

CITY OF PORTLAND

INTERGOVERNMENTAL AGREEMENT FOR SERVICES
for
VICTIMS OF SEX TRAFFICKING

City of Portland Agreement Number: 30007212
Multnomah County Agreement Number: DCHS-IGA-R-11914-2020

As authorized by City Ordinance **number**, this Agreement is made effective on July 1, 2019 (“Effective Date”) by and between the City of Portland (“City”), a municipal corporation of the State of Oregon, and Multnomah County Department of County Human Services (“County”), a municipal corporation of the State of Oregon, by and through their duly authorized representatives. This Agreement may refer to the City and County individually as a “Party” or jointly as the “Parties.”

The initial Term of this Agreement shall be from the Effective Date through June 30, 2022, with the City’s option to extend for an additional 5 years, for a total not to exceed 10 years. The total not-to-exceed amount under this Agreement for the initial Term shall be \$730,000.00.

Party contacts and County’s and City’s Project Manager for this Agreement are:

For City of Portland:	For Multnomah County:
Name: Lt. Leo Besner	Name: Alix Sanchez
Title: Human Trafficking Unit Lieutenant	Title: Sr. Manager, Domestic and Sexual Violence Coordination Office
Address: 1111 SW 2 nd Avenue, Rm. 1326	Address: 209 SW 4 th Avenue, Suite 200
City, State: Portland OR 97204	City, State: Portland OR 97204
e-mail: leo.besner@portlandoregon.gov	e-mail: alix.sanchez@multco.us
Copy to:	Copy to:
Procurement Services	Dept. of County Human Services - PCU
1120 SW 5 th Ave.	209 SW 4 th Avenue, Suite 200
Portland OR 97204	Portland, OR 97204
	e-mail: jill.punches@multco.us

Scope and Consideration

- (a) County shall perform the Services and provide the Deliverables set forth in **Exhibit A - Statement of Work** by the due dates specified in the Agreement.
- (b) City agrees to pay County an initial sum of \$310,000 per year for Fiscal Year 2019-20 through Fiscal Year 2020-21, and \$110,000 per year for Fiscal Year 2021-22 toward the accomplishment of the Project. This is a one-time Agreement and will terminate on June 30, 2022, unless both Parties agree to extend it through amendment.

(c) Payments shall be made to the County according to the quarterly invoices submitted to the City by the County, except for an initial lump sum payment made in the fiscal year ending June 30, 2020. Any remaining balance of unspent funding from the first fiscal year may be carried over into the following fiscal year.

Recitals:

WHEREAS, to further its government operations, the City of Portland desires to provide services to victims of sex trafficking (the “Project”); and

WHEREAS the County provides for delivery of services to victims of sex trafficking; and

WHEREAS both parties recognize that County and City have legitimate interests in the management and deployment of services to victims of sex trafficking;

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1 DEFINITIONS (10/19)

General Definitions. (11/18) These definitions apply to the entire Agreement, subsequent Amendments, and any Change Orders or Task Orders, unless modified in an Amendment. If any definition contains a substantive provision conferring rights and/or obligations upon a Party, then effect shall be given to the substantive provision.

“Acceptance” (10/19) means the Deliverable demonstrates to the City’s satisfaction that the Deliverable conforms to and operates according to the Acceptance Criteria, and if required, has successfully completed Acceptance review, and for Deliverables not requiring Acceptance Testing that the Deliverable conforms to the Acceptance Criteria or the City’s Specifications.

“Acceptance Certificate” (11/18) means a written instrument by which the City notifies County that a Deliverable has been Accepted or Accepted with exceptions, and Acceptance Criteria have been met or waived, in whole or in part.

“Acceptance Criteria” (11/18) means functionality and performance requirements determined by the City, based upon the Specifications, which must be satisfied prior to City’s Acceptance of a Deliverable. City and County shall agree upon written Acceptance Criteria.

“Acceptance Date” (11/18) means the date on which the City issues an Acceptance Certificate for the Deliverable(s).

“Affiliates” (11/18) means, for County, any individual, association, partnership, corporation or other entity controlling, controlled by, or under common control. The term “control” means the power to

direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by Agreement, agreement or otherwise.

“Amendment” (12/18) means a written document required to be signed by both Parties when in any way altering the Master Terms and Conditions of the Agreement, Agreement amount, or substantially altering a Statement of Work.

“Business Day” (11/18) means a twenty-four hour day, excluding weekends and City holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Calendar Day” (11/18) means a twenty-four hour day, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Change Order” (12/18) means a document, agreed and signed by both Parties, that changes an existing Statement of Work or Task Order. Change Orders cannot change Agreement amount or Master Terms and Conditions.

“Confidential Information” (08/19) means any information that is disclosed in written, graphic or machine-recognizable form and is marked or labeled at the time of disclosure as being Confidential or its equivalent, or, if the information is in verbal or visual form, it is identified as Confidential or proprietary at the time of disclosure, or a reasonable time thereafter. Information shall always be considered Confidential Information, whether or not it is marked or identified as such, if it is described by one or more of the following categories: (1) non-public financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.345(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) information which is exempt from disclosure per Oregon Public Records Law; (6) attorney/client privileged communications; (7) information which is exempt per federal laws (including but not limited to copyright, HIPPA); and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems including without limitation, data and information systems, any software code and related materials and processes, Customizations, Configurations, Updates, Upgrades; and any Documentation. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving Party; is already lawfully known to the receiving Party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Agreement or any other agreement between the Parties or of any applicable protective or similar order, in the receiving Party’s possession without any obligation restricting disclosure; is independently developed by the receiving Party, as shown by reasonable written documentation, without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party.

