



CITY OF West Linn

Shane Boyle, Information Technology Manager
Invites Qualified Candidates to Respond to a
Municipal Fiber Optic Network Feasibility Study
Request for Proposal

Date Issued: Friday, July 01 2016
Date Due: Friday, August 19, 2016
Time Due: 5:00PM, Pacific Time Zone

SUBMIT PROPOSALS TO:

Shane Boyle
Information Technology Manager
Information Technology Department
Sboyle@westlinnoregon.gov
City of West Linn City Hall
22500 Salamo Road,
West Linn, OR 97068

Request for Proposal

Municipal Fiber Optic Network Feasibility Study

City of West Linn invites qualified firms to submit proposals to provide fiber optic network market analysis, engineering, and business plan development services described in the “scope of work”. The intent is to select one firm to conduct the feasibility study and then deliver & present actionable findings.

Proposals, in digital format, will be received by Shane Boyle, Information Technology Manager, City of West Linn, 22500 Salamo Road, West Linn, OR 97068, until August 19, 2016, at 5:00 P.M. pacific. Late proposals will be retained but not considered for award.

The complete Request for Proposal is on file with and may be obtained from Shane Boyle, Information Technology Department, 22500 Salamo Road, West Linn, OR 97068, 503-722-5506, sboyle@westlinnoregon.gov. Information about the request for proposal can also be found at the City of West Linn website: [Http://Bids.westlinnoregon.gov](http://Bids.westlinnoregon.gov)

SECTION I

BACKGROUND AND SCOPE OF WORK

1 Background and Scope of Work

1.1 Description of the Scope of Work

The City of West Linn invites qualified firms to submit proposals to provide the services described in scope of work based upon similar work completed for comparable jurisdictions.

1.2 Background Information

The City of West Linn recognizes the importance of ubiquitous high-speed internet service in a thriving and successful community. No longer is it simply a convenience for shopping or entertainment. It is a critical service leveraged by schools, businesses, and governments to interact with their students, customers, and citizens.

The City is considering several options to ensure that access is available and affordable to all areas of West Linn. One potential solution is the construction of a fiber optic cable network owned and operated by the City of West Linn. City staff have conducted some initial research and believe it is a viable option.

The next step is to conduct a comprehensive feasibility study of the West Linn community to assess both the financial viability of a municipally owned network and the community's interest in such a network.

The key to conducting a successful feasibility study will be creativity. The City of West Linn is interested in looking at new ways to partner with other organizations and companies, innovative uses for a fiber network that connects every building in West Linn, and a variety of ways to potentially fund the project.

1.3 Statement of the Bidders Role and Desired Qualifications

The City is seeking a firm to provide a fixed fee proposal to provide the City a study regarding the feasibility of creating and operating a municipal fiber to the premise (FTTP) network.

The selected individual or firm must have the following qualifications to be deemed a subject matter expert and qualify for proposal consideration:

- Five years as a going concern with demonstrable experience in delivering feasibilities studies for communities with populations exceeding 15,000 citizens, and
- Demonstrable experience in delivering feasibility studies in complex land use governed municipalities.

1.4 Scope of Work

1.4.1 Required Research

- Conduct a review of the current incumbent providers in the community including their services, pricing, and customer service levels.
- Create a competitive pricing model for a city provided service and conduct a statistically relevant survey of residences and businesses to determine a projected take rate.
- Conduct an engineering analysis of sufficient scale to produce an approximate cost and timeline to build the proposed network and implement the required services.
- Conduct an assessment of any legal requirements or risks that may be encountered in the creation of the network and the provisioning of the services.
- Conduct an assessment of any community development code requirements or risks that may be encountered in the creation of the network and the provisioning of the services.
- Conduct an analysis of potential partners and how those partnerships may benefit the West Linn community.
- Conduct an analysis of the various possible funding mechanisms to provide the capital necessary to build and operate the network.

1.4.2 Delivered Results

- The results of all of the assessments conducted (current providers, conceptual City provided services and survey, engineering analysis, etc.)
- An analysis of potential options for ownership and services including:
 - City built and operated network and services.
 - City built and operated network but services provided by a third party.
 - Suggested possible public/private partnerships that would meet the goals of the project.
- A thorough business plan showing likely revenues and expenses, staffing requirements, marketing strategy, and timelines.
- A threat analysis of encumbrances to a successful municipal-led program (including)
 - State regulations and municipals codes impacting initial deployment & ongoing operations
 - Long term financial sustainability in a small service market
 - Market trends that may impact sustainability five & ten years into the future
- Options for financing such as bonds, generating revenue from alternate sources (advertising), or public/private partnerships.
- Realistic timeline for implementation.
- Suggested next steps.

