



**Request for Proposals (RFP) for
Municipal Audit Services**

**Closing Deadline: May 3, 2024, Time
Due: 4:00 p.m.**

Mailing & Hand Delivery Address:
City of Hermiston
Attn: Ignacio Palacios, Finance Director
180 NE 2nd Street
Hermiston, OR 97838

SCHEDULE

REQUEST FOR PROPOSAL ISSUED April 4, 2024
LAST DATE FOR SOLICITATION CLARIFICATIONS April 26, 2024
PROPOSALS DEADLINE..... May 3, 2024
INTERVIEWS (TENTATIVE) May 13, 2024
NOTICE OF INTENT TO AWARD May 15, 2024
LAST DATE TO PROTEST AWARD May 24, 2024
CONTRACT SIGNED May 31, 2024

SECTION 1

INTRODUCTION

The City of Hermiston (City) is accepting proposals from qualified firms of certified public accountants to provide financial consulting and audit services to the City beginning with the fiscal year ending June 30, 2024, with the option of continuing consulting and auditing services for the two (2) subsequent fiscal years.

OVERVIEW OF HERMISTON

Hermiston is a progressive, growth-oriented urban/retail/medical center for an area based economically on agriculture, food processing, transportation, utilities and other light industry. In 2023, Hermiston continued to grow as the largest city in Eastern Oregon, with a population of 19,973.

Hermiston is located in the northwest corner of Umatilla County in northeast Oregon and is centrally located between the major cities of the Pacific Northwest. Located just 185 miles east of Portland; 176 miles southwest of Spokane, Washington; 249 miles southeast of Seattle, Washington and 251 miles northwest of Boise, Idaho, Hermiston is a transportation hub accessed by Interstate Highways I-84, east to west, and I-82, north and south, and numerous feeder highways. Hermiston lies one truck day from seven western states and two Canadian provinces. In addition, the City operates a local municipal airport for light commercial and private use and there are Regional Airports offering full commercial services 30 minutes away at Pendleton, Oregon and Pasco, Washington.

The City is a full-service municipality that operates under a council/manager form of government. The elected City Council consists of the Mayor and eight Councilors. The Council sets policies for the city government, enacts ordinances and hires, directs and evaluates the city manager. The city manager is the City's chief executive officer, responsible for overall management and administration.

Municipal services are provided by City employees and headed by the city manager. The City operates a police department, a municipal court, water, sewer, electricity and stormwater utilities, street operations, planning, building, library, parks and recreation, community center, and senior services. The City also provides information technology services to regional agencies on a contract basis. The City has one component unit, the Hermiston Urban Renewal Agency (Agency)

The City utilizes Caselle accounting software for accounting, utility invoicing and financial reporting. The City prepares its financial statements using a modified accrual basis of accounting. Under this basis of accounting, the City recognizes assets, liabilities, net position/fund equity, revenues and expenditures when they result from cash transactions with a provision for capital assets and depreciation, recognition of long-term debts, and utility deposits.

The most recent audited annual financial statement and budget documents are available upon request or can be found on the city's website (<https://www.hermiston.or.us/finance/page/budget-financial-reports>).

The City of Hermiston anticipates that it will continue to submit its Annual Comprehensive Financial Reports (ACFR) to GFOA for the Certificate of Achievement for Excellence in Financial Reporting. The format of the audit reports must allow the City to meet the requirements of that program. This will also require that the Auditor ensure that the audit report and financial statements are completed in time for this submission.

SECTION 2

SCOPE OF SERVICES BEING REQUESTED

The primary services being requested are listed in one of two categories below. As applicable, the services being requested are for the City of Hermiston.

Specific Services.

