

**EXHIBIT A TO COUNCIL ORDINANCE  
CITY OF PORTLAND  
AGREEMENT FOR PROFESSIONAL, TECHNICAL, OR EXPERT SERVICES**

**CONTRACT NUMBER** \_\_\_\_\_

**TITLE OF WORK PROJECT  
Washington Park Reservoirs Improvements**

This Contract is between the City of Portland ("City," or "Bureau") and West Yost Associates, hereafter called Consultant. The City's Project Manager for this Contract is Jerry Moore.

**Effective Date and Duration**

This Contract shall become effective on September 1, 2019. This Contract shall expire, unless otherwise terminated or extended, on June 30, 2024.

**Consideration**

(a) City agrees to pay Consultant a sum not to exceed \$6,199,300 for accomplishment of the work through June 30, 2024.

(b) Interim payments shall be made to Consultant according to the schedule identified in the STATEMENT OF THE WORK AND PAYMENT SCHEDULE.

**CONSULTANT DATA AND CERTIFICATION**

Name (print full legal name): \_\_\_\_\_

Address: \_\_\_\_\_

Employer Identification Number (EIN): \_\_\_\_\_

**[INDEPENDENT CONSULTANTS: DO NOT PROVIDE SOCIAL SECURITY NUMBER (SSN) – LEAVE BLANK IF NO EIN]**

City of Portland Business Tax Registration Number: \_\_\_\_\_

Citizenship: Nonresident alien ☐ Yes ☐ No

Business Designation (check one): ☐ Individual ☐ Sole Proprietorship ☐ Partnership ☐ Corporation

☐ Limited Liability Co (LLC) ☐ Estate/Trust ☐ Public Service Corp. ☐ Government/Nonprofit

Payment information will be reported to the IRS under the name and taxpayer I.D. number provided above. Information must be provided prior to Contract approval.

**TERMS AND CONDITIONS**

**1. Standard of Care**

Consultant shall perform all services under this Contract using that care, skill, and diligence that would ordinarily be used by similar professionals in this community in similar circumstances.

**2. Effect of Expiration**

Passage of the Contract expiration date shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance that has not been corrected.

**3. Order of Precedence**

This Contract consists of these Terms and Conditions, the Statement of Work and Payment Schedule, and any exhibits that are attached. Any apparent or alleged conflict between these items will be resolved by using the following order of precedence:

a) these Terms and Conditions; b) Statement of Work and Payment Schedule; and c) any exhibits attached to the Contract.

**4. Early Termination of Contract**

(a) The City may terminate this Contract for convenience at any time for any reason deemed appropriate in its sole discretion. Termination is effective immediately upon notice of termination given by the City.

(b) Either party may terminate this Contract in the event of a material breach by the other party that is not cured. Before termination is permitted, the party seeking termination shall give the other party written notice of the breach, its intent to

terminate, and fifteen (15) calendar days to cure the breach. If the breach is not cured within 15 calendar days, the party seeking termination may terminate immediately by giving written notice that the Contract is terminated.

#### **5. Remedies and Payment on Early Termination**

- (a) If the City terminates pursuant to 4(a) above, the City shall pay the Consultant for work performed in accordance with the Contract prior to the termination date. No other costs or loss of anticipated profits shall be paid.
- (b) If the City terminates pursuant to 4(b) above, the City is entitled all remedies available at law or equity. In addition, Consultant shall pay the City all damages, costs, and sums incurred by the City as a result of the breach.
- (c) If the Consultant justifiably terminates the Contract pursuant to subsection 4(b), the Consultant's only remedy is payment for work prior to the termination. No other costs or loss of anticipated profits shall be paid.
- (d) If the City's termination under Section 4(b) was wrongful, the termination shall be automatically converted to one for convenience and the Consultant shall be paid as if the Contract was terminated under Section 4(a).
- (e) In the event of early termination the Consultant's work product before the date of termination becomes property of the City.

