



Council Business Meeting

February 21, 2023

Agenda Item	Contract with The Freshwater Trust for a Flow Augmentation Feasibility Study of Cold-Water Releases from Reeder Reservoir	
From	Scott Fleury PE	Public Works Director
Contact	Scott.Fleury@ashland.or.us	
Item Type	Requested by Council <input type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input checked="" type="checkbox"/> Presentation <input type="checkbox"/>	

SUMMARY

Before the Council is a professional services contract with the Freshwater Trust to perform a flow augmentation feasibility study in association with the Wastewater Treatment Plant National Pollution Discharge Elimination System Permit (NPDES). The augmentation study is meant to determine the feasibility of cold-water release from Reeder Reservoir during a potentially critical time from late October through mid-November when under worst case scenario it has been determined that Water Quality Trading (Shading) might not provide the needed thermal benefits for NPDES permit compliance.

POLICIES, PLANS & GOALS SUPPORTED

City Council Goals:

Essential Services

- Sewer

Continue to leverage resources to develop and/or enhance Value Services

Department Goals:

- Maintain existing infrastructure to meet regulatory requirements and minimize life-cycle costs
- Deliver timely life cycle capital improvement projects
- Maintain and improve infrastructure that enhances the economic vitality of the community
- Evaluate all city infrastructure regarding planning management and financial resources

BACKGROUND AND ADDITIONAL INFORMATION

On February 15, 2022 the City was issued a new National Pollution Discharge Elimination System (NPDES) permit by the Department of Environmental Quality for the Wastewater Treatment Plant (WWTP). The permit is valid until January 31, 2027. The City has long been planning for a new NPDES permit and the planning has included master plan developing along with refined studies to ensure regulatory compliance by sound capital investments. These studies/analysis have targeted applicable water quality regulations in the Bear Creek watershed that the City must comply with when





Council Business Meeting

discharging effluent to receiving waters include criteria for ammonia and metals such as copper, stringent limitations on in-stream mixing zones, and regulations on temperature that were anticipated to be part of the new NPDES permit.

Within the newly issued permit is a compliance schedule. The compliance schedule establishes regulatory milestones for major phases in each anticipated project needed to ensure regulatory compliance. The items in the compliance schedule are the result of negotiations between the City and DEQ, where parties sought to find a balance between highly protective water quality regulations and affordable, achievable solutions.

Figure 1: NPDES Compliance Schedule

Compliance Date:	Requirement:
By March 1, 2023	The permittee must submit final design plans and specifications for the outfall relocation to Bear Creek to DEQ for review and approval
By March 1, 2024	<ul style="list-style-type: none"> The permittee must submit to DEQ a progress report summarizing the progress made toward constructing the outfall to Bear Creek. Permittee must complete flow augmentation feasibility studies and submit findings to DEQ.
By September 1, 2023	The permittee must submit to DEQ a progress report summarizing the progress made toward acquiring the thermal credit target. The permittee must have obtained a total of at least 40% of the needed kilocalories.
By March 1, 2025	<ul style="list-style-type: none"> The permittee must complete construction of the outfall to Bear Creek. Permittee must complete a study and submit findings to DEQ on the thermal benefits of cold-water releases from Reeder Reservoir at the new outfall site in Bear Creek.
By March 1, 2026	<ul style="list-style-type: none"> The permittee must submit to DEQ a progress report summarizing the progress made toward acquiring the thermal credit target. The permittee must have obtained a total of at least 70% of the needed kilocalories to comply with the Outfall 004 excess thermal load limits Permittee must submit a DRAFT Flow Augmentation Water Quality Trading Plan to DEQ that details an analysis approach to evaluate benefits transferrable to the outfall site in Bear Creek and possible permit conditions.
By March 1, 2027	The permittee must submit to DEQ a final report summarizing all of the thermal credits that have been obtained. The permittee must achieve compliance with the final Outfall 004 excess thermal load limits.

On March 8, 2022 Public Works released a Request for Proposal-Qualifications Based Selection document for consultant services to analyze the feasibility of flow augmentation in meeting the WWTP NPDES Permit. The proposal document outlined contractual phases associated with meeting the compliance schedule requirements in the NPDES permit as outlined below:





Council Business Meeting

Phase 1: Feasibility/Limitations Study - Complete a study and submit findings to Oregon Department of Environmental Quality (DEQ) identifying the feasibility and limitations of flow augmentation to Bear Creek via cold water releases in Ashland Creek from Reeder Reservoir. A final report on feasibility must be submitted to DEQ by March 1, 2024.

Phase 2: Thermal Benefit Analysis - Complete a study and submit findings to DEQ, quantifying thermal benefits of cold water releases from Reeder Reservoir at the WWTP outfall site in Bear Creek. A final report on the study on the thermal benefits of cold water releases must be submitted to DEQ by March 1, 2025.

Phase 3: Water Quality Trading Plan Development - Develop a DEQ-approved Flow Augmentation Water Quality Trading Plan (Plan) that details an analysis approach to evaluate benefits transferrable to the outfall site in Bear Creek and permit conditions. A draft Plan must be submitted to DEQ by March 1, 2026, and ETL limit compliance must be fully achieved by March 1 2027. While not explicitly stated in the Compliance Schedule, it is inferred that full compliance includes submission of a Final Plan, following standard applicant- and public review periods.

In May of 2022, the City of Ashland completed the review process for selection of a consultant for the Flow Augmentation Water Quality Trading Plan for Excess Thermal Load Project. Proposals were submitted by The Freshwater Trust and Black & Veatch. The proposals were graded by Kaylea Kathol, Senior Engineering Project Manager, Alistair Andre, Water Treatment Plant Supervisor, and Scott Fleury PE, Public Works Director.

The results of the scoring are as follows:

CONSULTANT	TOTAL SCORE	RANK
The Freshwater Trust	276	1
Black and Veatch	275	2

After scoring was completed, all consultants were informed of the City’s intent to begin scope and fee negotiations with The Freshwater Trust. Through several formal discussions a final scope and fee was agreed upon in concept by the City and The Freshwater Trust. This scope and fee is part of attachment #1, Professional Services Contract.

Staff expects to begin this project in March of 2023, after Council approval in order to submit the feasibility report to DEQ by March 1, 2024 as required in the compliance schedule.





Council Business Meeting

Compliance Strategies

1. Outfall Relocation – Relocating the outfall from the relatively small Ashland Creek to the much-larger Bear Creek would provide sufficient receiving flows and mixing to achieve compliance with regulations pertaining to mixing zones, thermal plume provisions, toxic substances, and some components of cold water protection criteria. These compliance standards pertain to “near-field” impacts, which are measured as the localized effects of discharging effluent to a receiving water. Outfall relocation resolves most “near-field” impacts.

a. This project is currently under construction and will be completed in 2023.

2. Water Quality Temperature Trading Program – Establishment of a water quality trading program within the Bear Creek watershed allows the City to offset excess thermal loads (ETL) exceedances with riparian restoration in areas where streamside shade is lacking. The shade provided by restoring a native riparian forest ecosystem reduces the solar load in the water, thus reducing excess warming. Water quality trading allows the City to achieve compliance with the Total Maximum Daily Load (TMDL) temperate criteria and biologically based numeric criteria, as well as some provisions of cold water protection criteria. The City has a “target thermal reduction need” of 131.5 million kilocalories per day, which includes a 2:1 trading ratio of the 65 million kCal/day base ETL exceedance to account for a time lag following initial planting of the shade-producing trees. Compliance standards that can be achieved by water quality trading resolve the “far-field” impacts, measured at the point of maximum impact, which in this case is the ETL exceedance near the confluence of Bear Creek and the Rogue River.

a. This project is currently ongoing. In 2022 the total annualized credit generation for the water quality trading program was 40 million kCal/Day.

3. Treatment Wetlands – If necessary, the City is prepared to further mitigate temperature and thermal plume impacts via use of treatment wetlands to cool effluent prior to release into receiving waters. The City purchased additional land in 2017 in preparation for this mitigation strategy. At this time, the City believes it can comply with proposed ETL limits using the two strategies described above but is prepared to initiate a treatment wetland project if needed.

a. Scope of work to be generated if cold water release found to not be a viable solution to shoulder season temperature exceedances.

4. Cold Water Releases – The City may utilize limited cold water releases from Reeder Reservoir during brief periods when conditions render the other mitigation efforts insufficient. The City approaches cold water releases as a last resort contingency plan for achieving temperature compliance.



Council Business Meeting

a. Scope of work considered under this contract before Council for award.

PREVIOUS COUNCIL ACTIONS

Council has taken numerous actions over the past decade that have had a nexus to renewal of the NPDES permit, including:

- [March 15, 2011](#) – DEQ and Keller Associates presented effluent temperature compliance solutions.
- [April 17, 2012](#) – Council adopted a Comprehensive Sanitary Sewer Master Plan (and complimentary 2014 Wastewater Facilities Plan) that recommended a combination of relocating the outfall from Ashland Creek to Bear Creek, effluent discharge through constructed wetlands during various times of the year, selective discharges from Reeder Reservoir, and water quality temperature trading to meet excess thermal loading exceedances.
- [May 6, 2014](#) – City hired CH2M Hill (now Jacobs) to complete an outfall relocation study. The study investigated and recommended the best outfall relocation spot on Bear Creek that could comply with the mixing zone, thermal plume and toxics requirements anticipated in the updated NPDES permit.
- [December 5, 2017](#) – City hired CH2M Hill (now Jacobs) to complete pre-engineering for the Outfall Relocation project. Predesign, including environmental permitting, was complete in early 2020.
- [May 15, 2018](#) – Council approved the purchase of property adjacent to the treatment land for potential future use, in part, as treatment wetlands.
- [September 4, 2018](#) – Council approved a contract with The Freshwater Trust to initiate Phase 1 of the Water Quality Trading Partnership. Development of a water quality temperature trading plan, in consultation with DEQ, was complete during Phase 1.
- [September 3, 2019](#) – Council approved a contract with The Freshwater Trust to initiate Phase 2 of the Water Quality Trading Partnership. Phase 2 is characterized by a six-year agreement during which the contractor will implement water quality temperature trading plan accepted by DEQ.
- [February 1, 2021](#) – Council received an update on the status of permit renewal and associated mitigation projects.
- [May 4, 2021](#) – Council approved a contract with Jacobs to complete final engineering for the Outfall Relocation project.
- May 23, 2022 – Council approved a construction contract with Pilot Rock for construction of the outfall relocation project.



