

ORDINANCE EXHIBIT-A

185011

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

CONTRACT NO. Click Here and Type

SHORT TITLE OF WORK PROJECT: On-Call Services for Quality Assurance Work

This contract is between the City of Portland, acting by and through its Elected Officials, hereafter called "City," and CASE Associates, Inc, hereafter called Contractor. The City's Project Manager for this contract is Dan Bauer.

Effective Date and Duration

Unless terminated sooner under the provisions of this Contract, the term of this Contract shall be from January 1, 2012 to December 31, 2014 with the City's option to extend for up to two (2) years for a contract total of up to five (5) years.

Consideration

- (a) City agrees to pay Contractor a sum not to exceed Five Hundred Thousand dollars (\$500,000) 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.

Terms and conditions listed on pages 2 - 4.

CONTRACTOR DATA AND CERTIFICATION

Contractor Name (please print): CASE Associates, Inc.

Address: 2050 Beavercreek Road, Oregon City, OR 97045

Employer Identification Number (EIN) 93-0998356

City of Portland Business License # 431505

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 employer 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 including Exhibit A, the Request for Proposals (RFP) issued by the City, if any, and the Contractor's proposal included as Exhibit B 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) Amendments to this Contract, b) this contract's terms and conditions, c) Change Orders, d) Task orders e) the City's RFP, and f) the Contractor's proposal in response to the RFP, attached as Exhibit B, and g) Contractor's Price proposal, attached and included as part of Exhibit B.

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)** ☒ 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)** ☒ 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 non-owned vehicles, as applicable:

- (d)** ☒ Required and attached or Waived by City Attorney : _____

Professional Liability Insurance covering acts, errors or omissions arising out of the performance or failure to perform professional services related to the Services under this Agreement will be maintained. The coverage shall be placed with an insurer with an AM Best Rating of A-VII or better and shall include the following coverage parts:

Technology Products & Services E&O -Information Security & Privacy Liability for Service Provided to Others

Such insurance shall cover any and all errors, omissions or negligent acts in the delivery of Products, Services and Licensed Programs under this Agreement. Such errors and omissions insurance shall include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and intellectual property infringement, such as copyrights, trademarks, service marks and trade dress.

Such insurance shall include limits of coverage of the local currency equivalent of not less than USD \$1,000,000 (one Million U.S. dollars) and shall remain in effect for not less than three (3) years following the date of termination of this Agreement. Evidence of coverage must be sent to the City for three years following termination of this agreement.

- (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 that provides that the insurance shall not terminate or be cancelled without 30 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.

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.

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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. Warranty (a) Contractor warrants that the work performed under this Contract will meet the standards of skill and diligence normally employed by professional engineers or consultants performing the same or similar services, that work will be free from errors and from defects in workmanship and materials, and that deliverables shall conform to the performance standards, specifications, functions and other descriptions and standards applicable thereto as set forth in the Statement of Work. 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.

(b) Contractor warrants it has complied and shall comply with all applicable law in connection with the execution, delivery, and performance of this Contract and shall not contravene the terms of any contracts with third parties, or any third-party rights in any patent, trademark, copyright, trade secret, or similar right; and, as of the date of this Agreement, there are no actual or threatened legal actions with respect to the matters in this Agreement.

17. Governing Law

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

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.

22. Written Notifications

All notices to, and other written communication between, the Parties to this Agreement shall be deemed received five (5) days after being sent by first class mail, or upon receipt when sent by courier services or by fax transmission with telephone confirmation of receipt. All notices and written communications shall be sent to the Parties set forth below, or to such other places as they may designate by like notice from time to time:

For the City:

Name: Dan Bauer
Title: Project Manager
Address: 1120 SW 5th Ave
City, State: Portland, OR 97204
e-mail: dan.bauer@portlandoregon.gov

For the Contractor:

Name: David Sharon
Title: CEO / Principal Consultant
Address: 2050 Beaver Creek Rd Ste 101-225
City, State: Oregon City, OR 97045
e-mail: daves@caseassociates.com

23. **Conflict of Interest.** Contractor warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under the Agreement.

24. **Return of Parties' Property.** When the Agreement or any Task/Change Order placed pursuant to the Agreement is terminated or expired, each Party shall return to the other all papers, materials, and properties of the other Party then in its possession. The City will retain one (1) copy of the documentation for the express purposes of public record archiving.

