



CITY OF MOLALLA

**REQUEST FOR PROPOSAL TO PROVIDE
VALUE ANALYSIS SERVICES FOR
WASTEWATER TREATMENT FACILITY
IMPROVEMENTS**

RFP NO. 19-10-A

SUBMITTAL DEADLINE: 12:00 P.M., January 10, 2020



**CITY OF MOLALLA REQUEST FOR VALUE
ANALYSIS SERVICES FOR WASTEWATER
TREATMENT FACILITY IMPROVEMENTS**

RFP NO. 19-10-A

The City of Molalla is requesting proposals from qualified persons to provide PROFESSIONAL ENGINEERING SERVICES for the City of Molalla for value analysis services for the wastewater treatment facility improvements. The attached information identifies project details and a copy of the Request for Proposal (RFP) packet may be obtained from the Public Works Director's Office, at City Hall, 117 N. Molalla Ave., Molalla, OR 97038 or by downloading from the City's website at:

<https://www.cityofmolalla.com/publicworks/page/bids-rfps>

All proposals must be sealed, clearly marked PROFESSIONAL ENGINEERING SERVICES Proposal - RFP No. 19-10-A, **12:00 P.M., January 10, 2020** and received in the Public Works Director's Office at Molalla City Hall by the above specified date and time. Any proposal received after that date and time, or not submitted in the proper manner, will be returned without further consideration.

The City reserves the right to reject any and all proposals received as a result of this RFP, to waive any irregularities and to accept the proposal deemed to be in the best interest of the City. Preparation and submission of a proposal is at the Proposer(s)'s sole risk and expense.

CITY OF MOLALLA REQUEST FOR PROPOSALS FOR PROFESSIONAL ENGINEERING SERVICES - RFP NO. 19-10-A

- 1. GENERAL INFORMATION.** The City of Molalla (City) invites qualified individuals or firms to submit a proposals package to provide value analysis services as described in the specifications set forth in this Request for Proposal (RFP).
- 2. BACKGROUND.** The City of Molalla, population 9,610, is located in Clackamas County, approximately 15 miles south of Oregon City. The City Council consists of a Mayor and six (6) Council members. The City operates under a City Manager form of Government.

The City completed a Wastewater Facility and Collection System Master Plan in 2018. That document along with the flow mapping report and smoke testing report can be downloaded from <https://www.cityofmolalla.com/publicworks/page/public-works-master-plans>. The City has begun the pre-design phase of the wastewater treatment plant upgrade project and the first step is to perform a value analysis of the proposed improvements.

3. ANTICIPATED SCHEDULE OF EVENTS.

RFP Advertised	November 18 & 20, 2019
Proposal Due Date	January 10, 2020
Selection Committee Evaluation	January 13-17, 2020
Notice of Intent to Award	January 22, 2020
Contract Award	January 29, 2020

- 4. PROPOSAL PACKAGE REQUIREMENTS.** Submit 3 copies of the proposal package. The proposal package must not exceed 12 pages and at a minimum shall include the following:
 - Proposal Form. Complete form and attach to front of package. Form is not counted in package page requirements. See attachments at end of RFP.
 - Cover Letter. All proposal packages must include a cover letter, made to the attention of Gerald Fisher, Public Works Director, 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 firm name, names of local partners/principals and the number of local personnel, address, telephone, and FAX numbers of the firm, contact information, including an email address, of the person(s) who are authorized to represent the proposer.
 - 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.
 - 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 analysis, specifically wastewater analysis.
 - 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.
 - 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.
 - 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.
- 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.
 - List of Oregon local government jurisdictions your firm is currently providing wastewater analysis services and/or value analysis services for or has provided analysis services and/or value analysis services for within the last 5 years.
 - 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 design was completed, total cost of design, provide date construction was completed (if applicable), and cost of construction (if applicable). Provide staff that was involved with the project. Provide owner information and contact person.
 - 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.
- 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.

5. QUALIFICATION EVALUATION CRITERIA.

General: Evaluations will be performed to determine the contractor's understanding of the work to be performed, overall approach to the project, summary of hourly rates, and ability to explain details to staff. Consideration will be given as to the contractor's ability to respond in an expeditious manner to service calls. Award will be made to that reasonable contractor, whose offer, conforming to this RFP is considered most advantageous to the City, considering the Evaluation Criteria in this Section.

Personnel Qualifications, Project Organization, Experience, and Commitment Criteria: Submittals will be evaluated considering the contractor's technical, managerial experience, and qualifications to work on the project.