Council Business Meeting

FISCAL IMPACTS

The proposed fee for the scope of work is \$234,035 and will come from existing appropriations within the Wastewater Treatment Fund. A certain percentage of the work will be conducted in fiscal year 2024 and staff will need to request additional appropriations through the 2023-2025 Budget Process for this work.

DISCUSSION QUESTIONS

N/A

SUGGESTED NEXT STEPS

Next steps include providing The Freshwater Trust with formal notice to proceed for the project. Staff expects to bring back findings to Council the basic feasibility of cold-water flow augmentation to the Council later in 2023 for discussion and formal next steps to ensure NPDES compliance.

MOTIONS

I move to approve a Legal Department approved professional services contract with The Freshwater Trust in an amount not to exceed \$234,035.

REFERENCES & ATTACHMENTS

Attachment #1: Professional Services Contract – The Freshwater Trust “Flow Augmentation Feasibility”
Attachment #2: Request for Proposal – Solicitation Document

PERSONAL SERVICES AGREEMENT (Greater than \$35,000.00)

CITY OF ASHLAND

20 East Main Street
Ashland, Oregon 97520
Telephone: 541/488-5587
Fax: 541/488-6006

CONSULTANT: THE FRESHWATER TRUST

CONSULTANT'S CONTACT: DANIELLE DUMONT

ADDRESS: 700 SW TAYLOR, SUITE 200
PORTLAND, OR 97205

TELEPHONE: (503) 222-9091 x42

EMAIL: danielle@thefreshwatertrust.org

This Personal Services Agreement (hereinafter "Agreement") is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter "City") and THE FRESHWATER TRUST, a domestic professional corporation ("hereinafter "Consultant"), for Flow Augmentation Water Quality Trading Plan for Excess Thermal Load.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the City and Consultant hereby agree as follows:

- 1. Effective Date and Duration:** This Agreement shall become effective on the date of execution on behalf of the City, as set forth below (the "Effective Date"), and unless sooner terminated as specifically provided herein, shall terminate upon the City's affirmative acceptance of Consultant's Work as complete and Consultant's acceptance of the City's final payment therefore, but not later than June 30, 2024.
- 2. Scope of Work:** Consultant will provide Flow Augmentation Water Quality Trading Plan for Excess Thermal Load as more fully set forth in the Consultant's Proposal dated 1/11/2023, which is attached hereto as "Exhibit A" and incorporated herein by this reference. Consultant's services are collectively referred to herein as the "Work."
- 3. Supporting Documents/Conflicting Provisions:** This Agreement and any exhibits or other supporting documents shall be construed to be mutually complimentary and supplementary wherever possible. In the event of a conflict which cannot be so resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the exhibits or supporting documents.
- 4. All Costs Borne By Consultant:** Consultant shall, at its own risk and expense, perform the Work described above and, unless otherwise specified in this Agreement, furnish all labor, equipment, and materials required for the proper performance of such Work.
- 5. Qualified Work:** Consultant has represented, and by entering into this Agreement now represents, that all personnel assigned to the Work to be performed under this Agreement are fully qualified to perform the service to which they will be assigned in a skilled and worker-like manner and, if required to be registered, licensed or bonded by the State of Oregon, are so registered, licensed and bonded.

6. **Compensation:** City shall pay Consultant the NOT TO EXCEED sum of **\$234,035.00** as full compensation for Consultant's performance of all Work under this Agreement. In no event shall Consultant's total of all compensation and reimbursement under this Agreement exceed the sum of **\$234,035.00** without the express, written approval from the City official whose signature appears below, or such official's successor in office. Payments shall be made within 30 days of the date of receipt by the City of Consultant's invoice. Should this Agreement be terminated prior to completion of all Work, payments will be made for any phase of the Work completed and accepted as of the date of termination.
7. **Ownership of Work/Documents:** All Work product or deliverables produced as specified in Exhibit A of this Agreement shall become the physical property of the City. To the extent the Work product and deliverables incorporate pre-existing intellectual property of Consultant, Consultant hereby grants City a perpetual, fully paid, nonexclusive and nontransferable license to use such pre-existing property for City's purposes as specified in Exhibit A. Consultant retains ownership of any and all copyright, patent, trademark, proprietary or any other protected intellectual property rights included in, or delivered with, the Work product or deliverables. The City has a perpetual, royalty-free license to use the Work.
8. **Statutory Requirements:** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.
9. **Living Wage Requirements:** If the amount of this Agreement is \$20,688.86 or more, Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in that chapter, to all employees performing Work under this Agreement and to any Subcontractor who performs 50% or more of the Work under this Agreement. Consultant is also required to post the notice attached hereto as "Exhibit B" predominantly in areas where it will be seen by all employees.
10. **Indemnification:** Consultant hereby agrees to defend, indemnify, save, and hold City, its officers, employees, and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, or damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to any property, of whatsoever nature arising out of or incident to the performance of this Agreement by Consultant, its officers, employees, and agents. To the extent permitted under the Oregon Tort Claims Act, City hereby agrees to defend, indemnify, save, and hold Consultant, its officers, employees, and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, or damages resulting from or caused by the negligence or wrongful acts of City, its officers, employees, and agents.
11. **Termination:**
 - a. Mutual Consent. This Agreement may be terminated at any time by the mutual consent of both parties.
 - b. City's Convenience. This Agreement may be terminated by City at any time upon not less than 30 days' prior written notice delivered by certified mail or in person.
 - c. For Cause. City may terminate or modify this Agreement, in whole or in part, effective upon delivery of written notice to Consultant, or at such later date as may be established by City under any of the following conditions:
 - i. If City funding from federal, state, county or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;
 - ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this

- Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement; or
- iii. If any license or certificate required by law or regulation to be held by Consultant to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.
 - d. For Default or Breach.
 - i. Either City or Consultant may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and its intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, or within such other period as the party giving the notice may authorize in writing, then the Agreement may be terminated at any time thereafter by a written notice of termination by the party giving notice.
 - ii. Time is of the essence for Consultant's performance of each and every obligation and duty under this Agreement. City by written notice to Consultant of default or breach may at any time terminate the whole or any part of this Agreement if Consultant fails to provide services called for by this Agreement within the time specified herein or within any extension thereof.
 - iii. The rights and remedies of City provided in this subsection (d) are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
 - e. Obligation/Liability of Parties. Termination or modification of this Agreement pursuant to subsections a, b, or c above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to Subsection a, b, c, or d of this section, Consultant shall immediately cease all activities under this Agreement, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Consultant shall deliver to City all Agreement documents, information, works-in-progress and other property that are or would be deliverables had the Agreement been completed. City shall pay Consultant for Work performed prior to the termination date if such Work was performed in accordance with this Agreement. Consultant's liability for all claims related to this Agreement are limited to direct damages. This limit applies collectively to Consultant, its subsidiaries, contractors, and suppliers, Consultant will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill or anticipated savings.

12. Independent Contractor Status: Consultant is an independent contractor and not an employee of the City for any purpose. Consultant shall have the complete responsibility for the performance of this Agreement. Consultant shall provide workers' compensation coverage as required in ORS Chapter 656 for all persons employed to perform Work pursuant to this Agreement. Consultant is a subject employer that will comply with ORS 656.017.

13. Assignment: Consultant shall not assign this Agreement or subcontract any portion of the Work without the written consent of City. Any attempted assignment or subcontract without written consent of City shall be void. Consultant shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by them, and the approval by City of any assignment or

subcontract of the Work shall not create any contractual relation between the assignee or subcontractor and City.

- 14. Default.** The Consultant shall be in default of this Agreement if Consultant: commits any material breach or default of any covenant, warranty, certification, or obligation under the Agreement; institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general assignment for the benefit of creditors; or ceases doing business on a regular basis of the type identified in its obligations under the Agreement; or attempts to assign rights in, or delegate duties under, this Agreement.
- 15. Insurance.** Consultant shall, at its own expense, maintain the following insurance:
- a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers
 - b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence. This is to cover any damages caused by error, omission or negligent acts related to the professional services to be provided under this Agreement.
 - c. General Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence for Bodily Injury, Death, and Property Damage.
 - d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 (one million dollars) for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
 - e. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days' prior written notice from the Consultant or its insurer(s) to the City.
 - f. Additional Insured/Certificates of Insurance. Consultant shall name the City of Ashland, Oregon, and its elected officials, officers and employees as Additional Insureds on any insurance policies, excluding Professional Liability and Workers' Compensation, required herein, but only with respect to Consultant's services to be provided under this Agreement. The consultant's insurance is primary and non-contributory. As evidence of the insurance coverages required by this Agreement, the Consultant shall furnish acceptable insurance certificates prior to commencing the Work under this Agreement. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.
- 16. Nondiscrimination:** Consultant agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of any Work under this Agreement when employed by Consultant. Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Consultant agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.

17. Consultant's Compliance With Tax Laws:

17.1 Consultant represents and warrants to the City that:

17.1.1 Consultant shall, throughout the term of this Agreement, including any extensions hereof, comply with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

17.1.2 Consultant, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

- 18. Governing Law; Jurisdiction; Venue:** 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 Consultant that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon. If, however, 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 filed in Jackson County, Oregon. Consultant, by its signature hereon of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts.
- 19. THIS AGREEMENT AND THE ATTACHED EXHIBITS CONSTITUTE THE ENTIRE UNDERSTANDING AND AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. CONSULTANT, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**
- 20. Amendments.** This Agreement may be amended only by written instrument executed by both parties with the same formalities as this Agreement.
- 21. Nonappropriations Clause.** Funds Available and Authorized: City has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within the City's fiscal year budget. Consultant understands and agrees that City's payment of amounts under this Agreement attributable to Work performed after the last day of the current fiscal year is contingent on City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement. In the event City has insufficient appropriations, limitations or other expenditure authority, City may terminate this

Agreement without penalty or liability to City, effective upon the delivery of written notice to Consultant, with no further liability to Consultant.

22. Certification. Consultant shall sign the certification attached hereto as “Exhibit C” and incorporated herein by this reference.