25. **Notice of Change in Financial Condition.** Contractor must maintain a financial condition commensurate with the requirements of the Agreement. If, during the Agreement, Contractor experiences a change in its financial condition which may adversely affect its ability to perform, or changes the ownership or control, the City shall be immediately notified in writing. Failure to notify the City of such a change in financial condition or change in ownership or control is sufficient grounds for terminating the Agreement.

26. **Confidentiality.**

(a) **"City Confidential Information"** means any information, in any form or media, including verbal discussions, whether or not marked or identified by the City, which is reasonably described by one or more of the following categories of information: (1) financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act of 2007; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.501(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) Exempt per ORS 192.501 and/or ORS 192.502 (6) attorney/client privileged communications, (7) exempt per federal laws (including but not limited to Copyright, HIPPA) and (7) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems developed for the benefit of the City including without limitation, data and information systems, any software code and related materials licensed or provided to the City by third parties; processes; applications; codes, modifications and enhancements thereto; and any work products produced for the City.

(b) **Maintenance of Confidentiality.** Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use Confidential Information exclusively for the City's benefit and in furtherance of the goods and/or services provided by Contractor. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such Confidential Information. Contractor shall (1) limit disclosure of the Confidential Information to those directors, officers, employees and agents of Contractor who need to know the Confidential Information in connection with the City Project/Network, (2) exercise reasonable care with respect to the Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use Confidential intellectual property of the City without the City's prior written consent.

(c) **Scope.** This Agreement shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. This Agreement shall not apply to Confidential Information which (1) is or later becomes part of the public domain without breach of this Agreement and through no wrongful act of Contractor, (2) Contractor rightly receives from a third party, or (3) was developed independently by and was reduced to writing by Contractor prior to the earlier of the date of this Agreement or the date of any access or exposure to any Confidential Information. Contractor's obligations under this Agreement shall survive termination.

(d) **Equitable Remedies.** Contractor acknowledges that unauthorized disclosure of City Confidential Information or misuse of the City System or Network will result in irreparable harm to the City. In the event of a breach or threatened breach of this Agreement, the City may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.

(e) **Contractor's Confidential Information.** During the term of the Agreement, Contractor may disclose to the City, certain confidential information pertaining to Contractor's business ("Confidential Information"). Contractor shall

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be required to mark "CONFIDENTIAL" with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked or cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information at the time of disclosure or within a reasonable time thereafter. The City shall not be deemed to have breached this Section if (a) Confidential Information later becomes part of the public domain through no act or omission of the City; (b) is required to be disclosed under operation of law; or (c) the City lawfully receives Confidential Information from a third party with no breach of any duty of confidentiality.

27. Public Records Request. Contractor acknowledges that the City of Portland is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information Contractor submits to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Law. Subject to the following conditions, the City agrees not to disclose any information Contractor submits to the City that includes a written request for confidentiality and as described above, specifically identifies the information to be treated as Confidential. The City's commitments to maintain certain information confidential under this agreement are all subject to the constraints of Oregon and federal laws. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.

28. Survival. All obligations relating to confidentiality; indemnification; publicity; proprietary rights; limitation of liability; and obligations to make payments of amounts that become due under this Agreement prior to termination (except that payments for services not performed by the date of termination shall be prorated) shall survive the termination or expiration of this Agreement and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between Contractor and the City. Nothing in this Agreement shall alter, modify, or supersede the content and survival of such provisions, except as otherwise expressly agreed to in writing by the Parties and with the prior written approval of the City Attorney's office.

OPTIONAL PROVISIONS (selected by City Project Manager)

29. Arbitration: / ☐ / Applicable / ☒ / Not 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.

30. Progress Reports: / ☒ / Applicable / ☐ / 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.

31. 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.

32. Subcontractors: / ☐ / Applicable / ☐ / Not Applicable

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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.

33. TRAVEL / ☐ / Applicable / ☒ / Not Applicable

(a) **Reimbursement.** Contractor may be reimbursed, upon advance written approval by authorized City personnel, for certain expenses incurred in connection with personnel assigned to provide services for the City on the City's Site. All invoices shall be accompanied by original receipts and any additional backup that may be appropriate, and required by any subsequent Task/Change Order. Reimbursement will be made based on the following guidelines:

(b) **Commercial Air Travel.** Commercial air travel reservations are to be arranged based on the lowest coach fare available within a reasonable time frame surrounding the desired arrival or departure time. The City shall reimburse Contractor for one round trip to the subject work location, unless otherwise agreed to by the City in writing. When possible, air travel arrangements should be reserved at least seven (7) to fourteen (14) days in advance. Direct billing for commercial air travel is NOT permitted; however, City may elect to arrange travel reservations on behalf of Contractor personnel. Weekend travel is not reimbursable, unless otherwise agreed to by the City's Project Manager in writing. In the event weekend travel is reimbursed, such reimbursement shall be made based on an amount up to and in lieu of any authorized per diem amounts and, if applicable, any other daily expense reimbursement.