Relevant Past and Present Performance Criteria: Assessment of the contractor's past and present performance will be evaluated relative to the capability to meet the performance requirements. Additionally, quality of service, customer satisfaction, cost control and timeliness of past and present projects will be evaluated.

Summary of Rates: Cost component of each submittal will be evaluated with respect to the probable cost to the City of doing business with each submitter; summary of rates will be evaluated for realism and reasonableness

6. WASTEWATER TREATMENT PLANT BACKGROUND.

The City's original Wastewater Treatment Plant (WWTP) was constructed in 1955. Prior to that time, wastewater management systems consisted of individual septic tank and drain field systems. Due to population growth, density of development, and other factors,

the original WWTP was abandoned and a new WWTP was constructed in 1980. The City's existing wastewater collection system consists of approximately 160,299 lineal feet of gravity collection pipes, 4,376 lineal feet of pressure sewer mains, 534 manholes, and five pump stations. The City's existing wastewater treatment plant is comprised of an influent fine screen, aerated lagoon, transfer pump station, two facultative/storage lagoons, tertiary treatment, disinfection, and an effluent pump station.

The City operates its wastewater system under NPDES Permit No. 101514, issued May 12, 2014 by the DEQ. The City filed for an extension of the existing permit until a permit can be issued for the new treatment plant and is waiting for DEQ's review and approval. There are two permitted outfalls. Outfall 001 is located on the Molalla River at approximately River Mile 20. Discharge is only permitted to the Molalla River Outfall 001 from November 1 to April 30. Outfall 002 is the recycled water outfall for several DEQ approved land application sites. Effluent is land applied in accordance with permit requirements from May 1 through October 31. Several deficiencies are present throughout the City's wastewater collection system, WWTP, and effluent disposal systems. The City's collection system is antiquated and suffers from excessive Infiltration and Inflow (I/I). Excessive flows inundate gravity sewers, stress lift stations, and hydraulically overload the WWTP.

The WWTP is also overloaded organically and is routinely out of compliance. The aerated and facultative lagoons are the main biological processes used for treatment of the City's wastewater. The aerated lagoon and facultative lagoons are 37 years old, hydraulically undersized, and organically overloaded; all based on existing loads. Insufficient hydraulic detention time in the aerated lagoons prevents significant oxidation of biodegradable constituents. Deficient hydraulic detention time in the facultative lagoons inhibits proper biological treatment, but also impedes the City's ability to store recycled water during the summer months. Tertiary treatment systems are overloaded and struggle to remove solids reliably and at necessary flux rates.

As a result of the existing influent loads and deficiencies, the WWTP often performs in violation of the permit. During the winter months, the City regularly violates the Total Suspended Solids (TSS) concentration and mass load limits set forth in the NPDES Permit. During the summer months, because of WWTP capacity limitations and recycled water land application restrictions, the City is often forced to discharge effluent to the Molalla River, in violation of the discharge permit. The City also regularly violates effluent turbidity limits, and disinfection requirements during the summer. The condition of the WWTP is such that it is not possible to operate reliably and dependably in accordance with the current NPDES Permit.

In response to recurrent NPDES Permit violations, the City established a Mutual Agreement and Order with Oregon Department of Environmental Quality. A schedule and interim compliance standards has been established; while the City works to resolve compliance issues and implement requisite improvements.

This wastewater treatment plant upgrade aims to address the inability of the existing wastewater system to effectively treat wastewater in accordance with current NPDES Permit and Total Maximum Daily Load (TMDL) requirements and outlines the improvements that are necessary to meet regulatory and environmental antidegradation

requirements. The existing WWTP is beyond its design life and the treatment capacity for biosolids is neither present nor adequate.

The City's population is projected to almost double in the next twenty years. The City has begun replacement of the high priority collection system projects with two completed and one in design. Construction is also underway on the headworks expansion project.

7. SCOPE OF WORK. This scope is a preliminary list of items and contains the minimum items that the City anticipates would be necessary for this project. However, it is anticipated that the proposers will amend the list as necessary and provide any recommendation to their RFP package.