CITY OF ASHLAND:

THE FRESHWATER TRUST (CONSULTANT):

By: _____
City Manager

By: _____
Signature

Printed Name

Printed Name

Date

Title

Date

Purchase Order No. _____

(W-9 is to be submitted with this signed Agreement)

APPROVED AS TO FORM:

Carmel Zahran

Assistant City Attorney

2/15/2023

Date

EXHIBIT C

CERTIFICATIONS/REPRESENTATIONS: Consultant, by and through its authorized representative, under penalty of perjury, certifies that (a) the number shown on the attached W-9 form is its correct taxpayer ID (or is waiting for the number to be issued to it and (b) Consultant is not subject to backup withholding because: (i) it is exempt from backup withholding, or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Consultant further represents and warrants to City that: (a) it has the power and authority to enter into and perform the Work, (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Consultant enforceable in accordance with its terms, (c) the work under the Agreement shall be performed in accordance with the highest professional standards, and (d) Consultant is qualified, professionally competent, and duly licensed (if applicable) to perform the Work. Consultant also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, it is an independent contractor as defined in the Agreement, it is authorized to do business in the State of Oregon, and Consultant has checked four or more of the following criteria that apply to its business.

- _____ (1) Consultant carries out the work or services at a location separate from a private residence or is in a specific portion of a private residence, set aside as the location of the business.
- _____ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.
- _____ (3) Telephone listing is used for the business separate from the personal residence listing.
- _____ (4) Labor or services are performed only pursuant to written contracts.
- _____ (5) Labor or services are performed for two or more different persons within a period of one year.
- _____ (6) Consultant assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission (professional liability) insurance or liability insurance relating to the Work or services to be provided.

Consultant

Date

EXHIBIT B

CITY OF ASHLAND, OREGON

City of Ashland LIVING WAGE

ALL employers described below must comply with City of Ashland laws regulating payment of a living wage.



\$17.02 per hour, effective June 30, 2022.

The Living Wage is adjusted annually every June 30 by the Consumer Price Index.

Employees must be paid a living wage:

- For all hours worked under a service contract between their employer and the City of Ashland if the contract exceeds **\$24,050.68** or more.
- For all hours worked in a month if the employee spends 50% or more of the

employee's time in that month working on a project or portion of business of their employer, if the employer has ten or more employees, and has received financial assistance for the project or business from the City of Ashland in excess of **\$24,050.68**.

- If their employer is the City of Ashland, including the Parks and Recreation Department.

- In calculating the living wage, employers may add the value of health care, retirement, 401K and IRS eligible cafeteria plans (including childcare) benefits to the amount of wages received by the employee.
- **Note:** For temporary and part-time employees, the Living Wage does **not** apply to the first 1040 hours worked in any calendar year. For more details, please see Ashland Municipal Code Section 3.12.020.

For additional information:

Call the Ashland City Administrator's office at 541-488-6002 or write to the City Administrator, City Hall, 20 East Main Street, Ashland, OR 97520, or visit the City's website at www.ashland.or.us.

Notice to Employers: This notice must be posted predominantly in areas where it can be seen by all employees.



City of Ashland Flow Augmentation Water Quality Trading Plan for Excess Thermal Load

Scope of Work

January 11, 2023

Background:

The City of Ashland, Oregon (City) outlined the components of the Flow Augmentation Water Quality Trading Plan for Excess Thermal Load (Project 2012-12) in a public Request for Qualifications Based Proposals that closed in April 2022. The project components described in that document were broken into the following project phases:

- Phase 1, Feasibility/ Limitations Study
- Phase 2, Thermal Benefit Analysis
- Phase 3, Water Quality Trading Plan Development

Following the evaluation of two qualifications-based proposals, the City notified The Freshwater Trust (TFT) in September 2022 that the City intends to begin contract negotiations for professional services with TFT for Project #2021-12 Flow Augmentation Water Quality Trading Plan for Excess Thermal Load. Below is the proposed Scope of Work and Budget submitted by TFT and its partners: Jacobs Engineering Group (Jacobs), Applied Ecosystem Sciences (AES) and Formation Environmental (FE) (collectively the “Consulting Team”).

This document outlines our proposed approach, scope of work, and estimated budget to complete Phase 1 of the project, as requested by the City. The City plans to contract for Phases 2 and 3 of the project separately.

Project Objectives

The project objectives were outlined in the Request for Qualifications Based Proposals, as summarized below.

This project will facilitate regulatory compliance with Excess Thermal Load (ETL) water quality provisions and compliance schedule requirements in the City’s newly renewed National Pollution Discharge Elimination System (NPDES) Permit, effective March 1, 2022. The NPDES Permit regulates effluent discharges from the Wastewater Treatment Plant (WWTP) to receiving waters in Bear Creek and Ashland Creek. The Consulting Team will provide applicable studies, analysis, modeling, and reporting leading to, and including, the development of a water quality trading plan to support flow augmentation pursuant to applicable Oregon Water Quality Trading rules in OAR 340-039. The trading plan will provide a strategy for ETL reduction at the WWTP outfall in Bear Creek via controlled releases of stored cold water from Reeder Reservoir. The project phases and schedules are based on the NPDES Permit Compliance Schedule, and will include the following tasks and phases:

- **Phase 1: Feasibility/Limitations Study** - Complete a study and submit findings to Oregon Department of Environmental Quality (DEQ) identifying the feasibility and limitations of flow

augmentation to Bear Creek via cold-water releases in Ashland Creek from Reeder Reservoir. A final report on feasibility must be submitted to DEQ by March 1, 2024.

- **Phase 2: Thermal Benefit Analysis** - Complete a study and submit findings to DEQ, quantifying thermal benefits of cold-water releases from Reeder Reservoir at the WWTP outfall site in Bear Creek. A final report on the study on the thermal benefits of cold-water releases must be submitted to DEQ by March 1, 2025.
- **Phase 3: Water Quality Trading Plan Development** - Develop a DEQ-approved Flow Augmentation Water Quality Trading Plan (Plan) that details an analysis approach to evaluate benefits transferrable to the outfall site in Bear Creek and permit conditions. A draft Plan must be submitted to DEQ by March 1, 2026, and ETL limit compliance must be fully achieved by March 1, 2027. While not explicitly stated in the Compliance Schedule, it is inferred that full compliance includes submission of a Final Plan, following standard applicant and public review periods.

Proposed Scope of Work

In Phase 1, TFT and its partners will complete a study identifying the feasibility and limitations of flow augmentation to Bear Creek via cold-water releases in Ashland Creek from Reeder Reservoir and will support the City in discussing findings with the Oregon Department of Environmental Quality (DEQ). Phase 1 of the project is organized into four tasks. In addition, there are two contingent tasks proposed under this scope that may need to be executed during the Phase 1 timeframe in order to complete Phase 2 work in a timely manner. The tasks include:

Phase 1: Feasibility/ Limitations Study

- Task 1 Project Management
- Task 2 Initial Technical Analysis and Data Gap Evaluation
- Task 3 Feasibility/Limitations Study and Report
- Task 4 Regulatory Support

Contingent Task A: LiDAR Mapping of Ashland Creek

Contingent Task B: Ashland Creek Temperature Data Collection

The work included under each task is detailed further in the following sections.

General Assumptions

The level of effort and cost are based on the following general assumptions:

- Services covered under this project begin with Notice to Proceed and end with delivery of the deliverables noted under this scope of work.
- The Notice to Proceed is issued on or before March 1, 2023.
- The City will provide TFT and its partners with all data in City's possession relating to services provided in this scope in response to data requests from TFT and its partners to the City. TFT and its partners will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the City.

Additional assumptions are noted under individual subtasks.

Task 1 Project Management

TFT will organize and manage the Consulting Team, oversee the project, and coordinate with the City project manager and City staff. TFT will ensure that the work is performed with care, skill, and diligence and follows the team's quality control program. TFT, its partners, and City staff will meet during project duration at minimum once per month, including to review the scope, budget, schedule, and deliverables. TFT shall prepare monthly invoices and progress reports that cover:

- Work Completed during the month by work task as a percentage of completion.
- Needs for additional information or reviews by the City.
- Any scope, schedule, or budget issues and changes.

Upon written approval from the City, TFT will also prepare contracting for Phase 2 of the project.

Assumptions:

- Task begins in Q1 2023 – Q2 2024 for a 14-month duration.
- Regular meetings will occur virtually at least once per month between the City and TFT, with Consulting Team members included as necessary.
- As described further under Task 3, a draft go/no go decision on Phase 2 contracting will occur by October 31, 2023. Upon written approval from the City, TFT will initiate preparations for Phase 2 contracting to be ready to begin Phase 2 work by February 1, 2024.
- **Decisions on contingent tasks will be held with the City to initiate Contingent Task B (temperature monitoring) no later than July 31, 2023 and Contingent Task A (LiDAR mapping) no later than October 31, 2023 if Phase 2 work is likely to proceed.**

Task 2 Initial Technical Analysis and Data Gap Evaluation

TFT and its partners will review existing data necessary to complete the feasibility/limitations study and the thermal benefits analysis. Data sources reviewed will include:

- Infrastructure documentation, including Hosler Dam and penstock, as well as documentation related to the powerhouse, water treatment plant (WTP) and wastewater treatment plant (WWTP) as relevant.
- Reeder Reservoir and Ashland Creek water quality and flow/volume data and reporting that supports conceptual flow augmentation plans.
- Updated future WWTP effluent flow rate projections (Jacobs 2019).
- Existing and future planned ETL credits to be provided through riparian restoration.
- City plans for water right acquisitions and modified Ashland Creek water right release schedules.
- Recent WWTP flow, temperature, and ETL data consistent with the new NPDES permit.
- Recent LiDAR data necessary for thermal model development.
- Recent stream temperature data from Ashland Creek from periods planned for cold-water releases.
- Recent channel measurements from multiple locations along Ashland Creek.

Based on the initial review of existing data compiled to date, TFT and its partners will develop an initial data gap analysis and may submit a data request to the City for further information that may be in the City's possession. After additional data is received from the City and reviewed, TFT and its partners will set up meetings with City staff to discuss the information provided and ensure the team has the relevant information to begin Task 3.

Assumptions:

- Meetings with City staff for review of information provided will be held via web conferencing, with requested information provided to the Consulting Team in a reasonably timely manner.

