



OED Agreement Number

STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT

In compliance with the Americans with Disabilities Act, the Oregon Employment Department offers alternate formats, auxiliary aids and services, and language services to individuals with disabilities free of cost upon request. Individuals with limited English proficiency may also request language services free of cost upon request. To request any of these services, please send an e-mail to CITY_INTERPRETER@oregon.gov, or call (503) 947-1794 (voice), or dial 7-1-1 for TTY/TDD toll free relay service, or access free online relay service at: www.sprintrelayonline.com and enter phone number (503) 947-1794.

This Agreement is between the City of Portland, acting by and through its Open and Accountable Elections Program, hereinafter referred to as "City" and

The State of Oregon
Acting by and through its Employment Department
Office of Administrative Hearings
P.O. Box 14020
Salem, OR 97309
Agreement Administrator: John Mann
Telephone: 503-612-4311
Facsimile: 50 -612-4340
E-mail address: john.m.mann@oregon.gov

hereinafter referred to as "OAH." This Agreement may refer to OAH and CITY individually as a "Party" or collectively as the "Parties."

CITY's Agreement Administrator:

Name: XXXXXXXXXXXX
Address: XXXXXXXXXXXXXXXX
Telephone: XXXXXXXXXXXX
Facsimile: XXXXXXXXXXXX
E-mail address: XXXXXXXX

1. **Definitions.**

- a. **"Agreement"** means all terms and conditions herein and all Exhibits attached hereto
- b. **"Authorized Representative"** means a person representing a Party to this Agreement who is authorized to make commitments and decisions on behalf of the Party regarding the performance of this Agreement.
- c. **"Documentation"** means all documents, including documents that are Deliverables described in the Statement of Work that are to be delivered by the Parties under this Agreement.
- d. **"DOJ"** means the State of Oregon acting through its Department of Justice.
- e. **"Services"** means all effort to be expended by OAH under the Agreement
- f. **"State"** means the State of Oregon.
- g. **"Work"** means the tasks or services and deliverables accepted by CITY as described in Exhibit A, Part 1, "Statement of Work."
- h. **"Work Product"** means everything that is specifically made, conceived, discovered, or reduced to practice by OAH or OAH's subcontractor or agents (either alone or with others) pursuant to the Agreement. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product is not OAH Intellectual Property, CITY Intellectual Property, or Third-Party Intellectual Property.

2. **Effective Date and Duration.**

This Agreement shall become effective on the date this Agreement has been fully executed by both Parties. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on June 30, 2023. Any time prior to August 31, 2021, this Agreement may be extended at CITY's option for (1) an additional year or (2) an additional two-year period at CITY's sole discretion. Agreement termination or expiration shall not extinguish or prejudice either Party's right to enforce this Agreement with respect to any default by the other Party that has not been cured.

3. **Agreement Documents.**

- a. This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Statement of Work
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Terms and Conditions
- (4) Exhibit B: Standard Terms and Conditions

There are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified herein.

- b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibit A, Exhibit B.
- c. For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by OAH as set forth in Exhibit A.

4. Consideration.

- a. The maximum not-to-exceed amount payable to OAH under this Agreement, which includes any allowable expenses, is **\$XXXXXXXX**. CITY will not pay OAH any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all Parties. OAH will not complete any Work in excess of the work that can be completed for the maximum not-to-exceed amount.
- b. CITY will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

5. Signatures.

**State of Oregon, acting by and through its Oregon Employment Department
By:**

Authorized Signature	Date
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Authorized Signature	Designated Procurement Officer	Date
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**City of Portland acting by and through its Open and Accountable Elections
Program
By:**

Authorized Signature	Title	Date
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Approved for Legal Sufficiency (OAH):

Assistant Attorney General

Date

OAH Program Section:

Authorized Signature

Date

Approved As To Form:

