

REQUEST FOR PROPOSALS

Stites Park Design and Construction Documents



A place where families and businesses thrive.

**DATE:
September 30, 2020**

CITY OF FOREST GROVE
PO Box 326
1924 Council Street
Forest Grove, Oregon 97116
(503) 992-3237

TABLE OF CONTENTS

SECTION 1 – INVITATION.....	3
SECTION 2 – INTRODUCTION AND GENERAL INFORMATION.....	4
SECTION 3 –SCOPE OF WORK.....	11
SECTION 4 – PROPOSAL AND PROPOSER REQUIREMENTS.....	14
SECTION 5 – PROPOSAL SELECTION AND EVALUATION.....	18
SECTION 6 – CONTRACT REQUIREMENTS	20
 ATTACHMENTS:	
A: CERTIFICATIONS	21
B: SAMPLE PROFESSIONAL SERVICES AGREEMENT.....	22

**FOREST GROVE
REQUEST FOR PROPOSALS (RFP)
FOREST GROVE STITES PARK DESIGN AND CONSTRUCTION DOCUMENTS**

Proposals Due by 4:00 p.m., Wednesday, October 28, 2020

Notice is hereby given that the City of Forest Grove (“City”) is requesting proposals from qualified design firms (Consultant) in providing architectural and related design and engineering services for the development of design thru construction documents for Stites Park in North Forest Grove. The Phase 1 Development of this property includes approximately 6 acres of undeveloped property owned by the City of Forest Grove. The City has a recently developed comprehensive schematic design (including a cost estimate) which was adopted by the City in April 2020.

The RFP will be used to select the consultant to provide professional architectural and related design review services for construction of the above facilities. Responses to this RFP will be reviewed, scored, and ranked according to the criteria and process defined in the RFP. The consultant selected for contract will be the firm selected as the most qualified through the evaluation process.

There will be a mandatory pre-proposal meeting held on October 8, 2020, at 2:00 p.m. at the City of Forest Grove Community Auditorium located at 1915 Main Street, Forest Grove, Oregon. The purpose of the meeting is to share information about the project and answer questions about the project. Anyone or any firm intending to submit a proposal must have a representative at this meeting.

RFP documents are available by contacting Tom Gamble, Parks and Recreation Director, City of Forest Grove, at 503-992-3237, or e-mail: tgamble@forestgrove-or.gov. The Request for Proposals can also be downloaded from the City of Forest Grove website at <http://www.forestgrove-or.gov/rfps>.

Sealed proposals must be received by 4:00 p.m., October 28, 2020, by Paul Downey at pdowney@forestgrove-or.gov or at the City of Forest Grove, 1924 Council St, PO BOX 326, Forest Grove, OR 97116. Facsimile proposals will not be accepted. Proposals received after the designated time and date will not be opened.

The City may reject any proposal not in compliance with all prescribed solicitation procedures and requirements and other applicable law, and may reject any or all proposals in whole or in part when the cancellation or rejection is in the best interest of the City.

DATED THIS 30th day of September, 2020
Paul Downey, Administrative Services Director

SECTION 2 – INTRODUCTION AND GENERAL INFORMATION

2.1 INTRODUCTION

The City of Forest Grove (“City”) is an Oregon municipal corporation with a 2020 population of approximately 25,180. The City employs approximately 180 full and part-time staff, and is governed by a City Council comprised of six Councilors and the Mayor. The Council acts as the Local Contract Review Board for the City. The City is now accepting proposals to provide professional services for the design and construction documents (Phase 1) for a portion of an undeveloped park property known as Stites Park. The City’s target completion date for this project is October, 2021.

Phase 1 of Stites Park is intended to construct the community garden area, restrooms, play area, and parking for Stites Park. The area in Phase 1 is approximately 35% of the area of Stites Park. The remainder of the park was donated as a nature park and has restrictions on what can be built on that portion of the park.

The City of Forest Grove (“City”) desires to enter into a Professional Services Agreement with one qualified individual or firm that can demonstrate competency and experience to provide final design and construction documents for the portion of Stites Park being included in this phase of construction for Stites Park (Phase 1). The purpose of the project is to provide final design and construction document services that expands and refines the adopted schematic design that was adopted in 2020. The goal of the project is to develop a community-supported design that expands on the previous process and cost estimates. The project will focus on the western end of the property where the entrance to the park is located on 26th Street. The City’s goal is to commence construction during the summer of 2021.

The final design development portion of the project will include a review with partners who were identified during the schematic design process. In addition the project will seek to incorporate best practices to include sustainability, diversity, equity and inclusion.

This RFP details a scope of work that responds to the City’s Parks Master Plan Mission Statement which is:

MASTER PLAN MISSION STATEMENT

1. Make available to Forest Grove residents sustainable park and recreation facilities and programs that match their needs;
2. Maximize use of park and recreational facilities and where possible use partnerships to fulfill the community needs;
3. Where possible, maximize park and recreation revenues in order to offset the cost of constructing, operating, and sustaining the Forest Grove park system.

PARK PROPERTIES INCLUDED IN RFP:

Stites Park: 11 acres, 26th Ave. Undeveloped, some deed/development restrictions and master plan, schematic design, and cost estimates in place.

2.2 ISSUING OFFICE AND SUBMITTAL LOCATION

Paul Downey, the Director of Administrative Services, will issue the Request for Proposals (RFP) document and will be the point of contact for the City for questions and protests concerning the RFP.

Mr. Downey can be reached at 503-992-3220 or pdowney@forestgrove-or.gov. Tom Gamble, the Director of the Parks and Recreation Department, will be the point of contact for the City for all questions and concerns regarding the services to be provided by the selected firm. Mr. Gamble can be contacted at 503-992-3237 or tgamble@forestgrove-or.gov.

In order to be considered for this project, proposals must be received no later than October 28, 2020, at 4:00 p.m. Due to COVID-19, the City is allowing the proposer the option of submitting the proposal electronically or by printed copy. Electronic submittal is preferred. Electronic proposals are to be submitted to Paul Downey at pdowney@forestgrove-or.gov.

If paper copies are submitted, the Proposer must provide five total bound copies of their proposal; one copy should be marked "ORIGINAL". **The outside of the sealed envelope containing the proposal should state "Design Development and Construction Documents Stites Park Phase 1" and shall be addressed to:**

City of Forest Grove
Paul Downey, Administrative Services Director
1924 Council Street
PO Box 326
Forest Grove, OR 97116

2.3 ANTICIPATED RFP SCHEDULE

The City anticipates the following general timeline for receiving and evaluating the proposals and selecting a firm/individual for design development and construction documents. The schedule may be changed if it is in the City's best interest to do so.

