



Request for Qualifications

for

Walk Safely Milwaukie Program Engineering Services

January 2011

City of Milwaukie
Community Development Department
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206
(503) 786-7600

Project Number WSMP-11-001

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Section 1 – Invitation

The City of Milwaukie is seeking a qualified and experienced consulting engineering firm to providing civil engineering design services. Proposals will be received at the City of Milwaukie Community Development Office located at 6101 SE Johnson Creek Boulevard, Milwaukie, OR 97206 until 2:00 p.m. on Friday, February 4, 2011. Proposals received after the 2:00 p.m. deadline will not be considered and will be returned unopened to the proposer(s).

The Request for Qualifications may be obtained for no cost at the City of Milwaukie, Community Development Office located at 6101 SE Johnson Creek Boulevard, Milwaukie, OR 97206 or downloaded from the City of Milwaukie website at <http://www.ci.milwaukie.or.us/rfps>.

The Request for Qualifications may be obtained by standard mailing upon request for a fee of \$25.00.

Proposals shall be submitted in a sealed envelope plainly identifying Project Name, Project Number, and Proposer's Name and Address. Proposals shall be addressed to Alex Campbell, City of Milwaukie Community Development, 6101 SE Johnson Creek Boulevard, Milwaukie, OR 97206.

Any addenda will be delivered to all those who have obtained the Request for Qualifications by pick-up or mail through the City of Milwaukie Community Development Office. Proposers are advised to check the City's website regularly for addenda and other pertinent notifications.

For additional information regarding this Request for Qualifications, please contact Alex Campbell at 503 786-7608 or by email at campbella@ci.milwaukie.or.us. The City of Milwaukie reserves the right to reject any and all proposals or to negotiate individually with one or more firms, and to select one or more firms if determined to be in the best interest of the City.

Dated this 7th day of January 2011.

Section 2 – Introduction and General Information

2.1 Introduction

The City of Milwaukie (City) is an Oregon municipality with a 2008 population of approximately 20,915. The City employs approximately 180 full and part time staff and is governed by a City Council comprised of four Councilors and the Mayor. The Council acts as the Local Contract Review Board for the City.

The City seeks a responsible firm that can help define and deliver small, community-desired public safety improvements to be constructed within the right-of-way, as part of the Walk Safely Milwaukie Program. The Walk Safely Milwaukie Program is a new initiative of the City whereby Neighborhood District Associations may submit project proposals for projects to improve "walkability." A complete description of the program is available at:

<http://www.ci.milwaukie.or.us/communitydevelopment/walk-safely-milwaukie>

This solicitation is structured as a RFQ because of the size of the anticipated contract (NTE \$20,000) and the flexibility the City desires to maintain in the delivery of services. The City is confident that Work Order 1 under the City-defined scope will be carried out as defined below. The

City will maintain flexibility in structuring the additional services specified in additional work orders. Contractor will perform all work under discrete work orders, each with a work scope and a “not-to-exceed” amount.

2.2 Submission of Qualifications

Each Proposer shall provide four copies of their proposal, sealed in an envelope plainly identifying Project Name, Project Number, and Proposer’s Name and Address. Proposals shall be addressed and submitted by 2:00 p.m. on Friday, February 4, 2011.

All proposals must arrive at the City of Milwaukie Community Development Office on or before the time and date due. Electronically mailed or faxed proposals will not be accepted.

2.3 Request for Qualifications Schedule

The City anticipates the following general timeline for receiving and evaluating the proposals and selecting a firm/individual for the project. This schedule is subject to change if it is in the City’s best interest to do so.

- Request for Qualifications Posted January 7, 2011
- Deadline to Request Additional Information January 19, 2011, 2:00 p.m.
- Last Date for Addenda January 24, 2011
- Proposals Due February 2, 2011, 2:00 p.m.
- Evaluation of Proposals Complete February 9, 2011
- Notify Proposers of Interviews (if necessary) February 9, 2011
- Proposer Interviews (if necessary) February 14 or 15, 2011
- Notice of Intent to Award February 18, 2011
- City Council Hearing March 1, 2011
- Notice of Award March 2, 2011
- Commencement of Contract March 9, 2011

2.4 Changes to the Solicitation by Addenda

The City reserves the right to make changes to the RFQ by written addendum, which shall be issued to all those who have obtained the RFQ by pick-up or mail through the City of Milwaukie Community Development Office. Addenda will be made available for download on the City’s website at:

<http://www.ci.milwaukie.or.us/rfps>

Proposers are advised to check the City’s website regularly for addenda.