1.5 Definition of Project Success

The selected vendor will present a digital reported followed up by a presentation to the West Linn city council within the specified timelines. The submitted report and presentation will address all requirements in the scope of work with a clear set of final recommendations for the city of West Linn supported by solid financials.

1.6 Time Period for Completion of the Feasibility Study

- July 01, 2016 RFP Published.
- August 19, 2016 RFP Submissions Due.
- September 16, 2016 RFP Award Announcement.
- September 30, 2016 Contract Execution Completed.
- October 03, 2016 Research Phase Begins.
- December 02, 2016 Research Phase Concludes.
- December 05, 2016 Results Phase Begins.
- January 06, 2017 Results Phase Concludes.
- January 16, 2017 Digital Results Submitted.
- January 23, 2017 Presentation of Results to City Council.

SECTION II PROPOSAL PROCESS

2 Proposal Process

2.1 Schedule of RFP Events

Event	Event Date
RFP Published.	July 01, 2016
RFP Submissions Due.	August 19, 2016
RFP Respondent Interviews	September 06, 2016
RFP Award Announcement.	September 16, 2016
Contract Execution Completed.	September 30, 2016
Research Phase Begins.	October 03, 2016
Research Phase Concludes.*	December 02, 2016
Results Phase Begins.	December 05, 2016
Results Phase Concludes.*	January 06, 2017
Digital Results Submitted.	January 16, 2017
Presentation of Results to City Council.*	January 23, 2017

* Dates are approximate and City of West Linn reserves the absolute right to approve vendor requested changes to established dates.

2.2 Pre-Proposal Conference

A pre-proposal conference is not required for this project. Vendors may request publicly available materials directly related to completing this RFP.

2.3 Proposal Due Date

One digital copy of the proposal must be delivered no later than Friday, August 19, 2016, by 5:00 P.M. Pacific time. Late Proposals will be retained, but they will not be considered for award.

City of West Linn
Information Technology Department
Sboyle@westlinnoregon.gov
22500 Salamo Road
West Linn, OR 97068

Proposals must be clearly addressed and marked with the RFP title. No paper proposals accepted. It is the responsibility of the proposer to ensure the Proposal is received in a timely manner.

2.4 Proposal Handling and Public Record

The City will not disclose publicly or share vendor Proposals with non-city of West Linn staff, except as required by Oregon Public Records law.

2.5 Solicitation Protest

A person may protest or request a change of a solicitation provision, evaluation criteria, scope of work, specification or contract term no later than Fourteen (14) calendar days prior to the Proposal due date. No protest of the selection of an individual or firm award of a contract because of a solicitation provision, evaluation criteria, and scope of work, specification or contract term will be considered after such time. The protest or request for change shall include the reason for the protest or change, any proposed language, and why the proposed language would benefit the City. The City shall consider the protest or request for change and may reject the protest or request for change, issue an addendum or cancel the RFP. The protest must be submitted to the Information Technology Department at the following address:

Shane Boyle
Information Technology Manager
City of West Linn City Hall
22500 Salamo Road
West Linn, OR 97068
503-722-5506
Sboyle@westlinnoregon.gov

2.6 Official Contacts

Questions regarding the scope of services, site visits and other facilitations must be directed to the Information Technology Manager:

Shane Boyle
Information Technology Manager
City of West Linn City Hall
22500 Salamo Road
West Linn, OR 97068
503-722-5506
Sboyle@westlinnoregon.gov

SECTION III PROPOSAL FORM AND CONTENT

3 Proposal Form and Content

3.1 General Information

Proposals shall be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content and cost effectiveness of the Proposal.

Provide one digital submission of the Proposal. The Proposal shall not exceed Twenty (20) pages in length; consecutively number all pages of the proposal. Organize the proposal in accordance with RFP Section 3.2 through 3.8.

3.2 Letter of Transmittal

All Proposals must include a cover letter addressed to the City's Information Technology Manager and signed by a duly constituted official legally authorized to bind the proposer to its proposal. The cover letter may summarize the key provisions of the proposal. The cover letter must include the name, address, email address and telephone number of the proposer and the name, title, address, email address and telephone number, of the person authorized to represent the proposer and to whom the city should direct correspondence.