“Agency” (01/20) means the vendor(s) selected by Multnomah County to provide the services

“Agreement” (11/18) means the Master Terms and Conditions including all exhibits, attachments and schedules and their constituent parts listed in the Order of Precedence or incorporated by reference.

“Agreement Price” (10/19) means the not-to-exceed price agreed upon by the Parties for all Services.

“Deliverable(s)” (11/18) means the Services, Documentation or documents or tangible work products described in the Statement of Work to be provided to the City by County under this Agreement.

“Documentation” (10/19) means user manuals and other written materials in any form that describe the features or functions of the Deliverables and Services, including but not limited to published specifications, online instructions and help, marketing materials, technical manuals, and operating instructions provided by County to the City, or readily available to the public, or as required to be produced by County subject to the terms of this Agreement.

“Defect” (10/19) means any error, problem, condition, bug, or other partial or complete inability of a Service, Deliverable or component thereof, to operate in accordance with the applicable Specifications.

“Final Acceptance” (11/18) means the City has determined that all Deliverables have successfully completed Acceptance Testing, which demonstrates to the City’s satisfaction that all Deliverables conform to and operate according to the Acceptance Criteria, applicable Documentation, and County’s representations; and that for Deliverables not requiring Acceptance Testing, that the Deliverables conform to the Acceptance Criteria or the City’s specified requirements.

“Force Majeure Event” (11/18) means an exceptional and unavoidable occurrence beyond the reasonable control of the affected Party, such as, riots, epidemics, war, government regulations, labor disputes, fire, natural phenomena, or other causes beyond such Party’s reasonable control.

“Intellectual Property Rights (IPR)” (11/18) means any patent rights, copyrights, trade secrets, trade names, service marks, trademarks, trade dress, moral rights, know-how and any other similar rights or intangible assets to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations, or reissues of the foregoing now or hereafter in force.

“Key Personnel” (11/18) means the specific individuals identified in Section 3.11 to fill Key Positions.

“Key Position” (11/18) means a job position critical to the success of the Project as identified in Section 3.11 of this Agreement.

“Master Terms and Conditions” (11/18) means the body of text from the preamble through the signature page of this Agreement.

“Material Breach” (11/18) means any breach of this Agreement that causes, caused, or may cause substantial harm to the non-breaching Party or substantially deprives the non-breaching Party of the benefit it reasonably expected under this Agreement.

“Personally Identifiable Information (PII)” (11/18) means information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context, as described in the Oregon Consumer Identity Theft Protection Act.

“Project” (10/19) means the overall delivery of the Services including, without limitation, design, development, integration, implementation, testing, support, and any Deliverables any of which County may be providing in whole or in part.

“Proposal” (10/19) means County’s initial proposal of services referenced on page one of this Agreement.

“Services” (10/19) means ordinary or professional services performed by County under this Agreement.

“Specifications” (10/19) means the most current cumulative statement of capabilities, functionality, and performance requirements for the System and its components as set out in the Acceptance Criteria, Change Orders, the Statement of Work, Documentation, County’s representations, County’s Proposal and Proposal Clarifications.

“Statement of Work” (SOW) (10/19) means the written detailed specifications of the Services(s) to be delivered to the City by County, including any Change Orders or Task Orders subject to the terms and conditions of this Agreement.

“Subcontractor” (11/18) means any person or entity under the control of County, other than an employee of County, utilized by County to perform all or part of this Agreement.

“Task Order” (10/19) means any written request or document issued by the City and signed by both Parties for additional Service(s) to be provided under this Agreement. Task Orders shall document the description of Services, price, payment schedule, Project and performance schedule, due dates, milestones and Deliverables.

“Term” (11/18) means the period of time that this Agreement is in effect as stated on page one.

SECTION 2 ORDER OF PRECEDENCE

2.1 Order of Precedence. (09/17) In the event there is a conflict or ambiguity between the terms and conditions of one portion of this Agreement with another portion of this Agreement, the conflict or ambiguity will be resolved in accordance with the order of precedence below. This order of precedence designates which portion of the Agreement takes precedence over the other for purposes of interpretation. County’s hyperlinks contained herein will not supersede or alter the Master Terms and Conditions. For the avoidance of doubt, no other terms and conditions will override the Parties’ obligations in the Confidentiality, Indemnification, or Choice of Law

provisions in these Master Terms and Conditions. In this Agreement the order of precedence shall be:

