



**City of Sutherlin  
Request for Proposal  
To Provide Value Engineering Services  
For Wastewater System  
Improvements**

**NOTICE**

The City of Sutherlin is accepting proposals to provide value engineering services for the Wastewater Treatment Facility (WWTF) project. The City invites qualified consultants to submit a proposal package based upon the scope of the work contained within this Request for Proposal (RFP). This value engineering project is being funded by a loan obtained through the Clean Water State Revolving Fund (CWS) in conjunction with the project titled, *City of Sutherlin Wastewater System Improvement*.

**SUBMISSION OF PROPOSAL PACKAGE**

To receive consideration, proposal packages must be submitted in accordance with the following instructions:

1. All proposal packages shall be delivered to:

City of Sutherlin  
Public Works Utilities Superintendent  
Attn: Brian Elliott  
126 East Central Ave.  
Sutherlin OR, 97479

2. Submit six (6) copies of the proposal by **3:00 p.m. on May 24, 2016**.
3. The proposals must be clearly marked "PROPOSAL FOR VALUE ENGINEERING SERVICES FOR WASTEWATER SYSTEM IMPROVEMENTS".
4. Maintaining the integrity of the RFP process is extremely important to the City of Sutherlin. As such all questions, shall be directed to the Utilities Superintendent, Brian Elliott, at (541) 459-5768 or email [b.elliott@ci.sutherlin.or.us](mailto:b.elliott@ci.sutherlin.or.us) Prior to contact, please review the General Information regarding **Additional Information Requests**, located on Page 12 of this packet. Answers to all questions will be posted on line and made available to all firms intending to submit a proposal package. Failure to adhere to these restrictions may significantly reduce your prospects for selection.
5. The City of Sutherlin reserves the right to reject any and all proposals, and has the right, at its sole discretion, to accept the proposal it considers most favorable to the City's interest and the right to waive minor irregularities in procedures.

**City of Sutherlin**  
**Instructions to Submitters**  
**For Value Engineering Services for**  
**Wastewater System Improvements**

**GENERAL INSTRUCTIONS**

The City of Sutherlin invites qualified individuals or firms to submit a proposal package to provide value engineering services as described in the specifications set forth in this RFP. All submittals are subject to the provisions and requirements of the City of Sutherlin Rules of Local Contract Review and the Oregon Revised Statutes, and the Attorney General's Model Public Contract Rules.

**PROPOSAL PACKAGE REQUIREMENTS**

Your PROPOSAL package must not exceed 12 pages and at a minimum shall include the following:

1. **Cover Letter.** All proposal packages must include a cover letter, made to the attention of Brian Elliott, Public Works Utilities Superintendent, and signed by a person legally authorized to bind the applicant to its Proposal. The cover letter shall include any potential conflicts of interest your firm or any key individual may have with this project. Additionally, the cover letter must include the following items:
  - a. The firm name.
  - b. The names of local partners/principals and the number of local personnel.
  - c. The address, telephone, and fax numbers of the firm.
  - d. The contact information, including an email address of the person(s) who are authorized to represent the proposer.
  
2. **Personnel.** All proposal packages must include the following information related to key personnel who will be working on this project. Please note that the City's contract for professional services for this project will require commitment from the selected firm that the personnel listed below will be assigned to the project in the roles stated by your firm.
  - a. The names of the partners, managers and other key staff persons who will be assigned to the project along with brief resumes that indicate their experience in municipal civil engineering, specifically wastewater engineering.
  - b. Indicate the key staff's job classification, roles and responsibilities, professional registrations and certifications, and office location. Experience with design and construction administration of waste treatment plants is a high priority.
  - c. An organizational chart identifying members of the team, including sub consultants, who would be assigned to this project. The chart should clearly delineate roles and responsibilities of the various team members.
  - d. For the proposed sub consultants, please provide the name of each firm, the office location, contact name and telephone number, and the services to be provided.
  
3. **References.** All proposal packages must include the following information related to the references and qualifications relative to the scope of work associated with this proposal.

- a. List of Oregon local government jurisdictions your firm is currently providing wastewater engineering services and/or value engineering services for or has provided engineering services and/or value engineering services for within the last 5 years.
  - b. Relevant Project Summary/Profile Sheets completed within the last 5 years. At a minimum, the sheets shall provide a brief description of the project, provide date Value Engineering was completed, and total cost of Value Engineering. Provide staff that was involved with the project. Provide owner information and contact person.
  - c. Provide references for your team members, concentrating on those members who will have the largest degree of involvement on the project. Indicate the project involved and the individual's role. Provide contact information for the reference.
4. **Project Approach and Proposal.** A preliminary scope of work has been included with this RFP, however it is anticipated that the proposal will include any amendments and/or provide additional recommendations based on the consultant's experience on similar projects. Describe how your team will meet the project goals and summarize why your firm should be selected.

## **QUALIFICATION EVALUATION CRITERIA**

The City will follow a select procedure that involves the review of all qualified proposals, the evaluation and ranking of submittals, negotiation of fees with the most qualified firm and award of contract based upon our local and state procurement requirements. The evaluation committee will be comprised of City Staff. The selection will be based on the following criteria:

### **STATEMENT OF QUALIFICATIONS**

Are similar and current projects included to document the consultant's qualifications? Are individual staff members identified to document the Consultant has the staff to perform the work? Does consultant have appropriate management and support staff with the required experience for work on this type of project? Is staff local? Is staff located in Oregon? Is the staff identified in the Proposal the same staff that performed the work on the projects submitted? Is the proposal clear, concise, and complete?

### **PROJECT STAFFING**

Is the project manager qualified to manage all phases of the project? Has consultant demonstrated ability in studying, designing and applying value engineering principals on similar projects? Does support staff have sufficient experience with related work? Are all required disciplines represented in this scope of work? If sub consultants are proposed, have they worked with the consultant before? Have all team members had similar experience regarding project scope and magnitude?

### **PROJECT EXPERIENCE**

Are similar and current projects submitted as examples? Does the reference confirm a "job well done"? Are references current and accessible?

## **PROPOSED SERVICES**

Is a clear understanding of the project stated and demonstrated throughout? Is the scope detailed and comprehensive? Is the scope consistent with the teaming and staffing levels?

## **PROPOSAL CONTENT**

Does proposal present all required material in a clear and professional manner? Does proposal address all required information?

## **BACKGROUND AND SCOPE OF WORK**

### BACKGROUND

The City of Sutherlin's wastewater system was originally constructed in 1956 for a design population of 3,500 people. Prior to this time, treatment consisted of individual septic tank and drain field systems. Percolation rates are poor in the Sutherlin area of the Umpqua Valley due to the preponderance of heavy clays, shale and rock. Due to population growth, it was necessary to construct a new wastewater treatment facility in 1977, which is located near the intersection of Highway 138 and Stearns Lane. It consists of an activated sludge process operated in contact stabilization mode. The wastewater treatment plant provides secondary level treatment. During the wet weather season plant effluent is discharged to Calapooia Creek. During the dry season plant effluent is recycled and land applied. Many basic components of the wastewater system have reached the end of their design life. The condition of the plant is such that it is not possible to meet current National Pollutant discharge Elimination System (NPDES) limits, particularly with regard to total maximum daily load limitations (TMDL). In addition, during dry periods effluent is irrigated (recycled) on the Umpqua Golf Resort. At times the land application exceeds the capacity of the golf course greens and surface runoff occurs.