Task 3 Feasibility/Limitations Study and Report

TFT and its partners will evaluate the feasibility and limitations of flow augmentation and document findings in a report for the City. The feasibility and limitations assessments will include the following items (firm with lead responsibility are indicated in parentheses):

- **ETL Analysis Update** (Jacobs/TFT) – An update to the required ETL offset magnitude and timing that will be required from flow releases to supplement ETL from riparian shade projects.
- **Reservoir Water Quality Assessment** (AES)– An assessment of water quality dynamics within Reeder Reservoir that may affect Ashland Creek and the City’s WTP source water when releasing water from lower depths in Reeder Reservoir.
- **Reservoir Water Quantity Assessment** (Jacobs/AES)– An assessment of the maximum rates and timing of cold-water flow release for temperature control from Reeder Reservoir that can be allowed, considering the City’s overall water supply, water demand, the volume of the reservoir, and the volume of cold water available at depth.
- **Infrastructure Capability Assessment** (Jacobs) – An assessment of existing infrastructure ability/limitations to operate cold-water releases from deep outlets at Reeder Reservoir.
- **Water Treatment Impacts Assessment** (Jacobs) – An assessment of the potential impacts to water treatment processes and potential mitigation measures to reduce impacts of changed source water quality on WTP operations.
- **Preliminary Thermal Benefits Assessment** (Jacobs/Formation) – An assessment of the potential thermal benefits available at the WWTP Bear Creek Outfall resulting from changes to operations of Reeder Reservoir for cold-water release.
- **Thermal Model Development Planning** (Formation/Jacobs)– An evaluation of available existing relevant data sources and identification of additional data that will be necessary to complete the thermal model described under Phase 2. This will include a description of how the model will be used in Phase 2 to define ETL credits available at the WWTP Bear Creek Outfall.
- **Permit requirements potentially triggered by a change in Reeder Reservoir operations** (TFT/Jacobs).

During the Feasibility/Limitations Study, TFT and its partners and the City will meet to discuss preliminary feasibility and produce a draft go/no go decision on Phase 2 Thermal Benefits Analysis work by October 31, 2023. This decision point is necessary before completion of Task 3 to allow the project team to prepare for Phase 2 contracting and data collection on a timeline necessary to stay on track with the City’s NPDES Permit Compliance Schedule.

The feasibility and limitations assessments will be documented in a compiled Feasibility/Limitations Study Report. A draft report will be provided to the City by January 2024. The final report that integrates City feedback will be provided to the City by February 2024, ahead of the City’s deadline to submit the final report to DEQ by March 1, 2024.

Assumptions:

- This task includes one team field visit to meet with City staff at Reeder Reservoir and the WTP. In attendance will be up to 2 TFT staff, 2 Jacobs staff, and 1 AES staff member.
- A draft go/no go decision on Phase 2 contracting and data collection will occur by October 31, 2023.
- The City will review and provide comments on the draft Feasibility Study within approximately two weeks of draft report submittal.

Task 4 Regulatory Support

TFT and its partners will assist the City in responding to questions or concerns from DEQ related to the Feasibility/Limitations Study and Report and key findings.

Assumptions:

- Relevant meetings will be held between the City and DEQ during the development of the report.
- Relevant meetings will be held between the City and DEQ within two months after the final report is submitted to DEQ.
- Up to two TFT staff and up to two Jacobs staff will support the City in preparation and attendance at these meetings, with as needed support from other Consulting Team members.
- Meetings will be held via web conferencing.

Phase 1 Timeline:

Q1 2023 – Q2 2024 or 14 months to complete

Phase 1 Estimated Cost: \$234,035

Phase 1 Deliverables:

- A) Monthly progress reports submitted with invoice documentation.
- B) Draft Feasibility Study report provided to the City by January 2024.
- C) Final Feasibility Study report provided to the City by February 2024, ahead of the City's deadline to submit the final report to DEQ by March 1, 2024.

Contingent Task A: LiDAR Mapping of Ashland Creek

If existing available LiDAR data is not adequate to construct a thermal model of Ashland Creek from Reeder Reservoir to the Bear Creek confluence, this contingent task would cover the acquisition of new LiDAR data covering that stream reach. While data acquisition would not likely occur until 2024, contracting for this service would need to be initiated in 2023 and the funds approved as part of Phase 1 to avoid the potential for major gaps in data needed to complete Phase 2 work.

Assumptions:

- High-resolution data collected using unmanned aerial vehicle (UAV).
- Contracting for LiDAR mapping initiates by October 31, 2023.
- Data collection to occur during leaf-off conditions (approximately November 2023 – February 2024).

Contingent Task A Estimated Cost: \$43,625

Contingent Task B: Ashland Creek Stream Temperature Data Collection

If existing available continuous temperature data is not adequate to construct a thermal model of Ashland Creek from Reeder Reservoir to the Bear Creek confluence, this contingent task would cover the acquisition of

new continuous stream temperature data covering that stream reach. Planning and data acquisition would need to be initiated in 2023 and the funds approved as part of Phase 1 to avoid the potential for major gaps in data needed to complete Phase 2 work.

Assumptions:

- Local TFT staff collects this data.
- TFT purchases thermistors to collect the data.
- Thermistors to be placed at up to five locations distributed along Ashland Creek and to be deployed for up to a 5-month period (September 2023 to January 2024). Locations to be coordinated with the City, and the City will help secure any approvals needed to make right placements.
- Will take all reasonable measures to conceal thermistors but no guarantees against theft and subsequent loss of data.

Contingent Task B Estimated Cost: \$14,744

Schedule:

The following schedule is estimated for work on Phase 1, assuming a contract is finalized on or before March 1, 2023.

	2023										2024										2025					
Month	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
Phase 1: Feasibility Study																										

Estimated Budget:

TFT will perform work on a time and materials basis. The budget for Phase 1 is \$234,035. Contingent Tasks A & B totaling \$58,369 will only be activated following written notice to proceed from the City. A summary of total cost by top task is provided in the table below. A detailed breakdown of hours, labor costs, expenses, and total cost by subtask is provided in the attached Exhibit A.

#	Description	Cost
Phase 1	Feasibility/ Limitations Study	\$234,035
<i>Contingent Task A</i>	<i>LiDAR Mapping of Ashland Creek</i>	\$43,625
<i>Contingent Task B</i>	<i>Ashland Creek Stream Temperature Data Collection</i>	\$14,744

Who to contact for next steps

The Freshwater Trust appreciates the City’s interest and review. Please direct questions, comments, and additions to:

Tim Wigington
VP Finance & Policy
The Freshwater Trust
tim@thefreshwatertrust.org
503.222.9091 x41

Olivia Duren
Restoration Program Manager
The Freshwater Trust
olivia@thefreshwater.org
503.222.9091 x51

**REQUEST
FOR QUALIFICATIONS BASED
PROPOSALS**

Professional Services

PROJECT NO. 2021-12

Flow Augmentation Water Quality Trading Plan for Excess Thermal Load

PROJECT NO: 2021-12: Flow Augmentation Water Quality Trading Plan for Excess Thermal Load

PROJECT TYPE: Professional Engineering Services

PROPOSALS DUE: April 7, 2022 not later than 2:00 PM PST

SUBMIT PROPOSALS TO: City of Ashland Public Works – Engineering
51 Winburn Way, Ashland OR 97520;

or by mail to:

20 E. Main Street, Ashland, OR 97520

CITY PROJECT MANAGER: Kaylea Kathol, PMP, Sr. Project Manager

PROJECT DURATION: Phase 1: Feasibility Study (18-24 months)

Phase 2: Thermal Benefit Analysis (12 months)

Phase 3: Trading Plan Development (12 months)
and Finalization (12 months)



**CITY OF
ASHLAND**

**PUBLIC WORKS ENGINEERING
20 E. MAIN STREET
ASHLAND OR 97520
541/488-5587**

CONTENTS

ADVERTISEMENT	3
SECTION 1 - PROJECT OVERVIEW	4
1.1 OBJECTIVES	4
1.2 BACKGROUND INFORMATION	4
1.3 REFERENCE DOCUMENTS	5
SECTION 2 - SCHEDULE	6
SECTION 3 - SCOPE OF SERVICES	6
3.1 GENERAL REQUIREMENTS	6
3.2 SPECIFIC REQUIREMENTS	7
3.2.1 Phase 1: Feasibility/Limitations Study.....	7
3.2.2 Phase 2: Thermal Benefit Analysis	7
3.2.3 Phase 3: Water Quality Trading Plan Development.....	7
SECTION 4 - EVALUATION CRITERIA	8
4.1 PROJECT APPROACH (20 POINTS POSSIBLE).....	8
4.2 PROJECT EXPERIENCE (30 POINTS POSSIBLE).....	8
4.3 PROJECT TEAM EXPERIENCE (30 POINTS POSSIBLE).....	8
4.4 PROPOSER'S DEMONSTRATED ABILITY TO SUCCESSFULLY COMPLETE SIMILAR PROJECTS ON TIME AND WITHIN BUDGET (20 POINTS POSSIBLE)	9
4.5 TERMINATION FOR DEFAULT (PASS OR FAIL)	9
4.6 SCORING	9
SECTION 5 - EVALUATION PROCESS AND CONSULTANT SELECTION.....	9
5.1 REVIEW AND ACKNOWLEDGMENT OF DEFECTIVE PROPOSALS	10
5.2 RIGHT OF REJECTION	10
5.3 REFERENCES	10
5.4 RESPONSIBILITY	10
5.5 CLARIFICATION OF RESPONSE	11
5.6 INTERVIEWS.....	11
5.7 FINALIST SELECTION	11
5.8 TIES AMONG PROPOSERS	11
5.9 NOTICE OF INTENT TO AWARD.....	11
5.10 CONTRACT NEGOTIATION	12
5.11 PROTEST PROCEDURES	12
5.12 RESULTING CONTRACT	13
SECTION 6 - CONTRACT	13
6.1 CONTRACT FORM	13
6.2 BUSINESS LICENSE REQUIRED	14
6.3 INSURANCE REQUIREMENTS	14
6.4 LAWS AND REGULATIONS.....	15
SECTION 7 - INSTRUCTIONS TO PROPOSERS	15
7.1 GENERAL.....	15
7.2 INFORMATION OF RECORD	15

