

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

**PRICE AGREEMENT NO.**

**SHORT TITLE OF WORK PROJECT:  
Construction Inspection and Engineering Support**

This Price Agreement is between the City of Portland ("City," or "PBOT") and "Harper Houf Peterson Righellis Inc.", hereafter called Consultant. The City's Project Manager for this Price Agreement is Todd Liles. This Price Agreement sets forth the terms and conditions applicable to "Task Orders" that may be entered into between the Parties under this Price Agreement.

**Effective Date and Duration**

This Price Agreement shall become effective January 2, 2014 . This Price Agreement shall expire, unless otherwise terminated or extended, on December 31, 2016. No work is authorized until a Task Order is fully executed by the Parties to this Price Agreement.

**Consideration**

- (a) The not to exceed amount of this Price Agreement is \$1,500,000.00. City agrees to pay Consultant for accomplishment of the work only as authorized under fully executed Task Orders.
- (b) See "COMPENSATION" section of this Price Agreement for further detail regarding consideration and progress payments.

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**CONSULTANT DATA AND CERTIFICATION**

Name (please print): Harper Houf Peterson Righellis Inc. (HHPR, Inc)

Address: 205 SE Spokane Street, Suite 200, Portland, Oregon 97202

Employer Identification Number (EIN) 93-1045332

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

City of Portland Business License # 404477

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 Price Agreement approval.

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**TERMS AND CONDITIONS**

**1. Standard of Care:** Consultant shall perform all services under this Price Agreement using that care, skill and diligence that would ordinarily be used by similar professionals in this community in similar circumstances.

**2. Effect of Expiration**

Passage of the Price Agreement expiration date shall not extinguish, prejudice, or limit either party's right to enforce this Price Agreement with respect to any default or defect in performance that has not been corrected.

**3. Order of Precedence**

This Price Agreement consists of these Terms and Conditions, the Statement of Work and Payment Schedule, and any exhibits that are attached. Any apparent or alleged conflict between these items will be resolved by using the following order of precedence: a) these Terms and Conditions; b) Statement of Work and Payment Schedule; and c) any exhibits attached to the Price Agreement.

#### **4. Early Termination of Price Agreement**

(a) The City may terminate this Price Agreement (or individual Task Orders executed under the Price Agreement) for convenience at any time for any reason deemed appropriate in its sole discretion. Termination is effective immediately upon notice of termination given by the City.

(b) Either party may terminate this Price Agreement (or individual Task Orders executed under the Price Agreement) in the event of a material breach by the other party that is not cured. Before termination is permitted, the party seeking termination shall give the other party written notice of the breach, its intent to terminate and fifteen (15) calendar days to cure the breach. If the breach is not cured within 15 days, the party seeking termination may terminate immediately by giving written notice that the Price Agreement is terminated.

#### **5. Remedies and Payment on Early Termination**

(a) If the City terminates pursuant to 4(a) above, the City shall pay the Consultant for work performed in accordance with the Price Agreement prior to the termination date. No other costs or loss of anticipated profits shall be paid.

(b) If the City terminates pursuant to 4(b) above, the City is entitled all remedies available at law or equity. In addition, Consultant shall pay the City all damages, costs and sums incurred by the City as a result of the breach.

(c) If the Consultant justifiably terminates the Price Agreement pursuant to subsection 4(b), the Consultant's only remedy is payment for work prior to the termination. No other costs or loss of anticipated profits shall be paid.

(d) If the City's termination under Section 4(b) was wrongful, the termination shall be automatically converted to one for convenience and the Consultant shall be paid as if the Price Agreement was terminated under Section 4(a).

(e) In the event of early termination the Consultant's work product before the date of termination becomes property of the City.

#### **6. Assignment**

Consultant shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the City. Notwithstanding City approval of a sub-Consultant, the Consultant shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Consultant hereunder. The Consultant agrees that if sub-Consultants are employed in the performance of this Agreement, the Consultant and its sub-Consultants are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

#### **7. Compliance with Applicable Law**

Consultant shall comply with all applicable federal, state and local laws and regulations. Consultant shall perform all services and provide all deliverables required under the Price Agreement in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

#### **8. Indemnification for Property Damage and Personal Injury**

Consultant shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from all claims, losses, damages, and costs (including reasonable attorney fees) for personal injury and property damage arising out of the intentional or negligent acts or omissions of the Consultant, its Sub-Consultants, suppliers, employees or agents in the performance of its services. Nothing in this paragraph requires the Consultant or its insurer to indemnify the City for claims of personal injury or property damage caused by the negligence of the City. This duty shall survive the expiration or termination of this Price Agreement.