All addenda shall have the same binding effect as though contained in the main body of the RFQ. Oral instructions or information concerning the project given out by anyone other than the Project Manager shall not bind the City.

No addenda will be issued later than the date set in Subsection 2.3, except an addendum, if necessary, postponing the date for receipt of Proposals, withdrawing the invitation, modifying elements of the proposal resulting from delayed process, or requesting additional information, clarification, or revisions of proposals leading to obtaining best offers or best and final offers.

Each Proposer is responsible for obtaining all addenda prior to submitting a Proposal. Receipt of each addendum shall be acknowledged in writing as part of the Proposal.

2.5 Confidentiality

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

2.6 Cancellation

The City reserves the right to cancel contract award for the 2011 Walk Safely Milwaukie Program Engineering Services at any time before execution of the contract by both parties if cancellation is deemed to be in the City's best interest. In no event shall the City have any liability for the cancellation of contract award.

2.7 Late Proposals

All Proposals that are not received by the Proposal Due Date in Subsection 2.3 will not be considered and will be returned unopened to the Proposer(s). Electronically mailed or faxed proposals will not be accepted. Delays due to mail and/or delivery handling, including, but not limited to delays within the City's internal distribution systems, do not excuse the Proposer's responsibility for submitting the Proposal to the correct location by the Proposal Due Date.

2.8 Disputes

In case of any doubt or differences of opinions as to the items or service to be furnished hereunder, or the interpretation of the provisions of the RFQ, the decision of the City shall be final and binding upon all parties.

2.9 Proposer's Representation

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

- A. They have read and understand the RFQ Documents and their Proposal is made in accordance therewith;
- B. They have familiarized themselves with the local conditions under which the work will meet their satisfaction;
- C. Their Proposal is based upon the requirements described in the RFQ Documents without exception, unless clearly stated in the response.

2.10 Conditions of Submittal

By the act of submitting a Proposal in response to this Request for Qualifications, the Proposer certifies that:

- A. The Proposer and each person signing on behalf of any Proposer certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no elected official, officer, employee, or person, whose salary is payable in whole or part by the

City, has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof other than as fully described in the Proposer's response to this solicitation.

- B. The Proposer has examined all parts of the Request for Qualifications, including all requirements and contract terms and conditions thereof, and, if its Proposal is accepted, the Proposer shall accept the contract documents thereto unless substantive changes are made in same without the approval of the Proposer.
- C. The Proposer, if an individual, is of lawful age; is the only one interested in this Proposal; and that no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.
- D. The Proposer has quality experience providing civil engineering design services in a capacity similar to the duties outlined within the scope of services.

2.11 Proposer Requests Interpretation of Request for Qualifications Documents

Proposers shall promptly notify the City of any ambiguity, inconsistency or error, which they may discover upon examination of the RFQ Documents. Proposers requiring clarification or interpretation of the RFQ Documents shall make a written request for the same to the Project Manager.

The City shall make interpretations, corrections, or changes to the RFQ Documents in writing by published Addenda in accordance with Subsection 2.4. Interpretations, corrections, or changes to the RFQ Documents made in any other manner will not be binding, and Proposers shall not rely upon such interpretations, corrections, and changes.

2.12 Proposer Requests for Additional Information

Requests for information regarding City services, programs, or personnel, or any other information shall be submitted in writing to the Project Manager prior to the deadline to request additional information stated in Subsection 2.3.

The City shall respond to requests for additional information in writing by published Addenda in accordance with Subsection 2.4. Responses to requests for additional information made in any other manner will not be binding.

2.13 Competition

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

2.14 Complaints and Inequities

All complaints or perceived inequities related to the Request for Qualifications or award of work referenced herein shall be in writing and directed to the Project Manager. Such submittals will be reviewed upon receipt and will be answered in writing.

