



Special Session

SPS

Milwaukie City Council



**MILWAUKIE CITY COUNCIL
SPECIAL SESSION**

City Hall Conference Room
10722 SE Main St
www.milwaukieoregon.gov

**AGENDA
JANUARY 23, 2014**

| | | | Page # |
|----|-----------|--|---|
| 1. | 7:30 p.m. | Personal Services Agreement for City Municipal Judge Services | Finance Director Casey Camors 1 |
| 2. | 8:00 p.m. | Adjourn Special Session | |

Information

Executive Session: The City Council may meet in executive session pursuant to ORS 192.660(2). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- The Council requests that mobile devices be set on silent or turned off during the meeting.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities Act. For special accommodations, please call 503-786-7502 or email ocr@milwaukieoregon.gov at least 48 hours prior to the meeting.



MILWAUKIE CITY COUNCIL
AGENDA ITEM SUMMARY

Agenda Item: **SPS 1.**

Meeting Date: **1/21/14**

Title: **Personal Services Agreement for City Municipal Judge Services**

Prepared By: Casey Camors, Finance Director

Department Approval: Casey Camors

City Manager Approval: Bill Monahan, City Manager

Approval Date: January 13, 2014

ISSUES BEFORE COUNCIL

Direct staff to negotiate and execute a personal services agreement awarding the City's Municipal Court Judge position to the candidate recommended by the selection committee.

STAFF RECOMMENDATION

Direct staff to execute a personal services agreement with the Municipal Court Judge candidate recommended by the selection committee.

KEY FACTS & INFORMATION SUMMARY

In December of 2013, the City's long time Municipal Court Judge, Ronald Gray, resigned after 25 years of service to the City of Milwaukie. A request for proposal was initiated and advertised to fill the Municipal Court Judge position. Five proposals were received. The City's selection committee comprised of Mayor Ferguson, Councilor Hedges, Casey Camors – Finance Director, and Carla Bantz – Court Operations Supervisor, reviewed and analyzed the proposals and interviewed the Candidates

The selection committee is prepared to make a recommendation to the City Council.

OTHER ALTERNATIVES CONSIDERED

Select alternate candidate or perform supplemental selection process.

CITY COUNCIL GOALS

N/A

FISCAL NOTES

Compensation for City Municipal Judge services is expected not to exceed \$37,000.

ATTACHMENTS

1. Staff Report
2. Draft Resolution
3. Draft Personal Services Agreement



MILWAUKIE CITY COUNCIL
STAFF REPORT

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Personal Services Agreement for City Municipal Judge Services**

From: Casey Camors, Finance Director

Date: January 14, 2014

ACTION REQUESTED

Direct staff to negotiate and execute a personal services agreement awarding the City's Municipal Court Judge position to the candidate recommended by the selection committee.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

November 2013 – The City's Municipal Judge resigned after 25 years of service to the City of Milwaukie.

December 20, 2013 – The City published a Request for Proposals for City Municipal Judge Services and five proposals were submitted for the position by the January 3rd deadline.

January 10, 2014 – All five applicants were selected to advance to the next step of the process by a panel consisting of Mayor Ferguson, Councilor Hedges, Finance Director Casey Camors, and Court Operations Supervisor Carla Bantz.

January 14, 2014 – An interview panel made up of Mayor Ferguson, Councilor Hedges, Finance Director Casey Camors, and Court Operations Supervisor Carla Bantz conducted interview of some candidates. The interview process will be completed by January 23, 2014.

BACKGROUND

Upon the resignation of long time Municipal Judge Ronald Gray, staff initiated a request for proposal process. The selection committee comprised of Mayor Ferguson, Councilor Hedges, Finance Director Casey Camors and Court Operations Supervisor Carla Bantz felt the City had received a sufficient number of qualified applicants to move forward with the process and to make a recommendation to the City Council for a final decision.

An opportunity to be interviewed was extended to all five candidates. This work session provides an opportunity for Councilors to discuss their preferences with the full City Council. The goal is to obtain direction to accept one of the proposals and negotiate a two-year contract and to execute the transition to a new Municipal Judge on February 1,

2014. A resolution has been prepared and is in the agenda packet for action by the Council to appoint a Municipal Judge during the regular Council meeting.

FISCAL IMPACTS

Compensation for City Municipal Court Judge is \$37,000 per year.

WORK LOAD IMPACTS

None.

ALTERNATIVES

The City Council may wish to enter into the Agreement with the recommended candidate, an alternative candidate or direct staff to begin a second request for proposal process for City Municipal Judge Services.

ATTACHMENTS

- 1.Resolution
- 2.Personal Services Agreement



CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No.

