

REQUEST FOR PROPOSALS
FOR
ON-CALL ENGINEERING AND PUBLIC IMPROVEMENT PROJECT
TECHNICAL SERVICES – 2020

Jason A. Tuck, ICMA-CM
City Manager

Travis Warneke, CPA
Finance Director

CITY REQUEST FOR PROPOSALS OPENING

DATE: **September 14, 2020**

PLACE: **City Hall**
 16000 SE Misty Drive
 Happy Valley, OR 97086

TIME: **2:00 PM**

SCHEDULE

| | |
|--------------------------------------|--|
| RFP ADVERTISED | September 18, 2020 |
| LAST DATE FOR SPECIFICATION PROTEST | October 16, 2020 2:00 PM |
| RFP SUBMITTALS | October 23, 2020 2:00 PM |
| TENTATIVE NOTICE OF INTENT TO AWARD | WITHIN 4 WEEKS |
| LAST DATE TO PROTEST INTENT TO AWARD | SEVEN DAYS FROM NOTICE OF INTENT TO AWARD |

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SECTION 1
REQUEST FOR PROPOSALS (RFP)

REQUEST FOR PROPOSALS

Notice is hereby given that the City of Happy Valley will receive electronic or sealed proposals per specifications until **2:00 PM, October 23, 2020 for**

ON-CALL ENGINEERING AND PUBLIC IMPROVEMENT PROJECT TECHNICAL SERVICES – 2020

No proposals will be received or considered after that time.

The City of Happy Valley is seeking the services of qualified consultants for on-call engineering and public improvement project technical services. The work performed supports the City's Engineering Division and Public Works Department in engineering services, survey, design, cost estimates and general program support – specifically for future public improvements. Multiple contracts may be awarded.

Proposal packets will be available electronically. Sealed proposals are to be sent to Travis Warneke, Finance Officer at the above address or to travisw@happyvalleyor.gov. Proposals will be opened via computer or sealed document in the Engineering Division, located within City Hall, at the designated time.

This **is not** a public works contract subject to ORS 279.348 to 279.380 or the Davis-Bacon Act (40 U.S.C. 276a).

The City of Happy Valley reserves the right to reject any and all proposals not in compliance with all prescribed public bidding procedures and requirements, reject for good cause any and all proposals upon the finding that it is in the public interest to do so and waive any and all informalities.

Dated this 14th day of September 2020

Travis Warneke, CPA
Finance Director

SECTION 2
INSTRUCTIONS AND CONDITIONS

INSTRUCTIONS AND CONDITIONS

2.1 GENERAL:

Proposers must study carefully and conform to these "Instructions and Conditions" so that their proposals will be acceptable.

2.2 PROPOSALS:

All proposals shall be by electronic document (e-mail or flash drive) or typed on paper and comply in all regards with the requirements of this solicitation.

All proposals must be signed in ink or by digital signature. If the proposal is made by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the proposal is made by a corporation, it must be signed (in ink or digital) in the name of such corporation by an official who is authorized to bind the contractor.

2.3 DELIVERY OF PROPOSALS:

All proposals are encouraged to be submitted electronically, the email address is: travisw@happyvalleyor.gov. If by paper, all proposals are to be in a sealed envelope, bearing on the outside the name and address of the contractor, the name of the project for which the proposal is submitted and the time and date of the scheduled opening. If the proposal is forwarded by mail, the sealed envelope containing the proposal and marked as directed above, must be enclosed in another envelope addressed to the Finance Director, City of Happy Valley, 16000 SE Misty Drive, Happy Valley, Oregon 97086.

2.4 RECEIPT AND OPENING OF PROPOSALS:

Proposals shall be submitted prior to the time fixed in the advertisement for proposals, including time/date stamp of a received e-mail. Proposals received after the time so designated will be considered late proposals and will be rejected/returned unopened. No responsibility will be attached to any official of the City for the premature opening of, or the failure to open, a proposal not properly addressed and identified.

At the time fixed for the opening, the proposals shall be opened (electronically or sealed document) to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and shall be open for public inspection after contract award. Once the closing time and date arrive, the names of the offerors submitting proposals are read publicly. No other information will be disclosed.

