

# Council Business Meeting

November 17, 2020

|                    |   |                           |
|--------------------|---|---------------------------|
| <b>Agenda Item</b> | Approval of a Public Contract for Utility Billing Printing & Mailing Services |                           |
| <b>From</b>        | Bryn Morrison   | Financial Systems Manager |
| <b>Contact</b>     | Bryn.morrison@ashland.or.us   | (541) 552-2002            |

## **SUMMARY**

Approval is being requested to enter into a public contract for Utility Billing Printing and Mailing Services. The intent is for the City to partner with one contractor that can provide all of the goods and services that are required to produce and distribute utility billing statements for customers that have chosen to receive a hard copy of their utility billing statement. The City's intent is to award the public contract to the highest ranked proposer, Moonlight BPO (Moonlight Business Process Outsourcing, LLC), for a term of five years.

## **POLICIES, PLANS & GOALS SUPPORTED**

Section 2:

E. Analyze various departments/programs with the goal of gaining efficiencies, reducing costs, and improving City services.

## **PREVIOUS COUNCIL ACTION**

N/A

## **BACKGROUND AND ADDITIONAL INFORMATION**

Up until a year ago, Utility Billing printed the hard copies of utility billing statements in house and the only local vendor (Valley Web Printing) capable of physically picking up the printed utility billing statements one to two times per week provided the mailing services (sort, insert, apply metered postage, and mail utility bills). For the last year, Utility Billing has been able to email the billing data files to the vendor and have the vendor also print the utility billing data on the preprinted shells of utility billing statements provided by the City at a reduced cost.

Being able to email the billing data files to the vendor allows the City to combine all of the printing services with the mailing services and solicit bids from multiple vendors that can perform the printing services within the State of Oregon, per ORS 282.210, and provide all of the goods and services required to produce and distribute utility billing statements. The sourcing method used to obtain proposals for Utility Billing Printing & Mailing Services is a formal Competitive Sealed Proposal (Request for Proposal). The City received five proposals in response to this RFP. The proposals must be evaluated in accordance with the evaluation process and criteria set forth in the RFP. A three-person evaluation committee evaluated the proposals and the evaluation summary is attached for your review.

## **FISCAL IMPACTS**

The City spent \$31,654 for mailing services in FY 2020. The yearly contract for Moonlight BPO will reduce the printing cost down to \$25,125 per year.

## **STAFF RECOMMENDATION**

Staff recommends the public contract for Utility Billing Printing & Mailing Services be awarded to Moonlight BPO.

**ACTIONS, OPTIONS & POTENTIAL MOTIONS**

1. I move to approve the award of a public contract to Moonlight BPO for Utility Billing Printing & Mailing Services.

**ATTACHMENTS**

Attachment 1: Utility Billing Printing & Mailing Services Evaluation Summary

Attachment 2: Goods & Services Agreement with Moonlight Business Process Outsourcing, LLC.

**City of Ashland**  
**Request for Proposal**  
**UTILITY BILLING PRINTING & MAILING SERVICES**  
**Evaluation Summary**  
**October 30, 2020**