#### **6. Assignment**

Consultant shall not subcontract, assign, or transfer any of the work scheduled under this agreement, without the prior written consent of the City. Notwithstanding City approval of a subconsultant, the Consultant shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Consultant hereunder. The Consultant agrees that if subconsultants are employed in the performance of this Agreement, the Consultant and its subconsultants are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

#### **7. Compliance with Applicable Law**

Consultant shall comply with all applicable federal, state, and local laws and regulations. Consultant agrees it currently is in compliance with all tax laws. Consultant shall comply with Title VI of the Civil Rights Act of 1964 and its corresponding regulations. In connection with its activities under this Contract, the Consultant shall comply with all applicable Grant Terms and conditions. This includes all terms and conditions contained in this Contract and, for a Contract involving a grant, the Grant Terms and Conditions.

#### **8. Indemnification for Property Damage and Personal Injury**

Consultant shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from all claims, losses, damages, and costs (including reasonable attorney fees) for personal injury and property damage to the extent arising out of the negligent acts or omissions of the Consultant, its Subconsultants, suppliers, employees or agents in the performance of its services. Nothing in this paragraph requires the Consultant or its insurer to indemnify the City for claims of personal injury or property damage caused by the negligence of the City. For claims based upon professional negligence, Consultant's obligation to indemnify indemnitees for defense costs is not immediate and shall be satisfied at the time of any settlement or judgment as to Consultant's indemnity obligations under this Contract. This duty shall survive the expiration or termination of this Contract.

#### **9. Insurance**

Consultant shall obtain and maintain in full force at Consultant expense, throughout the duration of the Contract and any warranty or extension periods, the required insurance identified below. The City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of the Contract.

- (a) Workers' compensation insurance as required by ORS Chapter 656 and as it may be amended. Unless exempt under ORS Chapter 656, the Consultant and all subconsultants shall maintain coverage for all subject workers.

☐ Required and attached // ☐ Proof of exemption (i.e., completion of Workers' Compensation Insurance Statement)

- (b) General commercial liability (CGL) insurance covering bodily injury, personal injury, property damage, including coverage for independent consultant's protection (required if any work will be subContracted), premises/operations, Contractual liability, products and completed operations, in per occurrence limit of not less than \$1,000,000, and aggregate limit of not less than \$2,000,000.

☐ Required and attached // ☐ Waived by Bureau Director or designee // ☐ Reduce by Bureau Director or designee

- (c) Automobile liability insurance with coverage of not less than \$1,000,000 each accident, and an umbrella or excess liability coverage of \$2,000,000. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.

☐ Required and attached // ☐ Waived by Bureau Director or designee // ☐ Reduce by Bureau Director or designee

- (d) Professional Liability and/or Errors & Omissions insurance to cover damages caused by negligent acts, errors or omissions related to the professional services, and performance of duties and responsibilities of the Consultant under this Contract in an amount with a combined single limit of not less than \$1,000,000 per occurrence and aggregate of \$3,000,000 for all claims per occurrence. In lieu of an occurrence based policy, Consultant may have claims-made policy in an amount not less than \$1,000,000 per claim and \$3,000,000 annual aggregate, if the Consultant obtains an extended reporting period or tail coverage for not less than three (3) years following the termination or expiration of the Contract.



☐ Required and attached // ☐ Waived by Bureau Director or designee // ☐ Reduce by Bureau Director or designee

**Continuous Coverage; Notice of Cancellation:** The Consultant agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non-renewal of coverage without thirty (30) calendar days written notice from Consultant to the City. If the insurance is canceled or terminated prior to completion of the Contract, Consultant shall immediately notify the City and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract.

**Additional Insured:** The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation, shall be without prejudice to coverage otherwise existing, and shall name the City of Portland and its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the Consultant's activities to be performed, or products or services to be provided. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

**Certificate(s) of Insurance:** Consultant shall provide proof of insurance through acceptable certificate(s) of insurance, including additional insured endorsement form(s) and all other relevant endorsements, to the City prior to the award of the Contract if required by the procurement documents (e.g., request for proposal), or at execution of Contract and prior to any commencement of work or delivery of goods or services under the Contract. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Contract shall be obtained from insurance companies acceptable to the City of Portland. The Consultant shall pay for all deductibles and premium. The City reserves the right to require, at any time, complete, certified copies of required insurance policies, including endorsements evidencing the coverage the required.