2.5 WITHDRAWAL OF PROPOSALS:

Proposals may be withdrawn by written or electronic request received from the contractors prior to the time fixed for opening. Negligence on the part of the vendor in preparing the proposal confers no right for the withdrawal of the proposal after it has been opened. The proposal will be irrevocable until such time as the City:

1. Specifically rejects the proposal, or
2. Awards a contract and said contract is properly executed.

Contractors' proposals must be valid for at least 120 days.

2.6 MODIFICATION:

Any contractor may modify his/her proposal by registered communication at any time prior to the scheduled closing time for receipt of proposals, provided such communication is received prior to the closing time. The communication should not reveal the proposal price but should provide that the final price or terms will not be known until the sealed proposal is opened.

2.7 ACCEPTANCE OR REJECTION OF PROPOSALS

In the award of the contract, the City of Happy Valley will consider the element of time, will accept the proposal or proposals which in their estimation will best serve the interests of the City, and will reserve the right to award the contract to the contractor whose proposal shall be best for the public good. The City reserves the right to accept or reject any or all proposals. Without limiting the generality of the foregoing, any proposal which is incomplete may be rejected. Only one proposal will be accepted from any one firm or association. Any evidence of collusion between proposers may constitute a cause for rejection of any proposals so affected.

The City, pursuant to ORS 279A.120, for the purposes of awarding the contract, shall add a percent increase on the proposal of a non-resident proposer equal to the percent, if any, of the preference given to that proposer in the state in which the proposer resides. "Resident proposer" means a proposer that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the proposal, has a business address in this state and has stated in the proposal whether the proposer is a "resident proposer".

The City may accept any items or groups of items of any offer, unless the proposer qualifies his/her offer by specific limitations.

2.8 ADDENDA AND INTERPRETATIONS:

No oral interpretations shall be made to any proposer as to the meaning of any of the contract documents or be effective to modify any of the provisions of the contract documents. Every request for an interpretation shall be made in writing and addressed to the Finance Director and, to be given consideration, must be received at least 10 days prior to the date set for the opening of proposals. All such interpretations will be mailed to all prospective proposers (at the respective address furnished for such purposes) not later than five days prior to the date fixed for the opening of proposals. Failure of any proposer to receive any such addendum or interpretation shall not relieve such proposer from any obligation under this proposal as submitted. All addenda so issued shall become as much a part of the contract documents as if bound herein.

2.9 NONDISCRIMINATION:

The successful contractor agrees that, in performing the work called for by this proposal and in securing and supplying materials, contractor will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry unless the reasonable demands of employment are such that they cannot be met by a person with a particular physical or mental handicap.

2.10 FAILURE TO SUBMIT OFFER:

If no offer is to be submitted, do not return the RFP. Failure of the recipient to offer, or to notify the issuing office that future solicitations are desired, will not result in removal of the name of such recipient from the mailing list for the type of supplies or services covered by the solicitation.

2.11 PREPARATION OF OFFERS:

Proposers are expected to examine the specifications, schedule and all instructions. Each proposer shall furnish the information required by the solicitation. Proposers shall sign the solicitation (digital or ink) and print or type their name on other submitted exhibits and each continuation sheet thereof on which an entry is made. Erasures or other changes must be initialed by the person signing the offer. Proposals signed by an agent are to be accompanied by evidence of his/her authority unless such evidence has been previously furnished.

2.12 SPECIFICATIONS LIMITING COMPETITION

Proposers may comment on any specification or requirement contained within this RFP, which they feel limits competition in the selection of a proposer to perform the services herein defined. Such comments shall be formal in writing, and are to be addressed to:

City of Happy Valley Finance Director
Specification Protest – **On-Call Engineering and Public Improvement Project Technical
Services - 2020**
16000 SE Misty Drive, Happy Valley, OR 97086

Such comments shall be submitted to the City of Happy Valley no later than **2:00 PM, October 16, 2020**. No comments will be accepted after that time.

2.13 EMPLOYEES NOT TO BENEFIT:

No employee or elected official of the City shall be admitted to any share or part of this contract or to any benefit that may arise there from; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

2.14 CITY FURNISHED PROPERTY:

No material, labor or facilities will be furnished by the City unless otherwise provided for in the RFP.

2.15 DEFAULT:

The City may, subject to the provisions of paragraph (4) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances.

