

Contract # 30004734

LEGAL SERVICES AGREEMENT
(Non Conflict)

This Agreement for Services (Agreement) is between the City of Portland, Oregon (City), by and through the City Attorney's Office, and Hawkins Delafield & Wood LLP (Outside Counsel).

AGREEMENT:

1. SCOPE OF OUTSIDE COUNSEL LEGAL SERVICES

Outside Counsel shall provide legal services in accordance with the terms and conditions set forth in this Agreement and as specified in the *Scope of Work, Budget, Schedule and Compensation Rates*, attached hereto as Exhibit A.

To demonstrate Outside Counsel's legal expertise, Outside Counsel agrees to present to the City Attorney's Office two or more one-hour legal presentations on subject matter(s) of Outside Counsel's identified expertise, at no-cost to the City and which would be of the high quality to qualify for accreditation under the Oregon State Bar's MCLE requirements. Identification of appropriate subject matter and scheduling of the legal presentations shall be coordinated through the City Project Manager.

2. COMPENSATION, BILLING AND PAYMENT PROCEDURE

(a) Billing and compensation for Outside Counsel must conform to the billing rates and budget established for this Agreement and the *Contract Requirements for Outside Counsel*, attached hereto as Exhibit B. The total Compensation under this Agreement (i.e., the approved and payable attorney and legal staff billable time and legal services expenses) shall not exceed \$1,500,000, unless authorized as provided in Section 20 of this Agreement.

(b) Outside Counsel shall maintain time and billing records up-to-date to support all billings under this Agreement.

3. WORK PRODUCT AND RECORDS RETENTION

All of Outside Counsel's work product resulting from this Agreement is the exclusive property of the City ("Work Product"). The City and Outside Counsel intend that the Work Product be deemed "work made for hire" of which the City shall be the client and the owner. If for any reason the work product is not deemed "work made for hire," Outside Counsel hereby irrevocably assigns to the City all rights, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Outside Counsel shall execute such further documents and instruments as the City may reasonably request in order to fully vest such rights in the City. Outside Counsel forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. It is anticipated that Outside Counsel will provide the City with copies of required or requested Work Product throughout the progress of the Agreement. At the expiration or termination of this Agreement, following receipt of any payments due and owing from the City under this Agreement, Outside Counsel shall deliver to the City all of the Work Product. Outside Counsel must have adequate protocol for safekeeping Work

Product in Outside Counsel's possession and ensuring against inadvertent disclosure of City confidences or sensitive information to persons not involved in providing legal services under this Agreement, whether at Outside Counsel's law firm, agents, experts or consultants. Outside Counsel records shall be maintained for a period of three (3) years after completion or termination of this Agreement or the records maintenance and retention period followed by Outside Counsel's law firm, whichever period is longer.

4. **EFFECTIVE AND TERMINATION DATES**

This Agreement shall be effective as of September 1, 2015, and shall terminate as of September 1, 2020, unless otherwise amended.

5. **EARLY TERMINATION OF AGREEMENT; PAYMENT ON EARLY TERMINATION**

(a) The City may terminate this Agreement for convenience at any time for any reason deemed appropriate in its sole discretion.

(b) Either party may terminate this Agreement in the event of a material breach by the other party that is not cured. In order to terminate the Agreement, 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 the 15 days, the party seeking termination may terminate immediately by giving written notice that the Agreement is terminated.

(c) In the event of early termination of this Agreement under this Section, the City shall pay Outside Counsel for work performed in accordance with the Agreement prior to the termination date and nothing further.

6. **STANDARD OF CARE; ETHICAL AND PROFESSIONAL RESPONSIBILITY**

Outside Counsel shall perform all professional legal services using that care, skill and diligence which would ordinarily be used by attorneys in this community in similar circumstances and ensuring fulfillment of ethical and fiduciary duties, including duty of loyalty to the City as the client. Outside Counsel shall comply with the Oregon Rules of Professional Conduct, including but not limited to the responsibility of competence, diligence, confidentiality of information, legal conflict of interest related to current and former clients, and safekeeping property.

7. **PROFESSIONAL LIABILITY INSURANCE**

Outside Counsel shall maintain professional liability insurance as required by the Oregon State Bar, and not less than the limits of the Oregon Tort Claims Act, applicable to the City unless otherwise approved by the City Attorney. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Project Manager.

