



CITY OF MILWAUKIE



Request for Proposals

for

Government & Public Access Services

Issue Date: Tuesday, April 24, 2018

Proposal Due Date: Monday, May 21, 2018 at 3:00 PM PST

City of Milwaukie
Office of the City Recorder
10722 SE Main Street
Milwaukie, OR 97222
(503) 786-7502

Request for Proposals - Government & Public Access Services

SECTION 1: GENERAL INFORMATION

1.1 Introduction and Background

The City of Milwaukie is seeking proposals from qualified consultants to provide government and public access services to the City and its residents. The City's objective is to enter into a Personal Services Agreement that will provide these comprehensive services.

Currently, the City contracts with Willamette Falls Media Center (WFMC) to operate and maintain its government and public access programs. The current agreement with WFMC expires on June 30, 2018. In compliance with our Public Contracting Rule 70.020(A), the City is following a formal selection process to execute a new agreement for services.

The feed for the City's government and public access channels are housed at the WFMC studios in Oregon City. If it becomes necessary, the City will take responsibility for relocating the feed to City Hall (in Milwaukie) or to another location agreed to by the City and the selected consultant. Regular and consistent monitoring of the City's government and public access channel broadcasts is an important element of these services.

In addition to broadcasting government access programs, the City also posts videos of its government meetings (i.e., City Council, Planning Commission) on the City website via the City's YouTube channel. Some familiarity with the YouTube content delivery platform will be helpful to prospective consultants.

An on-site tour of City Hall, 10722 SE Main Street, Milwaukie, Oregon 97222 will be held on Friday, May 11, 2018 between 10:00 AM - 12:00 PM PST. This tour is not mandatory and will not be scored in the evaluation process; however, it is available to provide information on the City's current audio/video equipment and meeting areas.

1.2 Issuance of Request for Proposals Documents

Request for Proposals (RFP) documents may be obtained at no cost from the City's Bid Management System at <http://bids.milwaukieoregon.gov/>.

Scott Stauffer, City Recorder, 10722 SE Main Street, Milwaukie, Oregon 97222 is the sole point of contact for all questions, concerns, and protests related to this RFP. He may be reached at 503-786-7502 or by email at stauffers@milwaukieoregon.gov.

1.3 Submission of Proposals

Proposals shall be submitted electronically by 3:00 PM PST, Monday, May 21, 2018 in PDF format to:

Scott Stauffer, City Recorder
stauffers@milwaukieoregon.gov

Proposals, including any attachments, must be in type-written format plainly identifying the requested services and proposer's name and address. Proposals shall be submitted to the

above contact by the deadline. Phone, facsimile and printed proposals will not be accepted. There will be no formal opening of bids.

All proposals must arrive on or before the proposal due date and time. A person who has been authorized to make such a commitment on behalf of the consultant must sign the proposal.

1.4 Schedule of Events

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

- RFP Release April 24, 2018
- Deadline for Clarifications & Questions May 8, 2018, 3:00 PM PST
- On-site Tour (Optional) May 11, 2018, 10:00 AM-12:00 PM PST
- Deadline for Protests of RFP May 14, 2018, 3:00 PM PST
- Proposals Due May 21, 2018, 3:00 PM PST
- Evaluations Complete May 25, 2018
- Notice of Intent to Award May 29, 2018
- Deadline for Protests of Award June 5, 2018, 3:00 PM PST
- City Council Hearing June 5, 2018
- Commencement of Agreement July 1, 2018

1.5 Changes to the Solicitation by Addenda

The City reserves the right to make changes to this RFP by written addenda. Addenda shall be sent to all prospective proposers known to have obtained the solicitation documents at the time addenda is issued.

Proposers should consult the City's Bid Management System regularly until the due date and time to assure that they have not missed any addendum announcements. By submitting a proposal, each Proposer thereby agrees that it accepts all risks and waives all claims associated with or related to its failure to obtain addendum information.

A prospective Proposer may request a change in the RFP by submitting a written request to the contact set forth in Subsection 1.2. The request must specify the provision of the RFP in question, and contain an explanation of the requested change. All requests for changes to the RFP must be submitted to the City no later than the date set forth in Subsection 1.4.

The City will evaluate any request submitted, but reserves the right to determine whether to accept the requested change. Changes that are accepted by the City shall be issued in the form of an addendum to the RFP. All addenda shall have the same binding effect as though contained in the main body of the RFP. Written or oral instructions or information concerning the scope of work of the project given out by anyone other than Scott Stauffer shall not bind the City.