Although the design population for the plant was theoretically sized for 8,000 users, inflow and infiltration (I/I), more stringent regulatory requirements and age of the facility have led to treatment facility deficiencies. These deficiencies exist for each major element of the treatment process, including the headworks, secondary treatment units, bio solids treatment and disposal, and effluent reuse. The city entered into a Mutual Agreement and Order (MAO) with Oregon Department of Environmental Quality (DEQ) on June 13, 2004 to set a schedule and interim compliance standards while the city works to resolve the compliance issues. Specified compliance issues include failure of wastewater effluent to meet Class A reuse regulations and the discharge of recycled water from the golf course to Cook Creek.

Since the beginning of work on the Wastewater Facilities Plan (WWFP), the city has completed a series of significant collection system improvements and has reduced the infiltration and inflow into the collection system. Mid-way through the plan, which began in 2004, DEQ delayed the plan until it completed a study of the effluent outfall into Calapooia Creek. This study led to further restrictions for effluent discharge from May through October, which will require significant storage volume of treated effluent until stream flows reach minimum flow levels.

The City of Sutherlin has experienced relatively steady growth during the period of time that it has provided a wastewater utility to the community. Sutherlin's location in the I-5 corridor, available industrial and commercial land lends itself a steady population growth over the next 25 years.

The State or Oregon's 303(d) list for 2006 for water quality limited waters shows Calapooia Creek as Water Quality Limited (WQL). The Umpqua Basin TMDL was issued on October 31, 2006 and approved by the EPA on April 12, 2007. There is general consensus among stakeholders that TMDL requirements for Sutherlin's level of effluent phosphorus concentrations cannot be met with any practical method or technology other than storage or additional reuse areas. The effluent phosphorus level as required by the TMDL is zero between May through October, with conditional discharge in October based upon the minimum stream flow requirement.

This plan addresses the inability of the existing wastewater system to effectively treat wastewater in accordance with current NPDES and TMDL requirements, and the improvements which are necessary to meet the specified requirements. Wastewater planning is for a 20-year period from the expected project completion (start-up) date. The WWTP is beyond its design life, hydraulically overloaded and the treatment capacity for bio solids is inadequate. This is partly due to rules that have changed during the 1990s and to recent changes in the regulatory environment. Continuing I/I rehabilitation projects are addressed in the study as well.

Improvements will be completed in two phases. Phase 1 improvements will bring the Wastewater Treatment Plant in compliance with the NPDES permit and corrects deficiencies at the Everett Avenue Pump Station. Phase 2 will be collection improvements such as I/I repair projects and increasing conveyance capacity.

## **POPULATION AND FLOW PROJECTIONS**

### Population

Sutherlin has a full-time resident population of approximately 7,905. Census data indicates that there is an average of 1.85 people per household, although our calculations show there are approximately 2 people per wastewater equivalent dwelling unit (EDU). Projected population for the year 2037 is 11,594 people. Based on historical averages in the study area, a 1.5% per year growth rate was selected for the residential population for use in this Facilities Plan over the next 25 years. Douglas County and the Department of Land Conservation and Development (DLCD) have agreed that this rate coordinates with their efforts.

### Flows and Loads

Recent WWTP Daily Monitoring Report (DMR) records were analyzed to provide the existing wastewater flows and loads. DEQ guidelines were used to extrapolate the future projected flows and loads and are discussed in Section 4. Existing users are estimated to have an average higher per capita flow than newer users due to higher infiltration. Current flows exceed the WWTP design hydraulic capacity. A disciplined I/I rehabilitation program has been implemented and applied to the system, with special focus on areas identified in the February 2004 I/I study. These efforts have reduced peak daily average flows by approximately 30%. Projected flows and loads for 2037 exceed the WWTP hydraulic and bio solids treatment capacity. Tables 2.1 and 2.2 below summarize the existing and projected flows and loads for the City's wastewater system.

**TABLE 2.1****WASTEWATER FLOWS AND LOADS**

<b>Parameter</b>	<b>2012</b>	<b>2037</b>	
Population	7,905	11,594	
Base Sewage	0.617 MGD	80 gpcd	0.93 MGD
Base Infiltration	0.11 MGD	14 gpcd	0.16 MGD
AAF	1.07 MGD	135 gpcd	1.57 MGD
ADWF	0.72 MGD	92 gpcd	0.88 MGD
AWWF	1.37 MGD	173 gpcd	2.01 MGD
MMDWF <sub>10</sub>	1.23 MGD	156 gpcd	1.80 MGD
MMWWF <sub>5</sub>	1.70 MGD	233 gpcd	2.70 MGD
Peak Average Week	2.94 MGD	351 gpcd	4.07 MGD
PDAF <sub>5</sub>	5.57 MGD	604 gpcd	7.00 MGD
PIF	7.30 MGD	779 gpcd	8.80 MGD

**TABLE 2.2**  
**WASTEWATER TREATMENT DESIGN VALUES**

	<b>Flow Rate</b>	<b>BOD<sub>5</sub></b>		<b>TSS</b>	
AAF	1.57 MGD	165 mg/L	2,250 ppd	179 mg/L	2,450 ppd
MMDWF <sub>10</sub>	1.88 MGD	135 mg/L	2,120 ppd	150 mg/L	2,350 ppd
MMWWF <sub>5</sub>	2.70 MGD	110 mg/L	2,460 ppd	117 mg/L	2,640 ppd

PDAF	7.00 MGD	n/a	n/a	n/a	n/a
PIF	8.8 MGD	n/a	n/a	n/a	n/a

## COLLECTION SYSTEM

The Sutherlin wastewater conveyance system currently consists of approximately 141,000 feet (27 miles) of gravity sewer pipe (6 to 27-inch), an estimated 700 manholes, and 15,000 feet of pressure piping (2-inch through 10-inch). The system also has five collection system pump stations (Everett Avenue, Church Road, Airport, Page Street and Quail Run) in addition to the Plant Influent Pump Station.

The City has executed annual I/I rehabilitation projects from 2004 through 2011, and has completed improvements to Airport Pump Station and Everett Avenue Pump Station. I/I repair projects included approximately 9,000 lineal feet (lf) of inversion lining, lateral repairs and 30 sanitary sewer manhole repairs. Smoke testing was performed in 2012 to identify potential inflow areas and areas to concentrate on for ongoing I/I repair projects.

## TREATMENT SYSTEM

Raw wastewater is conveyed to the treatment facility via a 27-inch asbestos cement gravity sewer, flows to a Rotomat mechanical screen. Then influent flows to the influent pump station wet well. From the influent pump station, the liquid stream is lifted to the headworks which include a grit separator, comminutor and parshall flume. Flow is split from the headworks and continues by gravity to the north and south treatment units commonly referred to as “donut units”. The units each have a contact zone, stabilization zone, return activated sludge (RAS) system and center clarifier. The north treatment unit includes the irrigation holding reservoir and the south unit includes the chlorine contact tank and the filter pump sump.

## WWTP CONDITION

The facility is reaching the end of its design life. Much of the equipment is sound and operable, and the buildings and tanks are structurally sound. There is some surface corrosion of steel components due to age and environment. The biological process provides treatment and experiences minimal upsets. The hydraulic flow for the plant regularly exceeds the flow capacity of the mechanical screen chamber in the winter, and the plant is operating at capacity for mass loads. Each component of the treatment plant was examined for condition, capacity and operability. Details for each component are discussed briefly in the paragraphs below.

