

DESIGN SERVICES PRICE AGREEMENT**CITY OF PORTLAND**

PRICE AGREEMENT NUMBER _____

WASTEWATER TREATMENT ENGINEERING

As authorized by [Ordinance _____ and] Portland City Code 5.68.035, this Design Services Price Agreement ("Contract") is by and between the City of Portland ("City," or "Bureau") and _____, ("Consultant") that shall commence as of the date of the last signature of a Party hereto ("Effective Date").

Effective Date and Term

The Initial Term of this Price Agreement shall begin on XXX ("Effective Date") and shall expire five (5) years later unless terminated sooner as provided herein. The parties may agree, by mutual written consent, to extend this Price Agreement on the same terms and conditions set forth in the Initial Term for additional years, taken individually or in multiple years, up to five (5) more years. At least thirty (30) days prior to the expiration of the Initial Term, or extension, the parties shall commence discussions if they desire to extend the Price Agreement. However, nothing binds or requires either party to extend this Price Agreement. The total term of this Price Agreement shall not exceed ten (10) years.

Consideration

- (a) City agrees to pay Consultant a sum not to exceed Three Million One Hundred Twenty-Five Thousand Dollars (\$3,125,000) to complete work in accordance with the Statement of Work (SOW) and Compensation, attached hereto as Exhibits A and B.
- (b) City will pay Consultant in accordance with the SOW and Compensation.

CONSULTANT DATA AND CERTIFICATION

Name (print full legal name): _____

Address: _____

Business Designation (check one):

☐ Limited Liability Co (LLC)☐ Individual☐ Sole Proprietorship☐ Partnership☐ Corporation☐ Public Service Corp.☐ Government/Nonprofit

Payment information will be reported to the IRS under the name provided above. Information must be provided prior to contract approval.

TERMS AND CONDITIONS**1) Standard of Care**

In providing services under this Price Agreement, the Consultant shall exercise that degree of skill and care ordinarily used by other reputable members of Consultant's profession, practicing in the same or similar locality and under similar circumstances.

2) Effect of Expiration

Expiration of the Term shall not extinguish, prejudice, or limit either party's right to enforce this Price Agreement with respect to any default or uncorrected defect in performance.

3) Order of Precedence

This Price Agreement consists of these Terms and Conditions, the SOW, and all Exhibits that are attached. Any apparent or alleged conflict between these items will be resolved by using the following order of precedence:

- (a) Amendments executed by the parties after Price Agreement award;
- (b) This form of Price Agreement as executed by the Parties, including all Exhibits;
- (c) Task Orders issued from this Price Agreement;
- (d) RFP Requirements as set forth in City's RFP, including without limitations all Exhibits and any Addenda; and
- (e) Consultant's Proposal in response to the RFP, including without limitation, to all supplementary materials.

4) Early Termination of Price Agreement

- (a) The City may terminate this Price Agreement for convenience at any time for any reason deemed appropriate in its sole discretion. Termination shall be effective immediately upon City's delivery of a written notice of termination to Consultant.
- (b) Either party may terminate this Price Agreement in the event of a material breach by the other party that is not timely cured. Before termination is permitted, the party seeking termination shall give the other party written notice of the nature of the alleged breach, its intent to terminate, and providing for fifteen (15) calendar days within which to cure the breach. If the breach is not cured within 15 days, the party seeking termination may terminate immediately by giving written notice that the Price Agreement 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 Price Agreement prior to the date of the termination notice. No other costs or loss of anticipated profits shall be due or payable.
- (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 for the costs to defend any claim, and all damages, costs, and sums incurred by the City as a result of the breach.
- (c) If the Consultant terminates the Price Agreement pursuant to subsection 4(b), the Consultant's sole remedy shall be payment for work completed prior to date of City's receipt of the termination notice. No other costs, loss of anticipated profits or consequential damages 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 Price Agreement was terminated under Section 4(a).
- (e) In the event of early termination, the Consultant's work product completed prior to the date of termination shall be deemed the property of the City and copies and/or data shall be immediately released to 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 consent, the Consultant shall remain responsible for full performance hereunder. The Consultant agrees that if subcontractor(s) are employed in the performance of the SOW under this Price Agreement, both Consultant and any subcontractors remain subject to the requirements of ORS Chapter 656, Workers' Compensation.

7) Compliance with Applicable Laws; Funding Requirements

Consultant shall perform all services in accordance with all applicable federal, state, and local laws and regulations including without limitations tax laws and terms and conditions incident to receipt of any

grant funds. Consultant represents and warrants that it is in compliance with all laws and expressly represents that it is and shall remain in compliance with Title VI of the Civil Rights Act of 1964 and its corresponding regulations during the Term of this Price Agreement.

8) Respectful Workplace Behavior

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 consultants, vendors or contractors who provide services to the City. Consultant warrants its compliance with the terms and conditions of HR 2.02 as further described at: <https://www.portlandoregon.gov/citycode/27929>.

9) 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 arising out of the intentional or 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 sole negligence or misconduct of the City. This duty shall survive the expiration or termination of this Price Agreement.

The indemnity obligations of Consultant under this Price Agreement will not in any way be affected or limited by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting this Price Agreement.

This indemnity shall survive the termination of this Price Agreement or final payment hereunder. This indemnity is in addition to any other rights or remedies available under this Price Agreement, or in law or in equity to the City. In the event of any claim or demand made against any party entitled to indemnification hereunder, the City may in its sole discretion reserve, retain or apply any monies due to the Consultant under the Price Agreement to resolve such claims; provided, however, that the City may release such funds if the Consultant provides the City with adequate assurance of the protection of the City's interests. The City shall determine in its sole discretion of the adequacy of such assurances.

10) Insurance

Consultant shall obtain and maintain in full force at Consultant's sole cost and expense, throughout the Term 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 Price Agreement.

- (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 applicable coverage for all subject workers.

☒ Required and attached // ☐ Certified statement of exemption (i.e., completion of Independent Consultant Certification Statement or similar)

- (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 Price Agreement 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 Price Agreement.

☒ 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 Price Agreement. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non-renewal of coverage without thirty (30) days written notice from Consultant to the City. If the insurance is canceled or terminated prior to completion of the Price Agreement, 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 Price Agreement and shall be grounds for immediate termination of this Price Agreement.

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 Price Agreement if required by the procurement documents (e.g., request for proposal), or at execution of Price Agreement and prior to any commencement of work or delivery of goods or services under the Price Agreement. 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 Price Agreement 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 contractually require its Subconsultants to acquire and maintain in effect until full performance of their Work under this Price Agreement, insurance equal to the minimum coverage limits required above.

11) Ownership of Work Product

All work product produced by the Consultant under this Price Agreement is the exclusive property of the City upon payment in full to Consultant as set forth in this Price Agreement. "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 Price Agreement, the Consultant-Architect grants the City an exclusive and irrevocable license to use that Work Product. City's alteration of Consultant's Work Product or its use by City for any other purpose 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.

12) 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 Price Agreement.

13) Successors in Interest

The provisions of this Price Agreement 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 Price 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 Price Agreement 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 Price Agreement shall not constitute a waiver by the City of that or any other provision.

16) Errors

The Consultant shall without cost to the City, promptly correct errors or omissions related to the services required by this Price Agreement.

17) Governing Law/Venue

The provisions of this Price Agreement 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 Price Agreement must be brought in the appropriate court in Multnomah County Oregon.

18) Amendments

Any changes to the provisions of this Price Agreement's dollar amount, must be made by written amendment and approved by the Chief Procurement Officer or City Council to be valid. Any other

changes to the provisions of this Price Agreement, including changes to the scope of work, key personnel, subconsultants or other changes, must be made by written amendment and approved as pursuant to PCC 5.68 and the PTE Manual.

19) Prohibited Conduct

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

20) Payment to Vendors and Subconsultants

The Consultant shall timely pay all subconsultants and suppliers providing services or goods for this Price Agreement. If the Consultant fails to make timely payments to its Subcontractors, Subconsultants, or suppliers, the City is entitled to take any action permitted by law, including, but not limited to, the following:

- (a) Withhold all or part of any progress payment until Consultant makes payment;
- (b) Find that the Consultant is not a qualified bidder for future projects per the City's consideration of the Consultant's record of past performance pursuant to ORS 279C.110(3);
- (c) Directly make payment to the Subcontractor, Subconsultant, and supplier who has not received proper payment; and
- (d) Terminate the Price Agreement for and Event of Default as provided herein.

21) Access to Records and Audits

(a) The Consultant and its subconsultants and suppliers shall maintain all fiscal records relating to the Price Agreement in accordance with generally accepted accounting principles. The Consultant and its subconsultants shall maintain all other records necessary to clearly document their performance of the work and any claims for additional compensation or requests for additional contract time arising from or relating to their performance under the Price Agreement.

(b) The Consultant shall include in its subcontracts, purchase orders and all other written agreements a provision requiring all subconsultants, material suppliers, providers of rented operated equipment and persons submitting cost or pricing data according to the term of a contract, at all tiers, to comply with this section.