- | | |
|--|-----------------------------------|
| • RFP Advertised in Daily Journal of Commerce | September 30, 2020 |
| • Mandatory Pre-Proposal Meeting | October 8, 2020, 2:00 p.m. |
| • Deadline to Submit Changes/Solicitation Protests | October 9, 2020, 4:00 p.m. |
| • Last Date for an Addenda | October 14, 2020 |
| • Receive Proposals | October 28, 2018, 4:00 p.m. |
| • Proposer Interviews (if necessary) | November 12, 2020 |
| • Notice of Intent to Award | November 16, 2020 |
| • Award Protest Period Ends | November 23, 2020, 4:00 p.m. |
| • City Manager Approval | November 30, 2020 |
| • Commencement of Contract | December 1, 2020 |

The mandatory pre-proposal meeting will be held at the Community Auditorium, located at 1915 Main Street, Forest Grove, Oregon. The auditorium is large enough where proper social distancing can be maintained by the attendees. The City is asking that a firm send preferably one person, but no more than two persons, to this meeting. The City does require that masks be worn at all times while you are in the auditorium.

2.4 CHANGES TO THE SOLICITATION BY CITY ADDENDA

The City reserves the right to make changes to the RFP by written addendum, which shall be issued to all prospective Proposers who attended the mandatory pre-proposal meeting.

A prospective Proposer may request a change in the RFP by submitting a written request to the address set forth above. The request must specify the provision of the RFP in question, and contain an explanation for the requested change.

NOTE: All requests for changes or additional information must be submitted to the City no later than the date set in the RFP Schedule.

The City will evaluate any request submitted, but reserves the right to determine whether to accept the requested change. If in the Director's opinion, additional information or interpretation is necessary; such information will be supplied in the form of an addendum as stated above.

Any addenda shall have the same binding effect as though contained in the main body of the RFP. Oral instructions or information concerning the scope of work of the project given out by City managers, employees, or agents to the prospective Proposers shall not bind the City.

- a) Addenda will be emailed or delivered to all prospective Proposers who attended the mandatory pre-proposal meeting.
- b) No addenda will be issued later than the date set in the RFP Schedule, except an addendum, if necessary, postponing the date for receipt of Proposals, withdrawing the invitation, modifying elements of the proposal resulting from a delayed process, or requesting additional information, clarification, or revisions of proposals leading to obtaining best offers or best and final offers.
- c) Each Proposer shall ascertain, prior to submitting a Proposal, that the Proposer has received all Addenda issued, and receipt of each Addendum shall be acknowledged in the appropriate location on each Addendum and included with the Proposal submittal.

2.5 CONFIDENTIALITY

All information submitted by Proposers shall be public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the Proposals for which Proposer requests exception from disclosure consistent with Oregon Law. All requests shall be in writing, noting specifically which portion of the Proposal the Proposer requests exception from disclosure. Proposer shall not copyright, or cause to be copyrighted, any portion of any said document submitted to the City as a result of this RFP. Proposer should not mark the entire proposal document "Confidential."

2.6 CANCELLATION

The City reserves the right to cancel award of this contract at any time before execution of the contract by both parties if cancellation is deemed to be in the City's best interest. In no event shall the City have any liability for the cancellation of award.

2.7 LATE PROPOSALS

All Proposals that are not received by the deadline stated in the RFP schedule will be considered late. Delays due to mail and/or delivery handling, including, but not limited to delays within City's internal distribution systems, do not excuse the Proposer's responsibility for submitting the Proposal to the correct location by the stated deadline.

2.8 DISPUTES

In case of any doubt or differences of opinions as to the items or service to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the City shall be final and binding upon all parties. Disputes should be addressed to Paul Downey, Director of Administrative Services, P.O. Box 326, Forest Grove, OR 97116. Contact phone number is 503-992-3220 or email address is pdowney@forestgrove-or.gov.

2.9 PROPOSER'S REPRESENTATION

Proposers, by the act of submitting their Proposals, represent that:

- a) They have read and understand the Proposal Documents and their Proposal is made in accordance therewith;
- b) They have familiarized themselves with the local conditions under which the work will meet their satisfaction;
- c) Their Proposal is based upon the requirements described in the Proposal Documents without exception (unless exceptions are clearly stated in the response).

2.10 CONDITIONS OF SUBMITTAL

By the act of submitting a response to this Invitation, the Proposer certifies that:

- a) The Proposer and each person signing on behalf of any Proposer certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no elected official, officer, employee, or person, whose salary is payable in whole or in part by the City, has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof other than as fully described in the Proposer's response to this solicitation.
- b) The Proposer has examined all parts of the Request for Proposal, including all requirements and contract terms and conditions thereof, and, if its Proposal is accepted, the Proposer shall accept the contract documents thereto unless substantive changes are made in same without the approval of the Proposer.
- c) The Proposer, if an individual, is of lawful age; is the only one interested in this Proposal; and that no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.

2.11 PROPOSER REQUESTS INTERPRETATION OF RFP DOCUMENTS

Proposers shall promptly notify the City of any ambiguity, inconsistency or error, which they may discover upon examination of the Proposal Documents. Proposers requiring clarification or interpretation of the Proposal Documents shall make a written request for same to the Director at the submittal address located in Section 2.2.

The City shall make interpretations, corrections, or changes of the Proposal Documents in writing by published Addenda. Interpretations, corrections, or changes of the Proposal Documents made in any other manner will not be binding, and Proposers shall not rely upon such interpretations, corrections, and changes.

Should any doubt or difference of opinion arise between the City and a Proposer as to the items to be furnished hereunder or the interpretation of the provisions of this solicitation, the decision of the City shall be final and binding upon all parties.

2.12 PROPOSER REQUESTS FOR ADDITIONAL INFORMATION

Requests for information regarding City services, programs, or personnel, or any other information shall be submitted in writing directly to the Director at the address in the Invitation. All requests for additional information shall be submitted in writing. Answers shall be provided to all Proposers of record on the date that answers are available.

2.13 COMPETITION

Respondents are encouraged to comment, either with their Proposals or at any other time, in writing, on any specification or requirement within this RFP, which the respondent believes, will inordinately limit competition.

2.14 COMPLAINTS AND INEQUITIES

Any complaints or perceived inequities related to this RFP or award of work referenced herein shall be in writing and directed to the Director of Administrative Services at the contact information listed in Section 2.8 and shall be received no later than the date listed in the RFP Schedule. Such submittals will be reviewed upon receipt and will be answered in writing.

2.15 COST OF RFP AND ASSOCIATED RESPONSES

The City is not liable for any costs incurred by a proposer in the preparation and/or presentation of a proposal. The City is not liable for any cost incurred by a proposer in protesting the City's selection decision.

2.16 CITY TO REQUEST CLARIFICATION, ADDITIONAL RESEARCH, & REVISIONS

The City reserves the right to obtain clarification of any point in a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to respond to such a request for additional information or clarification could result in a finding that the Proposer is non-responsive and consequent rejection of the Proposal.