1. A thorough examination in accordance with generally accepted auditing standards of the financial information and supplemental schedules for all City funds. The City requires at least two Single Audits for the FY 2023-2024, and 2024-2025, and potentially more.
2. Year-end fund account combinations, government wide, and governmental fund and proprietary fund financial statements.
3. Drafting of the ACFR in accordance with all applicable GASB and/or FASB pronouncements.
4. An examination, if applicable, in accordance with the laws of Oregon and the Single Audit Act Amendments of 1996 and OMB Circular A-133.
5. Assistance with and review of Management Discussion and Analysis (MD&A) and incorporating the MD&A in reports.
6. Consulting services throughout the term of the contract on financial related issues including, but not limited to budgeting, internal controls, best practices, pronouncement interpretations, and guidance on compliance issues.
7. A pre-audit meeting between the auditing firm, the City Manager and the Finance Director will be conducted prior to the audit each year. During this meeting, items to be discussed include: audit schedule, working paper standards and requirements, and deadlines. A list shall be presented by the auditor at this time indicating the information required from City staff.
8. An exit conference is required of the auditing firm on completion of all fieldwork as to inform the Finance Director and City Manager of pertinent findings. Formal report presentation by the auditing firm may be required before a regular session of the Hermiston City Council, preferably before each annual report is submitted to the Secretary of State, Audit's Division.
9. A letter expressing an opinion on the financial statements. Written notice to the City in advance if the opinion is other than unqualified along with justification of the opinion.
10. The firm will issue two separate written letters of recommendation to City management after completion of the audit, covering the firm's review of the adequacy of internal

accounting controls and other audit investigations. The firm shall assist management in advice and counsel in implementing those recommendations as required.

11. The auditing firm shall submit an electronic version of the reports to the State Division of Audits and to the City no later than December 31st of each year.

General Services.

1. All funds and accounts of the City are to be covered by the audit examination.
2. The City is often subject to the additional audit requirements imposed by the Single Audit Act Amendments of 1996 and OMB Circular A-133, Audits of State and Local Governments. The audit firm is expected to prepare and deliver its report on the single audit no later than November for the preceding fiscal year.
3. The audit examination shall be made in accordance with generally accepted governmental procedures as prescribed in the AICPA Industry Audit Guide – Audits of State and Local Governmental Units and in GAAFR.
4. Report any unusual conditions encountered during the course of the audit.
5. Examine other reports or perform other services as required.

INFORMATION TO BE PROVIDED BY CITY

City staff will complete and balance all accounts at year-end, and will furnish, at a minimum, the following information and work-papers in conjunction with the audit engagement:

1. Staff will prepare the final closing of the books. The City will provide the auditors with a trial balance by fund and all accounting detail necessary to perform the audit.
2. Staff will prepare all work papers requested by the Auditor prior to the start of interim and/or final fieldwork.
3. Staff will generate the necessary confirmation letters based on templates provided by the auditors.
4. Staff will be available during the audit to assist in providing information, documentation and explanations as needed as well as access to the financial system to view records and print reports.
5. The City will provide the auditor with reasonable workspace including access to the internet and necessary office equipment to complete the scope of required audit procedures.
6. The City Administrator will provide the auditor with a signed Representation Letter at the conclusion of the audit.

GENERAL PROVISIONS

1. The intent of the City of Hermiston is to negotiate a three (3) year contract with the second - third year contingent upon successful completion of the first year as determined by the City. The contract would cover fiscal years ending June 30, 2024, 2025, 2026.
2. If the contract is satisfactorily carried through for three (3) years, the engagement may

be renewed for another three (3) years at the option of the City.

3. Either party may cancel the written contract by giving notice, in writing, to the other party at least ninety (90) days prior to July 1 of each year.
4. Ownership of the financial statements and audit reports shall belong to the City of Hermiston, and it is expressly understood that publication of the audit report (in whole or in part) or reference to such audit report shall be at the sole discretion of the City of Hermiston.
5. Services of the auditing firm that extend beyond the normal work anticipated are contingent upon Contractor's prior written notification to the City Finance Director, and written City approval. Fees for such additional services will be negotiated in advance.
6. Performance under any resulting audit contract may commence as soon after contract execution as is agreeable to both parties. Contract terms shall include that, for the fiscal year ending June 30, 2024, the field audit work shall be completed no later than October 31, 2024. A draft of the financial and audit reports for the fiscal year 2023-2024 shall be submitted to the City no later than November 15, in order for City staff to review and use those reports in preparation of the final report MD&A. The final Annual Financial Statements and Audit Report for the fiscal year ending June 30, 2025, shall be completed by December 15, 2025. The financial audit services for the fiscal year ending June 30, 2026, will conclude with a final report presentation by the auditor at a regular session of the Hermiston City Council on or before December 15, 2026. A similar timeline for each subsequent audited fiscal year will be established by the Finance Director and the auditing firm.

