



Request for Proposals

for

Water Meter Reading Services

Issue Date: Monday, May 2, 2016

Proposal Due Date: Friday, May 20, 2016 at 5:00PM

City of Milwaukie
Finance Department
10722 SE Main Street
Milwaukie, OR 97222
(503) 786-7555

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Request for Proposals

City of Milwaukie—Water Meter Reading Services

The City of Milwaukie (City) is seeking proposals from qualified and experienced contractors to provide Water Meter Reading services to the City. The City's objective is to enter into a Purchase Agreement that will provide these comprehensive services.

The City's expectation of any contractor the City contracts with is that the contractor's values align with the City's values of highly ethical conduct, fiscal responsibility, respect for the City and others, and responsiveness to the City's customers.

The Request for Proposal documents may be obtained at <http://bids.milwaukieoregon.gov/>.

Successful proposers will be asked to sign a Purchase Agreement with the City. A sample agreement is attached as part of the RFP documents. The City will require specific levels of insurance, a Milwaukie business registration, and a tax identification number. Proposers must evaluate this agreement and agree with the terms and conditions contained therein unless written objections are included as an addenda with their proposal. The City will review the addenda and content of any such objection in the proposal evaluation process. Objections after the awarding of the contract will not be considered and are ground for subsequent denial of the contract.

Proposals shall be submitted either in a sealed envelope or by email plainly identifying the RFP and contractor's name and address. Proposals shall be delivered to the City of Milwaukie, Joe Gardner, Finance Department, 10722 SE Main Street, Milwaukie, OR 97222 or emailed to gardnerj@milwaukieoregon.gov.

Proposals will be received until 5:00PM on Friday, May 20, 2016 for the purpose of selecting a contractor to provide Water Meter Reading services. Proposals received after the 5:00PM deadline will not be considered and will be returned unopened to the proposer(s).

For additional information regarding this RFP, please contact Accounting Technician, Joe Gardner, at (503) 786-7597 or by email at gardnerj@milwaukieoregon.gov. The City of Milwaukie reserves the right to reject any and all proposals or to negotiate individually with one or more contractors, and to select one or more contractors if determined to be in the best interest of the City.

Dated this 2nd day of May 2016.

SECTION 2: GENERAL INFORMATION

2.1 Introduction and Background

The City of Milwaukie is seeking proposals from qualified contractors to provide Water Meter Reading services for the City. The City's objective is to enter into a Purchase Agreement that will provide these comprehensive services.

The City has contracted with Metereaders for Water Meter Reading services since at least July 1997. In compliance with our Local Contract Review Board rule 10.010(A), the City is following a competitive proposal process to execute a new contract for Water Meter Reading services.

The City owns approximately 7,000 water meters located across an area of five square miles. The City requires monthly water meter reading data to ensure accurate billing of City of Milwaukie residents' usage. Additionally, the City relies on information obtained during the meter read for meter maintenance, and identification of potential leaks.

The selected firm shall be required to provide accurate monthly meter reads no later than the 20th of each month for processing of utility invoices. Actual read dates shall not be more than ten days prior to the delivery date.

2.2 Issuance of Request for Proposals Documents

The Request for Proposal (RFP) documents may be obtained at no cost from the City of Milwaukie website at <http://bids.milwaukieoregon.gov/>.

Accounting Technician, Joe Gardner, is the sole point of contact for all questions, concerns, and protests related to this RFP. He may be reached at 503-786-7597 or by email at gardnerj@milwaukieoregon.gov.

2.3 Submission for Proposals

Sealed proposals shall be submitted by 5:00PM, Friday, May 20, 2016 in pdf format via email, in person, or by U.S. Postal Service to:

Joe Gardner
City of Milwaukie
Finance Department
10722 SE Main Street
Milwaukie, OR 97222
gardnerj@milwaukieoregon.gov

If proposals are submitted in-person or by U.S. Postal Service, each Proposer must provide four (4) complete copies of their proposal, including attachments, in type-written format sealed in an envelope plainly identifying requested services and proposer's name and address. If submitted via email, the proposal, including attachments, shall be in pdf format. Proposals shall be addressed and submitted to the above location by the deadline. Phone and facsimile proposals will not be accepted. There will be no formal opening of bids.