A resolution of the City Council of the City of Milwaukie, Oregon, directing staff to execute a Personal Service Agreement with _____, for City Municipal Court Judge Services

WHEREAS, the Municipal Court for the City of Milwaukie constitutes the City's judicial tribunal and hears cases arising under the Municipal Code, the Development Code, and the Oregon Vehicle Code; and

WHEREAS, the City requires Municipal Court Judge Services for the operations of the City's Municipal Court; and

WHEREAS, the City has issued and received proposals responding to a request for proposal;

WHEREAS, the City's selection committee has reviewed such proposals and interviewed the qualified candidates and recommends _____ as the City Municipal Court Judge;

Now, Therefore, be it Resolved that the City Council directs staff to enter into an agreement with _____, for City Municipal Judge Services for the term of two years.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



**PERSONAL SERVICES AGREEMENT
WITH THE CITY OF MILWAUKIE, OREGON
FOR MUNICIPAL COURT JUDGE SERVICES**

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

RECITALS

WHEREAS City has need for the services of a person or an entity with particular training, ability, knowledge, and experience as possessed by Contractor, and

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

THEREFORE the Parties agree as follows:

1. SERVICES TO BE PROVIDED

Contractor shall provide services as specified in the Scope of Work, a copy of which is attached hereto, labeled Exhibit A and hereby incorporated by reference. Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement.

2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, by February 1, 2016. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. COMPENSATION

City agrees to pay Contractor not to exceed Nine Hundred Dollars (\$900) per regular court session and One Hundred Dollars (\$100) per truancy court session for a total of \$37,000 per year for performance of those services described in the Scope of Work, which payment shall be based upon the following applicable terms:

- A. Payment by City to Contractor for performance of services under this Agreement includes all expenses incurred by Contractor, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- B. Payment will be made in installments based on Contractor's invoice, subject to the approval of the City Manager, or designee, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.
- C. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- D. Where applicable, Contractor must make payment promptly as due to persons supplying Contractor labor or materials for the execution of the work provided by this order. Contractor must pay all contributions or amounts due from Contractor to the Industrial Accident Fund

incurred in the performance of this order. Contractor shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Contractor further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

- E. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- F. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279B.020. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC SS 201-209.
- G. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- H. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. OWNERSHIP OF WORK PRODUCT

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

5. ASSIGNMENT/DELEGATION

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

6. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor certifies that:

- A. Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.700 and not an employee of City,

shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.

- B. The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

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

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

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

7. INDEMNIFICATION

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

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

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

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

| City | Contractor |
|---|--|
| City of Milwaukie | Company: (insert name of firm) |
| Attn: Accounts Payable | Attn: (insert contract manager's name) |
| 10722 SE Main Street Milwaukie, Oregon 97222 | Address: (insert contract manager's address) |
| Phone: 503-786-7523 | Phone: (insert #) |
| Fax: 503-786-7528 | Fax: (insert #) |
| Email Address: finance@milwaukieoregon.gov | Email Address: (insert address) |

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

9. 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.

10. 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.

11. TERMINATION WITH CAUSE

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

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

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

- B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:
- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
 - 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

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

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

12. 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.

13. FORCE MAJEURE

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

14. 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.

15. NON-DISCRIMINATION

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules, and regulations. Contractor also shall comply with the Americans with

Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

16. 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.

17. EXTRA (CHANGES) WORK

Only the City Council, City Manager or Finance Director 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.

18. 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.

19. 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.

20. 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.

21. CONFLICT BETWEEN TERMS

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

22. 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.

23. 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.

24. COMPLETE AGREEMENT

This Agreement and attached exhibits constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and

signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

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

CITY OF MILWAUKIE

CONTRACTOR

Signature

Signature

Printed Name & Title

Printed Name & Title

Date

Date

EXHIBIT A
SCOPE OF WORK (SERVICES TO BE PROVIDED)

1. Act as the judicial officer of the City. The Municipal Court Judge shall be appointed by and hold office during the pleasure of the Council.
2. Be a member in good standing of the Oregon State Bar during the entire term of office. Disbarment shall be a basis for removal from office.
3. Hold a court within the City, which shall be known as the Municipal Court for the City of Milwaukie, Clackamas County, Oregon.
 - a. Court shall be open for transaction of judicial business most Wednesdays. Truancy court shall be open for transaction Monday evenings for the months of October through June unless changed by City Council.
 - b. The Court may be open for transaction of judicial business at such other times as the Municipal Court Judge, with the concurrence of the City Manager and Finance Director, determines to be necessary for the proper functioning of the court.
4. Conform to the general laws of the State of Oregon governing cities and the judiciary, including justice courts except as the City Charter or Code prescribes to the contrary.
5. The Municipal Court has original jurisdiction of all offenses defined and made punishable by ordinances of the City and of all actions brought to recover or enforce forfeitures or penalties defined or authorized by any ordinance of the City. The Municipal Court Judge may:
 - a. Render judgments and, for enforcing them, impose sanctions on persons and property within the court's territorial jurisdiction;
 - b. Order the arrest of anyone accused of an offense against the City;
 - c. Commit to jail or admit to bail anyone accused of such an offense;
 - d. Issue and compel obedience to subpoenas;
 - e. Compel witnesses to appear and testify and jurors to serve in the trial of matters before the court;
 - f. Penalize contempt of court;
 - g. Issue process necessary to effectuate judgments and orders of the court;
 - h. Issue search warrants; and
 - i. Perform other judicial and quasi-judicial functions prescribed by ordinance.
6. The Municipal Court Judge may appoint municipal judges pro-tem, which judges shall serve at the pleasure of the Council.
7. Notwithstanding this section, the Council may transfer some or all of the functions of the municipal court to an appropriate state court.