



REQUEST FOR PROPOSAL WEBSITE REDESIGN, DEVELOPMENT, AND MIGRATION

City of Toppenish RFP #2023-02

RESPONSE DUE: October 20, 2023, at 2:00PM

A. INTRODUCTION

The City of Toppenish is seeking a vendor to redesign and reconstruct the City of Toppenish website in alignment with the WA Cyber Program grant.

The City of Toppenish is currently on a domain and listed as cityoftoppenish.us. The switch to the .gov DNS is a priority for the City of Toppenish. The website is one of the primary communication tools to provide information, communications, and data to the residents of the City of Toppenish and surrounding areas.

The City of Toppenish plans to migrate from <http://cityoftoppenish.us/> to <https://toppenish.gov>. The current website is outdated, has security, data retention and data backup issues and is based on outdated and unsupported software templates with limited control and access. The move will include a complete redesign of the City of Toppenish website and provision of equipment and software for website management.

This upgrade and migration project for the Toppenish.gov website will provide a security certificate to the City of Toppenish domain and allow the city to include other services to migrate to the .gov domain. The City of Toppenish is dedicated to cybersecurity and the continuation of protecting the public infrastructure from cyber threats and attacks and to be more closely aligned with the Washington State Cybersecurity Plan.

B. OVERVIEW

City of Toppenish (City) is requesting proposals for five (5) services related to the City website:

- (1) Professional design of the site;
- (2) Migration of current site to the proposed site.
- (3) Implementation of an infrastructure that allows City offices and departments to maintain their specific information within a common framework;
- (4) Ability to conduct business with the public;
- (5) Hosting of the City website.

Respondents must provide proposals demonstrating their ability to provide all five website services mentioned above. Item (2) above may be quoted with consideration of various levels of count participation. The procedures for awarding this project will follow the guidelines outlined in RCW 39.04.270 - Competitive Negotiations. The proposals will be evaluated based on price and the criteria listed in this RFP.

The goal of the City's website is to provide simple and intuitive electronic access to public services, serve as a public communications tool, reduce transaction costs for the City and citizens, and to streamline business operations. Specifically, the City would like the redesigned site to better support e-government transactions such as on-line forms and applications, social media interconnectivity, hosting videos, and providing a more streamlined experience for the community and visitors to the site. The redesigned site should have a theme that promotes City of Toppenish with a welcoming, friendly, and professional feel with a method to allow designated staff to contribute, update or otherwise manage the new site. It is important that the selected consultant ensure that the new website is fully responsive, providing an optimal viewing experience on desktops, tablets, and mobile devices. The city has future plans to implement video streaming capabilities and the website design should take this into consideration. The city will be responsible for its content and its management during and after the project engagement and will own all content. The domain name shall be indicated on the website; however, no web design company indicators will be permitted on the website or embedded in the underlying code.

C. OTHER TECHNICAL AND VENDOR REQUIREMENTS

All vendor responses MUST include a sample copy of your End User Licensing Agreements for the proposed software and any third-party software required by the application to remain functional that City of Toppenish would be required to sign.

As a condition of award, the selected respondent will be required to sign the City of Toppenish Professional Services Contract (attached). The City of Toppenish Professional Services Contract will supersede any conflicting terms and conditions.

The Professional Services Contract will include the Respondent's response to this RFP as an Exhibit.

Progress payment schedule will be identified in the agreement. No money will be due to the vendor at the time of contract signing.

Service Provider will ensure maintaining the highest quality of cyber security coverage of all vendors as addressed by CISA. [Information and Communications Technology Supply Chain Risk Management | CISA](#)

Acceptance of any response to the RFP should not be construed as a contract nor shall it indicate any commitment on the part of the City of Toppenish for any future action. The awarding of the RFP is not complete until an agreement is signed by both parties.

The RFP does not commit City of Toppenish to pay for any costs incurred in the submission of a response to this RFP or for any cost incurred prior to the execution of a formal agreement.

City of Toppenish does not represent that any proposal will be implemented, or that any individual Respondent will be the party offered a contract. In the event City of Toppenish selects a Respondent's proposal, implementation of the proposal will be through separate written agreement. Proposals and all ideas contained therein shall not be deemed proprietary to the Respondent and may be used by the City of Toppenish in any manner deemed in its best interest.

