



CITY OF MILWAUKIE PLANNING DEPARTMENT

REQUEST FOR PROPOSALS (RFP)

COMMUNITY VISION AND ACTION PLAN

INTRODUCTION

The City of Milwaukie is presently accepting proposals from qualified firms for the development of a Community Vision and Action Plan. The Vision will be an aspirational document that relies on community preferences to describe Milwaukie in the year 2040, while the Action Plan will address how the City can achieve the goals and aspirations outlined in the Vision. To accomplish this task, the Milwaukie Planning Department is seeking to hire a consultant to perform tasks outlined in the Scope of Work.

The City is undertaking this visioning process as the first step in updating its Comprehensive Plan. The input received from the community will be used to help identify topics of interest that may be addressed in further detail in the Comprehensive Plan, and to develop goals and policies that help guide future growth and development over the next two decades. In addition, the Vision and Action Plan are anticipated to help guide other City plans, policies, decisions and actions, including the City Council's annual goal setting. As such, a broad and representative public outreach effort that gains participation and input from throughout the diverse Milwaukie community is integral to the success of the project.

SECTION 1: Proposal Submittal and Closing Date

The proposal must be received by the Milwaukie Planning Department by **5:00 p.m. on May 18, 2016**. Electronic submittals will be accepted. Late proposals will not be considered and will be returned unopened to the Proposer.

Proposals should be addressed to:

David Levitan, Senior Planner
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206
Phone: (503) 786-7627
levitand@milwaukieoregon.gov

SECTION 2: Inquiries

Questions that arise prior to the deadline must be submitted in writing no later than 48 hours prior to the deadline and must be addressed to the Project Manager listed above. As appropriate, questions and answers will be provided to all RFP recipients.

Interested firms are encouraged to visit the City's Bid Management System website (<http://bids.milwaukieoregon.gov>) for any potential RFP addenda prior to submittal. Firms may also request that the Project Manager listed above contact them with any addenda.

Protest of the contract award must be submitted within seven (7) days of the contract award or issuance of intent to award, whichever is earlier.

SECTION 3: Scope of Work (Please refer to the attached "Community Vision and Action Plan – Scope of Work")

SECTION 4: Request for Proposal

Information that is required from the applicant as part of the proposal shall include:

1. Project approach

The statement shall include an outline of the objectives and scope of the proposed project and shall describe the proposer's approach to accomplishing the project.

2. Statement of Work and products to be delivered

A clear statement of the services to be performed, the form they will take and what the final product or end result will be. A concise outline delineating the specific tasks to be performed, indicating what will be done, in what sequence and by whom.

3. Qualifications and Experience

Include resumes on each person involved in the project with verifiable references as well as a description of the respondent's organizational framework, special resources, and any other information to demonstrate that the respondent can effectively and efficiently provide the requested product.

Include the number of Oregon governmental organizations the proposer has worked with in performing the type of services covered by this RFP, the range of sizes of those organizations and a brief description of the services provided.

4. Cost proposal

The proposal shall provide an offer to undertake the project as proposed at a quoted cost. A rate schedule shall be provided in case of unanticipated change orders.

5. Project Timeline

A chart designed to illustrate the project schedule.

SECTION 5: Evaluation

The applicant's proposal and capabilities will be judged according to the following criteria:

1. Understanding the problem (20 pts)

The proposal will be evaluated based on the respondent's understanding of the nature of the project, chief issues, types of services necessary to accomplish the work, coordination issues and delivery of stated needs.

2. Project approach (30 pts)

This response will be evaluated to assess the approach that will be applied to accomplish the objectives set forth in the statement of work. This statement of approach must clearly outline how the work will be completed.

3. Individual capabilities and experience with similar projects (35 pts)

The project will be evaluated based on the experience and skills of the applicant and/or staff as they relate to this project, capacity to perform requested tasks and knowledge and experience with local housing issues.

4. Cost proposal (15 pts)

The proposal will be evaluated based upon the completion of the project in a timely fashion and at a competitive cost.

SECTION 6: Contract Language

The City's Personal Services Agreement is included with this RFP to inform proposers of the City's contractual requirements. Any questions or issues with the contract language should be addressed under separate cover and must be included with the proposal. This will be part of the evaluation process, although it is not a weighted score.