**Subconsultant(s):** Consultant shall provide evidence that any subconsultant, if any, performing work or providing goods or service under the Contract has the same types and amounts of coverages as required herein or that the subconsultant is included under Consultant's policy.

#### **10. Ownership of Work Product**

All work product produced by the Consultant under this Contract is the exclusive property of the City. "Work Product" includes, but is not limited to: research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form. The Consultant and the City intend that such Work Product shall be deemed "work made for hire" of which the City shall be deemed the author. If for any reason a Work Product is deemed not to be a "work made for hire," the Consultant hereby irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Consultant shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Consultant waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. If the Consultant is an architect, the Work Product is the property of the Consultant-Architect, and by execution of this Contract, the Consultant-Architect grants the City an exclusive and irrevocable license to use that Work Product. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

Notwithstanding the above, all pre-existing trademarks, services marks, patents, copyrights, trade secrets, and other proprietary rights of Consultant are and will remain the exclusive property of Consultant.

#### **11. EEO Certification**

The Consultant must be certified prior to Contract execution, as Equal Employment Opportunity Affirmative Action Employers as prescribed by Chapter 5.33.076 of the Code of the City of Portland.

#### **12. Equal Benefits**

Consultant must certify prior to Contract execution, that they do not discriminate by policy or practice in the provision of employee benefits between employees with domestic partners and employees with spouses as prescribed by Chapter 5.33.077 of the Code of the City of Portland.

#### **13. Successors in Interest**

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

#### **14. Severability**

The parties agree that if any term or provision of this Contract 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 Contract did not contain the particular term or provision held to be invalid.

#### **15. Waiver**

The failure of the City to enforce any provision of this Contract shall not constitute a waiver by the City of that or any other provision.

#### **16. Errors**

The Consultant shall promptly perform such additional services as may be necessary to correct errors in the services required by this Contract without undue delays and without additional cost.

#### **17. Governing Law/Venue**

The provisions of this Contract shall be interpreted, construed and enforced in accordance with, and governed by, the laws of the State of Oregon without reference to its conflict of laws provisions that might otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this Contract must be brought in the appropriate court in Multnomah County Oregon.

#### **18. Amendments**

All changes to this Contract, including changes to the scope of work and Contract amount, must be made by written amendment and approved by the Chief Procurement Officer to be valid. Any amendment that increases the original Contract amount by more than 25% must be approved by the City Council to be valid.

#### **19. Business Tax Registration**

The Consultant shall obtain a City of Portland business tax registration number as required by PCC 7.02 prior to beginning work under this Contract.

#### **20. Prohibited Conduct**

The Consultant shall not hire any City employee who evaluated the proposals or authorized the award of this Contract for two years after the date the Contract was authorized without the express written permission of the City and provided the hiring is permitted by state law.

#### **21. Payment to Vendors and Subconsultants**

The Consultant shall timely pay all subconsultants and suppliers providing services or goods for this Contract.

#### **22. Access to Records**

The Consultant shall maintain all records relating to this Contract for three (3) years after final payment. The City may examine, audit and copy the Consultant's books, documents, papers, and records relating to this Contract at any time during this period upon reasonable notice. Copies of these records shall be made available upon request. Payment for the reasonable cost of requested copies shall be made by the City.

#### **23. Audits**

- (a) The City may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by paragraph 22. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States Government Accountability Office.
- (b) If an audit discloses that payments to the Consultant exceed the amount to which the Consultant was entitled, the Consultant shall repay the amount of the excess to the City.

#### **24. Electronic Signatures**

The City and Consultant may conduct this transaction, including any Contract amendments, by electronic means, including the use of electronic signatures.

#### **25. Merger Clause**

This Contract encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether verbal or written.

#### **26. Dispute Resolution/Work Regardless of Disputes**

The parties shall participate in mediation to resolve disputes before conducting litigation. The mediation shall occur at a reasonable time after the conclusion of the Contract with a mediator jointly selected by the parties. Notwithstanding any dispute under this Contract, the Consultant shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Contract for undisputed portions of the work. In the event of litigation no attorney fees are recoverable. No different dispute resolution paragraph(s) in this Contract or any attachment hereto shall supersede or take precedence over this provision.

