

EXHIBIT A

ENGINEERING AND RELATED SERVICES PRICE AGREEMENT (PA)
PA Number: 31001042

PA Title: On Call Services as required Environmental Assessment	City Project Number: NA
Project Location: As set forth in issued Task Orders	Associated RFP Number: 573
Federal Aid Number: As set forth in issued Task Orders	No DBE Goal
Total Not-to-Exceed ("NTE") amount for this PA. This total includes: a) all allowable costs and expenses, profit, and fixed-fee amount.	\$ 150,000

This PA is between City of Portland, hereafter called "City" and Cardno, Inc, a Delaware corporation, hereafter called "Consultant." City and Consultant together are also referred to as "Parties" and individually referred to as "Party." The primary contacts for this PA are identified in Exhibit J, Contact Information and Key Persons.

This PA includes Federal Highway Administration ("FHWA") funding coordinated through the Oregon Department of Transportation ("ODOT"). See Section 18 - Compliance with Applicable Law.

For purposes of this PA:

- a) "business days" means calendar days, excluding Saturdays, Sundays and all State of Oregon recognized holidays;
- b) "calendar days" means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State of Oregon holiday or other day;
- c) "Engineering" Services means architectural, engineering, photogrammetric mapping, transportation planning or land surveying services that must be procured using qualifications based selection procedures [see ORS 279C.100 and ORS 279C.110]; and
- d) "Related Services" has the meaning provided in ORS 279C.100.

TERMS AND CONDITIONS

1. Effective Date; Expiration and Task Order Assignment Period; Termination.

- a. **Effective Date.** This PA shall become effective on the date this PA has been signed by the Parties and all required State of Oregon approvals have been obtained.
- b. **Expiration and Task Order Assignment Period**
 - i. **Expiration.** This PA shall have a limited Task Order assignment period but this PA will not expire until the later of the following occurs: (1) the expiration of the Task Order assignment period, or (2) the expiration or termination of all Task Orders assigned under this PA.
 - ii. **Task Order Assignment Period.** Unless this PA is sooner terminated, the Task Order assignment period ends 2 years [Total duration, including extensions, for PAs that include any federal funds cannot exceed 5 years per 23 CFR 172.9(a)(3).] from the effective date of this PA. At the City's discretion, depending on Consultant performance, need and available funding, PAs may be amended to extend the Task Order assignment period for up to an additional 2 years beyond the initial Task Order assignment period. A Task Order is considered assigned (for purposes of meeting the Task Order Assignment Period limitation) when the Task Order selection process is completed and the selection documentation has been submitted to the Bureaus single point of contact. All Task Order assignments are tentative until negotiations are successfully completed, all required signatures have been obtained on the Task Order, and City has issued a notice to proceed ("NTP") to Consultant.

2. Scope of Work. Consultant shall perform all services and deliver all deliverables as described in any Task Orders executed under this PA (the "Services"). The Services included in a Task Order must be within the Scope of Services set forth in **Exhibit A**, attached and incorporated into this PA by this reference. Consultant agrees to perform the Services and provide the deliverables required under each Task Order in accordance with the terms and conditions as set forth in this PA.

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3. Compensation. The aggregate maximum NTE amount for all Task Orders issued under this PA, which includes the total of all allowable and reimbursable costs and expenses (and contingency tasks, if any) payable to Consultant under this PA, is set forth in the table above and detailed further in Exhibit B, Compensation. City reserves the right, in its sole discretion, to amend this PA to increase this amount for additional Services within the scope of the procurement up to a maximum of \$150,000.00. The payment methodology and basis for payment to Consultant is described in Exhibit B, Compensation. Consultant and any subconsultants are subject to the requirements and limitations of 48 CFR Part 31 - Contract Cost Principles and Procedures.

4. PA Exhibits. This PA includes the following exhibits, each of which is incorporated into this PA as though fully set forth herein:

- Exhibit A - Scope of Services
- Exhibit B - Compensation
- Exhibit C - Insurance
- Exhibit D - Title VI Non-Discrimination Provisions
- Exhibit E - RESERVED
- Exhibit E.1 - Disadvantaged Business Enterprise (DBE) Provisions, No-Goal
- Exhibit F - Task Order Assignment and Special Terms & Conditions
- Exhibit G - Sample Task Order Template
- Exhibit H - RESERVED
- Exhibit I - Errors & Omissions ("E&O") Claims Process
- Exhibit J - Contact Information and Key Persons

5. Order of Precedence. Unless a different order is required by law, this PA shall be interpreted in the following order of precedence: this PA (including all amendments, if any) less all Exhibits, attachments and other documents/information incorporated into this PA, then the Statement of Work and Payment Schedule, then all other Exhibits, then any other attachments or documents/information incorporated into this PA by reference.

6. Independent Contractor; Conflict of Interest; Responsibility for Taxes and Withholding; Consultant Oversight.

- a. Consultant, by its signature on the PA, certifies that it is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779, which is available at the following link: <http://www.irs.gov/pub/irs-pdf/p1779.pdf>. Consultant shall perform all required Services as an independent contractor. Although City reserves the right (i) to determine the delivery schedule (as mutually acceptable to City and Consultant) for the Services to be performed and (ii) to evaluate the quality of the completed performance, City cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant is not an "officer", "employee", or "agent" of City, as those terms are used in ORS 30.265.
- b. Consultant, by its signature on the PA, certifies that: (i) Consultant and, to the best of its information, knowledge and belief, its Associates have made any disclosures required under the COI Disclosure Form (available at: http://www.oregon.gov/ODOT/CS/OPO/docs/aepage/coiform_lpa.doc) or any applicable law; and (ii) if a conflict of interest is discovered during the term of the PA and any Task Orders, Consultant shall timely submit a COI Disclosure Form to City disclosing the conflict(s).
- c. Consultant shall be responsible for all Federal or State of Oregon ("State") taxes applicable to compensation or payments paid to Consultant under the PA and, unless Consultant is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Consultant's Federal or State tax obligations. Throughout the duration of the PA, Consultant shall submit an updated W-9 form (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>) to City whenever Consultant's backup withholding status or any other information changes. Consultant

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is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Consultant under the PA, except as a self-employed individual.

- d. Consultant shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other consultants or contractors under contract with City, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 6.d. provisions do not in any way revise or adjust Consultant's professional responsibility to report to City any information that comes to Consultant's attention (during performance of this PA) pertaining to a project, or to performance by other consultants or contractors on a project, that would adversely affect City or a particular project.

7. Subcontracts and Assignment; Successors and Assigns

- a. Consultant shall obtain City's written consent prior to entering into any subcontracts for any of the Services required by Task Orders under the PA, or in any manner assigning, selling or transferring any of its rights or interest under the PA or delegate any of its duties or performance under the PA and issued Task Orders. In addition to any other provisions City may require, Consultant shall include, in any permitted subcontract under the PA, contractual provisions that shall require any subcontractor (which may also be referred to as "subconsultant") to comply with Sections 9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 27 and 29 of these PA provisions, the limitations of **Exhibit B - Compensation**, **Exhibit D - Title VI Nondiscrimination Provisions**, and the requirements and sanctions of ORS Chapter 656, Workers' Compensation, in the performance of the subcontractor's Services on the project that is the subject of the PA, as if the subcontractor were the Consultant. City's consent to any subcontract shall not relieve Consultant of any of its duties or obligations under the PA and any assigned Task Orders, including with respect to any Services, whether performed or to be performed by Consultant or a subcontractor.
- b. The provisions of the PA and any assigned Task Orders shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.
- c. Any purported assignment, delegation or disposition in violation of subsection "a." above is void.

8. Third Party Beneficiaries. The State of Oregon, the Oregon Transportation Commission (OTC) and ODOT, are intended third-party beneficiaries of the PA with express independent authority to enforce the terms and conditions of the PA. Otherwise, there are no third-party beneficiaries of the PA.