City of Milwaukie
SCOPE OF WORK
for a
COMMUNITY VISION AND ACTION PLAN

Project Description

The City of Milwaukie intends to develop a Community Vision and Action Plan that outlines a future vision of the Milwaukie community in the year 2040, and actions that can be taken to help achieve that vision. Development of the Community Vision and Action Plan will be a precursor to a major update of the City's Comprehensive Plan. As such, community engagement that reaches all segments of the Milwaukie community and is consistent with Statewide Planning Goal 1 is integral to the success of the project.

Milwaukie is a city of just over 20,000 residents, with a network of 7 strong neighborhood district associations that meet monthly and a strong local job base. The City has undertaken a number of planning efforts in recent years, including the recently completed Moving Forward Milwaukie project, which can provide additional context for issues that the City is facing and priorities that have been identified. The City is currently preparing a Goal 9 Economic Opportunities Analysis (EOA) and Goal 10 Housing Needs Analysis (HNA), which will be completed by July 2016.

With the recent opening of the Orange Line Light Rail and rapidly increasing housing prices, Milwaukie is a community that is growing and evolving. As part of the Community Vision and Action Plan, the city is interested in assessing the city's future through the lenses of sustainability, equity, and livability (see Scope of Work item #3 for more detail).

Estimated Start Date: June 2016

General Scope of Work Assumptions

The following five categories in the Scope of Work outline the City's minimum requirements for respondents to address in their proposals. The City is open to additional project components and methodologies that have proven successful in community visioning efforts. The proposal should be clear in the specific tasks, hours, costs, schedule, and responsibilities (consultant vs. City staff) for each component and task in the scope of work. Following the selection of a consultant, the City expects for the consultant to meet with City staff and the Steering Committee (discussed in more detail in Scope of Work item #1) to assist in finalizing project roles and priorities.

The City is aiming to complete work on the Community Vision within 6-8 months, and complete work on the Action Plan within 12 months. The City has budgeted \$75,000 as well as 1.0 FTE of staff time for development of the Community Vision and Action Plan, which includes a Senior Planner to serve as Project Manager. Proposals should assume that the City's Project Manager will be responsible for coordination and communication with the City Council and the project's committees (discussed further below), coordination of process/meeting logistics and support, and oversight of consultant work. Consultant expertise is needed for community

engagement, committee meeting and event facilitation, marketing and branding, survey research, website/social media, and development of the Vision and Action plan documents. The City is committed to developing a project-specific website that has the ability to incorporate a wide variety of social media platforms and engagement tools, which the City would host but for which it would require assistance in developing content and managing.

1: Project Management and Identification of Roles

As noted, the City will have a Project Manager as part of 1 FTE dedicated to the project, and will be responsible for coordination and communication with the City Council and Steering Committee, coordination of process logistics and support, and oversight of consultant work. The consultant will be responsible for the development of a community engagement program, meeting/event facilitation, marketing/branding, survey research, website/social media content, and development and graphic design of the Vision and Action Plan documents (further requirements for these individual tasks are included later in this RFP). The proposal needs to be clear in identifying the consultant's role on specific tasks and the cost/deliverables associated with those tasks.

City staff is proposing that the following groups and committees will be involved in the visioning process, and has identified the anticipated consultant support that each group will require. Respondents are welcome to comment on the proposed structure based on their experience with other visioning efforts.

- **Steering Committee:** The Steering Committee will guide the visioning process, including helping to identify opportunities for community involvement, keeping the full City Council updated on the project, and reviewing work products. The Steering Committee will include staff from the Planning Department and City Manager's Office; one or two City Council members; and several city department heads. City staff will be responsible for supporting most Steering Committee meetings, but respondents should budget for attending at least two meetings.
- **Project Advisory Group:** The Project Advisory Group (PAG) is designed to be the Statewide Planning Goal 1 citizen involvement advisory committee, and the precursor to the Comprehensive Plan Review Committee, which the city's existing Comprehensive Plan calls for creating for major updates to the Comprehensive Plan. The PAG will be responsible for advising on the content and language of the Vision and Action Plan and helping with community outreach. The PAG will include representation from the Planning Commission; City Council; Parks and Recreation Board; Milwaukie Center/Community Advisory Board; Public Safety Advisory Committee; the city's 9 neighborhood districts; the city's business community; and Clackamas County. Members of the PAG will be invited to continue as members of the Comprehensive Plan Review Committee. The consultant will be responsible for supporting and facilitating the PAG meetings, and working with city staff to prepare materials for each meeting.
- **Technical Advisory Group:** The Technical Advisory Group (TAG) will be comprised of city department heads and other agencies as needed, including the North Clackamas Parks and Recreation District, Clackamas County, ODOT, DLCD, and Metro. City staff will support the TAG without assistance from the consultants.
- **Project Management Team:** The Project Management Team (PMT) will be a subset of the

Steering Committee, and include staff from the Planning Department and City Manager's Office as well as the consultants. Regularly scheduled meetings, primarily by phone and as frequently as weekly, will serve to keep the process moving forward and identify short term PMT member tasks.