(c) The City and its authorized representatives shall have timely access to, and an opportunity to inspect, examine, copy and audit all books and records relating to the Price Agreement, for any reason, upon reasonable notice.

1. Such books and records shall be maintained by the Consultant and all subconsultants, suppliers and persons with cost or pricing data for a minimum period of six (6) years from the date of Final Payment under the Price Agreement, or until the conclusion of any audit, controversy, litigation, dispute or claim arising out of, or related to, the Price Agreement, whichever is longer.

2. The Consultant and all subconsultants, suppliers, and persons with cost or pricing data shall maintain all records in such a manner that providing a complete copy is neither unreasonably time consuming nor unreasonably burdensome for the Consultant or the City. Failure to maintain the records in this manner shall not be an excuse for not providing the records.

3. The Consultant and all subconsultants, suppliers, and persons with cost or pricing data shall produce all such books and records in Portland, Oregon, regardless of whether the records are produced pursuant to this provision of the Price Agreement or as a result of a claim, litigation, arbitration or other proceeding. The Consultant or a subconsultant, supplier, or other person may produce the books and records elsewhere if it fully compensates the City for the reasonable costs

of travel to and from the place where the records are produced and the reasonable cost of any employee's time in having to travel.

(d) If an audit discloses that payments to the Consultant were in excess of the amount to which the Consultant was entitled, the Consultant 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.

22) Electronic Signatures

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

23) Merger Clause

This Price Agreement, and the Price Agreement Documents identified at Section 3 above shall be deemed to encompass the entire agreement of the parties and supersede all previous understandings and agreements between the parties, whether verbal or written.

24) 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 Price Agreement with a mediator jointly selected by the parties. For any claim or dispute that is subject to mediation under this section, the statute of limitations and statute of repose shall not begin to run until the time period set forth in Section 29 below or upon the conclusion of mediation, whichever is later. Notwithstanding any dispute under this Price Agreement, the Consultant shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Price Agreement for undisputed portions of the work. In the event of litigation, no attorney fees are recoverable. No different dispute resolution paragraph(s) in this Price Agreement or any attachment hereto shall supersede or take precedence over this provision.

25) 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.

26) Consultant's Key Personnel: ☒/ Applicable ☐/ Not Applicable

If applicable, the Consultant shall assign the Key Personnel listed in the Statement of the Work and Payment Schedule for the work required by the Price Agreement and shall not change Key Personnel without the prior written consent of the City, which shall not be unreasonably withheld. Notwithstanding anything to the contrary herein, Consultant shall, within thirty (30) days of receipt a request from the City replace any Key Person who is not meeting City performance requirements.

The Consultant agrees that the primary personnel assigned to perform the services shall be listed in in the Statement of Work and Consultant shall not change such personnel without the prior written consent of the authorized representative of the City as designated in the SOW. The City will enforce all social equity contracting for Disadvantaged, Minority, Women, Emerging Small Business and Service-Disabled Veteran Business Enterprise (D/M/W/ESB/SDVBE) subconsultant commitments submitted by the Consultant in its proposals. Failure to use the identified D/M/W/ESB/SDVBE subconsultants without prior written consent is a material breach of contract.

27) Third Party Beneficiaries

There are no third-party beneficiaries to this Price Agreement. Enforcement of this Price Agreement is reserved to the parties.

28) Conflict of Interest

Consultant hereby certifies that, if applicable, its Price Agreement 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:

- (a) has responsibility in making decisions or ability to influence decision-making on the Price Agreement or project to which this Price Agreement pertains;
- (b) has or will participate in evaluation or management of the Price Agreement; or
- (c) has or will have financial benefits in the Price Agreement.

Consultant understands that should it elect to employ any former City official/employee during the term of the Price Agreement 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.

29) Contractual Statute of Limitations/Statute of Repose for Design Services Claims

The statute of limitations applicable to Design Services provided pursuant to this Agreement shall be 2 years from the date of Final Completion of the Project. The statute of repose applicable to Design Services provided pursuant to this Agreement shall be 10 years from Final Completion of the Project. The statute of limitations and statute of repose set forth herein shall not begin to run until the Project reaches Final Completion, regardless of discovery of any condition, act, error, or omission. This provision shall be included in any Subconsultant Agreement executed by the Consultant for the performance of services.

30) Notices and Communications

All notices and other communications concerning this Price Agreement shall bear the Price Agreement number assigned by the City. Notices and other communications may be delivered personally, by facsimile, email, by regular, certified or registered mail or other commercial delivery service. A notice to the City will be effective only if it is delivered to that person designated in writing in either:

- (a) the Notice of Award of this Price Agreement,
- (b) the Notice to Proceed under this Price Agreement, or
- (c) to another individual specifically designated by this Price Agreement.

A notice to the Consultant shall be effective if it is delivered to the individual who signed this Price Agreement on behalf of Consultant at the address shown with that signature, to a corporate officer if Consultant is a corporation, to a general partner if Consultant is a partnership, or to another individual designated in writing by the Consultant in the Price Agreement or in a written notice to the City.

31) Safety

Consultant shall ensure that all Work is performed in a safe manner protective of workers and the environment. Accordingly, Consultant shall maintain in place a safety plan that provides for compliance with all safety laws and regulations in effect during the Term. **Consultant shall bear the cost of compliance with its safety plan. The City agrees to increase Consultant's compensation only in the event of a change of law that directly and actually results in an increase in Consultant's costs of compliance with the new law. The City reserves the right but not the obligation to issue a "halt work" order in the event of a potential life safety risk as determines in the City's discretion.**

32) Access to Facilities

Consultant agrees that Consultant's physical or remote access to City facilities shall be subject to the security interests and health controls necessary to protect public property, City employees and the public. The City shall not be liable for any delays necessary in granting Consultant access to any portion of the facilities or systems.

33) Force Majeure

For the purpose of this Agreement, the term “Force Majeure” shall mean strikes, lockouts, inability to procure materials (but not including changes in cost thereof), inability despite due diligence to obtain required permits, power failure, acts of God, actions or failures to act on the part of local, state, or federal government preventing performance, civil commotion, fire, unavoidable casualty, [ALTERNATIVE] an outbreak of a pandemic disease, quarantine, unusually severe public health and weather conditions to the extent to which such condition impact the ability of a party performing an obligation hereunder to perform such obligation in accordance with this Agreement

34) COVID-19 Requirements

The Parties acknowledge and agree that this Price Agreement will be executed and performed during the COVID-19 pandemic. While Oregon is under a declaration of emergency associated with the COVID-19 pandemic, Consultant shall comply with all applicable requirements and guidance issued by federal, state and local authorities pertaining to COVID-19 (including but not limited to CDC, OSHA, Governor Brown, Oregon Health Authority, and Multnomah County Health Department). The applicable guidance and requirements include, but are not limited to, those pertaining to Oregon phased reopening and sector activities, reduction in gathering sizes appropriate to the type of location and activity, complying and implementing health protocols, maintaining social distancing, and wearing face coverings. Consultant shall have a satisfactory safety plan and protocols addressing COVID-19 precautions related to Consultant’s activities under this Price Agreement. Consultant shall monitor for updated guidance and requirements and update its plan and protocols accordingly. Consultant shall provide a copy of Consultant’s safety plan and protocols to City upon City’s request. Consultant is solely responsible for implementing a COVID safety plan and protocols and addressing any COVID-19 related claims pertaining to its activities and provision of Services under this Price Agreement. In the event that Consultant’s employees or its subcontractor’s employees exhibit symptoms of COVID infection, Consultant shall follow City’s contact tracing and response protocols which shall be made available to the Consultant.

35) Attachments

The following attachments are incorporated into this Price Agreement.

- (a) Exhibit A – Statement of Work
- (b) Exhibit B – Compensation
- (c) Exhibit C – Consultant’s Hourly Rates
- (d) Exhibit D – Sample Task Order
- (e) Exhibit E – RFP 00001468
- (f) Exhibit F – Consultant’s Proposal in response to RFP 00001468

CONSULTANT SIGNATURE:

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

This Price Agreement constitutes the entire agreement between the City and Consultant 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 Consultant quotation or invoice.

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

This Price 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 Price Agreement to be executed.

I, the undersigned, agree to perform work outlined in this Price Agreement in accordance to the Terms and Conditions and the Statement of Work (Exhibit A); 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

(Consultant's Name)

BY: _____ Date: _____

Name: _____

Title: _____

CONTRACT NUMBER: 3000XXXX

CONTRACT TITLE: PROJECT 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

EXHIBIT A
Statement of Work

Consultant's and City's Project Manager for this Contract are:

For City of Portland:	For Consultant:
Name:	Name:
Title:	Title:
Address:	Address:
City, State:	City, State:
e-mail:	e-mail:
Copy to: (BUYER)	Copy to:
Procurement Services	
1120 SW 5 th Ave.	
Portland OR 97204	

1. CONSULTANT KEY PERSONNEL

The Consultant shall assign the following Key Personnel to do the work in the capacities designated and agrees not to substitute these personnel while working on the Contract without the express approval of the City, which approval shall not unreasonably be withheld:

NAME	ROLE ON PROJECT

2. SUB CONSULTANTS

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

NAME	ROLE ON PROJECT	SUBCONTRACT AMOUNT

For Contracts valued \$50,000 or more, the Consultant shall submit subconsultant payment and utilization information electronically in the Contract Compliance Reporting System, reporting ALL subconsultants employed in the performance of this agreement. More information on this process may be viewed on the City Procurement website at: <https://www.portlandoregon.gov/bfrs/75932>.

