

EXHIBIT A

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

CONTRACT NUMBER 30004882

TITLE OF WORK PROJECT Portland Off-Road Cycling Master Plan

This contract is between the City of Portland and Toole Design Group LLC., hereafter called Consultant. The City's Project Manager for this contract is Michelle Kunec-North.

Effective Date and Duration

This contract shall become effective on November 16, 2015. This contract shall expire, unless otherwise terminated or extended, on March 30, 2017.

Consideration

- (a) City agrees to pay Consultant a sum not to exceed \$199,845 for accomplishment of the work.
- (b) Interim payments shall be made to Consultant according to the schedule identified in the STATEMENT OF THE WORK AND PAYMENT SCHEDULE.

CONSULTANT DATA AND CERTIFICATION

Name (print full legal name): Toole Design Group LLC

Address: 8484 Georgia Avenue Suite 800 Silver Springs MD 20910

Employer Identification Number (EIN): 05-0545429

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

City of Portland Business Tax Registration Number: 768398

Citizenship: Nonresident alien ☐ Yes ☒ No

Business Designation (check one): ☐ Individual ☐ Sole Proprietorship ☐ Partnership ☐ Corporation

☒ Limited Liability Co (LLC) ☐ Estate/Trust ☐ Public Service Corp. ☐ Government/Nonprofit

Payment information will be reported to the IRS under the name and taxpayer I.D. number provided above. Information must be provided prior to contract approval.

TERMS AND CONDITIONS

1. Standard of Care

Consultant shall perform all services under this contract 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 contract expiration date shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance that has not been corrected.

3. Order of Precedence

This contract 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 contract.

4. Early Termination of Contract

- (a) The City may terminate this Contract for convenience upon ten (10) days written notice 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 Contract 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 Contract 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 Contract 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 to the extent resulting from the breach.
- (c) If the Consultant justifiably terminates the contract 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 Contract 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 subconsultant, 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 subconsultants are employed in the performance of this Agreement, the Consultant and its subconsultants 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 agrees it currently is in compliance with all tax laws. Consultant shall comply with Title VI of the Civil Rights Act of 1964 and its corresponding regulations. In connection with its activities under this Contract, the Consultant shall comply with all applicable Grant Terms and conditions. This includes all terms and conditions contained in this contract and, for a contract involving a grant, the Grant Terms and Conditions.

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 to the extent arising out of the intentional or negligent acts or omissions of the Consultant, its Subconsultants, 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 contract.

9. Insurance

Consultant shall obtain and maintain in full force at Consultant expense, throughout the duration of the Contract and any warranty or extension periods, the required insurance identified below. The City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of the Contract.

- (a) Workers' compensation insurance as required by ORS Chapter 656 and as it may be amended. Unless exempt under ORS Chapter 656, the Consultant and all subconsultants shall maintain coverage for all subject workers.

☒ Required and attached // ☐ Proof of exemption (i.e., completion of Workers' Compensation Insurance Statement)

- (b) General commercial liability (CGL) insurance covering bodily injury, personal injury, property damage, including coverage for independent consultant's protection (required if any work will be subcontracted), premises/operations, contractual liability, products and completed operations, in per occurrence limit of not less than \$1,000,000, and aggregate limit of not less than \$2,000,000.

☐ Required and attached // ☐ Waived by Bureau Director or designee // ☒ Reduce by Bureau Director or designee

- (c) Automobile liability insurance with coverage of not less than \$1,000,000 each accident, and an umbrella or excess liability coverage of \$2,000,000. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.

☒ Required and attached // ☐ Waived by Bureau Director or designee // ☐ Reduce by Bureau Director or designee

- (d) Professional Liability and/or Errors & Omissions insurance to cover damages caused by negligent acts, errors or omissions related to the professional services, and performance of duties and responsibilities of the Consultant under this contract in an amount with a combined single limit of not less than \$1,000,000 per occurrence and aggregate of \$3,000,000 for all claims per occurrence. In lieu of an occurrence based policy, Consultant may have claims-made policy in an amount not less than \$1,000,000 per claim and \$3,000,000 annual aggregate, if the Consultant obtains an extended reporting period or tail coverage for not less than three (3) years following the termination or expiration of the Contract.

☐ Required and attached // ☐ Waived by Bureau Director or designee // ☒ Reduce by Bureau Director or designee

Continuous Coverage; Notice of Cancellation: The Consultant agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non renewal of coverage without thirty (30) days written notice from Consultant to the City. If the insurance is canceled or terminated prior to completion of the Contract, Consultant shall immediately notify the City and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract.