7.3	PROPOSAL PREPARATION AND FORMAT	15
7.4	SIGNATURE ON PROPOSAL	16
7.5	PREPARATION COSTS.....	16
7.6	CONFORMANCE TO SOLICITATION REQUIREMENTS.....	16
7.7	DEFINITIONS	16
7.8	QUESTIONS AND CLARIFICATIONS	17
7.9	PROTEST OF REQUIREMENTS	17
7.10	PROTEST OF CONTRACT AWARD.....	18
7.11	PROPOSAL MODIFICATION	18
7.12	PROPOSAL WITHDRAWALS.....	18
7.13	PROPRIETARY INFORMATION	18
7.14	TERMS AND CONDITIONS	19
7.15	PROPOSAL OPENING	19
SECTION 8 - PROPOSAL FORM		20
 APPENDICES		
	APPENDIX A – EXAMPLE CONTRACT, INCLUDING EXHIBIT B, EXHIBIT C	
	APPENDIX B – FORM W-9	
 ATTACHMENTS (BOUND SEPARATELY)		
	ATTACHMENT 1 – NPDES PERMIT	



ADVERTISEMENT

**CITY OF ASHLAND PUBLIC WORKS – REQUEST FOR PROPOSALS
QUALIFICATIONS BASED SELECTION
For
PROFESSIONAL ENGINEERING SERVICES**

The City of Ashland (City) is seeking Proposals for professional engineering consulting services for **Project 2021-12 Flow Augmentation Water Quality Trading Plan for Excess Thermal Load**. This project will facilitate regulatory compliance with Excess Thermal Load (ETL) water quality provisions in the City's new National Pollution Discharge Elimination System (NPDES) Permit, which regulates discharges from the Wastewater Treatment Plant (WWTP) to receiving waters in Bear Creek and Ashland Creek. The consulting team will provide all applicable studies, analysis, modeling, and reporting leading to, and including, the development of a water quality trading plan pursuant to applicable Oregon Water Quality Trading rules in OAR 340-039. The Plan will provide a strategy for ETL reduction at the WWTP outfall in Bear Creek via controlled releases of stored cold water from Reeder Reservoir. This project will include the following phases:

Phase 1: Feasibility/Limitations Study

Phase 2: Thermal Benefit Analysis

Phase 3: Water Quality Trading Plan Development

Proposals must be physically received by **April 7, 2022 not later than 2:00 PM PST** (main lobby clock), in the City of Ashland Public Works Engineering Office located at 51 Winburn Way, Ashland OR, 97520, or by mail at 20 E. Main Street, Ashland, OR 97520. Proposers mailing Proposals should allow normal delivery time to ensure the timely receipt of their Proposals. Any Proposal received after the date and time set for receipt of Proposals will not be considered and will be returned to the proposer unopened. For further information, contact the City's Project Manager, Kaylea Kathol, PMP, Sr. Project Manager at 541/488-5587 or by email at kaylea.kathol@ashland.or.us. Consultant selection is anticipated to result in the issuance of a contract for personal services in a form substantially similar to the one provided in this RFP.

Proposal documents may be downloaded from OregonBuys. Any addenda that may be issued relating to this RFP will be available from OregonBuys, and potential proposers are cautioned to continuously monitor the site for updates and addenda.

All Proposals shall be submitted as set forth in Section 7 - Instructions to Proposers. The City is not responsible for Proposals submitted in any manner, format, or to any delivery point other than as required by this RFP. Proposals shall be limited to eight (8) pages.

Consultant selection will be based upon weighed criteria as set forth in this Request for Proposals and will include criteria including, but not limited to, similar project experiences, general experience, staffing availability, schedule, and response time.

The City of Ashland reserves the right to cancel this procurement or reject any and all Proposals in accordance with ORS 279B.100.

Scott Fleury, PE, Public Works Director

First date of solicitation: March 8, 2022
RFP for Project No. 2021-12

CITY OF ASHLAND
DEPARTMENT OF PUBLIC WORKS
REQUEST FOR PROPOSALS – QUALIFICATIONS BASED SELECTION
PROJECT NO. 2021-12

Flow Augmentation Water Quality Trading Plan for Excess Thermal Load

SECTION 1 - PROJECT OVERVIEW

1.1 Objectives

The City of Ashland (City) is seeking written Proposals for the development of Project No. **2021-12 Flow Augmentation Water Quality Trading Plan for Excess Thermal Load**. This project will facilitate regulatory compliance with Excess Thermal Load (ETL) water quality provisions in the City’s new National Pollution Discharge Elimination System (NPDES) Permit, effective March 1, 2022. The NPDES Permit regulates effluent discharges from the Wastewater Treatment Plant (WWTP) to receiving waters in Bear Creek and Ashland Creek (Attachment 1 – NPDES Permit). The consulting team will provide all applicable studies, analysis, modeling, and reporting leading to, and including, the development of a water quality trading plan pursuant to applicable Oregon Water Quality Trading rules in OAR 340-039. The trading plan will provide a strategy for ETL reduction at the WWTP outfall in Bear Creek via controlled releases of stored cold water from Reeder Reservoir. The project phases and schedules are based on the NPDES Permit Compliance Schedule, and will include, but are not specifically limited to, the following tasks and phases:

Phase 1: Feasibility/Limitations Study - Complete a study and submit findings to Oregon Department of Environmental Quality (DEQ) identifying the feasibility and limitations of flow augmentation to Bear Creek via cold water releases in Ashland Creek from Reeder Reservoir. A final report on feasibility must be submitted to DEQ by March 1, 2024.

Phase 2: Thermal Benefit Analysis - Complete a study and submit findings to DEQ, quantifying thermal benefits of cold water releases from Reeder Reservoir at the WWTP outfall site in Bear Creek. A final report on the study on the thermal benefits of cold water releases must be submitted to DEQ by March 1, 2025.

Phase 3: Water Quality Trading Plan Development - Develop a DEQ-approved Flow Augmentation Water Quality Trading Plan (Plan) that details an analysis approach to evaluate benefits transferrable to the outfall site in Bear Creek and permit conditions. A draft Plan must be submitted to DEQ by March 1, 2026, and ETL limit compliance must be fully achieved by March 1 2027. While not explicitly stated in the Compliance Schedule, it is inferred that full compliance includes submission of a Final Plan, following standard applicant- and public review periods.

The approved consultant team will complete all phases of the project. The phases will be negotiated and awarded collectively through a single City of Ashland Contract for Personal Services.

1.2 Background Information

On March 1, 2022 the City received a new NPDES permit from DEQ, regulating effluent discharged from the WWTP into receiving surfaces waters (Attachment 1). Under current conditions, the effluent does not comply with certain water quality standards in the Permit, including provisions for mixing zones,

temperature, and toxics, as well as limits on ETL. Accordingly, DEQ has included a Compliance Schedule in the permit that identifies three major compliance actions the City must undertake, with key milestones that provide a path to compliance. The Compliance Schedule is provided on page 31 of the NPDES Permit.

Two compliance activities are underway, including a project to relocate the WWTP outfall from its current location in Ashland Creek to Bear Creek, and a Riparian Restoration Water Quality Trading (WQT) Program within the Bear Creek watershed. The outfall relocation project will resolve the City's compliance obligations for mixing zones, temperature, and toxics. The ETL limit exceedances are being addressed, in part, by the WQT Program, which is on-track to mitigate most of the City's ETL. The WQT program generates daily thermal credits by increasing shade via riparian restoration, which blocks thermal loading into the watershed. Thermal credits can be applied to the daily ETL from the effluent.

The third activity on the compliance schedule, and the subject of this RFP, is cold water flow augmentation. The thermal credits generated from riparian restoration are not expected to fully mitigate ETL exceedances projected to occur between October 15 and December 14, when reduced shade, combined with potential low flows in Bear Creek and more stringent biological temperature criteria lessen the effectiveness of the WQT Program. During this period the City may need to augment flows in Bear Creek by releasing cooler water stored in Reeder Reservoir down Ashland Creek. Ashland Creek enters Bear Creek just upstream of the new outfall location. Preliminary data collection and analysis supports the concept of flow augmentation for compliance purposes (See Section 1.3 - Reference Documents). However, a formalized plan to compliance has not been developed. This RFP will result in the development of a DEQ-approved Flow Augmentation Water Quality Trading Plan (Plan). The City will execute the Plan to achieve compliance during periods when thermal credits generated by riparian restoration are insufficient to offset ETL exceedances.

1.3 Reference Documents

Proposers are strongly encouraged to review applicable sections of the Outfall Relocation Study by CH2M Hill (2017). Section 5.3.2 of the report includes the data and findings of a preliminary study on cold water releases from Reeder Reservoir as a means of compliance with ETL limits:

http://www.ashland.or.us/Files/Ashland_Outfall_Relocation_Study_FINAL_Aug2017.pdf

In July 2021, City staff consulted with DEQ regarding examples of existing flow augmentation plans that have been approved by the agency. The following documents were suggested by DEQ as potentially useful guides for developing and implementing flow augmentation water quality trading.

- The current Clean Water Services (CWS) Trading Plan (2016). DEQ suggests searching for the term "flow enhancement" in this plan:
<https://www.cleanwaterservices.org/media/2284/thermal-load-management-plan.pdf>
- Clean Water Services Annual Report (2020). Again, search for "flow enhancement" to find the correct references.
<https://www.cleanwaterservices.org/media/2682/cws-2020-water-quality-credit-trading-annual-report.pdf>
- A good, albeit high-level, overview of CWS's flow augmentation strategy in their integrated Plan:
https://www.cleanwaterservices.org/media/2645/cws-integrated-plan_2020.pdf

- DEQ recently approved a trading plan for the Willamette Water Supply System (WWSS) to offset their ETL. DEQ does not think the WWSS is actively pursuing flow augmentation at present, but provides a good concept in their trading plan:
http://www.ourreliablewater.org/wordpress/wp-content/uploads/2020/10/WWSS_Trading_Plan_Approval_Signed_20201023.pdf

SECTION 2 - SCHEDULE

The schedule of events listed below represent City’s estimated schedule for this request for proposal. This schedule is SUBJECT TO CHANGE and will be adjusted as required.