2.4 Schedule of Events

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

- Request for Proposal Release May 2, 2016
- Deadline for Clarifications/Questions/Changes to RFP May 11, 2016, 5:00PM
- Deadline for Protests of RFP May 12, 2016, 5:00PM
- Proposals Due May 20, 2016, 5:00PM
- Evaluations of Proposals Complete May 25, 2016

- Posting of Notice of Intent to Award May 26, 2016
- Deadline for Protests of Award June 2, 2016, 5:00PM
- City Council hearing June 7, 2016
- Notice of Award June 8, 2016
- Commencement of Personal Services Agreement July 1, 2016

2.5 Changes to the Solicitation by Addenda

The City reserves the right to make changes to the 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 (<http://bids.milwaukieoregon.gov/>) regularly until the proposal 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 address set forth in Subsection 2.3. 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 2.4.

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 bidding 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 Joe Gardner shall not bind the City.

No addenda will be issued later than the date set in Subsection 2.4, 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.

2.6 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 the Proposer requests exception from disclosure. Proposer shall not copyright, or cause to be copyrighted, any portion of any said document submitted to the City as a result of this RFP. Proposer should not mark the entire proposal document “Confidential.”

2.7 Cancellation

The City reserves the right to cancel contract award for Water Meter Reading services at any time before execution of the contract by both parties if cancellation is deemed to be in the City’s best interest. In no event shall the City have any liability for the cancellation of contract award.

2.8 Late Proposals

All proposals that are not received by the proposal due date in Subsection 2.4 will not be considered and will be returned unopened to the Proposer(s). Phone and facsimile proposals will not be accepted. Delays due to mail and/or delivery handling, including, but not limited to delays within the City’s internal distribution systems, do not excuse the Proposer’s responsibility for submitting the proposal to the correct location by the proposal due date.

2.9 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.

2.10 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.

2.11 Conditions of Submittal

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

- A. The Proposer and each person signing on behalf of any Proposer certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no elected official, officer, employee, or person, whose salary is payable in whole or part by the City, has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof other than as fully described in the Proposer's response to this solicitation.
- B. The Proposer has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and, if its proposal is accepted, the Proposer shall accept the contract documents thereto unless substantive changes are made in same without the approval of the Proposer.
- C. The Proposers, if an individual, is of lawful age; is the only one interested in this proposal; and that no person, firm, or corporation, other than that named, has any interest in the proposal, or in the proposed contract.
- D. The Proposer has quality experience providing Water Meter Reading services in a capacity similar to the duties outlined within the scope of services.

2.12 Proposer Requests Interpretation of Request for Proposal 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 for the same to Accounting Technician, Joe Gardner.

The City shall make interpretations, corrections, or changes to the proposal documents in writing by published addenda in accordance with Subsection 2.5. 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.

2.13 Proposer Requests for Additional Information

Requests for information regarding City services, programs, or personnel, or any other information shall be submitted in writing to Accounting Technician, Joe Gardner, prior to the deadline to request additional information stated in Subsection 2.4.

The City shall respond to requests for additional information in writing by published addenda in accordance with Subsection 2.5. Responses to requests for additional information made in any other manner will not be binding.

2.14 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.

2.15 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 Accounting Technician, Joe Gardner. Such submittals will be reviewed upon receipt and will be answered in writing.

2.16 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.

2.17 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.

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

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

2.19 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 time and date designated for the receipt of proposals. Proposals submitted early may be modified or withdrawn only by notice to the City, at the Proposal submittal location, prior to the proposal due date. Such notice shall be in writing over the signature of the Proposer and submitted to Accounting Technician, Joe Gardner. 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.

2.20 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) 192.501 and ORS 192.502. Unless certain pages or specific information are specifically marked “proprietary” and qualify as such within the context of the regulations stated in the preceding paragraph, the City shall make available to any person requesting information through the City processes for disclosure of public records, any and all information submitted as a result of this RFP without obtaining permission from any Proposer to do so after the Notice of Intent to Award has been released.

2.21 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.

2.22 Affirmative Action/Nondiscrimination

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

SECTION 3: SCOPE OF WORK

3.1 Term of Service

The Purchase Agreement resulting from this RFP shall be for a period of two (2) years, commencing July 1, 2016. The City shall reserve the right to extend the term of the contract for two (2) additional two-year periods.

3.2 Scope of Work

The selected Contractor shall be responsible for the accurate, timely, and professional provision of Water Meter Reading services for the City. Specific responsibilities of the City and Contractor are outline in Exhibit A (Scope of Work) of the Purchase Agreement.

3.3 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.

3.4 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 apply to existing accounts at the time.

