

CITY OF PORTLAND, OREGON

SOLE SOURCE PROCUREMENT 108337

CONTRACT

PORTLAND RIVERFEST EVENT SERVICES

This Contract, made and entered into this 20th day of December, 2008, by and between Oregon Trout, an Oregon nonprofit corporation, hereinafter called Contractor, and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called City,

WITNESSETH:

ARTICLE I. The parties hereto mutually covenant and agree to and with each other as follows:

1. **SCOPE OF WORK:** To provide services for event design, coordination, and operations of the multi-day Portland Riverfest (Event) tentatively scheduled to take place during the summer of 2008 on behalf of the City of Portland. All work shall be performed in accordance with Exhibit A Statement of Work.

2. **EFFECTIVE DATE AND DURATION:** The term of this Contract shall begin on the date of last signature by the parties to this Contract, and shall expire after the Event unless terminated sooner as provided herein.

3. **CONSIDERATION:** The City agrees to pay Contractor a sum not to exceed \$15,000.00 for accomplishment of the work. Payments shall be made to the Contractor according to the schedule identified in Exhibit A.

4. **INVOICING:** The City of Portland is a tax-exempt governmental agency. Prices shall not include federal, state, local, or other taxes howsoever designated now or hereafter, unless the City is responsible therefore. The Contractor shall submit billings in a timely fashion. Invoices shall be sent to:

BUREAU OF PLANNING
ATTN: JOAN HAMILTON
1900 SW 4TH AVENUE ROOM 7100
PORTLAND, OR 97201

Contractor is at all times solely responsible for billing accuracy and timeliness; Contractor shall provide invoices for the goods and services to the City in paper form. Invoices will not be processed for payment nor will the period of cash discount commence until receipt of a properly completed invoice and until all invoice items are received and satisfactory performance of Contractor has been attained.

5. **INVOICE PAYMENT:** Revised invoices or billing adjustments shall apply only to goods and services that can be verified by the City. Requests for such adjustments shall be submitted in writing to the City within thirty (30) days of acceptance of the goods and services, shall reference the original invoice in which the error was made, and contain the level of detail defined in billing detail above. Billing adjustments shall not be submitted to the City in any form other than a paper document. The City shall pay undisputed portions of disputed or incorrect invoices where the City can easily identify the undisputed portion. Failure by the City to pay any portion of or the entire invoiced amount based on Contractor billing errors, goods and services

that fail to comply with this Contract, or disputed charges shall not constitute default under this Contract. Payment of an amount less than the total amount due on all unpaid invoices shall be any particular amount or item, which is subject to any claim of error or dispute between the parties, without prior written City approval.

ARTICLE II. Shipping of goods and materials shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Purchasing Agent or the Auditor. The insurance requirements are as follows: : .

6. INSURANCE – PROOF OF COVERAGE

Work shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Purchasing Agent or the Auditor.

Insurance - Public Liability and Property Damage

The Contractor shall provide and maintain public liability and property damage insurance that protects the Contractor and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from the Contractor's work under this contract. The insurance shall provide coverage for not less than:

For Personal Injury	\$1,000,000 for each occurrence
For Property Damage	\$1,000,000 for each occurrence

The insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insureds the City and its officers, agents and employees. 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.

The coverage shall apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the contract, the Contractor shall provide a new policy with the same terms. The Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the contract.

Automobile Liability

Automobile liability insurance with a combined single limit of not less than \$500,000 each occurrence for bodily injury and property damage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor.

Workers' Compensation Insurance

Prior to the performance of any work under a contract awarded by the City, the Contractor shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656, the Contractor shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under the contract.

