

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

**CONTRACT NO. 30002200**

**SHORT TITLE OF WORK PROJECT:  
A/E Services for Roof Replacement for Two Police Facilities**

This contract is between the City of Portland, acting by and through its Elected Officials, hereafter called "City," and Carleton Hart Architecture, PC, hereafter called Contractor. The City's Project Manager for this contract is Jim Coker.

**Effective Date and Duration**

This contract shall become effective on August 22, 2011. This contract shall expire, unless otherwise terminated or extended, on August 21, 2013.

**Consideration**

- (a) City agrees to pay Contractor a sum not to exceed \$100,295 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.

**CONTRACTOR DATA AND CERTIFICATION**

Name (please print): Carleton Hart Architecture, PC

Address: 322 NW 8<sup>th</sup> Avenue, Portland, OR 97209

Employer Identification Number (EIN) 93-1156836

[INDEPENDENT CONTRACTORS: DO NOT PROVIDE SOCIAL SECURITY NUMBER (SSN) – LEAVE BLANK IF NO EIN]

City of Portland Business License # 423357

Citizenship: Nonresident alien ☐ Yes ☒ No

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

Payment information will be reported to the IRS under the name and taxpayer I.D. number provided above. Information must be provided prior to contract approval. Information not matching IRS records could subject you to 20 percent backup withholding.

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

**1. 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 Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, 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 sub-consultants, 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: \_\_\_\_\_

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

**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 Chief Procurement Officer 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: /  X  / 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

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 /   X   / Not 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: /   X   / 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:   X   / 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 Chief Procurement Officer.

## STATEMENT OF THE WORK AND PAYMENT SCHEDULE

### SCOPE OF CONSULTANT SERVICES

#### 1. GENERAL SERVICES

The Contractor shall provide the following general services:

A. Provide architectural and engineering services in accordance with RFP No. FAC018 dated April 28, 2011, the proposal dated May 26, 2011, and the clarification of proposal letter dated June 6, 2011, as provided below.

#### 2. SPECIFIC SERVICES

In providing the general services described above, the Contractor shall provide not less than the following specific services:

##### 2.1 PROJECT ADMINISTRATION SERVICES

2.1.1 The Contractor shall manage the Contractor's services and administer the Project. The Contractor shall consult with the City, research applicable design criteria, attend Project meetings, communicate with members of the Project team and issue progress reports. The Contractor shall coordinate the services provided by the Contractor and the Contractor's subcontractors with those services provided by the City and the City's consultants.

2.1.2 When Project requirements have been sufficiently identified, the Contractor shall prepare, and update at each Construction Document (CD) phase, a Project schedule that shall identify milestone dates for decisions required of the City, design services furnished by the Contractor, completion of documentation provided by the Contractor, commencement of construction and Substantial Completion of the Work.

2.1.3 The Contractor shall consider the value of alternative materials, sustainable ('green') building practices, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

2.1.4 The Contractor shall submit CD documents to the City at 50% and 95% completion intervals appropriate to the design process for purposes of evaluation and approval by the City. The Contractor shall be entitled to rely on approvals received from the City in the further development of the design.

2.1.5 The Contractor shall assist the City in connection with the City's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

## **2.1.6 EVALUATION OF BUDGET AND COST OF THE WORK**

2.1.6.1 When the Project requirements have been sufficiently identified, the Contractor shall prepare an estimate of the Cost of the Work at each CD phase. The Contractor shall advise the City of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the Contractor's estimate of the Cost of Work exceeds the City's budget, the Contractor shall make appropriate recommendations to the City to adjust the Project's size, quality or budget, and the City shall cooperate with the Contractor in making such adjustments.

2.1.6.2 Evaluations of the City's budget for the Project, the estimates of the Cost of the work and updated estimates of the Cost of the Work prepared by the Contractor represent the Contractor's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Contractor nor the City has control over the cost of labor, competitive bidding, market or negotiating conditions. Accordingly, the Contractor cannot and does not warrant or represent that bids or negotiated prices will not vary from the City's budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Contractor.

2.1.6.3 In preparing estimates of the Cost of the Work, the Contractor shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the City's budget for the Cost of the Work. If an increase in the Contract Sum occurring after execution of the Contract between the City and the General Contractor selected for the construction of the project (General Contractor) causes the budget for the Cost of the Work to be exceeded, that budget shall be increased as provided by the Conditions of the Contract.

2.1.6.4 If bidding or negotiation has not commenced within ninety (90) days after the Contractor submits complete Construction Documents to the City, the City and the Contractor shall agree to negotiate a new budget for the Cost of the Work to reflect changes in the general level of prices in the construction industry.

