# CITY OF PORTLAND AGREEMENT FOR PROFESSIONAL, TECHNICAL, OR EXPERT SERVICES

CONTRACT NO. Click Here and Type

# SHORT TITLE OF WORK PROJECT: Click Here and Type

This contract is between the City of Portland, acting by and through its Elected Officials, hereafter called "City," and Click Here and Type, hereafter called Contractor. The City's Project Manager for this contract is Click Here and Type.

#### **Effective Date and Duration**

This contract shall become effective on Click Here and Type. This contract shall expire, unless otherwise terminated or extended, on Click Here and Type.

# Consideration

- (a) City agrees to pay Contractor a sum not to exceed Click Here and Type for accomplishment of the work.
- (b) Interim payments shall be made to Contractor according to the schedule identified in the STATEMENT OF THE WORK AND PAYMENT SCHEDULE.

Name (please p	rint):		•		
			CIAL SECURITY NUMBER	R (SSN) – LEAVE B	BLANK IF NO EIN
City of Portland	l Business License#		·		
				•	•
Citizensnip:	Nonresident alien	165140			
			Sole Proprietorship	Partnership	Corporation

# STANDARD CONTRACT PROVISIONS FOR PROFESSIONAL, TECHNICAL & EXPERT SERVICES (MANDATORY PROVISIONS)

# Access to Records

The Contractor shall maintain, and the City of Portland ("City") and its duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by the City.

### 2. Audits

- (a) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this agreement at any time in the course of the agreement and during the three (3) year period established by section 1, Access to Records. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

  (b) 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.
- (c) If any audit shows performance of services is not efficient in accordance with <u>Government Auditing Standards</u>, or that the program is not effective in accordance with <u>Government Auditing Standards</u>, the City may pursue remedies provided under section 5, Early Termination of Agreement and section 7, Remedies.

#### 3. Effective Date and Duration

The passage of the contract expiration date (as recorded on reverse side) shall not extinguish, prejudice, or limit either party's right to enforce this contract with respect to any default or defect in performance that has not been cured.

#### 4. Order of Precedence

This contract consists of the terms and conditions of this contract, the Request for Proposals (RFP) issued by the City, if any, and the Contractor's proposal in response to the RFP. In the event of any apparent or alleged conflict between these various documents, the following order of precedence shall apply to resolve the conflict: a) this contract's terms and conditions, b) the City's RFP, and c) the Contractor's proposal in response to the RFP.

### 5. Early Termination of Agreement

- (a) The City and the Contractor, by mutual written agreement, may terminate this Agreement at any time.
- (b) The City, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- (c) Either the City or the Contractor may terminate this Agreement in the event of a breach of the Agreement 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 of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

# 6. Payment on Early Termination

- (a) In the event of termination under subsection 5(a) or 5(b), Early Termination of Agreement hereof, the City shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.
- (b) In the event of termination under subsection 5(c), Early Termination of Agreement hereof, by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (a) of this section.
- (c) In the event of termination under subsection 5(c), Early Termination of Agreement hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7(a), Remedies.
- (d) In the event of early termination all of the Contractor's work product will become and remain property of the City.

#### 7. Remedies

- (a) In the event of termination under subsection 5(c), Early Termination of Agreement, hereof, by the City due to a breach by the Contractor, then the City may complete the work either itself, by agreement with another contractor or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, then the Contractor shall pay to the City the amount of the reasonable excess.
- (b) The remedies provided to the City under section 5, Early Termination of Agreement and section 7, Remedies for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.
- (c) In the event of breach of this Agreement by the City, then the Contractor's remedy shall be limited to termination of the Agreement and receipt of payment as provided in section 5(c), Early Termination of Agreement and section 6(b), Payment on Early Termination hereof.

#### 8. Subcontracts and Assignment

Contractor shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the City. Notwithstanding City approval of a 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 Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

# 9. Compliance with Applicable Law

In connection with its activities under this Agreement, Contractor shall comply with all applicable federal, state and local laws and regulations including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the administrative rules. Contractor shall complete the INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT, which is attached hereto and by this reference made a part hereof.

#### (a) Indemnity - Claims for Other than Professional Liability

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses arising out of death, or bodily injury to persons, or property damage caused by the negligence of the City.

(b) Indemnity - Claims for Professional Liability

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and subconsultants, agents or employees in performance of professional services under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses caused by the negligence of the City.

(c) Indemnity - Standard of Care

If Contractor's services involve engineering or consulting, the standard of care applicable to Contractor's service will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time such services are performed. Contractor will re-perform any services not meeting this standard without additional compensation.