2.15 Cost of Request for Qualifications and Associated Responses

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

2.16 City Requests for Clarification, Additional Research, & Revisions

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

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

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

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

2.17 Rejection of Proposals

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

- A. Failure of the Proposer to adhere to one or more of the provisions established in the Request for Qualifications.
- B. Failure of the Proposer to submit a Proposal in the format specified herein.
- C. Failure of the Proposer to submit a Proposal within the time requirements established herein.
- D. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the Proposal process.

The City may reject any Proposal not in compliance with all prescribed public procurement procedures and requirements, and may reject for good cause any or all Proposals upon a finding of the City that it is in the public interest to do so.

2.18 Modification or Withdrawal of Proposal by Proposer

A Proposal may not be modified, withdrawn, or canceled by the Proposer for sixty calendar days following the time and date designated for the receipt of Proposals. Proposals submitted early may be modified or withdrawn only by notice to the City, at the Proposal submittal location, prior to the Proposal Due Date. Such notice shall be in writing over the signature of the Proposer and submitted to the Project Manager. All such communication shall be so worded as not to reveal the amount of the original Proposal or any other material contents of the original Proposal.

Withdrawn proposals may be resubmitted up to the Proposal Due Date provided that they are then fully in conformance with the Request for Qualifications.

2.19 Proposal Ownership

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

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

2.20 Duration of Proposal

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

2.21 Intergovernmental Cooperative Agreement

Pursuant to ORS 279A, other public agencies shall have the ability to purchase the awarded goods and services from the awarded Contractor(s) under terms and conditions of the resultant contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor’s obligation to the City. Any estimated purchase volumes listed herein do not include other public agencies and the City makes no guarantee as to their participation. Any Proposer, by written notification included with their Proposal, may decline to extend the prices and terms of this Request for Qualifications to any and/or all public agencies.

2.22 Affirmative Action/Nondiscrimination

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

Section 3 – Scope of Work

3.1 Introduction

The City of Milwaukie (City) is seeking high quality and responsible services from a qualified and experienced individual or firm to provide civil engineering design services at a competitive price. The selected consultant(s) will provide services to assist the COM Community Development and Engineering Departments with civil/transportation engineering projects. COM will determine, in consultation with the selected firm, the scope of work for each work order and each assigned work order shall have a maximum monetary limit, established in writing, prior to commencement of work.

3.2 Term of Service

The contract resulting from this Request for Qualifications (RFQ) shall be for a period of twelve months, commencing in March 2011.

3.3 Likely Work Orders

Work Order 1 – Design Workshop

1.1 Preparation for Workshop

Consultant shall review initial list of NDA-submitted projects or problematic locations in preparation for workshops. Up to 3 hours. Expected time-frame: March 14-18, 2011.

1.2 Design Workshops

Consultant shall attend and provide on-the-spot advice and design services to neighborhood representatives regarding NDA-submitted projects or problematic locations. Two four-hour sessions; up to 8 hours total. Expected time-frame: March 21-25, 2011.

1.3 Workshop Follow Up

Consultant shall provide a memo to City staff summarizing any recommendations for action based on additional research, including field visits (as necessary), for projects or locations that are not readily addressed within the confines of the design workshop itself. Up to 8 hours. Expected time-frame: March 28-31, 2011.

Work Order 2 – Small Project Design

Provide full design engineering services for a few (2-4) small capital projects (total expected construction cost under \$50,000). City of Milwaukie would provide survey in .dwg format and, at a minimum, a narrative description of base concept. Consultant deliverables would be: 30/60/90 design sets and final stamped bid-ready set. Each design set, including the final set, shall be accompanied by an engineer's estimate of cost, broken out by bid item and including quantities and unit costs based on recent bid experience. City of Milwaukie would provide standard drawings. Likely effort: up to 120 hours. Expected time-frame June/July 2011.

Work Order 3 -- Design Review/Assistance

Consultant shall provide review and comment on conceptual design and 30% designs for up to 2 small/medium capital projects. (Total construction cost up to \$100,000). Up to 10 hours. Expected time-frame Fall 2011.