- Comprise a Value Analysis Team that includes qualified professionals proficient in wastewater design and management. This team will work closely with the City of Molalla Team (City Staff and other parties selected by the City).
- Provide a schedule of activities for Value Analysis and submittal of required report.
- Conduct a 4-day value analysis workshop, consisting of an information and function phase, creative phase, evaluation phase, development phase, and presentation phase
- The Value Analysis Team will evaluate preliminary treatment, secondary treatment, biosolids treatment, effluent disposal, treatment alternatives, disinfection options, and project schedule. The VA 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 Analysis goals.
- Review requirements of current NPDES permit, MAO, and anticipated NPDES permit.
- Evaluate and/or recommend other treatment recommendations or treatment plant expansion/upgrades.
- Evaluate and/or recommend energy efficient options that may provide savings over the life of the project.
- Provide a draft written report of findings and recommendations for review and comment by City. The report should 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.
 - Notes to the designer.
- Provide a final written report that incorporates comments generated by the draft report.

8. RESOURCES TO BE PROVIDED. A copy of the approved 2018 Wastewater Facility and Collection System Master Plan, 2018 Recycled Water Use Plan, technical memorandum provided to DEQ, and any other materials pertinent to the project.

9. GENERAL INFORMATION.

- Compliance with Rules: Proposers must follow its procedures and requirements except as otherwise provided by Oregon Administrative Rules Chapter 137, Division 47 and shall apply to all personal service contracts of the City. Failure to comply 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:

Gerald Fisher, Public Works Director
City of Molalla
P.O. Box 248
Molalla, OR 97038
gfisher@cityofmolalla.com

All requests for additional information, must clearly reference the Value Analysis RFI. All requests must be received no later than December 13, 2019. The responses to the requests will be made available at the City's website: <https://www.cityofmolalla.com/publicworks/page/bids-rfps> Hard copies can be mailed upon request.

- 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 Gerald Fisher, Public Works Director 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.
- 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 either active and passive acts or other conduct.
- Employment Status: Contractor shall perform the work required by this contract as an

independent contractor. Although the Owners 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 Molalla 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: See requirements in Professional Services Agreement attached.

**VALUE ANALYSIS SERVICES FOR WASTEWATER TREATMENT FACILITY
IMPROVEMENTS
RFP NO. 19-10-A**

PROPOSAL FORM

Legal Business Name: _____

Form and State of Organization: _____

Registered dba, if any: _____

Main Office Address: _____

Telephone Number: _____

E-mail address: _____

Tax Identification Number: _____

Representation, Covenant and Warranty of Undersigned and Proposer(s)

By signing this proposal, the undersigned makes the following representations and warranties:

1. That it is the duly authorized representative of the Proposer(s) for all purposes relative to the submission of this proposal.
2. That this proposal constitutes the Proposer(s)'s offer to enter into a contract with the City and, if accepted by the City, will be binding and enforceable against the Proposer(s).

By causing this proposal to be executed by the undersigned and delivered to the City, the Proposer(s) makes the following representations and warranties:

1. Proposer(s) has read and understands the terms and conditions contained in the RFP, had the opportunity to protest any term or condition that it found unacceptable and to seek clarification of any term or condition that it does not understand, and accepts and agrees to be bound by the terms and conditions of the RFP, including, but not limited to the contract conditions.
2. Proposer(s) has not discriminated against minority, women, disabled veterans or emerging small business enterprises in obtaining any required subcontracts.
3. Proposer(s) has not been listed by the Oregon Contractor's Board or the Oregon Department of Administrative Services as a person disqualified or ineligible to bid on or perform work under public contracts.
4. Proposer(s) agrees to meet all requirements contained in the RFP if it is selected to provide the services requested by this RFP.

Qualifications: In addition to the information requested by this RFP, the Proposer(s) should describe its particular capability to perform the services required under this RFP, and its recent, current and projected workloads.

Project Approach: Proposer(s) should submit a project management approach to deliver the final scope, schedule, preliminary engineering, design and construction. Describe any subcontractors that Proposer(s) would use as consultants, such as surveyors, landscape architects, etc. and how the subcontractors would be used. Describe any special resources available to the Proposer(s) that will be implemented to efficiently deliver a project limiting redesign, change orders, constructability challenges, and errors or omissions.

Authorized Signature: _____

Print Name and Title: _____

Date of Signature: _____

City of Molalla

Agreement for Professional Engineering Services

Value Analysis Services for Wastewater Treatment Facility Improvements (Project 19-10)

THIS AGREEMENT is made and entered into this _____ day of _____ 2020, by and between the City of Molalla, an Oregon municipal corporation, hereinafter referred to as "City", and _____, an Oregon corporation, hereinafter referred to as "Contractor".