#### **9. Insurance**

During the term of this Price Agreement, Consultant shall maintain in force at its own expense, the 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 (Consultants with one or more employees, unless exempt under ORS 656.027).

(b) Commercial 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 Price Agreement, and shall provide that City of Portland, and its agents, officers, and employees are Additional Insureds, but only with respect to the Consultant's services to be provided under this Price Agreement:

Required by Bureau X

Waived by Bureau     

(c) 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:

Required by Bureau X

Waived by Bureau     

(d) Professional Liability insurance with a combined single limit of not less than \$1,000,000 per claim, incident, or occurrence. If insurance is provided on a "claims made" basis the Consultant shall acquire "tail" coverage or continue the same coverage for three years after completion of the Price Agreement, provided coverage is available and economically feasible. If not feasible, Consultant shall notify City immediately.

Required by Bureau X

Waived by Bureau     

(e) There shall be no cancellation, material change, reduction of limits, or intent not to renew any required insurance without 30 days written notice from the Consultant or its insurer(s) to the City.

(f) Certificates of insurance. The Consultant shall furnish acceptable insurance certificates to the City showing the required insurance coverage. The certificate will specify all of the parties who are Additional Insureds. Certificates and insurers are subject to City approval. Complete policy copies shall be provided to the City upon request. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

#### **10. Ownership of Work Product**

All work product produced by the Consultant under this Price Agreement is the exclusive property of the City. "Work Product" includes, but is not limited to: research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form. The Consultant and the City intend that such Work Product shall be deemed "work made for hire" of which the City shall be deemed the author. If for any reason a Work Product is deemed not to be a "work made for hire," the Consultant hereby irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Consultant shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Consultant waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. If the Consultant is an architect, the Work Product is the property of the Consultant-Architect, and by execution of this Price Agreement, the Consultant-Architect grants the City an exclusive and irrevocable license to use that Work Product.

Notwithstanding the above, all pre-existing trademarks, services marks, patents, copyrights, trade secrets and other proprietary rights of Consultant are and will remain the exclusive property of Consultant.

**11. EEO Certification:** In the event Consultant provides in excess of \$2,500.00 for services to the City in any fiscal year, Consultant shall obtain EEO certification from the City.

#### **12. Equal Benefits**

Consultant must comply with the City's Equal Benefits program as prescribed by Chapter 3.100 of the Code of the City of Portland. The required documentation must be filed with Procurement Services, City of Portland, prior to Price Agreement execution.

#### **13. Successors in Interest**

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

#### **14. Severability**

The parties agree that if any term or provision of this Price Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be

affected, and the rights and obligations of the parties shall be construed and enforced as if the Price Agreement did not contain the particular term or provision held to be invalid.

#### **15. Waiver**

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

#### **16. Responsibility of Consultant**

Consultant shall be responsible for the professional quality and technical accuracy of all deliverables and other Services furnished by Consultant under the Price Agreement. Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its Services or deliverables.

Agency's review, approval or acceptance of, or payment for, the Services required under the Price Agreement shall not be construed to operate as a waiver of any rights under the Price Agreement or of any cause of action arising out of the performance of the Price Agreement, and Consultant shall be and remain liable to Agency in accordance with applicable law for all damages to Agency caused by Consultant's negligent performance of any of the Services furnished under the Price Agreement or negligent failure to perform any of the Services under the Price Agreement. The rights and remedies of Agency provided for under the Price Agreement are in addition to any other rights and remedies provided by law. If the Consultant, as designated in this Price Agreement, is comprised of more than one legal entity, (for example, a joint-venture or partnership), each such entity shall be jointly and severally liable under the Price Agreement.

#### **17. Governing Law/Venue**

The provisions of this Price Agreement shall be interpreted, construed and enforced in accordance with, and governed by, the laws of the State of Oregon without reference to its conflict of laws provisions that might otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this Price Agreement must be brought in the appropriate court in Multnomah County Oregon.