Section 4 – Proposal and Proposer Requirements

4.1 Submittal of Proposals

In order to be considered for this project, each Proposer must provide four total copies of their proposal. All proposals must arrive at the issuing office on or before the listed time and date due. A corporate officer who has been authorized to make such a commitment must sign the proposals.

Proposals shall be sealed in an envelope, plainly identifying Project Name, Project Number, and Proposer's Name and Address.

4.2 Proposer Requirements

The following minimum criteria will apply:

- A. Each Proposer shall have no fewer than five years experience in providing all the types of services required within the Scope of Work in Section 3.
- B. Proposer shall demonstrate, to the satisfaction of the City, the ability to provide the services required within the Scope of Work in Section 3 to the City and shall demonstrate a proven history of providing such service for public agencies.
- C. Proposer shall not have a record of substandard workmanship. The City will verify this requirement by communication with the licensing authority, the Proposer's clients and references, and as many other references as the City may deem appropriate.

4.3 Proposer Representations

The Proposer further agrees to the following:

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

4.4 Proposal Format and Requirements

4.4.1 Proposal Format

Proposers are encouraged to provide clear, concise proposals that contain only information required to respond to the needs of this project. Proposals shall be type written with the body text consisting of a serif font at least 12-point (e.g. Times New Roman, Garamond). Proposals shall be double sided and stapled once in the upper left hand corner. The City requests that submittal materials contain post-consumer recycled content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled, such as PVC binders, spiral bindings, and plastic or glossy covers or dividers. One page is considered to be one side of a single 8 1/2" x 11" sheet.

4.4.2 Introductory Letter (Two Page Maximum)

Include the name of the proposing firm and its principal business address and phone number where the relationship will be managed. The letter should address the firm's willingness and commitment, if selected, to provide the services offered and a description of why the Proposer believes it should be selected. The letter should address the availability of the key team members to complete work orders within the time-frames described in Section 3. The letter should be addressed to the Project Manager. Provide telephone and fax numbers, email addresses, and mailing addresses for Proposer's project contact/manager. A statement in the letter of interest shall specifically stipulate that the consultant accepts all terms and conditions contained in the RFQ and model Personal Services Agreement. The letter shall name the person(s) authorized to represent the consultant in any negotiations and the name of the person(s) authorized to sign any contract or agreement, which

may result. The letter of interest must be signed by a legal representative of the Consultant firm or institution, authorized to bind the firm or institution in contractual matters.

4.4.3 Proposer's Team Experience (Three Pages Maximum)

Proposer shall describe the team and/or individual to be assigned to the project by name, specifying which tasks would be completed by which team members. If a team approach is suggested, City would expect a team lead who would attend the workshop described in Work Order 1 in Section 3 above and oversee design. Describe the firm's size, office locations, and relevant capabilities and resources in relation to this project. Only experience on completed projects should be included in this section. This section should include:

- A. Experience with design of context-sensitive pedestrian- and bicyclist-oriented improvements.
- B. Experience designing within constrained right-of-ways and in a "retro-fit" condition.
- C. Experience with innovative solutions that calm traffic and improve safety.
- D. Experience working within tightly-constrained budgets and designing effective, low cost solutions.

Proposers may include bios (up to 2 pages) for each key team member. These pages will not count against the proposal page maximum.

4.4.4 Project Cost (One Page Maximum)

Proposer shall provide a billable rate for each team member to be assigned to the project.

4.4.5 Past Projects/References (Two Pages Maximum)

Proposer shall provide short project descriptions of three to five (3-5) completed projects that meet the criteria listed in Section 4.4.3. Proposer shall list the firm(s) and project team member(s) that worked on the listed projects. Proposer shall include references for each of the projects. List contact name, title, agency, phone number, and e-mail address.

4.4.6 Proposal Form (Attachment A)

Please complete the attached Proposal Form, Attachment A, with the required signature and other information. Please return this form with the Proposals in a sealed envelope in accordance with Section 4.1.

4.4.7 Sample Personal Services Agreement (Attachment B)

Review sample personal services agreement, Attachment B. Please review the agreement in consideration of the Proposal.