2.1.6.5 If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, the City shall:

1. give written approval of an increase in the budget for the Cost of the Work;
2. authorize re-bidding or renegotiating of the Project within a reasonable time;
3. terminate in accordance with Paragraph 5 of the Agreement, Early Termination; or
4. cooperate in revising the Project scope and quality as required to reduce the Cost of the Work.

2.1.6.6 If the City chooses to proceed under Clause 2.1.6.5.4, the Contractor shall modify the documents for which the Contractor is responsible under this Agreement as necessary to comply with the budget for the Cost of the Work. However, in the event the lowest bona fide bid exceeds the budget by 10% or more, the Contractor, without additional compensation, shall modify the documents for which the Contractor is responsible under this Agreement as necessary to comply with the budget for the Cost of the Work. The modification of such documents shall be the limit of the Contractor's responsibility under this Paragraph 2.1.6.6. The Contractor shall be entitled to compensation in accordance with this Agreement for services performed as defined in Paragraph 6 of the Agreement. Payment on Early Termination.

## **2.2 EVALUATION AND PLANNING SERVICES**

2.2.1 The Contractor shall provide a preliminary evaluation of the information furnished by the City under this Agreement, including the City's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Contractor shall review such information to ascertain that it is

consistent with the requirements of the Project and shall notify the City of any other information or consultant services that may be reasonably needed for the Project.

2.2.2 The Contractor shall provide a preliminary evaluation of the City's site for the Project based on the information provided by the City of site conditions, and the City's program, schedule and budget for the Cost of the Work.

2.2.3 The Contractor shall review the City's proposed method of contracting for construction services and shall notify the City of anticipated impacts that such method may have on the City's program, financial and time requirement, and the scope of the Project.

## **2.3 DESIGN SERVICES**

2.3.1 The Contractor's design services shall include normal architectural and engineering services.

## **2.3.2 CONSTRUCTION DOCUMENTS**

2.3.2.1 The Contractor shall provide Construction Documents and budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

2.3.2.2 During the development of the Construction Documents, the Contractor shall assist the City in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms and (2) the Conditions of the Contract for the Construction (General, Supplementary and other Conditions). The Contractor also shall assist in compiling the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

## **2.4 CONSTRUCTION PROCUREMENT SERVICES**

2.4.1 The Contractor shall assist the City in establishing a list of prospective bidders.

## **2.4.4 COMPETITIVE BIDDING**

2.4.4.1 Bidding Documents provided by the Contractor shall consist of Specifications and Drawings. All other Bidding Documents will be provided by the City.

2.4.4.2 If requested by the City, the Contractor shall arrange for procuring the reproduction of Bidding Documents. The City shall pay directly for the cost of reproduction of the bidding documents. The Contractor shall not distribute bid documents to prospective bidders.

2.4.4.3 The City shall distribute the Bidding Documents to prospective bidders and request their return upon completion of the bidding process. The City shall maintain a log of distribution and retrieval, and the amounts of deposits, if any, received from and returned to prospective bidders.

2.4.4.4 The Contractor shall consider requests for substitutions, if permitted by the Bidding Documents, and shall prepare addenda identifying approved substitution to all prospective bidders. The City will distribute the Addenda to prospective bidders.

2.4.4.5 The Contractor shall participate in a pre-bid conference for prospective bidders.

2.4.4.6 The City will forward questions from prospective bidders to the Contractor. The Contractor shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents to the City in the form of addenda. The City will distribute any and all addenda to prospective bidders.

2.4.4.7 The Contractor shall attend in the opening of the bids. The City shall subsequently document and distribute the bidding results.

2.4.4.8 No direct communication shall occur between the Contractor and prospective bidders.

## **2.5 CONTRACT ADMINISTRATION SERVICES**

### **2.5.1 GENERAL ADMINISTRATION**

2.5.1.1 The Contractor shall assist with administration of the Contract between the City and the General Contractor as set forth below. Modifications made to the Conditions of the Contract, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Contractors.

2.5.1.2 The Contractor's responsibility to assist with the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the City of the final Certificate for Payment. However, the Contractor shall be entitled to a Change in Services in accordance with Paragraph 2.6.1 when assistance with Contract Administration Services extend sixty (60) days after the date of Substantial Completion of the Work, unless the delay is caused by the Contractor.

2.5.1.3 The Contractor shall advise and consult with the City during the assistance of the Contract Administration Services.

2.5.1.4 Duties, responsibilities and limitations of the Contractor under this Article 2.5 shall not be restricted, modified or extended without written agreement of the City and Contractor.

2.5.1.5 The City will forward requests for additional information about Contract Documents by the General Contractor to the Contractor. The Contractor shall review properly prepared, timely requests by the General Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Contractor and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

2.5.1.6 Upon approval of the City, the Contractor may on the City's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the General Contractor. These supplemental Drawings and Specifications will distributed to the General Contractor thru the City.