D. CONFIDENTIALITY OF RECORDS

Respondents must identify each portion of their proposals, which they deem confidential. Respondents must provide justification of what materials, upon request, should not be disclosed by City of Toppenish. Nonetheless, City of Toppenish is a governmental agency, and as such, its records may be subject to public disclosure under RCW 42.56.070. City of Toppenish will timely notify Respondents in the event a public disclosure request has been filed for their Proposal, so that an injunction may be sought, if desired.

E. DEMONSTRATION OF PRODUCTS

Respondents must demonstrate the functionality of the proposed system. **Respondent(s) are to provide links to completed sites from other government agencies.** Examples provided shall become part of the official response to this RFP and will be considered part of the expected deliverables, reflect products proposed, and accurately demonstrate the functionality as would be implemented for the city.

F. TECHNICAL INFRASTRUCTURE

One of the areas of consideration for evaluating proposals will be compatibility with the city information technology infrastructure. That infrastructure currently includes the following:

- a) Microsoft 365 messaging.
- b) Supported versions of WebKit and Chromium based browsers.
- c) Microsoft Entra Identity Management
- d) Microsoft Windows 10/11 for workstation operating systems
- e) Mobile Device Operating systems (Apple iOS, Android)

Respondent's proposal must include a statement affirming compatibility.

G. MINIMUM REQUIREMENTS

The proposed application/system must meet the following minimum requirements. **Respondent's proposal submittal shall address each requirement in the order shown below. Cost shall be specified for each line item below and included in the Cost Proposal.**

- a) Respondent currently provides website services to a local government entity.
- b) Public access to all content and features (not development or management) on the website is not dependent on specific browser, that is, the web interface is browser agnostic and works with commonly used browsers found on Windows, Linux, and Mac computer systems.
- c) Website is capable of being organized into multiple departments and divisions within departments with ability for City website administration to add divisions.
- d) Intuitive and consistent options for navigating the website especially moving from department to department and department to general information/home page.
- e) Capability for easily searching the website for key words or phrases.
- f) Multiple level security, for further development or content management must be completely contained within the website infrastructure, and not reliant on the existing City network security or peer-to-peer connectivity.
- g) All security options must be fully explained in the response to this proposal.
- h) Flexibility within the portion of the site assigned to a department or function for designated staff to add, remove and update content using tools and templates that do not require extensive knowledge of web development languages or technical structure.

- i) Pages and features compatible with limited bandwidth access by the public. Some of our customers are still limited to dial up speeds and the city is concerned with public access being hindered by a digital divide.
- j) Web interface options that can accommodate individuals with disabilities in accordance with the Americans with Disabilities Act (ADA). See rules and an example at [Guidance on Web Accessibility and the ADA | ADA.gov](#) .
- k) Capability of the general website administration staff to:
 - i. Control size of individual web pages.
 - ii. Control size and types of images used within the site.
 - iii. Control publishing of links to other websites.
 - iv. Report website maintenance activity and statistics on content type: Updates, downloadable documents, web pages, calendars, and broken links.
 - v. Report number of visits to site generally and to each department.
- l) Support for TLS 1.3 with fallback to TLS 1.2 and configured to block fallback attacks to vulnerable protocols and cyphers. All management and editing logins must default to an encrypted protocol utilizing a valid and current certificate issued by a public Certificate Authority. Credentials required for installing, renewing, or revoking any certificates used must be made available to the City.
- m) Respondents proposing to host the city website must not be on any e-mail or website “blacklists” as a source of unwanted solicitations or objectionable content. Messaging should comply with common anti-spam measures such as SPF, DKIM, and DMARC where appropriate.
- n) The site must be designed for continuous operation 24 hours a day, 7 days a week with express maintenance windows clearly defined. The Host must have adequate redundant equipment to minimize downtime.
- o) Technical Support must be included in the contract and available as needed.
- p) Responses should include other service levels and pricing as an option.
- q) The website must have the ability to provide secure on-line payments, including the ability to specifically designate the amount being transmitted. The host is expected to work with any subcontracted company and ensure that the on-line payment service is available, secure, and dependable for the public.
- r) Adequate training to maximize the use of the website is mandatory. Training shall include administrator, security level, department head, and department user level. Training will be provided at a minimum in an interactive Webinar format. We strongly favor On-site training. Adequate training manuals must be provided, an electronic format is acceptable. **Training options must be included in the response to this RFP. Annual support and maintenance of the website, services such as refreshing the design elements, updating of technology in the website design, engineering, search engine optimization, content management and other elements associated with the City’s website shall be included as line items in the Cost Proposal.** The city would like to have these elements included with this project beginning with the first day of “go live” for the city

website for 1 year and, as an optional ongoing item and cost, the continuation of maintenance and support in 1-year increments thereafter.