The existing mechanical screen is undersized for current wet-weather peak flow and commonly is bypassed due to excessive flows and mechanical clogging from solids. The influent pump station does not meet redundancy or peak flow requirements and solids that bypass the mechanical screen settle into the wet well. The pumps’ performance has decreased as compared to original design values; regardless, they must be upsized to meet existing and future demand requirements. The

existing degritting system is no longer functioning, and allows solids and grit to settle into the treatment units. Flow is measured at the parshall flume, but not after the flow is split, which may affect operational flexibility between the basins. Due to sludge wasting limitations, WWTP operators often hold mixed liquor at a concentration of 8,800 mg/L MLSS. Inadequate mixing results in operational difficulty in maintaining necessary levels of dissolved oxygen in the aeration processes. Existing clarification capacity is inadequate to treat current WWTP flows and loads. The tertiary filter has not been operable for the last twenty years. The existing digester only allow for approximately 20 days detention based upon a hydraulic detention time calculation, yet 60 days is the requirement at 15° C. Oxygenation and mixing limit the operational capacity of digestion. Deliverable oxygen is calculated to be only 55% of what is required for optimal efficiency and the mixing system is below the fluid level, which results in a lack of surface agitation and thereby negates the maximum benefit of mixing for aeration in the digesters. During the wet season, the City periodically pays a local hauler to remove excess bio solids. The existing disinfection system consists of a chlorine gas system. This type of system has safety and supply chain issues. The City is currently in the process of switching to liquid hypochlorite for future disinfection needs.

Discharge from the Sutherlin WWTP is regulated under a NPDES permit. In order to protect aquatic life, the permit prohibits the discharge of effluent that violates water quality standards. In addition, Calapooia Creek is located in the Umpqua Basin, which is water quality limited for several parameters, including temperature (summers), pH (summers), fecal coliform (year-round), Ammonia (year-around) and phosphorus. Due to these restrictions, discharge to Calapooia Creek is not allowed between June 1<sup>st</sup> and October 31<sup>st</sup> unless approved by DEQ due to extraordinary circumstances. May and November discharges may be allowed if stream flow conditions listed in the NPDES permit are met. Effluent is pumped to the Umpqua Golf Resort course from June through September for irrigation (recycled water). The disinfection system will be used to provide chlorine residuals during summertime reuse and a new UV system will be used for disinfection prior to discharge into Calapooia Creek in the winter months. In October the effluent discharge is allowed, depending upon the minimum stream flow requirements in Calapooia Creek.

The City applies the treated sludge from the digesters on agricultural land for soil enhancement utilizing a 3,200-gallon truck which spreads the bio solids directly on four sites: the Reddekopp site (80 acres); the Rust site (80 acres); the Williams site (80 acres); and the Crouch site (35 acres). In addition, sludge is hauled to a private facility (Heard Farm). Bio solids are land applied at agronomic rates as allowed under the bio solids management plan. See Appendix D for application rates.

### WWTP Improvements

In short, the WWTP is deficient in preliminary treatment, secondary treatment, bio solids treatment and effluent disposal. Each area was reviewed with a minimum of three alternatives. The alternatives were examined based on initial capital costs, operation and maintenance (O&M) expenses, and salvage value. The alternative with the lowest life cycle cost was chosen for each item. A summary of the Phase 1 improvements is described as follows:

- Provide two new mechanical bar screens.
- Construct new influent pump station.
- Add new grit removal system.

- Update influent flow metering.
- Replace existing secondary treatment system with new sequencing batch reactors (SBR).
- Replace existing tertiary filter with new tertiary filter system.
- Secure an effluent storage pond by either acquiring an existing facility or by constructing a new pond.
- Convert existing secondary treatment units to bio solids digesters and improve mixers.
- Add bio solids process facility for dewatering and storage of dried sludge.

## RECOMMENDATIONS AND COSTS

The recommended projects for improving the city’s existing collection system and WWTP are summarized in Table 5.1. Capital improvements cost for the Everett Avenue Pump Station is \$1,144,000, Everett Avenue Pump Station Force Main Improvements \$763,000 and, for the WWTP plant \$ 14,413,500 for a Total Project Cost \$22,721,000.

### *WWTP & WW SYSTEM IMPROVEMENTS COST ESTIMATE*

<b>Item</b>	<b>Cost</b>
Plant Facilities	\$ 1,010,044
Filter Building – Building modifications included in process area 1301 (Dewatering)	
Operation Building not included in 2013 Facilities Plan Amendment	\$ 24,530
Control Building	\$ 604,800
Maintenance Shop Building not included in 2013 Facilities Plan Amendment	\$ 214,400
Influent Screening Facility	\$ 461,244
Influent Pump Station	\$ 1,169,530
Headworks	\$ 935,506
Sequencing Batch Reactors	\$ 5,036,669
Tertiary treatment	\$ 726,503
UV Disinfection	\$ 790,686

Effluent Disposal (Reuse)	\$ 292,015
Bio Solids Dewatering Building	\$ 1,086,278
Bio Solids Treatment	\$ 1,256,417
SBR Pre-Load (not included in 2013 Facilities Plan Amendment)	\$ 439,703
Miscellaneous (Generator, Spreader Truck, TV Monitoring)	\$ 380,000
<b>Construction (Total)</b>	<b>\$ 14,413,500</b>
Construction Cost	\$ 14,413,500
Engineering Design & Bidding	\$ 1,267,000
Engineering & Construction	\$ 1,267,000
Value Engineering	\$ 85,000
Environmental Report	\$ 16,500
Contingency	\$ 720,000
Legal/Administration	\$ 35,000
Land Acquisition & Easements	\$ 3,000,000
Permits & DEQ Review Fee	\$ 10,000
Everett Avenue Pump Station	\$ 1,144,000
Everett Avenue Pump Station Force Main	\$ 763,000
<b>Total Project Cost</b>	<b>\$ 22,721,000</b>

## VALUE ANALYSIS

A value analysis study was completed on October 20, 2014. The VA team generated 131 creative ideas, and developed 6 value proposals and 9 design suggestions to improve the project. Please review the City's website for the complete analysis.

## VALUE ENGINEERING

It is the intent of the Value Engineering to find improvement to the components selected by reducing their cost and providing new ideas. Upon completion of the Value Engineering it is anticipated that the City of Sutherlin will commence with Final Design.

The City entered into an MAO with the Oregon Department of Environmental Quality (DEQ) in 2004 that includes milestone and tasks that the City must complete in order to remain in compliance. The MAO includes a number of requirements that must be completed by a certain deadline. The next critical deadline in the MAO schedule is the completion of final design for WWTF. However, prior to commencing forward with final design, the City will perform Value Engineering. **Because of the MAO deadlines, the selected consultant must be able to assemble the Value Engineering team, perform a review, coordinate with City and City's Design Consultant, and submit a final report within a time frame of 55 days upon notice of award.**

### Scope of work

The City will select a consultant (or team) to perform a value engineering workshop and review of the City of Sutherlin's Predesign Report. The following services are anticipated:

1. Comprise a Value Engineering Team that includes personnel that is proficient in wastewater design and management (particularly with Sequencing Batch Reactor type treatment). This team will work closely with City Staff. The City will provide a contact person for this project. This City contact shall be copied on all correspondence and be a member on the Value Analysis Team. Additionally, the City will also request the following people to be a part of the Value Engineering team: personnel from the City's operation and maintenance staff, City Council and representative(s) from DEQ.
2. Prior to the Workshop, provide the City a list of additional information/plans that are necessary to commence with the workshop.
3. Conduct a three to four day value engineering workshop with the design engineer and City staff. Design engineer may not attend the entire workshop however they will be available for questions and/or clarifications.
4. Review design assumptions.
5. Review the Pre Design Report for Wastewater System Improvement Project.
6. Review report recommendations and cost estimate.
7. Review 20-25 percent design plans for Wastewater System Improvement Project.
8. Provide a draft written report of findings and recommendations for review and comment by City and VE Team. The report should include the following:
  - a) Executive Summary
  - b) Project Description
  - c) Project Cost
  - d) Scope and method of VE analysis
  - e) Summary of proposals including estimated savings, description, and disposition
  - f) Complete calculations for each proposal documenting construction and O&M cost savings.
  - g) Notes to designer
  - h) Conduct a Final Review Presentation For City Staff, City Council and other Stake Holders.
9. Provide a final written report that incorporates comments generated by the draft report.