8. **PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

(a) Outside Counsel shall obtain, at its expense, and keep in effect during the term of this Agreement and as specified below, Commercial General Liability Insurance (CGL) covering bodily injury and property damage in a form and with coverage's that are satisfactory to the City. This insurance shall include personal injury liability and contractual liability coverage for the indemnity provided under this Agreement (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis. Outside Counsel's

coverage shall be primary and non-contributory with any other insurance or self-insurance. Combined single limit per occurrence shall not be less than \$2,000,000 for each occurrence, \$2,000,000 Personal Injury/Advertising Injury, and \$2,000,000 General Aggregate. The City, its officers, agents and employees, shall be listed as Additional Insureds in regard to Outside Counsel's activities under this Agreement.

(b) Outside Counsel shall hold harmless, defend, and indemnify the City and the City's officers, agents, and employees against all claims, demands, actions, and suits (including all attorney fees and costs) for property damage or personal injury, or both, brought against any of them arising from Outside Counsel's actions or omissions under this Agreement.

9. WORKERS' COMPENSATION INSURANCE

(a) Outside Counsel, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation law and shall comply with ORS Chapter 656, which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or a copy of it, shall be provided, if applicable, and shall be incorporated herein and made a term and part of this Agreement. Outside Counsel further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.

(b) In the event Outside Counsel's workers' compensation insurance coverage is due to expire during the term of this Agreement, Outside Counsel agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration, and Outside Counsel agrees to provide the City of Portland such further certification of workers' compensation insurance as renewals of said insurance occur.

(c) Outside Counsel agrees to accurately complete the City of Portland's Questionnaire for Workers' Compensation Insurance and Qualification as Independent Contractor prior to commencing work under this Agreement. Questionnaire is attached to this Agreement as Exhibit C and shall remain attached to this Agreement and becomes a part of it as if fully copied herein. Any misrepresentation of information on the Questionnaire by Outside Counsel shall constitute a breach of this Agreement.

10. CERTIFICATES OF INSURANCE

(a) Outside Counsel shall provide to the City Project Manager certificates of insurance and additional insured endorsements signed by the insurance carrier showing that the coverage required by the Agreement with Insurance Services Office (ISO) form numbers to identify the specific coverage that has been obtained and the effective dates of the insurance policies. This shall be provided within 10 Calendar Days of the announcement of the intent to Award the Contract to Outside Counsel by the City. The certificates shall contain a provision that states substantially the following: "The insurance described in this certificate shall not be canceled or materially altered without giving the City 30 days written Notice in advance of that action." Notices of cancellation or termination of insurance shall be directed to the City Project Manager. Failure to comply with the reporting provisions of this Contract shall not affect the coverages provided to the City of Portland, the City and their officers, employees and agents.

(b) The City Attorney's Office will review the certificates for approval. The City Attorney's Office may reject any proposed certificate if the insurance proposed to be provided is not the same as the coverage required by the Agreement, may reject the certificate if it is unclear, or require that

the underlying policy be presented for review. If the City Attorney's Office determines that the certificates are unclear, Outside Counsel shall provide revised certificates that clearly show the insurance required by the Agreement has been obtained. Review or approval of the City Attorney's Office of any insurance certificate does not excuse Outside Counsel from providing the insurance required by the Agreement.

(c) The certificate(s) will identify all of the parties who are Additional Insureds or Loss Payees. In addition, there shall be no cancellation, non-renewal, material change, or potential exhaustion of aggregate limits without 30 days written notice from Outside Counsel or its insurer(s) to the City. The certificates shall reflect these requirements. To the extent certificates of insurance contain words to the effect that Outside Counsel shall "endeavor to send notice of cancellation" or similar language, Outside Counsel shall require its insurer(s) to send such notice by making sure that the words "endeavor to" or similar words are removed from the Certificate.

(d) Any deductible in excess of \$50,000 shall be disclosed to the City in writing prior to Issuance of a Notice to Proceed and is subject to the City's approval.

(e) Failure to maintain any insurance required under this Agreement shall be cause for immediate termination of the Agreement.