(c) **Rental Cars - Surface Transportation.** Vehicle rental will be reimbursed based on a minimum ratio of one (1) compact auto per two (2) Contractor personnel. Reimbursement for vehicle rental will not be approved for Contractor personnel falling below that ratio. Cost for additional insurance is not reimbursable, nor will reimbursement be permitted for fuel obtained at a vehicle rental agency. City does not assume any liability of any type in connection with rental vehicles reserved or operated by Contractor personnel. Direct billing for rental vehicles is not permitted. If the City's Project Manager elects to provide a per diem for auto rental, such per diem shall be the same per diem as allowed for City employees.

(d) **Lodging.** Contractor shall arrange for their own lodging if required, and approved in writing by the City. The City will reimburse Contractor per individual for a daily lodging expenses based on GSA per diem rates; such per diem shall be the same per diem as allowed for City employees. GSA per diem rates can be found at the U.S. General Services Administration website: <http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>.

(e) **Per Diem.** The City will provide a Per Diem for each full day (eight hours) worked for Contractor personnel assigned to deliver services. The per diem rate will be the same as the one published on the U.S. General Services Administration website, identified as the Meal and Incidental Expenses (M&IE) for the Portland, Oregon area. Per Diem may include the following expenses:

- meals
- laundry
- tips and gratuities
- communications for personal reasons
- any additional miscellaneous expenses

(f) **Personal Entertainment.** Expenses incurred for personal entertainment while traveling on the City business is not reimbursable. Personal entertainment includes items such as in-room movie charges, sightseeing, attendance at sporting events, reading materials, birthday gifts, haircuts, etc.

INFORMATION TECHNOLOGY

34. On-Call Information Technology (IT) Services Contract: / ☒ / Applicable / ☐ / Not Applicable

(a) The City shall assign individual projects on a Task Order, time-and-materials basis as project needs are identified. The scope of work, schedule, deliverables, and compensation for each project will be defined in the Task Order, similar in content to the WORK outlined in the STATEMENT OF THE WORK, prior to commencement of

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the work. Any changes to the scope of work, schedule, deliverables, and compensation must be agreed upon by Contractor and the City in writing as an amendment to the Task Order.

(b) Following each executed Task Order, the City's Project Manager will work directly with the Contractor for the duration of the project, unless otherwise noted on the Task Order.

(c) A single task order may not exceed \$250,000, including task order amendments, unless authorized by the Chief Technology Officer. The Chief Technology Officer shall approve task orders and task order amendments in the following scenarios: 1) When amending the task order to increase compensation is greater than 25% of the original task order amount or 2) When a task order exceeds \$250,000.

35. Multiple-Award Information Technology (IT) Services Contract: / X / Applicable / ___ / Not Applicable

This Contract is one of multiple contracts the City has awarded for on-call IT services in Quality Assurance service category as a result of RFP No. 113182. The number of contracts awarded for these on-call services is at the sole discretion of the City, as is the assignment of work. The City has no obligation to request any services from Contractor under this Contract. There is no guarantee that the total dollar limit of the contract will be reached. For projects exceeding \$25,000, the City shall contact at least three (3) contractors in the desired service category to determine which Contractor is best suited to perform the project in the required time frame. The City has established procedures to allow the Bureaus, in every case, to select the most technically qualified firm for each task order.

Contractor may be called on to provide as-needed consulting services and/or undertake fixed-term projects, which may range from a minimal amount up to \$250,000 subject to budget availability in any given year.

36. Security. (10/08) Contractors providing or having access to data containing City confidential or personally identifiable information (as defined in the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628) must maintain and demonstrate compliance with the following:

(a) (10/08) Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628. Specifically Contractors must develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of the personal information, including disposal of the data. Contractors must also provide immediate notification to the City of a data security breach (as defined) and in cooperation with the City, provide notice to affected consumers. Any costs or fees incurred by the City due to Contractor's data breach, including but not limited to notification, consumer credit reports or fines by the Department of Consumer and Business Services, shall be reimbursed to the City by Contractor.