9. Representations and Warranties. Consultant represents and warrants to City, for this PA and the Task Orders, that (i) Consultant has the power and authority to enter into and perform the Task Orders, (ii) the Task Order, when executed and delivered is a valid and binding obligation of Consultant, enforceable in accordance with its terms, (iii) the Services under the Task Order will be performed in accordance with the professional standard of care set forth in Section 10 below; (iv) Consultant is duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, is duly qualified and professionally competent to perform the Services; and (v) Consultant is an experienced firm having the skill, legal capacity, professional ability and resources necessary to perform all the Services required under the Task Order. The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

10. Professional Standard of Care; Responsibility of Consultant; Design Within Funding Limit**a. Professional Standard of Care.**

Consultant shall perform all Services under the Task Order in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline when performing similar services under similar circumstances, taking into consideration the contemporary state of the practice and the project conditions.

b. Responsibility of Consultant.

- (i) Consultant shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services furnished by Consultant under the Task Order. Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications and other Services.

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- (ii) City's review, approval or acceptance of, or payment for, the Services required under the Task Order shall not be construed to operate as a waiver of any rights under the Task Order or of any cause of action arising out of the performance of the Task Order, and Consultant shall be and remain liable to City in accordance with applicable law for all damages to City caused by Consultant's negligent performance of any of the Services furnished under the Task Order or negligent failure to perform any of the Services under the Task Order.
- (iii) The rights and remedies of City provided for under the PA and Task Order are in addition to any other rights and remedies provided by law.
- (iv) If Consultant is comprised of more than one legal entity (for example, a joint-venture or partnership), each such entity shall be jointly and severally liable under the Task Order.

11. Ownership of Work Product

- a. **Definitions.** The following terms have the meanings set forth below:
 - (i) "Consultant Intellectual Property" means any intellectual property owned by Consultant and developed independently from the Task Order.
 - (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than City or Consultant.
 - (iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item, and all intellectual property rights therein, that Consultant is required to deliver to City pursuant to the Task Order.
- b. **Work Product.** All Work Product created by Consultant pursuant to the Task Order, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of City. City and Consultant agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire" of which City is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the Task Order is not "work made for hire," Consultant hereby irrevocably assigns to City any and all of its rights, title, and interest in all Original Work Product created pursuant to the Task Order, whether arising from copyright, patent, trademark, trade secret, or any other State or Federal intellectual property law or doctrine. Upon City's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Original Work Product in City. Consultant forever waives any and all rights relating to Original Work Product created pursuant to the Task Order, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. However, see Sections 11.c and 11.d immediately below, for provisions applicable to Consultant Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works and Third Party Intellectual Property derivative works.
- c. **Consultant and Third Party Intellectual Property.** In the event that any Work Product is Consultant Intellectual Property or Third Party Intellectual Property (Consultant Intellectual Property or Third Party Intellectual Property that is applicable to the Services being performed by Consultant under the Task Order or included in Work Product deliverable to City under the Task Order), or in the event any Consultant Intellectual Property or Third Party Intellectual Property is needed by City to reasonably enjoy and use any Work Product, Consultant hereby agrees that it will grant to, or obtain for, the City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Consultant Intellectual Property and or Third Party Intellectual Property, including the right of City to authorize contractors, consultants and others to do the same on City's behalf. This obligation of the Consultant does not apply to a situation involving a third party who enters a license agreement directly with the City. At the request of Consultant, City shall take reasonable steps to protect the confidentiality and proprietary interests of Consultant in any Consultant Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).
- d. **Consultant and Third Party Intellectual Property-Derivative Work.** In the event that Work Product created by Consultant under the Task Order is a derivative work based on Consultant Intellectual

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Property or Third Party Intellectual Property, or is a compilation that includes Consultant Intellectual Property or Third Party Intellectual Property, Consultant hereby agrees to grant to, or obtain for, City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Consultant Intellectual Property or Third Party Intellectual Property employed in the Work Product, including the right of City to authorize others to do the same on City's behalf.

- e. **Consultant Use of Work Product.** Notwithstanding anything to the contrary in this Section 11, Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless specified otherwise in Exhibit A - Scope of Services, City hereby grants to Consultant a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display City-owned Work Product on other unrelated projects, except for any "Confidential Information" protected from disclosure under the provisions of Section 12 below, pertaining to Confidentiality and Non-Disclosure.

12. Confidentiality and Non-Disclosure. Consultant and its subcontractors, and their respective employees and agents, shall keep confidential all information, in whatever form, produced, prepared, observed or received to the extent that such information is designated as confidential by the City, by law, or by the Task Order. In the event Consultant is required to disclose Confidential Information pursuant to a subpoena or other legal process, Consultant shall immediately notify City of such subpoena or other legal process, provide City with copies of any subpoena, other legal process and any other written materials supporting the subpoena or other legal process, and otherwise cooperate with City in the event City decides to oppose the disclosure of the Confidential Information. In the event City decides not to oppose such subpoena or other legal process or City's decision to oppose the subpoena or legal process has not been successful, Consultant shall be excused from the confidentiality provisions of this Section, to the extent necessary to meet the requirements of the subpoena or other legal process controlling the required disclosure.

13. Indemnity

- a. ***Consultant's Acts or Omissions.*** *Consultant shall indemnify, defend, save, and hold harmless the City, the State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees, from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the professionally negligent or other acts, errors or omissions of any nature by Consultant or its subcontractors, or their respective agents or employees, under the PA and any Task Orders. However, neither Consultant nor any attorney engaged by Consultant shall defend or purport to defend a claim in the name of the City, the State of Oregon, the OTC or ODOT without first receiving from the applicable entity, authority to act as legal counsel, nor shall Consultant settle any claim on behalf of the foregoing entities without the approval of these entities. The City, the State of Oregon, the OTC or ODOT may, at their election and expense, assume their own defense and settlement.*
- b. ***City's Acts or Omissions.*** *This section 13 does not include indemnification by Consultant of the City, the State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees, for the acts or omissions of these entities and their respective officers, members, agents and employees, whether within the scope of the PA, Task Order or otherwise.*