11. SUBCONTRACTING

Outside Counsel shall not subcontract its work under this Agreement, in whole or in part, without the written approval of the City. Outside Counsel shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of Outside Counsel as specified in this Agreement. Notwithstanding City approval of a subcontractor, Outside Counsel shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to Outside Counsel hereunder. Outside Counsel agrees that if subcontractors are employed in the performance of this Agreement, Outside Counsel and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656.

12. ASSIGNMENT

Outside Counsel shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the City.

13. INDEPENDENT CONTRACTOR STATUS

Outside Counsel is engaged as an independent contractor and will be responsible for any federal, state, and local taxes and fees applicable to payments hereunder. Outside Counsel, its subcontractors, and their employees, are not employees of the City and are not eligible for any benefits through the City, including without limitation federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

14. COMMENCEMENT OF WORK

Neither party is obligated to perform services under this Agreement until authorized by the City in accordance with its Charter, City Code or applicable regulations, and until this Agreement is fully executed by the parties.

15. CITY PROJECT MANAGER

(a) The City Project Manager shall be [City Project Manager], who is authorized to approve work and billings hereunder, to give notices referred to herein, to terminate this Agreement as provided herein, and to carry out any other City actions referred to herein.

(b) Invoices must be submitted no later than 30 days after the end of the billing period, and no later than 60 days following the conclusion, termination or expiration of the contract, whichever comes first. Final invoices should clearly state on the face of the invoice that it is a final invoice.

Invoices shall be sent to:

Stephanie Harris
Office of the City Attorney
1221 SW 4th Ave, Suite 430
Portland, OR 97204

16. EQUAL EMPLOYMENT OPPORTUNITY

Outside Counsel agrees it is EEO certified pursuant to the City's Equal Employment Opportunity certification process. Outside Counsel shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, familial status, sexual orientation, national origin, veterans or other legally protected status under federal, state or local laws (collectively "legally protected status"). Outside Counsel shall take actions to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their legally protected status. Actions shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Outside Counsel shall post in conspicuous places, available to employees and applicants for employment, notices for the provisions of this nondiscrimination clause. Outside Counsel shall state that all qualified applicants will receive consideration for employment without regard to legally protected status. Outside Counsel shall incorporate the foregoing requirements of this paragraph in all of other agreements for work funded under this Agreement, except agreements governed by Section 104 of Executive Order 11246. To fulfill the Oregon State Bar's mission to promote diversity, inclusion and access to justice, Outside Counsel shall provide to its attorneys, paraprofessional and staff who are of diverse or legally protected status meaningful opportunities to participate in the performance of legal services, including responsibility for performing substantive and challenging legal work under this Agreement. Outside Counsel shall undertake review of its experts/consultants selection and retention process to ensure that qualified individuals with legally protected status will have equitable opportunity to be considered for performing legal services that may be required under this Agreement.

17. EQUAL BENEFITS PROGRAM

Outside Counsel must provide benefits to their employees with domestic partners equivalent to those provided to employees with spouses 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 contract execution.

18. **OREGON LAW AND FORUM**

This Agreement shall be construed according to the law of the State of Oregon without reference to its conflict of laws provisions, and any litigation between the City and Outside Counsel arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon. Outside Counsel shall comply with all applicable federal, state and local laws and regulations.

19. **BUSINESS LICENSE**

Outside Counsel shall obtain a City of Portland business license as required by City Code Chapter 7.02 prior to beginning work under this Agreement. Outside Counsel shall provide a business license number in the space provided at the end of this Agreement. Outside Counsel certifies that it is in compliance with federal, state and local tax laws including filing of requisite tax reports and paying tax obligations and agrees to comply with applicable requirements throughout the terms of the Agreement.

20. **AMENDMENTS**

The City and Outside Counsel may amend this Agreement at any time only by written amendment executed by the City and Outside Counsel. Unless otherwise provided in the authorizing document, if any, any amendment that increases the amount of compensation payable to Outside Counsel in an amount of 25% or less of the original amount of compensation in this Agreement may be approved by the City Attorney and the Chief Procurement Officer. Any amendment that increases compensation by more than 25% of the original amount of compensation in this Agreement must be authorized by City Council. The Chief Procurement Officer or City Attorney may authorize any other amendment on behalf of the City.