(b) (10/08) City of Portland, Bureau of Technology Services Security Standards. Specifically Contractors must comply with Technology Services, Information Security Administrative Rules 2.01, 2.02, 2.08, 2.12 and 2.15. These rules are located at: <http://www.portlandonline.com/auditor/index.cfm?c=26821>.

(c) (1/09) Additionally, any Contractor who provides or has access to Software which process and /or interacts with credit/debit card information must also be compliant with the Payment Card Industry- Data Security Standard (PCI-DSS). The most current version is 1.2. These standards are maintained at www.pcisecuritystandards.org

37. 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.

STATEMENT OF THE WORK AND PAYMENT SCHEDULE

SCOPE OF WORK: The City of Portland requires experienced, professional, independent firms to provide Quality Assurance Services for specific projects. Under the requirements of this contract, the contractor

shall provide the listed services, at a minimum and as required, to achieve the goals and answer the following questions:

- a. Review projects, project reports, problems and concerns and provide feedback regarding the development of various technology service/solution Requests for Proposals and/or contracts for large technology projects.
- b. Review and provide feedback regarding draft contract materials with firms selected through competitive procurements.
- c. Provide independent review of business process review activities during requirements definition phase of a given project.
- d. Provide ongoing independent written assessments of project activities and the progress toward its conformance with best practices in technology project management. The Contractor will report recommendations for changes or additions to project activities to the City project stakeholders. Working with an established project team, the City will use Quality Assurance information to assist in monitoring selected business technology projects. The Contractor will also be expected to discuss findings with project team, management staff, Technology Oversight Committee, other City administrators, and Elected Officials. Contractors will provide the required written materials, reports and presentations in a format determined by the City to provide a standard presentation of information to project team, management staff, Technology Oversight Committee, other City administrators and Elected Officials.
- e. Review established control measures and monitoring the measures that are in place to maintain timeline and budget as well as assessment of phase completion and success reporting. The Contractor will make specific recommendations to strengthen current control measures.
- f. Maintain vigilance of overall project progression and report to the City project stakeholders any situation, which in their professional judgment, requires attention and/or revision of plans in order to meet overall project goals.
- g. Review quality standards for project deliverables of existing projects and work with City and contract staff to offer improvement options and suggestions.

QUALITY ASSURANCE services will involve, at a minimum, review of project scope, planning, approach, testing, documentation, risks, progress and all other aspects and activities of City staff, consultants and Contractor resources as the City proceeds with planning and implementation of large technology projects.

Although Quality Assurance services must offer an independent opinion about project status, the focus of Quality Assurance reviews must also emphasize identification of issues and concerns the project team is not aware of, rather than only a restatement of issues already identified and being addressed. Basic questions to be answered periodically throughout the project include:

- a. Are Request for Proposal (RFP) documents and/or contracts comprehensive and do they adequately articulate the City's defined business and technical requirements?
- b. Is the project on schedule and if not is the schedule still reasonable? If the project is not on schedule what are the causes and/or issues?
- c. Are consultant(s) and the vendor(s) performing in a manner consistent with the contract(s)? Is there any work being conducted that was not defined in the original Scope of Work?
- d. If the Scope was expanded, has appropriate change management documentation, approval and coordination occurred?
- e. Are proposed business practices able to comply with mandated policies and regulations?
- f. Has adequate training occurred for personnel impacted by any change?
- g. Has change-readiness criteria been satisfied within the end-user group(s)?
- h. Has there been an adequate level of user acceptance testing and approval?
- i. Have the system components been sufficiently tested for performance and reliability and are they ready to "go live"?
- j. Is there a functioning communications plan that ensures project stakeholders are kept informed?

The QA Contractor(s) will be asked to respond to the City's request for costing on an individual task order basis. The City recognizes that there may be different approaches to Quality Assurance services. Therefore, responses to such requests for costs must identify the tasks (including work to be performed on-site at the City), specific reports or other deliverable products, a schedule of activities, and names and resumes of individuals to be engaged for the work. The tasks and schedule should reflect a methodology that has been used successfully by the Proposer in other Quality Assurance engagements. The City anticipates that task order costing proposals may include plans for reviews and reporting in the following areas:

PROJECT ORGANIZATION

- a. Is the structure adequate to ensure accountability and rapid escalation of issues for decisions?
- b. Are required decisions being made and acted upon?
- c. Are decisions being made at the appropriate level within the project organization?