INFORMATION TO BE PROVIDED BY PROPOSERS

To be considered by the City, please provide the following information in the exact order listed:

1. Describe how your firm will approach the audit, including the manner in which you intend to use computer-assisted auditing procedures, statistical sampling techniques, specialized governmental audit programs, and technical review of the reports prior to issuance. Three or fewer example audit(s) may be provided and will not count against page limitations but are not required.
2. Describe the communication process used by the firm to discuss issues with the management and council.
3. Identify the local office partners, manager and key staff members who would be assigned to the audit. Describe their roles and provide a brief description of their professional experience.
4. Discuss commitments you will make to staff continuity, including your staff turnover experience in the last three years.
5. Explain how you would propose to use city personnel, if at all, to assist you during the audit, and indicate the approximate time requirement.
6. Describe your firm's personnel development program and your continuing professional educational requirements. Identify specialized programs in the area of municipal accounting and auditing.

7. Describe your firm's capability and experience in providing financial-related consulting services to local government units and identify your local office consultants who would provide such services.
8. Submit an example of constructive suggestions your firm has provided to other local government units for improving internal accounting controls and administrative procedures.
9. Identify your firm's current municipal auditing engagements and indicate the number of years your firm has provided services to them. Provide the names and contact information for other similarly sized clients of the partner and/or manager that will be assigned to our organization.
10. Estimate the hours associated with providing the required services including, but not limited to examination of the financial records, preparation of all the financial statements and supplemental information and creation of the City's and Agency's Annual Financial Statements and Audit Report. Estimate of the hours associated with a typical examination in accordance with the Single Audit Act. Also estimate the percentage of this work that will be performed on-site.
11. Describe the method you would use in charging for any technical assistance on accounting and/or reporting questions, other special requests, reports or broadening of the scope – i.e., how such a request would be handled, rates, etc.
12. Submit two samples of recent management reports that you have issued regarding an audit, preferably of an Oregon municipality, which has similar services and is of comparative size with the City of Hermiston.
13. Provide details and outcome of any complaints against your firm or staff members or any disciplinary action imposed on your firm or staff members by the Oregon State Board of Accountancy or Oregon Secretary of State, Audits Division.
14. Comment on your firm's participation in peer review programs. Include a copy of the audit firm's latest peer review report and letter of comments.
15. Describe how and why your firm is different from other firms being considered, and why our selection of your firm as our external consultant and auditor is in the City's best interest. Include any other information that you believe will assist the City in making its selection.
16. Provide the following fees:
 - a) Estimate of the maximum fee for providing above-described services to the City of Hermiston and maximum hours the fee would include.
 - b) Billing rates for all applicable classifications of professional personnel for financial related consulting or additional billable services.
 - c) State whether your fees include travel and out-of-pocket expenses, or whether such costs are billed separately.
 - d) Projection of a maximum annual percentage of increase that can be expected in subsequent fiscal years. Include method used each year to adjust fees.