3. TASK ORDERS

Work performed under this Price Agreement must be authorized via a written Task Order (sample attached as Exhibit D) signed by the City and the Consultant. The scope of work, schedule, deliverables, and compensation for each project will be defined in the Task Order prior to commencement of the work. Any change to the scope of work, schedule, deliverables, and compensation must be agreed upon by the City and the Consultant in writing as an amendment to the Task Order.

Exhibit A – Statement of Work

The Bureau Director and the Chief Procurement Officer shall approve Task Orders and Task Order amendments in the following scenarios: 1) When amending the Task Order to increase compensation is greater than 25% of the original Task Order amount or 2) When a Task Order exceeds \$1,000,000.

Compensation for each Task Order will be determined through negotiation with the Consultant based on the scope of work, the hours the Consultant estimates for performance of the work and the Consultant's hourly rates, subject to a predetermined cap for the maximum compensation for the particular Task Order. If the work requires fewer hours than those estimated, the Consultant will be paid for the actual hours necessary to complete the Task Order. If the Consultant underestimates the number of hours that are required to perform the work, the negotiated maximum compensation for the Task Order shall be the cap of the compensation to be paid. Compensation may be amended for documentable circumstances not reasonably foreseeable to either party at the time the Task Order was issued, or for changes to the scope of work or deliverables requested by the City.

The Consultant must be able to start the work per the Task Order no later than seven (7) calendar days from the date of the Notice to Proceed as projects often require work with short deadlines. If the Consultant is unable or unwilling to complete the project within the required time, it shall so state in writing to the City's Project Manager and shall forfeit the Task Order within 24 hours of being notified.

Task Orders will be negotiated on a rotational basis. In the event the City and a Consultant cannot reach a favorable agreement on the maximum compensation for a specific Task Order, the City shall terminate negotiations and commence negotiations with the next Consultant from the rotational list. Continual difficulties in negotiating compensation caps or repeated unavailability or inability to perform Task Orders may result in removal of a Consultant from the rotation list and cancellation of the Consultant's Price Agreement with the City.

In the event that the Price Agreement maximum amount is reached prior to the end of the Price Agreement term, that Consultant will be removed from the on-call rotation list.

Following the execution of each Task Order, the City's Project Manager will work directly with the Consultant for the duration of the project unless otherwise noted on the Task Order.

4. SCOPE OF WORK

The Consultant shall provide engineering services as needed to complete the design of projects or project tasks as requested within potentially limited time frames and shall be expected to work closely with designated City personnel.

The Consultant may be called on to perform any combination of the tasks listed below. For each identified project, the City will provide the general scope of work. The Consultant will develop and negotiate the specific scope of work, budget, deliverables and schedule. These details shall be agreed upon in writing by the Consultant and the City in individual Task Orders for each project.

Equity in utilization of subcontractors is of paramount importance to the City for the work anticipated under this price agreement, and as such the Consultant has committed to support the City's equity and corporate responsibility initiatives to increase certified D/M/W/SDV/ESB firms' participation. In accordance with City Council's direction to provide for maximum utilization of State of Oregon certified D/M/W/SDV/ESB firms, each negotiated Task Order shall include D/M/W/SDV/ESB firms as subconsultants to the maximum extent possible. The City has set an aspirational goal of 30% minimum D/M/W/SDV/ESB utilization based on total Task Order amount. Consultants shall be required to make good faith efforts to contract with D/M/W/SDV/ESB subconsultants.

4.1. The types of services include, but are not limited to, the following:

4.1.1. Evaluation and analysis of existing wastewater treatment processes and equipment with cost benefit analysis of recommended alternatives. Includes unit process and process control analysis for physical, chemical and biological treatment systems.

Exhibit A – Statement of Work

- 4.1.2. Wastewater treatment designs, including civil, geotechnical, CAD/BIM drafting, structural, architectural, mechanical, HVAC, instrumentation, Loop diagrams, electrical elements (including electrical coordination studies and fault analysis), associated process control narratives, systems integration/programming support, electrical panel design and interconnection diagrams, energy efficiency calculations, operations and maintenance cost estimating, and construction cost estimating.
- 4.1.3. Hydraulic analysis of wastewater treatment processes, pumping and water systems, including using Computational Fluid Dynamics (CFD) software and Biowin process modeling software, water hammer, surge analysis, and calculation of hydraulic profiles.
- 4.1.4. Analysis and design of HVAC systems and associated fire protection requirements specific to wastewater treatment processes and support facilities.
- 4.2. For any work under this Price Agreement the Consultant shall:
 - 4.2.1. Proceed with minimal direction and supervision.
 - 4.2.2. Provide Project Management and coordination of design elements.
 - 4.2.3. Utilize the City's Heron project management system (based on e-Builder Enterprise) for all project communications, invoices, document management, deliverable transmittal and review processes, and project execution.
 - 4.2.4. Provide monthly status reports on budget, schedule and work completed for each task order when invoices are submitted through the Heron system.
 - 4.2.5. Independently coordinate with other City bureaus.
 - 4.2.6. Assist in securing City land use and construction approvals.
 - 4.2.7. Assist in securing permits from other agencies.
 - 4.2.8. Conduct pre-design and alternative analysis.
 - 4.2.9. Provide final design services including report preparation, calculations, utility coordination, providing Quality Assurance/Quality Control, preparation and submission of biddable plans and contract documents, value engineering, technical writing, control descriptions and systems integration documentation, and preparation of Operation & Maintenance manuals.
 - 4.2.10. Comply with applicable design guidelines including:
 - 4.2.10.1. the City CAD and BIM Guidelines;
 - 4.2.10.2. the City Equipment Naming Guidelines;
 - 4.2.10.3. the City Electrical and Instrumentation Guidelines;
 - 4.2.10.4. the City Control Description Template and Requirements;
 - 4.2.10.5. Standard Construction Specifications for the City of Portland;
 - 4.2.10.6. the City Operations and Maintenance Group (formerly Wastewater Group) Standards;
 - 4.2.10.7. All other applicable the City manuals, policies and conditions included within the scope of each project.
 - 4.2.10.8. Support construction activities through on-site visits, submittal review, responses to requests for information, design clarification preparation, commissioning, troubleshooting, system training, and support of as-built drawings.
 - 4.2.10.9. Comply with sustainable procurement practices as they apply to potential Task Orders and sustainability practices during the design process. Sustainability in the technical requirements, deliverables or evaluation criteria can be seen at the Sustainable Procurement Program website at <https://www.portlandoregon.gov/brfs/37732>.
- 4.3. **Sustainability Requirements**
 - 4.3.1. Concrete Environmental Product Declarations (Concrete EPDs)

For all concrete mix designs specified for projects at a volume of 50 cubic yards or more, a product-specific Type III Environmental Product Declaration (EPD) that is third-party verified and within its 5-year period of validity for that specific concrete mix design is required to be submitted to the City. EPDs shall be submitted to the Bureau of Environmental Services' Materials Testing Lab at concreteEPD@portlandoregon.gov along with the other required mix design information.

4.3.2. Low Global Warming Potential (GWP) Concrete Mixes

The Consultant is encouraged work with the City in identifying low GWP concrete mixes that will meet applicable performance requirements for projects. Mix-specific GWP data shall be obtained from mix-specific concrete EPDs as defined above. A low GWP is defined in relation to more typical mix alternatives that also meet the performance requirements. If a low GWP concrete mix is identified and approved for a project, the Consultant shall submit to the Bureau of Environmental Services' Materials Testing Lab (at concreteEPD@portlandoregon.gov) a narrative regarding the workability of the low GWP concrete mix such as set times, strength gain, finishability, and any other considerations that characterize the mix's impacts to the project schedule and cost. The narrative shall be submitted within 90 days of the low GWP mix first being used on the project.

4.4. Work Performed by the City

The City has assigned a Project Manager to oversee the Consultant's work and provide support as needed. The City's Project Manager or delegate will have the sole authority to issue Task Orders to Price Agreements issued from this Price Agreement; however, issued Task Orders may have a separate assigned manager. The City will make available copies of the appropriate design guidelines and standards manuals.