The City may obtain information from any legal source for clarification of any Proposal or for information on any Proposer. The City need not inform the Proposer of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of the responsible Proposer. Information may include, but shall not necessarily be limited to credit history, recent financial statements, current litigation, bonding capacity and related history, and contacting references. All such documents, if requested by the City, become part of the public records and may be disclosed accordingly.

The City reserves the right to request revisions of proposals after the submission of proposals and before award for the purpose of obtaining best offers or best and final offers.

2.17 REJECTION OF PROPOSALS

The City reserves the right to reject any or all Proposals received as a result of this request. Proposals may be rejected for one or more of the following reasons, including but not limited to:

- a) Failure of the Proposer to adhere to one or more of the provisions established in this RFP.
- b) Failure of the Proposer to submit a Proposal in the format specified herein.
- c) Failure of the Proposer to submit a Proposal within the time requirements established herein.
- d) Failure of the Proposer to adhere to ethical and professional standards before, during, or following the Proposal process.

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 of the City that it is in the public interest to do so.

2.18 MODIFICATION OR WITHDRAWAL OF PROPOSAL BY PROPOSER

A Proposal may not be modified, withdrawn, or canceled by the Proposer for 60 (sixty) calendar days following the time and date designated for the receipt of Proposals.

Prior to the time and date designated for receipt of Proposals, Proposals submitted early may be modified or withdrawn only by notice to the City Administrative Services Director, at the Proposal submittal location, prior to the time designated for receipt of Proposals. Such notice shall be in writing over the signature of the Proposer. All such communications shall be so worded as not to reveal the amount of the original Proposal or any other material contents of the original Proposal.

Withdrawn Proposals may be resubmitted up to the time designated for the receipt of Proposals provided that they are then fully in conformance with these Instructions to Proposers.

2.19 PROPOSAL OWNERSHIP

All Proposals submitted become and remain the property of the City and, as such, are considered public information and subject to public disclosure within the context of the federal Freedom of Information Act and Oregon Revised Statutes (ORS) 192.501 and ORS 192.502, public records exempt from disclosure.

Unless certain pages or specific information are specifically marked "proprietary" and qualify as such within the context of the regulations stated in the preceding paragraph, the City shall make available to any person requesting information through the City's processes for disclosure of public records, any and all information submitted as a result of this solicitation without obtaining permission from any Proposer to do so after the Notice of Intent to award has been released.

2.20 DURATION OF PROPOSAL

Proposal prices, terms and conditions shall be firm for a period of at least ninety (90) days from the deadline for receipt of submittal. The successful proposal shall not be subject to future price escalation or changes of terms if accepted during the ninety (90) day period. Price decreases or changes in terms by others after the acceptance of a proposal will not be considered.

2.21 INTERGOVERNMENTAL COOPERATIVE AGREEMENT

Pursuant to ORS 279A, other public agencies shall have the ability to purchase the awarded goods and services from the awarded Contractor(s) under terms and conditions of the resultant contract. Any such

purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to the City. Any estimated purchase volumes listed herein do not include other public agencies and the City makes no guarantee as to their participation. Any bidder, by written notification included with their solicitation response, may decline to extend the prices and terms of this solicitation to any and/or all other public agencies.

2.22 AFFIRMATIVE ACTION/NONDISCRIMINATION

By submitting a proposal, the Proposer agrees to comply with the Fair Labor Standard Act, Civil Rights Act of 1964, Executive Order 11246, Fair Employment Practices, Equal Employment Opportunity Act, Americans with Disabilities Act, and Oregon Revised Statutes. By submitting a proposal, the Proposer specifically certifies, under penalty of perjury, that the Proposer has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

2.23 PERFORMANCE AND PAYMENT BONDS

No performance and payment bonds are required.

SECTION 3 - SCOPE OF WORK

The following is a general description of the scope of services that the City wants the selected consultant to provide. A detailed scope of services will be developed with the selected consultant.

3.1 Services Provided By City: Proposers shall assume that the City will provide specialty services as follows:

- Geotechnical
- Environmental Testing
- Specialty inspections and/or materials testing as needed for items such as steel and concrete and roofing
- Project management

Information Provided by City:

- Provide the use of existing maps, aerials and AutoCAD base map for design and reproduction purposes.
- Provide existing studies and reports including 2016 Parks, Recreation and Open Space Master Plan, 2020 Schematic Design Plan and other pertinent planning studies or community development plans which may affect decisions and recommendation. The City will provide Forest Grove zoning ordinances and land division ordinances pertinent to the study.
- Provide partnership contact information.
- Schedule and facilitate Recreation Commission and City Council meetings and prepare agendas as needed.

3.2 Design Development Phase Responsibilities and Deliverables

- 3.2.1 Develop projected project schedule.
- 3.2.2 Have a project kick-off meeting and existing conditions review including: 1) Site tour and understanding of Purchase/Donation Easement Agreements; 2) review of the 2020 adopted schematic design; and 3) understanding and review of partnership agreements.
- 3.2.3 Using the 2020 adopted schematic design, commence design development to complete the design up to the point of construction documents.
- 3.2.4 Take primary responsibility for planning and coordination with local planning and building officials during pre-design to ensure compliance with City requirements.
- 3.2.5 Throughout the design phase as needed, conduct progressive reviews with the Design Committee, City staff, and Parks and Recreation Commission to obtain City approvals with design and specification decision, and adherence to design schedule and budget. Staff anticipates at least two meetings with Parks and Recreation Commission.
- 3.2.6 Meet regularly and as necessary with appropriate city planning and building officials to assure that developing and final designs and drawings are consistent with applicable codes as interpreted by the building officials having jurisdiction.

- 3.2.7 Prior to completion of the design development phase, hold a meeting to present the design to the project partners and public for final comment. If needed, revise design development documents. Format for meeting can be determined when the meeting is scheduled subject to COVID-19 concerns or restrictions at that time.
- 3.2.8 In coordination with City staff, present the final design to City Council prior to commencing with final construction documents.
- 3.2.9 Advise and coordinate implementing costing, savings, value engineering, and control procedures and documentation to meet budgetary limitations.
- 3.2.10 Ensure design progresses with the design schedule.
- 3.2.11 Consult with Design Committee and City staff on all material specifications and selections to assure installation of low maintenance products with the highest life cycle value. Provide various construction options and implementation methods to optimize cost savings.
- 3.2.12 Advise in the selection of any additional consultants and contractors as needed. Work with City staff to review various contracting options such as Construction Manager/General Contractor (CM/GC) or traditional bid.