- s) Multi-factor authentication must be available for all logins able to configure or edit the site. The second authentication factor must not solely depend on SMS or voice calls for the second factor.

A backup of site content and any related databases must be available to City staff via a management interface or upon request to support. Backup retention must be available for a minimum of thirty days.

The solution must not require transfer of management of any DNS records to the hosting provider.

H. ADDITIONAL FEATURES AND CAPABILITIES

The following is a list of additional features and capabilities the City of Toppenish is seeking in website services. The list is not intended to be all-inclusive, nor is it intended to represent a minimum of features and capabilities. **Respondent's proposal submittal shall address each feature/capability in the order shown below. Cost shall be specified for each line item below and included in the Cost Proposal.**

- a) E-mail interfaces, if any, are not dependent on a specific e-mail client.
- b) Graphic files should be related to the site and designed to allow for the quickest loading while retaining a resolution that is pleasing to the eye.
- c) CMS will provide a uniform means of managing web documents whether posted as web pages or downloadable files. Database needs to include items like the document/page title, description, posting information, expiration date.
- d) Meeting/event calendar system that allows for each department to add content to a department specific calendar that maintains a composite calendar of all City departments.
- e) Flexibility in scheduling recurring appointments is desirable. ('2ndThursday of each month, except if that date falls on a holiday;' e.g., ability to have one or more exceptions to a string of recurring appointments.)
- f) Service Provider/Vendor will create up to 5 hosted web forms.
- g) Forms will contain several "required" fields and when submitted, give the user the option of saving a copy to their local drive, then sending the completed form to the appropriate City Representative. The system must have an option for administration of this feature to change the destination email address and the ability to add a CC: to a secondary address.
- h) The entire form should be submitted, not just field names and data.
- i) The vendor must have a utility that allows for the processing and emailing of web forms using a system that is browser and email agnostic.
- j) Ability to upload data in preformatted web pages or document locations, for example, daily police logs produced from a records management system.

- k) Option for creation and maintenance of multiple blogs and/or newsgroups both restricted within a department's portion of the website and made available generally while hosted by a specific department.
- l) Allow authorized staff that maintains a specific department's web pages to make some pages available only to visitors with usernames and passwords supplied by the department.
- m) Support and restrict users to a consistent design strategy throughout the website and all departments.
- n) Ability to use current interactive and social networking mediums such as Facebook, X (Twitter), and RSS feeds, as well as flexibility to add these types of features in the future.
- o) Master composite calendar should contain a sorting feature for both the end user and the updater.
- p) Features that assist with complying with the Washington State Records Retention Schedules.

I. PROPOSAL CONTENT

All proposals are to include the following and with the alpha-numerical reference for easier evaluation purposes:

- a) Contact information for the Respondent.
- b) Location of Respondent corporate offices.
- c) Number of years of experience Respondent has in installing and supporting similar systems.
- d) List of current customers using the proposed service/system that the city can contact.
- e) Must include a customer of less than 6 months and one longer than 5 years.
- f) Description of the proposed process for website design including how you intend to gather all the required information, format preferred, and assistance expected from the City to complete this project. Whether or not Respondent has graphic design specialists on staff.
- g) Accessibility features of the proposed website.
- h) Description of how your company intends to meet the minimum requirements desired as well as the additional requirements outlined above. Specifically detail how you will comply with the public records laws for the State of Washington.
- i) Description of infrastructure, utilities and tools proposed for web page creation and maintenance. This should include the backroom content organization, link finders, etc.
- j) Proposed phases or steps in implementation of the website design, infrastructure, and hosting.
- k) Proposal for migration of current website content to the new website.
- l) Options for training the city staff in creating and maintaining website content.