#### **18. Amendments**

All changes to this Price Agreement, including changes to the scope of work and Price Agreement amount, must be made by written amendment and approved by the Chief Procurement Officer to be valid. Any amendment that increases the original Price Agreement amount by more than 25% must be approved by the City Council to be valid.

#### **19. Business License**

The Consultant shall obtain a City of Portland business license as required by PCC 7.02 prior to beginning work under this Price Agreement.

#### **20. Prohibited Conduct**

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

#### **21. Payment to Vendors and Sub-Consultants**

The Consultant shall timely pay all sub-Consultants and suppliers providing services or goods for this Price Agreement.

#### **22. Records Maintenance; Access**

Consultant, and its sub-Consultants, shall maintain all fiscal records relating to the Price Agreement in accordance with generally accepted accounting principles. In addition, Consultant shall maintain all other records pertinent to the Price Agreement and the project and shall do so in such a manner as to clearly document Consultant's performance. The local agency, ODOT, the Oregon Secretary of State's Office (OSS), FHWA and the Comptroller General of the United States and their duly authorized representatives shall have access (CGUS), and Consultant shall permit the aforementioned entities and individuals access, to such fiscal records and other books, documents, papers, plans and writings of Consultant that are pertinent to the Price Agreement to perform examinations and audits and make excerpts and transcripts. Consultant shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 10 years, or such longer period as may be required by applicable law, following final payment and expiration or termination of the Price Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Price Agreement, whichever date is later. Any cost data submitted by Consultant pursuant to this Price Agreement may be shared with ODOT, FHWA, OSS and CGU, as necessary, for audit purposes.

**23. Audits**

(a) The City 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 ten (10) year period established by paragraph 22. 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 Government Accountability Office.

(b) If an audit discloses that payments to the Consultant exceed the amount to which the Consultant was entitled, the Consultant shall repay the amount of the excess to the City.

**24. Electronic Signatures**

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

**25. Merger Clause**

This Price Agreement encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether verbal or written.

**26. Dispute Resolution/Work regardless of disputes**

The parties shall participate in mediation to resolve disputes before conducting litigation. The mediation shall occur at a reasonable time after the conclusion of the Price Agreement with a mediator jointly selected by the parties. Notwithstanding any dispute under this Price Agreement, the Consultant shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Price Agreement for undisputed portions of the work. In the event of litigation no attorney fees are recoverable. No different dispute resolution paragraph(s) in this Price Agreement or any attachment hereto shall supersede or take precedence over this provision.

**27. Progress Reports: / ☒ / Applicable / ☐ / Not Applicable**

If applicable, the Consultant shall provide monthly progress reports to the Project Manager as described in the Statement of the Work and Payment Schedule.

**28. Consultant's Personnel: / ☒ / Applicable / ☐ / Not Applicable**

If applicable, the Consultant shall assign the personnel listed in the Statement of the Work and Payment Schedule for the work required by the Price Agreement and shall not change personnel without the prior written consent of the City, which shall not be unreasonably withheld.

**29. Sub-Consultants**

The Consultant shall use the sub-Consultants identified in its proposals. The Consultant shall not change sub-Consultant assignments without the prior written consent of the Chief Procurement Officer.

**30. Third Party Beneficiaries**

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

**31. Tax Law Certification**

Any individual signing on behalf of Consultant hereby certifies under penalty of perjury: (a) Consultant has provided its correct TIN to Agency; (b) Consultant is not subject to backup withholding because (i) Consultant is exempt from backup withholding, (ii) Consultant has not been notified by the IRS that Consultant is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Consultant that Consultant is no longer subject to backup withholding; and (c) s/he is authorized to act on behalf of Consultant, s/he has authority and knowledge regarding Consultant's payment of taxes, and to the best of her/his knowledge, Consultant is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321, and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Department of Revenue under ORS 305.620. Consultant agrees it currently is in compliance with all local, state and federal tax laws.