14. Insurance. Consultant shall carry insurance as required on Exhibit C.

15. Termination

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- a. **Termination by Mutual Consent.** The PA, any assigned Task Order or both may be terminated at any time, in whole or in part, by mutual written consent of the Parties.
- b. **City's Right to Terminate for Convenience.** City may, at its sole discretion, terminate the PA, any assigned Task Order or both, in whole or in part, upon 30 calendar days prior written notice to Consultant.
- c. **City's Right to Terminate for Cause.** City may terminate the PA, any assigned Task Order or both, in whole or in part, immediately upon written notice to Consultant or at such later date as City may establish in such notice, upon the occurrence of any of the following events:
 - (i) City fails to receive appropriations, limitations or other expenditure authority sufficient to allow City, in the exercise of its reasonable administrative discretion, to continue to make payments for Consultant's Services. Payments under a Task Order and continuation of the Task Order beyond the current biennium are subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available from current funding sources. The City may terminate this PA, any assigned Task Order or both, and Consultant waives any and all claims for damages, effective immediately upon receipt of written notice, or any date specified therein, if for any reason the City's funding from local, state and/or federal sources is not appropriated or is withdrawn, limited or impaired;
 - (ii) Federal, State or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under the Task Order are prohibited or City is prohibited from paying for such Services from the planned funding source;
 - (iii) Consultant no longer holds any license or certificate that is required to perform the Services; or
 - (iv) Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under the Task Order, fails to perform the Services under the Task Order within the time specified or any extension thereof, or so fails to perform the Services as to endanger Consultant's performance under the Task Order in accordance with its terms and the terms of this PA, and such breach, default or failure is not cured within 14 calendar days after City's notice to Consultant, or such longer period as City may specify in such notice.
- d. **Consultant's Right to Terminate for Cause.**
 - (i) Consultant may terminate the Task Order by giving written notice to City if City fails to pay Consultant pursuant to the terms of the Task Order and if City fails to cure within 14 calendar days after receipt of Consultant's written notice, or such longer period of cure as Consultant may specify in such notice.
 - (ii) Consultant may terminate the Task Order, for reasons other than nonpayment, if City commits any material breach or default of any covenant, warranty, obligation or agreement under the Task Order, fails to perform under the Task Order within the times specified, or so fails to perform as to endanger Consultant's performance under the Task Order, and such breach, default or failure is not cured within 14 calendar days after Consultant's notice to City, or such longer period as Consultant may specify in such notice.
- e. **Remedies.**
 - (i) In the event of termination pursuant to Sections 15(a), 15(b), 15(c)(i), 15(c)(ii) or 15(d), Consultant's sole remedy (except as otherwise required by applicable State or Federal law) shall be a claim for payment of the satisfactory Services actually rendered up to the time of termination, less previous amounts paid and any claim(s) which State has against Consultant, except in the event of a termination under Section 15(c)(i) where no payment will be due and payable for Services performed or costs incurred after the last day of the current biennium. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall pay all excess to City upon demand.
 - (ii) In the event of termination pursuant to Section 15(c)(iii) or 15(c)(iv), City shall have any remedy available to it in law or equity. If it is determined for any reason that Consultant was not in default under Section 15(c)(iii) or 15(c)(iv), the rights and obligations of the Parties shall be the same as if the Task Order was terminated pursuant to Section 15(b).
- f. **Consultant's Tender Upon Termination/Retained Remedies of City.** Upon receiving a notice of termination of the Task Order, Consultant shall immediately cease all activities under the Task Order, unless City expressly directs otherwise in such notice of termination. Upon termination of the Task Order, Consultant shall deliver to City all documents, information, works-in-progress and

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other property that are or would be deliverables had the Task Order been completed. Upon City's request, Consultant shall surrender to anyone City designates, all documents, information, research, works-in-progress, Work Product and other property, that are deliverables or would be deliverables had the Task Order been completed, that are in Consultant's possession or control and may be needed by City to complete the Services.

16. Records Maintenance; Access. Consultant, and its subconsultants, shall maintain all fiscal records relating to the PA and any assigned Task Orders in accordance with generally accepted accounting principles. In addition, Consultant shall maintain all other records pertinent to the PA, Task Order and the project and shall do so in such a manner as to clearly document Consultant's performance. The City, ODOT, the Oregon Secretary of State's Office (OSS), FHWA and the Comptroller General of the United States (CGUS) and their respective, duly authorized representatives shall have access, and Consultant shall permit the aforementioned entities and individuals access, to such fiscal records and other books, documents, papers, plans and writings of Consultant that are pertinent to the PA and Task Order to perform examinations and audits and make excerpts and transcripts. Consultant shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and expiration or termination of the Task Order, or until the conclusion of any audit, controversy or litigation arising out of or related to the Task Order, whichever date is later. Any cost data submitted by Consultant pursuant to this PA or a Task Order may be shared with ODOT, FHWA, OSS and CGUS, as necessary, for audit purposes. City, ODOT and FHWA shall have the right to review or examine the work in progress for any Services performed under the Task Order.

17. Performance Evaluations. City will conduct performance evaluation(s) on the Consultant and its subconsultants during the term of the Task Order, which will be compiled and maintained by City, and become a written record of Consultant's performance. Generally, the performance evaluations will include criteria related to, but not limited to, quality and technical performance, adherence to contract scope and budget, schedule performance, and business relations (including communications and negotiations performance). City will provide a copy of the performance evaluation results to Consultant within 14 calendar days following completion. Consultant may respond, in writing, or may request a meeting to address any or all findings contained in the completed performance evaluation within 30 calendar days following receipt. City may adjust evaluation score(s) upon City's finding of good cause. City may provide copies of any performance evaluation documentation to ODOT, FHWA, and other parties unless lawfully exempt from disclosure. City may use performance evaluation findings and conclusions in any way deemed necessary, including, but not limited to, corrective action, requiring submittal of performance improvement plan by Consultant and withholding of retainage. City and ODOT may use Consultant performance under previous contracts as a selection criterion for future contracts.

18. Compliance with Applicable Law. Consultant shall comply with all Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Task Order, in effect at the time the Task Order is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the Task Order may or may not be the basis for modifications to Consultant's schedule, scope and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was anticipated by Consultant or the Parties, and other circumstances then existing. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659a.142; (iv) the Clean Air Act (42 U.S.C. 7401-7671q); (v) the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387); (vi) Executive Order 11738; (vii) Environmental Protection Agency regulations (40 CFR part 15); (viii) and all applicable standards, orders, regulations and administrative rules established pursuant to the foregoing laws. City's performance under the PA and Task Order is conditioned upon Consultant's compliance with, and Consultant shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.520 and 279C.530, which are incorporated by reference herein. All rights and remedies available to City under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and

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remedies under the PA and Task Order. If Consultant discovers a conflict among Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Task Order, Consultant shall in writing request City to resolve the conflict (in collaboration with ODOT and FHWA as applicable). Consultant shall specify if the conflict(s) create a problem for the design or other Services required under the Task Order. If City concludes there is a conflict among the applicable laws, Federal laws shall govern among the others; State laws shall govern over the others except Federal. The resolution of the conflict of the applicable laws by City shall be final and not subject to further review or challenge.

19. Permits and Licenses

- a. **Permits and licenses to conduct business.** Unless otherwise specified in the Task Order, Consultant shall obtain, hold, maintain and fully pay for during the term of the Task Order all permits and licenses required by law for Consultant to conduct its business and perform the Services under the Task Order.
- b. **Permits and licenses required for the project.** Unless otherwise specified in the Task Order, Consultant shall obtain, hold and maintain during the term of the Task Order all permits and licenses required for the project (for example, permits from regulatory authorities and use permits or licenses from owners of real and personal property), but City shall pay for such permits and licenses. Consultant shall review the project site, if applicable, and the nature of the Services that Consultant shall perform under the Task Order. Consultant shall advise City throughout the course of the project as to the necessity of obtaining all project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.

20. Foreign Contractor. If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the Task Order.

21. Force Majeure. Neither City nor Consultant shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including, but not limited to, fire, riot, acts of God, terrorist acts or other acts of political sabotage, or war where such cause was beyond the reasonable control of City or Consultant, respectively. Consultant shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Task Order.

22. Survival. All rights and obligations shall cease upon termination or expiration of the Task Order, except for the rights and obligations set forth in Sections 5, 9, 10, 11, 12, 13, 15(e), 15(f), 16, 22, 23, 26, 27 and 29 and all other rights and obligations which by their context are intended to survive.

23. Time is of the Essence. Consultant agrees that time is of the essence in Consultant's performance of its obligations under the Task Order.

24. Notice. Except as otherwise expressly provided in the Task Order, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by e-mail, by personal delivery, facsimile, or mailing the same, postage prepaid, to Consultant or City at the e-mail address, the delivery address or facsimile number set forth in the Task Order, or to such other addresses or numbers as either Party may hereafter indicate in writing to the other. Any notice or day-to-day communication sent by e-mail shall be deemed received when it is sent. **The recipient of any notice sent by e-mail shall reply by e-mail to confirm receipt of such notice.** Any communication or notice made by personal delivery shall be deemed to be received when actually delivered. Any communication or notice properly addressed and mailed shall be deemed received 5 calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received on the date of the notice of successful transmission generated by the transmitting machine. To be effective, such facsimile transmission must be confirmed by telephone notice to City's PA Administrator or Consultant's representative, as applicable.