## DELIVERABLES

ITEM	FORMAT	QUANTITY
Additional Information List	Email	1
Draft VE Report	Hard Copy	6
Draft VE Report	PDF	1
Final VE Report	Hard Copy	6
Final VE Report	PDF	1

## MINIMUM QUALIFICATION

Proposer must meet the following minimum requirement:

1. Be a licensed engineer in the state of Oregon.
2. Demonstrate experience with public sector (SBR wastewater treatment) engineering of similar size and scope of the services being requested

## RESOURCES TO BE PROVIDED

The City has made available on line the following documents for your use in preparation of your proposal. A hard copy of any of the reports can be provided for a fee by contacting Brian Elliott at 541-459-5768 or [b.elliott@ci.sutherlin.or.us](mailto:b.elliott@ci.sutherlin.or.us) to obtain directions and access to the web site.

1. Wastewater Facilities Plan Amendment, prepared by The Dyer Partnership Engineers & Planners, dated November 2013
2. City of Sutherlin, Oregon Predesign Report Wastewater System Improvements prepared by The Dyer Partnership Engineers & Planners, Inc. dated November 30, 2015.

The successful proposer shall enter into a standard professional services contract with the City. The City has a standard contract. The City's contract is located at the end of this document. It is anticipated that the successful proposer has read and agrees with the contractual language and insurance requirements in The Contract. If the proposer has questions or would like to request modifications to the contractual language, this discussion must occur prior to **May10, 2016 at 2 p.m.**

## **GENERAL INFORMATION**

### INTERVIEWS

Proposers **may** be invited to an interview with the City's Selection Committee. Selected Firms will be contacted regarding time and location of an interview.

### COMPLIANCE WITH RULES

Proposers responding to this RFP must follow its procedures and requirements. Except as otherwise provided in the RFP, applicable provisions of Oregon Administrative Rules Chapter 137, Division 47 shall apply to all personal service contracts of the City. Failure to comply with or complete any part of this **PROPOSAL** may result in rejection of your Proposal.

### REQUEST FOR ADDITIONAL INFORMATION

Proposers may submit questions or a request for additional information. All questions and/or requests must be submitted either by mail or email:

**City of Sutherlin  
Public Works Utilities  
Attn: Brian Elliott  
126 E Central Ave. Sutherlin, OR 97479  
b.elliott@ci.sutherlin.or.us**

All requests for additional information, must clearly reference the “Proposal for Value engineering Services for Wastewater System Improvement. All requests must be received no later than May 10, 2016 at 2:00 pm. The responses to the requests will be made available at the City’s website:

<http://cityofsutherlin.com>

Hard copies of the questions and responses can be mailed upon request for a fee.

SCHEDULE FOR RFP EVENTS

RFP Advertised	April 29, 2016
Deadline for Additional Information Request	May 10, 2016
Response to Additional Information Requests	May 13, 2016
Proposal Package Due	May 24, 2016
Schedule Interview (subject to City’s discretion)	May 26, 2016
Interviews (subject to City’s discretion)	June 1-3, 2016
Contract Negotiation w/ Selected Consultant	June 6-10, 2016
Council Consideration of Contract	June 13, 2016
Award of Project	June 14, 2016
Present Final Report To City	August 8, 2016

PROPOSAL WITHDRAWAL

Any Proposal may be withdrawn at any time before the “Proposal Due” date and time by providing a written request for the withdrawal to the issuing office. A duly authorized representative of the agency shall make the request. Withdrawal of a Proposal will not preclude the proposer from filing a new Proposal.

APPEALS

Bidders who wish to appeal a disqualification of proposal or the award of contract may submit the appeal in writing to the City Manager’s Office within five (5) working days of the postmarked Notice of Award or disqualification. Disagreement with the process, e.g., scoring by evaluators, is not subject to appeal.

Address: City of Sutherlin  
Public Works Utility Department  
Attn: City Manager  
126 E. Central  
Sutherlin, Or 97479

OWNERSHIP OF DOCUMENTS

Any material submitted by a proposer shall become the property of the City. Materials submitted after a contract is signed will be subject to the ownership provision of the executed contract.

#### CONFIDENTIALITY OF INFORMATION

All information and data furnished to the proposer by the City and all other documents to which the proposer's employees have access during the preparation and submittal of the Proposal shall be treated as confidential to the City. Any oral or written disclosure to unauthorized individuals is prohibited.

#### PUBLIC RECORD

All Proposals and information submitted by proposers are not open for public inspection until after the notice of intent to award a contract is issued. Except for exempt materials, all Proposals and information submitted by proposers will be available for viewing after the evaluation process is complete and the notice of intent to award is sent to all participating parties.

#### INDEMNITY

The Engineer of Record shall hold harmless, indemnify, and save the City, its officers, employees, and agents, from any and all liability claims, losses, or damages arising or alleged to arise during the performance of the work described herein by reason of any act or omission of the Engineer of Record or any of its agents, employees or representatives. The indemnity applies to both active and passive acts or other conduct.

#### EMPLOYMENT STATUS

Contractor shall perform the work required by this contract as an independent contractor. Although the Owner reserves the right to determine and modify the delivery schedule for the work to be performed and to evaluate the quality of the completed performance, the Owners cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work.

Contractor represents and warrants that the Contractor is not an employee of the City of Sutherlin and meets the specific independent contractor standards of ORS 670.600. Contractor is not an officer, employee, or agent of the Owners as those terms are used in ORS 30.265.

Contractor shall be responsible for any federal or state taxes applicable to any compensation or payments paid to Contractor under this contract and, the Owners will not withhold from such compensation or payments any amounts to cover Contractor's federal or state tax obligations.

Contractor is not eligible for any Social Security, unemployment insurance, or Workers Compensation, from compensation paid to Contractor under this contract except as a self-employed individual.

#### INSURANCE

1. General Liability shall be a per occurrence form and must cover the time for which the work is being performed.
2. Proof of insurance of not less than the amount required is to be provided. Written notice of cancellation of insurance shall be provided to the City/Agency not less than 30 days prior to the date of cancellation.

3. If the City/Agency is required to use Federal or State insurance policy limits, or is subject to the Federal or State tort claim limits, the limits required through this directive shall be superseded by such limits.
4. If a claim occurs where the amount of the claim exceeds the insurance policy limits required by this directive, the contractor assumes full responsibility for the payment of such claim.
4. Insurance policy limits shall not be less than those listed in this directive without the consensus of the City Manager, City Attorney and the City Risk Manager of Record. Insurance policy limits may be waived at the discretion of the City/Agency. Insurance policy limits may be required to be higher based upon the City Manager's review of the specific application for which the certificate is required.
5. Tail Coverage": If any of the required liability insurance is on a "claims made" basis, recipient shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Contract/Agreement, for a minimum of 24 months following the later of:
  - (1) Recipient's completion of all services and the City's/Agency's acceptance of all services required under the Contract/Agreement, or
  - (2) The expiration of all warranty periods provided under the contract/agreement.
 Notwithstanding the foregoing 24-month requirement, if recipient elects to maintain "tail" coverage and the maximum time period "tail" coverage is reasonably available in the marketplace is less than the 24-month period described above, recipient shall maintain "tail" coverage for the maximum time period "tail" coverage is reasonably available in the marketplace for the coverage required.