**32. Non-Discrimination**

**During the performance of this Contract or Price Agreement and any Work Order (Task Orders) as applicable, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:**

1. **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Price Agreement.
2. **Nondiscrimination:** Consultant, with regard to the work performed by it during the Price Agreement, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of sub-Consultants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Price Agreement covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential sub-Consultant or supplier shall be notified by Consultant of Consultant's obligations under this Price Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City, Oregon Department of Transportation (ODOT), the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to City, ODOT, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this Price Agreement, City shall impose such Price Agreement sanctions as it, ODOT, FHWA or FTA may determine to be appropriate, including, but not limited to:
  - (a) Withholding of payments to Consultant under the Price Agreement until Consultant complies, and/or
  - (b) Cancellation, termination or suspension of the Price Agreement, in whole or in part.
6. **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as City, ODOT, FHWA or -FTA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a sub-Consultant or supplier as a result of such direction, Consultant may request City, ODOT, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

### **33. False Claims**

- a. Consultant understands and acknowledges it is subject to the Oregon False Claims Act (ORS 180.750 to 180.785 <http://uscode.house.gov/>) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Price Agreement, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Price Agreement or the Project for which the Services are being performed, including but not limited to Consultant's statement of proposal and any invoices, reports, or other deliverables.
- b. Consultant shall immediately disclose (in writing) to Agency whenever, in connection with the award, performance or closeout of the Price Agreement, or any subcontract thereunder, the Consultant has credible evidence that a principal, employee, agent, or subcontractor of the Consultant has committed—
  - (A) A violation of the Oregon False Claims Act; or
  - (B) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.
- c. The Consultant must include subsections (a) and (b) of this section in each subcontract the Consultant may award in connection with the performance of the Price Agreement. In doing so, the Consultant may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

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## SCOPE OF WORK AND PAYMENT SCHEDULE

### SCOPE OF WORK

The Scope Of Work that applies to Task Orders that may be assigned under this Price Agreement is identified in the following sections of Exhibit B - RFP:

- Part I, Section A.3 – SCOPE OF WORK
- Part I, Section B – WORK REQUIREMENTS, and
- RFP Exhibit B – PERSONNEL CLASSIFICATION DESCRIPTIONS.

### TASK ORDER REQUIREMENTS

Consultant shall provide services, as assigned in fully executed Task Orders. Each Task Order must include a clearly defined statement of work with tasks and deliverables identified within the scope of work of this Price Agreement or the associated RFP.

For each Task Order assignment, Consultant shall submit a breakdown identifying the proposed staffing and billing rates based on the rates approved under the Price Agreement. Each Task Order will identify a not-to-exceed amount, negotiated by the parties, which is the maximum amount payable unless the Task Order is amended to increase or decrease the not-to-exceed amount.

A DBE Participation goal may be assigned on each Task Order that utilizes Federal Funds(e.g. FHWA, FTA or FAA). See sample Price Agreement Exhibit B for information regarding DBE participation in Task Orders with DBE Goals assigned and Exhibit A for information regarding federally funded task orders with no goal assigned

### CONSULTANT PERSONNEL

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

NAME	CLASSIFICATION
As delineated in Exhibit D	As delineated in Exhibit D

Additional personnel may be added to the above list on approval of the City's Project Manager.

### SUBCONSULTANTS

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

NAME	CLASSIFICATION
As delineated in Exhibit D	As delineated in Exhibit D

Additional sub-consultants may be added to the above list on approval of a written Price Agreement amendment per the City's standard contract amendment process.

### COMPENSATION

The maximum that the Consultant can be paid on this Price Agreement is \$ 1,500,000.00\_(hereafter the "not to exceed" amount). The "not to exceed" amount includes all payments to be made pursuant to this Price Agreement, including reimbursable expenses, if any. Nothing in this Price Agreement requires the City to pay for work that does not meet the Standard of Care or other requirements of the Price Agreement. The actual amount to be paid Consultant may be less than that amount.

Work will only be assigned by a fully executed Task Order agreed to and signed by both parties. No work can proceed without such a fully executed Task Order. The Consultant is entitled to receive progress payments for its work pursuant to the Price Agreement and subsequent Task Orders as provided in more detail below. The City will pay Consultant no more than once monthly based on these invoices for acceptable work performed and approved

until the “not to exceed” amount of individual Task Orders is reached (subject to the not-to-exceed amount of the Price Agreement). An amendment to the Task Order must be fully executed prior to authorizing any additional work or compensation under the Task Order. The Consultant shall not invoice and the City will not pay for any work not previously authorized.

If work is completed before the “not to exceed” amount is reached, the Consultant’s compensation will be based on the Consultant’s bills previously submitted for acceptable work performed and approved.