2.5.1.7 The Contractor shall interpret disputes concerning performance of the General Contractor per the Contract Documents on written request of the City. The Contractor's response to such requests shall be made in writing to the City within any time limits agreed upon or otherwise with reasonable promptness.

2.5.1.8 Interpretations and decisions of the Contractor shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. These decisions will be communicated to the General Contractor by the City.

### **2.5.2. EVALUATIONS OF THE WORK**

2.5.2.1 The Contractor (1) shall visit the site at intervals appropriate to the state of the General Contractor's operations or not less than one (1) visit per week to become generally familiar with and to keep the City informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the City against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Contractor shall not be required to make exhaustive or continuous on-site inspections to check the quality of quantity of the Work. The Contractor shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the General Contractor's rights and responsibilities under the Contract Documents.

2.5.2.2 The Contractor shall report to the City known deviations from the Contract Documents and from the most recent construction schedule submitted by the General Contractor. However, the Contractor shall not be responsible for the General Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Contractor shall be responsible for the Contractor's, or it's subcontractor's negligent acts or omissions, but shall not have control over or charge of and shall not be



responsible for acts or omissions of the General Contractor, its subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

2.5.2.3 The Contractor shall at all times have access to the Work wherever it is in preparation or progress.

2.5.2.4 Communications by and with the Contractor's sub-consultants shall be through the Contractor.

2.5.2.5 Whenever the Contractor considers it necessary or advisable, the Contractor shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed.

### **2.5.3 CERTIFICATION OF PAYMENTS TO GENERAL CONTRACTOR**

2.5.3.1 The Contractor shall review Certificates of Payment and certify the amounts due the General Contractor. The Contractor's certification for payment shall constitute a representation to the City based on the Contractor's evaluation of the Work as provided in Paragraph 2.5.2 and on the data comprising the General Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Contractor's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Contractor.

2.5.3.2 The Contractor's certification of a Certificate for Payment shall not be a representation that the Contractor has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City to substantiate the General Contractor's right to payment, or (4) ascertained how or for what purpose the General Contractor has used money previously paid on account of the Contract Sum.

2.5.3.3 The Contractor shall maintain a record of the General Contractor's Applications for Payment.

### **2.5.4 SUBMITTALS**

2.5.4.1 The Contractor shall review and approve or take other appropriate action upon the General Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the City, General Contractor, its subcontractors, or separate contractors, while allowing sufficient time in the Contractor's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the General Contractor as required by the Contract Documents. The Contractor's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Contractor, of any construction means, methods, techniques, sequences or procedures. The Contractor's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.5.4.2 The Contractor shall maintain a record of submittals and copies of submittals supplied by the General Contractor in accordance with the requirements of the Contract Documents.

2.5.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the General Contractor by the Contract Documents, the Contractor shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the General Contractor shall bear such professionals written approval when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

## **2.5.5 CHANGES IN THE WORK**

2.5.5.1 The Contractor shall prepare Construction Change Directives for the City's approval and execution in accordance with the Contract Documents. The City will prepare Change Orders. The Contractor may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Contractor shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Paragraph 2.6.1., upon approval of the City.

2.5.5.2 The Contractor shall review properly prepared, timely requests by the City or General Contractor for change in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Contractor to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Contractor determines that requested changes in the work are not materially different from the requirements of the Contract Documents, the Contractor may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

2.5.5.3 If the Contractor determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Contractor shall make a recommendation to the City, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the General Contractor, if any, the Contractor shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Contractor. With the City's approval, the Contractor shall incorporate those estimates into a Change Order or other appropriate documentation for the City's execution or negotiation with the General Contractor.

2.5.5.4 The Contractor shall maintain records relative to changes in the Work.

## **2.5.6 PROJECT COMPLETION**

2.5.6.1 The Contractor shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. Contractor shall review written warranties and related documents required by the Contract Documents and assembled by the General Contractor and forward them to the City, for the City's review and records. Contractor shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

2.5.6.2 The Contractor's inspection shall be conducted with the City's Project Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the General Contractor of Work to be completed or corrected.

2.5.6.3 When the Work is found to be substantially complete, the Contractor shall inform the City about the balance of the Contract Sum remaining to be paid the General Contractor, including any amounts needed to pay for final completion or correction of the Work.

2.5.6.4 The Contractor shall receive from the General Contractor and forward to the Owner: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens of bonds indemnifying the City against liens.

2.5.6.5 The Contractor shall provide to the City all Construction Document plans on computer disks in AutoCAD 2004 V.14 format, or in a format that can be read by AutoCAD 2004 V.14.