1. If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
2. If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failures within a period of 10 days (or such longer period as the City may authorize in writing) after receipt of notice from the City specifying such failure.
3. In the event the City terminates this contract in whole, or in part, as provided in paragraph (2) above of this clause, the City may procure, upon such terms and in such manner as the City may deem appropriate, supplies or services similar to those terminated, and the Contractor shall be liable to the City for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.
4. The Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the City in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but, in every case, the failure to perform must be beyond the control of the Contractor and without the Contractor's fault or negligence. The Contractor shall not be liable for excess costs for failure to perform, unless the supplies or services to be furnished were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.
5. The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

2.16 PAYMENTS

The contractor shall be paid, upon the submission of proper instruments as outlined below, the prices stipulated in the proposal for services rendered and accepted, less deductions, if any, as provided.

1. No claims will be considered for payment until the accurate record for the purposes of computing compensable time and services are rendered, and said records are submitted by the end of each month for payment by the City.
2. Payments will be made monthly, or as agreed, for any claims supported by an invoice and a duplicate.

3. For a period of one year after payment of any claim, the City reserve the right, under this contract, to recover any damages due the City as specified in the Clause of this contract entitled "Default".

2.17 TAXES:

Taxes, whether State or Federal, shall not be included in proposal prices. The City is generally exempted from Federal taxes, specifically, but not limited to excise and transportation taxes.

2.18 LITIGATION:

In the event litigation is necessary the Contractor agrees that such will be conducted in the courts of Clackamas County in the State of Oregon.

2.19 NOTICE OF INTENT TO AWARD

The notice of intent to award of the contract by the City shall constitute a final decision of the City's intent to award the contract if no written protest of the award is filed with the Finance Director within seven calendar days of the notice of intent to award. If a protest is timely filed, the award is a final decision of the City's intent to award only upon issuance of a written decision denying the protest and affirming the award. The award and any written decision denying protest shall be sent to every proposer who provided an address.

Right to Protest: Any actual proposer who is adversely affected or aggrieved by the City's award of the contract to another proposer on the same solicitation shall have seven calendar days after notice of intent to award has been issued to submit to the Finance Director a written protest of the award. The written protest shall specify the grounds upon which the protest is based. In order to be an adversely affected or aggrieved proposer with a right to submit a written protest, a proposer must be next in line for award, i.e. the protester must claim that all higher rated proposers are ineligible for award because they are non-responsive or non-responsible. The City of Happy Valley will not entertain protests submitted after the time period established in this rule.

SECTION 3
SCOPE OF SERVICES

SCOPE OF SERVICES

3.1 INTRODUCTION

The City of Happy Valley is seeking the services of qualified consultants to provide on-call engineering and public improvement project technical services on a continuing basis for the City. This RFP has been issued for the purpose of selecting multiple consultants to act as “on-call” independent contractors to perform the type and scope of work listed below as requested by the City. Contracts per this RFP will be for a period of three years with the option to renew for two additional three-year by contract addendum upon the written approval of both the Contractor and the City.

There will be no guarantee as to the amount of work or size of the project, if any, that the consultant will be given under this contract. The Contractor(s) shall provide general professional services on an “assignment by assignment” basis as required by the City. The City makes no guarantee as to the volume of work, if any, that will be assigned in any given contract year. Each project assignment will consist of a specific scope of services. As many as five contracts may be awarded to the most qualified firms. Contracts will include set hourly rate schedules for the term of the contract. Rates may be increased as approved by the City for each contract awarded.

3.2 QUESTIONS ON TECHNICAL INFORMATION

Questions relating to materials in Sections 3, 4, and 5 shall be addressed to:

Carol Earle, P.E.
City Engineer
503-783-3815

3.3 QUESTIONS ON LEGAL INFORMATION

Questions relating to this bid or bid document (excluding Sections 3, 4, and 5) shall be addressed to:

Travis Warneke, CPA
Finance Director
travisw@happyvalleyor.gov
503-783-3827

3.4 SCOPE OF WORK

The successful consultants will be required to provide a variety of engineering and planning services including, but not be limited to survey; all facets of design; cost estimates; and general program support on an as-needed basis.