- m) Description of ongoing support provisions.
- n) Specifications and configurations required to support the proposed system, including specifications for all software components required for the system, but not provided as part of the proposal. In other words, hardware and software requirements for City workstations and network configuration.
- o) Requirements, if any, for City bandwidth to the Internet necessary to support reasonable performance of website maintenance tools.
- p) Information on hosting site including specifications on security, disaster recovery, historical data preservation, and procedures for handling outages.
- q) Cost Proposal:
 - i. Include one-time and recurring costs as line items for: Website design; infrastructure; training; hosting, etc. Please note that the city expects this to be a “not to exceed” price.
 - ii. Minimum Requirements: Cost shall be specified for each line item in this section. Annual support and maintenance of the website, services such as refreshing the design elements, updating of technology in the website design, engineering, search engine optimization, content management and other elements associated with the City’s website shall be included as line items in the Cost Proposal.
 - iii. Additional Features and Capability: Cost shall be specified for each line item in this section of the Cost Proposal.

J. CONDITIONS OF WORK

- a) Final agreement(s) must be reviewed and approved as to form by the City’s Attorney.
- b) The Service Provider/Vendor will be responsible for all licenses, permits, fees and taxes associated with the system installation.
- c) All hardware, network, and software installation and configuration must be performed in cooperation with the City IT Department.
- d) The implementation must be accomplished in a manner that minimizes disruption of City business via the Internet.

K. CONTRACTUAL OBLIGATIONS

The Service Provider/Vendor will be required to enter into a written agreement with the City of Toppenish in which the vendor will undertake certain obligations. Due to the timeline necessary to complete the project per the grant, these contract terms will be non-negotiable, and Respondent agrees to accept these terms as a condition of submitting their Proposal. These obligations include, but are not limited to, the following:

Inclusion of Proposal - The successful proposal submitted in response to this RFP will be incorporated as an Exhibit to the final contract with the Awarded Respondent.

Costs - All costs are to be stated in exact amounts. All costs must be detailed specifically in the vendor cost summary section of the proposal; no additional charges (e.g., for sales tax, transportation, container

packing, installation, training, out-of-pocket expenses, etc.) will be allowed unless so specified in the proposal.

If using pricing from Washington State purchasing contracts, please include the contract ID in the response.

L. EVALUATION OF PROPOSALS

Consideration and scoring will be reviewed with the following Evaluation Criteria:

- a) Ability of the Respondent to provide all aspects of the proposal: design, infrastructure, migration and within the timeframe specified. (20 Points)
- b) Responsibility of the Respondent and Proposal's Responsiveness to the Minimum Requirements outlined above. (If the Respondent/Proposal does not meet the Minimum Requirements, their Proposal Submittal will be removed from further consideration.) (20 Points)
- c) Examples of previous customer experiences provided along with a list or examples of previous or current municipal clients or customers. (10 points)
- d) The extent to which the proposed system provides the Features and Capabilities outlined above. (20 Points)
- e) The degree to which the proposed system fits the existing information technology infrastructure at the City of Toppenish. (15 points)
- f) The degree to which the proposed system is user-friendly and easily maintained by City staff. (10 points)
- g) Cost Proposal. (15 points)

The award will be made to the qualified Respondent whose proposal is most advantageous to the city, with price and other factors considered. The city may reject any and all proposals.

M. PROJECT CONTACT

Questions about the project shall be directed in writing to:

Beth Simmons
Public Works Office Manager
408 Washington Avenue
Toppenish, WA 98948
beth.Simmons@cityoftoppenish.us

Or

All material information provided in response to a question will be posted to the City's website: [City of Toppenish](#) in the form of an Addendum to the RFP.

N. DELIVERY OF PROPOSAL

Each proposal must be received by the date and time set for closing receipt of offers. RFP #2023-02 is due no later than 2:00 PM PST on October 20, 2023. The envelope shall be sealed and identified with the RFP name **2023-02 WEBSITE DESIGN, DEVELOPMENT, AND HOSTING SERVICES**, the name of the Respondent,

and the date and time of closing. The envelope(s) must include 2 printed copies of the proposal and one flash drive with electronic copy in a standard searchable PDF format.

Note: Any deviation from this requirement may result in your proposal being considered nonresponsive, thus eliminating your company from further consideration. The city cautions Respondents to assure actual delivery of mailed or hand-delivered proposals directly to City Hall prior to the established deadline. A proposal received after the established deadline will be returned, unopened, to the Respondent.

NOTE: Proposals must be delivered to:
City of Toppenish – Finance
21 West 1st Avenue
Toppenish, WA 98948

LATE PROPOSALS WILL NOT BE ACCEPTED.