| Evaluation Criteria              | Points     | Apex Business Forms |           |           | Crabar GBF |           |           | EDMS Inc.             | Moonlight BPO |            |            | Valley Web Printing |            |            |            |
|----------------------------------|------------|---------------------|-----------|-----------|------------|-----------|-----------|-----------------------|---------------|------------|------------|---------------------|------------|------------|------------|
|                                  |            | #1                  | #2        | #3        | #1         | #2        | #3        |                       | #1            | #2         | #3         | #1                  | #2         | #3         |            |
| Letter of Introduction           | Pass/Fail  | Pass                | Pass      | Pass      | Pass       | Pass      | Pass      | Proposal<br>Withdrawn | Pass          | Pass       | Pass       | Pass                | Pass       | Pass       |            |
| Table of Contents                | Pass/Fail  | Pass                | Pass      | Pass      | Pass       | Pass      | Pass      |                       | Pass          | Pass       | Pass       | Pass                | Pass       | Pass       | Pass       |
| Proposal Submission Form         | Pass/Fail  | Pass                | Pass      | Pass      | Pass       | Pass      | Pass      |                       | Fail          | Fail       | Fail       | Pass                | Pass       | Pass       | Pass       |
| Experience & Qualifications      | 30         | 20                  | 20        | 25        | 20         | 20        | 25        |                       | 30            | 28         | 30         | 30                  | 30         | 30         | 30         |
| Project Approach & Understanding | 25         | 20                  | 20        | 15        | 20         | 20        | 15        |                       | 20            | 23         | 22         | 23                  | 25         | 25         | 25         |
| Data Protection Safeguards       | 30         | 25                  | 25        | 25        | 25         | 20        | 25        |                       | 30            | 30         | 25         | 25                  | 25         | 25         | 25         |
| References                       | 10         | 0                   | 0         | 0         | 10         | 10        | 8         |                       | 10            | 10         | 10         | 10                  | 10         | 10         | 10         |
| Contract Terms & Conditions      | 5          | 5                   | 5         | 5         | 5          | 5         | 5         |                       | 0             | 0          | 0          | 5                   | 5          | 5          | 5          |
| <b>SUBTOTAL</b>                  | <b>100</b> | <b>70</b>           | <b>70</b> | <b>70</b> | <b>80</b>  | <b>75</b> | <b>78</b> |                       | <b>90</b>     | <b>91</b>  | <b>87</b>  | <b>93</b>           | <b>95</b>  | <b>95</b>  | <b>95</b>  |
| Cost Proposal                    | 30         | 10                  | 10        | 10        | 15         | 15        | 15        |                       | 30            | 30         | 30         | 20                  | 20         | 20         | 20         |
| <b>TOTAL</b>                     | <b>130</b> | <b>80</b>           | <b>80</b> | <b>80</b> | <b>95</b>  | <b>90</b> | <b>93</b> |                       | <b>120</b>    | <b>121</b> | <b>117</b> | <b>113</b>          | <b>115</b> | <b>115</b> | <b>115</b> |
| <b>GRAND TOTAL</b>               |            | <b>240</b>          |           |           | <b>278</b> |           |           |                       | <b>358</b>    |            |            | <b>343</b>          |            |            |            |

## GOODS & SERVICES AGREEMENT

### CITY OF ASHLAND

20 East Main Street  
Ashland, Oregon 97520  
Telephone: 541/488-5587  
Fax: 541/488-6006

PROVIDER: Moonlight Business Process Outsourcing LLC  
PROVIDER'S CONTACT: Pete Nye, Client Solutions Manager  
ADDRESS: 2491 NE Twin Knolls Drive, Bend, OR 97701  
TELEPHONE: (541) 382-8402, (866) 348-9791  
EMAIL: [pete@moonlightbpo.com](mailto:pete@moonlightbpo.com)

This Goods and Services Agreement (hereinafter "Agreement") is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter "City") and **MOONLIGHT BPO**, a foreign limited liability company ("hereinafter "Provider"), dba Moonlight Business Process Outsourcing for **UTILITY BILLING PRINTING & MAILING SERVICES**.

### 1. PROVIDER'S OBLIGATIONS

- 1.1 Provide **all of the goods and services required to produce and distribute hard copies of utility billing statements** as set forth in the "SUPPORTING DOCUMENTS" attached hereto and, by this reference, incorporated herein. Provider expressly acknowledges that time is of the essence of any completion date set forth in the SUPPORTING DOCUMENTS, and that no waiver or extension of such deadline may be authorized except in the same manner as herein provided for authority to exceed the maximum compensation. The goods and services defined and described in the "SUPPORTING DOCUMENTS" shall hereinafter be collectively referred to as "Work."
- 1.2 Provider shall obtain and maintain during the term of this Agreement and until City's final acceptance of all Work received hereunder, a policy or policies of liability insurance including commercial general liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence for Bodily Injury and Property Damage.
  - 1.2.1 The insurance required in this Article shall include the following coverages:
    - Comprehensive General or Commercial General Liability, including personal injury, contractual liability, and products/completed operations coverage; and
    - Automobile Liability
    - Workers' Compensation
  - 1.2.2 Each policy of such insurance shall be on an "occurrence" and not a "claims made" form, and shall:
    - Name as additional insured "the City of Ashland, Oregon, its officers, agents and employees" with respect to claims arising out of the provision of Work under this Agreement;
    - Apply to each named and additional named insured as though a separate policy had been issued to each, provided that the policy limits shall not be increased thereby;
    - Apply as primary coverage for each additional named insured except to the extent that two or more such policies are intended to "layer" coverage and, taken together, they provide total coverage from the first dollar of liability;
    - Provider shall immediately notify the City of any change in insurance coverage