6. Definitions:

Commercial General Liability: To cover bodily injury, death, and property damage. This insurance shall include contractual liability coverage for the indemnity provided under those listed in the Agreement/Contract, personal and advertising injury liability, products liability and completed operations liability. Coverage may be written in combination with Automobile Liability Insurance (with separate limits).

Professional Liability: To cover error, omission or negligent acts related to the professional services to be provided under the Agreement/Contract.

Automobile Liability: To cover each accident for bodily injury and property damage, including coverage for owned, hired, non-owned, leased, or rented vehicles as applicable. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits).

Builders Risk: To cover structures being built, temporary structures at the building site, and building materials not yet having become part of the building. The building materials are covered while on the insured location, in transit, or in storage at another location.

Installation Floater: To cover materials, equipment, and personal property while in transit, installation, and until coverage terminates according to the terms of the floater. This coverage can cover the property of others in the contractor's care, custody or control that is often excluded under the contractor's general liability coverage.

Umbrella Liability: To cover excess liability over several of the insured's primary liability policies. An excess liability policy may be what is called a following form policy, which means it is subject to the same terms as the underlying policies; it may be a self-contained policy, which means it is subject to its own terms only; or it may be a combination of these two types of excess policies. Umbrella policies provide three functions:

- (1) To provide additional limits above each occurrence limit of the insured's primary policies;
- (2) To take the place of primary insurance when primary aggregate limits are reduced or exhausted;
- and
- (3) To provide broader coverage for some claims that would not be covered by the insured's primary insurance policies, which would be subject to the policy retention.

Most umbrella liability policies contain one comprehensive insuring agreement. The agreement usually states it will pay the ultimate net loss, which is the total amount in excess of the primary limit for which the insured becomes legally obligated to pay for damages of bodily injury, property damage, personal injury, and advertising injury.

Insurance Requirements: Professional Services contracts/agreements

Commercial General Liability Per occurrence	\$ 1,000,000
Professional Errors and Omissions liability (Per occurrence)	\$ 2,000,000
Workers' Compensation	Statutory Limit
Applicable Federal (e.g., Longshoremen's)	Statutory Limit
Employer's Liability	\$ 500,000
Automobile Liability (Per occurrence)	\$1,000,000

8. Should the Umbrella/Excess Insurance coverage combined with Commercial General Liability coverage not equal or exceed the minimum combined coverage shown, coverage must be increased to equal or exceed the minimum total coverage limits shown. If there is no Umbrella/Excess Insurance coverage, then the Commercial General Liability, Employers Liability, and Automobile Liability limits must be increased to equal or exceed the minimum total coverage limits shown. The Certificate of Insurance(s) and Endorsement(s) will be a part of the Contract and shall be provided to the City/Agency with endorsement(s) indicating that the Commercial General Liability insurance coverage is in effect which shall be primary and non-contributory with any insurance maintained by the City/Agency and include a per project aggregate (form CG 2503 05/09 or equivalent).

Such certificate(s) and endorsement(s) shall name the City/Agency as an additional insured commercial general liability, automobile liability, and umbrella liability policies. Copies of such endorsements or coverage enhancements shall be attached to the certificate. A waiver of subrogation under the workers' compensation and commercial general liability policies shall be provided. Thirty (30) days written notice shall be provided to the certificate holder prior to cancellation or significant modification of coverage. The Certificate of Insurance(s) and Endorsement(s) shall be provided to the City/Agency which will become a part of the Contract. Insurance Coverage provided must be underwritten by an insurance company deemed acceptable by the City/Agency. The City/Agency reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

Consultant will purchase and maintain property insurance for the entire work at the site on a replacement cost basis. Consultant shall obtain, at Consultant's expense, and keep in effect until final acceptance of the work performed under this contract, an Installation Floater or equivalent property coverage for materials, equipment, supplies, and tools to be used for completion of the work performed under this contract. The Installation Floater shall include coverage for testing, if applicable. The minimum amount of coverage to be carried shall be equal to the full amount of this contract. The Consultant will be responsible for any applicable deductibles.

9. Non-profits, community groups, and governmental entities that conduct meetings on city-owned property are exempt from the requirements of this administrative directive unless otherwise directed by the City Manager.

**PROFESSIONAL SERVICE AGREEMENT**

## VALUE ENGINEERING SERVICES

This Contract is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the CITY OF SUTHERLIN, an Oregon municipal corporation, hereinafter called "CITY", and \_\_\_\_\_ an independent Contractor hereinafter called "CONTRACTOR".

### SECTION 1. CONTRACTOR AGREES:

**1.1 Term.** Beginning on, \_\_\_\_\_ **2016** and continuing thereafter until terminated pursuant to Section 3.6 of this Contract, CONTRACTOR shall perform the services required by the Contract.

**1.2 Services.** CONTRACTOR shall

1. Comprise a Value Engineering Team that includes qualified professionals proficient in wastewater design and Operations. This team will work closely with the City Team and other parties selected by the City.
2. The Value Engineering team shall provide constructive input and feedback on these items and coordinate with the City to create evaluation criteria that can be based on factors such as impacts to neighbors, cost, land use, expandability, flexibility with respect to winter and summer flows (based on inflow and infiltration), etc. in accordance with the Value Engineering goals.
3. Review requirements of current MAO and NPDES permit.
4. Evaluate and/or recommend energy efficient options that may provide savings over the life of the project.
5. Provide a draft written report of findings and recommendations for review and comment by City. The report to include: Executive Summary; Project Description; Scope and Method of Value Analysis; Findings and Alternatives; Alternative Costs; Complete Calculations for each Alternative documenting construction and O & M cost savings; and Notes to the designer.
6. Provide a final written report that incorporates comments generated by the draft report.
7. Conduct a Final Review Presentation Highlighting The Most Viable Options For City Consideration.
8. Make every effort to adhere to the proposed schedule provided through the RFP.

**1.3 Expenditures.** Extraordinary unbudgeted expenditures, from Contracted funds, outside the scope of the work program may not be made by CONTRACTOR without the prior written approval of CITY'S Manager. CONTRACTOR shall promptly pay all expenses it incurs as a result of this Contract and shall comply with all provisions of federal, state and local law applicable to this Contract.