2: Stakeholder Identification, Outreach, and Community Engagement

The City's Project Manager and Steering Committee will assist consultants with identification of, and provide contact information for, the diverse set of stakeholders in the Milwaukie community that should be involved in the development of the Vision and Action Plan. The consultant will be responsible for developing and implementing an inclusive and creative community engagement process that is appropriate for an inner-ring suburb of 20,000 residents that combines traditional engagement (community events, open houses, NDA meetings, etc.) with a robust website and social media presence. City staff, including the Project Manager, Public Affairs Specialist, and Community Programs Coordinator, will be available to assist with community engagement.

The consultant should address how they plan to engage community members that are traditionally under-represented in visioning and planning efforts, including a summary of efforts that have been successful in other jurisdictions. The Steering Committee will review the proposed Public Engagement Plan and offer local insight and potential scope refinements.

The proposal shall include specific details on the number and type of proposed meetings/events, website and social media platforms, and other engagement/outreach tools, which will be summarized in a Public Engagement Plan. The proposal shall identify specific tasks that require assistance from city staff and Steering Committee members. Staff will be available to provide insight on topic areas of particular interest to the community in recent years. A preliminary list includes housing, transportation, natural resource protection, public safety, resilience, arts, governance, neighborhood communication and NDA structure, growth management, and downtown development/revitalization.

Consultant Products:

- a. Public Engagement Plan that summarizes stakeholders, online and social media efforts, open houses, community meetings and events, and other engagement efforts

3: Incorporating Sustainability, Equity, and Livability

The proposal shall make recommendations on how the topics of equity, livability, and sustainability can be framed and incorporated into the development of the Community Vision and Action Plan, and how these interests may intersect or conflict when developing the Vision and Action Plan. The City has identified the quadruple bottom line as a potential framework, one which evaluates not just the city's economic stability and prosperity, but also the city's commitment to sustainability and environmental stewardship, social equity, and the city's cultural landscape.

4: Development of the Community Vision

Working with the Steering committee, the consultant will evaluate and analyze the information gained through the public engagement process to identify and develop a structure and important components for the Community Vision. Working with the Project Manager and Steering Committee, the consultant will be expected to draft a Community Vision document, which will include identification of a vision statement, goals, and priorities for the community, as well as recommendations on how the Vision can be incorporated into future planning projects, Council goal setting, and other city efforts.

The vision statement should provide context and direction for the City's Comprehensive Plan update, in regards to how the community envisions Milwaukie will grow and develop over the next 20 years. The consultant will support the Project Manager in presenting a draft Vision Statement to the Steering Committee and the City Council, for review, discussion, and ultimate adoption. Upon adoption by the City Council, the consultant shall provide the City with the final document. The consultant is expected to provide graphic design services for the document. The City is seeking a document with a design and structure that will be easily accessible on the city website.

Development of the Vision should be based on the Oregon Visioning Model, or another proven model that achieves similar results, that is based on the following components:

- Background information that is easily understood and graphically oriented, incorporating data from recent city documents such as the Economic Opportunities Analysis and Housing Needs Analysis as well as data from other city services, such as police, public works, and the arts;
- An identification of current trends and an assessment of community input regarding the city's direction and prospects, and potential changes to respond to community feedback; and
- A methodology that synthesizes information collected through workshops, community events, and online tools into topic areas for the vision, and a process for the community to review, revise, and ultimately validate the identified vision.

Consultant Products:

- a. Memo summarizing the major themes/categories of ideas identified during the public outreach process, and how these will be presented in the Vision Statement and Action Plan
- b. Vision 2040 Document (Vision Statement, Goals and Priorities)

5: Development of the Action Plan

The consultant will incorporate information regarding the capabilities and capacity of the City and identified stakeholders to develop an achievable Action Plan the community ideals identified in the Community Vision. The Action Plan shall identify priority goals and action items that will

help fulfill the Vision identified by the community. The City is interested in goals and action items that integrate both short- and long-term projects, and that are based on a set of quantified metrics that can measure achievement of these goals.