4.4.8 Addenda

Receipt of all Addenda shall be acknowledged by the Proposer on the Proposal Form. Each Proposer shall ascertain, prior to submitting a Proposal, that the Proposer has received all Addenda issued by the City.

Section 5 – Proposal Selection and Evaluation

5.1 General Information

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

5.2 Selection Review Committee

The Selection Review Committee may be comprised of up to five members. The role of the Selection Review Committee is to evaluate the proposals submitted and make a recommendation of award. Scoring will be completed covering all areas listed in Section 5.4 in the Evaluation Criteria. Scores for each Proposal shall be added together to arrive at a final score for each Proposer. Proposals will then be ranked in descending order by the total Proposal score.

The City is seeking value from the service requested. While cost is important to the overall evaluation process, the experience and qualifications will be assigned a higher value. If additional information is deemed necessary as part of the evaluations, such information will be solicited in order to allow the committee to complete the evaluation process.

5.3 Interviews

Proposers selected for final evaluation (if necessary) may be required to make an oral presentation of their proposal to the Selection Review Committee. Such presentation shall provide an opportunity for Proposers to clarify their proposal to ensure thorough mutual understanding. The Selection Review Committee may interview the Proposers and ask additional questions related to the team’s experience and qualifications. The City will schedule the time and locations of the interviews, if required, on the dates indicated in Section 2.3. Interviews will take place at a location to be determined by the City. Firms invited to the interview will be responsible for making and paying for their own travel arrangements.

5.4 Scoring and Evaluation Criteria

The Selection Review Committee will evaluate the proposals. The role of the Selection Review Committee is to evaluate the proposals submitted and make a recommendation of award. The criteria listed below will be used to determine the finalists and apparent successful Proposer.

Each proposal shall be limited in length and judged as a demonstration of the Consultant’s capabilities and understanding of the project.

Evaluation criteria, maximum points and page limitations will be as follows:

Criteria	Maximum No. Pages	Score
Introductory Letter	2	15
Proposer’s Team Experience	3	45
Project Cost	1	20
Past Projects/Reference Findings	2	20
Total	6 Pages	100 Points

5.5 Best and Final Offers

If in the best interest of the City, the Selection Review Committee chooses to employ a method of Proposal selection leading to best and final offers, the City may conduct private discussions with qualified Proposers as allowed by ORS 279B.060(6).

5.6 Ranking of Proposals

Proposals may be ranked by the Selection Review Committee based on evaluation of responses and interviews (if any), with the first-ranked Proposal being that Proposer which is deemed to be the most appropriate and fully able to perform the services, and the second ranked Proposal being the Proposer next most appropriate, all in the sole judgment of the Selection Review Committee.

Proposal scores will be totaled and ranked. Any Proposal in response to this RFQ shall be considered de facto permission to the City to disclose the results, when completed, to selected reviewers at the sole discretion of the City.

Section 6 – Contract Requirements

6.1 Contract Award

The award of a contract is accomplished by executing a written agreement that incorporates the entire RFQ, Proposer's Proposal, clarifications, addenda, and additions. All such materials constitute the contract documents. The Proposer agrees to accept the contract terms of the attached Personal Services Agreement unless substantive changes are made without the approval of the Proposer. The City's Project Manager/Contract Administrator is the sole point of contact for the issuance of the contract. The contract shall be substantially in the form of the sample "Personal Services Agreement" in Attachment B.

6.2 Contract Administrator

The Project Manager/Contract Administrator for the City shall be Alex Campbell.

Attachment A – Proposal Form

Proposal Representations

The undersigned hereby submits this Proposal to furnish all work, services systems, materials, and labor as indicated herein and agrees to be bound by the following documents: Request for Qualifications, Personal Services Contract, and associated inclusions and references, specifications, Proposal Form, Proposer response, mutually agreed clarifications, appropriately priced change orders, exceptions which are acceptable to the City, and all other Proposer submittals.