No addenda will be issued later than the date set in Subsection 1.4, 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.

1.6 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 is exempt 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 RFP. Proposer should not mark the entire proposal document "Confidential."

1.7 Cancellation

The City reserves the right to cancel contract award for government and public access 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.

1.8 Late Proposals

All proposals that are not received by the proposal due date in Subsection 1.4 will not be considered. Delays due to system 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 by the proposal due date.

1.9 Disputes

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

1.10 Proposer's Representation

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

- A. They have read and understand the proposal 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 proposal documents without exception, unless clearly stated in the response.

1.11 Conditions of Submittal

By the act of submitting a proposal in response to this RFP, the Proposer certifies that:

- A. 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. Proposer has examined all parts of the RFP, including all requirements.
- C. 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. Proposer has quality experience providing services in a capacity similar to the duties outlined within the scope of services.

1.12 Proposer Requests Interpretation of RFP Documents

Proposers shall promptly notify the City of any ambiguity, inconsistency or error, which they may discover upon examination of the proposal documents. Proposers requiring clarification or interpretation of the proposal documents shall make a written request to Scott Stauffer. The City shall make interpretations, corrections, or changes to the proposal documents in writing by published addenda in accordance with Subsection 1.5. Interpretations, corrections, or changes to the proposal documents made in any other manner will not be binding, and Proposers shall not rely upon such interpretations, corrections, and changes.

1.13 Proposer Requests for Additional Information

Requests for information regarding City services, programs, or personnel, or any other information shall be submitted in writing to City Recorder, Scott Stauffer, prior to the deadline to request additional information stated in Subsection 1.4.

The City shall respond to requests for additional information in writing by published addenda in accordance with Subsection 1.5. Responses to requests for additional information made in any other manner will not be binding.

1.14 Competition

Proposers are encouraged to comment, either with their proposals or at any other time, in writing, on any specification or requirement with this RFP, which the Proposer believes, will inordinately limit competition.

1.15 Complaints and Inequities

All complaints or perceived inequities related to the RFP or award of work referenced herein shall be in writing and directed to City Recorder, Scott Stauffer. Such submittals will be reviewed upon receipt.

1.16 Cost of Request for Proposals 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.

1.17 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.

1.18 Rejection of Proposals

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

- A. Failure of Proposer to adhere to one or more of the provisions established in the RFP.
- B. Failure of Proposer to submit a proposal in the format specified herein.
- C. Failure of Proposer to submit a proposal within the time requirements established herein.
- D. Failure of 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.

1.19 Modification or Withdrawal of Proposal by Proposer

A Proposal may not be modified, withdrawn, or canceled by the proposer for 60 calendar days following the proposal due date. Proposals submitted early may be modified or withdrawn only by notice to the City prior to the proposal due date and time. Such notice shall be in writing over the signature of the Proposer and submitted to City Recorder, Scott Stauffer. All such communication shall be so worded as not to reveal material contents of the original Proposal.

Withdrawn proposals may be resubmitted up to the proposal due date and time, provided that they are then fully in conformance with the RFP.

1.20 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) 192.345 and 192.355. 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 RFP without obtaining permission from any Proposer to do so after contract execution.

1.21 Duration of Proposal

Proposal prices, terms and conditions shall be firm for a period of at least 60 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 60-day period. Price decreases or changes in terms by others after the acceptance of a proposal will not be considered.

1.22 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 2: SCOPE OF WORK

2.1 Scope of Work

The selected consultant shall be responsible for the accurate, timely, and professional provision of government and public access services for the City. Required services are outlined in the Scope of Work of the sample Personal Services Agreement (Attachment A).

2.2 Optional Services

In addition to the required services described, City requests proposals and ideas for optional services. Proposers are encouraged to identify and describe other services, progressive improvements in existing services or techniques that would be in the best interest of the City and reduce costs and/or increase revenues.

2.3 Other Services

If the City develops need for additional services during the life of the agreement, those services shall be provided with the same conditions as applicable to existing accounts at the time.

If regulatory bodies establish new regulations, consultant shall demonstrate full compliance with those regulations. If the consultant develops other services, the City is to be furnished with any information that City may use to consider these services.