City of Toppenish will not accept proposals via electronic mail services. All accepted proposals and accompanying documentation will become the property of the City of Toppenish and may not be returned. Vendors should be aware that because of Public Records Laws, we may not be able to hold information you provide in your responses as confidential. Any vendor inserting “confidential/proprietary” language into a proposal should be aware that confidentiality will be enforced to the extent allowed by Washington State Public Records laws.

City of Toppenish assumes no responsibility for delays caused by any delivery service. Receipt of Proposal Submittal by City of Toppenish must not exceed the date and time stated above. Postmarking by the due date will not substitute for the actual proposal receipt.

O. PROPOSAL COSTS

Respondents do so entirely at their own expense. There is no expressed or implied obligation by the City to reimburse any individual or firm for any costs incurred in preparing or submitting proposals, providing additional information when requested by the City, or for participating in any evaluation interviews.

Proposals may be modified or withdrawn by an authorized representative of the vendor or by formal written notice prior to the final due date and time specified for proposal submission.

Submitted proposals will become the property of the City of Toppenish after the proposal submission deadline.

P. ACCEPTANCE

Submission of any proposal indicates acceptance of the conditions contained in the RFP unless clearly and specifically noted otherwise in the proposal. Quantity and content of Exceptions will be considered when evaluating Proposal Responsiveness.

Q. TIMELINE

This is a grant-funded project and we do intend to enter into a contract as soon as possible. **It is our goal to have the new site up and fully operational by December 15, 2023, with January 1, 2023, being the latest acceptable go-live date, per the terms of our grant.**

R. Purchasing and Procurement Requirements Controlling Laws

The expenditure of public funds for the purchase of and contracting for, goods, services, supplies and materials shall comply with the following:

- a) For purchases made in whole or in part with Federal Funds - all applicable federal laws as stated in, [eCFR :: 2 CFR Part 200 Subpart D - Procurement Standards](#) plus all state law requirements as set forth in the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC), in addition to any local laws and regulations, always complying with the most restrictive requirement.
- b) For purchases made with State and Local Funds - all applicable state law requirements as set forth in the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC), in addition to any local laws and regulations, always complying with the most restrictive requirement.

S. Contractor Verification

- a) Certificate of Insurance - No contractor may work on City property without first providing a Certificate of Insurance, naming the City of Toppenish as primary and noncontributory additional insureds, with an additional attached endorsement. The required insurance limits are outlined in the attached Sample Agreement.
- b) City of Toppenish Business License - Any business working inside the limits of the City of Toppenish is required to have a current City Business License. This requirement applies to all contractors and subcontractors. Vendors may apply for, renew, and purchase their City of Toppenish Business License from the Department of Revenue at www.dor.wa.gov.
- c) **Responsible Bidder Verification** - In accordance with RCW 39.04.350, a bidder must meet the following responsibility criteria to be considered a responsible bidder and be qualified to be awarded a public works project:
 - i. Have a current Unified Business Identifier (UBI) number, verified through the Department of Revenue
 - ii. Have industrial insurance/workers' comp coverage, verified through Labor and Industries
 - iii. Have a Washington State Employment Security Department (ESD) account, verified by contractors ESD Bid Letter
 - iv. Have a state excise tax registration number.
 - v. Not be disqualified from bidding under RCW 39.06.010 or 39.12.065, verified through Labor and Industries debar and strike list.
 - vi. Not have any apprenticeship violations, if applicable
 - vii. For federal projects, be registered and in good standing with the US Government, verified through the System for Award Management (SAM) of the US Government.

T. Solicitation or Bid Appeals or Protests

Bidders may appeal or protest a proposal solicitation or award of contract issued by the City, provided that the bidder strictly follows the procedures described below. Prior to the deadline for submitting bids or proposals, bidders may appeal or protest specifications, terms, or requirements. After the deadline for submission of bids or proposals, bidders may appeal or protest the award or pending award to the apparent low bidder or the selection of the apparently most advantageous proposal. The appeal or protest shall:

- a) Be in writing; and

- b) Explicitly identify itself as an appeal or protest; and
- c) Explicitly identify the bid/project/request being appealed or protested; and
- d) Explicitly state all reasons and bases in law and fact supporting the appeal or protest, including, but not limited to, identification of all specifications, terms, requirements, or conditions to which the vendor objects; and
- e) Include all supporting documents; and
- f) Be filed with the City Clerk.