ARTICLE III. In consideration of the premises, and in accordance with the provisions for acceptance and payment for work set forth in these Standard Terms and Conditions and Special Terms and Conditions, the City and Contractor hereby agrees as follows:

STANDARD TERMS AND CONDITIONS

- 1. ENTIRE CONTRACT:** This Contract and its Exhibits represent the entire Contract between the parties. This Contract is a final, complete exclusive statement of the terms thereof, and supersedes and terminates any prior Contract, understanding, or representation between the parties with respect thereto, whether written or oral.
- 2. INDEPENDENT CONTRACTOR STATUS:** The Contractor is engaged as an independent Contractor and shall be responsible for any federal, state, and local taxes and fees applicable to payments hereunder. The Contractor, its Subcontractors, and their employees are not employees of the city and are not eligible for any benefits through the city including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.
- 3. NO THIRD PARTY BENEFICIARIES:** Contractor and City are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, assigns or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.
- 4. SUCCESSORS IN INTEREST:** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.
- 5. COMPLIANCE WITH APPLICABLE LAW:** In connection with its activities under this Contract, Contractor shall comply with all applicable federal, state and local laws and regulations. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this Contract. The following additional conditions in Appendix A as attached hereto apply to this solicitation and any resultant purchase order or contract:
- 6. GOVERNING LAW / VENUE:** The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its conflict of laws provisions. Any action or suits involving any question arising under this Contract shall be brought in the appropriate court in Multnomah County, Oregon. By signing this contract the Contractor agrees to in personal jurisdiction of the Oregon courts.
- 7. NONDISCRIMINATION:** Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS Chapter 659.425, and all regulations and administrative rules established pursuant to those laws.
- 8. INDEMNITY:** Contractor shall hold harmless, defend, and indemnify the City of Portland, its officers, employees, and agents, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature, including all attorney's fees and costs, resulting from or arising out of the activities of Contractor or its officers, employees, Subcontractors, or agents including intentional acts, or of its Subcontractors, agents or employees under this Contract.
- 9. ASSIGNMENT OF ANTI-TRUST RIGHTS** By entering into a contract, the Contractor, for consideration paid to the Contractor under the contract, does irrevocably assign to the City of Portland any claim for relief or cause of action which the Contractor now has or which may

accrue to the Contractor in the future, including, at the City's option, the right to control any such litigation on such claim for relief or cause of action, by reason of violation of 15 USC SS 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person, which goods or services are used, in whole or in part, for the purpose of carrying out the Contractor's obligation under this contract.

In the event the Contractor hires Subcontractors to perform any of the Contractor's duties under the contract, the Contractor shall require the Subcontractor to irrevocably assign to the City of Portland, as a third party beneficiary any right, title or interest that has accrued or may accrue to the Subcontractor by reasons of any violation of 15 USC SS 1-15, ORS 646.725 or ORS 646.730, including, at the City's option, the rights to control of any litigation arising thereunder, in connection with any goods or services provided to the Subcontractor by any person, in whole or in part, for the purpose of carrying out the Subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of the contract.

In connection with this assignment, it is an express obligation of the Contractor that it will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder to the City of Portland. It is an express obligation of the Contractor to advise the City Auditor or the Office of the City Attorney of Portland, Oregon:

- A. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
- B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to the City of Portland.

Furthermore, it is understood or agreed that in the event that any payment under such claim is made to the Contractor, it shall promptly pay over to the City of Portland its proportionate share thereof, if any, assigned to the state hereunder.

10. JUDICIAL RULING: If any provision of this Contract as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Contract or the validity or enforceability of the Contract.

11. SURVIVAL: The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

12. FUNDING: In the event the City, during the adoption of the City's annual budget, reduces, changes, eliminates, or otherwise modifies the funding for any of the projects identified herein, the Contractor agrees to abide by any such decision including revision or termination of services.

13. ASSIGNMENT AND SUBCONTRACTING: This Contract or any interest therein shall not be assigned or subcontracted to any other person or entity without the prior written consent of the City of Portland. In the event of transfer without prior written consent, the purported transfer is void and the Contractor remains liable for performance of the contract. The Contractor shall not subcontract its work under this Contract, in whole or in part, without the prior written approval of the City. Notwithstanding City approval of a Subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if Subcontractors are employed in the performance of this Contract, the Contractor and its Subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

14. SEVERABILITY: In the event that a court, government agency, or regulatory agency with proper jurisdiction determines that this Contract, or any provision of this Contract, is unlawful, this Contract, or that provision of the Contract to the extent it is unlawful, shall terminate. If a provision of this Contract is terminated but the parties can legally, commercially, and practicably continue without the terminated provision, the remainder of this Contract shall continue in effect.