SUBMISSION REQUIREMENTS AND PROVISIONS

1. Three (3) copies of sealed proposals are required. One should be marked “Original.”
2. Proposals shall not exceed 10 pages (excluding the title page, letter of transmittal, and required attachments) and shall include:
 - a) A cover sheet indicating an interest in providing consulting and auditing services to the City of Hermiston, and providing the following:
 - i) Full legal name of proposing business entity
 - ii) Structure or type of business entity
 - iii) Name(s) of the person(s) authorized to represent the Proposer in any negotiations
 - iv) Name(s) of the person(s) authorized to sign any contract that may result in a binding contract with the City
 - v) Contact person’s name, mailing or street addresses, phone, and email address
 - vi) Statement that no redactions are requested, if applicable
 - vii) Oregon Board of Accountancy license number as municipal auditor
 - viii) Statement as to Proposer’s standing with the Oregon Board of Accountancy
 - ix) Signature of Proposer representative, authorized to bind Proposer
 - b) Firm Qualifications and Experience: Provide a brief overview of the firm’s experience performing municipal audits. Include the results of the audit firm’s most recent external peer review, any findings discovered as part of that review and actions taken to correct those findings. The audit firm must also disclose information on the circumstances and status of any disciplinary action taken or pending against the audit firm during the past three (3) years with state regulatory bodies or professional organizations, as well as any pending or settled litigation within the past three (3) years.
 - c) Outline Project Team:
 - i) Experience and Qualifications of Key Personnel: Identify all key personnel who will be assigned to work on this project including names, CPA license numbers, and Oregon Municipal Audit Roster numbers. Include a summary of their background and experience in auditing similar organizations as well as their roles and assigned responsibilities under the proposal.
 - ii) Identify one senior project manager who will be responsible for the day-to-day management of personnel and serve as the primary contact for City’s project manager.
 - iii) Describe the role and responsibility of personnel that will be assigned to this project, including the percent of time that each individual will spend on the project in relation to their overall work hours.
 - iv) Describe your firm’s policy and practices related to rotating audit staff.
 - d) References: Provide contact information for three (3) of the firm’s current municipal auditing clients in Oregon. Contact information should include the

name of the public agency, name and title of contact person, telephone number, and email address.

- e) A signed attestation form, which is enclosed with this solicitation document, providing written assurances of the proposer's ability to meet the City's required criteria for selection.
 - f) Differentiators. Describe what makes your firm different from other firms providing the same service and describe how that will translate to the level of services received.
3. Proposals must be **received** no later than **4:00 p.m.** on **May 3, 2024**. Proposals received after this deadline will not be considered.
 4. Proposals must be in a sealed envelope marked "Audit Services Proposal" and mailed or hand delivered to:

City of Hermiston
Attn: Ignacio Palacios,
Finance Director
180 2nd Street
Hermiston, OR 97838

5. If any person contemplating submitting a proposal for the contract has a question concerning any provision of the proposal documents, the question should be submitted to the City's Finance Director. The person submitting the request will be responsible for its prompt delivery. Oral interpretations or statements cannot modify the provisions of the proposal documents. Any interpretation of the proposal documents will be made only by a written addendum, duly issued and a copy of the addendum will be mailed or delivered to each person receiving a set of proposal documents from the City. Receipt of an addendum must be acknowledged by signing and returning a copy of the addendum with the proposal.
6. After the scheduled closing time for the receipt of proposals and before acceptance of a proposal, no proposer will be permitted to withdraw the proposal unless said acceptance is delayed for a period exceeding thirty (30) days. Any proposals received after the scheduled closing time shall be returned to the proposers. Withdrawal of a proposal shall not disqualify the proposer from submitting another proposal provided the time for receipt of proposals has not expired. Any request for withdrawal of a proposal shall be executed and signed by an authorized agent of the proposer.
7. Any exceptions to the specifications of this RFP must be clearly identified in writing in the proposal and referenced in the cover sheet.
8. Any proposer who believes any of the proposed specifications may limit competition among potential proposers must submit written comments or objections on the proposed specifications to the City of Hermiston, Attn: Ignacio Palacios, Finance Director, 180 NE 2nd Street, Hermiston, Oregon 97838. The comments must specify why the proposed specification limits competition and must be received no later than five (5) calendar days before closing.