1. Amendments
2. Master Terms and Conditions
3. Exhibit A, Statement of Work
4. Change Orders

SECTION 3 GENERAL AND ADMINISTRATIVE PROVISIONS

- 3.1 Term. (09/17) This Agreement shall begin on the Effective Date and end upon the expiration date set forth on page one of this Agreement unless terminated or extended under the applicable Agreement provisions.
- 3.2 Point of Contact. (09/17) County shall be the sole point of contact for the City with regard to this Agreement and the System.
- 3.2.1 Written Notifications. (10/18) All notices to, and other written communication between the Parties shall be deemed received five (5) Business Days after being sent by first class mail, or upon receipt when sent by courier services, or by e-mail. All notices and written communications shall be sent to the Parties set forth on page 1 of the Agreement, or to such other places as they may designate by like notice from time to time. Each Party shall provide written notice of any changes to the Party's contacts within thirty (30) Calendar Days.
- 3.3 Changes to Agreement.
- 3.3.1 Amendment of the Agreement. (06/19) Any changes to the provisions of this Agreement shall be in the form of an Amendment. No provision of this Agreement may be amended unless such Amendment is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. If the requirements for Amendment of this Agreement as described in this section are not satisfied in full, then such Amendments automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect. The City reserves the right to make administrative changes to the Agreement unilaterally, such as extending option years and increasing compensation. An administrative change means a written Agreement change that does not affect the substantive rights of the Parties.
- 3.3.2 Change Orders to a Statement of Work. (12/18) The City and County can agree to make changes, at any time to a Statement of Work or Task Order in the form of a Change Order. County agrees to timely alter the delivery of Products or Services accordingly. If such changes materially increase or decrease County's obligations, the Parties shall execute an Amendment to the Agreement, and if the amount of such adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified amount.

- 3.4 Time is of the Essence. (06/19) The Parties agree that time is of the essence as to the delivery of Deliverables and performance of Services under this Agreement. By executing this Agreement and accepting the Statement of Work, County agrees that the time limits specified in the Statement of Work are reasonable. By accepting late or otherwise inadequate performance of County's obligations, the City will not waive its rights to require timely performance of County's obligations thereafter.
- 3.4.1 Late Delivery. (10/19) In the event that any specified delivery date is not met, County shall be liable for any loss, expense, or damage resulting from delay in delivery or failure to deliver Deliverables or provide Services which is due to any cause except as set forth in Force Majeure. In the event of delay due to any such cause, the City may obtain substitute Services from another source and bill all additional costs directly to County who shall remain financially liable for all additional acquisition costs.
- 3.4.2 Best Efforts. (10/19) County shall use best efforts to minimize any delay in the provision of Deliverables or performance of Services. If County anticipates any delay that may prevent timely performance of County's obligations under this Agreement, County shall promptly notify the City, including the anticipated length of the delay, the cause of the delay, measures proposed or taken to prevent or minimize the delay, and the timetable for implementation of such measures.
- 3.5 City Reporting Requirements. (12/18) The City is required to track certain types of Agreement data for reporting purposes. Items which the City must report on may include, but are not limited to, Subcontractor utilization, Minority, Women, Emerging Small Business, Service-Disabled Veteran Business Enterprise (D/M/W/ESB/SDVBE) participation and Subcontractor/Supplier Payment. The City will enforce all diversity in workforce and D/M/W/ESB/SDVBE subcontracting commitments made by County in its Proposal/Quote.
- 3.6 Payment. (09/17) Payment(s) shall be in accordance with the payment schedule set forth in Exhibit A: Statement of Work.
- 3.6.1 Payment shall be issued by the City net thirty (30) Calendar Days from receipt of a complete and acceptable invoice from the County. County invoices must contain the County's name and address; invoice number; date of invoice; Agreement number and date; description of Products and/or Services; quantity, unit price, (where appropriate), and total amount; City-required reporting, if any, and the title and phone number of the person to whom payment is to be sent. The City may stipulate how line items are entered on an invoice to ensure compatibility with the City's accounting and financial systems and to facilitate payment to the County.

- 3.6.2 For the fiscal year ending June 30, 2020, the County will invoice for a lump sum payment in the amount of \$310,000. The City will allow unused funding to be spent by the County in accordance with the Exhibit A Scope of Work to carry over in the following fiscal year.
- 3.6.3 The City makes payments via electronic fund transfers through the Automated Clearing House (ACH) network. To initiate payment of invoices, County shall execute the City's standard ACH Vendor Payment Authorization Agreement. Upon verification of the data provided, the ACH Vendor Payment Authorization Agreement will authorize the City to deposit payment directly into specified County accounts with specified financial institutions. All payments shall be made in United States currency.
- 3.7 Payment of Taxes/County Shall Withhold. (09/17) County shall, at its own expense, timely (a) pay all salaries, wages, and other compensation to its employees; (b) withhold, collect, and pay all applicable federal, state, and local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance and any other taxes or charges in connection with its employees; and (c) provide and pay for workers compensation insurance and any statutory or fringe benefits to employees. County shall be solely responsible for all such obligations for its employees. County shall also ensure that any Subcontractor shall comply with the foregoing obligations for its employees. The City shall have no duty to pay or withhold such obligations.
- 3.8 Records and Audits (06/19)
- 3.8.1 Records Retention. (06/19) County shall maintain current financial records in accordance with Generally Accepted Accounting Principles (GAAP). County agrees to maintain and retain and retain all financial records, supporting documents, statistical records and all other records pertinent to this Agreement during the term of this Agreement and for a minimum of six (6) years after the expiration or termination date of this Agreement or until the resolution of all audit questions or claims, whichever is longer.
- 3.8.2 City Audits. (06/19) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and Products or Services at any time in the course of the Agreement and during the records retention period listed above. Audits shall 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.
- 3.8.3 Access to Records. (06/19) The City may examine, audit and copy County's books, documents, papers, and records relating to this Agreement at any time during the records retention period listed above upon reasonable notice. Copies of applicable records shall be made available upon request.