15. LIENS: Contractor shall not permit any claim to be filed or prosecuted against the City or any lien against the property purchased in connection with this Contract and agrees to assume responsibility should such lien or claim be filed.

16. ENVIRONMENTALLY PREFERABLE PROCUREMENT: Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, contractors are encouraged to incorporate these Principles into their scope of work with the City wherever possible. Therefore in accordance with the Principles and the City's Sustainable Procurement Strategy, it is the policy of the City of Portland to encourage the use of products or services that help to minimize the human health and environmental impacts of City operations. Contractors are encouraged to incorporate environmentally preferable products or services into their responses wherever possible. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, recyclable in local recycling programs, is made from recycled materials, and/or is collected by the vendor for reuse/recycling.

17. FORCE MAJEURE: Neither City nor Contractor shall be held responsible for performance if its performance is prevented by unforeseeable acts or events beyond the party's reasonable control including, but not limited to: acts of God; fire, flood, earthquakes or other catastrophes; strikes or other labor unrest; power failures, electrical power surges or current fluctuations; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities; or any other circumstances that are not within its reasonable control.

18. AMENDMENTS: All changes to this Contract, including changes to the scope of work and contract amount, must be made by written amendment and approved by the Purchasing Agent to be valid. The City's Purchasing Agent is authorized to execute amendments to this Contract without the City's further approval, provided such amendments are in writing, signed by both parties, and approved by the City Attorney's Office. Contractor understands that City employees have no actual or apparent authority to enter into amendments, except as may be specifically granted by the City Council to the Purchasing Agent, or to waive the approval of the City Attorney's office.

19. NON-WAIVER: No waiver, consent, modification, or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purposes given. The failure of the City to enforce any provision of this Contract shall not constitute a waiver of that or any other provision.

20. COORDINATION WITH OTHER CONTRACTORS AND OTHER SERVICES: The Contractor shall cooperate fully with other Contractors and City employees providing systems or support to the City during installation, operation, or maintenance of the goods and services. This includes planning for and integration of the goods and services provided under this Contract with

those provided by others. Further, Contractor shall make every reasonable effort to cooperate with City to minimize and/or prevent any degradation of the other computer and telecommunications systems, equipment, or services of the city by the installation, operation, or maintenance of the goods and services. Contractor's failure to cooperate with the city and other Contractors may be grounds for termination as provided herein.

21. ACCESS TO RECORDS: The Contractor shall maintain professional accounting standards and on a current basis, and the City and its duly authorized representatives shall have access to, the books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request.

22. AUDITS: The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by ACCESS TO RECORDS. Audits shall be conducted in accordance with generally accepted auditing standards.

If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor 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. If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies as provided under EARLY TERMINATION OF CONTRACT and REMEDIES. In addition, the Contractor agrees to abide by the standards of the Office of the Comptroller set forth in May, 2002 Office of Justice Programs (OJP) Financial Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A87, A-102, A-122, A-128, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this contract shall be retained by the Contractor for a minimum of five (5) years for purposes of State of Oregon or the OJP Financial Guide from the Office of the Controller and apprise itself of all rules and regulations set forth.

23. EMPLOYEES NOT TO BENEFIT: No City employee or elected official of the City shall be admitted to any share or part of this Contract or to any benefit that may arise there from; but, this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

SPECIAL TERMS AND CONDITIONS

1. CITY FURNISHED PROPERTY: No materials, labor or facilities will be furnished by the City unless otherwise provided for within this Contract.

2. RIGHT TO CHANGE: The City reserves the right to order changes to the goods, materials, equipment and services outlined herein. The City and the Contractor shall determine a fair and equitable cost and if required, additional time for such changes. All such changes shall be ordered in writing and agreed to by the parties.