RECITALS:

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

WHEREAS, Provider represents that it and its employees are qualified on the basis of specialized experience and technical competence and prepared to provide such services as City does hereinafter require;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is agreed as follows:

1. EFFECTIVE DATE

This Agreement is effective from the date of execution by both parties, and will continue thereafter until Services are complete or unless otherwise terminated consistent with the terms of this Agreement.

2. SCOPE OF WORK

Contractor will provide Value Analysis Services for Wastewater Treatment Facility Improvements services specifically described in the RFP NO. 19-10-A, including Section 7 Scope of Work, and RFP Proposal attached hereto and incorporated herein ("Services") and as better defined in the correspondence attached documents.

3. CITY'S RESPONSIBILITIES

City shall:

- A. Provide criteria and information as to City's requirements and designate a person with authority to act on City's behalf on all matters concerning the Services;
- B. Furnish to Contractor existing studies, reports, summaries of system deficiencies and other available data and services pertinent to the Services; and Contractor shall be entitled to rely upon all such information in performing said Services;
- C. Arrange for access to and make all provisions for Contractor to enter upon public and private property as required for Contractor to perform the Services.

4. COMPENSATION

City agrees to pay Contractor for Services rendered as identified within Scope of Work (Section 2),

including reasonable costs and expenses incurred by Contractor directly related to the Services in an amount identified within a Task Order or in accordance with an attached Fee Schedule provided by Contractor. Contractor will issue to City an itemized bill monthly, separate from any other billing, based upon a percent complete of the Lump Sum Amount, for compensation for Services performed during the previous month. City agrees to pay undisputed bills within thirty (30) days following date of receipt by City ("Due Date"). Any undisputed amounts not paid by the Due Date shall be subject to a late payment fee of twelve percent per annum until fully paid.

5. USE OF CITY'S NAME

Contractor shall be authorized to utilize the City's name and description of services rendered for the purposes of marketing Contractor's services, unless otherwise expressed in writing by City.

6. STATUS AS AN INDEPENDENT CONTRACTOR

Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation identified in Section 4 (Compensation) of this Contract. As an independent contractor, Contractor is not eligible to receive through the City worker's compensation, social security, public employee's retirement, health insurance or other benefits provided to City employees. Contractor hereby expressly acknowledges and agrees that as an independent contractor, Provider 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 acknowledgment by Provider shall not affect his independent ability (or the ability of his insurer) to assert the monetary limitations found at ORS 30.269, the immunities listed at ORS 30.265, or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS 30.300).

7. PROJECT MANAGERS/NOTICES

City's Project Manager is the City Manager or in the event the City Manager is unavailable the Public Works Director. Each Party shall give the other written notification of any change in their respective Project Manager.

All notices required to be given under this Agreement, and all other communications related to this Agreement, shall be in writing and shall be deemed to have been duly given (a) when personally delivered, (b) when deposited for overnight mail, or (c) when received if deposited in first class U.S. Mail, charges prepaid, return receipt requested.

Notices shall be addressed as follows:

To CITY:

City of Molalla
Attn: City Manager
117 N. Molalla Avenue, P.O. Box 248
Molalla, OR 97038

To CONTRACTOR:

Attn: _____

Each party may change such address or change said designation or title of the individuals by written notice issued and delivered as above.

8. COMPLIANCE WITH APPLICABLE LAWS:

Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the provision of services under this Agreement. Without limiting the generality of the foregoing, to the extent applicable, Contractor expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No. 101-336) and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

9. DUTY TO INFORM

Contractor shall give prompt written notice to City if, at any time during the performance of this Agreement, Contractor becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the Agreement, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Contractor shall constitute neither agreement with nor acquiescence in Contractor's statement or claim and shall not constitute a waiver of any of City's rights.

10. CONFIDENTIALITY AND NON-DISCLOSURE

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to City and/or confidential as defined under state and federal law. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Agreement shall be deemed to be confidential information. Any reports or other documents or items that result from the use of the confidential information by Contractor shall be treated with respect to confidentiality in the same manner as the confidential information. Confidential information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is furnished by City to others without restrictions similar to those imposed by this contract; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this contract; or (d) is independently developed by employees or agents of the Contractor who can be shown to have had no access to the confidential information.