- 3.9 Overpayment. (09/17) If an audit discloses that payments to County were in excess of the amount to which County was entitled, then County shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices.
- 3.10 Independent Agency. (09/17) County is independent of the City and, accordingly, this Agreement is not entered into as a joint venture, partnership, or agency between the Parties. No employment or agency relationship is or is intended to be created between the City and any individual representing County. Employees of County and any authorized Subcontractors shall perform their work under this Agreement under County's sole control.
- 3.11 Personnel.
- 3.11.1 Security Requirements for Personnel. (09/17) If required by the City, County shall conduct a criminal history/records check of all personnel that will have access to City information, systems, or payments and ensure ongoing security requirements for personnel are maintained.
- 3.12 Termination. (12/19) Either party may terminate this Agreement for its convenience and without penalty by giving the other party thirty (30) days written notice of its intention to terminate. If City is unable to appropriate sufficient monies to pay County for their services under this Agreement, City shall notify County and the Agreement shall automatically terminate as of the end of the last fiscal year for which such appropriations are available.
- 3.13 Material Breach. (09/17) Either Party may terminate this Agreement in the event of a Material Breach of this Agreement by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice to cure the Material Breach and of the Party's intent to terminate. If the Party has not entirely cured the Material Breach within thirty (30) Calendar Days of the notice, then the Party giving the notice shall have the option to: (a) terminate this Agreement by giving a written notice of termination, (b) seek any remedies in this Agreement, in law, or at equity, to the extent not otherwise limited by the terms of this Agreement, or (c) any combination thereof.
- 3.14 Force Majeure. (09/17) Either Party may terminate this Agreement due to a Force Majeure event as set forth in Section 5.12, Force Majeure.
- 3.15 Bankruptcy. (09/17) The City may terminate this Agreement if County: (a) becomes insolvent, makes a general assignment for the benefit of creditors; (b) suffers or permits the appointment of a receiver for its business or assets; (c) becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, and such proceeding has not been dismissed within a sixty (60) Calendar Day period; or (d) has wound up or liquidated, voluntarily or otherwise.

- 3.16 Void Assignment. (09/17) In the event that County assigns its obligations under this Agreement to a third party, the City shall have the option to terminate this Agreement without any notice or cure period or further obligation to County or the assignee, and promptly receive a refund for fees paid for Products delivered and/or Services performed by the third party.
- 3.17 Waiver. (09/17) No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach of this Agreement. The failure of either Party to insist upon any of its rights under this Agreement upon one or more occasions, or to exercise any of its rights, shall not be deemed a waiver of such rights on any subsequent occasions.
- 3.18 Severability. (09/17) Any section of this Agreement which is held or declared void, invalid, illegal or otherwise not fully enforceable shall not affect any other provision of this Agreement and the remainder of this Agreement shall continue to be binding and of full force and effect. This Agreement shall be binding upon and inure to the benefit of the City and its successors and assigns.
- 3.19 News Releases and Public Announcements. (09/17) County shall not use the City seal or other representations of the City in its external advertising, marketing, website, or other promotional efforts, nor shall County issue any news release or public announcements pertaining to this Agreement or the Project without the express written approval of the City. Such approval may be withheld in the City's sole discretion. County shall not use the City seal without specific written permission from the City Auditor.
- 3.20 Rule of Construction/Agreement Elements/Headings. (09/17) This Agreement has been drafted by the City in the general format by the City as a convenience to the Parties only and shall not, by reason of such action, be construed against the City. Section headings are for ease of reference and convenience only and shall not affect or enter into the interpretation of any portion of this Agreement.
- 3.21 Survival. (09/17) All obligations relating to Confidential Information; indemnification; publicity; representations and warranties; remedies; proprietary rights; limitation of liability; and obligations to make payments of amounts that become due under this Agreement prior to termination or expiration shall survive the termination or expiration of this Agreement and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between County and the City.

SECTION 4 STATUTORY REQUIREMENTS, PUBLIC RECORDS AND CONFIDENTIALITY

- 4.1 Governing Law and Jurisdiction. (09/17) This Agreement shall be construed according to the laws of the State of Oregon without reference to the conflict of laws' provisions. Any litigation between the City and County arising under this Agreement or out of work performed under this

Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

- 4.2 Public Records Request. (09/17) County acknowledges that the City of Portland is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information County submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The City's commitments to maintain certain information confidential under this Agreement are all subject to the constraints of Oregon and federal laws. All information submitted by County is public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which County requests and meets an exemption from disclosure consistent with federal or Oregon law. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.
- 4.3 Public Records. (09/17) The City will retain one (1) copy of any public records for the express purposes of complying with State of Oregon and Portland City Code public records and archiving laws.
- 4.4 Confidentiality.
- 4.4.1 County's Confidential Information. (08/19) During the term of this Agreement, County may disclose to the City, certain County Confidential Information pertaining to County's business. County shall be required to mark Confidential Information CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked, or the County's Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, County shall identify the Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Agreement itself shall not be considered Confidential Information. Subject to Section 4.2, the City shall: (1) limit disclosure of County Confidential Information to those directors, employees, contractors and agents of the City who need to know the County Confidential Information in connection with the City Project and who have been informed of confidentiality obligations at least as strict as those contained in this Agreement, and (2) exercise reasonable care to protect the confidentiality of the County Confidential Information, at least to the same degree of care as the City employs with respect to protecting its own proprietary and confidential information.
- 4.4.2 City's Confidential Information. (08/19) County shall treat as confidential any City Confidential Information that has been made known or available to County or that County has received, learned, heard or observed; or to which County has had access. County shall use City Confidential Information exclusively for the City's benefit in the performance of this Agreement. Except as may be expressly authorized in writing by the City, in no event shall County publish, use, discuss or cause or permit to be disclosed to any other person such