25. Severability. The Parties agree that if any term or provision of the PA or Task Order is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the PA or Task Order did not contain the particular term or provision held to be invalid.

26. Dispute Resolution and Errors & Omissions Claims Process. In the event of a dispute between the Parties regarding any aspect of the PA or Task Order or performance under the Task Order, the Parties agree to attempt in good faith to investigate and resolve any such dispute through direct communications and negotiations.

- a. **Errors & Omissions Related.** In the event those good faith efforts do not resolve disputes related to potential Errors and Omissions, the Parties agree to make good faith efforts to resolve the matter pursuant to **Exhibit I, Errors & Omissions Claims Process.**
- b. **Other Disputes.** In the event good faith efforts do not resolve disputes unrelated to Errors & Omissions, the Parties agree to make a good faith effort to resolve any such dispute through fact finding and non-binding mediation prior to resorting to litigation. The mediator shall be selected by mutual agreement of the Parties. If the Parties fail to agree on a mediator, each Party shall select a mediator and those two persons shall agree on a third-party, who will be the sole mediator. The cost of the mediator shall be split equally between the Parties.
- c. **Notification to ODOT.** City shall immediately notify ODOT of any disputes that seek resolution with the Errors & Omissions Claims Process or mediation.

27. Governing Law; Venue; Consent to Jurisdiction. The PA and any assigned Task Order shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between City (or any agency or department of the State of Oregon) and Consultant that arises from or relates to the PA or Task Order shall be brought and conducted solely and exclusively within the Circuit Court located in the County in which the project is located; provided, however, if a Claim must be brought in a Federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the City or State of Oregon of any form or defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise. **CONSULTANT, BY EXECUTION OF THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

28. Amendments. City may amend the PA, the Task Order or both to the extent permitted by applicable statutes, administrative rules and ordinances and as mutually agreed upon by City and Consultant. City may agree to appropriate increases in the maximum compensation payable under the Task Order, should any City-approved increase occur in the scope, character, schedule or complexity of Services as outlined in the Statement of Work. Consultant shall not commence any Services authorized under an amendment, and the amendment is not effective, unless it is in writing, signed by the Parties and all approvals required by applicable law have been obtained.

29. False Claims

- a. Consultant understands and acknowledges it is subject to the Oregon False Claims Act (ORS 180.750 to 180.785) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the PA and any Task Order, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the PA and any Task Order or the Project for which the Services are being performed, including but not limited to Consultant's statement of proposal and any invoices, reports, or other deliverables.
- b. Consultant shall immediately disclose (in writing) to City whenever, in connection with the award, performance or closeout of the PA or any Task Order, or any subcontract thereunder, Consultant has credible evidence that a principal, employee, agent, or subcontractor of Consultant has committed—

EXHIBIT A

- (i) A violation of the Oregon False Claims Act; or
- (ii) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.
- c. Consultant must include subsections (a) and (b) of this section in each subcontract Consultant may award in connection with the performance of the PA or any Task Order. In doing so, Consultant may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

30. Certified Small Businesses. Respecting certification as a disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or an emerging small business under ORS 200.055, as and when applicable, the Consultant shall maintain the certifications, and require in its subcontracts that subcontractors maintain the certifications required by Section 2, Chapter 325, Oregon Laws 2015, as amended by Section 26, Chapter 565, Oregon Laws 2015 as a material condition of the PA and the Task Order. If the Consultant or subcontractor was awarded the PA, a Task Order, or subcontract, as applicable, in the course of City carrying out an affirmative action goal, policy or program under ORS 279A.100, and fails to maintain the required certification, City may terminate the Task Order, the PA or both, require the Consultant to terminate the subcontractor, or exercise any of remedies reserved for breach of the PA or the Task Order.

31. Merger Clause; Waiver; Interpretation. The Task Order, including everything incorporated by reference into the Task Order, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Task Order. No waiver, consent, modification or change of terms of the PA or Task Order shall bind either Party, unless such waiver, consent, modification or change of terms is in writing and signed by the Parties, and all necessary State of Oregon governmental approvals have been obtained. Such a waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Either Party's failure to enforce any provision of the PA or Task Order shall not constitute a waiver by that Party of that or any other provision. The characterization of provisions of the PA or the Task Order as material provisions or the failure to comply with certain provisions as a material breach of the PA or Task Order shall in no way be construed to mean that any other provisions of the PA or the Task Order are not material or that failure to comply with any other provisions is not a material breach of the PA or the Task Order.

EXHIBIT A
CONSULTANT CERTIFICATIONS

A. Any individual signing on behalf of Consultant hereby certifies under penalty of perjury:

- (1) Consultant has provided its correct TIN to City;
- (2) Consultant is not subject to backup withholding because (a) Consultant is exempt from backup withholding, (b) Consultant has not been notified by the IRS that Consultant is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified Consultant that Consultant is no longer subject to backup withholding; and
- (3) s/he is authorized to act on behalf of Consultant, s/he has authority and knowledge regarding Consultant's payment of taxes, and to the best of her/his knowledge, Consultant is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a State tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321, and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Department of Revenue under ORS 305.620.

B. Any individual signing on behalf of Consultant hereby certifies they are authorized to sign this PA and that:

- (1) Consultant has read this PA, understands it, and agrees to be bound by its terms and conditions.
- (2) Consultant understands and agrees that various documents are not physically attached, but are incorporated by reference and have the same force and effect as if fully set forth herein.
- (3) Consultant understands and has provided to all Associates the COI Disclosure Form available at: <http://www.oregon.gov/ODOT/CS/OPO/pages/AE.aspx>. Consultant and (to the best of the undersigned's information, knowledge and belief) Consultant's Associates are in compliance with the disclosure requirements of the COI Disclosure Form and have no conflicts of interest to disclose. If disclosures regarding this PA, any Task Order or the related Project are required per the COI Disclosure Form, Consultant has made such disclosures to City on a properly prepared and submitted form and, if determined necessary by City or ODOT, a mitigation plan has been approved by City and ODOT.
- (4) (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 (c) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 (d) Consultant shall require that the language of this certification be included in all subcontracts in excess of \$100,000 at all tiers and that all such subcontractors shall certify and disclose accordingly.
- (5) Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779.
- (6) In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this PA constitutes certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this PA.

No Payment shall be made for Services that are performed before all necessary governmental approvals have been obtained, the PA and the Task Order is fully executed, and Notice-To-Proceed has been issued by City.

Counterparts: The PA may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the PA so executed shall constitute an original.

EXHIBIT A
CONSULTANT SIGNATURE(s)

Signature: _____ Date: _____

Name: _____ Title: _____

Signature: _____ Date: _____

Name: _____ Title: _____

CITY SIGNATURE

Signature: _____ Date: _____

Name: _____ Title: _____

CITY LEGAL REVIEW:

Approved as to form: _____ Date: _____

EXHIBIT A

EXHIBIT A - SCOPE of SERVICES

A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

Consultant shall provide Services, as assigned in Task Orders, within the scope of work identified in this PA or the associated solicitation. Work tasks and deliverables that may be assigned via Task Orders under this PA may include but are not limited to those listed in the sections below. The tasks and deliverables identified in this exhibit are examples and are not exhaustive. Individual Task Order assignments may include any task, reasonably within the scope of work included in this PA or the associated solicitation, as determined necessary to complete an assigned Task Order.

General Expectation. Consultant commits to provide Services (and oversee and direct the design of the project, if applicable) to obtain the greatest long-term value for the government, and to promote prudent expenditure of public funds within the constraints of the project, program, context, budget and cost-effective sustainability principles. Consultant shall: (i) avoid expenditures for aesthetic effect which are disproportionate to the project as a whole; (ii) use recycled/recyclable products to the maximum extent economically feasible in the performance of any Task Orders, and (iii) apprise City throughout the project concerning any issues or decisions with potential economic impact to the project.