All appeals or protests of a purchase specification, term, condition, or requirement shall be received by the City Clerk no later than 7 calendar days prior to the deadline for submission of bids or proposals. All appeals or protests of an award or pending award shall be received by the City Clerk no later than 5 business days after the City awards the contract or selects the most advantageous proposal.

In no event will appeals or protests be heard or considered if these deadlines are not met. The City reserves the right to proceed with the execution of a contract and any actions allowed pursuant thereto without notice to the appellant/protestor, notwithstanding the pendency of any appeal/protest.

A bidder's initial appeal/protest will be reviewed by the City Manager, the City Attorney, the department head of the procuring department, and the City Clerk. The initial appeal/protest will be decided based upon the written appeal or protest, supporting documents, and other information obtained by those reviewing the appeal/protest. A meeting or conference with the appellant/protestor will occur only if the City Manager determines that a meeting or conference with the appellant/protestor would materially assist the City in resolving the appeal/protest. Only those issues raised by the appellant/protestor in the initial written appeal/protest filed with the City Clerk will be considered. The City will issue a written decision no later than 10 business days after the initial appeal/protest is filed with the City Clerk. The City may exercise discretion to extend the time for decisions if more time is needed.

An appellant/protestor may appeal the City's decision on an appeal/protest to the City Council by following the procedures described in this section. Any appeal of a City decision on an appeal/protest shall be in writing and received by the City Clerk no later than 7 calendar days after the date of the City's written decision. The appeal shall state the legal and factual bases for the appeal, include a copy of the initial appeal/protest, and the resulting City decision appealed. The appeal shall state whether the appellant requests the opportunity to present an oral argument to the City Council. The Council will not consider any issues not set forth in the initial appeal/protest. At its sole discretion, Council may allow the appellant to present an oral argument in support of the appellant's written submission if Council finds that such a presentation would materially aid its resolution of the appeal. The Council may form a committee of less than the entire Council to consider the appeal and recommend a decision to the entire Council. The Council's decision shall be in writing and shall be final and binding.

U. Interlocal Agreements (Piggybacking)

RCW 39.34.030 permits governmental agencies to utilize other entities' contracts without going to bid. There must be an Interlocal Agreement approved by the City Council and signed by both parties. The contract must have language allowing for interlocal purchasing.

In any such cooperative action, the City will ensure that any competitive bidding requirements, including publication and notice, that otherwise apply to the contract are fulfilled.

ATTACHED:
Sample City of Toppenish Professional Services Agreement
2 CFR 200 Federal Terms and Conditions

**CITY OF TOPPENISH
PROFESSIONAL SERVICES AGREEMENT**

**RFP 2023-02
WEBSITE REDESIGN, DEVELOPMENT, AND MIGRATION**

REGITALS
THIS AGREEMENT is made and entered into between _____ hereinafter referred to as
“Contractor” and the **City of Toppenish**, hereinafter referred to as “City,” on this ___ day
of _____, 2023.

WHEREAS, the City desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient City resources are not available to provide such services; and

WHEREAS, the Service Provider represents that the Service Provider is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

TERMS

1. Scope of Services; Compliance with Law

The Service Provider shall perform the services outlined in RFP 2023-02 and Exhibits “A”, “B”, and “C” of this Agreement. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services. The Service Provider shall perform the Work diligently and completely and in accordance with professional standards of conduct and performance.

The City of Toppenish Professional Services Contract will supersede any conflicting terms and conditions of Exhibit “C” the Service Provider.

2. Compensation

- A. The City shall pay the Service Provider according to rates set forth in Exhibit B.
- B. Upon receipt of a detailed invoice, the City shall pay the Service Provider for accepted services rendered and allowable expenses incurred during the applicable period.

C. Payment terms are Net 30 Days.

D. In no case shall the total amount paid exceed the “not to exceed” amount of \$18,500 unless the parties mutually agree in writing to the payment of additional fees and expenses as authorized by the City via written Change Order.

E. Any change or modification to this Agreement for additional services shall be in writing and signed by all parties to this Agreement. Any compensation due for the change or modifications shall be per the same terms and conditions as set forth in this section or in a manner otherwise mutually agreed to by the parties.

3. Termination (Convenience/Cause)

A. The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, upon thirty (30) days’ prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models and reports, or other material prepared by the Service Provider pursuant to this Agreement, shall be submitted to the City.