City Confidential Information. County shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees, Subcontractors and agents of County who need to know the City Confidential Information in connection with the City Project and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Agreement, (2) exercise reasonable care to protect the confidentiality of the City Confidential Information, at least to the same degree of care as County employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in County's possession or custody or under its control. County is expressly restricted from and shall not use the Intellectual Property Rights of the City without the City's prior written consent.

- 4.4.3 Scope. (09/17) This Agreement shall apply to all City Confidential Information previously received, learned, observed, known by or made available to County. County's confidentiality obligations under this Agreement shall survive termination or expiration of this Agreement.
- 4.4.4 Equitable Relief. (12/18) County acknowledges that unauthorized disclosure of City Confidential Information will result in irreparable harm to the City. In the event of a breach or threatened breach of this Agreement, the City may obtain injunctive relief prohibiting the breach, in addition to any other appropriate legal or equitable relief. The Parties agree that, notwithstanding any other section of this Agreement, in the event of a breach or a threatened breach of Agreement terms related to Confidential Information or Intellectual Property Rights, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.
- 4.4.5 Discovery of Documents. (06/19) In the event a court of competent jurisdiction orders the release of Confidential Information submitted by one Party, the other Party will notify the Party whose Confidential Information is being requested to be disclosed of the request. The Party receiving the request shall allow the other Party to participate in the response at its own expense. Each Party will comply with any effective court order.

SECTION 5 COUNTY PERFORMANCE AND WARRANTIES

5.1 General Warranties. (09/17) County makes the following warranties:

- 5.1.1 Capacity. (09/17) County warrants it has the legal authority and capacity to enter into and perform this Agreement.
- 5.1.2 Authority to Conduct Business. (08/19) County warrants it is lawfully organized and constituted and duly authorized to operate and do business in all places where it shall be

required to do business under this Agreement, and that it has obtained or will obtain all necessary licenses and permits required in connection with this Agreement.

- 5.1.3 Disclosure of Litigation. (09/17) County warrants that as of the Effective Date there are no suits, actions, other proceedings, or reasonable anticipation thereof, in any judicial or quasi-judicial forum that will or may adversely affect County's ability to fulfill its obligations under this Agreement. County further warrants that it will immediately notify the City in writing if, during the Term of this Agreement, County becomes aware of, or has reasonable anticipation of, any lawsuits, actions, or proceedings in any judicial or quasi-judicial forum that involves County or any Subcontractor and that will or may adversely affect County's ability to fulfill its obligations under this Agreement.
- 5.1.4 Conflict of Interest. (09/17) County warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under this Agreement.
- 5.1.5 Compliance with Applicable Law. (09/17) County warrants it has complied and shall comply with all applicable federal, state, and local laws and regulations of its domicile and wherever performance occurs during the term of this Agreement. County warrants it is currently in compliance with all tax laws.
- 5.1.6 Public Agreements. (09/17) County shall observe all applicable state and local laws pertaining to public Agreements. ORS Chapters 279A and 279B require every public Agreement to contain certain provisions. To the extent applicable, ORS 279B.220, 279B.230 and 279B.235 are incorporated into this Agreement by reference.
- 5.1.7 Compliance with Civil Rights Act. (09/17) County warrants it is in compliance with Title VI of the Civil Rights Act of 1964 and its corresponding regulations as further described at: <http://www.portlandoregon.gov/bibs/article/446806>
- 5.1.8 Respectful Workplace Behavior. (09/17) The City 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 of the City as well as contractors, vendors or consultants who provide services to the City of Portland. County warrants its compliance with terms and conditions HR 2.02 as further described at: <https://www.portlandoregon.gov/citycode/27929>
- 5.2 Grant Funding. (02/18). This Agreement is currently not using grant funding. However, in the event that City acquires or uses grant funding to pay for any portion of this Agreement, the City and County agree to Amend the Agreement to include the federally required terms and conditions. General grant terms may be found at <http://www.portlandoregon.gov/bibs/article/455735>