Acronyms and Definitions**B. STANDARDS and GENERAL REQUIREMENTS****1. Standards**

The City of Portland Bureau of Transportation requires a consultant to research, prepare, & submit environmental documentation for projects with a Federal nexus requiring NEPA(National Environmental Policy Act) documentation.

Specific Tasks as negotiated per Task Order:

Endangered Species Act: The consultant will determine the projects effects on Threatened & Endangered Species under the jurisdiction of USFWS(United States Fish & Wildlife Services) and NMFS(National Marine Fisheries Service). Documentation needs may include No Effect Memos and FAHP(Federal Aid Highway Programmatic Agreements) reports depending on the impacts of each project. Generally, projects that trigger the need for stormwater treatmentwill require a FAHP report addressing impacts to NMFS-listed species. This documentation must be prepared by an ODOT approved Biologist.

NHPA Section 106: The consultant will evaluate the projects impacts on cultural resources (Historic/ Archeological) within & near the projects limits and prepare a report discussing impacts. If the impacts are minimal the consultant will prepare a Finding of Effect for any impacted properties. The consultant will prepare materials for consultation with the State Historical Preservation Office (SHPO). Materials will be submitted to ODOT cultural resources staff for their review & preparation of the Section 106 clearances.

Section 4(f): The consultant will evaluate the potential impacts to any parks, recreational areas, wildlife or waterfowl refuges, or public or private historical sites and if necessary prepare appropriate documentation of those impacts. If necessary the consultant will prepare a formal consultation for use of a 4(f) resource, however this is a very unlikely occurrence.

Hazardous Materials: The consultant will prepare a Level 1 Hazardous Material survey and provide documentation to conform to required specifications. If necessary the consultant will prepare a Level 2 Hazardous Material report for specific sites.

EXHIBIT A

2. Software and Format Requirements

Software standards and formats include but are not limited to the following:

- Each draft and final text-based or spreadsheet-based deliverable shall be provided in MS Office file formats (i.e., MS Word, Excel, etc.) and must be fully compatible with version used by City.
- Consultant shall submit draft and final deliverables in electronic format via e-mail (and hard copy if requested).
- Consultant shall also submit any graphic files accompanying reports separately in .jpg or .tif formats unless specified differently by City.

Consultant's software shall produce deliverables that are fully compatible, readable and useable by City software, requiring no modification or translation of Consultant's deliverables. No loss of data integrity or accuracy shall result from any transfer of data. Compressed data shall be in a "self-expanding executable" format. Additional format requirements may be listed in the Task Order.

3. Professional Licenses, Registrations and Qualifications

- Consultant and its subconsultants must be duly licensed where required by law to perform the Services, and must be under the "responsible charge" (as that term is defined under ORS Chapter 672) of a person so licensed, as required by the applicable Oregon Revised Statutes and Oregon Administrative Rules, and other applicable laws (or must be otherwise exempt from any licensing requirements applicable to the Services being performed).
- City may require Consultant's Personnel to demonstrate a competency in the particular area/discipline to which they are assigned. This may include, but is not limited to, submittal of license number, resume, and work samples from previously completed projects.

4. General Requirements

- **Endorsement of Data.** Consultant shall place their official Oregon Registered Engineer seal and signature on all engineering design drawings and specifications furnished to City, as well as any other materials where professional standards require such seal and signature.
- **Safety Equipment.** Consultant shall provide and use all safety equipment including (but not limited to) hard hats, safety vests and clothing if required by State and Federal regulations and City policies and procedures for the Services under the Task Order.

5. Compliance with Applicable Law (in addition to those identified the PA.)**C. REVIEW, COMMENT and SCHEDULE OVERVIEW**

- Consultant shall coordinate with City staff as necessary and shall revise draft deliverables to incorporate draft review comments.
- Consultant shall incorporate comments within 10 business days from receipt by City and return the revised deliverables to City staff, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by City.

D. PROJECT COOPERATION

Consultant shall only be responsible for those obligations and deliverables identified as being assigned to Consultant (or its subconsultants) in the Task Order. All work assigned to other entities, other than subconsultants, is not subject to the Task Order, but shall be the subject of separate Intergovernmental Agreements or contracts which will contain the obligations of those entities. Any tasks or deliverables assigned to a subconsultant shall be construed as being the responsibility of Consultant. Any Consultant tasks or deliverables which are contingent upon receiving information, resources,

EXHIBIT A

assistance, or cooperation in any way from another entity (other than subconsultants) as described in this Statement of Work shall be subject to the following guidelines:

- a. At the first indication of non-cooperation, Consultant shall provide written notice to City's Task Order Administrator of the specific acts or inaction indicating non-cooperation and of any deliverables that may be delayed due to such lack of cooperation by other entities referenced in the Statement of Work.
- b. City's Task Order Administrator shall contact the non-cooperative entity/s to discuss the matter and attempt to correct the problem and expedite items determined to be delaying Consultant/project.

If Consultant has followed the notification process described in section "a", and delinquency or delay of any deliverable is found to be a result of the failure of other referenced entities to provide information, resources, assistance, or cooperation, as described in the Statement of Work, Consultant will not be found in breach or default with respect to delinquencies beyond any reasonable control of Consultant; nor shall Consultant be assessed or liable for any damages arising as a result of such delinquencies. Neither shall City be responsible or liable for any damages to Consultant as the result of such non-cooperation by other entities. City's Task Order Administrator will negotiate with Consultant in the best interest of the government, and may revise the delivery schedule to allow for delinquencies beyond any reasonable control of Consultant. Revised delivery dates beyond the expiration date of the Task Order require an amendment to the Task Order.

E. TASKS, DELIVERABLES and SCHEDULE

1. Will be negotiated for each project and will incorporate specific scope of work, deliverables, timelines, overall schedule & specific budget.

F. CONTINGENCY TASKS

Projects may include Services that may or may not be needed, depending on conditions that arise or change during a Task Order project period. These condition precedent Services are considered to be contingency Services and must be planned for in the Task Order. Any contingency tasks or deliverables in the Task Order must be within the Scope of Services included in this PA. In the Task Order, each contingency item must clearly be labeled as "Contingency" and must include a defined task, deliverable(s) and a schedule. The cost for each contingency task must be identified in the Task Order. When provided for in the Task Order and required by City, Consultant shall perform contingency tasks or deliverables related to a project. City will formally authorize the specific contingency work and associated costs with a Contingency NTP. Consultant shall only proceed with a contingency task after City has issued the Contingency NTP. The budget for each contingency task is specific to that task and may not be used or billed in association with any other task.

EXHIBIT B - COMPENSATION**Definitions:****CPFF** - Cost Plus Fixed Fee**FCCM** - Facilities Capital Cost of Money**NBR** - Negotiated Billing Rates. NBRs are fully loaded billing rates used by firms that do not have an audited, approved overhead rate. NBRs are inclusive of direct salary, indirect expenses and profit.**NTE** - Not to Exceed Amount**T&M** - Time and Materials**A. METHOD of COMPENSATION**

Payment will be made for completion of, or acceptable monthly progress on, tasks and deliverables in conformance with PA and Task Order requirements and all applicable standards. Consultant shall complete all Services and provide all deliverables as defined in the Task Order. If the applicable compensation is exhausted, but Services and deliverables are not complete, Consultant shall complete the Services and provide the deliverables to City's satisfaction without additional compensation.

Assigned Task Orders will identify the method(s) of compensation and progress payment option for each Task Order.