**1.4 Insurance Requirements.** At all times during the term of this Contract, at the sole expense of the CONTRACTOR, CONTRACTOR shall maintain continuously in effect the insurance policies described herein. Each policy shall be written as a primary policy, not contributing with or in excess of any coverage the CITY may carry. A copy of each policy or a certificate, and copies of additional insured endorsements, satisfactory to the CITY shall be delivered to the CITY prior to commencement of any work or services

provided under this Contract. The certificates shall specify and document all insurance related provisions within this Contract. A renewal certificate will be sent to the CITY at least ten (10) days prior to expiration of coverage. Unless specified, each policy shall be written on an "occurrence" form. Policies must be underwritten by an insurance company deemed acceptable to the CITY and admitted to do business in Oregon, or, in the alternative, rated A- or better by AM Best. The CITY reserves the right to reject any insurance carrier with an unacceptable financial rating. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without thirty (30) days written notice to the CITY. The 30-day notice of cancellation provision must be physically endorsed on the policy. In the event the statutory limit of liability of a public body for claims arising out of a single accident or occurrence is increased above the combined single limits specified in this Contract, CITY shall have the right to require CONTRACTOR to increase the CONTRACTOR'S coverage by an amount at least equal to the increase in the statutory limit for such claims and to increase the aggregate coverage by at least twice the amount of the increase in the statutory limit. Failure to maintain any insurance coverage required by this Contract shall be cause for immediate termination of the Contract by the CITY, but termination shall not relieve CONTRACTOR of its obligation to provide and maintain such coverage, and CITY shall be entitled to enforce all liability and indemnity provisions of this Contract following such termination. In addition, all requirements concerning insurance and indemnity shall survive the termination of this Contract. Unless waived or modified in writing by CITY, CONTRACTOR shall maintain the insurance coverages stated below:

**1.4.1 Commercial General Liability.** Throughout the term of this Contract, CONTRACTOR shall maintain continuously in a broad commercial general liability insurance policy with coverage of not less than \$1,000,000 combined single limit per occurrence, with an aggregate of \$2 million, for bodily injury, personal injury or property damage. The policy shall also contain an endorsement naming the CITY as an additional insured, on a form satisfactory to CITY, and expressly provide that the interest of the CITY shall not be affected by CONTRACTOR'S breach of policy provisions. Such policy must be maintained in full force and effect for the duration of this Contract, failure to do so shall be cause for immediate termination of this Contract by CITY. Any additional insured requirements included in this Contract shall both provide completed operations coverage after job completion and coverage that is primary and non-contributory. Claims Made policies will not be accepted.

**1.4.2 Automobile Liability Insurance.** At all times during the term of this Contract, and at the sole expense of CONTRACTOR, CONTRACTOR shall maintain "Symbol 1" automobile liability coverage including coverage for all owned, hired, non-owned vehicles, equivalent to a combined single limit per occurrence on not less than \$1,000,000 for bodily injury or property damage.

**1.4.3 Professional Liability Insurance.** At all times during the term of this Contract, CONTRACTOR shall maintain and keep in full force, an insurance policy for professional liability in the amount of \$2,000,000 per claim, incident, or occurrence. In no instance shall CITY be responsible for any retention amount or deductible that CONTRACTOR may owe as a result of this coverage, nor shall such retention or deductible exceed \$25,000. CONTRACTOR shall continue professional liability coverage for the duration of the project and three years thereafter; and further, submit Certificate of Insurance renewals of such coverage to the CITY.

**1.5 Indemnification.** CONTRACTOR shall defend, indemnify and hold harmless CITY, and each of CITY'S elected officials, officers, employees and agents from and against any and all claims, losses, suits, actions, damages, and costs (including reasonable attorney fees) for personal injury, death or property damage arising out of the intentional or negligent acts or omissions of CONTRACTOR, or any of its sub-contractors, suppliers, employees, or agents, in the performance of its services. Nothing in this paragraph shall require CONTRACTOR or its insurer to defend or indemnify CITY for claims of personal injury, death or property damage caused by the sole negligence of CITY. This duty shall survive the expiration or termination of this Contract.

**1.6 Books and Records.** CONTRACTOR shall keep complete and proper books, records and accounts of all transactions performed as part of this Contract and the approved invoices and work program. The books, records and accounts shall be open to inspection by the CITY or its designee during normal business hours, and shall remain open to the CITY for such inspection for three (3) years following the termination of this Contract.

**1.7 Availability.** CONTRACTOR shall be available for meetings, discussions and program review with CITY, as deemed necessary or beneficial by City, upon reasonable and sufficient notice.

**1.8 Assignment.** The responsibility for performing CONTRACTOR'S services under the terms of this Contract shall not be assigned, transferred, delegated or otherwise referred by CONTRACTOR to any third person or other entity without the prior written consent of CITY.

**1.9 Compliance with Law and Standard Contract Provisions.** CONTRACTOR shall comply with all federal, state and local laws, including Sutherlin Municipal Code Regulations relating to business registration, and with all Standard CITY Contract Provisions which are stated in **Exhibit "A"** attached hereto and incorporated herein by reference.

**1.10 Health Hazard Notification.** If CONTRACTOR is hired to perform work for the CITY involving possible exposure to hazardous materials or entry into confined spaces, CONTRACTOR will be informed of the CITY'S programs and the associated hazards that CITY is aware of. The notification is not designed to take over the Contractor's safety responsibilities to his or her employees, but to provide appropriate notification under the Oregon OSHA rules.

## **SECTION 2. CITY AGREES:**

**2.1 Fee.** In consideration of the above-described services, CITY agrees to pay CONTRACTOR an amount not to exceed \$\_\_\_\_\_ as outlined in proposal received from CONTRACTOR identified as **Exhibit "B,"** which is attached hereto and is incorporated herein by reference.

**2.2 Terms of Payment.** CONTRACTOR will tender an invoice to CITY by no later than the tenth (10<sup>th</sup>) day after services rendered, and CITY shall make full payment on such invoice within thirty (30) days of its receipt.

**SECTION 3. BOTH PARTIES AGREE:**

**3.1 Budget and Work Plan Approval.** All approved invoices and work programs shall be in writing.

**3.2 Independent Contractor.** CONTRACTOR is an independent Contractor. CONTRACTOR shall control the manner in which it performs the services herein, however, the nature of the services and the results to be achieved shall be specified by CITY. CONTRACTOR is not to be deemed an employee or agent of CITY for any purpose, shall not be entitled to any CITY benefits and shall not have any authority to make any binding commitments on behalf of CITY except as may be expressly approved in advance and in writing by the CITY Manager.

**3.3 Dispute Resolution.** The parties agree to submit to mediation, prior to the commencement of any litigation or other form of dispute resolution process, any dispute that may arise between the parties regarding the terms of this Agreement, any Task Order made a part of this Agreement, any matters or issues arising out of or related to any work or service covered by this Agreement, any claimed breach of this Agreement or the termination of this Agreement. The parties agree to participate in good faith in the mediation process.

3.3.1 Condition Precedent. **Unless specifically waived in writing by both parties, the submission of a dispute to mediation and good faith participation in mediation shall be a condition precedent to the right of either party to commence litigation or any other form of dispute resolution.**

3.3.2 Commencing Mediation. **To commence mediation, the aggrieved party must deliver to the other party written notice of its intent to submit a dispute to mediation within thirty (30) days after the date the dispute first arose. "The date when the dispute first arose" is defined to mean when a party discovered, or, with reasonable diligence should have discovered, the facts or information on which the dispute is based.**

3.3.3 Mediator. **Any mediation will be conducted in Roseburg, Oregon, unless both parties agree otherwise. The mediation shall be conducted by one neutral mediator selected and agreed to by the parties or, if the parties fail to agree on a mediator within fifteen (15) days of provision of the notice of intent to submit a dispute to mediation, a mediator will be appointed by the presiding judge of the Douglas County Oregon Circuit Court upon request of either party.**

3.3.4 Conduct. **The mediation will be conducted as promptly as possible but in no event later than ninety (90) calendar days from the date of the written notice of intent to submit a dispute to mediation. No discovery will be allowed by or against either party prior to mediation. Each party shall share equally the mediator's fees and other administrative costs of the mediation process. The parties shall bear their own respective attorney fees and all other costs.**

3.3.5 Litigation. **If mediation is not successful in resolving a dispute, the parties may mutually agree to a dispute resolution of their choice or either party may commence litigation in a court of competent jurisdiction.**

**3.4 Attorney Fees.** If any arbitration, administrative proceeding, judicial action, or appeal thereon, is instituted in connection with any controversy arising out of this Contract, the performance of this Contract or any failure to perform this Contract, the prevailing party shall be entitled to recover, in addition to costs and disbursements, such sum as the court or arbitrator may adjudge as reasonable attorney fees.

