evaluation criterion up to the maximum available points as indicated below.

SPC may request further clarification to assist the Evaluation Committee in gaining additional understanding of Proposal. A response to a clarification request must be to clarify or explain portions of the already submitted Proposal and may not contain new information not included in the original Proposal.

4.10.3 PREFERENCES

4.10.3.1 Reciprocal Preference

For evaluation purposes per OAR 125-246-0310, the City shall add a percent increase to each out-of-state Proposer's Proposal price that is equal to the percent preference, if any, given to a Resident Offeror in the [Proposer's state](#).

4.10.3.2 Tiebreakers

Oregon Suppliers: If the City receives Proposals identical in price, fitness, availability and quality and chooses to award a Contract, the City shall award the Contract in accordance with the procedures outlined in OAR 137-046-0300.

4.11 INITIAL EVALUATION CRITERIA

Scores are the points assigned by each Evaluation Committee member. The maximum points possible for each evaluation criteria are listed in the table below. The SPC will average all scores for each evaluation criterion.

Points and Scoring	
Evaluation Criteria	Points per Section
Proposed Work Plan and Timeline	30
Qualifications and Experience	25
Key Persons and Resumes	15
Cost Proposal	30
Total points available	100

Minimum qualifications (described in section 3.1) and minimum submission requirements (described in section 3.2) will not be scored though failure to clearly demonstrate minimum qualifications of Proposer and minimum submission requirements of Proposal are met may subject the Proposal to rejection by the City.

In addition to the above weighted scoring criteria, feedback from provided references will also be considered and may be determinative in the selectin process. Reference will not be scored but will be considered and may be a deciding factor.

4.12 RANKING OF PROPOSERS

The SPC will average the scores for each Proposal, calculated by totaling the points awarded by each Evaluation Committee member and dividing by the number of members.

The City will rank all Proposers at the conclusion of the evaluation and scoring and may, in the City’s sole discretion, determine an apparent successful Proposer with no additional rounds of competition. If additional competition is conducted, the City will rank advancing Proposers at the conclusion of each subsequent round and may determine an apparent successful Proposer at any time during the solicitation process.

After any applicable preference has been applied, SPC will determine the rank order for each Proposer, with the highest score receiving the highest rank, and successive rank order determined by the next highest score.

4.13 NEXT STEP DETERMINATION

At the conclusion of a round of competition, the City may choose to conduct additional round(s) of competition if in the best interest of the City. Additional rounds of competition may consist of, but will not be limited to:

- Interviews
- Presentations/Demonstrations/Additional Submittal Items
- Discussions and submittal of revised Proposals
- Serial or simultaneous negotiations
- Best and Final Offers

Competitive Range Determination

If the City, in its sole discretion, determines that one or more additional rounds of competition is necessary, it will select a Competitive Range to indicate the Proposers that will be invited to participate in a subsequent round. The Competitive Range may include all, or at the City's sole discretion, some (based primarily on a natural break in the distribution of scores), of the Proposers from a previous round. The City will post a notice on its website of its Competitive Range Determination and provide details about the process and schedule for the subsequent round.

SECTION 5: AWARD AND NEGOTIATION

5.1 AWARD NOTIFICATION PROCESS

5.1.1 Award Consideration

City, if it awards a Contract, shall award a Contract to the highest ranking Responsible Proposer(s) based upon the scoring methodology and process described in Section 4. The City may award less than the full Scope defined in this RFP. If agreement with the highest ranked Proposer is not reached, the City may offer award to the next ranked Proposer and so on until agreement is reached or until the City terminates the process. The City may require reconfirmation of the qualifications and staffing of any Proposer.

5.1.2 Intent to Award Notice

In accordance with ORS 279B.135 and OAR 137-047-0610, the City will notify all Proposers in Writing that the City intends to award a Contract to the selected Proposer(s) subject to successful negotiation of any negotiable provisions.

5.2 INTENT TO AWARD PROTEST

5.2.1 Protest Submission

An Affected Offeror shall have 7 calendar days from the date of the intent to award notice to file a Written protest.

A Proposer is an Affected Offeror only if the Proposer would be eligible for Contract award in the event the protest was successful and is protesting for one or more of the following reasons as specified in ORS 279B.410:

- All higher ranked Proposals are non-Responsive.
- The City has failed to conduct an evaluation of Proposals in accordance with the criteria or process described in the RFP.
- The City abused its discretion in rejecting the protestor's Proposal as non-Responsive.
- The City's evaluation of Proposal or determination of award otherwise violates ORS Chapter 279B or ORS Chapter 279A.