#### **27. Progress Reports: ☐ Applicable ☐ Not Applicable**

If applicable, the Consultant shall provide monthly progress reports to the Project Manager as described in the Statement of the Work and Payment Schedule.

#### **28. Consultant's Personnel: ☐ Applicable ☐ Not Applicable**

If applicable, the Consultant shall assign the personnel listed in the Statement of the Work and Payment Schedule for the work required by the Contract and shall not change personnel without the prior written consent of the City, which shall not be unreasonably withheld.



**29. Subconsultants**

The Consultant shall use the subconsultants identified in its proposals. The Consultant shall not change subconsultant's assignments without the prior written consent of the Chief Procurement Officer. The City will enforce all social equity Contracting and Disadvantaged, Minority, Women and Emerging Small Business (D/M/W/ESB) subContracting commitments submitted by the Consultant in its proposals. Failure to use the identified D/M/W/ESB subconsultants without prior written consent is a material breach of Contract.

For Contracts valued \$50,000 or more, the Consultant shall submit a Monthly Subconsultant Payment and Utilization Report (MUR), made part of this Contract by reference, reporting ALL subconsultants employed in the performance of this agreement. An electronic copy of the MUR may be obtained by contacting the PTE Contract Compliance Specialist.

**30. Third Party Beneficiaries**

There are no third party beneficiaries to this Contract. Enforcement of this Contract is reserved to the parties.

**31. Conflict of Interest**

Consultant hereby certifies that, if applicable, its Contract proposal is made in good faith without fraud, collusion or connection of any kind with any other proposer of the same request for proposals or other City procurement solicitation(s), that the Consultant as a proposer has competed solely on its own behalf without connection or obligation to, any undisclosed person or firm. Consultant certifies that it is not a City official/employee or a business with which a City official/employee is associated, and that to the best of its knowledge, Consultant, its employee(s), its officer(s) or its director(s) is not a City official/employee or a relative of any City official/employee who: i) has responsibility in making decisions or ability to influence decision-making on the Contract or project to which this Contract pertains; ii) has or will participate in evaluation or management of the Contract; or iii) has or will have financial benefits in the Contract. Consultant understands that should it elect to employ any former City official/employee during the term of the Contract then that the former City official/Consultant employee must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and the City's Charter, Codes and administrative rules, including lobbying prohibitions under Portland City Code Section 2.12.080.

**32. Respectful Workplace Behavior**

The City of Portland is committed to a respectful work environment, free of harassment, discrimination and retaliation and other inappropriate conduct. Every individual has a right to work in a professional atmosphere where all individuals are treated with respect and dignity. The City's HR Rule 2.02 covers all employees with the City of Portland as well as consultants, vendors or consultants who provide services to the City of Portland. By signing this Contract/Agreement, the Consultant indicates compliance with all terms and conditions contained in this Contract including HR 2.02.

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**STATEMENT OF THE WORK  
AND PAYMENT SCHEDULE**

**NOTE** - For Contracts pertaining to A/E services for a new construction or major retrofit project intended for LEED™ or other green building certification:

- If the A/E firm is designated as being responsible for the registration, documentation, and submittal for building certification (as opposed to having an independent consultant), then encourage that the successful A/E firm to acquire necessary memberships related to the applicable building certification scheme to facilitate this responsibility.
- Tie the final payment to the successful submittal of the certification application to the applicable certification body.
- Consider including a requirement in the price agreement that the firm cannot substitute members of the A/E team working with the City without notification to, and written permission from, the City.
- With regards to any and LEED™ (or other certification scheme) credit compliance documentation the Consultant and Subconsultants agree to grant the City a limited, irrevocable, perpetual, non-exclusive, transferable, royalty-free, worldwide, and sublicensable right to use, reproduce, prepare derivative works from, distribute, display and publish such compliance documentation in any and all media and formats known now or in the future. This right is granted at the time such information is submitted to the City and/or uploaded or entered within LEED™ Online (or applicable certification documentation system) and shall be retained by the City regardless of whether the Project is submitted for certification review. Such rights and licenses shall survive the cancellation of registration for the project, as well as a denial or revocation of certification for the project by the certification body, or abandonment of building certification by the City. The City will use any such documentation for the purpose of applying for building certification and for educational purposes designed to promote the green building features and benefits of the project.