**3.5 Ownership and use of Documents.** In whatever form they may be produced or stored, any documents prepared in performance of this Contract and any supporting and investigative information that is gathered in the performance of this Contract, upon completion of the work, or upon termination of this Contract, shall be and remain the property of the CITY and shall be subject to copyright by the CITY at its sole discretion. CONTRACTOR shall be permitted to retain copies, including reproducible copies, of such documents. CONTRACTOR shall treat such documents as if CITY had secured a copyright thereon, and will not use the documents in a manner that would constitute copyright infringement. CITY may use the documents prepared hereunder for any purpose, however CONTRACTOR shall have no liability with regard to the City's use of such documents to the extent they are used or applied outside of the scope of CONTRACTOR's work under this Contract unless CONTRACTOR is consulted and offers a professional opinion that the contemplated use is appropriate.

**3.6 Termination.** This Contract may be terminated as follows:

**3.6.1.** CITY and CONTRACTOR, by mutual written agreement, may terminate this Contract at any time.

**3.6.2.** CITY, in its sole discretion, may terminate this Contract for any reason on thirty (30) days written notice to CONTRACTOR. Written notice shall be effective upon the date the written notice is provided in accordance with Section 3.7 of this Contract.

**3.6.3.** Either CITY or CONTRACTOR may terminate this Contract in the event of a breach of the Contract by the other party. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach as provided in Section 3.7 of this Contract and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving written notice of termination to the other party.

**3.6.4.** Notwithstanding paragraph 3.6.3, CITY may terminate this Contract immediately by written notice, as provided by Section 3.7, to CONTRACTOR upon denial, suspension, revocation or non-renewal of any license, permit or certificate that CONTRACTOR must hold to provide services under this Contract.

**3.7 Notices.** Any notice permitted or required to be given under this Contract, or required by law, shall be in writing and delivered to the parties by either hand delivery or certified mail, return receipt requested, at the following addresses:

CITY OF SUTHERLIN

VALUE ENGINEERING CONSULTING FIRM

CITY Manager

\_\_\_\_\_

126 E Central

\_\_\_\_\_

Sutherlin, OR 97479

\_\_\_\_\_

**3.8 Applicable Laws.** The laws of the State of Oregon shall be used in construing this Contract and enforcing the rights and remedies of the parties.

**3.9 Binding Effect.** This Contract shall be binding upon and inure to the benefit of the parties and to each of their respective heirs, administrators, successors and assigns.

**3.10 Complete Agreement.** This Contract constitutes the entire agreement between CITY and CONTRACTOR concerning the subject matter of this Contract and supersedes any and all prior negotiations, agreements and understandings between the parties, whether in writing or oral, that is not expressly set forth in this Contract. No amendments or modifications to this Contract may be made unless in writing and signed by both parties.

CITY OF SUTHERLIN

VALUE ENGINEERING CONSULTING FIRM

\_\_\_\_\_

\_\_\_\_\_

Jerry Gillham, CITY Manager

\_\_\_\_\_

Founder and President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

CITY Recorder

## EXHIBIT A

### CITY OF SUTHERLIN - STANDARD CONTRACT PROVISIONS

#### Contracts Subject to ORS Chapter 279C

#### Services of Architects, Engineers, Land Surveyors and Related

#### Consultants on Public Improvements

#### Construction Services

#### Labor and Services for Public Improvements and

#### Public Works Subject to ORS 279C.800 to 279C.870

The following provisions, if applicable, are hereby included in and made a part of the attached Contract between the CITY of Sutherlin ("CITY") and the Contractor named thereon as provided for in the Sutherlin Municipal Code, the revised statutes of the State of Oregon, and Federal laws, rules, regulations, and guidelines. THE CONTRACTOR AND EVERY SUBCONTRACTOR SHALL INCLUDE THESE PROVISIONS IN EVERY SUBCONTRACT SO THAT THESE PROVISIONS WILL APPLY TO, AND BE BINDING ON EVERY SUBCONTRACTOR. Failure to comply with any of the applicable provisions below shall be a material breach of the Contract and may result in debarment of the Contractor or sub-Contractor from CITY Contracts for up to three (3) years.

#### **1. Discrimination in sub-Contracting prohibited; remedies. (ORS 279A.110)**

- 1.1. The Contractor may not discriminate against a sub-Contractor in the awarding of a sub-Contract because the sub-Contractor is a minority, women or emerging small business enterprise certified under ORS 200.055.
- 1.2. By entering into the Contract, the Contractor certifies that it has not discriminated and will not discriminate, in violation of subsection 1.1, against any minority, women or emerging small business enterprise in obtaining any required sub-Contract.
- 1.3. If the Contractor violates the nondiscrimination certification made under subsection 1.2, the CITY may regard the violation as a breach of Contract that permits the CITY to terminate the Contract or exercise any remedies for breach permitted under the Contract.

#### **2. CITY'S right to audit records. (OAR 137-049-0880)**

- 2.1. **Cost or pricing data.** The CITY may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data in connection with the Contract to the extent that such books and records relate to such cost or pricing data. If the Contract requires submission of cost or pricing data, any person who has submitted cost or pricing data shall maintain the books and records that relate to the cost or pricing data for three years from the date of final payment under the Contract, unless a shorter period is authorized by the CITY in writing.

2.2. **Contract audit.** The CITY shall be entitled to audit the books and records of the Contractor or any sub-Contractor to the extent that the books and records relate to the performance of the Contract. Contractor and each sub-Contractor are required to maintain books and records for a period of three years from the date of final payment under the Contract or sub-Contract, as applicable, unless a shorter period is authorized by the CITY in writing.

### **3. Termination in the public interest. (ORS 279C.665)**

The CITY may terminate the Contract when required by the public interest including, at minimum, for the following:

- (a) If the Contractor is prevented from completing the work for reasons beyond the control of the CITY;
- (b) If completion of the project is beyond control of the Contractor; or
- (c) For any reason considered by the CITY manager to be in the public interest. These reasons may include, but are not necessarily limited to, non-availability of materials, lack of funds, phenomenon of nature of catastrophic proportions or intensity, executive orders of the President related to national defense, congressional or state acts related to funding or changes in applicable laws.

When the Contract, or any portion thereof, is terminated before completion of all items of work in the Contract, payment will be made for the actual items of work completed under the Contract, or by mutual agreement, for items of work partially completed. No claim for loss of anticipated profits will be allowed.

### **4. Nonresident Contractors. (ORS 279A.120)**

- 4.1. As used in this section, "nonresident Contractor" means a Contractor that: (A) has not paid unemployment taxes or income taxes in the state of Oregon during the twelve (12) calendar months immediately preceding submission of the bid for the Contract, (B) does not have a business address in this state and (C) stated in the bid for the Contract that it was not a "resident bidder" under ORS 279A.120.
- 4.2. If the Contractor is a nonresident Contractor and the Contract price exceeds Ten Thousand Dollars (\$10,000), the Contractor shall promptly report to the Department of Revenue on forms to be provided by the Department of Revenue the total Contract price, terms of payment, length of Contract and such other information as the Department of Revenue may require before the Contractor may receive final payment on the Contract. The CITY may not award a Contract to a nonresident bidder that is an educational service district. The CITY shall satisfy itself that the requirement of this subsection has been complied with before the CITY issues a final payment on the Contract.