If the City receives only one Proposal, the City may dispense with the evaluation process and intent to award protest period and proceed with Contract Negotiations and award.

5.2.1.1 Protests must:

- Be delivered to the SPC via email or hard copy
- Reference the RFP number
- Identify prospective Proposer's name and contact information
- Be signed by an authorized representative
- Specify the grounds for the protest
- Be received within 7 calendar days of issuance of the Notice of Intent to Award

5.2.2 Response to Protest

The City will address all timely submitted protests within a reasonable time and will issue a Written decision to the respective Proposer. Protests that do not include the required information may not be considered by the City.

5.3 APPARENT SUCCESSFUL PROPOSER SUBMISSION REQUIREMENTS

Proposers who are selected for a Contract award under this RFP will be required to submit additional information and comply with the following:

5.3.1 Insurance

Prior to award, Proposers shall secure and demonstrate to the City proof of insurance in the amount of \$2,000,000 Commercial General Liability for each occurrence and \$2,000,000 Professional Liability per claim. Insurance requirements must be maintained throughout the term of the Contract.

5.3.2 Taxpayer Identification Number

The apparent successful Proposer shall provide its Taxpayer Identification Number (TIN) and backup withholding status on a completed W-9 form when requested by the City or when the backup withholding status or any other relevant information of Proposer has changed since the last submitted W-9 form, if any.

5.3.3 Business Registry

If selected for award, Proposer shall be duly authorized by the State of Oregon to transact business in the State of Oregon before executing the Contract. Information about these requirements may be found at <http://sos.oregon.gov/business/pages/register.aspx>.

5.4 CONTRACT NEGOTIATION

5.4.1 Negotiation

After selection of a successful Proposer, the City may enter into Contract negotiations with the successful Proposer. By submitting a Proposal, Proposer agrees to comply with the requirements of the RFP, including the terms and conditions of the Sample Personal Services Contract (Attachment A).

Proposer shall review the attached Sample Personal Services Contract and note exceptions. Unless Proposer notes exceptions in its Proposal, the City intends to enter into a Contract with the successful Proposer substantially in the form set forth in Sample Personal Services Contract. It may be possible to negotiate some provisions of the final Contract; however, many provisions cannot be changed. Proposer is cautioned that the City believes modifications to the standard provisions constitute increased risk and increased cost to the City. Therefore, the City will consider the Scope of requested exceptions in the evaluation of Proposal.

Any subsequent negotiated changes are subject to prior review of the City Attorney.

In the event that the parties have not reached mutually agreeable terms within 10 calendar days, the City may terminate Negotiations and commence Negotiations with the next highest ranking Proposer.

SECTION 6: ADDITIONAL INFORMATION

6.1 CERTIFIED FIRM PARTICIPATION

Pursuant to Oregon Revised Statute (ORS) Chapter 200, the City encourages the participation of small businesses, certified by the Oregon Certification Office for Business Inclusion and Diversity (“COBID”) in all contracting opportunities. This includes certified small businesses in the following categories: disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business. The City also encourages joint ventures or subcontracting with certified small business enterprises. For more information please visit

<https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?XID=6787&TN=oregon4biz>

6.2 GOVERNING LAWS AND REGULATIONS

This RFP is governed by the laws of the State of Oregon. Venue for any administrative or judicial action relating to this RFP, evaluation and award is the Circuit Court of the State of Oregon located in McMinnville, Oregon; provided, however, if a proceeding must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the

District of Oregon. In no event shall this Section be construed as a waiver by the City of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court.

6.3 OWNERSHIP/PERMISSION TO USE MATERIALS

All Proposals are public record and are subject to public inspection after the City issues the Notice of the Intent to Award. Application of the Oregon Public Records Law will determine whether any information is actually exempt from disclosure.

All Proposals submitted in response to this RFP become the Property of the City. By submitting a Proposal in response to this RFP, Proposer grants the City a non-exclusive, perpetual, irrevocable, royalty-free license for the rights to copy, distribute, display, prepare derivative works of and transmit the Proposal solely for the purpose of evaluating the Proposal, negotiating an Agreement, if awarded to Proposer, or as otherwise needed to administer the RFP process, and to fulfill obligations under Oregon Public Records Law (ORS 192.410 through 192.505). Proposals, including supporting materials, will not be returned to Proposer unless the Proposal is submitted late.