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

SECTION 4: PROPOSAL AND PROPOSER REQUIREMENTS

4.1 Submittal of Proposals

If proposals are submitted in-person or by U.S. Postal Service, each Proposer must provide four (4) complete copies of their proposal, including attachments. All proposals must arrive at the issuing office on or before the proposal due date and time. A person who has been authorized to make such a commitment on behalf of the contractor must sign the proposals. Proposals shall be sealed in an envelope, plainly identifying requested services and proposer's name and address and addressed and delivered to the issuing office. If submitted via email, the document shall be addressed and delivered as identified in Subsection 2.3.

4.2 Proposer Requirements

Any contractor 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 as a firm for at least five (5) years;
- C. All Proposers must be experienced in Water Meter Reading similar to that of the City;
- D. All Proposers must agree to execute the City's Purchase Agreement, if awarded; and
- E. All Proposers must carry required insurance, naming the City an additional insured.

4.3 Proposal Format

Proposals shall be type-written with body text consisting of a 11 or 12-point font. Proposals shall be printed double-sided. The City requests that submittal materials contain post-consumer recycle content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled, such as PVC binder, spiral bindings, and plastic or glossy covers or dividers. One page is considered to be one side of a single 8 ½" x 11" sheet.

Proposals being submitted electronically must be in pdf format.

4.4 Proposal Requirements

All proposals submitted in response to this Request for Proposal must include the following:

- A. Attachment "A" is the Purchase Agreement. Each Proposer must evaluate this contract form and its Exhibit B (Scope of Work), and thereby agree with the terms and conditions contained therein unless written objections are included as an addenda to the proposal. The City will review the addenda and content of any such objection in the proposal evaluation process.
- B. Proposal Content – each Proposer shall fully address Section 5.3(B-E) of this RFP and give complete information regarding experience, general understanding of the services requested, service timeframe, and proposed rates.
- C. Supplemental material—materials and data not specifically requested for consideration may be included as supplemental information.
- D. 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.

4.5 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 2.4. 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 as follows:

Joe Gardner
City of Milwaukie
Finance Department
10722 SE Main Street
Milwaukie, OR 97222
gardnerj@milwaukieoregon.gov

Protests must include:

- A. The identity of the Proposer;
- B. A 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.

SECTION 5: PROPOSAL SELECTION AND EVALUATION

5.1 General Information

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

5.2 Selection Review Committee

The Selection Review Committee will be comprised of at least three (3) members. The role of the Selection Review 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 5.3. 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.

5.3 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>Experience and competence with governmental and municipal entities will be evaluated.</i> | 5 points |
| C. Service understanding and approach
<i>Evaluation of Proposer's work plan, general understanding of the services as detailed, and customer service features.</i> | 5 points |
| D. Service timeframe
<i>Evaluation of Proposer's practical approach to meeting the City's deadlines as detailed.</i> | 10 points |
| E. Fee evaluation
<i>Evaluation of the proposed rates and methodology.</i> | 20 points |

5.4 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, and the second ranked Proposal being the Proposer next most appropriate, all in the sole judgment of the Selection Review Committee.

Proposal scores will be totaled and ranked. Any Proposal in response to this 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.

5.5 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.

5.6 Intent of Award

Upon evaluation and interviews of the proposers, the City will provide written notice of its intent to award the contract to the contractor who best meets the overall needs of the City.

5.7 Protest of Award

In accordance with the City's Public Contracting Rule 30.135, any adversely affected or aggrieved proposers has seven (7) calendar days from the date of the written notice of award to file a written protest, as identified in Section 2.4.

SECTION 6: CONTRACT REQUIREMENTS

6.1 Contract Negotiation

The City reserves the right to negotiate final terms of a Purchase Agreement as the City determines to be in its best interest.

The City will negotiate the agreement once the Selection Review Committee has chosen the top-ranked Proposer. If the City cannot come to terms with the top-ranked Proposer, the City will 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.

6.2 Contract Award

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



**PURCHASE AGREEMENT
WITH THE CITY OF MILWAUKIE, OREGON
FOR WATER METER READING SERVICES**

THIS CONTRACT is made and entered into this Day of Month, Year, by and between the City of Milwaukie, Oregon, a municipal corporation of the State of Oregon, hereinafter called "City", and enter Contractor's business name, hereinafter called "Contractor."

RECITALS

WHEREAS, City has need for certain goods or services provided by Contractor, and

WHEREAS, Contractor is in the business of selling certain goods or services and is aware of the purposes for which City will use the goods,

THEREFORE, City and Contractor wish to enter into a contract under which City shall purchase the goods or services described in Contractor's bid in accordance with these contract documents, including the attached standard terms and conditions.