Additional Insured: The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation, shall be without prejudice to coverage otherwise existing, and shall name the City of Portland and its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the Consultant's activities to be performed, or products or services to be provided. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

Certificate(s) of Insurance: Consultant shall provide proof of insurance through acceptable certificate(s) of insurance, including additional insured endorsement form(s) and all other relevant endorsements, to the City prior to the award of the Contract if required by the procurement documents (e.g., request for proposal), or at execution of Contract and prior to any commencement of work or delivery of goods or services under the Contract. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Contract shall be obtained from insurance companies acceptable to the City of Portland. The Consultant shall pay for all deductibles and premium. The City reserves the right to require, at any time, complete, certified copies of required insurance policies, including endorsements evidencing the coverage the required.

Subconsultant(s): Consultant shall provide evidence that any subconsultant, if any, performing work or providing goods or service under the Contract has the same types and amounts of coverages as required herein or that the subconsultant is included under Consultant's policy.

10. Ownership of Work Product

All work product produced by the Consultant under this contract 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 contract, 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 contract execution.

13. Successors in Interest

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

14. Severability

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

15. Waiver

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

16. Errors

The Consultant shall promptly perform such additional services as may be necessary to correct errors in the services required by this contract without undue delays and without additional cost.

17. Governing Law/Venue

The provisions of this contract 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 contract must be brought in the appropriate court in Multnomah County Oregon.

18. Amendments

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

19. Business Tax Registration

The Consultant shall obtain a City of Portland business tax registration number as required by PCC 7.02 prior to beginning work under this Contract.

20. Prohibited Conduct

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

21. Payment to Vendors and Subconsultants

The Consultant shall timely pay all subconsultants and suppliers providing services or goods for this Contract.

22. Access to Records

The Consultant shall maintain all records relating to this Contract for three (3) years after final payment. The City may examine, audit and copy the Consultant's books, documents, papers, and records relating to this contract at any time during this period upon reasonable notice. Copies of these records shall be made available upon request. Payment for the reasonable cost of requested copies shall be made by the City.

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 three (3) 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 contract amendments, by electronic means, including the use of electronic signatures.

25. Merger Clause

This Contract 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 Contract with a mediator jointly selected by the parties. Notwithstanding any dispute under this Contract, the Consultant shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Contract for undisputed portions of the work. In the event of litigation no attorney fees are recoverable. No different dispute resolution paragraph(s) in this contract 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 Contract and shall not change personnel without the prior written consent of the City, which shall not be unreasonably withheld.

29. Subconsultants

The Consultant shall use the subconsultants identified in its proposals. The Consultant shall not change subconsultant assignments without the prior written consent of the Chief Procurement Officer. The City will enforce all social equity contracting and Minority, Women and Emerging Small Business (M/W/ESB) subcontracting commitments submitted by the Consultant in its proposals. Failure to use the identified M/W/ESB subconsultants without prior written consent is a material breach of contract.

For contracts valued \$50,000 or more, the Consultant shall submit a Monthly Subconsultant Payment and Utilization Report (MUR), made part of this contract by reference, reporting ALL subconsultants employed in the performance of this agreement. An electronic copy of the MUR may be obtained by contacting the PTE Contract Compliance Specialist.

30. Third Party Beneficiaries

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

31. Conflict of Interest

Consultant hereby certifies that, if applicable, its contract proposal is made in good faith without fraud, collusion or connection of any kind with any other proposer of the same request for proposals or other City procurement solicitation(s), that the Consultant as a proposer has competed solely on its own behalf without connection or obligation to, any undisclosed person or firm. Consultant certifies that it is not a City official/employee or a business with which a City official/employee is associated, and that to the best of its knowledge, Consultant, its employee(s), its officer(s) or its director(s) is not a City official/employee or a relative of any City official/employee who: i) has responsibility in making decisions or ability to influence decision-making on the contract or project to which this contract pertains; ii) has or will participate in evaluation or management of the contract; or iii) has or will have financial benefits in the contract. Consultant understands that should it elect to employ any former City official/employee during the term of the contract then that the former City official/Consultant employee must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and the City's Charter, Codes and administrative rules, including lobbying prohibitions under Portland City Code Section 2.12.080.

32. Respectful Workplace Behavior

The City of Portland is committed to a respectful work environment, free of harassment, discrimination and retaliation and other inappropriate conduct. Every individual has a right to work in a professional atmosphere where all individuals are treated with respect and dignity. The City's HR Rule 2.02 covers all employees with the City of Portland as well as consultants, vendors or consultants who provide services to the City of Portland. By signing this Contract/Agreement, the Consultant indicates compliance with all terms and conditions contained in this Contract including HR 2.02.

STATEMENT OF THE WORK AND PAYMENT SCHEDULE

SCOPE OF WORK

See Exhibit A.