***DELETE ABOVE INSTRUCTIONS AND ANY INSTRUCTIONS BELOW IN BRACKETS***

**SCOPE OF WORK****CONSULTANT PERSONNEL *[Use these provisions as applicable]***

The Consultant shall assign the following personnel to do the work in the capacities designated:

NAME	ROLE ON PROJECT

#### SUBCONSULTANTS *[If none, indicate "NONE"]*

The Consultant shall assign the following subconsultants to perform work in the capacities designated:

NAME	DMWESB CERTIFICATION TYPE	ROLE ON PROJECT	SUBCONTRACT AMOUNT
			\$
			\$
			\$

The City will enforce all social equity Contracting and Disadvantaged, Minority, Women and Emerging Small Business (D/M/W/ESB) subContracting commitments submitted by the Consultant in its Proposal. For Contracts valued \$50,000 or more, the Consultant shall submit a Monthly Subconsultant Payment and Utilization Report (MUR), made part of this Contract by reference, reporting ALL subconsultants employed in the performance of this agreement. A copy of the Subconsultant Change Request Form can be found on Procurement Services' website under Consultant Resources.

#### COMPENSATION *[Modify these provisions to meet your specific needs]*

The maximum that the Consultant can be paid on this Contract is \$\_\_\_\_\_ (hereafter the "not to exceed" amount.). The "not to exceed" amount includes all payments to be made pursuant to this Contract, including reimbursable expenses, if any. Nothing in this Contract requires the City to pay for work that does not meet the Standard of Care or other requirements of the Contract. The actual amount to be paid Consultant may be less than that amount.

The Consultant is entitled to receive progress payments for its work pursuant to the Contract as provided in more detail below. The City will pay Consultant based on these invoices for acceptable work performed and approved until the "not to exceed" amount is reached. Thereafter, Consultant must complete work based on the Contract without additional compensation unless there is a change to the scope of work.

If work is completed before the "not to exceed" amount is reached, the Consultant's compensation will be based on the Consultant's bills previously submitted for acceptable work performed and approved.

#### PAYMENT TERMS: Net 30 Days

##### Hourly Rates

The billing rates shall not exceed those set forth in the attached exhibit identified as Exhibit \_\_\_\_\_:

##### Standard Reimbursable Costs

The following costs will be reimbursed without mark-up:

- \*\*
- \*\*

##### Subconsultant Costs

Compensation for subconsultants shall be limited to the same restrictions imposed on the Consultant. The maximum markup on subconsultant services shall not exceed 5%.

##### Adjustment of Labor Rates Due to Inflation

Annual adjustment of hourly rates will be considered upon written request from the Consultant. Approval of a request for rate increases is solely within the City's discretion and under no circumstances is the City obligated to approve such a request.

Rate increases are subject to the following limitations:

- No increases will be granted before the one-year anniversary of the Contract;
- No more than one increase shall be granted per Contract year;
- Rate increases may not exceed the then-current average inflation rate for the Portland Metropolitan Area (as determined from the US Department of Labor statistics);



- Rate increases shall not be retroactive.

Other than the impact of inflation as described above, hourly rates may not be increased.

**Progress Payments** *[Do not delete these sections, but modify the provisions if there are specific Bureau needs]*

On or before the 15<sup>th</sup> of each month, the Consultant shall submit to the City's Project Manager an invoice for work performed by the Consultant during the preceding month. The invoice shall contain the City's Contract Number and set out all items for payment including, but not limited to: 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, if applicable. The Consultant shall stamp and approve all subconsultant invoices and note on the subconsultant invoice what they are approving as "billable" under the 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.

The City shall pay all amounts to which no dispute exists within 30 calendar days of receipt of the invoice. Payment of any bill, however, does not preclude the City from later determining that an error in payment was made and from withholding the disputed sum from the next progress payment until the dispute is resolved.

The Consultant shall make full payment to its subconsultants within 10 business days following receipt of any payment made by the City to Consultant.