3.3 Project Understanding

The proposer shall include a detailed statement to demonstrate its understanding of the project, including but not limited to:

- The City's goals in pursuing the feasibility study.
- The role of the proposer.
- Key research milestones, including an explanation of which ones are the most important, and the ramifications of missing milestones.
- The key deliverables required by the project.

3.4 Qualifications

Proposals shall demonstrate the qualifications and experience of the personnel who will work directly with the City rather than describing the general experience and qualifications of the firm. The City will not consider promotional literature of a general nature. The focus should be on recent and local project experience within the last two years that is relevant to the scope of work outlined in this RFP. The RFP shall include the information specified in paragraphs 3.4.1 through 3.4.4.

3.4.1 Qualifications of the Firm

- Describe the firm's capabilities and experience.
- List recent experience working with similar projects.

- List recent experience working with government clients
- Describe how the firm is legally qualified in the State of Oregon to perform the work requested.

3.4.2 Project Manager Qualifications

- The project manager is the person who will be assigned by the proposer to provide day-to-day management of this project.
- List the qualifications of the project manager who will work on this project. Include a description of the relevant education and training, certificates and licenses, professional background, and years of experience with work relevant to the scope of this RFP.
- Describe the experience of the project manager, particularly similar projects with similar entities. Identify the project manager's specific role in relevant projects; do not include projects where the project manager had a minor or no active role. The City will only consider projects that include a client contact name and phone number.
- If submitting a resume, only include project experience relevant to the scope of work outlined in this RFP.

3.4.3 Key Technical Personnel Qualifications

- Provide information about the qualifications and experience of key personnel. (See Project Manager Qualifications)
- If submitting a resume, only include project experience relevant to the scope of work outlined in this RFP.

3.4.4 Subcontractor Qualification

If a subcontractor will be used in this project:

- Provide information about the qualifications and experience of any subcontractor(s). (See Project Manager Qualifications)
- Describe the experience of the project manager and key personnel working with the subcontractor(s).

3.5 Project Approach and Schedule

The proposer shall include a detailed statement of its approach to the project and schedule. Include the following information.

- An overview explanation of proposer's approach to the work, the techniques the proposer expects to use, and the use of key personnel. This should include an

explanation of any modifications of the work items and scope of work presented in this RFP.

- Describe how proposer would use city personnel, if at all, to assist during the project and indicate the approximate time requirement.
- Describe the projected workload of the project manager, key personnel and subcontractors and demonstrate their availability to timely provide the services requested in this RFP.
- Describe your approach to the overall management and integration of all activities required by the scope of work, including quality assurance, responsibility, and cost control.
- Outline a work plan and related time schedule for each significant segment of the work. This may include a GANT or PERT chart.
- Include an estimate the amount of hours each staff will spend per task substantially in the following format:

Project Tasks	Consultant 1	Consultant 2	Consultant 3
Task 1	Hours		
Task 2		Hours	
Task 3			Hours
TOTAL			

- Provide any additional information about proposer's project approach that would be beneficial to the selection committee.

3.6 Additional Information

Provide any other information that the proposer feels applicable to the evaluation of the proposal or of their qualification for accomplishing the project. Use this section to address those aspects of your services that distinguish your firm from other firms. Additional information shall be considered when evaluating the proposer's project approach and schedule.

Proposers are encouraged to improve upon the tasks, work items, or other elements described in this RFP. However, prior to basing a proposal on those improvements, proposers should check with the City's Information Technology Manager to ensure that the City views the changes as desirable improvements.

If there is no additional information to present, state, "There is no additional information we wish to present."

3.7 Cost Schedule

The proposer's cost schedule shall be submitted with the Proposal. All costs are to be contained in this section. For each project category (Sub-Contractors, Services,

Expenses, and labor), include a cost and state a grand total for all project categories. This section shall also include payment terms required for services rendered.

The cost schedule shall include:

Proposer's fee for the requested work as follows:

- Using the amount of hours estimate from section 3.5, state the fee by phase, task, and total hours.
- Total hours by staff classification multiplied by the hourly billing rate.
- Cost and personnel should be clearly tied to the project specific tasks (including subcontractor personnel and costs).
- All out-of-pocket costs.
- Any other anticipated fees or costs.
- A fee for each phase of the project.
- Proposed or preferred schedule of billing dates and payment terms.
- The method used to charge for any special requests, changes orders that broadening of the scope of the work beyond that described in this RFP or mitigate a risk factor identified.