	EVENT	DAILY COUNT (CALENDAR DAYS)	DATE
1.	Request for Proposal Released	0	3/8/2022
2.	Last Date for Request for changes/Protest for Specifications/Questions	10 days prior to Proposal Closing	3/28/2022
3.	Last Date for City to Post Addenda	3 days prior to Proposal Closing	4/4/2022
4.	Solicitation Closing Date	~30 days after Proposal Release	4/7/2022
5.	Responses Evaluated	~15 days after Closing Date	4/22/2022
6.	Interviews Held (if necessary)	~25 days after Closing Date	5/2/2022
7.	Intent to Award Announced	~30 days after Closing Date	5/7/2022
8.	Contract Negotiations	~40 days after Closing Date	5/17/2022
9.	Expected Project Completion (all phases)		3/12/2027

SECTION 3 - SCOPE OF SERVICES

3.1 General Requirements

- **Personnel, Materials, & Equipment:** The Consultant shall provide qualified and competent personnel and shall furnish all supplies, equipment, tools and incidentals required to accomplish the work. All materials and supplies shall be of good quality and suitable for the assigned work.
- **Safety Equipment:** The Consultant shall provide and use all safety equipment including, and not limited to hard hats, safety vests and clothing required by State, Federal regulations and Department policies and procedures.
- **Professional Responsibilities:** The Consultant shall perform the work using the standards of care, skill and diligence normally provided by a professional in the performance of such services in respect to similar work and shall comply will all applicable codes and standards.
- **Project Management:** The Consultant and the City staff will meet as required during project duration. The objectives of the meeting will include reviewing the scope, budget, schedule and deliverables. The Consultant will organize and manage the consultant project team and coordinate with city project manager and City staff.

- Monthly Invoices and Progress Reports: The Consultant shall prepare monthly invoices and progress reports including the following:
 - Work Completed during the month by work task as a percentage of completion.
 - Needs for Additional Information, Reviews, or Changes to the Scope of Work.
 - Scope, Schedule, and Budget Issues and Changes.

3.2 Specific Requirements

3.2.1 Phase 1: Feasibility/Limitations Study

Complete a study and submit findings to Oregon Department of Environmental Quality (DEQ) identifying the feasibility and limitations of flow augmentation to Bear Creek via cold water releases in Ashland Creek from Reeder Reservoir. Consultant will:

- Provide a project manager to oversee project and all contractual phases
- Review existing infrastructure documentation, including Hosler Dam and penstock, and as applicable, powerhouse, water treatment plant and wastewater treatment plant
- Review existing water quality data and reporting supporting conceptual flow augmentation
- Identify limitations of flow augmentation, which will include at a minimum:
 - Collection of any data necessary to assess the water quality effects on Ashland Creek due to releasing water from lower depths in Reeder Reservoir.
 - Determination of the maximum rates of additional flow release for temperature control from Reeder Reservoir that can be allowed considering the City's overall water supply and demand situation.
 - Assessment of existing infrastructure ability/limitations to operate cold water releases from deep outlets at Reeder Reservoir.
 - Provide findings in a Feasibility Study report
- Assist the City in responding to any questions or concerns from DEQ

3.2.2 Phase 2: Thermal Benefit Analysis

Complete a study and submit findings to DEQ, quantifying thermal benefits of cold water releases from Reeder Reservoir at the WWTP outfall site in Bear Creek. The study will report on:

- Development a stream temperature model for Ashland Creek to account for any potential heating in Ashland Creek and to account for any additional temperature benefit from flow augmentation (e.g. volume increases and residence time decreases).
- Use of the model to evaluate the thermal benefits of the cold water release from Reeder Reservoir at the point of compliance at the Bear Creek outfall.

3.2.3 Phase 3: Water Quality Trading Plan Development

Develop a DEQ-approved Flow Augmentation Water Quality Trading Plan that details an analysis approach to evaluate benefits transferrable to the outfall site in Bear Creek and permit conditions. The

Plan shall be consistent with applicable Oregon Water Quality Trading rules in OAR 340-039. The consultant will:

- Create a Draft Plan for DEQ review
- Assist the City in responding to and resolving DEQ comments on the Draft Plan during the applicant review period
- Attend one City Council meeting to provide technical support to staff during presentation of the Draft Plan to City leadership
- Assist the City in resolving comments and concerns that may arise during a public review period of the Draft Plan
- Incorporate results of review processes into a final plan for DEQ approval

A final, comprehensive task-specific scope and fee schedule will be negotiated between City and the selected consulting firm.

SECTION 4 - EVALUATION CRITERIA

Written Proposals will be evaluated and scored and a contract may be awarded based upon the proposer's qualifications and experience as described below:

4.1 Project Approach (20 Points Possible)

Provide a description of how your firm would approach the development a water quality trading plan pursuant to OAR 340-039 that includes flow augmentation. Include a summary of prior partnerships with the City of Ashland if any. Include a summary of your quality control program.

4.2 Project Experience (30 Points Possible)

- a. Describe how your firm is organized and how its resources will be utilized to complete the work.
- b. Provide a summary of relevant work experience associated with development of water quality trading programs, particularly programs that include a flow augmentation component.
- c. Provide a concise description of at least three (3) projects in the last ten (10) years, involving similar work to those listed in the scope of work.
- d. Indicate which members of the proposed project team, if any, who worked on the example projects, and their involvement. These team members should be included in the Key Persons list submitted in 4.3(b) below.
- e. Submit references for three of the projects described above. Include the Client's name, organization name, contact name, contact email and phone.

4.3 Project Team Experience (30 Points Possible)

- a. Provide a description of the proposed organizational structure to be used for the project.
- b. Provide a list of the key staff proposed for this project ("Key Person(s)"). Be specific on the individuals that will play primary roles in development of the required engineering and their experience working with municipalities on NPDES compliance projects. Provide a concise summary of each key person(s)'s role, and a description of their relevant experience for this project.

- c. Submit resumes that support each Key Person’s relevant experience. *No more than five resumes should be submitted as Appendix A and will not count against page limit.*
- d. Indicate which individual will manage the project and be the primary contact. Indicate the specific experience this individual has managing project similar to the proposed project.
- e. Provide the anticipated percentage of time devoted by each Key Person to the project during the term of the contract. If applicable, indicate how any Key Person’s availability is expected to vary by phase.

4.4 Proposer’s Demonstrated Ability to Successfully Complete Similar Projects on Time and Within Budget (20 Points Possible)

For each of the three (3) projects listed in response to 4.2(c), provide a discussion of whether the project was completed on time and on budget or needed to be revised. Briefly explain the reason for any revisions, and what attempts were made to bring the project back on schedule and within budget.

4.5 Termination for Default (Pass or Fail)

Proposers shall indicate if they have had a contract terminated for default in the last five years. Termination for default is defined as notice to stop performance that was delivered to the Proposer due to the Proposer’s non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and determined that the Proposer was in default.

NOTE: If a Proposer has had a contract terminated for default in this period, then the Proposer shall submit full details including the other party’s name, address and phone number. City of Ashland will evaluate the facts and may, at its sole discretion, reject the Proposal on the grounds of past performance.

4.6 Scoring

	CATEGORY	POSSIBLE POINTS	POINTS SCORING
1.	Project Approach	20	
2.	Project Experience	30	
3.	Project Team Experience	30	
4.	Demonstrated Ability to Successfully Complete Projects on Time and Within Budget	20	
6.	Termination for Default	<u>P/F</u>	
	Total	100	

SECTION 5 - EVALUATION PROCESS AND CONSULTANT SELECTION

Proposals will be reviewed and evaluated by an evaluation committee of reviewers consisting of at least three City employees. The total number of points possible for written Proposals is 100, and an additional 100 points may be scored through the interview process.

5.1 Review and Acknowledgment of Defective Proposals

Due to limited resources, City generally will not completely review or analyze Proposals that on their faces fail to comply with the minimum mandatory requirements of the solicitation documents nor will City generally investigate the references or qualifications of such proposals. Therefore, City will not acknowledge whether or not an unsuccessful Proposal was complete, responsive, responsible, sufficient, or lawful in any respect. This is a public solicitation, the processes and procedures which are established and required by Oregon law and City-adopted rules. Proposers are advised to strictly follow the process, procedures, and requirements as set forth in this RFP and not anticipate or rely on any opportunity to negotiate, beyond such limitations that are identified herein.

5.2 Right of Rejection

Proposers must comply with all terms of this RFP and all applicable federal, state, and local laws, administrative rules, and regulations. The City may reject any Proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of this RFP.

Proposers may not qualify the Proposal nor restrict the rights of the City. If a Proposer does so, the City may determine the Proposal to be a non-responsive counter-offer, and the Proposal may be rejected.

Minor informalities that may be waived include those that:

- do not affect responsiveness,
- are merely a matter of form or format,
- do not change the relative standing or otherwise prejudice other offers,
- are trivial, negligible, or immaterial in nature,
- do not reflect a material change in the work, or,
- do not constitute a reservation against a requirement or provision.

The City reserves the right to refrain from making an award if the City determines that to be in its best interest.

A Proposal from a debarred or suspended Proposer shall be rejected.

5.3 References

The City reserves the right to investigate any and all references and the past performance information provided in the Proposal with respect to the proposer's successful performance of similar projects, compliance with specifications and contractual obligations, completion or delivery of a project on a schedule, and lawful payment of employees and workers.

The City reserves the right to check any and all sources for information on a proposer's past performance, including sources other than the references provided in the proposer's Proposal. The City may consider information available from any source, including government bodies and regulatory authorities.

5.4 Responsibility

The City reserves the right to investigate and evaluate, at any time prior to award and execution of the contract, the apparent successful Proposer's responsibility for performing the contract. Submission of a signed Proposal shall constitute approval for City to obtain any information City deems necessary to conduct evaluation. City reserves the right to request additional information or documentation from the successful Proposer prior to award of contract. Such information may include, but is not limited to,

current and recent balance sheets, income statements, cash flow statements, or a performance bond from an acceptable surety. Failure to provide this information will result in rescission of City's Intent to Award.

City may postpone the award of contract after announcement of the apparent successful Proposer in order to complete its investigation and evaluation. Failure of the apparent successful Proposer to demonstrate responsibility shall render the Proposer non-responsible and shall constitute grounds for rejection of the proposal.

5.5 Clarification of Response

City reserves the right to request clarification of any item in any Proposal, or to request additional information necessary to properly evaluate a particular Proposal. All request for clarification and responses shall be in writing.

During the evaluation of Proposals, Proposers must respond to any request for clarification from the Evaluation Committee within 24 hours of request (Monday through Friday). Inability of the Evaluation Committee to reach a Proposer for clarification and/or failure of a Proposer to respond within the time stated may result in rejection of the Proposer's Proposal.