**ACH Payments**

It is the City's policy to pay its Consultant invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, Consultant shall execute the City's standard ACH Vendor Payment Authorization Agreement.

Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for services rendered directly into Consultant accounts with financial institutions. All payments shall be in United States currency.

**WORKERS' COMPENSATION INSURANCE STATEMENT****IF YOUR FIRM HAS CURRENT WORKERS' COMPENSATION INSURANCE, CONSULTANT MUST SIGN HERE:**

I, undersigned, am authorized to act on behalf of entity designated below, and I hereby certify that this entity has current Workers' Compensation Insurance.

Consultant Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Entity: \_\_\_\_\_

**IF YOUR FIRM DOES NOT HAVE CURRENT WORKERS' COMPENSATION INSURANCE, CONSULTANT MUST COMPLETE THE FOLLOWING INDEPENDENT CONSULTANT CERTIFICATION STATEMENT:**

As an independent Consultant, I certify that I meet the following standards:

1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;
2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent Consultant in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Consultant: check four or more of the following:
  - \_\_\_\_\_ A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
  - \_\_\_\_\_ B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;
  - \_\_\_\_\_ C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;
  - \_\_\_\_\_ D. Labor or services are performed only pursuant to written Contracts;
  - \_\_\_\_\_ E. Labor or services are performed for two or more different persons within a period of one year; or
  - \_\_\_\_\_ F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

\_\_\_\_\_  
Consultant Signature

\_\_\_\_\_  
Date

**FOR CITY USE ONLY**

**PROJECT MANAGER-COMplete ONLY IF CONSULTANT DOES NOT HAVE WORKER'S COMPENSATION INSURANCE**  
ORS 670.600 Independent Consultant standards. As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent consultant" if the standards of this section are met. The Contracted work meets the following standards:

1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the Contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

\_\_\_\_\_  
City Project Manager Signature

\_\_\_\_\_  
Date



**CONSULTANT SIGNATURE:**

This Contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same Agreement.

The parties agree the City and Consultant may conduct this transaction, including any Contract amendments, by electronic means, including the use of electronic signatures.

I, the undersigned, agree to perform work outlined in this Contract in accordance to the STANDARD CONTRACT PROVISIONS, the terms and conditions, made part of this Contract by reference, and the STATEMENT OF THE WORK made part of this Contract by reference; hereby certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; hereby certify that my business is certified as an Equal Employment Opportunity Affirmative Action Employer and is in compliance with the Equal Benefits Program as prescribed by Chapters 5.33.076 and 5.33.077 of Code of the City of Portland; and hereby certify I am an independent consultant as defined in ORS 670.600.

**"Click Here and Type {Consultant Name Here}"**

BY: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CONTRACT NUMBER: \_\_\_\_\_

CONTRACT TITLE: \_\_\_\_\_

**CITY OF PORTLAND SIGNATURES:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Bureau Director

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chief Procurement Officer

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Elected Official

Approved:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of City Auditor

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of City Attorney



**ENGINEERING SERVICES DURING CONSTRUCTION FOR THE  
WASHINGTON PARK RESERVOIR IMPROVEMENT PROJECT**

JUNE 20, 2019

**I. PHASE 4000 – ASSISTANCE DURING CONSTRUCTION**

The construction of Washington Park Reservoirs includes five stages. According to construction documents, the construction and commissioning of new Reservoir No. 3 and the disconnection of the existing Reservoir No. 4 are included in Stage 3 Construction that is to be completed by December 31, 2020. Stage 4 is the two-year “Construction Settlement” period required for consolidation of the subgrade under large earthen structures, from January 1, 2021 until December 31, 2022. Stage 5 is primarily the construction and commissioning of the park amenities including the reflecting pools with substantial completion by June 30, 2024. However, based on the progress of construction so far, the project currently appears on track to complete Stage 3 work in the later part of 2021 and for project completion near the beginning of 2025 adjusting the overall schedule to the following:

Stage 3: Completion December, 2021

Stage 4: January, 2022 to June, 2023

Stage 5: July, 2023 to June, 2025

This scope provides for engineering assistance to be provided upon the PWB’s request for items associated with Stages 3 – 5 construction as defined by specification 007300 in the construction documents until not later than June 30, 2025. Contract Administration and construction management shall be completed by PWB with support from the Consultant as requested. The Consultant shall assist PWB during construction by performing the following tasks as defined in this section.