SECTION 3: PROPOSAL AND PROPOSER REQUIREMENTS

3.1 Proposer Requirements

Any consultant submitting a proposal must meet the following minimum requirements:

- A. All Proposers must be licensed to perform business in the State of Oregon;
- B. All Proposers must have been in business for at least five (5) years;
- C. All Proposers must have experienced with similar services to those requested by the City;
- D. All Proposers must agree to negotiate and execute the City's Personal Services Agreement, if awarded; and
- E. All Proposers must carry insurance, naming the City an additional insured.

3.2 Proposal Requirements

All proposals submitted in response to this RFP must include the following:

- A. Proposal Content – each Proposer shall fully address Section 4.3(B-E) of this RFP and give complete information regarding experience, general understanding of services requested, and service timeframe.
- B. Supplemental Material - any materials and data not specifically requested for consideration may be included as supplemental information.
- C. All Proposers shall submit all Addenda of this RFP as part of the proposal. Receipt of each Addendum, if any, shall be acknowledged by the Proposer by signing in the appropriate designated location. Each Proposer shall ascertain, prior to submitting a proposal, that the proposer has received all Addenda issued by the City.

3.3 Protest Procedures for Proposal Requirements

Any and all complaints regarding this solicitation must be presented in writing no less than seven (7) calendar days prior to the proposal due date, as identified in Section 1.4. The City will address all timely submitted protests within a reasonable time following the City's receipt of the protest and will issue a written decision to the protesting Proposer. Protests shall be addressed to the point of contact identified in Section 1.2.

Protests must include:

- A. Identity of the Proposer;
- B. Clear reference to this RFP;
- C. Reason for the protest;
- D. Proposed changes to the RFP provisions and/or statement of work; and
- E. All required information as described in ORS 279B.405(4).

Protests that do not include the required information will not be considered by the City.

3.4 Proposer Considerations

Attachment "A" is a sample Personal Services Agreement. Each Proposer may evaluate this agreement, as the City will negotiate the terms and conditions contained therein with the awarded proposer.

An on-site tour of City Hall, 10722 SE Main Street, Milwaukie, Oregon 97222 will be held on Friday, May 11, 2018 between 10:00 AM - 12:00 PM PST. This tour is not mandatory or scored in the evaluation process; however, it is available to provide information on the City's audio/video equipment and meeting areas.

SECTION 4: PROPOSAL SELECTION AND EVALUATION

4.1 General Information

Each proposal will be judged on its completeness and quality of its content. The City reserves the right to reject any and all proposals. 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 Personal Services Agreement with the Proposer whose proposal is deemed to be most advantageous to the City.

4.2 Selection Review Committee

The Selection Review Committee will be comprised of at least three (3) City staff members. The role of the committee is to evaluate the proposals submitted and make a recommendation of award to City Council. Scoring will be completed covering all areas listed in Section 4.3. 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.

4.3 Scoring and Evaluation Criteria

The criteria listed below will be used to determine the apparent successful Proposer. Proposals will be evaluated in accordance with the following criteria:

- | | |
|---|-------------|
| A. Proposal submitted on time | Pass / Fail |
| B. Firm and Service Team Qualifications
<i>Provide experience and ability in working with government agencies, project leadership and responsibilities, and qualifications of team members.</i> | 30 points |
| C. Service Understanding and Approach
<i>Define work plan and understanding of services. State primary work assigned to each team member and percentage of time each member will devote to services.</i> | 30 points |
| D. Service Timeframe
<i>Approach to meeting City's deadlines.</i> | 30 points |
| E. Fee evaluation
<i>Proposed rates for requested services.</i> | 10 points |

4.4 Ranking of Proposals

Proposals will be ranked by the Selection Review Committee based on evaluation of responses with the first-ranked proposal being that Proposer which is deemed to be the most appropriate and fully able to perform the services, all in the sole judgment of the Selection Review Committee. Proposal scores will be totaled and ranked. Any proposal in response to this RFP 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.

4.5 Proposal Rejection

The City reserves the right to:

- A. Reject any and all proposals not in compliance with all public procedures and requirements;
- B. Reject any proposal not meeting the specifications set forth herein;
- C. Waive any or all irregularities in proposals submitted;
- D. Award any or all parts of any proposal; and
- E. Request references and other data to determine responsiveness.

4.6 Intent of Award

Upon evaluation of the proposals, the City will provide written notice of its intent to award the contract to the consultant who best meets the overall needs of the City.

4.7 Protest of Award

In accordance with the City's Public Contracting Rule 70.020(A)(4)(c), any adversely affected or aggrieved proposer has seven (7) calendar days from the date of selection notice, as identified in Section 1.4.