3. NOTICE: Except as otherwise stated in this Contract, any notice or demand to be given under this Contract shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

CITY	CONTRACTOR
BUREAU OF PURCHASES ATTN: JASON WEINSTEIN 1120 SW FIFTH AVE RM 750 PORTLAND, OR 97204 WITH COPY TO: BUREAU OF PLANNING ATTN: JOAN HAMILTON 1900 SW 4 TH AVENUE ROOM 7100 PORTLAND, OR 97201	OREGON TROUT ATTN: 65 SW YAMHILL ST STE 300 PORTLAND, OR 97204

If either party changes its address or if a party's representative changes, the other party shall be advised of such a change in writing, in accordance with this section.

4. EARLY TERMINATION OF CONTRACT: The City and the Contractor, by mutual written agreement, may terminate the Contract at any time. The City, on thirty (30) days written notice to the Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion. Either the City or the Contractor may terminate this Contract in the event of a material breach of the Contract by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and the party's intent to terminate. If the party has not entirely cured the breach within thirty (30) days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

5. SUSPENSION OF THE WORK: The City may at any time give notice in writing, by electronic mail, or by facsimile to the Contractor to suspend this Contract. The notice of suspension shall specify the date of suspension and the estimated duration of the suspension. In no event shall the Contractor be entitled to any lost or prospective profits or any incidental or consequential damages because of suspension.

6. PAYMENT ON EARLY TERMINATION: In the event of termination under EARLY TERMINATION OF CONTRACT hereof, the City shall pay the Contractor for goods and services in accordance with the Contract prior to the termination date and delivered to City provided that such goods and services conform to Contract specifications and are of use to the City. In the event of termination under EARLY TERMINATION OF CONTRACT hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor for goods delivered and services performed in accordance with the Contract prior to the termination date subject to set off of excess costs, as provided for in Remedies. In the event of early termination all of the Contractor's work product shall become and remain property of the City. Under no circumstances shall the City be subject to early termination penalties for recurring charges for goods or services that the City cancels during the term of this Contract.

7. REMEDIES: In the event of termination under EARLY TERMINATION OF CONTRACT by the City due to a breach by the Contractor, the City may purchase goods and services outstanding from another Contractor and the Contractor shall be liable for additional procurement costs incurred by the City. The City also shall be entitled to any other equitable and legal remedies that are available. Except as expressly contained in this Contract, the remedies for a breach of this Contract shall not be exclusive, or construed as a limitation on any

other equitable and legal remedies that are available., including without limitation rights or remedies that are or may become available.

8. PERMITS AND LICENSES: The Contractor shall be required to have or obtain, at their expense, any and all permits and licenses required by the City and/or County, state and Federal (except FCC radio licenses), pertaining to the materials and services to be provided.

9. COPYRIGHTS AND PATENTS: The City requires the following regarding copyrighting and patent pending on work products pertaining to this Contract:

a. Copyright: All work products of the Contractor which result from this contract are the exclusive property of the City. If this Contract results in a copyright, the City of Portland reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for governmental purposes, the work or the copyright to any work developed under this Contract and any rights of copyright to which the Contractor or its sub-vendor, purchases ownership with grant support.

b. Patent: If this Contract results in the production of patentable items, patent rights, processes, or inventions, the Contractor or any of its sub-vendors shall immediately notify the City. The City will provide the Contractor with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

10. SPECIFICATIONS: This Contract authorizes the Contractor to provide and the City to procure those goods, materials, equipment and services, and establishes the terms and conditions for the City to obtain said goods, materials, equipment and services from the Contractor. Goods, materials, equipment and services to be provided under this Contract are described in the Exhibits hereto. The Contractor shall provide to the City those goods, materials, equipment and services described in the Exhibits in accordance with the prices shown herein. Payment shall be made only in accordance with the payment schedule identified herein.

11. WARRANTY: The Contractor shall guarantee its products to be free from defects in materials and workmanship, given normal use and care, over the period of the manufacturer warranty. The Contractor shall agree to repair and/or immediately replace without charge (including freight both ways) to City Users any product or part thereof, which proves to be defective or fails within the warranty period as specified.