#### **PAYMENT TERMS: Net 30 Days**

##### **Hourly Rates**

The billing rates shall not exceed those set forth below:

[Classifications and price ranges shown in Exhibit D and included in this Price Agreement by reference, in table form. Overtime rates are included.]

##### **Standard Reimbursable Costs**

The following costs will be reimbursed without mark-up:

- Mileage will be reimbursed at the Federal IRS rate per mile for each employee that exceeds 100 job related miles per week. Mileage of less than 100 miles per week per employee is considered incidental to the classified rate. Mileage to the initial jobsite each day and from the final jobsite at the end of each day is considered incidental and not-reimbursable and not part of the weekly incidental mileage limitation.
- Any additional costs as requested and approved in writing by the Project Manager

##### **Subconsultant Costs**

Compensation for subconsultants shall be limited to the same restrictions imposed on the Consultant. No markup will be allowed for subconsultant services.

##### **Adjustment of Labor Rates Due to Inflation**

Annual adjustment of hourly rates will be considered upon written request from the Consultant. Approval of a request for rate increases is solely within the City’s discretion and under no circumstances is the City obligated to approve such a request.

Rate increases are subject to the following limitations:

- No increases will be considered before the one-year anniversary of the Price Agreement;
- No more than one increase shall be granted per Price Agreement year;
- Rate increases may not exceed the then-current average inflation rate for the Portland Metropolitan Area (as determined from the US Department of Labor statistics);
- Rate increases shall not be retroactive.
- Rate increases must be approved as an amendment to the PA
- Rate increases, if approved, will be effective on January 1<sup>st</sup> of the year following the one-year anniversary of the Price Agreement.

Other than the impact of inflation as described above, hourly rates may not be increased.

##### **Unallowable Charges**

City will not pay for direct or indirect costs that are unallowable under the provisions of 48 CFR Part 31.

Costs or direct charges for, but not limited to, the following are not reimbursable:

- Costs for negotiation of the Price Agreement or Price Agreement amendments, including but not limited to proposal preparation, BOC preparation, preparation for negotiations, and negotiation of level of effort/budget.
- Costs related to disputes or E&O Claims, including but not limited to discussions, meetings and preparation of any dispute or claim related documentation.
- Mark-up on subcontractors or direct non-labor costs.
- Transfer of knowledge and information related to Key Person replacements.



- Correcting or making adjustments to incorrect or improper invoices.
- Direct compensation for items included in firm's indirect costs (unless properly credited back to indirect cost).
- Premium costs incurred as a result of working overtime or holidays, not directed by the owner. (Premium time should normally be charged to overhead. Employees shall be paid at not less than time and one-half for all overtime worked in excess of 40 hours in any one week, except for individuals who are excluded from receiving overtime under personal services Price Agreements pursuant to ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209.)

### **Progress Payments**

On or before the 15<sup>th</sup> of each month, the Consultant shall submit to the City's Project Manager an invoice for work performed by the Consultant during the preceding month. The invoice shall contain the City's Price Agreement 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 Consultant shall also attach photocopies of claimed reimbursable expenses, if applicable. The Consultant's Project Coordinator shall stamp and approve all subconsultant invoices and note on the subconsultant invoice what they are approving as "billable" under the Price Agreement. The billing from the prime Consultant must clearly roll up labor and reimbursable costs for the prime Consultant and subconsultants – matching the subconsultant invoices. Prior to initial billing, the Consultant shall develop a billing format for approval by the City. The billing format must include the hours billed to individual project numbers (SAP supplied codes) per employee and the total hours billed per project number. In addition, a copy of each employee's timesheet must be attached to the billing.

The City shall pay all amounts to which no dispute exists within 30 days of receipt of the invoice. Payment to the consultant will be made no more than once per month. 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 Consultant shall make full payment to its sub-Consultants within 10 business days following receipt of any payment made by the City to Consultant.

### **ACH Payments**

It is the City's policy to pay its Consultant invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, Consultants shall execute the City's standard ACH Vendor Payment Authorization Agreement which is available on the City's website at: <http://www.portlandoregon.gov/bfs/article/409834>.

Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for services rendered directly into Consultant accounts with financial institutions. All payments shall be in United States currency.

## INDEPENDENT CONSULTANT CERTIFICATION STATEMENT

### SECTION A

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

Firm Name \_\_\_\_\_

Consultant Signature \_\_\_\_\_ Date \_\_\_\_\_

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

### SECTION B

**ORS 670.600 Independent Consultant 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 Consultant" 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 Consultant 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 Consultant 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. Consultant 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.