TERM AND CONDITIONS

Any purchase made against this Contract shall be in compliance with the terms and conditions set forth in these contract documents, including those listed in Exhibit A, Standard Terms and Conditions.

GOODS OR SERVICES TO BE PROVIDED

City shall purchase goods or services from Contractor in accordance with specifications, scope, and unit prices outlined in Exhibit B. This Contract is non-exclusive; City reserves the right to procure goods or services through any other means as it deems necessary. Contractor shall be responsible for the delivery of goods or services in accordance with Exhibit B and the terms and conditions of this Contract.

EFFECTIVE DATES AND DURATION

This Contract shall become effective upon July 1, 2016 and shall expire, unless otherwise terminated or extended, on June 30, 2018. The City shall also retain the rights to two (2) two-year extensions to the Contract.

COMPENSATION

City agrees to compensate Contractor for goods or services supplied, including any applicable shipping and handling charges, as described in Exhibit B. City shall not be responsible for payment of any materials, services, expense, or costs other than those which are specifically included in Exhibit B. Payment shall be on a unit price only for those goods or services received in an acceptable condition to City. Compensation over the life of this Contract is not to exceed the rates established in Exhibit B. Any pricing increase must be submitted to the City 60 days prior to the effective date and must be in compliance with the Escalation Clause stated in Exhibit B. Payment will be made based on Contractor's invoice, subject to the approval of the Contract Manager or appropriate City representative, and not more frequently than monthly. Payment shall be made only for work actually completed as of date of invoice. Payment terms shall be net 30 days from date of invoice.

CONTACT INFORMATION

All notices shall be made in writing and may be given by personal delivery, mail, email or fax. The following addresses and contacts shall be used to transmit notices and other information:

Contact for City:	Contact for Contractor:
Joe Gardner	(add Contractor's contact person's name)
10722 SE Main Street Milwaukie, Oregon 97222	Address: (add Contractor's mailing address)
Phone: 503-786-7597	Phone: (add Contractor's contact person's phone number)
Fax: 503-786-7528	Fax: (add Contractor's contact person's fax number)
Email Address: gardnerj@milwaukieoregon.gov	Email Address: (add Contractor's contact person's email)
Data Transmission Email: utilitybilling@milwaukieoregon.gov	

All invoices shall be given by personal delivery, mail, email or fax. The following addresses and contacts shall be used to transmit invoices:

Accounting Contact for City:	Accounting Contact for Contractor:
Kelli Tucker, Accounts Payable	(add Contractor's contact person's name)
10722 SE Main Street Milwaukie, Oregon 97222	Address: (add Contractor's mailing address)
Phone: 503-786-7523	Phone: (add Contractor's contact person's phone number)
Fax: 503-786-7528	Fax: (add Contractor's contact person's fax number)
Email Address: tuckerk@milwaukieoregon.gov	Email Address: (add Contractor's contact person's email)
Invoice Email: ap@milwaukieoregon.gov	

CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor acknowledges that for all purposes related to this Contract, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.600 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 Contract, 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.

Contractor acknowledges that for all purposes related to this Contract, Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

INDEMNIFICATION

Contractor shall defend, indemnify, and hold harmless City, City's officers, employees, agents, and representatives from and against all liability, claims, demands, judgments, penalties, and causes of action of any kind or character, or other costs or expenses incidental to the investigation and defense thereof, of whatever nature, resulting from or arising out of the activities of the Contractor or its Subcontractors, agents, or employees under this contract, except, however, that the foregoing shall not apply to liability that arises out of City's negligence.

INSURANCE

Contractor shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities and work hereunder.

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

a. Commercial General Liability Insurance

If Contractor will be installing or testing the goods, or otherwise performing services on City's premises, Contractor shall provide a certificate indicating that Contractor has commercial general liability insurance covering bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability insurance. Coverage will include \$2,000,000 per occurrence and \$3,000,000 general annual aggregate. Said insurance shall name City as an additional insured and shall require written notice to City thirty (30) days in advance of cancellation. If Contractor hires a carrier to make delivery, Contractor shall ensure that said carrier complies with this paragraph.

b. Business Automobile Liability Insurance

If Contractor will be delivering the goods, Contractor shall provide City a certificate indicating that Contractor has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000. Said insurance shall name City as an additional insured and shall require written notice to City thirty (30) days in advance of cancellation. If Contractor hires a carrier to make delivery, Contractor shall ensure that said carrier complies with this paragraph.

c. Workers' Compensation Insurance

The Contractor, its Subcontractors, if any, and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers' Compensation Law 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 Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain workers' compensation coverage. All non-exempt employers shall provide Employers Liability Insurance with coverage limits of not less than \$500,000 each accident.

d. 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 effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Contract.

e. City's insurance is excess and not contributory insurance with the insurance required by this contract.