6.4 CANCELLATION OF RFP; REJECTION OF PROPOSAL; NO DAMAGES.

Pursuant to ORS 279B.100, the City may reject any or all Proposals in-whole or in-part, or may cancel this RFP at any time when the rejection or cancellation is in the best interest of the City, as determined by the City. The City is not liable to any Proposer for any loss or expense caused by or resulting from the delay, suspension, or cancellation of the RFP, award, or rejection of any Proposal.

6.5 COST OF SUBMITTING A PROPOSAL

Proposer shall pay all the costs in submitting its Proposal, including, but not limited to, the costs to prepare and submit the Proposal, costs of samples and other supporting materials, costs to participate in demonstrations, or costs associated with protests.

6.6 STATEWIDE E-WASTE/RECOVERY POLICY

If applicable, Proposer shall include information in its Proposal that demonstrates compliance with the Statewide E-Waste/Recovery Policy effective July 1, 2012.

6.7 RECYCLABLE PRODUCTS

Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the Services or Work set forth in this document and the subsequent Contract. (ORS 279B.025)

6.8 PRINTING, BINDING, AND STATIONERY WORK

Except as provided in ORS 282.210(2), all printing, binding and stationery work, including the manufacture of motor vehicle registration plates and plates required to be affixed to motor carriers,

for the State or any county, city, town, port district, school district, or other political subdivision, must be performed within the State.

6.9 CHECKLIST DISCLAIMER

Any checklists that may be contained in this RFP are provided only as a courtesy to prospective Proposer. The City makes no representation as to the completeness or accuracy of any Checklist. Prospective Proposer is solely responsible for reviewing and understanding the RFP and complying with all the requirements of this RFP, whether listed in a checklist or not. The City is not liable for any claims, or subject to any defenses, asserted by Proposer based upon, resulting from, or related to, Proposer’s failure to comprehend all requirements of this RFP.

Checklist	Y / N
3.1 (1) Audit firm (Proposer) must be properly licensed for public practice as an independent auditor and be qualified as a municipal auditor.	
3.1 (2) Audit firm must not have a record of substandard work. The City will verify this requirement by communication with the Oregon State Board of Accountancy.	
3.1 (3) Audit firm must meet the independent standards of the GAO Standards for Audit of Government Organizations, Programs, Activities, and Functions, Latest Revision.	
3.2.1 Attachment B – Affidavit of Trade Secret (if applicable)	
3.3.1 Attachment C – Proposer Information and Certification Sheet	
3.3.2 References	
3.3.3 Work Plan and Timeline	
3.3.4 Qualifications and Experience	
3.3.5 Key Persons and Resumes	
3.3.6 Cost Proposal	

**CITY OF McMinnville
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) for the Audit Services Project (“Project”) is made and entered into on this _____ day of _____ 2021 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and _____ a(n) _____ [state] _____ [corporation/limited liability company, etc.] (hereinafter referred to as “Consultant”).

RECITALS

WHEREAS, the City requires services which Consultant is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Consultant represents that Consultant is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Scope of Work

Consultant shall diligently perform the audit services according to the requirements identified in the Scope of Work for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Services”).

Section 2. Term

2.1. The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than _____, 2026 (“Initial Term”), whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

2.2. The City and Consultant may extend the Initial Term of this Agreement in one (1) year increments, not to exceed a total of five (5) years beyond the Initial Term. Any extension of the Initial Term pursuant to this Section 2.2 must be agreed to in writing by the parties.

Section 3. Consultant’s Services

3.1. All written documents prepared by Consultant in conjunction with the Services shall bear the signature, name, or logo of, or otherwise be identified as coming from, Consultant’s authorized Project Manager.

3.2. Consultant will not be deemed to be in default by reason of delays in performance due to circumstances beyond Consultant's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Consultant's direction and control ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly and proportionately by the City, in writing. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

3.3. The existence of this Agreement between the City and Consultant shall not be construed as the City's promise or assurance that Consultant will be retained for future services beyond the Scope of Work described herein.

3.4. Consultant shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Consultant may have access by reason of this Agreement. Consultant warrants that Consultant's employees assigned to the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

Section 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed _____ DOLLARS (\$_____), for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant.

4.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Work described on **Exhibit A**, a written Addendum to this Agreement must be executed in compliance with the provisions of **Section 16**.

4.3. Except for amounts withheld by the City pursuant to this Agreement, Consultant will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Consultant as promptly as is reasonably possible.

4.4. The City will be responsible for the direct payment of required fees payable to governmental agencies that are not specifically covered by **Exhibit A**.