\_\_\_\_\_  
Consultant Signature

\_\_\_\_\_  
Date

**CONSULTANT SIGNATURE:**

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

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

I, the undersigned, agree to perform work authorized under fully executed Task Orders, as outlined in this Price Agreement, in accordance with the TERMS AND CONDITIONS, the exhibits to the Price Agreement and the SCOPE OF WORK made part of this Price Agreement 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 Consultant as defined in ORS 670.600.

**Harper Houf Peterson Reghellis Inc.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Price Agreement No. \_\_\_\_\_

Price Agreement Title: Price Agreement for Construction Inspection and Technical Support Services

**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: **APPROVED AS TO FORM**

By: James H. Van Dyke Date: 4/20/13  
Office of City Attorney  
**CITY ATTORNEY**

## Exhibit A

### DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROVISIONS

#### No-Goal

(Applicable to federally funded Task Orders when no goal is assigned for DBE participation)

The DBE program is administered by the Oregon Department of Transportation, Office of Civil Rights (OCR). As the City is entering into this Contract under authority granted by ODOT, the DBE Provisions apply the same as if ODOT were the contracting agency.

For purposes of these DBE Provisions, "Contract" means any project-specific contract, Price Agreement (PA), Work Order Contract (WOC), Task Order, or any other contract entered into with ODOT (or local agency when applicable). "Consultant" and "Contractor" are hereinafter referred to as "Contractor". **See section e for specific reporting requirements of Contractor.**

- a. **Policy and Program Authorities:** ODOT and Contractor agree to abide by and take all necessary and reasonable steps to comply with these DBE Provisions and the following, which are incorporated in this Contract with the same force and effect as though fully set forth in this Contract:
- o ODOT DBE Policy Statement
  - o ODOT DBE Program Plan, and
  - o Requirements of Title 49, Code of Federal Regulations, Part 26 - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

ODOT's DBE Program authorities are set forth in the ODOT DBE Program Plan.

- b. **DBE Goals:** ODOT's overall goal for DBE participation is 16.95% for FHWA funded Contracts and 2% for FTA funded Contracts. For FHWA funded contracting, ODOT may assign DBE Contract goals to increase participation by substantially underutilized DBE groups pursuant to ODOT's August 20, 2012 USDOT-approved waiver. Under the waiver, all DBEs, except Asian Pacific American-owned DBEs, are eligible for use to meet an assigned DBE Contract goal on A&E and Related Services Contracts. However, all DBE utilization, including Asian Pacific American-owned DBE utilization, may be credited toward meeting ODOT's overall goal in accordance with 49CFR § 26.55.

**A DBE participation goal has not been established for this procurement.**

- c. **Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this USDOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- d. **Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory performance of its contract no later than 10 calendar days from receipt of each payment Consultant receives from ODOT (or local agency when applicable). In addition, Contractor shall return any retainage payments to each subcontractor within 10 calendar days after the subcontractor's work is satisfactorily completed.
- e. **Reporting Requirements:** Contractor shall report all subcontractor utilization (including any DBE participation obtained through race-neutral means) throughout the period of performance. Contractor shall submit with its on-time monthly invoice a completed "Summary Report of Subcontractor's Paid" (form 734-2722) to APM the month following each month payment was made to a subcontractor or supplier.
- f. **Commercially Useful Function:** For Contracts with no DBE goal assigned, ODOT may count race-neutral DBE participation toward its overall goal, provided the DBE is performing a commercially useful

function (CUF) as set forth in **49 CFR 26.55**. A DBE performs a commercially useful function when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in **49 CFR 26.55**. ODOT may perform a CUF review at any time during the performance of the Contract.