21. **FUNDS**

The City certifies that sufficient funds are available and authorized for expenditure to finance the cost of this Agreement.

22. **ELECTRONIC SIGNATURES**

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

23. **COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. No counterpart shall be effective until each party has executed at least one counterpart.

24. **PROHIBITED INTEREST**

(a) No City officer or employee during his or her tenure or for two (2) years 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 Outside Counsel during the period of the Agreement unless specifically authorized in advance by City Council.

25. THIRD PARTY BENEFICIARIES

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

26. MERGER CLAUSE

This Agreement encompasses the entire agreement of the parties, and supersedes all previous understandings and Agreements between the parties, whether oral or written.

Outside Counsel

City of Portland

Name: _____

Name: Christine Moody

Title: Chief Procurement Officer

Title: _____

Date: _____

Date: _____

Business License No. _____

Tax ID No. _____

Approved as to Form

City Attorney

**EXHIBIT A
CITY OF PORTLAND
CITY ATTORNEY'S OFFICE
SCOPE OF WORK, BUDGET, SCHEDULE AND COMPENSATION RATES**

Assigned Attorney & billing rate:

Other assigned Attorney & billing rate (if applicable):

Assigned Paralegal & billing rate:

Contract budgeted amount:

Expected duration of the work to be performed:

Tasks:

187 2 6 8

**EXHIBIT B
CITY OF PORTLAND
CITY ATTORNEY'S OFFICE
CONTRACT REQUIREMENTS FOR OUTSIDE COUNSEL**

I. INTRODUCTION

A. Applicability & Purpose

1. These Contract Requirements apply to all Outside Counsel retained by the City of Portland (City) through the City Attorney's Office. They are intended to ensure that Outside Counsel provide the City with high-quality, cost-effective legal services, are mindful of the need to conserve public resources and account for their work in a professional and transparent manner.
2. Outside Counsel (including all attorneys and support staff who participate in representing the City) are expected to know and adhere to these Requirements.

B. Requests for Modifications

Outside Counsel may bring requests for modification of these Contract Requirements to the City Attorney or Deputy City Attorney assigned as the City's principal point of contact (the "City Project Manager"). Requested modifications shall only be valid if approved in writing by the City Project Manager.

II. RELATIONSHIP BETWEEN THE CITY & OUTSIDE COUNSEL

A. Decision-making Authority

The City Attorney remains responsible for making all substantive decisions in matters assigned to Outside Counsel. To ensure effective communication with Outside Counsel concerning substantive decision-making and other aspects of a matter, the City Attorney or a designated Deputy City Attorney will be named as City Project Manager for each matter sent to Outside Counsel.

B. Selection of Outside Counsel

1. The City Attorney will determine which Outside Counsel to engage for any particular matter, taking into account factors bearing upon the likelihood of advancing the City's interests and achieving the ultimate desired outcome as well as the appropriate stewardship of public resources through cost effective legal representation. These factors may include: whether prospective Outside Counsel has previously been engaged by the City and, if so, the quality and cost-effectiveness of Outside Counsel's prior performance; the reputation of the prospective Outside Counsel within the legal community; the relevant experience of the prospective Outside Counsel before any court or other tribunal or body involved; the prospective Outside Counsel's knowledge and understanding of the City and the particular matter at issue; and the reasonableness of the prospective Outside Counsel's proposed fees and budget.
2. Prospective Outside Counsel must not have conflicts of interest precluding them from taking on the engagement and must accept these Contract Requirements and the City Attorney's fee restrictions, including caps on maximum hourly rates for attorneys and paralegals.

C. Commitment of Outside Counsel to Diversity

In selecting Outside Counsel, the City Attorney will also consider the extent to which prospective Outside Counsel shares the City's goals of facilitating the success of minority-owned businesses and promoting equal employment opportunities for all persons, regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability. The City Attorney encourages women or minority-owned law firms or attorneys and other diverse candidates to apply to represent the City.