The amount payable under the Task Order may be adjusted by City or renegotiated to:

- Reduce the NTE, Fixed-Price or Fixed-Fee amount associated with Tasks/Deliverables that were not authorized by City or not performed by Consultant;
- Reduce the NTE, Fixed-Price or Fixed-Fee amount commensurate with deductive amendments to reduce the risk associated with the project or to reduce the scope of work required under the Task Order;
- Increase the NTE, Fixed-Price or Fixed-Fee amount for additional Tasks/Deliverables added to the scope of work via amendment to the Task Order.

1. Fixed Price

City will pay Consultant for the actual Services performed under the Task Order according to the Fixed Price amount(s) established in the Task Order. The Fixed Price amount(s) includes all labor costs, overhead, profit, and may include expenses (if travel or other expenses are approved). The Fixed Price amount(s) must not include any unallowable indirect or direct costs, including travel which must be based on the allowable travel and lodging rates identified in section B of this Exhibit.

Consultant acknowledges and agrees that the Fixed Price is only due and payable for work authorized by City and satisfactorily completed by Consultant.

The dollar amount for Fixed Price Services is: \$ To be negotiated per each individual Task Order. Total overall compensation for all Task Orders executed shall be a Not To Exceed PA value of \$150,000

B. PAYMENT OPTIONS

Payments will occur only after City has determined that Consultant has completed, and City has accepted, the required Services (including defined deliverables) for which payment is sought via a properly submitted and correct invoice.

C. TRAVEL

The Fixed Price amount(s) in the Task Order includes all travel, lodging, per diem, and mileage expenses. City will not reimburse Consultant separately for travel, lodging, per diem, or mileage expenses.

Travel costs are allowable only if they are specifically authorized under the Task Order and if the travel is essential to the normal discharge of City's responsibilities and is related to official City business. All travel shall be conducted in the most efficient and cost-effective manner that results in the best value for the City. Personal expenses shall not be authorized at any time. The following guidelines shall apply to the Task Order:

- The travel, lodging, and per diem rates referenced in this Section C are the maximums that Consultant's estimate (or reimbursement, if applicable) may be based on. Travel rates other than those referenced in this Section C may be negotiated in the Task Order, however, under no circumstance shall travel, lodging and per diem rates exceed the maximums set forth by the State Controller at <http://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf>.
- Mileage - For compensation based on Cost-Plus-Fixed-Fee or Time and Materials (or Fixed Price or Price Per Unit when travel reimbursement is approved and mileage is compensated separately), all mileage approved by City will be reimbursed according to the rates set forth by the State Controller at <http://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> that are in effect on the date when the travel occurs.

D. INVOICES

On or before the 15th of each month, the Consultant shall submit to PBOTContracts@portlandoregon.gov an electronic copy(pdf only) invoice for work performed by the Consultant during the preceding month. The invoice shall be on the prime contractor's business letterhead and contain the City's Price Agreement Number/Purchase Order and any Task Order number, as applicable, the PBOT Project Managers name, and set out all items for payment including, but not limited to: invoice number, period services were performed for, the name of the individual, labor category, direct labor rate, hours worked during the period, and tasks performed. The Consultant shall also attach photocopies of claimed reimbursable expenses, as applicable. A summary shall be provided per invoice showing, Current amount billed, past invoices billed but unpaid, invoices paid to reflect total amount billed as of invoice date against contract total. The Consultant shall stamp and approve all subconsultant invoices and note on the subconsultant invoice what they are approving as "billable" under the contract, if subconsultants were used under this contract. The billing from the prime should clearly roll up labor and reimbursable costs for the prime and subconsultants - matching the subconsultant invoices. Prior to initial billing, the Consultant shall develop a billing format for approval by the City.

Fixed-Price Compensation. Consultant shall prepare invoice(s) based on the payment option identified in Section B of this Exhibit:

- For Task Orders using "Progress Payments for Services Completed" payment option, Consultant invoices shall be limited to an amount commensurate with the percentage of the total Services (including Deliverables) that were completed in the month invoiced.

City may request a full written itemization of and receipts for, but not limited to, any or all labor and direct costs billed by Consultant. Consultant shall provide written itemization and receipts to City within 5 business days of City's request. City will not make payment to Consultant under the applicable

invoice until City has received all requested supporting documentation from Consultant and City has approved the invoiced amounts. Any overdue payments to Consultant by City for an approved invoice are subject to ORS 293.462.

E. PAYMENT TERMS

Payment will be made to Consultant no later than 30 calendar days from receipt of invoice completed in conformance with all contractual requirements. City will endeavor to notify Consultant within 10 business days of receipt of invoice regarding any necessary revisions or corrections to the invoice. If revisions are necessary, payment will be made no later than 30 calendar days from receipt of the revised invoice.

F. CORRECTIVE WORK

Consultant shall complete all Services, including Deliverables, as required in the Task Order to City's satisfaction. If City, using reasonable discretion, determines that the Services or associated deliverables, or both, are unacceptable, City shall notify Consultant in writing of the deficiency. Within 7 calendar days (unless a different timeframe is agreed to by the Parties) of receipt of the deficiency notification Consultant shall respond to City outlining how the deficiency shall be corrected. Consultant shall correct any deficiencies in the Services and Deliverables to City's satisfaction without further compensation. City will not unreasonably withhold payment.

G. PAYMENT REDUCTION

City, or its duly authorized agents, may audit Consultant's fiscal records, including certified payroll and overhead records at any time. If City finds previously undisclosed inaccurate or improper costs have been invoiced and paid, City will notify Consultant and seek clarification. City, in its sole discretion, may reduce the payment for Services by withholding the inaccurate or improper amounts from any future payment to Consultant, withhold the inaccurate or improper amounts from final payment to Consultant, or may use any other means to seek recovery of already paid but improperly calculated amounts.

H. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES

Specific Limitations

For cost reimbursement compensation such as CPFF or T&M, Consultant shall invoice City only for actual productive time Consultant personnel spend on Services by any level of Consultant's staff (up to the established not-to-exceed amount). Consultant's general supervisors or personnel who are responsible for more than one City project shall charge only for actual productive time spent directly on the project identified in the Task Order.

City will pay Consultant only up to the hourly rates set forth in the Task Order that are commensurate with the type of Services performed regardless of the classification, title, or level of experience of the individual performing those Services. However, under no circumstances shall Consultant invoice City based on higher direct salary rates than the actual amount paid to its employees.

Discriminatory Pricing. Direct and indirect costs as applied to work performed under City contracts and subcontracts may not be discriminatory against the City. It is discriminatory against the City if employee (or owner/sole proprietor) compensation (in whatever form or name) is in excess of that being paid for similar non-City work under comparable circumstances.

Discriminatory Wage Rates. Pursuant to ORS 279C.520, Consultant shall comply with the prohibitions set forth in ORS 652.220. Failure to comply is a breach that entitles the City to terminate the Task Order for cause.

Employee Discussions Regarding Compensation. Consultant shall not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person {see ORS 279C.520(1)}.

Unallowable Charges

City will not pay for direct or indirect costs that are unallowable under the provisions of 48 CFR Part 31.

Costs or direct charges for, but not limited to, the following are not reimbursable:

- Costs for negotiation of the Task Order or Task Order amendments, including but not limited to proposal preparation, BOC preparation, preparation for negotiations, and negotiation of level of effort/budget.
- Costs related to disputes or E&O Claims, including but not limited to discussions, meetings and preparation of any dispute or claim related documentation.
- Mark-up on subcontractors or direct non-labor costs.
- Transfer of knowledge and information related to Key Person replacements.
- Correcting or making adjustments to incorrect or improper invoices.
- Direct compensation for items included in firm's indirect costs (unless properly credited back to indirect cost).
- Premium costs incurred as a result of working overtime or holidays. (Premium time should normally be charged to overhead. In accordance with ORS 279C.520, employees shall be paid at not less than time and one-half for all overtime worked and for work on legal holidays, except for individuals who are excluded from receiving overtime under personal services contracts pursuant to ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209.)