EVALUATION CRITERIA

Evaluation consideration will include the following:

Evaluation Criteria	Scoring
Firm's municipal audit expertise and experience and qualifications of key personnel	30%
Audit approach and schedule	20%
References	20%
Fees for service	20%
Differentiators	10%

AWARD / REJECTION

Award of the contract in the form attached will be made to the proposer whose proposal is, in the opinion of the City Manager and Finance Director, in the best interest of the City, price and other factors considered. The City reserves the right to reject all proposals or to reject any proposal not in accordance with this solicitation. Submittal of a proposal indicates proposer's intent to be bound to the form contract attached. The City reserves the right to make changes and complete this contract in its sole discretion.

When an item that is proposed is not the same as the item specified in the RFP documents, the City shall determine whether or not the proposed item shall be considered as an approved equal. If the item is not determined to be an approved equal, that proposal item shall be rejected. This determination shall be made prior to contract award.

An evaluation committee will be responsible for initially reviewing the competing proposals, based upon the criteria set forth in this Request for Proposals. Selection may be made directly from the proposals submitted, or the City may conduct interviews with potential finalists. The committee will select the proposer determined to meet the best interest of the City, and the committee's recommendation will be forwarded to City Council. The City Council shall make the final contract award determination.

Attachments:

Attachment A – Fee Proposal

Attachment B - Authorized Signatures and Attestation

Attachment C - Personal Service Agreement for Auditing Services

**ATTACHMENT A
FEE PROPOSAL**

In accordance with the Request for Proposals for Professional Auditing Services, the firm referenced below submits the following hourly fee quotation and hours proposed for all positions to be assigned to the audit:

Fee for Fiscal Year End June 30, 2024:

<i>Key Personnel</i>	<i>Audit Hours</i>	<i>Hourly Rate</i>	<i>Total</i>
Engagement Partner			
Engagement Manager			
Engagement Senior			
Engagement Staff			
Clerical/Support Staff			
Other			

In accordance with the Request for Proposals for Professional Auditing Services the firm referenced below submits the following cost proposal for the term of the contract:

Fee proposal for Fiscal Years Ending June 30:

	<i>2024</i>	<i>2025</i>	<i>2026</i>
Financial Statement Audit			
Single Audit (if required)			
Cost of Supplies and Materials			
Additional Fees (if applicable*)			
Total			

*Technical assistance, as needed, is expected from the audit firm throughout the fiscal year that may include inquiries regarding accounting, reporting and internal control issues. If fees related to this technical assistance are not included in the firm’s financial statement audit fee, please include them here.

Attachment A: Fee Proposal (continued)

I hereby certify that the undersigned is authorized to represent the firm stated below, and empowered to submit this bid, and if selected, authorized to sign a contract for the services identified in the RFP.

Firm Name:	
Signature:	
Printed Name:	
Title:	
Date:	
Email Address:	

ATTACHMENT B
AUTHORIZED SIGNATURES AND ATTESTATION

I/we, the undersigned, an authorized representative of

_____, whose address is: _____
have read and thoroughly understand the specifications, instructions and all other conditions of the Request for Proposal issued by the City of Hermiston for Municipal Audit Services for fiscal years ended June 30, 2024, 2025 and 2026.

Acting on behalf of my/our firm, which is listed above, I/we do attest that the services offered by my/our firm meet the City of Hermiston specifications in every respect, (check one) _____ without exceptions or _____ with exceptions (provide detailed explanation on a separate sheet).

The proposal in its entirety shall be valid for 90 days from the proposal due date.

The proposal has been created independently and without collusion designed to limit independent bidding or competition.

I/we therefore offer and make this proposal to furnish to the City of Hermiston the audit and consulting services detailed in my/our proposal at the prices indicated.

Firm Name: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

ATTACHMENT C

CITY OF HERMISTON PROFESSIONAL SERVICES AGREEMENT FOR AUDITING SERVICES

This Professional Services Agreement (this "Agreement") is dated _____ but made effective for all purposes as of the Effective Date (as defined below) between the City of Hermiston ("City"), whose address is 180 NE 2nd Street, Hermiston, Oregon 97838 and _____ ("Contractor"), whose address is _____.