3.8 Contracting Terms & Conditions

All proposals must contain a list of potential conflicting contract terms from the City of West Linn standard personal services agreement. These term & condition conflicts will be considered when scoring proposal submissions. (See Section VI Personal Services Agreement).

SECTION IV EVALUATION / SELECTION OF PROPOSALS

4 Evaluation / Selection of Proposals

4.1 Clarifications

The City reserves the right to seek written clarification of each proposal submitted. The City also reserves the right to require other evidence of minimum qualifications, technical, managerial, financial, or other abilities prior to selection.

4.2 Evaluation Criteria

The City will make a selection based on the evaluation of the written proposals and interviews. The City may elect to interview all proposers or only the highest ranked proposers. The City reserves the right to make a selection based only on the evaluation of the written Proposals. Written Proposals and interviews will be evaluated based on the following criteria:

- Project Understanding – 10 points
- Organization Qualifications – 30 points
- Project Management Approach– 30 points
- Compensation Schedule - 30 points

Information gained during an interview will be considered during the evaluation of the written proposal.

4.3 Method of Selection

A selection committee will evaluate each submitted written proposal and each interview, when applicable, to determine whose proposal is the most advantageous to the City based on the evaluation process and evaluation criteria outlined in this RFP. The City will award the contract to the highest ranked responsive proposer.

4.4 Single or Multiple Contracts

One firm will be selected to provide all services.

4.5 Notice of Intent to Award

Upon completion of the evaluation process, the selection committee will advise all proposers as to if they were selected or not selected. The City of West Linn is not liable to any bidder or proposer for any loss or expense caused by cancellation of this RFP.

4.6 Selection Protest

Proposers who disagree with the City's selection decision may protest that decision. The judgment used in the scoring by individual evaluators is not grounds for appeal. No protest because of a solicitation provision, evaluation criteria, or scope of work, specification or contract term that could have been raised as a solicitation protest will be considered. The selection protest must be submitted in writing within seven (7) calendar days following of the RFP Award Announcement. The protest shall be submitted to the Information Technology Manager at the following address:

City of West Linn City Hall
Shane Boyle
Information Technology Department
Sboyle@westlinnoregon.gov
22500 Salamo Road
West Linn, OR 97068

The selection protest must state all the relevant facts that establish that all higher ranked proposers were ineligible for selection. A written decision will be sent to the protester.

4.7 Agreement

The City reserves the right to negotiate a final contract that is in the best interest of the City. The City of West Linn standard terms and conditions are included in section VI. Standard terms and conditions are not negotiable. Any terms & conditions that may prevent a signed agreement must be included in the proposal submission for consideration of RFP award.

The contract will define the extent of services to be rendered, method and amount of compensation. The contract will be negotiated with the number one ranked proposer for the project. If an agreement is not reached, negotiations will be terminated. Negotiations will then begin with the selection committee's second choice for the project.

When an agreement is reached, a contract for the work will be prepared and executed with City Manager approval.

The successful proposer will enter into a contract with the City by September 16, 2016.

4.8 Term

The contract term will end on January 31, 2017, or a date negotiated as part of the contract.

4.9 Compensation

The final contract will be negotiated based upon the standard terms & conditions contained within the City of West Linn's personal services agreement (see section VI).

SECTION V GENERAL INFORMATION

5 General Information

5.1 Compliance with the Rules

Proposers responding to this RFP must follow the procedures and requirements stated in the RFP document. Contracting with City of West Linn shall be subject to City public contracting rules except as otherwise provided in the City governing charter. Adherence to the procedures and requirements of this RFP will ensure a fair and objective analysis of your proposal. Failure to comply with or complete any part of this RFP may result in rejection of your Proposal.

5.2 Proposal Withdrawal

Any proposal may be withdrawn at any time before the proposal due date and time, by providing a written request for the withdrawal of the proposal to the issuing office. A duly authorized representative of the firm shall execute the request. Withdrawal of a proposal will not prejudice the right of the proposer to file a new proposal before the due date.

5.3 Addenda

The City may modify the RFP at any time at least five (5) days prior to the RFP due date, by issuance of an electronic addendum to all proposers who are participating in the process at the time the addendum is issued. Verbal modifications to the RFP specifications shall not be binding upon the City.

5.4 Cancellation, Delay or Suspension of Solicitation; Rejection of Proposals

The City may cancel, delay, or suspend this solicitation if in the best interest of the City, as determined by the City. In addition, the City may reject any or all proposals, in whole or in part, if it is in the best interest of the City, as determined by the City.