B. In the event this Agreement is terminated or suspended, the Service Provider shall be entitled to payment for all services performed per the terms of this Agreement and reimbursable expenses incurred up to the date of termination.

C. The City may cancel or terminate this Agreement immediately if the Service Provider’s insurance coverage is canceled for any reason or if the Service Provider is unable to perform the services called for by this Agreement.

D. The Service Provider reserves the right to terminate this Agreement with not less than thirty (30) days’ written notice.

E. This section shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

4. Duration

The initial term of this Agreement shall be in full force and effect for a period of one year commencing upon the date of execution by both parties, and as an optional ongoing item and cost, the continuation of maintenance and support in 1-year increments thereafter, unless sooner terminated under the provisions of this Agreement.

Time is of the essence for this Agreement in each and all its provisions in which performance is required. It is our goal to have the new site up and fully operational by December 15, 2023, with January 1, 2023, being the latest acceptable go-live date, per the terms of our grant.

5. Expansion clause

Any resultant contract may be further expanded by the Purchasing Manager in writing to include any other item normally offered by the Contractor, as long as the price of such additional products

is based on the same cost/profit formula as the listed item/service. At any time during the term of this contract, other City departments may be added to this contract, if both parties agree.

6. Ownership and Use of Documents

A. Any records, files, documents, drawings, specifications, data, or information, regardless of form or format, and all other products or materials produced by the Service Provider in connection with the services provided to the City, shall be the property of the City whether the project for which they are made is executed or not. All such documents, products, and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The city agrees that if the documents, products, and materials prepared by the Service Provider are used for purposes other than those intended by the Agreement, the city does so at its sole risk and agrees to hold the Service Provider harmless for such use.

B. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released to the news media or any other source without the written permission of the city.

C. The Service Provider at such times and in such forms as the City may require, shall furnish to the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement. All the reports, information, data, records, and other related materials prepared or assembled by the Service Provider under this Agreement are potentially subject to public disclosure pursuant to Ch. 42.56 RCW. To the extent allowed by Ch. 42.56 RCW, reports, information, data, records, and other related materials prepared or assembled by the Service Provider under this Agreement that contain information that is personal and wherein a right to privacy exists, or that falls under a statutorily specified exemption from disclosure, will be exempt from disclosure. Generally, Chapter 42.56, R.C.W., requires disclosure of all but the most personal and sensitive information in City hands.

6. Maintenance and Inspection of Records

A. The Service Provider shall maintain books, records, and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

B. The Service Provider shall retain all books, records, documents, and other material relevant to this agreement, for six (6) years after its expiration. The Service Provider agrees that the City or its Designee shall have full access and the right to examine any of said materials at all reasonable times during said period.

7. Independent Service Provider

A. The parties intend that an independent contractor relationship will be created by this Agreement. The city will not exercise control and direction over the work of the Service Provider and is interested primarily in the results to be achieved. Subject to paragraphs herein, the implementation of services pursuant to this Agreement will lie solely within the discretion of the Service Provider. No agent, employee, servant, or representative of the Service Provider shall be deemed to be an employee, agent, servant, or representative of the City for any purpose, and the employees of the Service Provider are not entitled to any of the benefits the City provides for its employees. The Service Provider will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors, or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated the Service Provider is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

C. As an independent contractor, the Service Provider shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.

D. The City may at its sole discretion require the Service Provider to remove an employee(s), agent(s), or subcontractor(s) from employment on this Project.

8. Indemnification/Hold Harmless

A. The Service Provider shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Service Provider in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Service Provider and the City, its officers, officials, employees, and volunteers, the Service Provider's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Service Provider's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Service Provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually agreed upon by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

9. Insurance

A. The Service Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in

connection with the performance of the work hereunder by the Service Provider, its agents, representatives, or employees.

B. No Limitation. Service Provider's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Service Provider to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

Minimum Scope of Insurance

- C. Service Provider shall obtain insurance of the types and coverage described below:
- 1) Commercial General Liability insurance shall at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Service Provider's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO OG 20 26.
 - 2) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 - 3) Professional Liability insurance appropriate to the Service Provider's profession.

Minimum Amounts of Insurance

- D. Service Provider shall maintain the following insurance limits:
- 1) Commercial General Liability insurance shall be written with limits of no less than \$1,000,000 each occurrence, \$1,000,000 general aggregate.
 - 2) Professional Liability insurance shall be written with limits of no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

E. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Professional Liability and Commercial General Liability insurance:

1 The Service Provider's insurance coverage policies are to contain an Additional Insured Endorsement, listing City of Toppenish as Additional Insured, with exception to professional liability, with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Service Provider's insurance and shall be non-contributory.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage. Service Provider shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work.