Any action or suits involving any question arising under this Contract must be brought in the Circuit Court of the State of Oregon.

COMPLETE AGREEMENT

This Contract, including the attached terms and conditions and exhibits, constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Contract 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 Contract. Contractor, by the signature of its authorized representative, hereby acknowledges that he/she has read this Contract, understands it and agrees to be bound by its terms and conditions.

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

CITY OF MILWAUKIE

CONTRACTOR

Signature

Signature

Printed Name & Title

Printed Name & Title

Date

Date

CITY OF MILWAUKIE
STANDARD TERMS AND CONDITIONS

1. **Packing & Shipment.** Deliveries shall be made as specified, without charge for boxing, crating, carting or storage. Material shall be suitably packed to ensure against damage from weather or transportation and to secure lowest transportation costs, and in accordance with the requirements of common carriers. Buyer's Order number and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. Buyer's count or weight shall be conclusive on shipment not accompanied by packing lists. Unless otherwise specifically agreed, all costs of packaging and shipment are included in the purchase price and all goods will be shipped, with all costs prepaid. Risk of loss to goods in shipment (including damage, destruction, theft, or loss) shall be borne by the Seller. Risk of loss shall not pass to Buyer until the goods are delivered to and checked in at the location specified by Buyer in this Order.
2. **Warranty.** Unless otherwise agreed in writing, Seller warrants that the products ordered will conform to the specifications herein and to any drawings, samples, or other description furnished or adopted by Buyer. All products are warranted to be merchantable, to be of the highest quality design, material, and workmanship and free from defect and to be fit for purpose intended. All warranties shall survive inspection or test, acceptance and payment. Warranties shall run to Buyer, its successors, assigns and customers. Warranty period shall be (1) year from date of acceptance by Buyer.
3. **Inspection and Acceptance.** At Buyer's request, Seller shall provide a complete inspection program; satisfactory to Buyer, for Buyer's inspection of all materials, fabricating methods, equipment in process work and finished products.
If this Order provides for inspection of the work by Buyer on site during the period of manufacture, Seller agrees to provide Buyer's inspectors with reasonable facilities and assistance during such inspection. Inspection by Buyer shall not unduly delay the work. Buyer may charge Seller any additional cost incurred by Buyer if the work is not ready in accordance with the inspection schedule. Any inspection made or Waiver-of-Inspection-Notice given by Buyer will not relieve Seller from its responsibilities for delivering products and work hereunder.
Acceptance or rejection of the products shall be made up to 10 days after delivery and inspection by Buyer except as otherwise provided herein. Failure to inspect and accept or reject products shall neither relieve Seller from responsibility for such products, which do not meet the requirements herein nor impose liability on Buyer therefore.
4. **Delivery.** If Seller fails to meet the delivery schedule provided herein, Buyer may require Seller to deliver the products, or any portion thereof, in any manner commercially necessary to speed delivery, all at the Seller's sole expense. Unless otherwise agreed upon in writing by Buyer and Seller, Seller shall be required to pay the normal freight weight plus any premium rate required. Invoices covering products shipped in advance of the date specified will not be paid until after the date specified for delivery and are subject to rejection, as provided in this paragraph immediately below, if shipped too early. Neither party shall be liable for delays or defaults due to strike, fire, windstorm, riot, natural disaster, war, civil unrest or other similar unforeseeable cause beyond the control and without the fault or negligence of the party incurring such delay. Seller shall notify Buyer in writing of the existence of such cause within five (5) days after the commencement of the delay or default giving pertinent information concerning such cause. No delivery shall be made more than seven (7) days prior to the applicable delivery date, and Buyer shall have the