3.3 Construction Documents Phase Responsibilities and Deliverables

- 3.3.1 Develop Construction Documents, including detailed designs, drawings, specifications and any other documentation needed for the project to go to bid.
- 3.3.2 Prepare construction bid package. Consult with City to assure understanding and agreement prior to release.
- 3.3.3 Assist the City in evaluating the bids and proposals, make recommendations regarding contract award and choices of bid alternates.
- 3.3.4 Obtain permitting agency plan checks and permits prior to the release of the construction bid packages for bidding.

3.4 Construction Phase Activities

- 3.4.1 Visit construction site to monitor progress, workmanship and to conduct project design and specification compliance inspections. Alert City to any potential concerns or problems on a timely basis.
- 3.4.2 Attend construction meetings and maintain project documentation as necessary.
- 3.4.3 Monitor construction progress to ensure compliance with construction documentation and the master schedule. Alert City to any problems.
- 3.4.4 Review all material submittals to assure compliance with Construction Documents.

- 3.4.5 Review and respond to contractor requests for information.
- 3.4.6 Review and recommend payment or appropriate modification of progress payment billings from construction contractors.
- 3.4.7 Analyze contractor claims, if any, and recommend City action.
- 3.4.8 Provide assistance to the City, as necessary, to secure occupancy permit.

3.5 Close-out Phase Activities

- 3.5.1 Prepare punch list and Certificate of Substantial Completion.
- 3.5.2 Confirm completion of punch list and prepare Certificate of Final Completion.
- 3.5.3 Continue coordination with appropriate local building officials.
- 3.5.4 Receive, review and approve for completeness and accuracy contract closeout documentation, as-builts, O&M's and recommend final acceptance. Provide hard and soft copies (where cost effective) of all construction/as-built documents for archiving by City.
- 3.5.5 Review and recommend final payment to the General Contractor.

3.6 Responsibilities

Responsibility of Consultant – It is understood and agreed that the services the Consultant will be required to perform under this contract shall be rendered directly by or under close personal supervision by the Consultant, and that the work shall be faithfully performed with care and diligence. The Consultant will return all calls or other contacts from the City within a reasonable time. If it is not possible for the called or contacted party to respond, the Consultant will make arrangements for a designated member of the Consultant to respond to the contact.

Responsibility of the City – The Parks and Recreation Director or an assigned appointee will provide the Consultant with a list of designated City employees who are authorized to contact the Consultant. The City will also provide a point of contact for all service and billing issues.

Joint Responsibility – If additional services, supplemental to those included herein, are required, both the City and the Consultant have the responsibility to identify those services, include them as an addendum or amendment to the Contract, and determine fair compensation for the additional services.

3.7 Changes of Scope and Additional Work

The Proposer may be requested to perform special projects for the City. Because of variations in the demand for additional services from time to time, such work shall be agreed upon in advance, contracted for, provided and billed separately to the City on a pre-arranged basis.

SECTION 4 – PROPOSAL AND PROPOSER REQUIREMENTS

4.1 SUBMITTAL OF PROPOSALS

In order to be considered for this project, proposals must be received no later than October 28, 2020, at 4:00 p.m. **The proposal is to be submitted without proposed fees. After the initial scoring is completed, proposed fees will be requested from the three highest scoring proposals.**

Due to COVID-19, the City is allowing the proposer the option of submitting the proposal electronically or by printed copy. Electronic submittal is preferred. Electronic proposals are to be submitted to Paul Downey at pdowney@forestgrove-or.gov.

If paper copies are submitted, the Proposer must provide five total bound copies of their proposal; one copy should be marked "ORIGINAL". **The outside of the sealed envelope containing the proposal should state "Design Development and Construction Documents Stites Park Phase 1" and shall be addressed to:**

City of Forest Grove
Paul Downey, Administrative Services Director
1924 Council Street
PO Box 326
Forest Grove, OR 97116

4.2 PROPOSER REQUIREMENTS

Mandatory Requirements (Pass/Fail). These requirements will not be scored. Failure to meet any of these qualifications will render your proposal non-responsive.

- 1) **Introductory Letter.** This letter shall specifically stipulate that the Consultant accepts all terms and conditions contained in the RFP and supporting documents. The letter shall name the person(s) authorized to represent the Consultant in any negotiations and the name of the person(s) authorized to sign any contract that may result.
- 2) **Proof of Licensure.** Consultant shall submit proof that they and any sub-consultants have current, active license to practice architecture in the State of Oregon. Consultant and any sub-consultants shall obtain a City business license if selected.

The following minimum criteria will apply:

- A. Proposer shall include sufficient evidence as to the Proposer's Proposals to perform the work. This information shall disclose and include all pertinent facts as may be appropriate and shall include a description of past performance on projects of similar type, scope and size.
- B. Proposers shall have a minimum of providing design and construction services for three municipal parks or other closely related facilities.

- C. Proposers shall have experience in making public presentations to an elected body, working with a citizens' advisory committee and conducting public workshops.
- D. Shall demonstrate, to the satisfaction of the Selection Review Committee, the ability to provide the services required within the Scope of Work, within the timeline indicated, to the City and shall demonstrate a proven history of providing such services.
- E. Shall not have a record of substandard workmanship. The City will verify this requirement by communication with the licensing authority, the Proposer's clients and references, and as many other references as may be deemed appropriate.

4.3 PROPOSER REPRESENTATIONS

The Proposer further agrees to the following:

- A. To examine all specifications and conditions thoroughly.
- B. To provide for appropriate insurance, deposits, and performance bonds if required.
- C. To comply fully with the scope of services as attached for the agreed contract.
- D. That any and all registration and certification requirements required for Contractors are met as set forth in the Oregon Revised Statutes.

4.4 PROPOSER REPRESENTATIVE

The selected Proposer shall assign a competent representative acceptable to the City who will represent the Proposer in providing contracted services to the City. If the representative is removed by the Proposer, the new representative must be acceptable to the City.

4.5 PROPOSAL FORMAT AND REQUIREMENTS – MANDATORY

Each Proposer shall provide the following:

4.5.1 Format Proposal shall be submitted with the following formatting limitations:

- A. Proposals must be submitted on letter-sized (8.5" X 11") paper. Margins must be at least ½" on all sides. Font size can be no smaller than 10.
- B. The maximum total number of pages in the proposal must not exceed thirty (30) single-sided pages or fifteen (15) double-sided pages. Resumes, if provided, shall be limited to either two (2) single-sided pages, or one (1) double-sided page. Resumes will not count against total page limitation.
- C. Proposers must include a maximum two page Introductory Letter, which does not count against the total page limitation.
- D. Proposers must submit Proof of Licensure, which does not count against the total page limitation.

4.5.2 Introductory Letter

Include the name of the proposing Firm or Individual and its principal business address and phone number. The letter should address the Proposer's willingness and commitment, if selected, to provide the services as outlined in the Scope of Work and a description of why the Proposer believes it should be selected. The letter should be addressed to Tom Gamble, Director of Parks and Recreation, and should be signed by an officer of the firm authorized to bind the firm to all comments made in the proposal. Please provide all contact telephone, fax numbers, e-mail addresses, and addresses of your office(s).