#### 10. Insurance

During the term of this contract Contractor shall maintain in force at its own expense, each insurance noted below:

- (a) Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).
- (b) \_\_X\_\_ Required and attached or Waived by City Attorney:\_\_\_\_

General Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract, and shall provide that City of Portland, and its agents, officers, and employees are Additional Insured but only with respect to the Contractor's services to be provided under this Contract:

(c)	X Required and attached	or	Waived by City Attorney:
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Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or nonowned vehicles, as applicable:

(d) \_X\_ Required and attached or Waived by City Attorney: \_\_\_\_

Professional Liability insurance with a combined single limit of not less than \$1,000,000 per claim, incident, or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract. If insurance coverage is provided on a "claims made" basis, the successful Proposer shall acquire a "tail" coverage or continue the same coverage for three years after completion of the contract, provided coverage is available and economically feasible. If such coverage is not available or economically feasible, contractor shall notify City immediately.

- (e) On all types of insurance. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from the Contractor or its insurer(s) to the City.
- (f) Certificates of insurance. As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to the City at the time contractor returns signed contracts. The certificate will specify all of the parties who are Additional Insured and will include the 30-day cancellation clause and 10-day non-payment clause that provides that the insurance shall not terminate or be cancelled without 30 days or 10 days written notice first being given to the City Auditor. Insuring companies or entities are subject to City acceptance. If requested, complete policy copies shall be provided to the City. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

# 11. Ownership of Work Product

All work products produced by the Contractor under this contract is the exclusive property of the City. "Work product" shall include but not be limited to research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form; the Contractor 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 Contractor 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. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Contractor 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 Contractor is an architect, the work product is the property of the Contractor-Architect, and by execution of this contract, the Contractor-Architect grants the City an exclusive and irrevocable license to use that work product.

#### 12. 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 I. No. 101-336) including Title II of that Act, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

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#### 13. Successors in Interest

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

#### 14. Severability

The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

#### 15. Waiver

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

#### 16. Errors

The Contractor shall perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

## 17. Governing Law

The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Multnomah County Oregon.

#### 18. Amendments

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

#### 19. Business License

The Contractor shall obtain a City of Portland business license as required by PCC 7.02 prior to beginning work under this Agreement. The Contractor shall provide a business license number in the space provided on page one of this Agreement. Additionally, the Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full term of this contract. Failure to be in compliance may result in payments due under this contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.

### 20. Prohibited Interest

- (a) No City officer or employee during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- (b) No City officer or employee who participated in the award of this Agreement shall be employed by the Contractor during the period of the Agreement.

# 21. Payment to Vendors and Subcontractors

The Contractor shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The Contractor shall not take or fail to take any action in a manner that causes the City or any materials that the Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

#### Merger Clause

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. 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 PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE OR SHE HAS READ THIS CONTRACT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

#### OPTIONAL PROVISIONS (selected by City Project Manager)

- 22. Arbitration: /\_\_/ Not Applicable /\_\_/ Applicable (consult with City Attorney's Office before finalizing as applicable)
- (a) Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Contractor and the City within sixty (60) days of notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Multnomah. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any Page 4 of 9

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litigation arising out of or in connection with this Agreement, shall be conducted in Portland, Oregon, shall be governed by the laws of the State of Oregon, and shall be as speedy as reasonably possible. The applicable arbitration rules for the Multnomah County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within forty-five (45) days of the first meeting with the Contractor and the City. Insofar as the Contractor and the City legally may do so, they agree to be bound by the decision of the arbitrator.

(b) Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Agreement for undisputed portions of work.

23.	Progress Reports:	/ / Applicable	/ /N	ot Applicable

The Contractor shall provide monthly progress reports to the Project Manager. If applicable, the STATEMENT OF THE WORK should list what information the Contractor must include in monthly progress reports.

# 24. Contractor's Personnel: /\_/Applicable /\_/Not Applicable

The Contractor shall assign the following personnel to do the work in the capacities designated: If applicable, list selected personnel in the STATEMENT OF THE WORK. The Contractor shall not change personnel assignments without the prior written consent of the City.

# 25. Subcontractors: /\_\_/Applicable /\_\_/Not Applicable

The City requires Contractors to use the Minority, Women and Emerging Small Business (M/W/ESB) subcontractors identified in their proposals, and as such the Contractor shall assign these subcontractors as listed in the STATEMENT OF THE WORK to perform work in the capacities designated. The Contractor shall not change subcontractor assignments without the prior written consent of the Purchasing Agent.

# STATEMENT OF THE WORK AND PAYMENT SCHEDULE

**NOTE** - For contracts pertaining to A/E services for a new construction or major retrofit project intended for LEEDTM certification:

- If the A/E firm is designated as being responsible for the registration, documentation, and submittal for LEED<sup>TM</sup> certification (as opposed to having an independent LEED<sup>TM</sup> consultant), then encourage that the successful A/E firm become a member of the USGBC to facilitate this responsibility. Being a member is not a requirement for submittal.
- Tie the final payment to the successful submittal of the LEEDTM application to the U.S. Green Building Council.
- Consider including a requirement in the contract that the firm cannot substitute members of the A/E team working with
  the City without notification to, and written permission from, the City.