- Provider shall supply an endorsement naming the City, its officers, employees and agents as additional insureds by the Effective Date of this Agreement; and
- Be evidenced by a certificate or certificates of such insurance approved by the City.

1.3 All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. As evidence of the insurance required by this Agreement, the Provider shall furnish an acceptable insurance certificate prior to commencing any Work under this Agreement.

1.4 Provider agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of this Agreement when employed by Provider. Provider agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Provider agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.

1.5 In all solicitations either by competitive bidding or negotiation made by Provider for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Providers of the Provider's obligations under this Agreement and Title VI of the Civil Rights Act of 1964 and other federal nondiscrimination laws.

1.6 **Living Wage Requirements:** If the amount of this Agreement is \$22,002.43 or more, Provider is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in that chapter, to all employees performing Work under this Agreement and to any Subcontractor who performs 50% or more of the Work under this Agreement. Provider is also required to post the notice attached hereto as "Exhibit A" predominantly in areas where it will be seen by all employees.

## 2. CITY'S OBLIGATIONS

2.1 City shall pay Provider the fees provided on the Cost Proposal provided herein as full compensation for the Work as specified in the SUPPORTING DOCUMENTS.

2.2 In no event shall Provider's total of all compensation and reimbursement under this Agreement exceed the sum of \$133,000 (this is maximum, not to exceed amount of entire Agreement) without express, written approval from the City official whose signature appears below, or such official's successor in office. Provider expressly acknowledges that no other person has authority to order or authorize additional Work which would cause this maximum sum to be exceeded and that any authorization from the responsible official must be in writing. Provider further acknowledges that any Work delivered or expenses incurred without authorization as provided herein is done at Provider's own risk and as a volunteer without expectation of compensation or reimbursement.

## 3. GENERAL PROVISIONS

3.1 This is a non-exclusive Agreement. City is not obligated to procure any specific amount of Work from Provider and is free to procure similar types of goods and services from other providers in its sole discretion.

3.2 Provider is an independent contractor and not an employee or agent of the City for any purpose.

- 3.3 Provider is not entitled to, and expressly waives all claims to City benefits such as health and disability insurance, paid leave, and retirement.
- 3.4 Provider shall not assign this Agreement or subcontract any portion of the Work to be provided hereunder without the prior written consent of the City. Any attempted assignment or subcontract without written consent of the City shall be void. Provider shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by them, and the approval by the City of any assignment or subcontract shall not create any contractual relation between the assignee or subcontractor and the City.
- 3.5 This Agreement embodies the full and complete understanding of the parties respecting the subject matter hereof. It supersedes all prior agreements, negotiations, and representations between the parties, whether written or oral.
- 3.6 This Agreement may be amended only by written instrument executed with the same formalities as this Agreement.
- 3.7 The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.
- 3.8 This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Jackson County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon. Each party expressly waives any and all rights to maintain an action under this Agreement in any other venue, and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue.
- 3.9 Provider shall defend, save, hold harmless and indemnify the City and its officers, employees and agents from and against any and all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from, arising out of, or relating to the activities of Provider or its officers, employees, contractors, or agents under this Agreement.
- 3.10 Neither party to this Agreement shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's officers, employees or agents.
- 3.11 If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Provider and the City set forth in this Agreement.
- 3.12 Deliveries will be F.O.B destination. Provider shall pay all transportation and handling charges for the Goods. Provider is responsible and liable for loss or damage until final inspection and acceptance of the Goods by the City. Provider remains liable for latent defects, fraud, and warranties.
- 3.13 The City may inspect and test the Goods. The City may reject non-conforming Goods and require Provider to correct them without charge or deliver them at a reduced price, as negotiated. If Provider does not cure any defects within a reasonable time, the City may reject the Goods and cancel this

Agreement in whole or in part. This paragraph does not affect or limit the City's rights, including its rights under the Uniform Commercial Code, ORS Chapter 72 (UCC).