CONSULTANT PERSONNEL

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

NAME	ROLE ON PROJECT
Robert Burchfield	Principal-in-charge (TDG)
Kristen Lohse	Project Manager (TDG)
Adrian Witte	Transportation Planner (TDG)
Jeanne Lawson	Principal (JLA)
Jessica Pickul	Project Coordinator (JLA)
Tim Brooks	Principal Planner (W&B)
Nate Lopes	Project Designer (Hilride)
Rachael Lopes	Project Coordinator (Hilride)

SUBCONSULTANTS

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

NAME	ROLE ON PROJECT	SUBCONTRACT AMOUNT
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JLA Public Involvement	Community engagement	\$53,391
Hilride Progression Development Group	Planning	\$38,065
Winterowd and Brooks LLC	Planning	\$23,994

The City will enforce all social equity contracting and Minority, Women and Emerging Small Business (M/W/ESB) subcontracting commitments submitted by the Consultant in its Proposal. For contracts valued \$50,000 or more, the Consultant shall submit a Monthly Subconsultant Payment and Utilization Report (MUR), made part of this contract by reference, reporting ALL subconsultants employed in the performance of this agreement. A copy of the Subconsultant Change Request Form can be found on Procurement Services' website under Contractor Resources.

COMPENSATION

The maximum that the Consultant can be paid on this contract is \$199,845 (hereafter the "not to exceed" amount.). The "not to exceed" amount includes all payments to be made pursuant to this contract, including reimbursable expenses, if any. Nothing in this contract requires the City to pay for work that does not meet the Standard of Care or other requirements of the Contract. The actual amount to be paid Consultant may be less than that amount.

The Consultant is entitled to receive progress payments for its work pursuant to the Contract as provided in more detail below. The City will pay Consultant based on these invoices for acceptable work performed and approved until the "not to exceed" amount is reached. Thereafter, Consultant must complete work based on the Contract without additional compensation unless there is a change to the scope of work.

Any estimate of the hours necessary to perform the work is not binding on the City. The Consultant remains responsible if the estimate proves to be incorrect. Exceeding the number of estimated hours of work does not impose any liability on the City for additional payment.

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:

NAME	ROLE ON PROJECT	HOURLY RATE
Toole Design Group		
Robert Burchfield	Principal in Charge	\$185
Kristen Lohse	Project Manager	\$120
Adrian Witte	Senior Planner/Engineer	\$125
Peter Lagerway	QA/QC	\$175
--	Planner	\$80
JLA Public Involvement		
Jeanne Lawson	Principal	\$182
Kalin Schmoldt	Creative Services Manager	\$117
Jessica Pickul	Project Coordinator	\$88
Winterowd and Brooks LLC		
Tim Brooks	Principal Planner	\$152
Anita Smyth	Environmental Scientist	\$96
--	Project Coordinator	\$82
Hilride Progression Development Group		
Nate Lopes	Project Designer	\$115
Rachael Lopes	Project Coordinator	\$115

Standard Reimbursable Costs

Receipts and documentation of costs will be reimbursed without mark-up:

- Out of town travel outside a 100- mile radius of consultant's project office shall be reimbursed in accordance with the General Services Administration (GSA) per diem rates.

Subconsultant Costs

Compensation for subconsultants shall be limited to the same restrictions imposed on the Consultant. The maximum markup on subconsultant services shall not exceed 10%.

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 granted before the one-year anniversary of the contract;
- No more than one increase shall be granted per contract 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.

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

Progress Payments

On or before the 15th 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 Contract Number and Purchase Order (DPO) and include: task/subtask, the name of the individual, labor rate, hours worked during the period and remaining hours per task/subtask. The Consultant shall also attach photocopies of claimed reimbursable expenses, if applicable. The Consultant shall stamp and approve all subconsultant invoices and note on the subconsultant invoice what they are approving as "billable" under the contract. The billing from the prime should clearly roll up labor and reimbursable costs for the prime and subconsultants – matching the subconsultant invoices. Prior to initial billing, the Consultant shall develop a billing format for approval by the City.

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

The Consultant shall make full payment to its subconsultants 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.

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.

WORKERS' COMPENSATION INSURANCE STATEMENT

IF YOUR FIRM HAS CURRENT WORKERS' COMPENSATION INSURANCE, CONSULTANT MUST SIGN HERE:

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

Consultant Signature: _____ Date: _____ Entity: _____

IF YOUR FIRM DOES NOT HAVE CURRENT WORKERS' COMPENSATION INSURANCE, CONSULTANT MUST COMPLETE THE FOLLOWING INDEPENDENT CONSULTANT CERTIFICATION STATEMENT:

As an independent Consultant, I certify that I meet 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

FOR CITY USE ONLY

PROJECT MANAGER-COMplete ONLY IF CONSULTANT DOES NOT HAVE WORKER'S COMPENSATION INSURANCE
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

CONSULTANT SIGNATURE:

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

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

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

Toole Design Group, LLC

BY: _____ Date: _____

Name: _____

Title: _____

CONTRACT NUMBER: 30004882

CONTRACT TITLE: Portland Off-Road Cycling Master Plan

CITY OF PORTLAND SIGNATURES:

By: _____
Chief Procurement Officer

Date: _____

Approved as to Form:

By: _____
Office of City Attorney

Date: _____

Exhibit A. Scope of Work

The Consultant shall provide the following services in accordance with RFP No.118428, Bid 91, dated July 21, 2015 and response dated August 28, 2015.