DELETE ABOVE INSTRUCTIONS AND ANY INSTRUCTIONS BELOW IN BRACKETS

#### SCOPE OF WORK

# CONTRACTOR PERSONNEL [Use these provisions as applicable]

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

NAME	 ROLE ON PROJECT		
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		 	~

# SUBCONTRACTORS [If none, indicate "NONE"]

The Contractor shall assign the following subcontractors to perform work in the capacities designated:

NAME .	ROLE ON PROJECT
,	

The City will enforce all diversity in workforce and Minority, Women and Emerging Small Business (M/W/ESB) subcontracting commitments submitted by the Contractor in its Proposal. For contracts valued \$100,000 or more, the Contractor shall submit a Monthly Subconsultant Payment and Utilization Report (MUR), made part of this contract by reference, reporting ALL subcontractors employed in the performance of this agreement. An electronic copy of the MUR may be obtained at: <a href="http://www.portlandonline.com/shared/cfm/image.cfm?id=119851">http://www.portlandonline.com/shared/cfm/image.cfm?id=119851</a>.

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

Contractor shall be paid the not to exceed amount of \$\\_\_\_\_\_\_. The Contractor will be paid based on its hourly rates, costs incurred in paying its subcontractors, if any, plus any authorized expenses, as set forth in more detail below. The "not to exceed amount" is the maximum amount of compensation due the Contractor for all the work required by the contract. Errors in estimating the number of hours necessary to perform the work is the sole responsibility of the Contractor.

# PAYMENT TERMS: Net 30 Days

# **Hourly Rates**

The billing rates shall not exceed those [set forth below].

# Standard Reimbursable Costs

The following costs will be reimbursed without mark-up.

#### Subconsultant Costs

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

# Adjustment of Labor Rates

Each year the contract is in force, hourly rates may be adjusted annually to an amount not to exceed the average inflation rate for the Portland Metropolitan Area as determined from the US Department of Labor statistics and certified by the City of Portland Auditor. Other than the impact of inflation as described above, compensation rates may not be increased.

#### **Progress Payments**

On or before the 15<sup>th</sup> of each month, the Contractor shall submit to the City's Project Manager an invoice for work performed by the Contractor during the preceding month. The invoice shall contain the City's Contract Number and set out all items for payment including, but not limited to: the name of the individual, labor category, direct labor rate, hours worked during the period, and tasks performed. The Contractor shall also attach photocopies of claimed reimbursable expenses. The Project Coordinator shall stamp and approve all subconsultant invoices and note on the subconsultant invoice what they are approving as "billable" under the contract. The billing from the prime should clearly roll up labor and reimbursable costs for the prime and subconsultants — matching the subconsultant invoices. Prior to initial billing, the Contractor shall develop a billing format for approval by the City.

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

The Contractor shall make full payment to its subcontractors within 10 business days following receipt of any payment made by the Bureau to Contractor.

# INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

	Contractor Signature	Date	Entity
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lf enti the re	ity does not have Workers' Compe mainder of this form.	nsation Insurance, City Pro	ect Manager and Contractor comple
SIECSS (	.600 Independent contractor standards. As	neration shall be considered to perfor	hapters 316, 656, 657, and 701, an individual or in the labor or services as an "independent contra
The in	ndividual or business entity providing the labor or services, subject only to the right of the per-	r or services is free from direction an son for whom the labor or services ar	I control over the means and manner of providing provided to specify the desired results;
The in	ndividual or business entity providing labor or ation licenses required by state law or local go	services is responsible for obtaining overnment ordinances for the individu	all assumed business registrations or professional al or business entity to conduct the business;
The in labor o	dividual or business entity providing labor or sor services;	services furnishes the tools or equipment	nent necessary for performance of the contracted
The in	adividual or business entity providing labor or	services has the authority to hire and	fire employees to perform the labor or services;
Payme annual	ent for the labor or services is made upon comp l or periodic retainer.	pletion of the performance of specific	portions of the project or is made on the basis of
	City Project Manager Signature		Date
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#### **CONTRACTOR SIGNATURE:**

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

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

I, the undersigned, agree to perform work outlined in this contract in accordance to the STANDARD CONTRACT PROVISIONS, the terms and conditions, made part of this contract by reference, and the STATEMENT OF THE WORK made part of this contract by reference; hereby certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; hereby certify that my business is certified as an Equal Employment Opportunity Affirmative Action Employer and is in compliance with the Equal Benefits Program as prescribed by Chapter 3.100 of Code of the City of Portland; and hereby certify I am an independent contractor as defined in ORS 670.600.

Contractor Name Here

BY:	-		Date:	,
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Name:				., .
Title:				٠

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Contrac	et Title:	·	
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CITY	OF PORTLAND SIGNATURES:	· ·	
By:		Date:	
	Bureau Director		
By:	Purchasing Agent	Date:	
	v 4. v 2.		
Ву:		Date:	
<i>2</i> .j.	Elected Official		
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Approve	ed as to Form:	•	
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By:	Office of City Attorney	Date:	***************************************