D. Protocol

1. Outside Counsel should communicate frequently and directly with the City Project Manager regarding the assigned matter. Outside Counsel should regularly consult with the City Project Manager so that the City Project Manager can participate in decisions as to whether specific costs and fees should be incurred. For example, Outside Counsel should consult with the City Project Manager on such topics as whether a particular research project is necessary, whether the City already has prior legal research on a topic or issue that can be used in the matter, whether a particular deposition makes sense from an economic standpoint, or whether a particular document production can be completed more economically in-house. Outside Counsel's failure to communicate with the City Project Manager prior to undertaking such work will result in the City's refusal to pay for work performed without consultation which the City Attorney believes was not reasonably required or cost-effective.
2. Outside Counsel shall keep the City Project Manager fully and currently informed about the status of ongoing matters by means of prompt personal communications (telephone calls, emails) rather than letters summarizing work done over a period of time.
3. Outside Counsel shall transmit documents to the City Project Manager prior to filing them with the Court, allowing sufficient time for review, comment and approval. Outside Counsel shall also provide the City Project Manager with copies of final or as-filed documents, as well as copies of any memoranda or correspondence, whether internal or external, for which the City will incur a fee (other than routine internal emails). The general expectation is that all documents will be transmitted electronically, unless circumstances warrant furnishing copies in other formats such as paper.
4. Outside Counsel shall consult with the City Project Manager regarding any settlement demands and overtures. Outside Counsel shall not enter into any settlement negotiations or settlements without prior approval of the City Project Manager. Outside Counsel is not legally authorized to enter into any enforceable settlement agreements. By law, any such agreements by the City require either City Attorney and City Bureau Director (if under \$5,000) or City Council (if over \$5,000) approval.

E. Conflicts of Interest

Outside Counsel must investigate potential conflicts of interest before beginning working on a matter and must inform the City Project Manager of any potential or actual conflicts of interest as soon as Outside Counsel becomes aware of them. Unless Outside Counsel specifically raises a conflict of interest, and the City Attorney acknowledges and waives the conflict in writing, Outside Counsel will fully reimburse the City for additional costs subsequently incurred due to such conflict, including, where appropriate, the cost of substitute counsel becoming familiar with the matter. The City will not reimburse Outside Counsel for the time or cost of a conflicts check.

F. Media Relations

Outside Counsel is not authorized to comment publicly on City matters or to issue any statements or press releases in connection with any matter of engagement for the City without the express advance consent of the City Project Manager.

III. PROJECTION OF FEES & EXPENSES**A. Setting of Rates**

At the time of the initial engagement, Outside Counsel must furnish the City Attorney with a schedule of hourly rates for all partners, associates, and paralegals who will or may bill time on the matter. The rates ultimately agreed

upon will apply for the full period of this engagement. Outside Counsel may only change these rates upon prior written approval of the City Attorney. Proposed changes in the agreed upon rate(s) shall be provided to the City Attorney no less than 60 days before the requested effective date.

B. Submission of Budget

1. For each matter, Outside Counsel is required to provide the City Project Manager with a budget, as shown in Exhibit A. No invoices will be paid until a budget is approved and legal fees may not exceed the budgeted amount without prior approval from the City Project Manager.
2. The budget must specifically include the work that Outside Counsel will perform, the identity and the billing rate of each attorney and paralegal assigned to the matter, and the expected duration of the work. Outside Counsel is expected to stay within the budget absent truly unforeseen or exceptional circumstances. If it appears that Outside Counsel may exceed the budget on a particular matter, Outside Counsel must promptly notify the City Project Manager, provide a written explanation for the prospective variance, and obtain the approval of the City Project Manager for the enlarged budget well before incurring fees or expenses beyond the budget. The City will not pay for time spent in preparing budgets or monthly bills.

IV. STAFFING AND SUPERVISION

A. Assigned Attorneys

The specific attorney(s) with whom the engagement is established ("Lead Counsel") shall be directly and intimately involved in the matter throughout its course, unless the City Project Manager agrees otherwise. Outside Counsel shall consult with the City Project Manager regarding other attorneys who may be assigned to work on any City matters. Lead Counsel may not assign additional attorneys to any City matter without prior written approval from the City Project Manager. If a staffing change affecting the budget should occur, Outside Counsel should notify the City Project Manager in writing of the proposed revised budget. The proposed revised budget shall not be effective until approved in writing by the City Project Manager.