3.14 Provider represents and warrants that the Goods are new, current, and fully warranted by the manufacturer. Delivered Goods will comply with SUPPORTING DOCUMENTS and be free from defects in labor, material and manufacture. Provider shall transfer all warranties to the City.

#### **4. SUPPORTING DOCUMENTS**

The following documents are, by this reference, expressly incorporated in this Agreement, and are collectively referred to in this Agreement as the "SUPPORTING DOCUMENTS:"

- The City's written Request for Proposals for Utility Billing Printing and Mailing Services released on August 21, 2020.
- The Provider's complete written proposal dated September 22, 2020.
- The Provider's complete cost proposal dated September 22, 2020 and October 13, 2020.

#### **5. REMEDIES**

5.1 In the event Provider is in default of this Agreement, City may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:

5.1.1 Termination of this Agreement;

5.1.2 Withholding all monies due for the Work that Provider has failed to deliver within any scheduled completion dates or any Work that have been delivered inadequately or defectively;

5.1.3 Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;

5.1.4 These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

5.2 In no event shall City be liable to Provider for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Provider exceed the amount due, Provider shall pay immediately any excess to City upon written demand provided.

#### **6. TERM AND TERMINATION**

##### **6.1 Term**

This Agreement shall be effective from the date of execution on behalf of the City as set forth below (the "Effective Date") and shall continue in full force and effect until **December 1, 2025**, unless sooner terminated as provided in Subsection 6.2.

##### **6.2 Termination**

6.2.1 The City and Provider may terminate this Agreement by mutual agreement at any time.

6.2.2 The City may, upon not less than thirty (30) days' prior written notice, terminate this Agreement for any reason deemed appropriate in its sole discretion.

6.2.3 Either party may terminate this Agreement, with cause, by not less than fourteen (14) days' prior written notice if the cause is not cured within that fourteen (14) day period after written notice. Such termination is in addition to and not in lieu of any other remedy at law or equity.

#### **7. NOTICE**

Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, or

by mailing using registered or certified United States mail, return receipt requested, postage prepaid, to the address set forth below:

**If to the City:**

City of Ashland  
Utility Billing  
Attention: Bryn Morrison  
20 E. Main Street  
Ashland, Oregon 97520  
Phone: (541) 552-2003

**With a copy to:**

City of Ashland – Legal Department  
20 E. Main Street  
Ashland, Oregon 97520  
Phone: (541) 488-5350

**If to Provider:**

Moonlight BPO  
Attention: Pete Nye  
2491 NE Twin Knolls Drive  
Bend, OR 97701  
Telephone: (541) 382-8402, (866) 348-9791

**8. WAIVER OF BREACH**

One or more waivers or failures to object by either party to the other’s breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

**9. PROVIDER’S COMPLIANCE WITH TAX LAWS**

9.1 Provider represents and warrants to the City that:

9.1.1 Provider shall, throughout the term of this Agreement, including any extensions hereof, comply with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Provider; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

9.1.2 Provider, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Provider; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.



9.2 Provider's failure to comply with the tax laws of the State of Oregon and all applicable tax laws of any political subdivision of the State of Oregon shall constitute a material breach of this Agreement. Further, any violation of Provider's warranty, as set forth in this Article 9, shall constitute a material breach of this Agreement. Any material breach of this Agreement shall entitle the City to terminate this Agreement and to seek damages and any other relief available under this Agreement, at law, or in equity.

**IN WITNESS WHEREOF** the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

**CITY OF ASHLAND:**

**MOONLIGHT BUSINESS PROCESSING OUTSOURCING**

By:

By: \_\_\_\_\_

\_\_\_\_\_  
City Administrator

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**(W-9** is to be submitted with this signed Agreement)

Purchase Order No.  
\_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Date