Portland City Attorney

Date

EXHIBIT A**Part 1
Statement of Work**

1. Services to be Provided by OAH shall include:
 - a. Conduct all contested-case hearings requested under CITY code section 2.16.170 (Hearings) and referred to OAH by CITY in accordance with CITY's charter, code and administrative rules. Those services may include, but are not limited to, the following:
 - (1) Promptly scheduling prehearing conferences and hearings, and issuing notices to CITY's attorney, the director of the Open and Accountable Elections Program, and the party requesting the hearing or the requesting party's attorney or representative;
 - (2) Conducting the hearing or prehearing conference by telephone or in- person;
 - (3) Supplying one or more hearing officers who are active or inactive members of the Oregon State Bar (or the bar of another state) who have, or who can attain within a reasonable time, the relevant government ethics training from the Oregon Government Ethics Commission (OGEC). OGEC provides training information on its website at <https://www.oregon.gov/OGEC/Pages/training.aspx>.
 - (4) Maintaining records identifying each hearings officer (administrative law judge);
 - (5) Promptly delivering to the parties and the CITY Open and Accountable Elections Program Director a copy of all Final Orders;
 - (6) Returning to CITY case records in electronic form either once the hearings officer's Final Order becomes final by operation of law, if CITY has not notified OAH that a petition has been filed with the Circuit Court for Writ of Review;
 - (7) Appointing a certified or qualified interpreter whenever it is necessary to interpret the proceeding.

- b. Hearing dates will be set in accordance with CITY code section 2.16.170 and Title 22 of CITY code as amended. If CITY or the member has an emergency, every effort will be made to set hearings as soon as possible.
 - c. The hearings officers shall issue orders consistent with applicable law, including but not limited to the CITY charter, code, and administrative rules.
2. CITY agrees to, at the time of referral, forward to OAH documents relevant to the referral of the contested case hearing, including an information sheet containing names, addresses, telephone numbers of parties (including updating OAH on new names, addresses and telephone numbers of parties).

EXHIBIT A**Part2****Payment and Financial Reporting****1. Payment Provisions.**

- a. Payment for all work performed under this Agreement shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum not-to-exceed amount stated in Section 3, "Consideration" of this Agreement, for the term of this Agreement.
- b. Interim payments shall be made to OAH following CITY's review and approval of invoices submitted by OAH, but not later than 30 days after the invoice is sent to CITY.
- c. CITY will reimburse OAH for Work completed under this Agreement per the schedule of fees and funding mechanisms established by ORS 183.655 and ORS 183.665.
- d. CITY will reimburse OAH for all appropriate and actual costs incurred to provide said Work under Agreement. Such costs include, but are not limited to:
 - (1) Interpreter fees
 - (2) Postage
 - (3) Long-distance telephone calls; and
 - (4) Reasonable copying costs.
- e. OAH Invoice.
 - (1) OAH shall submit monthly invoices for Work performed. The invoices shall describe all work performed with particularity, indicating by whom the work was performed and shall itemize and explain all expenses for which reimbursement is claimed. OAH shall send invoices to CITY's Agreement Administrator with the Agreement number noted.
 - (2) CITY will not pay any amount in excess of the maximum not-to-exceed amount. The maximum compensation may be increased by written amendment of this Agreement, signed by both Parties. In no event is OAH required to perform work for which it will not be paid because the not-to-exceed amount has been reached, and no amendment has been agreed upon. No payment will be made for any Work performed under the terms of this Agreement before the beginning date or after the expiration date of this Agreement, as it may be amended from time to time in accordance with its terms.

- (3) If, while this Agreement is in effect, OAH increases hourly rates being charged to CITY, that increase may only be applied with CITY's written consent. If CITY chooses not to consent to the increased rates, CITY may terminate OAH's services under this Agreement.

EXHIBIT A**Part 3
Special Terms and
Conditions****1. Confidentiality of Information.**

- a. OAH acknowledges that it and any of its officers, directors, employees, agents and subcontractors may, in the course of performing the Work under this Agreement, be exposed to or acquire information that is confidential to CITY or CITY's clients. To the extent permitted by law, any and all information of any form provided to OAH or its officers, directors, employees, agents and subcontractors in the performance of this Agreement that reasonably could at the time of its disclosure be understood to be confidential shall be deemed to be Confidential Information.
- b. Confidential Information shall be deemed not to include information that:
 - (1) OAH is permitted or required by law to disclose;
 - (2) Is or becomes publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure;
 - (3) Is furnished by CITY to others without restrictions similar to those imposed on OAH under this Agreement;
 - (4) Is obtained from a source other than CITY without the obligation of confidentiality;
 - (5) Is disclosed with the written consent of CITY; or
 - (6) Is independently developed by OAH, its officers, directors, employees, agents or subcontractors who can be shown to have had no access to the Confidential Information.
- c. These confidentiality obligations do not restrict disclosure of information otherwise qualifying as Confidential Information if OAH can show that either of the following conditions exists: (i) the information was disclosed in response to a subpoena or court order duly issued in a judicial or legislative process, in which case OAH shall notify the originating Party of the subpoena five days prior to the disclosure, unless such notice could not reasonably be given; or (ii) the disclosure was required to respond to a request for the information made under the Oregon Public Records Law, ORS 192.410 to 192.505. OAH shall notify the originating Party of a public records