4.5.3 Proposer Profile and References

Please include the following:

- A. A corporate overview, structure and organization, the year it was established, the type of services available, and the size of staff. Provide the proposed organizational structure under which the Proposer will provide the requested services to the City, including the designation of the Principal in Charge and other key personnel.
- B. Describe firm's recent experience in providing architectural services in the design and construction of at least your three (3) most recent park projects that are similar in size and scope to that contemplated for this project. Include the same information for key sub-consultants, such as engineering firms, as well. When citing specific examples, always clarify the following:
 - (1) The name, location, client entity, and year of completion of the project.
 - (2) Size in square feet, bid costs of project, and final cost of the built project. Projects in progress may be described with the current anticipated size and estimated cost.
 - (3) Define roles each member of the project team had, if any, on the project.
 - (4) Contracting type and firm's role in delivery of the project (e.g. Construction Manager/General Contractor (CM/GC), Design-Build, Design-Bid-Build, Private Bid).
 - (5) Project References should include the names, position or role, and current contact information for client representatives or other persons who became familiar with your firm's work and performance on the project.
- C. A description of all projects which the Proposer is currently working on which may pose a potential conflict with the completion of this project.
- D. Key Personnel. Provide a company-wide organizational chart that highlights the key personnel that will be assigned to the work should your firm be selected to design the proposed park. Identify Principal, Project Manager, and other key staff, and extent of their involvement should your firm be selected to respond to the RFP. Identify staff from key sub-consultants mentioned above. Describe individual

roles, responsibilities, credentials, and related experience that will allow the City to evaluate the qualifications of the individuals proposed for the project. Include each individual's percentage of overall time that can be dedicated to the project. Upon completion of the contract, key personnel assigned to the project cannot be changed without written approval of the City.

- E. A statement to confirm Proposer's ability to comply with our minimum requirements. Also list any exceptions.

4.5.4 Proposer's Services

Please provide detailed information on the specifications and features of the proposed services as listed below. Provide any suggestions for services you would recommend that were not requested in the scope and why you recommend those services. Please provide answers in this format and as straightforwardly as possible.

- A. Indication that the Proposer has a clear understanding of the requested services by describing your scope of services for pre-design activities through construction close-out.
- B. Outline and description of project tasks, how they will be accomplished within the specified timeframe, any challenges the Proposer foresees and how those challenges will be addressed. Please provide a description of assumptions regarding City staff responsibilities as they pertain to this project.
- C. Estimated project timeline showing all major milestones and other relevant information.
- D. Furnish a disclosure statement of involvement in any civil or criminal litigation or investigation regarding your business practices during the past five years.

4.5.5 Proposed Fees

Proposed fees are not to be included with the proposal. After the initial scoring, proposed fees will be requested from the three highest-scoring proposals. Selected proposers will have two business days to submit their proposed fees. Failure to do so will result in the proposal being deemed non-responsive and the City will request proposed fees from the next highest scoring proposer.

4.5.6 Certifications (Attachment A)

Please complete the attached certification form for non-collusion and conflict of interest, Attachment A, with the required signature and other information.

4.5.7 Sample Professional Services Agreement (Attachment B)

Review sample agreement and list any concerns with the sample agreement.

4.5.8 Addenda

All Addenda of this RFP shall be submitted as part of the Proposal. Receipt of each Addendum shall be acknowledged by the Proposer by signing in the appropriate designated location. Each Proposer shall ascertain, prior to submitting a Proposal, that the Proposer has received all Addenda issued by the City.

SECTION 5 – PROPOSAL SELECTION AND EVALUATION

5.1 GENERAL INFORMATION

The City intends to award all of the tasks to the selected consultant. Each proposal will be judged on its completeness and quality of its content. The City reserves the right to reject any or all proposals and is not liable for any costs the Proposer incurs while preparing or presenting the proposal. All proposals will become part of the public file, without obligation to the City. Upon the completion of the evaluation process, the City intends to negotiate a contract with the Proposer whose proposal is deemed to be most advantageous to the City.

5.2 SELECTION REVIEW COMMITTEE

The Selection Review Committee may be comprised of up to five members. The role of the Selection Review Committee is to evaluate the proposals submitted and make a recommendation of award. The City may also seek independent expert advice with no apparent or perceived conflicts of interest to help review proposals. However, any such person that is contacted by the City for their expert advice shall not, from first being contacted until the RFP process is completed, or otherwise brought to an end, have communications with any Proposers regarding their proposals or the process.

Scoring will be completed covering all areas as described below in the Evaluation Criteria. All scores for each Proposer shall be added together to arrive at an evaluation score for each Proposer. Proposals will then be ranked in descending order by the total Proposal score.

At the City's option, interviews may be conducted with all or a select few of the Proposers after the Proposals are evaluated. The interview scores will be added to the criteria evaluation scores, and the list re-ordered. City will enter into contract negotiations with the highest ranked Proposer. If a contract with the highest ranked Proposer cannot be reached, the City will commence negotiations with the second highest ranked Proposer.

City reserves the right to negotiate with any of these Proposers or may elect to negotiate a contract using best and final offers.

5.3 INTERVIEWS

Proposers selected for final evaluation (if necessary) may be required to make an oral presentation of their proposal to the City. Such presentation shall provide an opportunity for Proposers to clarify their proposal to ensure thorough mutual understanding. The Selection Review Committee may interview the Proposers and ask additional questions related to the proposal and the scope of work. The City will schedule the time and locations of the interviews, if required, on the dates indicated in the RFP Schedule. Interviews will take place at a location to be determined, in Forest Grove. Firms invited to the interview will be responsible for making and paying for their own travel arrangements.

5.4 SCORING AND EVALUATION CRITERIA

The criteria listed below will be used to evaluate the Proposers to determine the finalists and apparent successful Vendor. **Total possible evaluation points prior to consideration of cost and interviews will be 400. A possible seventy points are available for costs of the proposal bringing the total possible score before interviews to 470 points. If interviews are conducted, an additional 100 points are available to determine the final scores.**

5.4.1 Comprehensiveness of Proposed Services (40 points) 10%

Completeness of proposed services compared to requested services.

5.4.2 Evaluation of Proposer's Services (100 points) 25%

Evaluation of proposer's process to complete project including how tasks will be performed within the agreed-upon timeframe.

5.4.3 Experience of firm to provide proposed services (100 points) 25%

Overall capabilities and experience of the Proposer to provide the requested services described in this RFP.

5.4.4 Qualifications of Proposed Staff (160 points) 40%

The credentials and experience of the assigned staff selected to perform the requested services.