4.5. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges,

licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

Section 5. City's Rights and Responsibilities

5.1. The City will designate a Project Manager to facilitate day-to-day communication between Consultant and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

5.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2020-21. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this contract early, as described in **Section 14**.

Section 6. City's Project Manager

The City's Project Manager is Jennifer Cuellar. The City shall give Consultant prompt written notice of any re-designation of its Project Manager.

Section 7. Consultant's Project Manager

Consultant's Project Manager is _____. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Consultant's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Consultant that is not from Consultant's designated Project Manager, the City may request verification by Consultant's Project Manager, which verification must be promptly furnished.

Section 8. Project Information

Except for confidential information designated by the City as information not to be shared, Consultant agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 9. Subcontractors and Assignments

9.1. Unless expressly authorized in **Exhibit A** or **Section 10** of this Agreement, Consultant shall not subcontract with others for any of the Services prescribed herein. Consultant shall not assign any of Consultant's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion. Some Services may be performed by persons other than Consultant, provided Consultant advises the City

of the names of such subcontractors and the work which they intend to perform, and the City specifically agrees in writing to such subcontracting. Consultant acknowledges such work will be provided to the City pursuant to a subcontract(s) between Consultant and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Agreement, the City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this Agreement without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for work performed by others on behalf of Consultant shall not be subject to additional reimbursement by the City.

9.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Agreement. Consultant shall cooperate with the City and other firms, engineers or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Consultant shall furnish other engineers, subcontractors and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

9.3. Consultant shall include this Agreement by reference in any subcontract and require subcontractors to perform in strict compliance with this Agreement.

Section 10. Consultant Is Independent Contractor

10.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Project.

10.2. Consultant may request that some consulting services be performed on the Project by persons or firms other than Consultant, through a subcontract with Consultant. Consultant acknowledges that if such services are provided to the City pursuant to a subcontract(s) between Consultant and those who provide such services, Consultant may not utilize any subcontractor(s), or in any way assign its responsibility under this Agreement, without first obtaining the express written consent of the City, which consent may be given or denied in the City's sole discretion. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

10.3. Consultant shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Consultant shall require that all of Consultant's subcontractors also comply with, and be subject to, the provisions of this **Section 10** and meet the same insurance requirements of Consultant under this Agreement.

Section 11. Consultant Responsibilities

11.1. Consultant must make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement as such claims become due. Consultant shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Consultant. If Consultant fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

11.2. Consultant must comply with all applicable Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Consultant shall make all required workers compensation and medical care payments on time. Consultant shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

11.3. No person shall be discriminated against by Consultant or any subcontractor in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City. References to "subcontractor" mean a subcontractor at any tier.

11.4. COVID-19 Safety Measures. Consultant must have a written policy in place to comply with all applicable local, state, and federal laws, regulations, and executive orders related to the COVID-19 coronavirus outbreak to ensure the protection of Consultant's employees and/or subconsultants, City employees, and the public. Consultant must provide its written policy to the City Project Manager at the commencement of the Project. In the event that Consultant is required to stop or delay work due to a COVID-19 related event, Consultant shall not be entitled to any additional payment, remobilization costs, or delay damages.

Section 12. Indemnity

12.1. Indemnification. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful

misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 12.2**. Consultant shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Consultant. As used herein, the term "Consultant" applies to Consultant and its own agents, employees, and suppliers, and to all of Consultant's subcontractors, including their agents, employees, and suppliers.

12.2. Standard of Care. In the performance of the Services, Consultant agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Consultant's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

Section 13. Insurance

13.1. Insurance Requirements. Consultant shall maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder. Any and all agents, contractors, or subcontractors with which Consultant contracts to work on the Services must have insurance that conforms to the insurance requirements in this Agreement. Additionally, if a subcontractor is an engineer, architect, or other professional, Consultant must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

13.1.1. Commercial General Liability Insurance. Consultant and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

13.1.2. Professional Errors and Omissions Coverage. Consultant agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$2,000,000** per claim. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Agreement, and coverage will remain in force for a period of at least three (3) years after termination of this Agreement.

13.1.3. Business Automobile Liability Insurance. If Consultant or any subcontractors will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

13.1.4. Workers Compensation Insurance. Consultant, its subcontractors, and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

13.1.5. Insurance Carrier Rating. Coverages provided by Consultant and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

13.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages. Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of McMinnville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Consultant must be an additional insured on the

insurance policies obtained by its subcontractors performing work on the Services contemplated under this Agreement.