2. Maintenance of Confidentiality.

OAH shall treat as confidential any Confidential Information that has been made known or available to OAH or that OHA has received, learned, heard or observed; or to which OAH has had access. OAH shall use Confidential Information exclusively for the purposes of this Agreement and in furtherance of the Services provided by OAH in Exhibit A-Statement of Work under this Agreement. Except as may be expressly authorized in writing by the CITY, in no event shall OAH publish, use, discuss or cause or permit to be disclosed to any other person such Confidential Information unless required by law. OAH shall (1) limit disclosure of the CITY Confidential Information to those directors, officers, and employees of OAH who need to know the Confidential Information in connection with the Work, (2) exercise reasonable care with respect to the Confidential Information, at least to the same degree of care as OAH employs with respect to protecting its own proprietary and confidential information, and (3) OAH is expressly restricted from and shall not use Confidential Information of the CITY after this agreement is terminated unless required by law or upon CITY's written authorization to use the Confidential Information.

This Exhibit A-Part 3 shall survive Agreement expiration or termination.

EXIHBIT B**Standard Terms and Conditions**

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed 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 the Parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither Party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The Parties acknowledge that this is a binding and enforceable agreement. **Compliance with Law.** In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state, and local laws.
2. **Independent Contractors.** The Parties agree and acknowledge that their relationship is that of independent contracting Parties and that neither Party is an officer, employee, or agent of the other Party as those terms are used in ORS 30.265 or otherwise.
3. **Representations and Warranties.**
 - a. CITY represents and warrants to OAH that:
 - (1) CITY is a city duly organized and validly existing. CITY has the power and authority to enter into and perform this Agreement;
 - (2) The making and performance by CITY of this Agreement (a) have been duly authorized by all necessary action of CITY, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of CITY's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which CITY is Party or by which CITY may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by CITY of this Agreement, other than those that have already been obtained;
 - (3) This Agreement has been duly executed and delivered by CITY and

constitutes a legal, valid and binding obligation of CITY enforceable in accordance with its terms;

- (4) CITY shall, at all times during the term of this Agreement, be qualified to perform its obligations under this Agreement

b. OAH represents and warrants to CITY that:

- (1) OAH has the power and authority to enter into and perform this Agreement;
- (2) The making and performance by OAH of this Agreement (a) have been duly authorized by all necessary action of OAH, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which OAH is Party or by which OAH may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by OAH of this Agreement, other than those that have already been obtained; and.
- (3) This Agreement has been duly executed and delivered by OAH and constitutes a legal, valid and binding obligation of OAH enforceable in accordance with its terms.

c. The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided.

4. **Recovery of Overpayments.** If payments to OAH under this Agreement exceed the amount to which OAH is entitled, CITY may, after notifying OAH in writing, withhold from payments due OAH under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

5. **OAH Default.** OAH shall be in default under this Agreement upon the occurrence of any of the following events:

- a. OAH fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein.
- b. Any representation, warranty or statement made by OAH herein or in any documents or reports relied upon by CITY to measure the delivery

of services, or the expenditure of payments is untrue in any material respect when made;

6. **CITY Default.** CITY shall be in default under this Agreement upon the occurrence of any of the following events:
- a. CITY materially fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
 - b. Any representation, warranty or statement made by City herein is untrue in any material respect when made.
7. **Termination.**
- a. This Agreement may be terminated at any time by mutual written consent of the Parties.
 - b. OAH Termination: Agency may terminate this Agreement as follows:
 - (1) Upon 60 days advance written notice to CITY;
 - (2) Immediately upon written notice to CITY, if OAH fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in OAH's reasonable administrative discretion, to perform its obligations under this Agreement;
 - (3) Immediately upon written notice to CITY, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that OAH's performance under this Agreement is prohibited or OAH is prohibited from paying for such performance from the planned funding source;
 - (4) Immediately upon written notice to CITY, if CITY is in default under this Agreement and such default remains uncured 15 days after written notice thereof to CITY; or
 - (5) As otherwise expressly provided in this Agreement
 - c. CITY Termination: CITY may terminate this Agreement as follows:
 - (1) Upon 60 days advance written notice to OAH
 - (2) Immediately upon written notice to OAH, if CITY fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in CITY's reasonable administrative discretion, to perform its obligations under this Agreement;
 - (3) Immediately upon written notice to OAH, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that CITY's performance under this Agreement is prohibited or CITY is prohibited from paying for

such performance from the planned funding source;