5.5 Irregularities

The City reserves the right to waive any non-material irregularities or information in the RFP or in any proposal.

5.6 Incurred Costs

The City is not liable for any costs incurred by a proposer in the preparation and/or presentation of a Proposal.

5.7 Ownership of Documents

Any material submitted by a proposer shall become the property of the City. Materials submitted after a contract is signed will be subject to the ownership provision of the executed contract.

5.8 Confidentiality of Information

All information and data furnished to the proposer by the City and all other documents to which the proposer's employees have access during the preparation and submittal of the proposal shall be treated as confidential to the City. Any oral or written disclosure to unauthorized individuals is prohibited.

5.9 Public Record

Any portion of a proposal that the proposer claims constitutes a "trade secret" or is "confidential" must clearly identify such material, keep it separate, and provide separate notice in writing of the status of this material to the official RFP contact.

All Proposals and information submitted by proposers are open for public inspection.

Clearly marked sample work or documents illustrating previous work experience will be returned to proposers after the evaluation and award process upon written request.

5.10 Equal Opportunity Policy for Contractors

The City of West Linn requires all proposers to comply with equal opportunity policies. The City of West Linn's programs, services, employment opportunities, and volunteer positions and contracts are open to all persons without regard to race, religion, color, national origin, sex, sexual orientation, age, marital status, handicap, or political affiliation. A copy of the City's policy is available upon request.

5.11 Miscellaneous Licenses/Permits

The selected proposer will be required to obtain a business license if work is performed within the City of West Linn.

5.12 Minimum Qualifications

The firm and all applicable personnel must be legally qualified in the State of Oregon (i.e. be appropriately licensed or certified) to practice the work proposed to be performed.

5.13 Recyclable Products

Proposers shall use recyclable products to the maximum extent economically feasible in the preparation of the proposal and in the performance of the work set forth in this RFP.

SECTION VI
PERSONAL SERVICES AGREEMENT
FOR (TITLE)

City: City of West Linn, a municipal corporation of the State of Oregon.
Contractor: (insert name of contractor)
(insert address of contractor)
(insert City, State, Zip)
Term: (insert beginning date - insert end date)
Compensation: Not to exceed \$(insert amount)

RECITALS

1. City has need for the services of a person or an entity with particular training, ability, knowledge, and experience as possessed by Contractor, and
2. City has determined that Contractor is qualified and capable of performing the professional services the City require, under the terms and conditions in this Personal Services Agreement ("Agreement"),

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 and incorporated in Exhibit A. 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 **(Month - Day - Year)**. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. COMPENSATION

City agrees to pay Contractor not to exceed **(Amount in written form) (\$Amount in numerical form)** for performance of those services described 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 in the work.
- 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 in this Agreement 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 coverages:

A. Commercial General Liability Insurance

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

<u>Coverage</u>	<u>Limit</u>
General Aggregate	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 30 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for **(PROJECT NAME)**. The City of West Linn, 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:

(insert staff's name) City of West Linn 22500 Salamo Road West Linn, OR 97068	Ph: 503-(insert #) Fax: 503-(insert #) Email: name@westlinnoregon.gov
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Such policies or certificates must be delivered prior to commencement of the work.

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

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

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

City of West Linn	CONTRACTOR
Attn: Finance Department	Attn: (insert contract manager's name)
22500 Salamo Road	Address: (insert contract manager's address)
West Linn, OR 97068	
Phone: 503- 657-0331	Phone: (insert #)
Fax: 503-650-9041	Fax: (insert #)
Email: rseals@westlinnoregon.gov	Email: (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 in this Agreement 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 disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. NON-WAIVER

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

16. NON-DISCRIMINATION

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act 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 **City staff member's title & name** 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 that should there be any conflict between the terms of this Agreement and the Contractor's proposed contract terms, scope of work, or any other document provided by the Contractor, this Agreement shall control and nothing in this Agreement shall be considered as an acceptance of any conflicting terms in the Contractor's proposal.

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. AMENDMENT AND 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 in this Agreement regarding this Agreement. Contractor, by the signature of its authorized representative, acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

INTENDING TO BE BOUND, City has caused this Agreement to be executed by its duly authorized undersigned officer and Contractor has executed this Agreement on the date written below.

CONTRACTOR

Signature

Printed Name & Title

Date

CITY OF WEST LINN

Signature

Printed Name & Title

Date

APPROVED AS TO FORM:

CITY ATTORNEY