RECITAL:

City desires to contract with Contractor to perform services municipal audit services. Subject to the terms and conditions contained in this Agreement, Contractor will perform the Services (as defined below) for and on behalf of City.

AGREEMENT:

NOW, THEREFORE, in consideration of the parties' mutual obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Contractor Services.

1.1 Services. Subject to the terms and conditions contained in this Agreement, Contractor will perform the following services for and on behalf of City (collectively, the "Services"): (a) those services identified in Contractor's scope of work titled "Scope of Work" attached hereto as Exhibit A (the "Scope of Work").

1.2 Subcontractors. Contractor is not permitted to subcontract and/or assign all or any part of the Services without City's prior written consent. City's consent to Contractor's subcontract with Subcontractor and all other proposed subcontracts and/or assignment of Services by Contractor is conditioned on (in addition to any other condition that City may reasonably impose) the following: (a) Contractor demonstrating to City that Subcontractor and any other subcontractor/assignees (if any) is capable of successfully performing the identified Services in accordance with this Agreement; and (b) Subcontractor and/or the subcontractor/assignee agreeing in writing to comply with and be bound by all the terms and conditions contained in this Agreement.

2. Compensation.

2.1 Compensation. Subject to the terms and conditions contained in this Agreement, in consideration of Contractor's timely performance of the Services in accordance with this Agreement, City will pay Contractor for the Services at the hourly rates and fees identified in the Scope and Budget. Contractor will submit monthly invoices to City concerning the Services performed by Contractor during the immediately preceding month (each an "Invoice"). Subject to the terms and conditions contained in this Agreement, City will pay the amount due under each Invoice within thirty (30) days after City has reviewed and approved the Invoice. No compensation will be paid by City for any portion of the Services not performed. City's payment will be accepted by Contractor as full compensation for performing subject Services. Notwithstanding anything contained in this Agreement to the contrary, the compensation payable by City under this Agreement for performance of the Services will not exceed the amount(s) City and Contractor agree upon in the applicable Request for Services as follows:

Fiscal Year Ending 6/30/2024 \$ _____
Fiscal Year Ending 6/30/2025 \$ _____
Fiscal Year Ending 6/30/2026 \$ _____

2.2 No Benefits; No Reimbursement. City will not provide any benefits to Contractor, and Contractor will be solely responsible for obtaining Contractor’s own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. Contractor will provide, at Contractor’s cost and expense, all materials, equipment, and supplies necessary or appropriate to perform the Services. City will not reimburse Contractor for any expenses Contractor incurs to perform the Services.

3. Relationship.

3.1 Independent Contractor. Contractor is an independent contractor of City. Contractor is not an employee of City. Contractor will be free from direction and control over the means and manner of performing the Services, subject only to the right of City to specify the desired results. This Agreement does not create an agency relationship between City and Contractor and does not establish a joint venture or partnership between City and Contractor. Contractor does not have the authority to bind City or represent to any person that Contractor is an agent of City. Contractor has the authority to hire other persons to assist Contractor in performing the Services (and has the authority to fire such persons).

3.2 Taxes; Licenses. City will not withhold any taxes from any payments made to Contractor, and Contractor will be solely responsible for paying all taxes arising out of or resulting from Contractor’s performance of the Services, including, without limitation, income, social security, workers’ compensation, and employment insurance taxes. Contractor will be solely responsible for obtaining all licenses, approvals, and certificates necessary or appropriate to perform the Services.

4. Representations; Warranties; Covenants.

In addition to any other Contractor representation, warranty, and/or covenant made in this Agreement, Contractor represents, warrants, and covenants to City as follows:

4.1 Authority; Binding Obligation; Conflicts. Contractor is duly organized, validly existing, and in good standing under applicable Oregon laws. Contractor has full power and authority to sign and deliver this Agreement and to perform all Contractor’s obligations under this Agreement. This Agreement is the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms. The signing and delivery of this Agreement by Contractor and the performance by Contractor of all Contractor’s obligations under this Agreement will not (a) breach any agreement to which Contractor is a party, or give any person the right to accelerate any obligation of Contractor, (b) violate any law, judgment, or order to which Contractor is subject, or (c) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