H. Notice of Cancellation. The Service Provider shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

I. Failure to Maintain Insurance. Failure on the part of the Service Provider to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Service Provider to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Service Provider from the City.

J. Sub-Service Providers. The Service Provider shall include all sub-Service Providers as Insureds under its policies or shall furnish separate certificates and endorsements for each sub-Service Provider. All coverage for sub-Service Providers shall be subject to all the same insurance requirements as stated herein for the Service Provider.

K. City Full Availability of Service Provider Limits. If the Service Provider maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Service Provider, irrespective of whether such limits maintained by the Service Provider are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Service Provider.

10. Treatment of Assets

Title to all property furnished by the City shall remain in the name of the City and the City shall become the owner of the work product and other documents, if any, prepared by the Service Provider pursuant to this Agreement.

11. Political Activity Prohibited

None of the funds, materials, property, or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

12. Assignment and Subcontracting

A. The Service Provider shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the City, and it is further agreed that said consent must be sought in writing by the Service Provider not less than thirty (30) days prior to the date of any proposed assignment. The City reserves the right to reject without cause any such assignment.

B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances, and guidelines.

C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the City.

13. Nondiscrimination

A. The City of Toppenish is an equal opportunity employer.

B. Nondiscrimination in Employment. In the performance of this Agreement, the Service Provider will not discriminate against any employee or applicant for employment on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, gender identity, pregnancy, age or other basis prohibited by state or federal law. The Service Provider shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state, and federal laws prohibiting discrimination in employment.

C. Nondiscrimination in Services. The Service Provider will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, gender identity, pregnancy, age, or other basis prohibited by state or federal law.

D. If any assignment and/or subcontracting has been authorized by the City, said assignment or subcontract shall include appropriate safeguards against discrimination. The Service Provider shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

14. General Administration and Management

The City's contract manager shall be the Community TV Manager or his/her Designee.

15. Changes

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

16. Notices

Any notice of change, termination or other communication having a material effect on this Agreement shall be served in one or more of the following manners:

- a. In-person delivery to the Toppenish Accounting Manager if delivering to the Authority; an authorized officer, employee, agent or other representative if delivering to the Contractor.

- b. Deposited in the U.S. mails under certified or registered handling, postage prepaid, posted to the address(es) provided herein:

To the City:

Beth Simmons
Public Works Office Manager
408 Washington Avenue
Toppenish, WA 98948
beth.Simmons@cityoftoppenish.us

To the Service Provider:

Service Provider's Name
Contact Person
Mailing and Physical Address
City, State, Zip Code
Phone Number; Email

17. Attorney Fees and Costs

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

18. Interpretation and Venue

A. This Agreement has been and shall be construed as having been made and delivered with the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Yakima County, Washington.

19. Severability

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof conflicts with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

20. Entire Agreement; Waiver

This Agreement, including Exhibits A&B, contains a complete integrated understanding and agreement between the parties and supersedes any understanding, agreement, or negotiations whether oral or written not set forth herein or in any written amendments hereto duly executed by both parties. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

The Contractor and the City hereby agree to all provisions of the Agreement. Signed this ____ day of _____ 2023, Toppenish, Washington.
SIGNATURE PAGE

CITY OF TOPPENISH, WASHINGTON

CONSULTANT

Debbie Zabell, City Manager

Name, Title

ATTEST:

Heidi Riojas, City Clerk

Attachments: Exhibit "A"

Authorizing Resolution No. _____

This content is from the eCFR and is authoritative but unofficial.

Title 2 – Grants and Agreements**Subtitle A – Office of Management and Budget Guidance for Grants and Agreements****Chapter II – Office of Management and Budget Guidance****Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards****Source:** 85 FR 49543, Aug. 13, 2020, unless otherwise noted.**Source:** 85 FR 49539, Aug. 13, 2020, unless otherwise noted.**Authority:** 31 U.S.C. 503**Source:** 78 FR 78608, Dec. 26, 2013, unless otherwise noted.**Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part

3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any

other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

EXHIBIT B TO AGREEMENT
SERVICE PROVIDER'S PROPOSAL