The City will also provide the following services as requested:

- 4.4.1. Pavement corings
- 4.4.2. Profile and invert elevations of the existing combination, storm, and sanitary sewer system (AutoCAD format)
- 4.4.3. Right-of-Way services
- 4.4.4. Electronic quarter section topographic maps (AutoCAD format)
- 4.4.5. Bid book front-end documents (e.g. procurement and contracting requirements and bidding forms)
- 4.4.6. Review of specified deliverables at critical progress points
- 4.4.7. Survey
- 4.4.8. Public Involvements

Other project specific duties the City will perform shall be identified in the individual Task Orders.

5. AUTHORIZATION TO PROCEED

Irrespective of the effective date of the Contract, the Consultant shall not proceed with any work required under this Contract without a written authorization to proceed from the City. Any work performed or expenses incurred by the Consultant prior to the Consultant's receipt of authorization to proceed shall be entirely at the Consultant's risk.

EXHIBIT B Compensation

1. Compensation

- 1.1. The City agrees to pay Consultant a sum not to exceed \$3,125,000 for the work ordered and accepted during the Initial Term (five years), and if services are extended a sum not to exceed \$625,000 per each additional year, based on the hourly rates and any City approved reimbursable costs identified below.
- 1.2. Payments shall be made to Consultant according to the rates identified in Exhibit C.
- 1.3. Payment Terms: Net 30 Days

The City shall pay the Consultant as follows upon the submission of approved invoices:

2. Standard Reimbursable Costs

The following costs will be reimbursed without cost-increase:

- 2.1. If pre-approved by the City, allowable costs of travel shall be determined in accordance with the General Services Administration (GSA) per diem rates in effect on the date of this Contract. Consultant's time spent traveling to the Portland area, however, will not be reimbursed. All costs incurred for local travel within the Portland metropolitan area, and a 100-mile radius, including but not limited to, vehicle mileage and parking fees are considered as included in the overhead rate, and shall not be reimbursed separately.
- 2.2. Personal expenditures or expenditures not related to the Contract are not eligible for reimbursement.

3. Hourly Rates

- 3.1. The Consultant shall be compensated in accordance with the hourly rates set forth in attached Exhibit C, Hourly Billing Rate Table. In no way shall the cost of hours billed by the Consultant exceed the total Contract amount throughout the term of this Contract.
- 3.2. Discretionary 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:
 - 3.2.1. No increases will be granted before the one-year anniversary of the Contract;
 - 3.2.2. No more than one increase shall be granted per Contract year;
 - 3.2.3. Rate increases may not exceed the preceding calendar year's Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the West Region Class Size A average inflation rate (as determined from the US Department of Labor statistics);
 - 3.2.4. Rate increases shall not be retroactive.

Other than as stated above, hourly rates may not be increased.

4. Subconsultant Costs

Compensation for subconsultants shall be subject to the same billing restrictions and requirements as those of the Consultant. Consultant may bill Subconsultant services at cost plus a 5% mark-up and shall not be subject to any cost increase. Other Direct Expenses, as stated under Standard Reimbursable Costs, shall be billed at cost without mark-up. Allowable subconsultant services can only be marked-up once. For example, the Prime is not allowed to mark-up on a second-tier subconsultant's allowable expenses if it has already been marked-up by the Prime's subconsultant. Mark-up is not allowable when using intergovernmental resources to complete work and will not be accepted.

5. Progress Payments

5.1. Compensation to the Consultant shall be based on the following:

- 5.1.1. Invoices submitted to the City including the appropriate required information as outlined below and all supporting documentation relating to charges expressed on the invoice.
- 5.1.2. The invoice shall be submitted to BES in Heron.
- 5.1.3. Detailed monthly Project Progress Reports submitted to the City Project Manager by email.

5.2. The Consultant is required to follow Generally Accepted Accounting Principles (GAAP).

Personal expenditures or expenditures not related to the Project or part of the Contract are not eligible for reimbursement. On or before the 15th of each month, the Consultant shall submit to the City Accounts Payable Department an invoice for work performed by the Consultant during the preceding month.

5.3. The Consultant shall enter all pertinent information below on their invoice in order for the City to review and authorize processing of invoices for payment.

5.3.1. Contract Number, City's Project Title and any other identifying information requested by the City

5.3.2. Invoice date

5.3.3. Date range during which the services are being invoiced for work provided

5.3.4. Invoice number. The last invoice submitted on the Project must be clearly labeled "Final Invoice"

5.3.5. City Project Manager's name

5.3.6. Amount being invoiced for the current invoice

5.3.7. Consultant shall describe all services performed with particularity and by whom it was performed (Consultant's individuals or subconsultant, labor category, direct labor rate, hours worked during the period) and shall itemize and explain all expenses for which reimbursement is claimed. If reimbursable expenses are authorized, identify by line item categories, 1) Travel Expenses and 2) General Reimbursable Expenses. Note: Invoices for Basic Services under a specific Task shall be for completed Basic Services only and shall indicate the percentage of the total Basic Services for that Task that the amount invoiced represents

5.3.8. The Consultant shall also attach photocopies of claimed reimbursable expenses, as applicable and preapproved authorization document from the City Project Manager

5.3.9. The Consultant shall stamp and approve all subconsultant invoices and note on subconsultant invoice what they are approving as "billable" under the Contract

5.3.10. The billing from the Consultant must clearly roll up labor and reimbursable costs for the prime and subconsultants – matching the subconsultant invoices

5.3.11. To the extent the City disputes any portion of the amount requested in the application for payment, the City shall indicate the undisputed amounts and the amounts that are in dispute. The City shall pay the undisputed amounts and indicate to whom such payments shall be made. The Consultant shall make such payments to itself and to subconsultants as indicated by the City for such undisputed amounts. The City and Consultant and, if applicable, the subconsultant shall then work to reach agreement on the disputed amounts.

5.4. Prior to initial billing, the Consultant shall develop a billing format for approval by the City. Submission of the draft billing document shall be emailed to the City Project Manager for final review and approval.

6. 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, Consultants shall execute the City's standard ACH Vendor Payment Authorization Agreement and provide required documentation. Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit

Exhibit B – Compensation

payment for services rendered directly into Consultant accounts with financial institutions. All payments shall be in United States currency.

Exhibit C – Consultant's Rates

EXHIBIT C
Consultant's Rates (attached separately)

**EXHIBIT D
SAMPLE TASK ORDER**



**ENVIRONMENTAL SERVICES
CITY OF PORTLAND**

working for clean rivers



CONTRACT NUMBER 3100...
Task Order Number PM&C fills out

Project: project name
Project No: project number

The Price Agreement by and between **Consultant Name**, hereinafter called Consultant, and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called City, provides for **Type of service** on-call services.

Original Price Agreement Value: PM&C fills out
NTE Amount: PM&C fills out
Previous Task Order Amounts: PM&C fills out
Total of all Task Orders to Date: PM&C fills out

As directed in the Price Agreement, this executed Task Order directs Consultant to perform the services as outlined below.

A.1 Project Background:

A.2 Scope:

A.3 Requirements:

Consultant must perform the following task(s):

A.3.1

A.3.2

A.3.3

A.4 Deliverables and Schedule:

Deliverables and Schedule for this Task Order shall include:

1.

- 2.
- 3.

All deliverables must be completed in an approved format.

A.5 Period of Performance:

The period of performance for this Task Order 'is NTP through [Click to enter a date..](#)

A.6 Key Personnel for this Task Order:

The Consultant shall assign the key personnel to do the work in the capacities designated as shown in Exhibit XX to this Task Order. Consultant may not change personnel unless authorized by a written Amendment to the Task Order.

A.7 Hours and Cost:

The maximum compensation for this Task Order shall not exceed [\\$amt of request](#) unless authorized by a written Amendment to the Task Order. The hourly rates shall be as indicated in the Price Agreement. The Tasks breakdown of the not-to-exceed amount is shown in Exhibit XX to this Task Order. Consultant may not reallocate compensation between Tasks without the written approval of the Project Manager.

A.8 SUBCONSULTANT Participation for this Task Order:

Consultant agrees they will use the following subconsultant(s) on this Task Order in the following Total Dollar amounts and Percentages listed. Consultant may not change subconsultants unless authorized by a written Amendment to the Task Order.

SUBCONSULTANT(S) TO BE USED	D/M/W/ESB CERTIFICATION (DBE, MBE, WBE, ESB, NONE)	ROLE ON PROJECT	TOTAL DOLLARS COMMITTED	PERCENTAGE
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	

If aspirational DMWESB subconsultant participation is not possible for this Task Order, provide justification below:

Procurement Services to complete this section
Cumulative D/M/W/ESB Participation for the Entire Price Agreement
Current D/M/W/ESB participation is \$ _____; Subcontract Total - ____%; Price Agreement Total - ____%
Proposed D/M/W/ESB participation is \$ _____; Subcontract Total - ____%; Price Agreement Total - ____%

All provisions of the original Price Agreement shall remain in full force and effect.

This Task Order 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 Task Order.