4.2 Quality of Services. Contractor will perform the Services to the best of Contractor’s ability, diligently, in good faith, in a professional manner, free from errors, omissions, and/or defects, and consistent with the terms and conditions contained in this Agreement and the Scope of Work. The Services will be performed in accordance with the Laws (as defined below). Contractor will be solely responsible for the Services. Contractor will make all decisions called for promptly and without unreasonable delay. All materials and documents prepared by Contractor will be accurate, complete, unambiguous, prepared properly, and in compliance with the Laws.

4.3 Insurance. During the term of this Agreement, Contractor will obtain and maintain, in addition to any other insurance required under this Agreement, the following minimum levels of insurance: (a) general liability insurance for any and all losses or claims arising out of or related to Contractor’s performance of its

obligations under this Agreement (including, without limitation, damages as a result of death or injury to any person or destruction or damage to any property) with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; (b) comprehensive automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by Contractor in connection with Contractor's performance of the Services with limits of not less than \$1,000,000 per occurrence which may be reached through an umbrella policy; (c) professional liability insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; and (d) workers' compensation insurance in form and amount sufficient to satisfy the requirements of applicable Oregon law. Each liability insurance policy required under this Agreement will be in form and content satisfactory to City, will list City and City's Representatives (as defined below) as additional insureds. The insurance Contractor is required to obtain under this Agreement may not be cancelled without ten (10) days prior written notice to City. Contractor's insurance will be primary, and any insurance carried by City will be excess and noncontributing. Contractor will furnish City with appropriate documentation evidencing the insurance coverage (and endorsements). Contractor is required to obtain under this Agreement upon Contractor's execution of this Agreement and at any other time requested by City.

4.4 Indemnification. Contractor will defend, indemnify, and hold City, and each present and future City employee, officer, agent, and representative (collectively, "City's Representatives"), harmless from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of, whether directly or indirectly, the following: (a) damage, injury, and/or death to person or property caused directly or indirectly by Contractor (and/or Contractor's members, managers, officers, agents, employees, representatives, and/or contractors); (b) Contractor's failure to pay any tax arising out of or resulting from the performance of the Services; and/or (c) Contractor's breach and/or failure to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement.

5. Term; Termination.

5.1 Term of Agreement. Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date, the date signed by both parties to this Agreement, and will remain in full force and effect until December 31, 2026, unless sooner terminated as provided in this Agreement. This Agreement may be extended for one additional term of one year by the parties' mutual written agreement.

5.2 Termination by Mutual Agreement or City's Prior Notice. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated (a) at any time by the mutual written agreement of City and Contractor, and/or (b) by City for convenience and without cause by giving ninety (90) days prior to July 1 written notice of such termination to Contractor.

5.3 Immediate Termination. Notwithstanding anything contained in this Agreement to the contrary, City may terminate this Agreement immediately upon notice to Contractor upon the happening of any of the following events: (a) Contractor engages in any form of dishonesty or conduct involving moral turpitude related to Contractor's independent contractor relationship with City or that otherwise reflects adversely on the reputation or operations of City; (b) Contractor fails to comply with any applicable law related to Contractor's independent contractor relationship with City; (c) continuous and repeated problems occur in connection with the performance of the Services; and/or (d) Contractor breaches and/or otherwise fails to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement. The determination as to whether any of the aforementioned events have occurred will be made by City in City's sole discretion.

5.4 Consequences of Termination. Upon termination of this Agreement, City will not be obligated to reimburse or pay Contractor for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments. Within a reasonable period of time after termination of this Agreement (but in no event later than five days after termination), Contractor will

deliver to City all materials and documentation, including raw or tabulated data and work in progress, related to or concerning the Services. Termination of this Agreement by City will not constitute a waiver or termination of any rights, claims, and/or causes of action City may have against Contractor.