The Consultant shall also provide all Engineer of Record (EOR) and construction services, required to construct the Washington Park Reservoirs Improvements Project (Project) except for EOR services required for construction of the Reservoir 3 structure; tie back walls TB1 and TB2; Mechanically Stabilized Earthen (MSE) structures; and Reinforced Structural Slopes (RSS). A list of the plan sheets included as Appendix A to identify the exempt work for EOR services. The Consultant shall also perform work to fully execute, complete, and close-out all permits required of the Project. This excludes work associated with the EOR for the structures noted above. The EOR observations and permitting requirements for the structures noted above will remain with the current Prime Contractors, AECOM Technical Services, Inc. (Contract no. 30003252) and Cornforth Consultants, Inc. (Contract no. 30003064).

**A. Task 4110 – Project Management**

1. Monitor project engineering scope, project schedule, project costs, engineering budgets and projected work cash flows with monthly updates to the PWB Program and Project Manager. Budget includes project management through June 30, 2025.
2. As-needed coordination for engineering support to PWB during construction and close-out.
  - a. Coordination with the Construction Manager/General Contractor (CM/GC) responsible for construction.
  - b. Coordination with engineering design teams and Engineer of Record responsible for supporting construction.
  - c. Coordination with Geotechnical Engineer (GE). Coordinate with GE for topics associated with construction of geotechnical elements if affected by other discipline designs.

- d. Provide West Yost project manager level support (assumes one staff person dedicated to project management at 50%) to the project for the duration of the work.
- e. Provide as-needed West Yost Principal Engineer level support (assumes one staff person dedicated at 75%) for 2019 and 2020.

B. Task 4111 – Public Involvement

1. Public Information Materials and Outreach Lead. This task will be provided primarily by Jeanne Lawson Associates.
  - a. Supplement PWB outreach staff as requested.
  - b. Attend weekly Owner's Construction meetings, if requested, to give public outreach updates and receive construction related comments. Anticipated to attend 8 meetings per year.
  - c. Create, alter, and update public information materials, including maps, brochures, posters, flyers, postcards, FAQ sheets, Fact sheets, and other project related documents as PWB staff deems necessary.
  - d. Provide support to PWB staff in tasks related to public open houses or other public events, including ground breaking, project tours, or other project related events.
  - e. Organize and facilitate up to eight (8) public tours.
  - f. Conduct door-to-door flyer placement in adjacent neighborhoods/streets that may be affected by construction, if requested.
2. Assumptions of work performed by the PWB
  - a. The PWB will cover expenses for all prints and mailers, such as FAQ flyers and mailers prior to open houses.

C. Task 4120 – Management Meetings

1. Regular Meetings.
  - a. Attend regular construction, management and PWB meetings, with PWB as requested, to stay informed of project progress, concerns and issues. Two staff from the Consultant Team (West Yost and the subconsultants) will attend each meeting as-needed. Monthly meetings will be held during the two-year rest period. A total of 3,000 hours are allotted for meetings.

D. Task 4130 – Conformed Documents

1. Incorporate changes made by Contract Change Directives, Field Orders, submittals and RFIs into the Conformed electronic plan set to maintain working drawings during construction.
  - a. Update working record drawing set to include drawing changes produced in CCDs as efficient with CAD, or in Bluebeam Studio.
  - b. Update working drawing set to include drawing changes produced from RFI responses issued after October 31, 2017.
  - c. West Yost will deliver electronic sets of the conformed drawings to PWB and our subconsultants as needed.
  - d. A total of 1,310 hours are allotted for conformed documents.