The undersigned hereby certifies and represents that the Proposer:

- 1) has examined and is thoroughly familiar with the Request for Qualifications and full understand its intent; and
- 2) has examined and is thoroughly familiar with the Personal Services Contract, agrees to accept the contract terms, and execute such contract upon award of the contract; and
- 3) understands that the City reserves the right to accept a proposal or reject all proposals if deemed in the best interest of the City; and
- 4) understands that all information included in, attached to, or required by this Request for Proposal shall be public record subject to disclosure within the context of the federal Freedom of Information Act and Oregon Revised Statutes (ORS) 192.501 and ORS 192.502.

Receipt of Addenda

Bidder acknowledges that addenda numbers _____ have been delivered and examined as part of the Request for Qualifications.

Fee Schedule

The expected total “Not-To-Exceed” amount for the contract is \$20,000. The undersigned, if selected, commits to furnish engineering services on a time and materials basis based on the rates detailed in the Project Cost statement.

Certifications

Non-Collusion

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

Conflict of Interest

The undersigned Proposer and each person signing on behalf of the Proposer certifies, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of the City Council, officer, employee, or person, whose salary in whole or in part by the City , has a direct or indirect financial interest in the award of this Proposal, or in the services to which this Proposal relates, or in any of the profits, real or potential, thereof, except as noted otherwise herein.

Reciprocal Preference Law

Residency

The undersigned Proposer certifies that their firm is a () Resident Proposer () Non-resident Proposer.

Signature Block

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

Proposer Firm Name

Mailing Address, City, State, Zip

Telephone Number

Facsimile Number

Proposer Name

Proposer Email Address

Signature

Date



PERSONAL SERVICES AGREEMENT WITH THE CITY OF MILWAUKIE, OR FOR (TITLE)

THIS AGREEMENT made and entered into this (Day) day of (Month), (Year) by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called City, and (Contractor's Name), hereinafter called Contractor.

RECITALS

WHEREAS City has need for the services of a company with a particular training, ability, knowledge, and experience possessed by Contractor, and

WHEREAS City has determined that Contractor is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth,

THEREFORE the Parties agree as follows:

1. **SERVICES TO BE PROVIDED**

Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement.

Contractor agrees to complete work that is detailed in Exhibit A and by this reference made a part hereof. Contractor may have some contact with the public in the course of performing this contract and shall maintain good relations with the public. Failure to maintain good relations with the public shall constitute a breach of the contract. The City may treat the failure to maintain good relations as a non-curable breach allowing the City to terminate the contract and to disqualify Contractor from future work for the City.

2. **EFFECTIVE DATE AND DURATION**

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, by (Month – Day – Year). All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. **COMPENSATION**

City agrees to pay Contractor not to exceed (Amount in written form) (\$Amount in numerical form) for performance of those services described herein, which payment shall be based upon the following applicable terms:

A. Payment by City to Contractor for performance of services under this Agreement includes all expenses incurred by Contractor, with the exception of expenses, if any identified in this Agreement as separately reimbursable.

B. Payment will be made in installments based on Contractor's invoice, subject to the approval of the City Manager, or designee, and not more frequently than

- monthly. Payment shall be made only for work actually completed as of the date of invoice.
- C. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- D. Where applicable, Contractor must make payment promptly as due to persons supplying Contractor labor or materials for the execution of the work provided by this order. Contractor must pay all contributions or amounts due from Contractor to the Industrial Accident Fund incurred in the performance of this order. Contractor shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Contractor further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- E. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- F. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279B.020. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC §§ 201-209.
- G. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- H. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. **OWNERSHIP OF WORK PRODUCT**

City shall be the owner of and shall be entitled to possession of any and all work products of Contractor which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Contractor prior to termination of this Agreement by Contractor or upon completion of the work pursuant to this Agreement.

5. **ASSIGNMENT/DELEGATION**

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Contractor shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. **STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR**

Contractor certifies that:

- A. Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.
- B. The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, Contractor certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- C. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. **INDEMNIFICATION**

City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor agrees that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

As respects the operations of Contractor under this Agreement other than the performance of professional services, Contractor shall indemnify, hold harmless, and defend the City, its officers, agents, employees and volunteers from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees and other costs of defense, attributable to personal injury, bodily injury, including death, or property damage, including loss of use thereof, and arising out of or alleged to arise out of the negligence or willful misconduct of Contractor or anyone for whom Contractor is legally responsible, excepting only those claims, damages, liabilities, losses, and costs caused by the City's sole negligence or willful misconduct.