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

CONSULTANT:

By: _____

Date: _____

Name: _____

Title: _____

CITY OF PORTLAND:

Chief Procurement Officer

Accounting Info:

WBS, Internal Order, and/or Grant #:

DPO#:

EXHIBIT E

RFP 00001468 (attached separately)

EXHIBIT F

Consultant's Proposal in response to RFP 00001468 (attached separately)

DESIGN SERVICES PRICE AGREEMENT**CITY OF PORTLAND**

PRICE AGREEMENT NUMBER _____

STRUCTURAL ENGINEERING

As authorized by [Ordinance _____ and] Portland City Code 5.68.035, this Design Services Price Agreement ("Contract") is by and between the City of Portland ("City," or "Bureau") and _____, ("Consultant") that shall commence as of the date of the last signature of a Party hereto ("Effective Date").

Effective Date and Term

The Initial Term of this Price Agreement shall begin on XXX ("Effective Date") and shall expire five (5) years later unless terminated sooner as provided herein. The parties may agree, by mutual written consent, to extend this Price Agreement on the same terms and conditions set forth in the Initial Term for additional years, taken individually or in multiple years, up to five (5) more years. At least thirty (30) days prior to the expiration of the Initial Term, or extension, the parties shall commence discussions if they desire to extend the Price Agreement. However, nothing binds or requires either party to extend this Price Agreement. The total term of this Price Agreement shall not exceed ten (10) years.

Consideration

- (a) City agrees to pay Consultant a sum not to exceed Five Hundred Thousand Dollars (\$500,000) to complete work in accordance with the Statement of Work (SOW) and Compensation, attached hereto as Exhibits A and B.
- (b) City will pay Consultant in accordance with the SOW and Compensation.

CONSULTANT DATA AND CERTIFICATION

Name (print full legal name): _____

Address: _____

Business Designation (check one): ☐ Individual ☐ Sole Proprietorship ☐ Partnership ☐ Corporation
☐ Limited Liability Co (LLC) ☐ Public Service Corp. ☐ Government/Nonprofit

Payment information will be reported to the IRS under the name provided above. Information must be provided prior to contract approval.

TERMS AND CONDITIONS**1) Standard of Care**

In providing services under this Price Agreement, the Consultant shall exercise that degree of skill and care ordinarily used by other reputable members of Consultant's profession, practicing in the same or similar locality and under similar circumstances.

2) Effect of Expiration

Expiration of the Term shall not extinguish, prejudice, or limit either party's right to enforce this Price Agreement with respect to any default or uncorrected defect in performance.

3) Order of Precedence

This Price Agreement consists of these Terms and Conditions, the SOW, and all Exhibits that are attached. Any apparent or alleged conflict between these items will be resolved by using the following order of precedence:

- (a) Amendments executed by the parties after Price Agreement award;
- (b) This form of Price Agreement as executed by the Parties, including all Exhibits;
- (c) Task Orders issued from this Price Agreement;
- (d) RFP Requirements as set forth in City's RFP, including without limitations all Exhibits and any Addenda; and
- (e) Consultant's Proposal in response to the RFP, including without limitation, to all supplementary materials.

4) Early Termination of Price Agreement

- (a) The City may terminate this Price Agreement for convenience at any time for any reason deemed appropriate in its sole discretion. Termination shall be effective immediately upon City's delivery of a written notice of termination to Consultant.
- (b) Either party may terminate this Price Agreement in the event of a material breach by the other party that is not timely cured. Before termination is permitted, the party seeking termination shall give the other party written notice of the nature of the alleged breach, its intent to terminate, and providing for fifteen (15) calendar days within which to cure the breach. If the breach is not cured within 15 days, the party seeking termination may terminate immediately by giving written notice that the Price Agreement 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 Price Agreement prior to the date of the termination notice. No other costs or loss of anticipated profits shall be due or payable.
- (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 for the costs to defend any claim, and all damages, costs, and sums incurred by the City as a result of the breach.
- (c) If the Consultant terminates the Price Agreement pursuant to subsection 4(b), the Consultant's sole remedy shall be payment for work completed prior to date of City's receipt of the termination notice. No other costs, loss of anticipated profits or consequential damages 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 Price Agreement was terminated under Section 4(a).
- (e) In the event of early termination, the Consultant's work product completed prior to the date of termination shall be deemed the property of the City and copies and/or data shall be immediately released to 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 consent, the Consultant shall remain responsible for full performance hereunder. The Consultant agrees that if subcontractor(s) are employed in the performance of the SOW under this Price Agreement, both Consultant and any subcontractors remain subject to the requirements of ORS Chapter 656, Workers' Compensation.

7) Compliance with Applicable Laws; Funding Requirements

Consultant shall perform all services in accordance with all applicable federal, state, and local laws and regulations including without limitations tax laws and terms and conditions incident to receipt of any

grant funds. Consultant represents and warrants that it is in compliance with all laws and expressly represents that it is and shall remain in compliance with Title VI of the Civil Rights Act of 1964 and its corresponding regulations during the Term of this Price Agreement.

8) Respectful Workplace Behavior

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 consultants, vendors or contractors who provide services to the City. Consultant warrants its compliance with the terms and conditions of HR 2.02 as further described at: <https://www.portlandoregon.gov/citycode/27929>.

9) 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 arising out of the intentional or 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 sole negligence or misconduct of the City. This duty shall survive the expiration or termination of this Price Agreement.

The indemnity obligations of Consultant under this Price Agreement will not in any way be affected or limited by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting this Price Agreement.

This indemnity shall survive the termination of this Price Agreement or final payment hereunder. This indemnity is in addition to any other rights or remedies available under this Price Agreement, or in law or in equity to the City. In the event of any claim or demand made against any party entitled to indemnification hereunder, the City may in its sole discretion reserve, retain or apply any monies due to the Consultant under the Price Agreement to resolve such claims; provided, however, that the City may release such funds if the Consultant provides the City with adequate assurance of the protection of the City's interests. The City shall determine in its sole discretion of the adequacy of such assurances.

10) Insurance

Consultant shall obtain and maintain in full force at Consultant's sole cost and expense, throughout the Term 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 Price Agreement.

- (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 applicable coverage for all subject workers.

☒ Required and attached // ☐ Certified statement of exemption (i.e., completion of Independent Consultant Certification Statement or similar)

- (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 Price Agreement 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 Price Agreement.

☒ 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 Price Agreement. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non-renewal of coverage without thirty (30) days written notice from Consultant to the City. If the insurance is canceled or terminated prior to completion of the Price Agreement, 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 Price Agreement and shall be grounds for immediate termination of this Price Agreement.

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 Price Agreement if required by the procurement documents (e.g., request for proposal), or at execution of Price Agreement and prior to any commencement of work or delivery of goods or services under the Price Agreement. 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 Price Agreement 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 contractually require its Subconsultants to acquire and maintain in effect until full performance of their Work under this Price Agreement, insurance equal to the minimum coverage limits required above.

11) Ownership of Work Product

All work product produced by the Consultant under this Price Agreement is the exclusive property of the City upon payment in full to Consultant as set forth in this Price Agreement. "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 Price Agreement, the Consultant-Architect grants the City an exclusive and irrevocable license to use that Work Product. City's alteration of Consultant's Work Product or its use by City for any other purpose 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.

12) 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 Price Agreement.

13) Successors in Interest

The provisions of this Price Agreement 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 Price 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 Price Agreement 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 Price Agreement shall not constitute a waiver by the City of that or any other provision.

16) Errors

The Consultant shall without cost to the City, promptly correct errors or omissions related to the services required by this Price Agreement.

17) Governing Law/Venue

The provisions of this Price Agreement 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 Price Agreement must be brought in the appropriate court in Multnomah County Oregon.

18) Amendments

Any changes to the provisions of this Price Agreement's dollar amount, must be made by written amendment and approved by the Chief Procurement Officer or City Council to be valid. Any other

changes to the provisions of this Price Agreement, including changes to the scope of work, key personnel, subconsultants or other changes, must be made by written amendment and approved as pursuant to PCC 5.68 and the PTE Manual.

19) Prohibited Conduct

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

20) Payment to Vendors and Subconsultants

The Consultant shall timely pay all subconsultants and suppliers providing services or goods for this Price Agreement. If the Consultant fails to make timely payments to its Subcontractors, Subconsultants, or suppliers, the City is entitled to take any action permitted by law, including, but not limited to, the following:

- (a) Withhold all or part of any progress payment until Consultant makes payment;
- (b) Find that the Consultant is not a qualified bidder for future projects per the City's consideration of the Consultant's record of past performance pursuant to ORS 279C.110(3);
- (c) Directly make payment to the Subcontractor, Subconsultant, and supplier who has not received proper payment; and
- (d) Terminate the Price Agreement for and Event of Default as provided herein.

21) Access to Records and Audits

(a) The Consultant and its subconsultants and suppliers shall maintain all fiscal records relating to the Price Agreement in accordance with generally accepted accounting principles. The Consultant and its subconsultants shall maintain all other records necessary to clearly document their performance of the work and any claims for additional compensation or requests for additional contract time arising from or relating to their performance under the Price Agreement.