Contractor agrees to hold confidential information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to

copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose confidential information to third parties or use confidential information for any purposes whatsoever other than the provision of services to City hereunder, and to advise each of its employees and agents of their obligations to keep confidential information confidential. Contractor shall use its best efforts to assist City in identifying and preventing any unauthorized use or disclosure of any confidential information. Without limitation of the foregoing, Contractor shall advise City immediately in the event Contractor learns or has reason to believe that any person who has had access to confidential information has violated or intends to violate the terms of this Agreement and contractor will at its expense cooperate with City in seeking injunctive or other equitable relief in the name of City or Contractor against any such person. Contractor agrees that, except as directed by City, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any confidential information to any person, and that upon termination of this Agreement or at City's request, Contractor will turn over to City all documents, papers, and other matter in Contractor's possession that embody confidential information

Contractor acknowledges that breach of this paragraph including disclosure of any confidential information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to the City that is inadequately compensable in damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the City and are reasonable in scope and content.

11. CONFLICT OF INTEREST

Contractor covenants that neither it nor its employees have any interest and shall not acquire any (direct or indirect) interest which would conflict in any manner with the performance of Services.

12. PAYMENTS REQUIRED By ORS 279B.220:

For all services provided under this Agreement, Contractor shall: (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the industrial Accident Fund from the Contractor or any subcontractors; (iii) not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished; (iv) pay to the Department of Revenue all sums withheld from employees under ORS 316.167. The City will not withhold from such compensation or payments any amount(s) to cover the Contractor's federal or state tax obligation.

13. HOURS OF LABOR

Contractor shall pay employees for overtime work performed under the terms of this contract in accordance with ORS 653.010 to ORS 653.261 and the Fair Labor Standards Act of 1938. (29 USC §§ 201et. seq.)

14. INDEMNITY AND INSURANCE

- A. Indemnity: Contractor's work will be performed consistent with the best professional practices and standards of licensed engineer performing similar projects in Oregon, as well as with the requirements of applicable federal, state and local laws. Contractor acknowledges responsibility for all liability arising out of the performance of this contract and will hold City harmless from

and indemnify City against liability, settlements, loss, costs, and expenses in connection with any action, suit or claim resulting or allegedly resulting from Contractor's negligent acts or omissions, activities, or services in the course of performing this contract or for the negligent acts or omissions of their agents or employees.

- B. Liability Insurance: Contractor will maintain during the life of this Agreement and provide certification of the following minimum public liability and property damage insurance, naming the City of Molalla as additional insured as applicable which shall protect the City and Consultant from claims for injuries including accidental death, as well as from claims for property damage, which may arise from the performance of work under this agreement:
- 1) Commercial General Liability -Including personal injury liability, blanket contractual liability and broad form property damage liability with a combined single limit, or the equivalent, of not less than \$1,000,000 (one million dollars) for each occurrence for bodily injury and property damage and not less than \$2,000,000 (two million dollars) in the aggregate.
 - 2) Automobile Liability- a combined single limit, or the equivalent, of not less than \$1,000,000 (one million dollars) for each occurrence for bodily injury and property damage and not less than \$1,000,000 (one million dollars) in the aggregate.
 - 3) Professional Liability- With limits not less than \$1,000,000.
 - 4) Workers Compensation Coverage - Contractor is a subject employer that will comply with ORS 656.017. Contractor 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. Contractor shall indemnify City for any liability incurred by City as a result of Contractor's breach of the warranty under this paragraph. (ORS 2798.230)

15. [INTENTIONALLY LEFT BLANK]

16. MEDICAL CARE FOR EMPLOYEES

Contractor shall make payment of all sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care incident to the sickness or injury of Contractor's employee(s), all sums which Contractor agrees to pay for such services and all monies and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or contract for the purpose of providing or paying for such service. (ORS 2798.230)

17. SAFETY & HEALTH REQUIREMENTS

Services provided under this Agreement shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division.

18. CONTRACTOR IDENTIFICATION

Contractor shall furnish to City the Contractor's employer identification number, as designated by the Internal Revenue Service or, if the Internal Revenue Service has designated no employer identification number, Contractor's Social Security number.

19. AWARD TO FOREIGN CONTRACTOR

If the amount of this Agreement exceeds \$10,000 and if the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of

Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. The City shall withhold final payment under this Agreement until Contractor has met this requirement.

20. TERMINATION

At any time with or without cause, City or Contractor has the right to terminate this contract. Contractor agrees to provide City with written notice of its intent to terminate this Agreement no less than ten (10) business days before termination. If City terminates this contract, it shall deliver full payment to contractor for services rendered to date of termination.