- (4) Immediately upon written notice to OAH, if OAH is in default under this Agreement and such default remains uncured 15 days after written notice thereof to OAH; or
- (5) As otherwise expressly provided in this Agreement.

e. Return of Property. Upon termination of this Agreement for any reason whatsoever, OAH shall immediately deliver to CITY all of CITY's property (including without limitation any Work Products for which CITY has made payment in whole or in part) that are in the possession or under the control of OAH in whatever stage of development and form of recordation such CITY property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, OAH shall immediately cease all activities under this Agreement, unless CITY expressly directs otherwise in such notice of termination. Upon CITY's request, OAH shall surrender to anyone CITY designates, all documents, research or objects or other tangible things needed to complete the Work Products.

8. Effect of Termination.

a. Entire Agreement.

- (1) Upon termination of this Agreement in its entirety, CITY shall pay to OAH all amounts currently owing.
- (2) Upon termination of this Agreement in its entirety, OAH shall have no further obligation to perform Work under this Agreement.

b. Obligations and Liabilities. Notwithstanding Section 8.a. above, any termination of this Agreement shall not prejudice any obligations or liabilities of either Party accrued prior to such termination.

9. Limitation of Liabilities. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

10. Records Maintenance; Access. The Parties shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, OAH shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of OAH, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document OAH's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of OAH whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." OAH shall

retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

11. **Force Majeure.** Neither CITY nor OAH shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, act of nature, or war which is beyond the reasonable control of CITY or OAH, respectively. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Either Party may terminate this Agreement upon written notice to the other Party after reasonably determining that the delay or default will likely prevent successful performance of this Agreement.
12. **Assignment of Agreement, Successors in Interest.** CITY may not assign or transfer its interest in this Agreement without the prior written consent of OAH and any attempt by CITY to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. OAH's consent to CITY's assignment or transfer of its interest in this Agreement will not relieve CITY of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
13. **No Third-Party Beneficiaries.** CITY and OAH are the only Parties to this Agreement and are the only parties entitled to enforce its terms. The Parties agree that OAH's performance under this Agreement is solely for the benefit of CITY to assist and enable CITY to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
14. **Amendments.** No amendment, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and when required the Department of Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.
15. **Severability.** The Parties agree that if any term or provision of this Agreement 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 Agreement did not contain the particular term or provision held to be invalid.
16. **Survival.** All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 9, 11, 15, 16 and 24 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the

Parties under this Agreement prior to termination.

17. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, facsimile, or mailing the same, postage prepaid to OAH or CITY at the physical address, or fax number, or email address set forth in this Agreement. Any communication or notice so addressed and mailed by regular mail or email shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.
18. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
19. **Counterparts.** This Agreement and any subsequent amendments 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 this Agreement and any amendments so executed shall constitute an original.
20. **Construction.** The Parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the Party preparing or drafting the agreement shall not be applicable to the interpretation of this Agreement.
21. **Waiver.** This Agreement and all exhibits and attachments constitute 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 this Agreement. No waiver or consent under this Agreement will bind a Party unless signed by an authorized person representing the consenting or waiving Party. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
22. **Alternative Dispute Resolution.** The Parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

- 23. Contribution.** If any third Party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim. With respect to a Third Party Claim for which OAH is jointly liable with the CITY (or would be if joined in the Third Party Claim), any contribution from OAH is capped in accordance with the Tort Claims Act and payable solely from the Insurance Fund established by ORS 278.425. With respect to such claims, OAH shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by CITY in such proportion as is appropriate to reflect the relative fault of OAH on the one hand and of the CITY on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OAH on the one hand and of the CITY on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OAH's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if OAH had sole liability in the proceeding.
- 24. Indemnification by Subcontractors.** CITY shall take all reasonable steps to cause its contractor(s), that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of CITY's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.