(b) The Consultant shall include in its subcontracts, purchase orders and all other written agreements a provision requiring all subconsultants, material suppliers, providers of rented operated equipment and persons submitting cost or pricing data according to the term of a contract, at all tiers, to comply with this section.

(c) The City and its authorized representatives shall have timely access to, and an opportunity to inspect, examine, copy and audit all books and records relating to the Price Agreement, for any reason, upon reasonable notice.

1. Such books and records shall be maintained by the Consultant and all subconsultants, suppliers and persons with cost or pricing data for a minimum period of six (6) years from the date of Final Payment under the Price Agreement, or until the conclusion of any audit, controversy, litigation, dispute or claim arising out of, or related to, the Price Agreement, whichever is longer.

2. The Consultant and all subconsultants, suppliers, and persons with cost or pricing data shall maintain all records in such a manner that providing a complete copy is neither unreasonably time consuming nor unreasonably burdensome for the Consultant or the City. Failure to maintain the records in this manner shall not be an excuse for not providing the records.

3. The Consultant and all subconsultants, suppliers, and persons with cost or pricing data shall produce all such books and records in Portland, Oregon, regardless of whether the records are produced pursuant to this provision of the Price Agreement or as a result of a claim, litigation, arbitration or other proceeding. The Consultant or a subconsultant, supplier, or other person may produce the books and records elsewhere if it fully compensates the City for the reasonable costs

of travel to and from the place where the records are produced and the reasonable cost of any employee's time in having to travel.

(d) If an audit discloses that payments to the Consultant were in excess of the amount to which the Consultant was entitled, the Consultant 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.

22) Electronic Signatures

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

23) Merger Clause

This Price Agreement, and the Price Agreement Documents identified at Section 3 above shall be deemed to encompass the entire agreement of the parties and supersede all previous understandings and agreements between the parties, whether verbal or written.

24) 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 Price Agreement with a mediator jointly selected by the parties. For any claim or dispute that is subject to mediation under this section, the statute of limitations and statute of repose shall not begin to run until the time period set forth in Section 29 below or upon the conclusion of mediation, whichever is later. Notwithstanding any dispute under this Price Agreement, the Consultant shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Price Agreement for undisputed portions of the work. In the event of litigation, no attorney fees are recoverable. No different dispute resolution paragraph(s) in this Price Agreement or any attachment hereto shall supersede or take precedence over this provision.

25) 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.

26) Consultant's Key Personnel: ☒/ Applicable ☐/ Not Applicable

If applicable, the Consultant shall assign the Key Personnel listed in the Statement of the Work and Payment Schedule for the work required by the Price Agreement and shall not change Key Personnel without the prior written consent of the City, which shall not be unreasonably withheld. Notwithstanding anything to the contrary herein, Consultant shall, within thirty (30) days of receipt a request from the City replace any Key Person who is not meeting City performance requirements.

The Consultant agrees that the primary personnel assigned to perform the services shall be listed in in the Statement of Work and Consultant shall not change such personnel without the prior written consent of the authorized representative of the City as designated in the SOW. The City will enforce all social equity contracting for Disadvantaged, Minority, Women, Emerging Small Business and Service-Disabled Veteran Business Enterprise (D/M/W/ESB/SDVBE) subconsultant commitments submitted by the Consultant in its proposals. Failure to use the identified D/M/W/ESB/SDVBE subconsultants without prior written consent is a material breach of contract.

27) Third Party Beneficiaries

There are no third-party beneficiaries to this Price Agreement. Enforcement of this Price Agreement is reserved to the parties.

28) Conflict of Interest

Consultant hereby certifies that, if applicable, its Price Agreement 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:

- (a) has responsibility in making decisions or ability to influence decision-making on the Price Agreement or project to which this Price Agreement pertains;
- (b) has or will participate in evaluation or management of the Price Agreement; or
- (c) has or will have financial benefits in the Price Agreement.

Consultant understands that should it elect to employ any former City official/employee during the term of the Price Agreement 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.

29) Contractual Statute of Limitations/Statute of Repose for Design Services Claims

The statute of limitations applicable to Design Services provided pursuant to this Agreement shall be 2 years from the date of Final Completion of the Project. The statute of repose applicable to Design Services provided pursuant to this Agreement shall be 10 years from Final Completion of the Project. The statute of limitations and statute of repose set forth herein shall not begin to run until the Project reaches Final Completion, regardless of discovery of any condition, act, error, or omission. This provision shall be included in any Subconsultant Agreement executed by the Consultant for the performance of services.

30) Notices and Communications

All notices and other communications concerning this Price Agreement shall bear the Price Agreement number assigned by the City. Notices and other communications may be delivered personally, by facsimile, email, by regular, certified or registered mail or other commercial delivery service. A notice to the City will be effective only if it is delivered to that person designated in writing in either:

- (a) the Notice of Award of this Price Agreement,
- (b) the Notice to Proceed under this Price Agreement, or
- (c) to another individual specifically designated by this Price Agreement.

A notice to the Consultant shall be effective if it is delivered to the individual who signed this Price Agreement on behalf of Consultant at the address shown with that signature, to a corporate officer if Consultant is a corporation, to a general partner if Consultant is a partnership, or to another individual designated in writing by the Consultant in the Price Agreement or in a written notice to the City.

31) Safety

Consultant shall ensure that all Work is performed in a safe manner protective of workers and the environment. Accordingly, Consultant shall maintain in place a safety plan that provides for compliance with all safety laws and regulations in effect during the Term. **Consultant shall bear the cost of compliance with its safety plan. The City agrees to increase Consultant's compensation only in the event of a change of law that directly and actually results in an increase in Consultant's costs of compliance with the new law. The City reserves the right but not the obligation to issue a "halt work" order in the event of a potential life safety risk as determines in the City's discretion.**

32) Access to Facilities

Consultant agrees that Consultant's physical or remote access to City facilities shall be subject to the security interests and health controls necessary to protect public property, City employees and the public. The City shall not be liable for any delays necessary in granting Consultant access to any portion of the facilities or systems.

33) Force Majeure

For the purpose of this Agreement, the term “Force Majeure” shall mean strikes, lockouts, inability to procure materials (but not including changes in cost thereof), inability despite due diligence to obtain required permits, power failure, acts of God, actions or failures to act on the part of local, state, or federal government preventing performance, civil commotion, fire, unavoidable casualty, [ALTERNATIVE] an outbreak of a pandemic disease, quarantine, unusually severe public health and weather conditions to the extent to which such condition impact the ability of a party performing an obligation hereunder to perform such obligation in accordance with this Agreement

34) COVID-19 Requirements

The Parties acknowledge and agree that this Price Agreement will be executed and performed during the COVID-19 pandemic. While Oregon is under a declaration of emergency associated with the COVID-19 pandemic, Consultant shall comply with all applicable requirements and guidance issued by federal, state and local authorities pertaining to COVID-19 (including but not limited to CDC, OSHA, Governor Brown, Oregon Health Authority, and Multnomah County Health Department). The applicable guidance and requirements include, but are not limited to, those pertaining to Oregon phased reopening and sector activities, reduction in gathering sizes appropriate to the type of location and activity, complying and implementing health protocols, maintaining social distancing, and wearing face coverings. Consultant shall have a satisfactory safety plan and protocols addressing COVID-19 precautions related to Consultant’s activities under this Price Agreement. Consultant shall monitor for updated guidance and requirements and update its plan and protocols accordingly. Consultant shall provide a copy of Consultant’s safety plan and protocols to City upon City’s request. Consultant is solely responsible for implementing a COVID safety plan and protocols and addressing any COVID-19 related claims pertaining to its activities and provision of Services under this Price Agreement. In the event that Consultant’s employees or its subcontractor’s employees exhibit symptoms of COVID infection, Consultant shall follow City’s contact tracing and response protocols which shall be made available to the Consultant.

35) Attachments

The following attachments are incorporated into this Price Agreement.

- (a) Exhibit A – Statement of Work
- (b) Exhibit B – Compensation
- (c) Exhibit C – Consultant’s Hourly Rates
- (d) Exhibit D – Sample Task Order
- (e) Exhibit E – RFP 00001468
- (f) Exhibit F – Consultant’s Proposal in response to RFP 00001468

CONSULTANT SIGNATURE:

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

This Price Agreement constitutes the entire agreement between the City and Consultant 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 Consultant quotation or invoice.

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

This Price 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 Price Agreement to be executed.