5.4.5 Proposed Fees for Project (70 points)

After scores of 5.4.1 through 5.4.4 are totaled, proposed fees will be requested from the three highest-scored proposals. Selected proposers will have two business days to submit their proposed fees. Failure to do so will result in the proposal being deemed non-responsive and the City will request proposed fees from the next highest scoring proposer. The proposed fees will be awarded points which will be added to the point totals of 5.4.1 through 5.4.4 to arrive at a total point score for the three highest ranked proposals prior to interviews, if held.

5.4.6 Interviews, if held (additional 100 points)

If held, the purpose of the interviews is to evaluate presentations of proposals and Proposer's ability to work with City staff. Interview scores will be added to the scores from 5.4.1 through 5.4.5.

5.4.7 Reference Check (no points)

The City reserves the right to contact references as part of the decision-making process and prior to making a final selection.

5.5 RANKING OF PROPOSALS

- A. Proposals may be ranked by the Selection Review Committee based on evaluation of responses and interviews (if any), with the first-ranked Proposer being that Proposer which is deemed to be the most appropriate and fully able to perform the services, and the second ranked Proposer being the next most appropriate, all in the sole judgment of the Selection Review Committee.
- B. Proposer's scores will be totaled and ranked. Any Proposer's response to this RFP shall be considered de facto permission to the City to disclose the results, when completed, to selected viewers at the sole discretion of the City.

SECTION 6 – CONTRACT REQUIREMENTS

6.1 CONTRACT AWARD

The award of a contract is accomplished by executing a written agreement that incorporates the entire RFP, Proposer’s response, clarifications, addenda, and additions. All such materials constitute the contract documents. The Proposer agrees to accept the contract terms of the attached Professional Services Agreement unless substantive changes are made without the approval of the Proposer. Otherwise, exceptions to the contract must be submitted by the Proposer during the solicitation protest period. The issuing office is the sole point of contact for the issuance of the contract. The contract shall be substantially in the form of the sample “Professional Services Agreement” in Attachment B. The City Attorney has not done a final review of the contract but no substantive changes are anticipated.

6.2 REQUIREMENTS

The firm must be covered by Workers’ Compensation Insurance, which will extend to and include work in Oregon. In addition, the firm must also submit documents addressing general liability insurance, automobile and collision insurance, professional liability insurance, and indication that there is no conflict of interest on the part of the Contractor’s submission of a proposal for the services being solicited under this RFP.

6.3 CONTRACT ADMINISTRATOR

Tom Gamble, the City’s Parks and Recreation Director, shall be the Contract Administrator for this project.

ATTACHMENT A – CERTIFICATIONS

Non-Collusion

The undersigned Proposer hereby certifies that it, its officers, partners, owners, providers, representatives, employees and parties in interest, including the affiant, has not in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, potential Proposer, firm or person, in connection with this solicitation, to submit a collusive or sham bid, to refrain from bidding, to manipulate or ascertain the price(s) of other Proposers or potential Proposers, or to secure through any unlawful act an advantage over other Proposers or the City. The fees and prices submitted herein have been arrived at in an entirely independent and lawful manner by the Proposer without consultation with other Proposers or potential Proposers or foreknowledge of the prices to be submitted in response to this solicitation by other Proposers or potential Proposers on the part of the Proposer, its officers, partners, owners, providers, representatives, employees or parties in interest, including the affiant.

Conflict Of Interest

The undersigned Proposer and each person signing on behalf of the Proposer certifies, and in the case of a sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of the City Council, officer, employee, or person, whose salary is payable in whole or in part by the City, has a direct or indirect financial interest in the award of this Proposal, or in the services to which this Proposal relates, or in any of the profits, real or potential, thereof, except as noted otherwise herein. The undersigned hereby submits this Proposal to furnish all work, services systems, materials, and labor as indicated herein and agrees to be bound by the following documents: Request for Proposal, Professional Services Agreement, and associated inclusions and references, specifications, Proposal Form, Proposer response, mutually agreed clarifications, appropriately priced change orders, exceptions which are acceptable to the City, and all other Proposer submittals.

Reciprocal Preference Law - Residency

Resident Proposer () Non-Resident Proposer ()

Signature Block

The Proposer hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

Proposer Name Proposer

Telephone Number

Proposer Mailing Address, City, State, Zip

Proposer Facsimile Number

Proposer E-mail Address

Signature

Date

ATTACHMENT B – SAMPLE AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

This Agreement made on the _____ day of _____, 20____, between:

THE CITY OF FOREST GROVE
1924 Council Street
P.O. Box 326
Forest Grove, Oregon 97116
("City")

and

[Consultant]
[Address]
[Telephone]
[Fax]
("Consultant")

Consultant agrees to provide professional services (a.k.a. "personal" services) to the City pursuant to this Agreement. Such services are authorized by and subject to the terms and conditions of this Agreement.

The "Project":

[Describe Project]

[Include nature of project and budget/time parameters.]

Consultant has reviewed the City's description of the Project and conducted initial inquiries with the City and other local regulatory agencies regarding the Project. Consultant represents that Consultant is competent and willing to undertake professional services in connection with the Project and is capable of performing such professional services within the time allotted herein.

1. Consultant's Responsibilities

1.1. Consultant will provide professional services for the City during all phases of the Project to which this Agreement applies; serve as the City's representative for the Project as set forth below and give professional consultation to the City during the performance of services hereunder.

1.2. Consultant will provide all professional services customarily furnished and reasonably necessary within the Scope of Services set out at Exhibit A, attached. Time is of the essence of this Agreement. The City and Consultant will develop a Project Schedule consistent with requirements of the Scope of Services and Consultant will complete each phase of the services in accord with that Schedule. Subconsultants, if any, may only be used with the City's prior written consent. Consultant will contract directly with and will pay such subconsultants. City has no obligation to pay any subconsultants.

1.3. Consultant will pay all royalties and license fees which may be due by reason of materials or methods employed by Consultant or its subconsultants or by reason of the necessary inclusion of protected materials or methods in the Project as designed except to the extent such materials or methods are included with the informed consent or at the direction of the City. Consultant will defend all suits or claims for infringement of patent, trademark, or copyright for which Consultant is responsible pursuant to this paragraph, which may be brought against the City, and Consultant will be liable to the City for all losses arising therefrom, including costs, expenses, and attorney fees.

1.4. Consultant will not be relieved of responsibility for errors or omissions or other defects in plans and specifications or any other documents prepared by Consultant for the City's review and approval.

1.5. Consultant will keep any real property involved in the Project free from all liens by reason of its services and will defend, indemnify and hold harmless the City from the operation and effect of any such lien or encumbrance that may be claimed by any person by reason of Consultant's services. If Consultant fails to remove any lien or adjust any other claim relating to Consultant's services, the City may without recourse by Consultant, pay the lien or claim and charge such payments, with any resulting costs incurred by the City deducted from any monies owed Consultant by City. (ORS 279A.220)

1.6. All services provided by Consultant (and any of their sub-consultants) will be performed in a prompt manner consistent with the professional standards of care and diligence applicable to those services performed by recognized firms in the Portland metropolitan region on the type of project being done. Consultant is and will be responsible for all services provided regardless of whether the services are provided directly by Consultant or by sub-consultants used by Consultant. Consultant will make all decisions called for promptly and without unreasonable delay.