Anticipated services under this contract may include:

1. Civil Engineering; including, but not limited to:
 - a. Project Design
 - b. Development Plan Review
 - c. Conceptual Designs
 - d. Park Development
 - e. Trails, Paths, Sidewalks
 - f. Municipal & Public Facilities
 - g. Stormwater Systems
 - h. Lighting Photometrics
 - i. CADD Drafting Services
 - j. Cost Estimating
 - k. As-Built Plans
 - l. Franchise Utility Coordination
 - m. General Conditions Evaluations
2. Structural Engineering; including, but not limited to:
 - a. Seismic Evaluations
 - b. Structural Vulnerability Studies
 - c. LEED Designs
 - d. Buildings
 - e. Retaining Walls
3. Construction Support Services; including but not limited to:
 - a. Construction Project Management
 - b. Inspection Services
 - c. Erosion Sediment Control Inspections
4. Geotechnical Engineering; including, but not limited to:
 - a. Geotechnical Site Evaluations
 - b. Geotechnical Reporting
 - c. Geotechnical Inspections
5. Survey; including but not limited to:
 - a. Existing Conditions Survey
 - b. Legal Descriptions & Exhibits
 - c. Design Survey
 - d. Construction Staking & Survey
6. Natural Resources; including, but not limited to:
 - a. Environmental/Natural Resource Permitting
 - b. Fill/Removal Permitting
 - c. Flood Plain Analysis
 - d. Stream & Wetland Restoration
 - e. Interpretive Signage
 - f. Consulting Arborist
 - g. Hazard Tree Assessment & Construction Impacts
7. Planning; including, but not limited to:
 - a. Alternatives Analysis/Feasibility Studies
 - b. Land Use Planning Services
 - c. Local Improvement District (LID) Development
 - d. Reimbursement District (RD) Development

- e. Public Involvement/Community Outreach
- f. Landscape Architecture
- g. GIS Services
- h. Feasibility Mapping & Preliminary Plans

Individual tasks will be assigned as project needs are identified under these on-call contracts. The scope of work, schedule and compensation for each project will be established in writing via a Task Order prior to commencement of the work. Contract services provided will be authorized via Task Orders issued by the Project Manager for each of the areas. Any changes to the cost, scope of work or schedule must be agreed to by the consultant and the City in writing as an amendment to the Task Order.

Following Notice to Proceed (issued by the contract administrator), the Project Manager will work directly with the Contractor for the duration of the project unless otherwise noted in the Task Order. All work progress reports and invoices will be submitted to the City's Project Manager.

SECTION 4
PROPOSAL CONTENTS AND RESPONSE FORM

PROPOSAL CONTENTS AND RESPONSE FORMS

4.1 DETAILED PROPOSAL FORMAT

Qualified Contractors must demonstrate experience in engineering and related services as detailed above related to the summary of type of work. The submittal must describe the qualifications of the Contractor and the availability of resources to perform the required activities within a reasonable timeline. The proposal shall contain the required minimum criteria in the following format:

All proposals shall be 8 ½" X 11" with a minimum font size of 11 point (including tables). Each side of paper or electronic page counts as a page.

The proposal shall describe the specific qualifications of the firms to perform the work proposed. All sub-consultants anticipated to be included on the team shall be identified. Demonstrated experience and available staffing must be clearly stated.

The City reserves the right to solicit additional information or proposal clarification from the firms, or any one firm submitting a proposal, should the City deem such information necessary.

Any proposer supplied material that is to be considered confidential must be marked "Confidential".

If not submitted electronically, one signed original and eight copies of the proposal shall be submitted. The original shall be marked as "Original". Proposals must be bound or stapled and the outside of the proposal shall plainly identify the subject of the submittal and the name and address of the submitting firm.

The successful proposer(s) must be an Equal Opportunity Employer and have a policy of nondiscrimination in employment because of race, age, color, sex, religion, national origin, mental or physical handicap, political affiliation, or marital status.

The following information is to be provided in the order that it appears below.

4.2 PROPOSAL CONTENT

Qualified Contractors must demonstrate experience in on-call engineering and public improvement projects related to the summary of the type of work. The submittal must describe the qualifications of the Contractor and the availability of resources to perform the required activities within a reasonable timeline. Requirements of the content and organization of the submittal are specified below and are to be provided in the order of appearance.

1. Proposal Response Forms - REQUIRED

Return the signed proposal response forms included in this section. Failure to return this form will result in the submittal being deemed non-responsive.

2. Cover Letter

A one-page dated cover letter with original signature shall be submitted containing the name, address, tax filing name and number of the corporation or business structure submitting the proposal. Include the name, title, address, telephone and fax numbers of the person authorized to represent the proposer.