I, the undersigned, agree to perform work outlined in this Price Agreement in accordance to the Terms and Conditions and the Statement of Work (Exhibit A); 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

(Consultant's Name)

BY: _____ Date: _____

Name: _____

Title: _____

CONTRACT NUMBER: 3000XXXX

CONTRACT TITLE: PROJECT 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

EXHIBIT A
Statement of Work

Consultant's and City's Project Manager for this Contract are:

For City of Portland:	For Consultant:
Name:	Name:
Title:	Title:
Address:	Address:
City, State:	City, State:
e-mail:	e-mail:
Copy to: (BUYER)	Copy to:
Procurement Services	
1120 SW 5 th Ave.	
Portland OR 97204	

1. CONSULTANT KEY PERSONNEL

The Consultant shall assign the following Key Personnel to do the work in the capacities designated and agrees not to substitute these personnel while working on the Contract without the express approval of the City, which approval shall not unreasonably be withheld:

NAME	ROLE ON PROJECT

2. SUB CONSULTANTS

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

NAME	ROLE ON PROJECT	SUBCONTRACT AMOUNT

For Contracts valued \$50,000 or more, the Consultant shall submit subconsultant payment and utilization information electronically in the Contract Compliance Reporting System, reporting ALL subconsultants employed in the performance of this agreement. More information on this process may be viewed on the City Procurement website at: <https://www.portlandoregon.gov/bfrs/75932>.

3. TASK ORDERS

Work performed under this Price Agreement must be authorized via a written Task Order (sample attached as Exhibit D) signed by the City and the Consultant. The scope of work, schedule, deliverables, and compensation for each project will be defined in the Task Order prior to commencement of the work. Any change to the scope of work, schedule, deliverables, and compensation must be agreed upon by the City and the Consultant in writing as an amendment to the Task Order.

Exhibit A – Statement of Work

The Bureau Director and the Chief Procurement Officer shall approve Task Orders and Task Order amendments in the following scenarios: 1) When amending the Task Order to increase compensation is greater than 25% of the original Task Order amount or 2) When a Task Order exceeds \$125,000.

Compensation for each Task Order will be determined through negotiation with the Consultant based on the scope of work, the hours the Consultant estimates for performance of the work and the Consultant's hourly rates, subject to a predetermined cap for the maximum compensation for the particular Task Order. If the work requires fewer hours than those estimated, the Consultant will be paid for the actual hours necessary to complete the Task Order. If the Consultant underestimates the number of hours that are required to perform the work, the negotiated maximum compensation for the Task Order shall be the cap of the compensation to be paid. Compensation may be amended for documentable circumstances not reasonably foreseeable to either party at the time the Task Order was issued, or for changes to the scope of work or deliverables requested by the City.

The Consultant must be able to start the work per the Task Order no later than seven (7) calendar days from the date of the Notice to Proceed as projects often require work with short deadlines. If the Consultant is unable or unwilling to complete the project within the required time, it shall so state in writing to the City's Project Manager and shall forfeit the Task Order within 24 hours of being notified.

Task Orders will be negotiated on a rotational basis. In the event the City and a Consultant cannot reach a favorable agreement on the maximum compensation for a specific Task Order, the City shall terminate negotiations and commence negotiations with the next Consultant from the rotational list. Continual difficulties in negotiating compensation caps or repeated unavailability or inability to perform Task Orders may result in removal of a Consultant from the rotation list and cancellation of the Consultant's Price Agreement with the City.

In the event that the Price Agreement maximum amount is reached prior to the end of the Price Agreement term, that Consultant will be removed from the on-call rotation list.

Following the execution of each Task Order, the City's Project Manager will work directly with the Consultant for the duration of the project unless otherwise noted on the Task Order.

4. SCOPE OF WORK

The Consultant shall provide engineering services as needed to complete the design of projects or project tasks as requested within potentially limited time frames and shall be expected to work closely with designated City personnel.

The Consultant may be called on to perform any combination of the tasks listed below. For each identified project, the City will provide the general scope of work. The Consultant will develop and negotiate the specific scope of work, budget, deliverables and schedule. These details shall be agreed upon in writing by the Consultant and the City in individual Task Orders for each project.

Equity in utilization of subcontractors is of paramount importance to the City for the work anticipated under this price agreement, and as such the Consultant has committed to support the City's equity and corporate responsibility initiatives to increase certified D/M/W/SDV/ESB firms' participation. In accordance with City Council's direction to provide for maximum utilization of State of Oregon certified D/M/W/SDV/ESB firms, each negotiated Task Order shall include D/M/W/SDV/ESB firms as subconsultants to the maximum extent possible. The City has set an aspirational goal of 30% minimum D/M/W/SDV/ESB utilization based on total Task Order amount. Consultants shall be required to make good faith efforts to contract with D/M/W/SDV/ESB subconsultants.

4.1. The types of services include, but are not limited to, the following:

- 4.1.1. Design of structural alterations to existing structures, such as new openings in floors and walls, installations of lifting devices and systems, design and selection of grating or load

Exhibit A – Statement of Work

- supporting floor and vault covers, design of equipment and pipe support systems, and structural rehabilitation evaluations and design for existing structures.
- 4.1.2. Load studies of existing structures to ensure that adequate safety factors remain after the installation of new equipment.
- 4.1.3. Seismic analyses of existing structures and design of seismic upgrades.
- 4.1.4. Structural design for large sewers and manholes.
- 4.1.5. Structural design for concrete culvert headwalls and inlet structures.
- 4.1.6. Structural design for concrete forebays and valve structures on water quality.
- 4.2. For any work under this Price Agreement the Consultant shall:
 - 4.2.1. Proceed with minimal direction and supervision.
 - 4.2.2. Provide Project Management and coordination of design elements.
 - 4.2.3. Utilize the City's Heron project management system (based on e-Builder Enterprise) for all project communications, invoices, document management, deliverable transmittal and review processes, and project execution.
 - 4.2.4. Provide monthly status reports on budget, schedule and work completed for each task order when invoices are submitted through the Heron system.
 - 4.2.5. Independently coordinate with other City bureaus.
 - 4.2.6. Assist in securing City land use and construction approvals.
 - 4.2.7. Assist in securing permits from other agencies.
 - 4.2.8. Conduct pre-design and alternative analysis.
 - 4.2.9. Provide final design services including report preparation, calculations, utility coordination, providing Quality Assurance/Quality Control, preparation and submission of biddable plans and contract documents, value engineering, technical writing, control descriptions and systems integration documentation, and preparation of Operation & Maintenance manuals.
 - 4.2.10. Comply with applicable design guidelines including:
 - 4.2.11. the City CAD and BIM Guidelines;
 - 4.2.12. the City Equipment Naming Guidelines;
 - 4.2.13. the City Electrical and Instrumentation Guidelines;
 - 4.2.14. the City Control Description Template and Requirements;
 - 4.2.15. Standard Construction Specifications for the City of Portland;
 - 4.2.16. the City Operations and Maintenance Group (formerly Wastewater Group) Standards;
 - 4.2.17. All other applicable the City manuals, policies and conditions included within the scope of each project.
 - 4.2.18. Support construction activities through on-site visits, submittal review, responses to requests for information, design clarification preparation, commissioning, troubleshooting, system training, and support of as-built drawings.
 - 4.2.19. Comply with sustainable procurement practices as they apply to potential Task Orders and sustainability practices during the design process. Sustainability in the technical requirements, deliverables or evaluation criteria can be seen at the Sustainable Procurement Program website at <https://www.portlandoregon.gov/bfrs/37732>.
- 4.3. **Sustainability Requirements**
 - 4.3.1. Concrete Environmental Product Declarations (Concrete EPDs)

For all concrete mix designs specified for projects at a volume of 50 cubic yards or more, a product-specific Type III Environmental Product Declaration (EPD) that is third-party verified and within its 5-year period of validity for that specific concrete mix design is required to be submitted to the City. EPDs shall be submitted to the Bureau of Environmental Services' Materials Testing Lab at concreteEPD@portlandoregon.gov along with the other required mix design information.
 - 4.3.2. Low Global Warming Potential (GWP) Concrete Mixes

The Consultant is encouraged work with the City in identifying low GWP concrete mixes that will meet applicable performance requirements for projects. Mix-specific GWP data shall be obtained from mix-specific concrete EPDs as defined above. A low GWP is

Exhibit A – Statement of Work

defined in relation to more typical mix alternatives that also meet the performance requirements. If a low GWP concrete mix is identified and approved for a project, the Consultant shall submit to the Bureau of Environmental Services' Materials Testing Lab (at concreteEPD@portlandoregon.gov) a narrative regarding the workability of the low GWP concrete mix such as set times, strength gain, finishability, and any other considerations that characterize the mix's impacts to the project schedule and cost. The narrative shall be submitted within 90 days of the low GWP mix first being used on the project.

4.4. Work Performed by the City

The City has assigned a Project Manager to oversee the Consultant's work and provide support as needed. The City's Project Manager or delegate will have the sole authority to issue Task Orders to Price Agreements issued from this Price Agreement; however, issued Task Orders may have a separate assigned manager. The City will make available copies of the appropriate design guidelines and standards manuals.

The City will also provide the following services as requested:

- 4.4.1. Pavement corings
- 4.4.2. Profile and invert elevations of the existing combination, storm, and sanitary sewer system (AutoCAD format)
- 4.4.3. Right-of-Way services
- 4.4.4. Electronic quarter section topographic maps (AutoCAD format)
- 4.4.5. Bid book front-end documents (e.g. procurement and contracting requirements and bidding forms)
- 4.4.6. Review of specified deliverables at critical progress points
- 4.4.7. Survey
- 4.4.8. Public Involvements

Other project specific duties the City will perform shall be identified in the individual Task Orders.