1.7. Consultant will perform only the services authorized. Additional services will be compensated only if and as authorized in writing by the City. To the extent services are made necessary by fault or error of Consultant or their sub-consultants in the performance of their respective duties, responsibilities or obligations, the services will not be compensated.

1.8. Consultant will maintain all documents, books, papers, recordings and all other records, including any in digital format, arising out of or related to this Agreement for a period of three (3) years after completion or abandonment of the Project. Such records will be made available, in full, to the City upon reasonable notice.

1.9. If applicable, Consultant will designate a representative fully knowledgeable about the Project with the authority to carry out Consultant's duties under this Agreement.

1.10. Consultant will furnish City with either its IRS-designated employer identification number or social security number whichever is appropriate.

1.11. Consultant will not provide any comments, information, press releases or opinions to representatives of newspapers, magazines, television and radio stations, weblogs or any other news medium without the City's prior written consent.

1.12. Consultant will give prompt written notice to City if Consultant becomes aware of, or forms a belief regarding, actual or potential problems, faults or defects in the Project, any nonconformity with the Agreement or with any federal, state or local law, regulation or ordinance, or has any objection to any decision or order made by City with respect to Consultant's duties under this Agreement. Any delay or failure on the City's part to provide a written response to Consultant will not be deemed or construed to be an endorsement of Consultant's notice and will not constitute a waiver of any of City's rights.

1.13. Any employee of Consultant or any sub-consultant will be paid at least time and a half for all time worked in excess of 40 hours in any one week, other than a person excluded from overtime pursuant to ORS Chapter 653 or United States Code Title 29.

1.14. Consultant will promptly pay, as due, all persons supplying labor or material for the performance of its work under this Agreement. (ORS 279B.220)

1.15. Consultant will pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of its work under this Agreement, and shall ensure subcontractors pay those amounts due from the subcontractors. (ORS 279B.220)

1.16. Consultant will pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

1.17. Consultant will promptly pay, as due, all persons or entities furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to Consultant's employees, those sums that Consultant agrees to pay for those services and all moneys and sums that Consultant collected or deducted from its employees' wages under any law, contract or agreement for the purpose of providing or paying for the services. (ORS 279B.230)

1.18 Consultant is a subject employer that will comply with ORS 656.017. Consultant warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Consultant shall indemnify City for any liability incurred by City as a result of Consultant's breach of the warranty under this Paragraph. (ORS 279B.230)

2. The City's Responsibilities

2.1. The City will designate a representative fully knowledgeable about the Project and with the authority to review and approve all Project work.

2.2. The City will furnish Consultant with information regarding requirements for the Project, including programs setting forth the City's objectives, schedules, constraints and criteria.

2.3. The City will render its decisions in a timely manner to avoid unreasonable delay in the orderly and sequential progress of Consultant's services.

2.4. The City will furnish Consultant with all information in its possession regarding the Project.

3. Drawings and Specifications

3.1. Construction or Project drawings and specifications, if any, or other construction documents submitted by Consultant to the City, or to any trade contractors or others for bidding or negotiation, will be complete and unambiguous and in compliance with all applicable codes, ordinances, statutes, regulations and laws except to the extent expressly and specifically otherwise stated in detail in writing by Consultant at the time of such submission. By submitting such documents for construction or bidding purposes, Consultant represents that Consultant has informed the City of any tests, studies, analyses or reports which are necessary or advisable to be performed by or for the City at that time.

3.2. Consultant will assign all original designs, drawings, specifications and other construction documents, if any, to the City upon completion or termination of services under this Agreement.

3.3. All copies of drawings, specifications or other Construction Documents, if any, provided the City become the property of the City which may use them without Consultant's permission for any proper purpose relating to the Project, including, but not limited to, additions to or completion of the Project.

3.4. If applicable, Consultant will provide one set of reproducible record drawings, which are the revised construction drawings reflecting the construction as completed. The revisions will be based on observations of Consultant made verifying actual construction.

4. Payments to the Consultant

4.1. For the period of this Agreement, Consultant agrees to provide services at the rates set forth in Exhibit B (attached).

4.2. For authorized reimbursable expenses, the City will pay Consultant at the rate specified. For unscheduled reimbursement items, Consultant will be reimbursed at Consultant's direct cost without markup.

4.3. Consultant will not be entitled to or be paid for services provided in excess of any guaranteed maximum price or fixed price that has been established for such services unless authorized by a written scope change.

4.4. Consultant will provide the City with monthly statement(s) of services rendered and authorized reimbursable expenses incurred for the preceding month. Consultant expressly waives any right to payment for services rendered if such services are not billed within sixty (60) days following their rendition.

4.5. In addition to the monthly statement described in 4.4, Consultant's invoices will include a summary of services provided; a summary of reimbursable expenses; and a summary of authorized additional services, all in accordance with the compensation provisions of this Agreement, as well as an estimate of the percent of services completed as of the invoice date.

4.6. Invoices for reimbursable expenses will be accompanied by supporting documentation.

4.7. Invoices for authorized additional services will outline and identify the services performed and by whom, the number of hours each person worked and applicable pay rates.

4.8. Payments will be made monthly for services performed and invoiced.

4.9. Consultant shall keep its billing records, including timesheets, rate schedules and invoices necessary to support invoices for time and materials, additional services and expenses current consistent with generally recognized accounting principles and procedures and maintained for a period of two (2) years following completion or abandonment of the Project. Such records will be available to the City for inspection, copying and/or audit during normal business hours.

5. Termination

5.1. The City may terminate this Agreement for convenience and without cause by giving written notice of such termination to Consultant. Upon receipt of such notice, Consultant will immediately cease further performance except that Consultant may perform such services and incur such reimbursable expenses as reasonably necessary to preserve work that has been completed or is in progress and to achieve an orderly termination or transition. Upon such termination, the City will pay Consultant, pursuant to the payment provisions of this Agreement for all authorized services or reimbursable expenses up to the date established in the notice of termination. Authorized reimbursements include those costs necessarily and reasonably incurred by Consultant for organizing and carrying out the termination. The City will not be obligated to reimburse Consultant for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments.

5.2. Within a reasonable time after termination of this Agreement or of any Exhibit A work, Consultant will deliver to the City all materials and equipment and documentation, including

raw or tabulated data and work in progress upon payment pursuant to paragraph 5.1 above.