### **5. Conditions concerning payment, contributions, liens, withholding; drug testing. (ORS 279C.505)**

- 5.1. **Prompt payment.** The Contractor shall:
  - (a) Make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the work provided for in the Contract.
  - (b) Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or sub-Contractor incurred in the performance of the Contract.
  - (c) Not permit any lien or claim to be filed or prosecuted against the CITY on account of any labor or material furnished.

(d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

**6. Demolition Contracts to require material salvage; lawn and landscape maintenance Contracts to require composting or mulching. (ORS 279C.510)**

- 6.1. If the Contract includes demolition, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.
- 6.2. If the Contract includes services for lawn and landscape maintenance the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

**7. Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials, and complaints. (ORS 279C.515)**

- 7.1. If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a sub-Contractor by any person in connection with the Contract as the claim becomes due, the CITY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the Contract.
- 7.2. If the Contractor or a first-tier sub-Contractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract within thirty (30) days after receipt of payment from the CITY or the Contractor, the Contractor or first-tier sub-Contractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier sub-Contractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after the date when payment was received from the CITY or from the Contractor, but the rate of interest may not exceed thirty percent (30%). The amount of interest may not be waived.
- 7.3. If the Contractor or a sub-Contractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- 7.4. The payment of a claim in the manner authorized in this section does not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

**8. Condition concerning payment for medical care and providing workers' compensation. (ORS 279C.530)**

- 8.1. The Contractor and all sub-Contractors shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor or sub-Contractor, as applicable, of all sums that the Contractor or sub-Contractor, as applicable, agrees to pay for the services and all moneys and sums that the Contractor or sub-Contractor, as applicable, collected or deducted from the wages of employees under any law, Contract or agreement for the purpose of providing or paying for the services.
- 8.2. All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

**9. Conditions concerning hours and maximum hours of labor on public Contracts; holidays; exceptions; liability to workers; rules. (ORS 279C.520; 279C.540)**

- 9.1. A person may not be employed for more, or required or permitted to labor more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, except in cases of Contracts for architect, engineering, land surveying or related consultant services, the person so employed for excessive hours shall receive at least time and a half pay:
- (a) For all overtime in excess of eight (8) hours in any one day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or
- For all overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and
- (b) For all work performed on Saturday and on the following legal holidays:
- (A) Each Sunday.
- (B) New Year's Day on January 1.
- (C) Memorial Day on the last Monday in May.
- (D) Independence Day on July 4.
- (E) Labor Day on the first Monday in September.
- (F) Thanksgiving Day on the fourth Thursday in November.
- (G) Christmas Day on December 25.
- 9.2. An employer shall give notice in writing to employees who perform work under subsection 9.1, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.
- 9.3. For the purpose of this section, each time a legal holiday listed in subsection 9.1, other than Sunday, falls on Sunday, the succeeding Monday shall be recognized as a legal holiday. Each time a legal holiday listed in subsection 9.1 falls on Saturday, the preceding Friday shall be recognized as a legal holiday.
- 9.4. Subsections 9.1 and 9.2 of this section do not apply to labor on the Contract or to construction services if the Contractor is a party to a collective bargaining agreement in effect with any labor organization.
- 9.5. When specifically agreed to under a written labor-management negotiated labor agreement, an employee may be paid at least time and a half pay for work performed on any legal holiday specified in ORS 187.010 and 187.020 that is not listed in subsection 9.1.
- 9.6. This section does not apply to Contracts for architect, engineering, land surveying or related consultant services, provided that persons employed under such Contracts shall receive at least time and a half pay for work performed on the legal holidays specified in subsection 9.1(b)(B) to (G) of this section and for all overtime worked in excess of forty (40) hours in any one week, except for individuals under personal services Contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201-209 from receiving overtime.
- 9.7. (a) Subsections 9.1 and 9.2 of this section do not apply to Contracts for construction services other than in construction of a Public Improvement or a Public Works. However, persons employed under such Contracts shall receive at least time and a half pay for work performed on

the legal holidays specified in a collective bargaining agreement or in subsection 10.1(b) (B) to (G) of this section and for all time worked in excess of ten (10) hours in any one day or in excess of forty (40) hours in any one week, whichever is greater.

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

9.8. Any Contractor or sub-Contractor or Contractor's or sub-Contractor's surety that violates the provisions of this section is liable to the affected employees in the amount of their unpaid overtime wages and in an additional amount equal to the unpaid overtime wages as liquidated damages. If the violation results from willful falsification of payroll records, the Contractor or sub-Contractor or the Contractor's or sub-Contractor's surety is liable to the affected employees in the amount of their unpaid overtime wages and an additional amount equal to twice the unpaid overtime wages as liquidated damages.

9.9. This section does not apply to financial institutions as defined in ORS 706.008.

#### **10. Contractor's relations with sub-Contractors. (ORS 279C.580)**

10.1. **Payment to sub-Contractors.** The Contractor shall include in every sub-Contract entered into by the Contractor and a first-tier sub-Contractor, including a material supplier, for the purpose of performing the Contract:

(a) A payment clause that obligates the Contractor to pay the first-tier sub-Contractor for satisfactory performance under its sub-Contract within ten (10) days out of such amounts as are paid to the Contractor by CITY under such Contract; and

(b) An interest penalty clause that obligates the Contractor, if payment is not made within thirty (30) days after receipt of payment from CITY, to pay the first-tier sub-Contractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the sub-Contract. The Contractor or first-tier sub-Contractor shall not be obligated to pay an interest penalty if the only reason that the Contractor or first-tier sub-Contractor did not make payment when payment was due is that the Contractor or first-tier sub-Contractor did not receive payment from CITY or the Contractor when payment was due. The interest penalty shall be:

A. For the period beginning on the day after the required payment date and ending on which payment of the amount due is made; and

B. Computed at the rate specified in ORS 279C.515 (2).

10.2. The Contractor shall include in each of its sub-Contracts, for the purpose of performance of such Contract condition, a provision requiring the first-tier sub-Contractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subsection 11.1 and requiring each of its sub-Contractors to include such clauses in their sub-Contracts with each lower-tier sub-Contractor or supplier.

10.3. None of the provisions in this section are intended to prevent the Contractor or any sub-Contractor from including in its Contracts the provisions described in ORS 279C.580 (5).

10.4. **Contractor may not request payment of sums withheld from sub-Contractors.** The Contractor may not request payment from CITY of any amount withheld or retained from a sub-Contract by the Contractor in accordance with ORS 279C.580(5) until such time as the Contractor has

determined and certified to CITY that the sub-Contractor has determined and certified to the Contractor that the sub-Contractor is entitled to the payment of such amount.

10.5. **CITY not party to disputes.** A dispute between the Contractor and first-tier sub-Contractor relating to the amount or entitlement of a first-tier sub-Contractor to a payment or a late payment interest penalty under a clause included in the sub-Contract under subsection ORS 279.580 does not constitute a dispute to which CITY is a party. CITY may not be included as a party in any administrative or judicial proceeding involving such a dispute.

**11. Compliance with Tax Certification; Compliance with Laws.** Contractor certifies under penalty of perjury, that to the best of its knowledge, it is not in violation of any tax laws described in ORS 305.380(4). Contractor shall comply with all federal, state and local laws, rules, ordinances and regulations at all times and in the performance of the services described in this Contract.