- right to return earlier deliveries at Seller's risk and expense or charge to Seller any additional costs sustained because of the same.
5. **Buyer-Furnished Materials.** Seller shall assume all risk of loss of any material furnished by Buyer to Seller for use in performance of this Order.
 6. **Taxes.** Seller shall not invoice Buyer for any taxes nor include in Seller's price any federal excise, state, or city tax or any other tax, unless Seller has first asked Buyer for Buyer's tax exemption number and it has been agreed upon between both parties that Buyer is not exempt from the tax.
 7. **Changes.** Buyer may, by written order, make changes including changes in drawings or specifications. Buyer will equitably adjust any difference in cost or time for performance resulting from such change and the Order modified in writing accordingly. ANY CLAIM BY SELLER UNDER THIS CLAUSE MUST BE ASSERTED IN WRITING WITHIN 30 DAYS FROM THE DATE OF SELLER'S RECEIPT OF THE CHANGE ORDER OR THE CLAIM WILL NOT BE ALLOWED.
In the event that Buyer proposes any change prior to making such change by written order and such change will have an effect on the warranty of the products procured by this Order, Seller shall notify Buyer in writing of such effect within 10 days of receipt of such proposal.
 8. **Advertising.** Seller shall not, without the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the products herein.
 9. **Cancellation for Cause.** Buyer may cancel all or any part of the undelivered portion of this Order if Seller breaches any of the terms hereof or in the event of any of the following: Insolvency of Seller, a voluntary or involuntary petition in bankruptcy for, by or against Seller; the appointment of a receiver or trustee for Seller, or an assignment for the benefit of creditors by Seller or if Buyer has reasonable cause to believe Seller will become insolvent, file for bankruptcy, go out of business or that the products being shipped may be subject to lien, claim or attachment by a creditor of Seller. Any such cancellation under this section shall be cancellation for cause and in the event of such cancellation, Buyer shall have the right to complete, or cause to have completed, this Order including the right to cause Seller to produce, without liability of any kind to the Buyer, proprietary items of the Seller as necessary to complete the Order. The remedies and damages in this section shall be cumulative and in addition to any other or further remedies provided at Law or in Equity, including reasonable and necessary attorney's fees and other costs of litigation.
 10. **Termination.** Buyer has the right, in its sole discretion, to terminate this Agreement without cause or for no cause at any time by giving notice to Seller. If Buyer terminates the contract pursuant to this section, it shall pay Seller for goods shipped by Seller prior to receipt by Seller of the notice of termination. Buyer may deduct the amount of damages, if any, sustained by Buyer due to any breach of contract or warranty by Seller. Damages for breach of contract or warranty shall be those allowed by Oregon law, reasonable and necessary attorney fees, witness fees (expert and non-expert), and other costs of litigation at trial and on appeal.
 11. **Assignment and Subcontracting.** Seller may not assign or subcontract any of its rights or obligations hereunder without the prior written approval of Buyer. Any unapproved assignment shall be void. Seller shall be fully responsible for the acts or omissions of any subcontractors and all persons employed by them, and neither the approval by Buyer of any subcontract nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and the Buyer. Buyer may assign its rights under this Order.
 12. **Work on Buyer's Premises.** If Seller's performance of this Order involves operations by Seller on Buyer's premises, Seller shall (a)

provide all necessary and sufficient safeguards and take all proper precautions against the occurrence of injury to any person or damage to any property, and shall be responsible for and shall indemnify and hold harmless Buyer, its representatives, officers, employees, and agents from any and all loss, suit, action or claim, including cost and attorney's fees, by reason of injury, including death, to any person and carry public liability and property damage insurance with limits of liability of not less than \$1,000,000 each, unless higher limits are required by a signed purchase agreement, with contractual liability endorsement and such insurance as set forth in the insurance clause of the contract. Compliance shall be verified by Certificate of Insurance with appropriate endorsements sent to Buyer prior to Seller commencing work on Buyer's premises. Any work performed on Buyer's premises must be done pursuant to all OSHA standards, all applicable State and Federal health and safety laws, rules and regulations and all workers must be covered by workers' compensation insurance furnished through and paid for by Seller.

13. Stop Work Order. Buyer may, at any time by written order to Seller, require Seller to stop all, or any part of the work called for by this Order for a period of 90 days after the written order is delivered to Seller, and for any further period to which the parties may agree and for any other period to which the parties may have agreed or as provided in Section 4, 10, and/or 11. Within the period of 90 days or less or within any extension of that period, Buyer shall either: (a) cancel the "Stop Work Order" and direct Seller to resume work; or (b) terminate the work covered by this Order. If Buyer orders Seller to resume work, Seller shall be entitled to any equitable adjustment pursuant to Section 8 provided a claim for such an adjustment shall be submitted by Seller within 30 days after the end of the period of work stoppage.

14. Payment. Payment date shall be calculated from the date of Buyer's receipt of an acceptable invoice and Buyer's acceptance of the products and supporting documentation at destination.