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- d. Have appropriate City staff been identified and scheduled or allocated for review and acceptance of project deliverables?
- e. Are the proposed City's staff skill levels adequate for the project?
- f. Does the proposed RFP and subsequent contract documents sufficiently address the consultant firm's staffing, skill levels and remedies for unacceptable contract performance?
- g. Are work plans comprehensive, documented and kept up to date?
- h. Are project deliverables clearly identified?
- i. Do the business, technology, and contractor teams clearly understand roles and responsibilities? Are these commitments being met?
- j. Do work plans identify milestones and briefings for relevant stakeholders?
- k. Is the Technology Oversight Committee monitoring the project? Is it being utilized based on its documented goals and responsibilities plan? Is it adding value?
- l. Is the business organization adequately engaged in the project and effectively preparing the organization for the change?
- m. Are the projects properly staffed to meet their deliverables?

PROJECT PERSPECTIVE

- a. Are project goals and objectives well defined and understood by members of the project team?
- b. Are project activities being conducted in an effective manner and in conformance with project plans?
- c. Have quality standards been established for project deliverables?
- d. Has a clear communications plan been established, and if so, is it being followed?
- e. How are project activities and deliverables perceived by future system users?
- f. How is the project doing in comparison to schedule and budget?

PROJECT ADMINISTRATION

- a. Is routine status reporting concise and focused on identifying risks, issues and impediments?
- b. Is the change control process adequate, clear and being followed?
- c. Is an adequate and clear issue and risk management process in place and being executed?
- d. Is project task reporting adequate and kept up to date per an appropriate level of project planning?
- e. Is there agreement between work plans, staffing levels and labor expenses?
- f. Is there a cooperative working environment and good team morale?
- g. Is project documentation adequate and kept up to date?
- h. Are there clear procedures for resolving conflicts among participating bureaus and implementation team members?
- i. Is there common and shared understanding of project scope and priorities?
- j. Is analysis of current project schedule, risks, and critical path dependencies being addressed as planned? Are Risks/Issues being handled?

PROJECT IMPLEMENTATION

- a. Has the technical architecture, with development, test and production environments been established where appropriate?
- b. Is there a clear plan and schedule for implementing the elements of the technical environment?
- c. Is there a clear implementation and conversion plan in place including a back-out plan?
- d. Has the appropriate phase systems been delivered, installed, configured, and tested?
- e. Have roll-out plans, based on phases, been acknowledged by stakeholders?

CHANGE CONTROL

- a. Is there a business process change management strategy, and if so, is it being followed?
- b. Is there an adequate and timely process for addressing or reviewing unforeseen "opportunity" requests which would potentially alter overall project scope and timeline?
- c. Is there an approved employment transition plan for City project staff?
- d. Has go-live readiness been certified by appropriate stakeholders?

CONTRACTOR PERSONNEL

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

NAME	ROLE ON PROJECT
Please see attached Exhibit B Consultant Proposal section 2.4	

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SUBCONTRACTORS:

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

NAME	ROLE ON PROJECT
Please see attached Exhibit B Consultant Proposal section 2.4	

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

Contractor shall be paid an amount not to exceed \$500,000.00. 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 the rates listed as follows:

QA Project Manager and Expert QA Consultants – \$140.00/hour

IT Security and IV and V Consultants – \$140.00/hour

Quality Assurance Analyst and Consultants – \$110.00/hour

Standard Reimbursable Costs

The City does not anticipate Consultants having expenses that are not included in the billing rates listed above. Therefore, no additional expenses are authorized.

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 0%.

Adjustment of Labor Rates

Labor rates under this contract are expected to remain the same throughout the term of the contract.

Progress Payments

On or before the 15th 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.

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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.

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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 _____ Entity _____

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;

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- ☐ 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

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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.

CASE Associates Inc.

BY: _____ Date: _____

Name: _____

Title: _____

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Contract No. _____

Contract Title: _____

CITY OF PORTLAND SIGNATURES:

By: _____ Date: _____
Bureau Director

By: _____ Date: _____
Chief Procurement Officer

By: _____ Date: _____
Elected Official

Approved:

By: _____ Date: _____
Office of City Auditor

Approved as to Form:

By: _____ Date: _____
Office of City Attorney