Short and long-term action plan items may rely on individual organizations or partners, or a combination of partners that are responsible for each item in order to actively achieve the goals and priorities. The short-term plans shall include, at a minimum, identification of goals and actions to be accomplished in the first five years of the Vision horizon.

Actions should be tied to Vision themes and should identify who has responsibility for the goals and action items. The city is seeking to identify, develop, and measure specific and quantifiable metrics that can assess progress on achieving the vision and associated goals of the community. These metrics should be easily accessible and replicable on an ongoing basis so that the visioning process can be maintained and updated in future years.

Development of the Action Plan shall be done in a way that allows for a seamless transition into the City's Comprehensive Plan Update. It is anticipated that the visioning process will identify a number of ideas and concepts that will result in detailed discussion and policy additions or amendments in the Comprehensive Plan, while other topics won't fit well within the typical construct of a Comprehensive Plan. It will be important for ideas and concepts that don't fit into the Comprehensive Plan to be featured prominently in the Action Plan. The consultant shall also address how ideas identified in the Action Plan can be incorporated into the Comprehensive Plan Update.

The consultant will present a draft Action Plan to the Steering Committee and the City Council, for review, discussion, and ultimate adoption. Following the City Council's approval of the Action Plan, the consultant will provide the City with the final document. The consultant is expected to provide graphic design services for the document. The City is seeking a document with a design and structure that will be easily accessible on the city website.

Consultant Products:

- a. Vision 2040 Action Plan, including metrics to evaluate progress towards achieving identified goals
- b. Summary memo on how to incorporate Action Plan items into the Comprehensive Plan Update process



PERSONAL SERVICES AGREEMENT WITH THE CITY OF MILWAUKIE, OREGON

THIS AGREEMENT made and entered into this 24th day of March, 2016 by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called City, and **Consultant**, hereinafter called Contractor.

RECITALS

WHEREAS City has need for the services of a person or an entity with particular training, ability, knowledge, and experience as 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 provide services as specified in the Scope of Work, a copy of which is attached hereto, labeled Exhibit A and hereby incorporated by reference. Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement.

2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, by July 31, 2016. 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 **XX Dollars (\$XX,XXX)** for performance of those services described in the Scope of Work, 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 SS 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 warrants 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.

Contractor agrees to indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except to the extent that the liability arises out of the sole negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

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 coverage:

- 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. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	2,000,000
Personal & Advertising Injury	2,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	500,000
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 this 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. Professional Liability Insurance

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$1,000,000. Annual aggregate limit shall not be less than \$1,000,000.

D. Workers’ Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who are 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. Out-of-state employers must provide workers’ compensation coverage for their workers that complies with ORS 656.126. Employer’s Liability Insurance with coverage limits of not less than \$500,000 each accident shall be included.

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 effected 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 City of Milwaukie Housing Needs Analysis." The City of Milwaukie, its officers, directors and employees shall be added as additional insureds with respects to this contract. A notation stating that "Insured coverage is primary" shall appear 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:

City of Milwaukie
Attn: Finance
10722 SE Main Street
Milwaukie, Oregon 97222

Business Phone: 503-786-7555
Business Fax: 503-653-2444
Email Address: finance@milwaukieoregon.gov

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, email 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:
Attn: Accounts Payable	Attn:
10722 SE Main Street Milwaukie, Oregon 97222	Address:
Phone: 503-786-7523	Phone:
Fax: 503-786-7528	Fax:
Email Address: ap@milwaukieoregon.gov	Email 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.

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 disenabled, 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 disenabled 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 statues, rules, and regulations. Contractor also shall comply with the Americans with

Disabilities Act of 1990, 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 Planning Director, Dennis Egner may authorize extra (and/or change) 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. WARRANTIES

All work shall be guaranteed by Contractor for a period of one year after the date of final acceptance of the work by the owner. Contractor warrants that all practices and procedures, workmanship and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Contractor from liability under warranties contained in or implied by this Agreement.

20. 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.

21. 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.

22. 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, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapters 279A and 279B, the provisions of which are hereby made a part of this agreement

23. 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.

24. 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.

25. 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.

26. 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

William Monahan, City Manager

Printed Name & Title

Printed Name & Title

Date

Date

EXHIBIT A
SCOPE OF WORK