5.3. Termination of this agreement by the City does not constitute a waiver or termination of any rights, claims, or causes of action the City may have against Consultant under this Agreement.

5.4. Upon a determination by a court or an arbitrator that any termination of Consultant or its successor in interest by the City was wrongful, such termination will be deemed converted to a termination for convenience as set forth above and Consultant's remedy will be so limited.

6. Insurance

6.1. Consultant will maintain throughout the period of this Agreement, as extended from time to time, and for a period of two (2) years after completion of the Project, the following minimum levels of insurance:

- (a) Workers' compensation coverage as required by law.
- (b) Employer's liability with limits of not less than \$2 million per occurrence.
- (c) Comprehensive general liability for damages as a result of death or bodily injury to any persons or destruction or damage to any property with limits of not less than \$2 million per occurrence including completed operations.
- (d) Comprehensive automobile liability insurance for at least \$2 million per occurrence.
- (e) Errors and omissions insurance with limits of not less than \$2 million.

Consultant will require that any subconsultants engaged or employed by Consultant carry and maintain similar insurance as listed above with the same limits and coverage requirements.

6.2. Consultant's insurance will be primary and any insurance carried by the City will be excess and noncontributing. The general liability coverage will name the City, its officers, employees, agents and insurers as additional insureds and will contain a severability of interest clause. Additional insured coverage shall be for both on-going operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Workers' compensation coverage will contain a waiver of subrogation in favor of the City. All required coverage will be with companies rated A-/V or better by A.M. Bests Rating Service and will provide the City with thirty (30) days notice of material change, expiration, or cancellation.

6.3. Prior to commencement of any services under this Agreement, Consultant will furnish the City with evidence of insurance coverage and provisions as described under 6.1. In the event Consultant fails to maintain insurance as required, the City will have the option, but not the obligation, to obtain such coverage with costs to be the responsibility of and reimbursable by Consultant.

7. Force Majeure Delay

Neither party will be responsible to the other for its failure to perform on time when such failure is due to causes beyond the party's reasonable control such as acts of God, fire, theft, war, riot, embargoes, or acts of civil or military authorities. If Consultant's services are delayed by such contingencies, Consultant will immediately notify the City in writing and the City may

either (1) extend time of performance, or (2) terminate the uncompleted portion of Consultant's services at no cost to the City.

8. Independent Contractor

Consultant is an independent contractor and is entitled to no compensation other than the compensation expressly provided by this Agreement. Nothing in this Agreement will be construed as forming a partnership, agency or joint venture between the parties. As an independent contractor, Consultant is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285. This acknowledgement does not affect Consultant's independent ability (or the ability of its insurer) to assert the monetary limitations, immunities or other limitations affecting a claim made under the Oregon Tort Claims Act.

9. Notices

Any notice required under this Agreement will be deemed properly given if directed by prepaid mail, certified return receipt requested, or delivered in hand to the parties at the address as specified on the face page of this Agreement.

10. Work is Property of City

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Consultant under this Agreement shall be the property of City.

11. Indemnity

Consultant acknowledges responsibility for any and all liability arising out of Consultant's performance under this Agreement. Consultant will indemnify, defend (with counsel acceptable to City) and hold City, its councilors, officers, employees, agents and insurers (collectively "City") harmless from and against any and all liability, losses, costs, settlements and expenses in connection with any action, suit or claim resulting or allegedly resulting from Consultant's acts, omissions, activities or services in the course of performing under this Agreement.

12. Successors and Assignments

12.1. Both City and Consultant bind themselves and any partner, successor, executor, administrator, or assign to this Agreement.

12.2. Neither City nor Consultant shall assign or transfer their interest or obligation hereunder in this Agreement without the prior written consent of the other. Consultant must seek and obtain City's written consent before subcontracting any part of the work required of Consultant under this Agreement.

12.3. Any assignment, transfer or subcontract attempted in violation of this subparagraph shall be void.

13. Records

13.1. Consultant shall retain all books, documents, papers, and records that are directly pertinent to this Agreement for at least three (3) years after City makes final payment on this Agreement and all other pending matters are closed.

13.2. Consultant shall allow City (or any of its authorized representatives) to audit, examine, copy, take excerpts from or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

14. Intellectual Property

The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this Agreement shall vest in City. Consultant shall execute any assignment or other documents necessary to effect this paragraph. Consultant may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Consultant shall transfer to City any data or other tangible property generated by Consultant under this Agreement and necessary for the beneficial use of intellectual property covered by this paragraph.

15. Mediation/Litigation

If any dispute arises between the parties to this Agreement, the dispute will be submitted to mediation prior to any litigation. No claim or dispute arising under this Agreement may proceed to litigation if the parties have not first mediated that claim or dispute. Mediation will be conducted in Forest Grove, Oregon. The parties will attempt to select a mediator within 30 days of a party's request for mediation. If the parties fail to agree on a mediator, a mediator will be appointed by the presiding judge of the Washington County Circuit Court upon a party's request. The mediator's fees and expenses will be shared equally by the parties. Each party will bear its own attorney fees.

Any litigation arising out of or related to this Agreement will be tried to the court without a jury. Each party will bear its own fees, costs and expenses related to any litigation, including attorney fees.

16. Governing Law

This Agreement and all services performed hereunder will be interpreted under the laws of the State of Oregon without respect to conflict of laws principles. The exclusive venue for any lawsuit or action will be in Washington County, Oregon.

17. Assignment

Consultant cannot assign any rights nor delegate any responsibilities it has under this Agreement without the City's prior written approval.

18. Severability

If any term, condition or provision of this Agreement or the application thereof to any circumstance is determined to be invalid or unenforceable to any extent, the remaining provisions of this Agreement will not be affected but will instead remain valid and fully enforceable.

19. Article Headings

All article headings are inserted for convenience only and will not affect any construction or interpretation of this Agreement.

20. Waiver

No waiver of satisfaction of a condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver.

21. No Third-Party Beneficiaries

This Agreement confers no rights or benefits on any third party.

22. Entire Agreement

_____ This Agreement signed by both parties and so initialed by both parties in the
CITY margin opposite this paragraph constitutes a final written expression of all the terms of
_____ this Agreement and is a complete and exclusive statement of those terms. Any and all
CONS representations, promises, warranties, or statements by the City or the City’s agents that
differ in any way from the terms of this written Agreement will be given no force and
effect. This Contract will be changed, amended, or modified only by written instrument
signed by both the City and Consultant. This Agreement will not be modified or altered
by any course of performance by either party.

CITY OF FOREST GROVE
MICHAEL JESSE VANDERZANDEN

CONSULTANT
[CONSULTANT NAME]

By: _____
Title: City Manager

By: _____
Title: _____

EXHIBIT A

[Scope of Work]

{00607647; 1 }

EXHIBIT A – Scope of Work

EXHIBIT B

[Cost Schedule]