12. NEWS RELEASES AND PUBLIC ANNOUNCEMENTS: The Contractor shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representatives of the City, except with prior specific written authorization from the City. Contractor shall not issue any news release or public announcement pertaining to this Contract or the project without prior written approval of the City, which may be withheld in the City's sole discretion. A minimum of three (3) business days notice is required for a response to a request for such approval. If approval is not issued within the three (3) business day period, the request shall be deemed denied.

13. PROPRIETARY AND CONFIDENTIAL INFORMATION: The Oregon Public Records Law, ORS 192.410 et seq. strictly governs the City's treatment of requests for public records pertinent to this Contract.

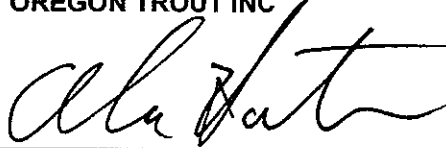
Contractor agrees to hold in confidence any and all information of the City's it receives while performing any of the contemplated function of the Contract and shall not disclose any such information to third parties.

ARTICLE IV. It is understood and agreed by the parties hereto that:

1. Any reference in this Contract to the scope of work or specifications is intended as a convenience to the parties in administration of the Contract. Therefore, in the absence of an express statement to the contrary herein, any restatement or partial restatement in this Contract of any provision of the scope of work or specifications is not intended, nor shall be construed to change, alter, modify, amend, or delete the requirements of the scope of work or specifications.
2. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and State of Oregon shall be followed with respect to this Contract.
3. An offeror submitting a bid certifies that no officer, agent or employee of the City who has a pecuniary interest in this bid has participated in preparation of the bid, that the bid is made in good faith without fraud, collusion, or connection of any kind with any other offeror of the same call for bids, and that the offeror is competing solely in its own behalf without connection with, or obligation to any undisclosed person or firm.

IN WITNESS WHEREOF, Contractor and City have caused this contract to be executed in triplicate by their duly authorized representative(s), all on the day and year first above written.

OREGON TROUT INC



(NAME)
(TITLE)

ALAN NORTON
MANAGING DIRECTOR

Address:

65 SW YAMHILL ST STE 300
PORTLAND, OR 97204

Telephone No.

503-222-9091

Federal Tax ID

Business License

CITY OF PORTLAND

APPROVED AS TO FORM


CITY ATTORNEY

JEFFREY B. BAER, PURCHASING AGENT

EXHIBIT A**STATEMENT OF WORK****1. SCOPE OF WORK**

To provide services for event design, coordination, and operations of the multi-day Portland Riverfest ("The Event") tentatively scheduled to take place during the summer of 2008 on behalf of the City of Portland.

2. TECHNICAL OR REQUIRED SERVICES AND SCHEDULE:

Contractor shall arrange services and provide oversight necessary to secure event design and coordination for The Event proposed for late summer 2008. These services include facilitating:

- a. Design, facilities, and staffing for the Riverfest event;
- b. Coordination of group meetings, including meeting times, agendas, and meeting summaries;
- c. Development of project timelines;
- d. Partnerships with additional organizations; and
- e. Provision of additional resources to assure a successful event.

3. DELIVERABLES

- a. Project schedule for calendar year 2008;
- b. Meeting schedule for the organizing group and supporting committees for calendar year 2008;
- c. List of potential partners, including contact information;
- d. List of potential funding sources, including contact information;
- e. Written, preliminary design for the event showing likely activities, venues, dates, and times—as well as descriptive information to provide context and enable event marketing;
- f. Facilitation for the organizing ("Helm") group and the planning ("Core") group; and
- g. Written summary highlighting services performed and products developed.

4. WORK PERFORMED BY THE CITY

- a. City of Portland Bureau of Planning shall make available sufficient hours of staff personnel as required to meet with the Contractor and provide such information as required. The Bureau of Planning has assigned a project manager who will oversee the work and provide support as needed.
- b. The City shall be responsible for implementing and maintaining usual, customary and appropriate internal accounting procedures and controls, internal controls, and other appropriate procedures and controls for the City. These controls will include information technology, proprietary information, and trade secret safeguards if appropriate to City work.