5.3 Compliance with Non-Discrimination Laws and Regulations.

- 5.3.1 Nondiscrimination. (06/19) Pursuant to all City, State, and federal non-discrimination and civil rights laws, County, with regard to the work performed by it during this Agreement, shall not discriminate on the grounds of race, color, national origin, including limited English proficiency, sex, sexual orientation, gender identity, age, religion or non-religion, disability, marital status, family status, or source of income, including in employment practices, the selection and retention of Subcontractors, including procurements of materials and leases of equipment.
- 5.3.2 Solicitations for Subcontractors, Including Procurements of Materials and Equipment. (06/19) In all solicitations either by competitive bidding or negotiation made by County for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by County of County's obligations under this Agreement relative to nondiscrimination on the grounds of race, color, national origin, sex, sexual orientation, age, religion, disability, marital status, or family relationships.
- 5.3.3 Sanctions for Noncompliance. (09/17) In the event of County's noncompliance with the nondiscrimination provisions of this Agreement, the City shall impose such Agreement sanctions as it or any state or federal agency may determine to be appropriate, including, but not limited to withholding of payments to County under this Agreement until County complies, and/or cancellation, termination, or suspension of this Agreement, in whole or in part.
- 5.3.4 ADA Compliance. (07/18) County shall comply with the Americans With Disabilities Act (ADA), including any duty the ADA may impose on City or County as a result of the Products, Services or activities requested to be provided for City under this Agreement.

At minimum, County shall do the following:

County shall provide victims of sex trafficking with services in accordance with the attached scope of work.

County shall document each ADA request for modification to the Products or Services and County's fulfillment of the request. If County determines that it is unable to promptly fulfill the request for modification under the ADA, County will contact the City Agreement manager within the same business day, proving reasons why County is unable to fulfill the request for modification and to identify alternate accessibility options that County can perform.

Within 30 Business Days after receipt, City and County shall advise the other Party in writing, and provide the other Party with copies (as applicable) of any notices alleging violation of or noncompliance with the ADA relating to the Agreement, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to the Agreement or the programs, Products, Services or activities that County is undertaking for City under this Agreement.

5.3.5 Required Reporting. (05/19) If any person or class of persons files a complaint with County alleging discrimination under Title VI of the Civil Rights Act of 1964 (race, color, or national origin, including limited English proficiency), County will notify the City of Portland of the complaint and cooperate with any investigation related to the complaint. Notifications shall be sent to Title VI Program Manager, 421 SW 6th Ave, Suite 500, Portland, Oregon 97204, or title6complaints@portlandoregon.gov.

5.4 Service(s) and Deliverables Warranties. (10/19) County makes the following warranties:

5.4.1 No Third-Party Conflict or Infringement. (01/19) As of the Effective Date, County warrants the execution and performance of this Agreement, shall not contravene the terms of any Agreements with third parties or any third-party Intellectual Property Right; and, as of the Effective Date of this Agreement, there are no actual or threatened legal actions with respect to the matters in this provision. County agrees to promptly notify the City, in writing, if during the Term of the Agreement, a potential third-party conflict or infringement of third-party Intellectual Property Rights arises.

5.4.2 No Encumbrances. (08/19) All Deliverables provided by County under this Agreement shall be transferred to the City free and clear of any and all restrictions of transfer or distribution and free and clear of any and all liens, claims, security interests, liabilities and encumbrances of any kind.

5.4.3 Conformance with Specifications. (01/19) County warrants that the Deliverables and Services shall operate in conformance with the Specifications.

5.4.4 Compliance with Law. (10/19) County warrants that the Deliverables conform to all requirements of applicable law, including all applicable health, safety, privacy, data security and environmental laws and regulations.

5.4.5 Industry Standards. (10/19) County warrants that the Services performed under this Agreement will meet the standards of skill and diligence normally employed by persons performing the same or similar services.

5.5 No Waiver of Warranties or Representation. (10/19) Performance of Services shall not be construed to represent Acceptance nor relieve County from its responsibility under any

representation or warranty. If the City makes a payment prior to Final Acceptance, the payment does not grant a waiver of any representation or warranty by County.

- 5.6 No Third Party to Benefit. (09/17) This Agreement is entered into for the benefit of the City and County. Except as set forth herein, nothing in this Agreement shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a Party to this Agreement to maintain a suit for breach of Agreement, personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.
- 5.7 Notice of Change in Financial Condition. (09/17) County must maintain a financial condition commensurate with the requirements of this Agreement. If, during the term of this Agreement, County experiences a change in its financial condition which may adversely affect its ability to perform the obligations of this Agreement, County shall immediately notify the City in writing. Failure to notify the City of such a change in financial condition is sufficient grounds for terminating this Agreement.
- 5.8 Subcontractors. (10/19) County may subcontract any work under this Agreement without the City's prior written consent. County shall be fully responsible for the acts and omissions of its Subcontractors, including any Affiliates, at all levels, and of their agents and employees. County shall ensure that all applicable provisions of this Agreement (including those relating to Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The City reserves the right to review any agreements between County and its Subcontractors for Services authorized under this Agreement.

All D/M/W/ESB/SDVBE (COBID Certified) Subcontractors/suppliers identified in County's proposals shall be used in their proposed capacity during Agreement performance. If County desires to replace any D/M/W/ESB/SDVBE Subcontractors/suppliers under this Agreement all substitution requests must have approval from the City's Chief Procurement Officer before such substitutions can be made. In no event shall County subcontract any work, assign any rights, or delegate any obligations under this Agreement without the City's prior written consent.