5.6 Interviews

The outcome of the Proposal evaluations *may* result in placement on an interview (short-listed) with time and date of the interview. Should City elect to hold interviews, the total additional points possible for the interview will be **100**.

City may invite up to three (3) of the highest-ranked firms (or at a natural break in scoring) to interview. The Firm's Key Persons, as identified by City shall be prepared to attend the interview within five (5) business days of notification by City, and shall be prepared to answer questions provided with the Interview Invite letter, and questions that will be provided at the time of the interview, and discuss the Firm's proposed project approach.

5.7 Finalist Selection

The firm with the highest total score as a result of written Proposal scoring and interview scoring, if conducted, will be considered the Finalist, and all other firms will be ranked according to next highest score, etc.

5.8 Ties among Proposers

If City determines after the ranking of potential firms, that two or more of them are equally qualified to be the Finalist, City may select a candidate through any process that the City believes will result in the best value for taking into account the scope, complexity and nature of the Work. The process shall instill public confidence through ethical and fair dealing, honesty and good faith on the part of City and Proposers and shall protect the integrity of the Public contracting process.

As part of the procedure for choosing the Finalist between two or more equally qualified candidates, City may elect to give a preference to a local consulting firm.

5.9 Notice of Intent to Award

After the completion of the evaluation and ranking, the City will issue a written Notice of Intent to Award, naming the Finalist, and will send copies to all Proposers.

5.10 Contract Negotiation

City will begin negotiating the fees for the project, along with expanded scope of work detail, with the highest ranked Proposer and specifically, conduct direct negotiations toward obtaining written agreement on:

- a) Contractor's performance obligations and schedule; and any expansion of the Scope of Work.
- b) Contractor's fees, payment methodology, and a maximum amount payable to Contractor for the Work required under the Contract that is fair and reasonable to City determined solely by City, taking into account the value, scope, complexity and nature of work.
- c) Any other provisions City believes to be in the City's best interest to negotiate.
- d) Initial negotiations will be based upon Contract Phase 1.

City shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if City and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. City may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, as determined solely by City, City may end the particular formal solicitation. Nothing in the rule precludes City from proceeding with a new formal solicitation for the same Work described in the RFP that failed to result in a Contract.

5.11 Protest Procedures

City shall provide to all Proposers a copy of the selection notice that City sent to the highest ranked Proposer. A Qualified Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the City consistent with the provisions of AMC 2.50.140 (Protests of Procurement Process and Solicitant Award) and ORS 279B.410 (Protests of Contract Award).

Eligible Proposers protesting award shall follow the procedures described herein. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Proposers.

- a) Protests must be received within seven (7) days after issuance of the notice of intent to award the Contract. City will not consider late protests.
- b) Protests must comply with the requirements of ORS 279B.410(1) through (4)
- c) Protests based on procedural matters will not be considered.
- d) The City's Public Works Director will review the protest and will fax and mail the protesting party a written response within three (3) business days of receipt of the written protest to the fax number and address provided in the proposal. Any written response may be comprised of a determination of the protest, a notice to the protesting party of the need for additional time in which to evaluate the matter, or other notice to the protesting party.
- e) If the Public Works Director's determination (response) is adverse to the protester, any further appeal of the Public Works Director's determination by the party must be submitted in writing to the City Administrator within three (3) business days of issuance of the Public Works Director's determination (response).

- f) The City Administrator will review any appeal of the Public Works Director's determination and shall fax and mail, in accordance with the fax number and address provided in the proposal, the protesting party a written response within three (3) business days of receipt of written appeal.
- g) If the determination of the City Administrator is adverse to the protesting party's interest, the protesting party may only appeal to the City Council by filing a written notice of appeal to the Council with the City Administrator within two (2) business days of issuance of the City Administrator's written determination.

The Council, in considering the protest, shall review the documentation presented to the Public Works Director and the City Administrator on the next regularly scheduled Council Meeting, but in no event shall they be required to review in less than ten (10) business days, and thereafter, base their decision on such material. The Council review will be limited to the evaluation of compliance with City's policies and procedures, requirements of the RFP and the equal and fair application of City's contracting rules. The City Council's determination shall be City's final decision.

An adversely affected or aggrieved proposer must exhaust all avenues of administrative remedies before seeking judicial review of City's Consultant selection or Notice of Intent to Award.

5.12 Resulting Contract

Upon reaching final agreement in regards to fees and a final scope of work with an awarded Proposer, the City will issue a Personal Services Agreement ("PSA"), in substantially the form as found in the Appendix of this RFP. The PSA will include the City's Standard Terms and Conditions and the final scope of work and fees.

SECTION 6 - CONTRACT

6.1 Contract Form

The consultant selected by the City will be expected to enter into a written contract in substantially the same form as attached to this RFP (ATTACHMENT 2). The Proposal should indicate acceptance of the City's contract provisions. Suggested reasonable alternatives that do not substantially impair City's rights under the contract may be submitted as outlined under Section 5.11. Unconditional refusal to accept contract provisions will result in Proposal rejection.

Contract Duration –

- Phase 1: Feasibility Study (18-24 months)
- Phase 2: Thermal Benefit Analysis (12 months)
- Phase 3: Trading Plan Development (12 months) and Finalization (12 months)

Contract Payment – Contingent upon City's need, consultant's performance and availability of approved funding, City reserves the right to amend the contract (within the scope of the project described in this RFP) for additional tasks, project phases and compensation as necessary to complete a particular project. Proposers are advised that the award and potential dollar amount of the contract under this RFP will be contingent upon approval by the Ashland City Council acting as the Contract Review Board.

Payment will be made for completion of, or acceptable monthly progress on, tasks and deliverables in conformance with contract requirements and applicable standards. The method of compensation will be determined by the City and may be based upon any one or combination of the following methods:

- Cost plus fixed-fee, up to a maximum NTE amount
- Fixed price for all services. Fixed price per deliverable. Fixed price per milestone
- Time and materials, up to a maximum NTE amount (City preferred method)
- Price per unit

Ashland Living Wage Requirements – Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying at least the living wage as established by the City of Ashland on June 30, 2021 (\$15.96 per hour). Living wage provisions apply as follows:

- For all hours worked under a service contract between their employer and the City if the contract exceeds \$22,310.46 or more.
- For all hours worked in a month if the employee spends 50% or more of the employee’s time in that month working on a project or portion of business of their employer, if the employer has ten or more employees and has received financial assistance for the project or business from the City in excess of \$22,310.46.
- Contractor is also required to post the notice included in the appendix predominantly in areas where it will be seen by all employees.
- In calculating the living wage for full time employees, employers may add the value of health care, retirement, 401K and IRS eligible cafeteria plans, and other benefits to the employee’s wages. The City of Ashland Living Wage Statement is appended to the sample contract included in the appendix.

6.2 Business License Required

The selected consultant must have or acquire a current City of Ashland business license prior to conducting any work under the contact.

6.3 Insurance Requirements

Contractor shall at its own expense provide the following insurance:

- a. Worker’s Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers’ compensation coverage for all their subject workers.
- b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 per occurrence. This is to cover damages caused by any error, omission, or negligent act related to the professional services to be provided under the contract.
- c. General Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 per occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under the contract.
- d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for each accident for bodily injury and property damage, including coverage for owned, hired or non-owned vehicles, as applicable.
- e. Notice of Cancellation or Change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days’ written notice from the contractor or its insurer(s) to the City.

Additional Insured/Certificates of Insurance. Contractor shall name The City of Ashland, Oregon, and its elected officials, officers and employees as additional insurers on any insurance policies required herein

but only with respect to contractor's services to be provided under this contract. As evidence of the insurance coverage required by this contract, the contractor shall furnish acceptable insurance certificates prior to commencing work under this contract. The certificate will specify all of the parties who are additional insureds. The consultant's insurance is primary and non-contributory. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City. The contractor shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance.

6.4 Laws and Regulations

The proposer is assumed to be familiar with all Federal, State, County or City laws or regulations, which in any manner affect those engaged or employed in the work or the materials or equipment used or which in any way affect the conduct of the work, and no pleas of misunderstanding will be considered on account of ignorance thereof. If the proposer shall discover any provision in these specifications or project information, plans or contract documents which is contrary to or inconsistent with any law or regulations, they shall report it to the City of Ashland in writing.

All work performed by the contractor shall be in compliance with all Federal, State, County and local laws, regulations and ordinances. Unless otherwise specified, the contractor shall be responsible for applying for applicable permits and licenses.

SECTION 7 - INSTRUCTIONS TO PROPOSERS

7.1 General

All Proposals and any resulting contracts are subject to the provisions and requirements of Oregon Revised Statutes Chapters 279A and 279B and to the Ashland Municipal Code (AMC) Chapter 2.50. Engineering contracts are further subject to ORS Chapter 279C.

7.2 Information of Record

This Request for Proposal (RFP) will be distributed through OregonBuys. All updates, addendum, and related communications will be published through OregonBuys. All prospective proposers are advised to continuously monitor the website for information regarding this proposal. It is the sole responsibility of the proposer to check the website on a timely basis for critical information regarding the proposal.

7.3 Proposal Preparation and Format

- Proposals shall be typewritten in 12 point font minimum.
- Except for proposer attachments, proposal form, cover letter and resumes, the Proposal shall contain no more than 8 pages.
- Cover Letter, proposal form and resumes do not count against the 8 page limit.
- Proposal narrative must follow along with scoring criteria sections
- No oral, telegraphic, telephone or facsimile Proposals shall be accepted.
- The electronic submission of a Proposal will not be permitted.
- To be considered, all Proposals must be received by the City prior to the date and time set for Proposal closing.
- A total of five (5) original (wet signatures), complete Proposals shall be submitted to the City prior to the date and time set for closing.

- One (1) digital copy of the complete Proposal shall be submitted on a thumb drive.

7.4 Signature on Proposal

Proposals shall be signed in ink by an authorized representative of the Proposer. Signature on a Proposal certifies that the Proposal is made without connection with any person, firm or corporation making a proposal for the same goods and/or services and is in all respects fair and made without collusion or fraud. Signature on a Proposal also certifies that the proposer has read, fully understands and agrees with all solicitation requirements, terms and conditions. No consideration will be given to any claim resulting from proposing without fully comprehending all requirements of this Request for Proposals.