5. AUTHORIZATION TO PROCEED

Irrespective of the effective date of the Contract, the Consultant shall not proceed with any work required under this Contract without a written authorization to proceed from the City. Any work performed or expenses incurred by the Consultant prior to the Consultant's receipt of authorization to proceed shall be entirely at the Consultant's risk.

EXHIBIT B Compensation

1. Compensation

- 1.1. The City agrees to pay Consultant a sum not to exceed \$500,000 for the work ordered and accepted during the Initial Term (five years), and if services are extended a sum not to exceed \$100,000 per each additional year, based on the hourly rates and any City approved reimbursable costs identified below.
- 1.2. Payments shall be made to Consultant according to the rates identified in Exhibit C.
- 1.3. Payment Terms: Net 30 Days

The City shall pay the Consultant as follows upon the submission of approved invoices:

2. Standard Reimbursable Costs

The following costs will be reimbursed without cost-increase:

- 2.1. If pre-approved by the City, allowable costs of travel shall be determined in accordance with the General Services Administration (GSA) per diem rates in effect on the date of this Contract. Consultant's time spent traveling to the Portland area, however, will not be reimbursed. All costs incurred for local travel within the Portland metropolitan area, and a 100-mile radius, including but not limited to, vehicle mileage and parking fees are considered as included in the overhead rate, and shall not be reimbursed separately.
- 2.2. Personal expenditures or expenditures not related to the Contract are not eligible for reimbursement.

3. Hourly Rates

- 3.1. The Consultant shall be compensated in accordance with the hourly rates set forth in attached Exhibit C, Hourly Billing Rate Table. In no way shall the cost of hours billed by the Consultant exceed the total Contract amount throughout the term of this Contract.
- 3.2. Discretionary 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:
 - 3.2.1. No increases will be granted before the one-year anniversary of the Contract;
 - 3.2.2. No more than one increase shall be granted per Contract year;
 - 3.2.3. Rate increases may not exceed the preceding calendar year's Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the West Region Class Size A average inflation rate (as determined from the US Department of Labor statistics);
 - 3.2.4. Rate increases shall not be retroactive.

Other than as stated above, hourly rates may not be increased.

4. Subconsultant Costs

Compensation for subconsultants shall be subject to the same billing restrictions and requirements as those of the Consultant. Consultant may bill Subconsultant services at cost plus a 5% mark-up and shall not be subject to any cost increase. Other Direct Expenses, as stated under Standard Reimbursable Costs, shall be billed at cost without mark-up. Allowable subconsultant services can only be marked-up once. For example, the Prime is not allowed to mark-up on a second-tier subconsultant's allowable expenses if it has already been marked-up by the Prime's subconsultant. Mark-up is not allowable when using intergovernmental resources to complete work and will not be accepted.

5. Progress Payments

5.1. Compensation to the Consultant shall be based on the following:

- 5.1.1. Invoices submitted to the City including the appropriate required information as outlined below and all supporting documentation relating to charges expressed on the invoice.
- 5.1.2. The invoice shall be submitted to BES in Heron.
- 5.1.3. Detailed monthly Project Progress Reports submitted to the City Project Manager by email.

5.2. The Consultant is required to follow Generally Accepted Accounting Principles (GAAP).

Personal expenditures or expenditures not related to the Project or part of the Contract are not eligible for reimbursement. On or before the 15th of each month, the Consultant shall submit to the City Accounts Payable Department an invoice for work performed by the Consultant during the preceding month.

5.3. The Consultant shall enter all pertinent information below on their invoice in order for the City to review and authorize processing of invoices for payment.

5.3.1. Contract Number, City's Project Title and any other identifying information requested by the City

5.3.2. Invoice date

5.3.3. Date range during which the services are being invoiced for work provided

5.3.4. Invoice number. The last invoice submitted on the Project must be clearly labeled "Final Invoice"

5.3.5. City Project Manager's name

5.3.6. Amount being invoiced for the current invoice

5.3.7. Consultant shall describe all services performed with particularity and by whom it was performed (Consultant's individuals or subconsultant, labor category, direct labor rate, hours worked during the period) and shall itemize and explain all expenses for which reimbursement is claimed. If reimbursable expenses are authorized, identify by line item categories, 1) Travel Expenses and 2) General Reimbursable Expenses. Note: Invoices for Basic Services under a specific Task shall be for completed Basic Services only and shall indicate the percentage of the total Basic Services for that Task that the amount invoiced represents

5.3.8. The Consultant shall also attach photocopies of claimed reimbursable expenses, as applicable and preapproved authorization document from the City Project Manager

5.3.9. The Consultant shall stamp and approve all subconsultant invoices and note on subconsultant invoice what they are approving as "billable" under the Contract

5.3.10. The billing from the Consultant must clearly roll up labor and reimbursable costs for the prime and subconsultants – matching the subconsultant invoices

5.3.11. To the extent the City disputes any portion of the amount requested in the application for payment, the City shall indicate the undisputed amounts and the amounts that are in dispute. The City shall pay the undisputed amounts and indicate to whom such payments shall be made. The Consultant shall make such payments to itself and to subconsultants as indicated by the City for such undisputed amounts. The City and Consultant and, if applicable, the subconsultant shall then work to reach agreement on the disputed amounts.

5.4. Prior to initial billing, the Consultant shall develop a billing format for approval by the City. Submission of the draft billing document shall be emailed to the City Project Manager for final review and approval.

6. 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, Consultants shall execute the City's standard ACH Vendor Payment Authorization Agreement and provide required documentation. Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit

Exhibit B – Compensation

payment for services rendered directly into Consultant accounts with financial institutions. All payments shall be in United States currency.

Exhibit C – Consultant's Rates

EXHIBIT C
Consultant's Rates (attached separately)

EXHIBIT D
SAMPLE TASK ORDER



ENVIRONMENTAL SERVICES
CITY OF PORTLAND

working for clean rivers



CONTRACT NUMBER **3100...**
Task Order Number PM&C fills out

Project: project name
Project No: project number

The Price Agreement by and between **Consultant Name**, hereinafter called Consultant, and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called City, provides for **Type of service** on-call services.

Original Price Agreement Value: PM&C fills out
NTE Amount: PM&C fills out
Previous Task Order Amounts: PM&C fills out
Total of all Task Orders to Date: PM&C fills out

As directed in the Price Agreement, this executed Task Order directs Consultant to perform the services as outlined below.

A.1 Project Background:

A.2 Scope:

A.3 Requirements:

Consultant must perform the following task(s):

A.3.1

A.3.2

A.3.3

A.4 Deliverables and Schedule:

Deliverables and Schedule for this Task Order shall include:

1.

- 2.
- 3.

All deliverables must be completed in an approved format.

A.5 Period of Performance:

The period of performance for this Task Order 'is NTP through [Click to enter a date..](#)

A.6 Key Personnel for this Task Order:

The Consultant shall assign the key personnel to do the work in the capacities designated as shown in Exhibit XX to this Task Order. Consultant may not change personnel unless authorized by a written Amendment to the Task Order.

A.7 Hours and Cost:

The maximum compensation for this Task Order shall not exceed [\\$amt of request](#) unless authorized by a written Amendment to the Task Order. The hourly rates shall be as indicated in the Price Agreement. The Tasks breakdown of the not-to-exceed amount is shown in Exhibit XX to this Task Order. Consultant may not reallocate compensation between Tasks without the written approval of the Project Manager.

A.8 SUBCONSULTANT Participation for this Task Order:

Consultant agrees they will use the following subconsultant(s) on this Task Order in the following Total Dollar amounts and Percentages listed. Consultant may not change subconsultants unless authorized by a written Amendment to the Task Order.

SUBCONSULTANT(S) TO BE USED	D/M/W/ESB CERTIFICATION (DBE, MBE, WBE, ESB, NONE)	ROLE ON PROJECT	TOTAL DOLLARS COMMITTED	PERCENTAGE
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	

If aspirational DMWESB subconsultant participation is not possible for this Task Order, provide justification below:

Procurement Services to complete this section
Cumulative D/M/W/ESB Participation for the Entire Price Agreement
Current D/M/W/ESB participation is \$ _____; Subcontract Total - ____%; Price Agreement Total - ____%
Proposed D/M/W/ESB participation is \$ _____; Subcontract Total - ____%; Price Agreement Total - ____%

All provisions of the original Price Agreement shall remain in full force and effect.

This Task Order 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 Task Order.

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

CONSULTANT:

By: _____

Date: _____

Name: _____

Title: _____

CITY OF PORTLAND:

Chief Procurement Officer

Accounting Info:

WBS, Internal Order, and/or Grant #:

DPO#:

EXHIBIT E

RFP 00001468 (attached separately)

EXHIBIT F

Consultant's Proposal in response to RFP 00001468 (attached separately)