5. PAYMENT SCHEDULE

City will pay a total of \$15,000 to Contractor for services and oversight of work as described in Exhibit A, Statement of Work. The City shall pay \$14,000 at the start of the term of this contract and \$1,000 upon receipt of the written summary and invoice from Contractor.

6. TIME IS OF THE ESSENCE: Time shall be of the essence in this Contract. Contractor shall make every reasonable effort to meet established delivery dates and other deadlines. Circumstances that may delay the delivery of goods and services from established delivery dates and other deadlines, including excusable delays and force majeure events, shall be reported to the City immediately upon discovery. The City and Contractor shall mutually agree upon any schedule or pricing change due to excusable delays or force majeure events in writing. In the event Contractor does not meet the established delivery dates or other deadlines and Contractor has failed to cure such breach within fifteen (15) days of written notice by the City,

the City may obtain the undelivered goods and/or non-performed service from another source, and no recurring charges, one-time charges, or termination charges or other penalties shall be due the Contractor. In addition, the City will be entitled to reasonable compensation as stated under REMEDIES.

APPENDIX A

Contractor shall observe all applicable state and local laws pertaining to public contracts. ORS Chapters 279A, 279B and 279C require every public contract to contain certain provisions. Pursuant to those chapters, the following provisions shall be a part of this contract, as applicable:

- Pursuant to ORS 279B.220, on every public contract, the Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the work provided for in the contract; shall pay all contributions or amounts due the Industrial Accident Fund from the Contractor or Subcontractor incurred in the performance of the contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- Pursuant to ORS 279C.505, on public improvement contracts, the Contractor shall make payments promptly, as due, to all persons supplying to such Contractor labor or material for the prosecution of the work provided for in such contract. The Contractor shall pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. The Contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. The Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall demonstrate that an employee drug-testing program is in place.
- Pursuant to ORS 279C.510(1), in every public contract for demolition, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. Pursuant to ORS 279B.225 and 279C.510(3) in every public contract and every public improvement contract for lawn and landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- Pursuant to ORS 279B.230(1), in every public contract, the Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- Pursuant to ORS 279B.230(2), in every public contract, all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- Pursuant to ORS 279B.235(1), in every public contract, the Contractor shall pay employees for overtime work performed under the public contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 *et. seq.*)
- Pursuant to ORS 279C.515(1), on public improvement contracts, if the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of such contract. The payment of a claim in the manner authorized by ORS 279C.515 shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

- Pursuant to ORS 279C.515(2), on public improvement contracts, if the Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contract agency or a Contractor, the Contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the Contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.
- Pursuant to ORS 279C.515(3), in every public improvement contract and every contract related to the public improvement Contractor, if the Contractor or Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- Pursuant to ORS 279C.520, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. The Contractor shall give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. In the case of contracts for personal services as defined in ORS 279C.100, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater. The Contractor shall give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- Pursuant to ORS 279C.530(1), in every public improvement contract, the Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. In every public contract, subject to ORS 279C, all employers working under the contract are subject employers that shall comply with ORS 656.017.
- Pursuant to ORS 279C.580(3)(a), the Contractor shall include in each public improvement subcontract for property or services entered into by the Contractor and a

Subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the Contractor to pay the Subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Contractor by the public contracting agency under such contract, and an interest penalty clause that obligates the Contractor to pay to the Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to ORS 279C.580(3), for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS 279C.515(2).

- Pursuant to ORS 279C.580(3), the Contractor shall include in each of its subcontracts for a public improvement, for the purpose of performance of such contract condition, a provision requiring the Subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580(B)(4) in each of its subcontracts and to require each of its Subcontractors to include such clauses in their subcontracts with each lower-tier Subcontractor or supplier.

- Pursuant to ORS 279C.830(2), in a public works contract subject to ORS 279C.800 to 279C.870, the Contractor shall pay the required fee to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279C.825(1). The fee shall be paid to the Commissioner pursuant to the administrative rule of the Commissioner.

Revised August 22, 2005