13.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Consultant shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice and Consultant will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

13.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Consultant will be required to maintain such policies in full force and effect throughout any warranty period.

Section 14. Early Termination; Default

14.1. This Agreement may be terminated prior to the expiration of the agreed upon terms:

14.1.1. By mutual written consent of the parties;

14.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person; or

14.1.3. By Consultant, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Consultant, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

14.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

14.3. If the City terminates this Agreement for its own convenience not due to any default by Consultant, payment of Consultant shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Consultant against the City under this Agreement.

14.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 18**, for which Consultant has received payment or the City has made payment.

Section 15. Suspension of Services

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within Consultant's control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Consultant. Should the City suspend, delay, or interrupt the Services and the suspension is not within Consultant's control, then the City shall extend the time of completion by the length of the delay.

Section 16. Modification/Addendum

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Work or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of an Addendum. Consultant's failure to submit such written request for modification in the form of an Addendum shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Agreement affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment, and other costs. If Consultant incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum. To be enforceable, the Addendum must describe with particularity the nature of the change, any delay in time the Addendum will cause, or any increase or decrease in the Compensation Amount. The Addendum must be signed and dated by both Consultant and the City before the Addendum may be implemented.

Section 17. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Consultant as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts during the term of this Agreement and for a period of four (4) years after termination of the Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 18. Property of the City

18.1. All documents, reports, and research gathered or prepared by Consultant under this Agreement, including but not limited to spreadsheets, charts, graphs, drawings, modeling, maps, data generation, papers, diaries, and inspection reports, shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to the City upon request without additional compensation.

18.2. Consultant shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all work performed by Consultant pursuant to this Agreement without the express written permission of Consultant.

Section 19. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of McMinnville
Attn: Jennifer Cuellar
230 NE Second Street
McMinnville, OR 97128

To Consultant: _____
Attn: _____

Section 20. Miscellaneous Provisions

20.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Agreement shall control.

20.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

20.3. No Assignment. Consultant may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

20.4. Adherence to Law. In the performance of this Agreement, Consultant shall adhere to all applicable federal, state, and local laws (including the McMinnville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Consultant is required by law to obtain or maintain in order to perform the Services described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

20.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

20.6. Jurisdiction. Venue for any dispute will be in Yamhill County Circuit Court.

20.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

20.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

20.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

20.10. Modification. This Agreement may not be modified except by written instrument executed by Consultant and the City.

20.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

20.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

20.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

20.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

20.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

20.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

20.17. Interpretation. As a further condition of this Agreement, the City and Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

20.18. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

20.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

20.20. Authority. Each party signing on behalf of Consultant and the City hereby warrants actual authority to bind their respective party.

The Consultant and the City hereby agree to all provisions of this Agreement.

CONSULTANT:

By: _____

Print Name: _____

As Its: _____

Employer I.D. No. _____

CITY:

CITY OF McMinnville

By: _____

Print Name: _____

As Its: _____

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney
City of McMinnville, Oregon

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ATTACHMENT B – AFFIDAVIT OF TRADE SECRET

_____ (Affiant), being first duly sworn under oath, and representing [insert Applicant Name](hereafter “Applicant”), hereby deposes and swears or affirms under penalty of perjury that:

1. I am an employee of the Proposer, I have knowledge of the Request for Proposal (RFP) referenced herein, and I have full authority from the Proposer to submit this affidavit and accept the responsibilities stated herein.

2. I am aware that the Proposer has submitted a Proposal, dated on or about _____ [insert date] (the “Proposal”), to the City of McMinnville in response to Request for Proposal _____ and I am familiar with the contents of the RFP and Proposal.

3. I have read and am familiar with the provisions of Oregon’s Public Records Law, Oregon Revised Statutes (“ORS”) 192.410 through 192.505, and the Uniform Trade Secrets Act as adopted by the State of Oregon, which is set forth in ORS 646.461 through ORS 646.475. I understand that the Proposal is a public record held by a public body and is subject to disclosure under the Oregon Public Records Law unless specifically exempt from disclosure under that law.

4. I have reviewed the information contained in the Proposal. The Proposer believes the information listed in Exhibit A is exempt from public disclosure (collectively, the “Exempt Information”), which is incorporated herein by this reference. It is my opinion that the Exempt Information constitutes “Trade Secrets” under either the Oregon Public Records Law or the Uniform Trade Secrets Act as adopted in Oregon because that information is either:

A. A formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that:

i is not patented,

ii is known only to certain individuals within the Proposer’s organization and that is used in a business the Proposer conducts,

iii has actual or potential commercial value, and

iv gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. or

B. Information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:

i Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

ii Is the subject of efforts by the Proposer that are reasonable under the circumstances to maintain its secrecy.