B. Efficient Staffing

The City expects staffing to be efficient. Attorneys should not be performing work more appropriately assigned to a paralegal. Similarly, paralegals should not be assigned secretarial or other clerical tasks such as photocopying, filing or delivering materials, or scheduling depositions or meetings. Routine file maintenance should not be charged to the City. (For appropriate examples of paralegal work, see below.)

Absent prior written authorization from the City Project Manager Outside Counsel shall not:

- Bill for the attendance of more than one attorney at a meeting, hearing, deposition or trial;
- Charge for learning time of newly assigned attorneys when a shift in personnel is warranted;
- Bill for internal "conferences" about City matters; or
- Write status reports or letters, unless requested.

C. Appropriate Use of Paralegals

Paralegals should be used to perform appropriate work when it is economical to use them. Examples of activities that a paralegal should generally perform are:

- Preparing first drafts of basic forms and documents;

- Preparing and filing UCC statements;
- Organizing, summarizing and indexing files and other materials that require professional judgment;
- Preparing subpoenas or notices for deposition, entry of appearance, substitution of counsel, interrogatories, requests to produce, jury trial demands, and other routine litigation documents; and
- Preparing records requests and subpoenas.

D. Experts & Consultants

1. The selection and retention of appraisers, experts, and consultants must be coordinated with and approved in advance in writing by the City Project Manager. Outside Counsel must itemize these charges on their bills.
2. The City will pay the actual cost of services such as printing and acquisition of specific materials by appraisers, experts and consultants if the City Project Manager approves such expenses in writing in advance.

V. BILLABLE AND NON-BILLABLE ITEMS

A. Expenses & Disbursements

1. The City will reimburse Outside Counsel for out-of-pocket expenses as applicable and as provided below. The City will not pay for normal overhead expenses unless prior written approval has been obtained from the City Project Manager and the appropriate portions of the invoice specify that the charges have been "Authorized by [City Project Manager name]" and indicate the date of the authorization. Such charges include items such as: secretarial, clerical or word processing services (normal, temporary or overtime); administrative services (including file creation, file organization and maintenance; clearing conflicts; local telephone expenses; charges for business meals or refreshments (unless related to out-of-town travel); local travel expenses including mileage under 100 miles, toll charges, parking fees, train and cab fares; normal postage.
2. Unless otherwise covered by a specific agreement in advance, the City will pay for separately itemized expenses and disbursements only as follows:
 - a. Toll calls. The City will pay the actual charge billed to the firm or attorney for each call, without an overhead adjustment and without a premium. The City will not pay any charges for fax copying other than actual telephone line charges.
 - b. Messenger Services. The City will reimburse Outside Counsel for actual charges billed to counsel for deliveries (including overnight express) that are necessary. The City Attorney does not want documents to be routinely hand-delivered or sent by overnight express. Wherever possible, documents should be transmitted electronically. Delivery modes should be made with due regard for need, economy and common sense.
 - c. Local and Surface Travel. Travel must be approved by the City Project Manager in writing and in advance. If approved and if Outside Counsel is required to travel more than 100 miles roundtrip on an assigned matter, the City will reimburse mileage for the use of personal cars at the IRS rate or the actual cost of taxicabs, buses, or trains necessitated by the City's business that are not part of attorneys' or employees' commuting costs during regular business hours.
 - d. Out-of-Town Travel. Outside Counsel must receive prior approval for all out-of-town travel reimbursement. The City Attorney encourages Outside Counsel to make travel

arrangements through means that will ensure that the best and most reasonable prices for air or ground transportation are obtained. The City will only reimburse Outside Counsel for coach rates. Only in very unusual circumstances and with prior written approval will the City approve travel by more than one attorney.

- e. Attorney Travel Time. Charges for attorney time during travel are only reimbursable if such time is actually used in performing substantive legal work for the City.
- f. Attorney Time. As previously noted, the City will only pay for one attorney to attend depositions, meetings, or arguments. Outside Counsel must obtain prior written approval from the City Project Manager if Outside Counsel plans to bill time for more than one attorney to attend a meeting, trial, deposition or hearing.