- g. **Termination of DBE Notification Requirement:** Contractor must promptly notify ODOT whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work. See additional requirements of **49CFR 26.53(f)** regarding termination of a DBE.
- h. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights (OCR). Questions related to the DBE Program may be sent via email to [ocrinforequest@odot.state.or.us](mailto:ocrinforequest@odot.state.or.us) or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 355 Capitol Street NE, Room 504 Salem, OR 97301-3871 Phone: 503-986-4350 Fax: 503-986-6382
- i. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at: <http://www4.cbs.state.or.us/ex/dir/omwesh/search/index.cfm?fuseaction=code>

**Related Web Sites:**

All forms, documents and CFRs referenced or linked in these DBE Provisions are available on line at:

- o **Forms:** [http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/forms.aspx#dbe\\_form](http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/forms.aspx#dbe_form)
- o **Documents:** [http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/sbe/dbe/dbe\\_program.aspx](http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/sbe/dbe/dbe_program.aspx)
- o **49 CFR Part 26:** <http://www.gpo.gov/fdsys/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-part26.xml>

## Exhibit B      DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROVISIONS

(Applicable to federally funded Task Orders with an assigned DBE goal greater than zero.)

The DBE program is administered by the Oregon Department of Transportation, Office of Civil Rights (OCR). As the City is entering into this Contract under authority granted by ODOT, the DBE Provisions apply the same as if ODOT were the contracting agency.

For purposes of these DBE Provisions, "Contract" means any project-specific contract, Price Agreement (PA), Work Order Contract (WOC), Task Order, or any other contract entered into with ODOT (or local agency when applicable). "Consultant" and "Contractor" are hereinafter referred to as "Contractor". **See sections d and i for specific documentation and reporting requirements of Contractor.**

- a. **Policy and Program Authorities:** ODOT and Contractor agree to abide by and take all necessary and reasonable steps to comply with these DBE Provisions and the following, which are incorporated in this Contract with the same force and effect as though fully set forth in this Contract:

- o ODOT DBE Policy Statement
- o ODOT DBE Program Plan, and
- o Requirements of **Title 49, Code of Federal Regulations, Part 26** - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

ODOT's DBE Program authorities are set forth in the ODOT DBE Program Plan.

- b. **DBE Goals:** ODOT's overall goal for DBE participation is 16.95% for FHWA funded contracting and 2% for FTA funded contracting. For FHWA funded contracting, ODOT may assign DBE Contract goals to increase participation by substantially underutilized DBE groups pursuant to ODOT's August 20, 2012 USDOT-approved waiver. Under the waiver, all DBEs, except Asian Pacific American-owned DBEs, are eligible for use to meet an assigned DBE Contract goal on A&E and Related Services Contracts. However, all DBE utilization, including Asian Pacific American-owned DBE utilization, may be credited toward meeting ODOT's overall goal in accordance with 49CFR § 26.55.

- **A separate DBE Contract goal, as set forth on page 1 of the WOC or project-specific Contract (as applicable), has been assigned for this procurement.**

- c. **Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR § 26.13(b)).
- d. **Documentation of Proposed Participation:** Contractor shall document sufficient DBE participation to meet an assigned Contract goal or, alternatively, document adequate good faith efforts to do so (see 49 CFR § 26.53). All work committed to a DBE firm toward meeting the assigned participation goal must be performed under a written subcontract. The subcontract must fully describe any work committed to be performed by the DBE and shall include all required flow-down provisions of the primary Contract. Contractor must complete and submit the following documentation, as applicable:
1. **Subcontractor Solicitation and Utilization Report (SSUR)** – submitted with proposal in response to formal and informal Requests for Proposals (RFPs).
  2. **Breakdown of Costs (BOC) or (BOC-NBR), as applicable** - submitted prior to negotiation and execution of the Contract and each amendment that changes the scope of work and costs under the Contract. The BOC forms and BOC Requirements are available from the Internet at: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms>. The BOC must clearly list any tasks or subtasks to be performed by subcontractors (DBEs and non-DBEs), each subcontractor's Federal



Tax ID and identification of any required personnel. Include in the Expense Detail tab any required equipment and supplies furnished by the DBE, any of the prime contractor's resources that will be provided for the DBE's use, and identification of any second or lower tier subcontractors with the dollar amounts for each.