3. Company Qualifications (2 pages maximum)

Provide a general overview of the firm (including partners and sub-consultants) including size of staff, location of closest office to the City of Happy Valley, background of company, specific qualifications, etc. Include the name of the individual(s) authorized to represent the consultant in negotiating and signing any contract that may result. Provide any additional supportive information that will illustrate the company's qualifications.

4. Project Team Capabilities (3 pages maximum)

a. Detail the qualifications, experience and project responsibilities of the consultant, key professional staff, and any sub-consultants and affiliates the firm may use on various tasks during the performance of the contract (See Section 3.4). Provide a list and point of contact for any sub-contractors that may be utilized.

b. Provide summaries of similar work on projects within the past three years that best characterize work quality and cost control (include references for the City's contact with name and telephone number).

c. Provide experience with local, state, and federal agencies.

5. Project Understanding and Approach (4 pages maximum)

Detail your understanding of the required duties, methodology, and course of action used to meet the goals and objectives for a successful project. Describe the Firm's approach to managing similar type of on-call contracts and the approach for engaging City staff. The issue is whether the proposer has a clear and concise understanding of the anticipated duties and responsibilities for the tasks required (See Section 3.4).

6. Communication and Availability (1 page maximum)

a. Contractors must be accessible by the City's Project Manager and available for project work, meetings, and other interaction with the City. Specify resources available to perform the work for the duration of the contract.

b. Contractors must have the ability to establish and maintain functional and productive working relationships. Provide references to support these criteria.

PROPOSAL RESPONSE

Submitted by: _____
Entity Type / State of Formation

Address: _____

Date: _____ Phone number: _____

The undersigned, through the formal submittal of this proposal response, declares that he/she has examined all related proposal documents and read the instruction and conditions, and hereby proposes to furnish proposals as specified, for the project entitled **ON-CALL ENGINEERING AND PUBLIC IMPROVEMENT PROJECT TECHNICAL SERVICES - 2020** in accordance with the proposal documents herein.

The Proposer, by his signature below, hereby represents as follows:

- (a) That no Councilor, officer, agency or employee of the City are personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the City, its Councilors, officers, agents, or employees had induced him to enter into this contract and the papers made a part hereof by its terms;
- (b) That this proposal is made without connection with any person, firm or corporation making a bid for the same material, and is in all respects, fair and without collusion or fraud.
- (c) The proposer agrees to accept as full payment for the services specified herein, the amount as shown in his/her proposal.
- (d) Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
- (e) I, the undersigned, certify that the proposer holds current licenses that businesses or services professionals operating in this state must hold in order to undertake or perform the work specified in these contract documents.
- (f) I, the undersigned, certify that the proposer is covered by liability insurance and other insurance in the amount(s) required by the solicitation.
- (g) I, the undersigned, certify that the proposer qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
- (h) I, the undersigned, certify that the bidder is legally qualified to contract with the City.

[] Drug Testing Requirement, as defined in ORS 279.312

[] Resident Bidder, as defined in ORS 279.029

[] Non-Resident Bidder, Resident State: _____

The names of the principal officers of the corporation submitting this proposal, or of the partnership, or of all persons interested in this proposal as principals are as follows:

| | |
|---------------|----------------|
| _____ Name | _____ Title |
| _____ Name | _____ Title |
| _____ Name | _____ Title |

(If Sole Proprietor or Partnership)

In witness hereto, the undersigned has set his (its) hand this _____ day of _____, 2020.

Name of Firm

Signature of Bidder

(If Corporation)

In witness whereof the undersigned corporation has caused this instrument to be executed by its duly authorized officers this _____ day of _____, 2020.

Name of Corporation

By

Title

SECTION 5
EVALUATION AND SELECTION CRITERIA

EVALUATION AND SELECTION CRITERIA

5.1 PROPOSAL REVIEW:

The evaluation committee will evaluate and rank all Proposals received based on the award criteria outlined in this RFP. Oral interviews may be conducted at the sole discretion of the City. Oral interviews, if conducted, will be to clarify information submitted in the RFP and aid in assigning point values. Final selection will be based upon the total number of points assigned by the evaluation committee.

Contract negotiations will be undertaken with the highest ranked firms. If successful negotiation cannot be completed with the highest ranked firms, the City reserve the right to negotiate with the next highest ranked firm.

The successful proposer will be required to enter into a formal contract for professional services with the City (see attached Contract Form).

The proposal sections, along with their relative evaluation weights, are outlined below.