B. Line Item Entry Guidelines

1. Outside Counsel should review each invoice to determine that each line item clearly describes the task performed and the legal reason for the task if not apparent from the task description itself. It is the responsibility of the City Project Manager to ensure the accuracy and reasonableness of each invoice and line item. The City reserves the right to reduce or reject any invoice or invoice line item because of a failure to comply with these Contract Requirements, because an invoice line item is unclear or unreasonable or for any other valid and reasonable purpose.
2. Task descriptions should be written in plain English. The purpose for the task should either be plain from the context or should be succinctly described. When describing work performed, Outside Counsel should comply with the following billing guidelines:
 - Do Not Use:
 - Attention to
 - Review
 - Review and Revise
 - Revise
 - Continued (followed by a task)
 - Review emails
 - Request attention to _____
 - Organize file
 - Follow up
 - Recommended For Use:
 - Read _____
 - Write _____
 - Prepare for _____
 - Edit _____
 - Attend _____
 - Conduct _____
 - Phone conference with _____ regarding _____
 - Email with _____ regarding _____
 - Legal Research regarding _____
 - Write legal memorandum to _____ regarding _____
 - Meeting with _____ regarding _____
 - Take deposition of _____
 - Defend deposition of _____

C. Prohibition Against Reimbursement for Administrative or Clerical Functions

The City will only pay for work performed by professionals (i.e., attorneys or paralegals), and will not pay an hourly or flat rate or fee for work that is secretarial, clerical, or administrative in nature, regardless of the seniority of the person performing the task. Examples of such secretarial, clerical, or administrative work include: scheduling meetings and appointments, making travel arrangements, and maintaining calendars.

D. Legal Research

The City Attorney's Office maintains extensive legal research on issues pertaining to the City. Outside Counsel should confer with the City Project Manager to determine if the City Attorney already has relevant legal research on a given topic. In addition, the City Project Manager may determine that it is more cost effective for City Attorney staff to undertake legal research in a given matter. Where it is determined after consultation that Outside Counsel will undertake legal research, the City Attorney expects that Outside Counsel will use paralegals or junior associates for research matters, and avoid having partners or senior associates devote extensive time to research. Outside Counsel should forward copies of all research products that are prepared for a City matter to the City Project Manager.

E. Office Conferences

Intra-office conferences that deal with substantive issues pertaining to the matter are reimbursable when Outside Counsel provides a thorough description of the purpose of the conference. Generally, no more than two staff members should bill for an intra-office conference. The City will only pay for reasonable amounts of time expended on such conferences. Billing for such conference should be minimized to the greatest extent practicable.

F. Prohibition Against Block Billing

The City will not pay for "block billed entries," that is, a line item with a single time charge for multiple activities or disbursements. A time charge must accompany each fee activity, and Outside Counsel must itemize each disbursement entry.

G. Format

Outside Counsel should clearly show the total of the current bill and also include a running total for the matter to date. Prior balances or payment history should be shown, if at all, on a separate page. Outside Counsel must include with the statement both time sheet or diary detail for time charges and copies of invoices or internal data compilations for disbursements over \$500, especially for out-of-town travel and bulk photocopying or special vendor services.

H. Audit

The City has the right to examine and audit all of Outside Counsel's firm's or attorney billings for any work charges to the City and all of the supporting data for those billings.

VI. ACCEPTANCE OF TERMS

These Contract Requirements constitute the terms and conditions of the City of Portland's retention of Outside Counsel. Outside Counsel's acceptance of an offer of engagement constitutes an agreement to comply with the terms and conditions set forth in these Requirements. Outside Counsel must discuss questions concerning the applicability of these Requirements with the City Project Manager before proceeding on a course of action not specifically authorized.

EXHIBIT C

Questionnaire for Workers' Compensation Insurance OR Qualification as Independent Contractor

If Outside Counsel does have Workers' Compensation Insurance: Outside Counsel completes section A only

SECTION A

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

Signature of Outside Counsel _____ Date _____ Entity/Firm _____

If Outside Counsel does not have Workers' Compensation Insurance: City Project Manager completes Section B only; Outside Counsel completes section C only.

INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT**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 farm 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:

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| _____ | 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. |

Outside Counsel Signature _____ Date _____