As respects the performance of professional services under this Agreement, Contractor shall indemnify and hold harmless the City, its officers, agents, employees and volunteers from and against liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees and other costs of defense, to the extent caused by the negligence or willful misconduct of Contractor or anyone for whom Contractor is legally responsible.

8. **INSURANCE**

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier. Such insurance shall be primary and non-contributory.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

A. **Commercial General Liability Insurance**

Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

Coverage	Limit
General Aggregate	2,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

- B. Commercial Automobile Insurance
Contractor shall also obtain, at contractor’s expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

- C. Workers’ Compensation Insurance
The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers’ Compensation Law and shall comply with ORS 656.017, which requires them to provide workers’ compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers’ compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer’s Liability Insurance with coverage limits of not less than \$500,000 each accident.

- D. Professional Liability Insurance
Contractor shall also obtain, at Contractor’s expense, and keep in effect during the term of the contract, professional liability insurance. The limits of such professional liability coverage shall be \$1,000,000 per claim and in aggregate.

- E. Additional Insured Provision
The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this contract.

- F. Notice of Cancellation
There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City.
Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days notice of cancellation to the City.

G. Insurance Carrier Rating
Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

H. Certificates of Insurance
As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be affected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for (Project Title). The City of Milwaukie, its officers, agents, employees and volunteers shall be added as additional insureds with respects to this contract. Insured coverage is "primary" in the description portion of certificate.

I. Independent Contractor Status
The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

J. Primary Coverage Clarification
The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

K. Cross-Liability Clause
A cross-liability clause or separation of insureds clause will be included in the general liability policy.

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Finance Office
City of Milwaukie
10722 SE Main St.
Milwaukie, Oregon 97222

Business Phone: 503-786-7522
Business Fax: 503-786-7528
Email Address: finance@ci.milwaukie.or.us

Such policies or certificates must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit contractor’s liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

City	Contractor
City of Milwaukie	Company: (Firm Name)
Attn: Accounts Payable	Attn: (Contract Manager’s Name)
10722 SE Main St., Milwaukie, Oregon 97222	Address: (Contract Manager’s Address)
Phone: 503-786-7524	Phone: (Phone Number)
Fax: 503-786-7528	Fax: (Fax Number)
Email Address: finance@ci.milwaukie.or.us	Email Address: (Address)

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to who notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

10. MERGER

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

11. TERMINATION WITHOUT CAUSE

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered to the date of termination.

12. TERMINATION WITH CAUSE

A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds

- 2) 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.
- 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:

- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.
- 3) If Contractor fails to eliminate a conflict as described in Section 11 of this agreement.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (b), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

13. ACCESS TO RECORDS

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

14. FORCE MAJEURE

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. NON-WAIVER

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

16. NON-DISCRIMINATION

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

17. ERRORS

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

18. EXTRA (CHANGES) WORK

Only the City staff member's title & name, may authorize extra (and/or changed) work. Failure of Contractor to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

19. ATTORNEY'S FEES

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

20. **GOVERNING LAW**

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

21. **COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES**

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, ORS 279A.120, ORS 279B.020, ORS 279B.220, ORS 279B.225, ORS 279B.230, and ORS 279B.235, the provisions of which are hereby made a part of this agreement.

22. **CONFLICT BETWEEN TERMS**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

23. **AUDIT**

Contractor shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Contractor agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

24. **SEVERABILITY**

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

Agreement continued on next page. This portion of the page left blank intentionally.

25. COMPLETE AGREEMENT

This Agreement and attached exhibits constitutes the entire 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 specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Contractor has executed this Agreement on the date hereinabove first written.

CITY OF MILWAUKIE

CONTRACTOR

Signature

Signature

Printed Name & Title

Printed Name & Title

Date

Date

EXHIBIT A
SERVICES TO BE PROVIDED