5.2 AWARD CRITERIA:

The following criteria will be considered in evaluating proposals. A major deficiency in any one category may cause a proposer to be deemed non-responsive.

| <u>Item</u> | <u>Points</u> |
|-------------------------------------|----------------|
| 1. Company Qualifications | 0 – 25 |
| 2. Project Team Capabilities | 0 – 30 |
| 3. Project Understanding & Approach | 0 – 30 |
| 4. Communication and Availability | 0 – 15 |
| Total Points Possible | 0 - 100 |

SECTION 6
CONTRACT FORM

**CONTRACT WITH _____ FOR
ON-CALL ENGINEERING AND PUBLIC IMPROVEMENT TECHNICAL
SERVICES - 2020**

This contract for professional services is entered into by and between the City of Happy Valley, a municipality in the State of Oregon, hereinafter referred to as CITY, and _____, hereinafter called CONTRACTOR, to provide the services described in the attached Proposal Response, which by this reference is hereby made a part hereof and incorporated herein. The following provisions shall comprise this Contract:

I. COMPENSATION:

The CITY agrees to compensate the CONTRACTOR on a fee-for-services basis as outlined in the attached Proposal Response. The CONTRACTOR shall meet the standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. Services shall be provided in accordance with a schedule approved by the CITY. Invoices submitted for payment in connection with this agreement shall be properly documented and shall indicate pertinent CITY contract and/or purchase order numbers. All charges shall be billed monthly and will be paid net 30 days from receipt of invoice. This agreement covers the period beginning **November 2020 and continuing through September 2023**. This contract may be renewed by contract addendum for two additional three-year terms upon the written approval of both parties.

B. The CONTRACTOR is engaged hereby as an independent contractor and will be so deemed for purposes of the following:

- 1.** The CONTRACTOR will be solely responsible for payment of any Federal or State taxes required as a result of this Contract.
- 2.** This Contract is not intended to entitle the CONTRACTOR to any benefits generally granted to CITY employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Contract to the CONTRACTOR are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the CONTRACTOR is presently a member of the Oregon Public Employees Retirement System).
- 3.** If the CONTRACTOR has the assistance of other persons in the performance of this Contract, and the CONTRACTOR is a subject employer, the CONTRACTOR shall qualify and remain qualified and pay employees for the term of work in accordance with this Contract as an insured employer under Oregon Revised Statutes ("ORS") 279B.020 and ORS 279B.235, which are incorporated herein by this reference.

C. The CONTRACTOR certifies that, at present, he or she, if an individual is not a program, CITY or Federal employee.

D. The CONTRACTOR, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

II. SERVICES TO BE PROVIDED

The CONTRACTOR shall provide services for **ON-CALL ENGINEERING AND PUBLIC IMPROVEMENT PROJECT TECHNICAL SERVICES – 2020** as set forth in the Request for Proposals dated **September 14, 2020** and the Proposal Response of the Contractor dated no later than **October 16, 2020**.

III. CONSTRAINTS

The CONTRACTOR agrees:

A. If the services to be provided pursuant to Section I Scope are professional and/or consultative, the CONTRACTOR shall not delegate the responsibility for providing those services to any other individual or agency.

B. Pursuant to the requirements of state law, the following terms and conditions are made a part of this Contract:

1. CONTRACTOR shall:

a. Make payments promptly, as due, to all persons supplying to the CONTRACTOR labor or materials for the prosecution of the work provided for in this Contract.

b. Pay all contributions or amounts due the Industrial Accident Fund from such CONTRACTOR or subcontractor incurred in the performance of this Contract.

c. Not permit any lien or claim to be filed or prosecuted against the CITY on account of any labor or material furnished.

2. If the CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the CITY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the CONTRACTOR by reason of this Contract.

3. The CONTRACTOR shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which are incorporated herein by this reference.

All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

4. The CONTRACTOR shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the CONTRACTOR of all sums which the CONTRACTOR agrees to pay for such services and all moneys and sums which the CONTRACTOR collected or deducted from the wages of the CONTRACTOR'S employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

6. The CONTRACTOR shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work as described in Attachment A under this Contract.

7. To the extent the CONTRACTOR is negligent, the CONTRACTOR shall indemnify, hold harmless and defend the CITY, its officers, commissioners, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof (including but not limited to attorney's fees), arising out of or based upon damage or injuries to persons or property caused by the negligent acts, errors, omissions, or fault of the CONTRACTOR or the CONTRACTOR'S employees or agents.