E. Task 4210 – Site Visits

1. Make periodic visits to the site to observe, as an experienced and qualified engineer, the progress and quality of the assigned aspects of the work. Based on information obtained during such visits, determine if work is proceeding in general conformance with the contract documents.
2. Provide Engineer of Record (EOR) on-site observations to support construction as required by code, jurisdictional and/or permitting authorities and BDS.
3. Provide a written response or verbal report to PWB PM of observations and recommendations based on the site visits.
4. Provide written notice to PWB of any deficiencies that need to be resolved.
5. EOR observations for the Reservoir 3 structure; tie back walls TB1 and TB2; Mechanically Stabilized Earthen (MSE) structures; and Reinforced Structural Slopes (RSS) are not included as part of this scope. Refer to Appendix A to identify the exempt work for EOR services.
6. The budget assumes 300 site visits by one person for 3 hours each.

F. Task 4240 – Test Procedures and Start-Ups Observations

1. Observe, record, and report to PWB observations regarding test procedures and start-ups observed for Reservoir No. 3.
2. Observe, record, and report to PWB observations regarding test procedures and start-ups observed for Park Amenities, including the treatment systems related to the reflecting pools.
3. Provide written comments from the observation based on test procedures and start-ups that are included in the specifications.
4. Two iterations of start-up procedures for each piece of equipment are included with this scope.
5. A total of 600 hours are allotted for testing and start-up support.

G. Task 4310 – Requests for Information

1. As requested by PWB, provide interpretations and clarifications of the contract documents to PWB with supporting documentation.
2. The budget includes 1,920 hours for interpretation and clarification.

H. Task 4320 – Field Orders/Construction Change Directives

1. As requested by PWB, prepare supporting documentation to accompany field orders or construction change directives that change of construction plans and/or specifications.
2. The budget includes 770 hours for field order and construction change directive support.

I. Task 4330 – Submittal Review

1. Review shop drawings and submittals as requested by the PWB PM and provide written responses to PWB within no more than fourteen (14) calendar days unless a different schedule is agreed on in advance by the PWB PM.
  - a. The budget includes 1,750 hours for submittal/resubmittal, shop drawing, manufacturer's O&M manual, certificates, and testing report review support.

J. Task 4340 – Change Orders/Claims

1. Assist PWB in reviewing change order requests and provide comments for pricing, contractor's labor and material costs. Change orders will be typically be a cumulation of several CCD's.
2. Provide the PWB PM with assistance in preparation of responses to construction claims.
3. The budget includes 930 hours for change order request and claim support.

K. Task 4405 – Final O&M Manual

1. Compile the final testing report, including test procedures, testing results and startup performance of Reservoir No. 3 and the Park Amenities, including the reflecting pools and chlorine system. It is assumed that the information for the final testing report will be provided by PWB from observations of start-ups and test.
2. Update PWB O&M Manual including recommended operating procedures, settings for equipment, recommended maintenance schedule, shutdown procedures, CM/GC O&M submittals (O&M instructions from manufacturers), warranties, and final testing reports. O&M manual shall include equipment related to the reflecting pools and the chlorine system operations and maintenance schedules.
3. Finalize the O&M Manuals related to Reservoir No. 3 and park amenities by incorporating PWB comments and construction changes prior to completion of the work. PWB comments shall be assembled and transmitted into one set of comments. One iteration of the comment/response cycle is budgeted.
4. Provide the PWB PM with five (5) hard copies and one (1) electronic in PDF format of the Washington Park O&M documents.
5. As the extent of this effort is somewhat undefined at this time, the budget includes a total of 720 hours of staff time.

II. PHASE 5000 – PROJECT MITIGATION

Phase 5000 provides for Project Mitigation to allow PWB to negotiate a budget and scope of work with the Consultant for undefined tasks at such time that the task scope can be defined. When a task is approved and added under this Phase the Consultant shall be required to resubmit a revised Budget Detail, Exhibit A to reflect the added Task under Phase 5000, Project Mitigation. In addition, the Consultant shall update Exhibit B, Schedule that shall be included to the Amendment for any required changes to this contract. Mitigation funds are included in the Budget Detail, Exhibit B to manage any additional tasks that may be required under this Contract. No work shall be performed under this task without the execution of a written amendment defining the scope, schedule, and budget of any added work task.

III. SCHEDULE

The proposed scope and budget for this amendment was developed using the assumed project schedule shown in Attachment B.

IV. BUDGET

See Attachment C.