J. INDIRECT COSTS; SALARY and BILLING RATE SCHEDULES

1. Approved cost data on file with ODOT - If Consultant or its subconsultants have current, approved overhead, salary, or NBR rate schedules on file at ODOT, Consultant and its subconsultants will submit those approved rate schedules and any required certifications (or City may obtain rate schedules from ODOT) as required in subsections 2 and 3 below for use under the Task Order.

2. Overhead Schedule - If Consultant or subconsultants calculate overhead as part of their normal business practice, the overhead schedules shall be prepared and submitted in accordance with ODOT's Billing Rate Policy (as may be revised from time to time by ODOT) available at: <http://www.oregon.gov/ODOT/CS/OPO/pages/AE.aspx> (under "Related Policies"). Consultant shall use the Overhead Schedule available on line at the following Internet site: <http://www.oregon.gov/ODOT/CS/OPO/Pages/AE.aspx>. Consultant Certification of compliance with Federal Cost Principles is required per FHWA directive 4470.1a: <http://www.fhwa.dot.gov/legregs/directives/orders/44701a.htm>. A signed Certification of Final Indirect Costs form must be submitted with the overhead schedule.

In order to assess the adequacy of an audited overhead rate for use in fair and reasonable price negotiation, City and/or ODOT may evaluate a firm's financial capability, internal control structure, and overhead schedule. This includes a determination as to the applicability of historical overhead rates to the anticipated future contract period, performing financial ratio analysis, evaluating overhead account trends and utilization rates for reasonableness.

3. Salary and Billing Rate Schedules

Consultant shall, and shall cause all of its subconsultants to submit electronically to City the applicable rate schedules described below.

Direct Salary Rate Schedule - includes the name, classification and actual direct salary rate as approved for each employee that may be used under the Task Order. This schedule is required for firms that calculate an overhead rate. This schedule will not be included in the Task Order but will be retained by City.

Negotiated Billing Rate Schedule - may be required for Consultants or subconsultants that do not have a cognizant or acceptable independent audit for overhead rates (or do not calculate overhead as part of their normal accounting practice) and City determines it is in the public's best interest to negotiate specific billing rates. Instead of calculating a billing rate using a formula that applies overhead, profit, and FCCM to the direct salary rate, this schedule lists negotiated rates that are fully inclusive of profit, overhead and any cost of living or merit raises. The billing rates invoiced under the Task Order must not exceed the rates per classifications listed in the schedule and may be no greater than the lowest rates charged to other public or private clients.

Direct Non-Labor Rate Schedule - is an optional schedule used to list actual costs of reimbursable items that are not included in the firm's overhead rate (or that are properly applied as a credit in overhead calculation).

Approved Rate Schedules - The rate schedules approved for the PA and the BOC are incorporated into Task Order. Prior to approval of additional subconsultants, Consultant shall provide to City any requested documentation of qualifications and experience of the prospective subconsultant and its staff.

K. RATE REVISIONS

The hourly rates (including escalations, if any) approved for use under this PA shall remain in effect throughout the duration of the Contract unless revisions are approved by City. Any approved revisions to the hourly rates allowable under Task Orders shall not cause an increase in the Task Order NTE amount (exceptions may be approved by City on a case by case basis).

L. BREAKDOWN OF COSTS (BOC)

Prior to execution of the Task Order or any amendments that add Services, Consultant shall prepare and submit a BOC based on the approved overhead and actual direct salary rates (and approved NBRs as applicable) for each classification to be used under the Task Order. Consultant shall include names of proposed staffing in the BOC.

The BOC must include a detailed breakdown of the costs for each element of the work regardless of compensation method. The BOC must identify:

- a) the proposed staff assignments (classifications and names) and hours per task and sub-task;
- b) an itemization with documentation (estimates from vendors shall be provided upon request) to support rental equipment, flaggers, travel and other direct non-labor expenses; and
- c) the estimate for Services as provided by each subconsultant(if applicable) that shows the assigned staff and hours per task and sub-task and itemized direct non-labor costs. City may ask for qualifications of any staff assigned to work on a project if they were not included in Statement of Proposal originally submitted for solicitation.
- d) the certification status of any disadvantaged business enterprise, minority-owned business, woman-owned business, service-disabled veteran-owned business or emerging small business subcontractors included in the BOC.

EXHIBIT C - INSURANCE

All insurance required by this PA shall be maintained with insurers with an A.M. Best Financial Strength Rating of no less than A-. Insurers must be legally authorized to transact the business of insurance and issue coverage in the State of Oregon. Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions and self-insurance. Prior to beginning work and during the term of any assigned Task Order, including any extensions or warranty period, Consultant shall maintain in force at its own expense each insurance set forth below:

1. **Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (Consultants with one or more employees, unless exempt under ORS 656.027).
2. ☒ **Required by City** ☐ **Not required by City.**
Professional Liability insurance with a per claim, incident or occurrence limit, or the equivalent, of not less than ☒ \$1,000,000, or ☐ \$2,000,000. Any annual aggregate limits must not be less than ☐ \$1,000,000, or ☒ \$2,000,000. This insurance must cover damages caused by negligent acts, errors or omissions of Consultant and Consultant's subcontractors, agents, officers or employees related to the professional Services to be provided under the Task Order. If this insurance is provided on a "claims made" basis, Consultant shall continue the same coverage for ☐ 2 years, ☐ 3 years, or ☐ 6 years after completion of the Services or acquire "tail" coverage or an Extended Reporting Period endorsement for the foregoing extended period beyond Task Order expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the Task Order.
3. ☒ **Required by City** ☐ **Not required by City.**
Commercial General Liability insurance must be issued on an occurrence basis with per occurrence limit, or the equivalent, of not less than \$1,000,000 covering "bodily injury" and "property damage." Any annual aggregate limits shall not be less than \$2,000,000.
4. ☒ **Required by City** ☐ **Not required by City.**
Automobile Liability insurance covering Consultant's business-related automobile use, with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for "bodily injury" and "property damage," including coverage for all owned, non-owned, rented or hired vehicles.
5. **Notice of change or cancellation.** There shall be no cancellation, material change (one that would adversely impact the protection of City provided through the insurance coverages required in this Exhibit C), reduction of limits or intent not to renew the insurance coverage(s) without 30 calendar days prior written notice from Consultant or its insurer(s) to City. All policies and certificates of insurance, including Workers' Compensation, must include a notice of cancellation or nonrenewal clause as required under ORS 742.700 to 742.710.
6. **Certificates of Insurance.** As evidence of the insurance coverages required by this PA, Consultant shall furnish acceptable insurance certificates to City prior to PA execution. Throughout the life of this PA and any assigned Task Order, Consultant shall submit updated certificates of insurance prior to the policy expiration date(s) indicated for the required coverages. If requested by City, Consultant shall either: a) provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to City; or b) make such insurance policies, endorsements, self-insurance documents and related insurance documents available for inspection by City's representatives at a location in the State of Oregon that is reasonably convenient for City's representatives responsible for verification of the insurance coverages required under the PA.
7. **Additional Insureds.** Insurance certificates for Automobile and Commercial General Liability must include an endorsement physically attached to the certificate specifying the City, the State of Oregon, the OTC, the Oregon Department of Transportation, and their respective officers, members, agents and employees as Additional Insureds and must expressly provide that the interest of the Additional Insureds shall not be affected by Consultant's breach of policy provisions.
8. **Subcontractors.** Consultant shall: (i) obtain proof of the above insurance coverages, as applicable, from any subcontractor providing Services related to this PA, or (ii) include subcontractors within Consultant's coverage for the duration of the subcontractor's Services related to this PA.