I understand that disclosure of the information referenced in Exhibit A may depend on official or judicial determinations made in accordance with the Public Records Law.

Affiant's Signature

State of _____)

) ss:

County of _____)

Signed and sworn to before me on _____ (date) by _____ (Affiant's name).

Notary Signature

Notary Public for the State of: _____

My Commission Expires: _____

EXHIBIT A to Affidavit of Trade Secret

Proposer identifies the following information as exempt from public disclosure:

ATTACHMENT C PROPOSER INFORMATION AND CERTIFICATION SHEET

Legal Name of Proposer: _____

Address: _____ City, State, Zip: _____

State of Incorporation: _____ Entity Type: _____

Contact Name: _____ Telephone: _____ Email: _____

Oregon Business Registry Number (if required): _____

Any individual signing below hereby certifies they are an authorized representative of Proposer and that:

1. Proposer has received, examined and accepts the requirements of this RFP. By submitting a Proposal, Proposer agrees to be bound by the Contract/Price Agreement terms and conditions in Attachment A and as modified by any Addenda, except for those terms and conditions that Agency has reserved for negotiation, as identified in the RFP.
2. Proposer acknowledges receipt of any and all Addenda to this RFP.
3. Proposal is a Firm Offer for 180 days following the Closing.
4. If awarded a Contract/Price Agreement, Proposer agrees to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work of the Contract/Price Agreement.
5. I have knowledge regarding Proposer’s payment of taxes and by signing below I hereby certify that, to the best of my knowledge, Proposer is not in violation of any tax laws of the state or a political subdivision of the state, including, without limitation, ORS 305.620 and ORS chapters 316, 317 and 318.
6. Proposer does not discriminate in its employment practices with regard to race, creed, age, religious affiliation, gender, disability, sexual orientation, national origin. When awarding subcontracts, Proposer does not discriminate against any business certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business.
7. Proposer complies with ORS 652.220 and does not unlawfully discriminate against any of Proposer’s employees in the payment of wages or other compensation for work of comparable character on the basis of an employee’s membership in a protected class. “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age.

Contractor’s continuing compliance constitutes a material element of this Contract/Price Agreement and a failure to comply constitutes a breach that entitles Agency to terminate this Contract/Price Agreement for cause.

Contractor may not prohibit any of Contractor’s employees from discussing the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not

retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

8. Proposer is not engaged in the provision of broadband Internet access service, or if at any time Proposer is engaged in or may engage in the provision of broadband Internet access service Proposer is in compliance with Oregon Laws 2018, Chapter 88 (HB 4155) and applicable Public Utility Commission rules, and will remain in compliance throughout the term of the Contract.
9. Proposer and Proposer's employees, agents, and subcontractors are not included on:
 - A. the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>, or
 - B. the government wide exclusions lists in the System for Award Management found at: <https://www.sam.gov/portal/>
10. Proposer certifies that, to the best of its knowledge, there exists no actual or potential conflict between the business or economic interests of Proposer, its employees, or its agents, on the one hand, and the business or economic interests of the State, on the other hand, arising out of, or relating in any way to, the subject matter of the RFP. If any changes occur with respect to Proposer's status regarding conflict of interest, Proposer shall promptly notify the State in writing.
11. Proposer certifies that all contents of the Proposal (including any other forms or documentation, if required under this RFP) and this Proposal Certification Sheet are truthful and accurate and have been prepared independently from all other Proposers, and without collusion, fraud, or other dishonesty.
12. Proposer understands that any statement or representation it makes, in response to this RFP, if determined to be false or fraudulent, a misrepresentation, or inaccurate because of the omission of material information could result in a "claim" {as defined by the Oregon False Claims Act, ORS 180.750(1)}, made under Contract/Price Agreement being a "false claim" {ORS 180.750(2)} subject to the Oregon False Claims Act, ORS 180.750 to 180.785, and to any liabilities or penalties associated with the making of a false claim under that Act.
13. Proposer acknowledges these certifications are in addition to any certifications required in the Contract/Price Agreement and Statement of Work in Attachment A at the time of Contract/Price Agreement execution.

Authorized Signature

Date

(Printed Name and Title)