15. Information/Data. Unless otherwise agreed in writing any designs, drawings, specifications, or other manufacturing information furnished by Buyer to Seller shall be confidential to Buyer and is furnished solely for the performance of this Order. All copies of such information shall be returned to Buyer upon completion of the Order. Any designs, drawings, specifications, or other manufacturing information delivered by Seller to Buyer may be used for any purpose whatsoever. The foregoing shall apply notwithstanding the presence or absence of any contrary legend or statement on any of such information. All business and governmental information materials containing business and governmental information provided by Buyer to Seller shall be treated as confidential.

16. Compliance with Laws and Regulations. Seller warrants that all products, goods, or work delivered and performed shall comply with all applicable Federal, State or Local Laws or Regulations including without limitation The Occupational Safety and Health Act (29 USC. Chapter 15); Federal Hazardous Material Transportation Act (49 USC. Chapter 27); Equal Employment Opportunity; E.O. 11246 and 41 CFR Sections 60-1.4 and 60-1.7; Employment of the Handicapped E.O. 11758 and 41 CFR Section 60-741-4; Utilization of Minority Enterprises E.O. 11625 and 41 CFR Subpart 1-1.13; Age Discrimination E.O. 11141, Employment of Veterans E.O. 11701 and 41 CFR Section 50-250.4 and all rules, regulations and amendments issued pursuant to the foregoing.

Seller shall indemnify Buyer, its officers, employees and agents against any damages, penalties, costs or expenses incurred in connection with any alleged violation of any Federal, State or Local Law or regulating the manufacture or sale to the Buyer of any item covered by this Order.

17. Patents, Copyrights, Trademarks. Seller warrants that no products will be furnished hereunder which infringe or contribute to the

infringement of any letters patent, copyright or trademark. Seller agrees to immediately replace at its sole cost any products furnished hereunder which infringe or contribute to the infringement of any letters patent, copyright or trademark or to take all steps necessary at Seller's sole expense to remove such infringement.

Seller will indemnify and hold harmless Buyer, its representatives, officers, employees and agents from and against any and all costs, royalties, damages and/or expenses which may arise out of or result from, or be reasonably incurred in contesting any claims that the methods, processes or acts by the Seller or its employees or the products furnished hereunder, infringes or contributes to the infringement of any letters, patent, copyright or trademark.

18. Waiver. The failure of Buyer to enforce at any time any of the provisions of this Order or to exercise any option herein provided, shall not be a present or future waiver of such provisions, nor in any way affect the validity of this Order or any part hereof, or the right thereafter to enforce each and every such provision. The express waiver (whether one (1) or more times) of any provision, condition or requirement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

19. Independent Contractor. Seller is an independent contractor and persons employed by Seller shall be employees of Seller and not employees of Buyer.

20. Complete Agreement. The Purchase Agreement and any referenced attachments constitute the complete agreement between the parties. Except as otherwise provided herein, it is subject to change only by an instrument signed in writing by both parties.

21. Acceptance by Performance. If Seller fails provide to Buyer with a signed copy of this order, but delivers product or performs the services specified in this agreement, then Seller agrees that the Seller shall be deemed to have accepted the terms and conditions of this order, as provided on both the front and this reverse side of the order. Buyer must agree any changes or modifications to this order by Seller to, in writing, or they shall not be deemed accepted by Buyer and if the Seller delivers the products nonetheless, then the original terms and conditions of this order shall govern.

22. Mandatory Mediation and Binding Arbitration. If there is a dispute concerning any of the terms, conditions or the performance of this order, then it is hereby agreed by both Buyer and Seller that the dispute shall be submitted first to non-binding mediation, to be performed by a sole mediator to be agreed upon between Buyer and Seller. If a mediator cannot be agreed upon, then the parties agree that any Circuit Court judge for the State of Oregon, County of Clackamas, shall be authorized to appoint a mediator for the parties. Should the parties fail to reach an agreement through mediation, then the parties shall submit to binding arbitration, which shall be governed by the rules of the Arbitration Service of Portland, and shall be conducted within Clackamas County. The arbitration shall be conducted by a single arbitrator chosen by mutual agreement of the parties. If the parties are unable to agree on an arbitrator, the parties shall ask the Presiding Judge of the Circuit Court for Clackamas County to select the arbitrator. If the arbitrator determines that one party is the prevailing party, then the losing party shall be required to pay all fees and costs of the arbitration. On the other hand, if the arbitrator determines that neither party is to be considered the prevailing party, then the fees and costs of the arbitration shall be divided equally between the parties. The parties knowingly and voluntarily waive their rights to have their dispute tried and adjudicated by a judge or jury. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, then the other party shall be entitled to costs, including reasonable attorney fees, for having to compel arbitration or defend or enforce the award. The parties agree to defend the arbitrator and any individual engaged in the