SECTION 5: CONTRACT REQUIREMENTS

5.1 Contract Term

The Personal Services Agreement resulting from this RFP shall be for a period of two (2) years, commencing July 1, 2018. The City shall reserve the right to extend the term of the contract for two (2) additional two-year periods.

5.2 Contract Negotiation

The City reserves the right to negotiate final terms of the Personal Services Agreement as determined to be in its best interest. The City will negotiate with the top-ranked Proposer. If the City cannot come to terms with the top-ranked Proposer, the City will end negotiations and then enter into negotiations with the second-ranked Proposer. This process will continue until the City reaches an agreement which the City deems appropriate for the services.

5.2 Contract Award

The award of a contract is accomplished by executing a written Personal Services Agreement that incorporates the Proposer's proposal, clarifications, addenda, objections, and insurance. All such materials constitute the contract documents.

ATTACHMENT A



PERSONAL SERVICES AGREEMENT WITH THE CITY OF MILWAUKIE, OREGON FOR GOVERNMENT & PUBLIC ACCESS SERVICES

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 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 June 30, 2020. All work under this Agreement shall be completed prior to the expiration of this Agreement. The City shall also retain the rights to two (2) two-year extensions.

3. **COMPENSATION**

City agrees to pay Contractor not to exceed (Amount in written form) (\$Amount in numerical form) 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:

Coverage	Limit
General Aggregate	\$3,000,000
Products-Completed Operations Aggregate	3,000,000
Personal & Advertising Injury	3,000,000
Each Occurrence	2,000,000
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 \$2,000,000.
- 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 \$2,000,000. Annual aggregate limit shall not be less than \$2,000,000.
- 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 Government & Public Access Services." 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: (insert name of firm)
Attn: Accounts Payable	Attn: (insert contract manager's name)
10722 SE Main Street	Address: (insert contract manager's address)
Milwaukie, Oregon 97222	
Phone: 503-786-7594	Phone: (insert #)
Fax: 503-786-7528	Fax: (insert #)
Email Address: ap@milwaukieoregon.gov	Email Address: (insert 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 City Recorder, Scott Stauffer, 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

Printed Name & Title

Printed Name & Title

Date

Date

Exhibit A
SCOPE OF WORK (SERVICES TO BE PROVIDED)

Public Access

1. Provide residents of the City with full access to a studio to produce and edit television programs for airing on the public access channel. Maintain videography equipment and schedule equipment rentals for use by residents.
2. Allow residents of the City to cablecast programs on public access channels.
3. Assist City residents in producing, editing and broadcasting reader board notices.
4. Provide residents with full access to education and training for media production classes.
5. Maintain accessibility of services to City residents by:
 - a. Schedule, monitor, and maintain editing and production facilities and studio;
 - b. Monitor equipment and perform maintenance, as needed; and
 - c. Manage and coordinate cablecast of programming on the public access channel, according to an established cablecast schedule.

Government Access

1. Provide City with a videographer to operate City-owned, on-site audio and video equipment located at City Hall (10722 SE Main Street) for public meeting times scheduled below. Meeting days and times may be subject to change with written, mutual consent of both parties.
 - a. Twenty-four (24) Council meetings per year, two (2) per month, generally held on the first and third Tuesdays, typically running from 4 PM - 10 PM; and
 - b. Twelve (12) Council Study Session meetings per year, one (1) per month, generally held on the third Thursday, typically running from 5:15 PM - 6:15 PM; and
 - c. Twenty-four (24) Planning Commission meetings per year, two (2) per month, generally held on the second and fourth Tuesdays, typically running from 6:30 PM - 9:30 PM.
2. Produce audio/video media copies of meetings, as needed.
3. Maintain and keep current public messages on a video bulletin board on the government access channel.
4. Ensure quality audio and video output of broadcasts on the government access channel.
5. Coordinate, develop, maintain and manage the programming and playback of established schedule for all programs and meetings.
6. Work with City staff and cable provider(s) to coordinate selection and purchase of appropriate cablecast equipment for broadcast.
7. Monitor City-owned equipment and perform basic maintenance, as needed.
8. Transport media to off-site broadcast feed locations, as necessary.
9. Available on-call and by phone within one hour to troubleshoot playback errors.
10. Provide on-call videography and production services (for additional special meetings) at an hourly rate to be specified by Contractor.