3. **Committed DBE Breakdown and Certification form(s)** [printed from BOC or BOC-NBR forms or in other format as may be required by ODOT]- Required for all Contracts with assigned goals and completed prior to Contract execution and any proposed substitution.
- e. **Good Faith Efforts:** Contractor shall make good faith efforts, as set forth in 49 CFR § 26.53, Appendix A to Part 26, and ODOT DBE Program Plan, to obtain and support DBE participation that could reasonably be expected to produce and maintain a level of DBE participation sufficient to meet the Contract goal. Good faith efforts are required during solicitation, upon Contract award, and continue throughout the performance of the Contract to maximize DBE participation. The ODOT (or local agency when applicable) Project Manager (APM) may request Contractor to submit evidence of good faith efforts prior to Contract execution or at any time during the course of the Contract and Contractor shall promptly submit such evidence.
- f. **Commercially Useful Function (CUF):** Contractor is responsible to ensure the DBE performs a commercially useful function on the Contract. A DBE performs a CUF when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in 49 CFR § 26.55. The APM will review the proposed DBE participation and may provide written comments as to whether the activities and type of work identified for DBEs complies with program regulations. In those instances where proposed activity and type of work violates applicable regulations, written comments will be offered as to corrective action required in order to comply with the regulations. ODOT may perform a CUF review at any time during the performance of the Contract.
- g. **Changes in Work Committed to DBE:** ODOT will consider the impact on DBE participation in instances where the prime Contract is amended to reduce, or delete work committed to the DBE. In such instances, Contractor shall not be required to replace the work but is encouraged to do so to the maximum extent practicable.
- h. **Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory performance under its contract no later than 10 calendar days from receipt of each payment Contractor receives from ODOT (or local agency when applicable) for the subcontracted work. In addition, within 10 calendar days of receipt of retainage from ODOT (or local agency when applicable), Contractor shall pay to each subcontractor the retainage that pertains to the work of that subcontractor.
- i. **Reporting Requirements:** Contractor shall report all subcontractor utilization (including any DBE participation obtained through race-neutral means) throughout the period of performance. Contractor shall submit with its monthly invoice a completed "Summary Report of Subcontractor's Paid" (form 734-2722) to APM the month following each month payment was made to a subcontractor or supplier.
- j. **Termination of DBE Notification Requirement:** Contractor shall comply with all requirements set forth in 49 CFR § 26.53 regarding termination of DBEs including, without limitation, documentation of good cause, 5-day notice to the DBE subcontractor and ODOT, DBE responses, ODOT's approval of DBE termination, and replacement of DBEs.
- k. **Remedies:** Contractor's failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by ODOT: non-compliance documented in ODOT evaluation of Contractor performance, a corrective action plan prepared by Contractor, ODOT (or local agency when applicable) withholding of retainage, suspension of work, reporting of non-compliance to the federal System for Award Management (SAM) available at <http://sam.gov>, any other remedies provided under the Contract.
- l. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights (OCR). Questions related to the DBE Program may be sent via email to [ocrinforequest@odot.state.or.us](mailto:ocrinforequest@odot.state.or.us) or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 355 Capitol Street NE, Room 504 Salem, OR 97301-3871 Phone: 503-986-4350 Fax: 503-986-6382

- m. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at:  
<http://www4.cbs.state.or.us/ex/dir/omwesb/search/index.cfm?fuseaction=code>

**Related Web Sites:**

All forms, documents and CFR citations referenced or linked in these DBE Provisions are available on line at:

- o **Forms:** [http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/forms.aspx#dbe\\_form](http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/forms.aspx#dbe_form)
- o **Documents:** [http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/sbe/dbe/dbe\\_program.aspx](http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/sbe/dbe/dbe_program.aspx)
- o **49 CFR Part 26:** <http://www.gpo.gov/fdsys/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-part26.xml>

**Exhibit C**

**Request for Proposals (RFP)**

**The RFP associated with this Price Agreement is attached and incorporated by this reference.**

**Exhibit D**  
**Table of Consultant Personnel as well as Sub-consultants and personnel**

	Loaded Standard Rate		Loaded Overtime Rate	
	Low	High	Low	High
Project Manager	146.07	149.05	Exempt	Exempt
Senior Public Works Inspector	101.34	146.07	117.68	169.63
Public Works Inspector	71.52	102.30	83.05	118.80
Engineering Technician	72.26	122.20	83.92	141.91
Surveyor	108.50	145.30	126.00	168.73

Notes:

- 1) "Loaded" rates calculated by multiplying base salary rates by 3.1 multiplier. Overtime rate only applies 1.5 multiplier to base rates, not overhead.
- 2) Rates apply to Prime and Subconsultants
- 3) Commute mileage to and from site is not billable. First 100 miles of travel within a week is incidental. Additional mileage billable at the current IRS allowable rate / mile.
- 4) Other expenses are considered incidental and are not billable without prior written approval.