- administration of an arbitration proceeding from any subpoenas or claims from third parties arising out of this order or the arbitration.
23. Jurisdiction and Attorney Fees. This order shall be governed and construed according to the laws of the State of Oregon. If a dispute shall arise under this order necessitating the services of an attorney, then the prevailing party shall be entitled to collect from the losing party all of its/his/her reasonable costs and attorney fees, either in arbitration (if awarded by the arbitrator as provided above), or by a court before which any matter concerning this order may be heard, both at trial and on appeal.
24. Neutral Interpretation. This order constitutes the product of negotiations between the parties hereto. Any enforcement hereof will be interpreted in a neutral manner and not more strongly for or against any party based upon the source of draftsmanship.
25. Severability. Nothing contained herein shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between the provisions contained herein and any present or future statute, law, ordinance or regulation contrary to which to the parties have no legal right to contract, the latter shall prevail. The provision of this Agreement, which is affected, shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law.
26. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday or such holiday, then that period shall be extended to include the next day which is not a Saturday, Sunday or holiday.
27. Notice. Any notice required or permitted to be given by either party to the other shall be deemed to have been given when sent via telecopy, overnight air courier, or deposited in the United States mail certified, return receipt requested, with first class postage prepaid, addressed as indicated on the front of this order, or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Notice shall also be considered effective upon delivery if personally delivered.
28. Conditions of Supplying a Public Agency. Where applicable, seller must make payment promptly as due to persons supplying Seller labor or materials for the execution of the work provided by this order. Seller must pay all contributions or amounts due from Seller to the Industrial Accident Fund incurred in the performance of this order. Seller shall not permit any lien or claim to be filed or prosecuted against Buyer or any subdivision of Buyer on account of any labor or material to be furnished. Seller further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
29. Payment of Claims by Public Officers. In the event that Seller fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Seller or a subcontractor of Seller by any person in connection with the performance of this order when such claim becomes due, then the proper officer or officers representing the Buyer hereunder may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due to the Seller by reason of this order. The payment of a claim in the manner authorized by this provision shall not relieve the Seller or any of the Seller's surety from obligations with respect to any unpaid claims.
30. Health Care Benefits for Seller's Employees. If this order involves public service, then Seller must provide health care benefits to all employees who are performing services previously performed by public employees performing similar duties under this order.
31. Hours of Labor. 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.
32. Medical Care and Workers' Compensation. Seller 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 such Seller, of all sums which the Seller agrees to pay for such services and all moneys and sums which the Seller collected or deducted from the wages of the employees pursuant to any law, contractor agreement for the purpose of providing or paying for such service.

EXHIBIT B

SCOPE OF WORK

General

The City owns approximately 7,000 water meters located across a five square mile area. The meters are typically located near the public right-of-way or property line. A few meters may be located in unusual locations, in which case the City shall provide location details.

The City performs a monthly billing cycle which requires all 7,000 meters to be read each month, or roughly 84,000 reads per year.

Scope of Work

The City shall provide Contractor a monthly list of meters to be read. This list may vary slightly each month based on additional meter installations or meter removals. Contractor shall be required to submit meter reading data to the City's Finance department electronically no later than the 20th of each month, with actual read dates not more than ten days prior to the delivery date. Meter reading data shall be submitted via e-mail to utilitybilling@milwaukieoregon.gov.

In addition to monthly meter reading data, separate electronic files shall provide the following information for City staff:

- Meter maintenance items (dig-out's, trim, meter lid replacement, etc.)
- Meter problems (fogged/damaged register, dead meter)
- Misread meters from prior month
- Potential leaks
- Unreadable meters along with reasoning

Contractor shall not be responsible for readings associated with opening or closing customer accounts, re-reads, vacancy checks, verification if meter is on or off, readings inside buildings, pumping flooded vaults, or reading meters inside vaults that cannot be read without entering.

Deliverables

An electronic, comma delimited text file shall be submitted by Contractor to the City each month. The text file shall include the following information:

- Meter reading
- Date of meter reading
- Meter identification number
- Meter serial number

All water meters must be accurately read, and estimated reads will not be accepted. If Contractor is unable to read a meter then the reason must be included in the electronic file sent to the City. Acceptable reasons for an unread meter may include, but are not limited to, a buried meter, vehicle parked over meter, or meter under water.