5.5 Remedies. If a party breaches or otherwise fails to perform any of its representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting party may, in addition to any other remedy provided to the non-defaulting party under this Agreement, pursue all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

6. Miscellaneous.

6.1 Severability; Assignment; Binding Effect. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Subject to Section 1.4 and this Section 6.1, Contractor will not subcontract or assign any of Contractor’s rights and/or obligations under this Agreement to any person. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This Agreement may be amended only by a written agreement signed by each party. This Agreement will be deemed binding and effective for all purposes as of the date this Agreement is fully executed by the parties (the “Effective Date”).

6.2 Method and Place of Submitting Notice, Bills and Payments. All notices, bills and payments shall be made in writing and may be given by personal delivery or mail. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices and other information:

City:

Contractor:

City of Hermiston

Ignacio Palacios, Finance Director
180 NE 2nd Street
Hermiston, OR 97838

Notices mailed to the address provided for notice in this section shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery.

6.3 Attorney Fees; Dispute Resolution. If any arbitration or litigation is instituted to interpret, enforce, and/rescind this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party’s reasonable attorney fees and other fees, costs, and expenses of every kind, including, without limitation, costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. If any claim, dispute, or controversy arising out of or related to this Agreement occurs (a “Dispute”), City and Contractor will exert their best efforts to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute. If the Dispute is not resolved by negotiated resolution, either party may initiate a suit, action, arbitration, or other proceeding to interpret, enforce, and/or rescind this Agreement.

6.4 Governing Law; Venue. This Agreement is governed by the laws of the State of Oregon,

without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action or proceeding arising out of this Agreement will be litigated in courts located in Umatilla County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Umatilla County, Oregon.

6.5 Attachments; Further Assurances; Notices. Any exhibits, schedules, instruments, documents, and other attachments referenced in this Agreement are part of this Agreement. If any provisions contained in an attached exhibit, schedule, instrument, document, and/or other attachment conflicts with this Agreement, the provisions of this Agreement will control. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. Time is of the essence with respect to Contractor's performance of its obligations under this Agreement. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email transmission (with electronic confirmation of delivery), or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

6.6 Waiver; Entire Agreement. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by City and Contractor. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Contractor has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Agreement.

6.7 Person; Interpretation; Execution. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be binding and effective for all purposes as of the Effective Date.

CITY:
City of Hermiston

CONTRACTOR:

By: Byron Smith
City Manager
Hermiston, Oregon

By:

Date: _____

Date: _____

EXHIBIT A

SCOPE OF WORK

[TO BE FILLED IN]

EXHIBIT B
CONSULTANT'S PROPOSAL

EXHIBIT C

ORS CHAPTER 279B PUBLIC CONTRACTING REQUIREMENTS PERSONAL SERVICES

- (1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor. ORS 279B.220(1).
- (2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. ORS 279B.220(2).
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against City on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3).
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617. ORS 279B.220(4).
- (5) Contractor agrees that if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If City is unable to determine the validity of any claim for labor or material furnished, City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
- (6) Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1).
- (7) All subject employers working under the contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2).
- (8) Contractor shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, *et seq.*) ORS 279B.235(3).
- (9) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work. ORS 279B.235(2).

- (10) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430.
- (11) Consultant shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper or other products as defined in ORS 279A.010.
- (12) Consultant certifies its compliance with all applicable state and local tax laws, including but not limited to ORS 305.385, ORS 305.620, ORS chapters 316, 317 and 318. Consultant certifies it will continue to comply with all such tax laws during the term of this contract. Consultant's failure to comply with such state and local tax laws prior to executing this contract or during the term of this contract constitutes a default for which City may terminate this contract and seek damages and other relief available under the terms of this contract or applicable law. ORS 279B.045.
- (13) Contractor certifies that it has not discriminated and will not discriminate against minorities, women, emerging small business enterprises or a business enterprise that is controlled by or that employs a veteran as defined in ORS 408.225 in obtaining any required subcontractors. ORS 279A.110.
- (14) As used in this section, "nonresident contractor" means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a "resident bidder" under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120.