7.5 Preparation Costs

The City may cancel a solicitation, whether informal or formal, or reject all Proposals, without liability incurred by City at any time after issuing an RFP, if City believes it is in City's best interest to do so. Consultants responding to RFPs are responsible for all costs they may incur in connection with submitting Proposals and responses to RFPs, which includes, but is not limited to: preparation, submittal, travel expenses, interviews, presentations, or evaluation of any Proposal.

7.6 Conformance to Solicitation Requirements

Proposals shall conform to the requirements of this Request for Proposals. All necessary attachments (Independent Contractor Certification, etc.) shall be submitted with the Proposal and in the required format. Failure to comply with all requirements may result in Proposal rejection.

7.7 Definitions

For the purpose of this RFP:

"Agency" or "City" means City of Ashland.

"Business days" means calendar days, excluding Saturdays, Sundays and all City recognized holidays.

"Calendar days" or "days" means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State holiday or other day.

"Council" means City of Ashland Council

"Department" means the City of Ashland Engineering Department.

"Manager" means the City of Ashland Project Manager.

"Proposers"- All firms submitting proposals are referred to as Proposers in this document; after negotiations, an awarded Proposer will be designated as "Consultant".

"Qualification Based Selection" or "QBS" (for the purposes of this RFP) means evaluations and scoring of proposals based on qualifications, experiences and project approach, without considering cost.

"RFP" means Request for Proposals.

"Scope of Work" means the general character and range of services and supplies needed to complete the work's purpose and objectives, and an overview of the performance outcomes expected by Agency.

"Services" means the services to be performed under the Contract by the Consultant.

"Statement of Work" means the specific provision in the final contract which sets forth and defines in detail (within the identified Scope of Work) the agreed-upon objectives, expectations, performance standards, services, deliverables, schedule for delivery and other obligations.

7.8 Questions and Clarifications

All inquiries, whether relating to the RFP process, administration, deadline or award, or to the intent or technical aspects of the services, must be submitted in writing to the City's Project Manager listed in the advertisement for this RFP, at 20 East Main Street, Ashland, Oregon 97520. All questions must be received not later than ten (10) calendar days prior to the date and time set for closing.

Answers to questions received by City, which are deemed by City to be substantive, will be issued as official addenda to this RFP to ensure that all proposers base their proposals on the same information. When appropriate, as determined by City in its sole discretions, revisions, substitution or clarification of the RFP or attached terms and conditions, an official addendum to this RFP will be issued. Proposer shall indicate receipt of all issued addenda by indicating the number of addendum received on the Proposal Form.

Any addendum or addenda issued by the City which may include changes, corrections, additions, interpretations or information, and issued seventy-two (72) hours or more before the scheduled closing time for submission of bids, Saturday, Sunday and legal holidays not included, shall be binding upon the proposer. The City may elect to email addendum to registered proposers but will do so as a courtesy only. All official addendums will be issued through OregonBuys and it shall be the proposer's sole responsibility to acquire any and all addendum pertaining to RFP. The proposer is strongly cautioned to monitor this site on a continual basis.

7.9 Protest of Requirements

Proposers may submit a written protest of any provision, specification or contract term contained in this RFP and may request a change to any provision, specification or contract term contained in this RFP, not later than ten (10) calendar days prior to the advertised proposal closing date, consistent with AMC 2.50.140 (Protests of Procurement Process and Solicitation Award) and ORS 279B.405 (Protests and Judicial Review of Solicitations).

A proposer's written protest must meet the specific requirements of ORS 279B.405(4).

All protests shall be mailed or otherwise delivered to the City marked as follows:

PROPOSAL PROTEST
Proposal No. **2021-12**
City of Ashland Public Works Dept.
ATTN: Kaylea Kathol, PMP, Sr. Project Manager
20 East Main St
Ashland, OR 97520

City Response: The City may reject without consideration a proposer's protest after the deadline established for submitting protest. The City shall provide notice to the applicable proposer if it entirely rejects a protest. If the City agrees with the proposer's protest, in whole or in part, the City shall either issue an addendum reflecting its determination or cancel the solicitation.

Extension of Closing: If the City receives a written protest from a proposer in accordance with this rule, the City may extend closing if the City determines an extension necessary to consider the protest and to issue addenda, if any, to the solicitation of document.

Judicial review of the City's decision relating to a specification protest shall be in accordance with ORS 279B.405.

7.10 Protest of Contract Award

Every Proposer who submits a proposal shall be notified of its selection status. Any Proposer who claims to have been adversely affected or aggrieved by the selection of another or any Proposer who contends that the provisions of this RFP or any aspect of the procurement process has promoted favoritism in the award of the contract or has substantially diminished competition, must file a written protest to this RFP within seven (7) calendar days after the date of the notice of intent to award. Failure to file a protest will be deemed a waiver of any claim by an offeror that the procurement process violates any provision of ORS Chapters 279A, 279B, or 279C, the City of Ashland Municipal Code, or the City's procedures for screening and selection of persons to perform personal services.

7.11 Proposal Modification

Modifications or erasures made before proposal submission shall be initialed in ink by the person signing the proposal. Proposals, once submitted, may be modified in writing before the time and date set for proposal closing. Any modification shall be prepared on company letterhead, shall be signed by an authorized representative, and shall state that the new document supersedes or modifies prior proposal submissions and any other prior proposal modifications. Proposal modifications shall be submitted in a sealed envelope clearly marked "Proposal Modification," identifying the RFP number and closing date and time. Proposers may not modify proposals after proposal closing date and time.

7.12 Proposal Withdrawals

Proposals may be withdrawn in writing on company letterhead signed by an authorized representative and received by the Engineering Services Manager prior to the date and time set for closing. Proposals may be withdrawn in person before closing time upon presentation of appropriate identification.

7.13 Proprietary Information

The City is subject to the Oregon Public Records Laws (ORS 192.311 to 192.478), which require the City to disclose all records generated or received in the transaction of City business, except as expressly exempted. The City will not disclose records submitted by a Proposer that are exempt from disclosure under the Oregon Public Records Law, subject to the following procedures and limitations.

The entire Proposal cannot be marked confidential; nor shall any pricing be marked confidential.

All pages containing the records exempt from disclosure shall be marked "confidential" and segregated in the following manner:

- It shall be clearly marked in bulk and on each page of the confidential document.
- It shall be kept separate from the other Proposal documents in a separate envelope or package
- Where the specification conflicts with other formatting and response instruction specifications, this specification shall prevail.
- Where such conflict occurs, the Proposer is instructed to respond with the following: "Refer to confidential information enclosed." This statement shall be inserted in the place where the requested information was to have been placed.

Proposers who desire that additional information be treated as confidential must mark those pages as "confidential." Proposers shall also cite the specific statutory basis for the exemption and give the reasons why the public interest would be served by the confidentially. Should a Proposal be submitted as described in this section, no portion of it will be held confidential unless that portion is segregated as described in the criteria above.

Notwithstanding the above procedures, the City reserves the right to disclose information that the City determines, in its sole discretion, is not exempt from disclosure or that the City is directed to disclose by the City's Attorney, the District Attorney, or a court of competent jurisdiction.

7.14 Terms and Conditions

Unless an official addendum has modified or reserved the right to negotiate any terms contained in the contract or exhibits thereto, the City will not negotiate any term or condition after the protest deadline, except the statement of work, pricing, and calendar with the selected proposer. By submitting a Proposal, the selected proposer agrees to be bound by the terms and conditions as set forth in this RFP and as such terms and conditions may have been modified or reserved by the City for negotiation. Any Proposal that is received conditioned upon City's acceptance of any other terms and conditions or rights to negotiate will be rejected.

7.15 Proposal Opening

Unless otherwise provided by law, Proposals received in response to this RFP shall be opened at the date and time set for closing at the Engineering Services Building at 51 Winburn Way, Ashland, Oregon 97520. Proposers who attend the Proposal opening shall be informed only of the names of the Proposers submitting Proposals. No other information shall be available, and no copies of the Proposals shall be made. Award decisions will NOT be made at that time.

SECTION 8 - PROPOSAL FORM

Proposals should be prepared and organized in a clear and concise manner and must include all information required by this RFP. Headers, Titles or Tabs should be used to identify required information. Responses to the Evaluation Criteria found in Section 4 shall be organized in the same order listed in that Section, preferably by re-stating the criteria and then responding below the restated criteria.

REQUIRED RESPONSE DOCUMENTS

THE FOLLOWING INFORMATION MUST BE RETURNED WITH YOUR RESPONSE:

(Place a check in front of the item indicating inclusion in your response)

- RESPONSE TO ALL EVALUATION CRITERIA listed in Section 4
- SECTION 8 – Proposal Form
- Independent Contractor Certification

MWESB INFORMATION

The City encourages contracting with minority owned, woman owned, and emerging small business (MWESB). The State of Oregon offers a certification process. Indicate below if your business is a MWESB and if so, which categories have been State certified.

MWESB certified? Yes ___ No ___. If yes, indicate which categories below:

Minority Owned___ Woman Owned___ Emerging Small Business___ Veteran Owned___

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA TO PROPOSAL DOCUMENTS:

Proposer acknowledges receipt of Addenda and agrees to be bound by their contents.

Circle each RFP addendum received: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10

Check if not applicable or if no addenda were received: _____

OSBEELS / OSBGE / ORBAE No.(s)

Provide name(s), title(s), and certification number(s) for each Key Person listed under Section 6.3 (b). Attach additional sheet if necessary)

Name: _____ Title: _____ Certification No: _____

Name: _____ Title: _____ Certification No: _____

Name: _____ Title: _____ Certification No: _____

Name: _____ Title: _____ Certification No: _____

Name: _____ Title: _____ Certification No: _____

Name: _____ Title: _____ Certification No: _____

PROPOSER INFORMATION:

Proposer Company Name

Company Address (from which work will be performed)

Telephone Number

Fax Number

FEDERAL ID NUMBER

Printed Name of Person Signing RFP: _____

Title: _____

Signature: _____

Email Address: _____

APPENDIX A – EXAMPLE CONTRACT, INCLUDING EXHIBIT B, EXHIBIT C

Placeholder. Insert most current agreement template in the Purchasing folder when converting to PDF

APPENDIX B – **FORM W-9**

Placeholder. Insert most current W-9 form when converting to PDF.