- 5.9 Flow-down Clauses. (12/19) County shall include the following clauses, or substantially similar language, in its subcontracts under this Agreement:

Section 4.4, Confidentiality

Section 5.3, Compliance with Non-Discrimination Laws and Regulations

Section 6.1, Hold Harmless and Indemnification

- 5.10 Force Majeure. (01/19)

- 5.10.1 In the event that either Party is unable to perform any of its obligations under this Agreement due to a Force Majeure Event not the fault of the affected Party, the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, the performance obligations affected by the Force Majeure event shall immediately be suspended.
- 5.10.2 If the period of nonperformance exceeds fifteen (15) Calendar Days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement or any Statement of Work.
- 5.10.3 If the period of nonperformance due to a Force Majeure Event does not exceed fifteen (15) Calendar Days, such nonperformance shall automatically extend the Project schedule for a period equal to the duration of such events. Any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event.
- 5.10.4 If the period of nonperformance due to Force Majeure Event is longer than fifteen (15) Calendar Days, the Parties shall negotiate options for mitigation of the Force Majeure Event.
- 5.11 Ownership of Property. (06/19) All work product produced by the County under this Agreement 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 County 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 County 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. County shall obtain such interests and execute all documents necessary to fully vest such rights in the City. County 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 County is an architect, the Work Product is the property of the Consultant-Architect, and by execution of this Agreement, the County-Architect grants the City an exclusive and irrevocable license to use that Work Product.
- Notwithstanding the above, all pre-existing trademarks, services marks, patents, copyrights, trade secrets, and other proprietary rights of County are and will remain the exclusive property of County. County hereby grants to the City a non-exclusive, perpetual, irrevocable license, with the right to sublicense, to disclose, copy, distribute, display, perform, prepare derivative works of and otherwise exploit any pre-existing Intellectual Property Rights incorporated into the Work Product(s).

SECTION 6 INDEMNIFICATION, INSURANCE, BONDING, LIQUIDATED DAMAGES**6.1 Hold Harmless and Indemnification. (12/19)**

6.1.1 Subject to the conditions and limitations of the Oregon Constitution and Oregon Tort Claims Act, ORS 30.260 through 30.300, City shall defend, indemnify and save harmless County, its directors, officers, agents and employees from and against all liability, loss, expenses and costs arising out of or resulting from the acts or omissions of City, its officers, employees and agents under this Agreement.

6.1.2 Subject to the conditions and limitations of the Oregon Constitution and Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, indemnify and save harmless City, its directors, officers, agents and employees from and against all liability, loss, expenses and costs arising out of or resulting from the acts or omissions of County, its officers, employees and agents under this Agreement.

6.2 **Insurance. (12/19)** Each party shall be responsible for providing worker's compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage and are assumed to be self-insured.

6.2.1 **Insurance Requirements for Subcontractors. (08/19)** County shall contractually require its Subcontractors to acquire and maintain for the duration of this Agreement insurance equal to the minimum coverage limits required by the City of City vendors.

6.3 **Dispute Resolution. (01/20)** County shall cooperate with the City to ensure that all claims and controversies which arise during this Agreement will be resolved as expeditiously as possible.

6.3.1 **Attorney Fees. (12/19)** In the event a lawsuit is instituted to obtain performance of any kind under this Agreement, the prevailing party shall be entitled to such additional sums as the court may adjust for reasonable attorney fees, all costs and disbursements, including attorney fees, costs and disbursements on appeal.

6.3.2 **Mediation. (12/19)** Should any dispute arise between the parties concerning this Agreement, which is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this Agreement agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by both parties.

6.3.3 Integration. (12/19) This Agreement contains the entire agreement between the parties regarding the subject matter addressed herein and supersedes all prior written or oral discussions or agreements.

SIGNATURE PAGE
(08/19)

County represents that County has had the opportunity to consult with its own independently selected attorney in the review of this Agreement. Neither Party has relied upon any representations or statements made by the other Party that are not specifically set forth in this Agreement.

This Agreement constitutes the entire agreement between the City and County and supersedes all prior and contemporaneous proposals and oral and written agreements, between the Parties on this subject, and any different or additional terms on a City purchase order or County quotation or invoice.

The Parties agree that they may execute this Agreement and any Amendments to this Agreement, by electronic means, including the use of electronic signatures.

This Agreement 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.

IN WITNESS WHEREOF, the Parties hereby cause this Agreement to be executed.

MULTNOMAH COUNTY SIGNATURE

County Chair or Designee Date

Printed Name and Title

Address: _____

Phone: _____

Email: _____

County Attorney Review:
Reviewed: JENNY M. MADKOUR, COUNTY
ATTORNEY FOR MULTNOMAH COUNTY

By: _____

Assistant County Attorney:
John Strauhull

Date: _____

Agreement Number: 30007212

Amendment Number: 0

Agreement Title: VICTIMS OF SEX TRAFFICKING

CITY OF PORTLAND SIGNATURES

By: N/A Date: _____
Bureau Director

By: N/A Date: _____
Chief Procurement Officer

By: _____ Date: _____
Elected Official

Approved:

By: N/A Date: _____
Office of City Auditor

Approved as to Form:

By: _____ Date: _____
Office of City Attorney

Exhibit A
Statement of Work – Confidential Advocacy

SECTION 1 SCOPE OF WORK

City will make payments according to the following schedule:

A lump sum of \$310,000 for services rendered for Fiscal Year 2019-20 toward accomplishment of the project.

Up to \$310,000 for services rendered by June 30, 2021 toward accomplishment of the project.

Up to \$110,000 for services rendered by June 30, 2022 toward accomplishment of the project.