8. The CONTRACTOR'S failure to perform the scope of work identified or failure to meet established performance standards shall be subject to consequences that include but are not limited to any or all of:

- a. Reducing or withholding payment;
- b. Requiring the CONTRACTOR to perform, at the CONTRACTOR'S expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or
- c. Declaring a default, terminating the Contract and seeking damages and other relief under the terms of the Contract or other applicable law.

IV. INSURANCE REQUIREMENTS

A. Commercial General Liability

☒ Required by CITY ☐ Not required by CITY

The CONTRACTOR agrees to furnish the CITY evidence of commercial general liability insurance in the amount of not less than \$2,000,000 combined single limit per occurrence / \$2,000,000 general annual aggregate for personal injury and property damage for the protection

of the CITY, their officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The CITY, at their option, may require a complete copy of the above policy.

B. Automobile Liability

☒ Required by CITY

☐ Not required by CITY

The CONTRACTOR agrees to furnish the CITY evidence of business automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage for the protection of the CITY, their officers, commissioners, agents and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The CITY, at their option, may require a complete copy of the above policy.

C. Professional Liability

☒ Required by CITY

☐ Not required by CITY

The CONTRACTOR agrees to furnish the CITY evidence of professional liability insurance in the amount of not less than \$2,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of the CITY, their officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Contract. The CITY, at its option, may require a complete copy of the above policy.

D. Worker's Compensation

☒ Required by CITY

☐ Not required by CITY

CONTRACTOR certifies that CONTRACTOR has qualified for State of Oregon Workers' Compensation coverage for all CONTRACTOR'S employees who are subject to Oregon's Workers' Compensation statute, either as a carrier-insured employer as provided by ORS 656.407 or as a self-insured employer. The CONTRACTOR agrees to furnish the CITY evidence of coverage limits not less than \$1,000,000 for each accident. CONTRACTOR shall provide to CITY within 10 days after contract award a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to CITY, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to CITY. A copy of the certificate of self-insurance issued by the State shall be provided to CITY if the CONTRACTOR is self-insured. A waiver of subrogation in favor of the CITY shall be included in the policy.

E. If the CONTRACTOR has the assistance of other persons in the performance of this Contract, and the CONTRACTOR is a subject employer, the CONTRACTOR agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The CONTRACTOR shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

F. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided the coverage's retroactive date is on or before the effective date of this Contract.

G. The insurance, other than the professional liability and workers compensation insurances, shall include the CITY as expressly scheduled additional insureds. Proof of insurance must include a copy of the endorsement showing the CITY as scheduled insureds. Such insurance shall provide sixty (60) days written notice to the CITY in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the CITY under this insurance. This policy(s) shall be primary insurance as respects to the CITY. Any insurance or self-insurance maintained by the CITY shall be excess and shall not contribute to it.

H. The CONTRACTOR shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the CONTRACTOR under this Contract, unless this requirement is expressly modified or waived by the CITY in writing.

V. SUBCONTRACTS:

The CONTRACTOR shall be responsible to the City of Happy Valley for the actions of persons and firms performing subcontract work. The CONTRACTOR certifies that the CONTRACTOR has not discriminated and will not discriminate against any minority, women or emerging small business enterprise that is owned or controlled by or that employs a disabled veteran, in obtaining any subcontract.

The CONTRACTOR shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the CONTRACTOR under this Contract, unless this requirement is expressly modified or waived by the CITY in writing.

VI. TERMINATION-AMENDMENT:

A. This Contract may be terminated by either party upon at least 10 days written notice to the other.

B. This Contract and any amendments to this contract will not be effective until approved in writing by an authorized representative of the City of Happy Valley, Acting as the Governing Body of the City of Happy Valley.

C. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

The undersigned, by its signature, agrees to perform the scope of work as described in the Contract documents and meet the performance standards set forth therein. By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

CONTRACTOR

CITY OF HAPPY VALLEY Acting as the
Governing Body of the City of Happy Valley by:

Entity Type/State of Formation

Jason A. Tuck, City Manager

Authorized Signature

Name / Title Printed

Date

Telephone / Fax Number

Oregon Business Registry #

Entity Type / State of Formation

Date

SECTION 7
CERTIFICATE OF INSURANCE