EXHIBIT D - TITLE VI NON-DISCRIMINATION PROVISIONS

During the performance of any Task Orders under this PA, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

- a. **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this PA and any Task Orders under this PA.
- b. **Nondiscrimination:** Consultant, with regard to the work performed by it during the PA and any Task Orders, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Task Order covers a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this PA and any Task Orders and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- d. **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City, ODOT, FHWA or the Federal Transit Administration (FTA) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to City, ODOT, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this PA, City shall impose such PA and Task Order sanctions as it, ODOT, FHWA or FTA may determine to be appropriate, including, but not limited to:
 - (i) Withholding of payments to Consultant under the Task Order until Consultant complies, and/or
 - (ii) Cancellation, termination or suspension of the Task Order, PA or both, in whole or in part.
- f. **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as City, ODOT, FHWA or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request City, ODOT, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT E - RESERVED

EXHIBIT E.1 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS (No-Goal)

For purposes of these DBE Provisions, "Contract" means any project-specific contract, Price Agreement ("PA"), Work Order Contract ("WOC"), Task Order, or any other contract entered into with ODOT (or local agency when applicable). "Consultant" and "Contractor" are hereinafter referred to as "Contractor". **See section e for specific reporting requirements of Contractor.**

The DBE program is administered by the ODOT Office of Civil Rights ("OCR"). As the City is entering into this Contract under authority granted by ODOT, the DBE Provisions apply the same as if ODOT were the contracting agency.

"Consultant" and "Contractor" are hereinafter referred to as "Contractor". **See section e for specific reporting requirements of Contractor.**

- a. Policy and Program Authorities:** ODOT and Contractor agree to abide by and take all necessary and reasonable steps to comply with these DBE Provisions and the following, which are incorporated in this Contract with the same force and effect as though fully set forth in this Contract:
- o ODOT DBE Policy Statement
 - o ODOT DBE Program Plan, and
 - o Requirements of Title 49, Code of Federal Regulations, Part 26 - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

ODOT's DBE Program authorities are set forth in the ODOT DBE Program Plan.

- b. DBE Goals:** ODOT's overall goal for DBE participation is 13.1% for FHWA funded Contracts and 8% (proposed) for FTA funded Contracts. For FHWA funded contracting, ODOT may assign DBE Contract goals to increase participation by DBEs. For any Contract with an assigned DBE goal, Contractor shall select a portion of work available under the Contract for DBE participation. Contractor may use DBE subcontractors, suppliers, manufacturers, or Professional Services and Related Services providers to fulfill the assigned DBE Contract goal as long as the DBE is certified in the types of work selected. The assigned DBE Contract goal remains in effect throughout the life of the Contract. Dollar values of participation shall be credited toward meeting the assigned DBE Contract goal based on DBE gross earnings.

A DBE participation goal has not been established for this procurement.

- c. Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this USDOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- d. Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory performance of its contract no later than 10 calendar days from receipt of each payment Consultant receives from ODOT (or local agency when applicable). In addition, Contractor shall

return any retainage payments to each subcontractor within 10 calendar days after the subcontractor's work is satisfactorily completed.

- e. **Reporting Requirements:** Contractor shall complete and submit an initial **Paid Summary Report** [form 734-2882] with the final negotiated breakdown of costs (prior to contract execution), interim reports and final report per the instructions for A&E and Related Services on the form. Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance.
- f. **Commercially Useful Function:** For Contracts with no DBE goal assigned, ODOT may count race-neutral DBE participation toward its overall goal, provided the DBE is performing a commercially useful function ("CUF") as set forth in **49 CFR 26.55**. A DBE performs a commercially useful function when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in **49 CFR 26.55**. ODOT may perform a CUF review at any time during the performance of the Contract.
- g. **Termination of DBE Notification Requirement:** Contractor must promptly notify ODOT whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work. See additional requirements of **49CFR 26.53(f)** regarding termination of a DBE.
- h. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights. Questions related to the DBE Program may be sent via email to ocrinforequest@odot.state.or.us or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 355 Capitol Street NE, MS 31 Salem, OR 97301-3871 Phone: 503-986-4350 Fax: 503-986-6382
- i. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at: <https://oregon4biz.diversitysoftware.com/FrontEnd/ VendorSearchPublic.asp>

Related Web Sites:

All forms, documents and CFRs referenced or linked in these DBE Provisions are available on line at:

- o **Forms:** <http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/forms.aspx>
- o **Documents:** http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/sbe/dbe/dbe_program.aspx
- o **49 CFR Part 26:** <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=34ea04c7ed3d45b0e41f82a5646f1c15&rgn=div5&view=text&node=49:1.0.1.1.20&idno=49>

Acronyms & Definitions Applicable to Exhibit E.1

APM	ODOT's or local agency's Project Manager
CFR	Code of Federal Regulations
CUF	Commercially useful function
DBE	Disadvantaged Business Enterprise
OCR	ODOT Office of Civil Rights
ODOT	Oregon Dept. of Transportation
RFP	Request for Proposals
SSUR	Subcontractor Solicitation and Utilization Report
USDOT	United States Department of Transportation

COMMITTED DBE BREAKDOWN and CERTIFICATION FORM(s)

The signed Committed DBE Breakdown and Certification Form(s) is not physically attached but incorporated into this Contract by this reference with the same force and effect as though fully set forth herein. A copy of the signed Committed DBE Breakdown and Certification Form(s) has been provided to the ODOT Office of Civil Rights (for tracking purposes) prior to Contract execution.

EXHIBIT F - TASK ORDER ASSIGNMENT and SPECIAL TERMS & CONDITIONS

Provisions in this Exhibit F are in addition to and do not supersede the terms and conditions set forth in the PA.

1. Task Orders**1.1. Assignment Methodology**

Task Orders will be assigned as needed by the City for the services detailed in .

EXHIBIT G - SAMPLE TASK ORDER TEMPLATE

Task Order

Contract

Project: _____ Work Order #: _____

SAP Cost Object #: _____ Proposed Consultant: _____

Project Manager: _____ initials: _____ Phone: _____

(Vendor)Task Order
Manager: _____ Phone: _____

Group/Division: _____

Effective date of Work
Order: _____ As signed by all _____ Cost (not to exceed): \$ _____

Expiration Date: _____ \$ _____

Total to Date \$ _____

Project Synopsis of Statement of Work (Statement of Work & budget spreadsheet (Breakdown of costs) is attached and incorporated by this reference):

The City of Portland pays on a net 30 day basis after receipt of invoice. Please reference Contract & TO number on all invoices.

Approved By:

Acceptance of Terms by Consultant:

Contracts Date_____
Name/Title Date_____
Financial Analyst Date_____
Address_____
Group/Division Manager Date_____
City, State, Zipcode

E-Mail address:

EXHIBIT H - RESERVED

EXHIBIT I - RESERVED

EXHIBIT J - CONTACT INFORMATION and KEY PERSONS**1. Party Contact Information.****a.1 *: City PA Administrator for contractual matters:**

Name:	Patrick Boyd
Ph:	503.823.7031
E-mail:	Patrick.Boyd@portlandoregon.gov

a.2 City's address for invoicing:

Mailing Address:	Not Applicable
E-mail:	PBOTContracts@portlandoregon.gov

b. **Consultant's Primary contact for this PA is:

Name:	Adam Bonin
Ph:	503.575.3317
E-mail:	Adam.Bonin@cardno.com

* City may change the PA Administrator designation by promptly sending written notice (e-mail acceptable) to Consultant, with a copy to ODOT Procurement Office.

**Any changes to Consultant's Primary contact for this PA or Project Manager under an assigned Task Order must be approved in writing (e-mail acceptable) by City.