Any remaining balance of unspent funding from the first fiscal year may be carried over into the following fiscal year.

County shall provide the following Services:

County will subcontract and closely partner with a certified Domestic Violence and Sexual Assault (DVSA) Service Provider who can deliver privileged, confidential domestic and sexual violence advocacy and support services to survivors.

The DVSA Service Provider will employ at least two (2) full-time DVSA Advocates who will provide the following confidential advocacy services to youth survivors of sex trafficking; crisis intervention, safety planning, emotional support, accompaniment to medical exams and criminal justice proceedings, systems navigation, resources and referrals, barrier reduction, education around trauma, and other advocacy services as appropriate. The DVSA Advocates will deliver advocacy, increase coordination and access to resources and decrease duplication of services.

Requirements for Confidential Advocacy Service Delivery

1. Provides direct 24/7 victim services for non-gender specific trafficked victims and victims trying to exit the sex industry. This includes victims over 25.
2. Provides referrals to appropriate transitional housing, including emergency shelter and referral to subsidized housing options.
3. Referral to Drug counseling
 - a. For Youth 17 & Under, Contractor shall:
 - 1) Advocate for visibility of sex trafficked youth in HYS and leverage space in existing emergency shelters for youth whenever possible.
 - 2) Advocate for visibility of sex trafficked youth in HYS and leverage space in existing transitional housing and shelters for youth whenever possible.
 - 3) Offer assertive engagement support for housing access and retention.

- 4) Explore relocation or reunification with family when possible and appropriate.
4. Reporting standards/ to provide outputs and outcomes (Schedule, monthly and year-to-date); Provide the City with year-to-date totals of: Victims identified, victims placed with services/type of services, how victims were identified, number of victims dropping out of services, efforts that have been made to reengage with those victims.
 5. Ensure that staff and volunteers have knowledge, experience and training on sexual violence, victim/survivor services and related issues; including assuring they meet the minimum training requirements for sexual violence advocacy programs, as established by Oregon Administrative Rules (OAR 137-085-0060 Advocate Certification and Training); Ensure that staff and volunteers have access to continuing education opportunities beyond the minimum training requirements established by Oregon Administrative Rules (OAR 137-085-0060 Advocate Certification and Training);
 6. Maintain a high level of confidentiality of participant identifying information. Confidentiality standards must meet the Violence Against Women Act (VAWA) minimum standards. For complete list of standards please visit <https://www.justice.gov/ovw/legislation>;
 7. Incorporate the survivor's voice in individual service plans/choices and integrate survivor input/feedback for program/service development, delivery, and evaluation;
 8. Safety planning with participants and their accompanying children when violence is or could be a concern;
 9. Provision of domestic and sexual violence education, including support groups or referral to support groups or individual instruction; and
 10. Using trauma-informed approaches provide advocacy, education, referral and support for participants who are parenting children impacted by violence, and connection and referral to child/family advocacy programs;

OVC Program Reporting Standards

1. Direct services. These standards address interactions and relationships between providers and persons served, as well as the types of services, information, and referrals provided.
2. Privacy, confidentiality, data security, and assistive technology:

A written guideline describes the program's procedures for storing and maintaining paper and electronic records, including:

- Types of records to be maintained.
- Format in which records are to be maintained.
- Media and/or devices for short-term and long-term storage of records.
- Ongoing backup and security procedures to protect data.
- Methods and criteria for destroying records.
- Notice to victims if sensitive data is stolen or if a data device is lost.

3. Administration and evaluation. These standards address governance, fiscal management, staffing, training, supervision, and evaluation. For individuals, these standards also address self-awareness and self-care issues.

4. Apply methods of routinely and systematically documenting, analyzing, and reporting victims needs and the services provided to them.

Programs should have written guidelines for documenting the information listed above and maintain records consistent with local, state, and federal laws and program regulations.

CITY reserves the right to request additional documentation in support of County's submitted reports

SECTION 2 PROJECT MANAGEMENT

2.1 Status Reports

County shall summarize activities under this Agreement in written monthly status reports submitted to the City Project Manager. The status reports are due on the first day of the month and shall include summaries of all activities and Deliverables completed in the prior month. The report shall include a list of any services not meeting standards, a description of the cause of the service reduction/interruption, and a proposed method of resolution. These items shall be carried over onto subsequent reports until resolved.

All reporting requirements are in effect and retroactive to July 1, 2019. OVC Program Reporting is mandatory and shall be delivered to City.

2.2 Place of Performance

County shall provide City with services at City or County locations as directed by the City Project Manager. Some portions of the work will be performed at County facilities as agreed with the City Project Manager.

2.3 Project Managers

The City's Project Manager will be Lt. Leo Besner or his designate/successor. The City may change City's Project Manager from time to time upon written notice to County. Contact Information:

Name: Lt. Leo Besner
Title: Human Trafficking Unit Lieutenant
Address: 1111 SW 2 nd Avenue, Rm. 1326
City, State: Portland OR 97204
e-mail: leo.besner@portlandoregon.gov

The County's Project Manager will be Alix Sanchez. Contact Information:

Name: Alix Sanchez
Title: Sr. Manager, Domestic and Sexual Violence Coordination Office
Address: 209 SW 4 th Avenue, Ste. 200
City, State: Portland OR 97204
e-mail: alix.sanchez@multco.us