## **2.6 REQUEST FOR ADDITIONAL SERVICES**

2.6.1 The following information shall be provided to the City by the Contractor as a Change in Services:

1. review of a General Contractor's submittal out of sequence from the submittal schedule agreed to by the Contractor;
2. excessive responses to the General Contractor's requests for information where such information is available to the General Contractor from a careful study and comparison of the Contract Documents, field conditions, other City-provided information, General Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

3. Change Orders and Construction Change Directives involving substantial changes to the project at the request of the City or General Contractor requiring evaluation of proposals, including the preparation or revision of Instruments of Service;
4. providing consultation concerning replacement of Work resulting from fire or other cause during construction;
5. evaluation of an extensive number of claims submitted by the City's consultants, the General Contractor or others in connection with the Work;
6. evaluation of an extensive number of substitutions proposed by the City's consultants or contractors and making subsequent revisions to Instruments of Service resulting there-from;
7. preparation of design and documentation for alternate bid or proposal requests proposed by the City; or
8. assistance with Contract Administration Services provided sixty (60) days after the date of Substantial Completion of the Work unless a delay was caused by the Contractor.

## 2.7 OTHER REQUIREMENTS

1. The Contractor shall submit a Monthly Subconsultant Payment and Utilization Report by the 15<sup>th</sup> of each month.
2. All deliverables and resulting work products from this contract will become the property of the City of Portland.

### CONTRACTOR PERSONNEL

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

NAME	ROLE ON PROJECT
Brian Carleton, AIA	Principal
Scott Palmer, AIA	Project Manager
Lisa Garavetto, AIA	Project Architect
Melissa Soots	Job Captain

### SUBCONTRACTORS

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

NAME	ROLE ON PROJECT
Professional Roof Consultants, Inc.	Technical service & consulting
Lando and Associated	Landscape Architecture
TM Rippey	

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: <http://www.portlandonline.com/shared/cfm/image.cfm?id=119851>.

### COMPENSATION

The "not to exceed amount" of \$100,295 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.

As work progresses on the contract, the City will pay the Contractor a portion of the contract amount each month until the work is complete. Progress Payments are based on the percentage of work successfully completed by the Contractor and approved by the City. For example, if in a given month the Contractor successfully completes 10% of the work the Contractor will be paid 10% of the Contract amount after City approval.

The following schedule of tasks and fee breakdown defines the maximum amounts the Contractor may earn for each task. The Contractor will be paid each month based on the percentage of work successfully completed for each task after City approval.

1. Pre-design	\$ 18,840
2. Design Development	\$ 16,180
3. Contract Documents	\$ 29,250
4. Bidding	\$ 2,160
5. Contract Administration	\$ 24,750
Reimbursables*	<u>\$ 9,115</u>

**Total: \$100,295**

\*Reimbursable fees shall be integrated within the five project tasks.

### **Submitting Payment Invoices**

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. Invoices from the Contractor shall identify the work performed and state the percentage of work successfully completed for each task.

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 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 City may disapprove a payment previously made, withhold money from a future progress payment, or disapprove of an invoice submitted by the Contractor in whole or in part, if the work has not progressed to the point indicated by the Contractor's invoice or if it appears that previously approved work was not, in fact, successfully completed based on the requirements of the contract.

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

## SECTION A

CONTRACTOR CERTIFICATION I, undersigned, am authorized to act on behalf of entity designated below, hereby certify that entity has current Workers' Compensation Insurance.

Contractor Signature

Date

7/14/11

Entity CARLETON NAELT APICAL

**If entity does not have Workers' Compensation Insurance, City Project Manager and Contractor complete the remainder of this form.**

## SECTION B

**ORS 670.600 Independent contractor standards.** As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. The contracted work meets the following standards:

1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

City Project Manager Signature

Date

## SECTION C

Independent contractor certifies he/she meets the following standards:

1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;
2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Contractor check four or more of the following:

- ☐ A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
- ☐ B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;
- ☐ C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;
- ☐ D. Labor or services are performed only pursuant to written contracts;
- ☐ E. Labor or services are performed for two or more different persons within a period of one year; or
- ☐ F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature

Date

**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.

**CARLETON HART ARCHITECTURE, PC**BY: 

Date: 7/18/11

Name: BRIAN O. CARLETON

Title: PRINCIPAL

Contract No. 30002200

Contract Title: A/E Services for Roof Replacement for Two Police Facilities

**CITY OF PORTLAND SIGNATURES:**

By: \_\_\_\_\_  
Bureau Director

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chief Procurement Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Elected Official

Date: \_\_\_\_\_

Approved:

By: \_\_\_\_\_  
Office of City Auditor

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
Office of City Attorney

**APPROVED AS TO FORM**

*Linda Wright*  
**CITY ATTORNEY**

Date: 7/20/2011