21. WORK IS PROPERTY OF CITY

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Contractor under this contract is the property of City.

22. 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 contract shall vest in the City. Contractor shall execute any assignment or other documents necessary to effect this paragraph. Contractor shall transfer to the City any data or other tangible property generated by Contractor under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.

23. PROJECT INFORMATION

Contractor agrees to share all information related to services covered in this Agreement with the City. No information, news, or press releases related to the project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of the City Manager.

24. PAYMENT OF CLAIMS BY THE CITY

Contractor shall make payment promptly, as due, to all persons supplying to Contractor labor or material for the prosecution of the work provided for in this contract. (ORS 279B.220) If Contractor fails, neglects, or refuses to make a prompt payment of any claim for labor or services furnished to Contractor or a subcontractor, or by any person in connection with this contract as the claim becomes due, the City may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor pursuant to this contract. The City's payment of a claim under this Paragraph shall not relieve Contractor or Contractor's surety, if any, from responsibility for those claims.

25. BREACH

Contractor shall remedy any breach of this Agreement within the shortest reasonable time after Contractor first has notice of the breach or City notifies Contractor thereof, whichever is earlier. If Contractor fails to remedy the breach, City may immediately terminate the Agreement, may obtain substitute services in a reasonable manner, and may recover from Contractor the amount by which the price for those substitute services exceeds the price for the same services under this Agreement.

Pending a decision to terminate all or part of this Agreement, City unilaterally may order Contractor to suspend all or part of the services under this Agreement. If City terminates all or part of the Agreement pursuant to this paragraph, Contractor shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Agreement and later orders Contractor to resume those services, Contractor shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension. To recover amounts due under this paragraph, City may withhold from any amounts owed by City to Contractor, including but not limited to, amounts owed under this or any other Agreement between Contractor and City.

26. LAW OF OREGON

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the City and the Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Contractor hereby consents to the in personam jurisdiction of said courts.

27. DISPUTES

Should any dispute arise between the parties to this Agreement, it is agreed that such dispute will be resolved, where possible, by the City Manager and Contractor. If the dispute cannot be resolved by the City Manager and Contractor, the dispute will be submitted to a mediator prior to any litigation and Contractor hereby expressly agrees that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation. The City and Contractor shall exercise good faith efforts in selecting a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If either the City or Contractor requests mediation and the other fails to respond or if the parties fail to agree on a mediator within 10 days, a mediator shall be appointed by the presiding judge of the Clackamas County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section. Any litigation arising under or as a result of this Agreement shall be tried to the court without a jury. Each party agrees to be responsible for payment of its own professional fees, including attorneys' fees.

28. SUCCESSORS AND ASSIGNMENTS

Each Party binds itself, and any partner, successor, executor, administrator, or assign to this Agreement. Neither City nor Contractor shall assign or transfer their interest or obligation hereunder in this Agreement without the written consent of the others. Contractor must seek and obtain City's written consent before subcontracting any part of the work required of Contractor under this Agreement. Any assignment, transfer, or subcontract attempted in violation of this subparagraph shall be void.

29. RECORDS

Contractor will retain all books, documents, papers, and records that are directly pertinent to this Contract and any work done under its term for at least three years after City makes final payment on this Agreement and all other pending matters are closed.

Contractor will allow the 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.

30. FORCE MAJEURE

Neither the City, nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the Party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Agreement. The City may terminate this Contract upon written notice after reasonably determining that such delay or default will likely prevent successful performance of the Agreement.

31. MODIFICATION

Any modification of the provisions of this contract must be in writing and signed by the parties.

32. NO WAIVER OF LEGAL RIGHTS

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

33. SEVERABILITY

If any provision of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

34. MULTIPLE ORIGINALS; COUNTERPARTS

This Agreement may be executed in multiple original counterparts, each of which is deemed to be an original, and all such counterparts shall constitute one and the same instrument.

35. INTEGRATION

This contract contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

IN WITNESS WHEREOF, City has caused this Contract to be executed in duplicate originals by its duly authorized undersigned agents and Contractor has executed this Contract on the date hereinabove first

PROVIDER:

CITY OF MOLALLA:

Name of Firm

By _____
Dan Huff
City Manager

By _____

Printed Name: _____

Title: _____

Mailing
Address: _____

Mailing
Address: PO Box 248

Molalla, OR 97381

Employer ID No. _____