TASK 1. Project coordination & project management

The Consultant will communicate with the City on a regular basis throughout all phases of the project in order to refine project objectives, approaches and work plan; develop recommendations; and allow for review of work products.

1.1 Kick-off Meeting: The Consultant will plan and facilitate a kick-off meeting with BPS and other City agencies to discuss the overall coordination and project management strategy. Based on feedback from this meeting, the Consultant will revise the draft project work plan, and develop the project schedule and complete the Quality Management Plan (QA/QC).

1.2 Community Engagement Plan: The Consultant will work with the City at project kickoff to develop a Community Engagement Plan and outreach strategy/schedule for the project. This will be a strategic effort that identifies project milestones, tools, decision strategy, and stakeholders, as well as the roles of the City agency partners, and the consultant team in the outreach. We will explore how to apply an equity lens, identify initial key messages, integrate social media, and outline the Project Advisory Committee's charge.

1.3 Ongoing Project Coordination: The Consultant will maintain regular and on-going communication with the City's project team. The Consultant will hold bi-weekly meetings with the project manager, bringing in other team members and representatives from partner bureaus and agencies as needed. The Consultant will attend up to six meetings of the Project Coordination Team. All project coordination meetings included in this Task may be conducted by phone or web conferencing. The Consultant will also prepare monthly progress reports that include task accomplishments, status of deliverables, and expected upcoming activities.

Task 1 Deliverables

- *Project work plan and schedule*
- *Community Engagement Plan*
- *QA/QC Plan*
- *Monthly progress reports*
- *Monthly Sub-consultant Payment and Utilization Report*

Task 1 Meetings

- *Kick-off meeting*
- *Bi-weekly meetings (via phone)*
- *Project Coordination Meetings, up to six (6) (via phone/Skype)*

TASK 2. Community Engagement and Information

The Consultant will work with the City to conduct a well-publicized community engagement process using various media and public forums to reach a variety of stakeholders and interested community members. The Consultant will use input received through this community engagement process in developing the Plan's needs assessment and other relevant Plan components.

2.1 Project Advisory Committee: The community engagement program will include a Project Advisory Committee that will provide community and technical expertise, ongoing input and direction, and recommendations. The Consultant will provide facilitation of the Project Advisory Committee. In consultation with the City, the Consultant will be responsible for developing agendas, facilitating meetings, providing presentation materials, and summarizing comment themes and decision points. The Consultant will also facilitate the Committee's efforts to create a final committee report that summarizes the group's recommendations and viewpoints.

The Project Advisory Committee will meet up to ten (10) times, potentially including up to two (2) half day workshops or site tours. The Consultant will also meet with the City for up to ten (10) planning meetings related to the facilitation of the Project Advisory Committee. The Consultant anticipates Committee meetings to coincide with key milestones: chartering and visioning for the long term; defining the demand and types of facilities; exploring the possibilities - inventorying possible locations, types of facilities; evaluating sites - working with the community; selecting sites; talking implementation and management.

2.2 Public Conversation: The community engagement and information process will include multiple formats and tools.

- a. Public information: The Consultant will provide the City with draft content for web postings and project handouts, for the purpose of public information at major project milestones and all other notices as appropriate. This content may include content from other project deliverables including documents, text, graphics, maps, photos and/or video.
- b. Interactive mapping tool: The Consultant will provide the City with data for a City-developed interactive mapping tool that will allow stakeholders and community members to provide information on existing use patterns or explore and comment on project proposals. The Consultant will also draft comment questions and review the tool prior to major updates to ensure accuracy. The City will provide the Consultant with public comments to summarize findings.
- c. Open Houses - Virtual and Physical: The Consultant will provide content and facilitation for two open houses (virtual and physical) and will summarize findings.
- d. Youth Focus Groups: The Consultant will work with BPS to outline a plan to engage youth and will develop materials and focus group questions.
- e. Social Media: The Consultant will provide strategy updates and messaging for social media updates throughout the project at major project milestones.
- f. Videos (Optional): The Consultant will explore video as a way of supporting outreach efforts; relying on crowd-sourced material as possible. Consultant will work with BPS and partner agencies to develop an outline and script, provide guidance for securing video, and edit the video.
- g. Community Partnerships: To reach people who do not typically engage in public processes, the Consultant will develop a strategy and materials to enlist the help of organizations whose missions focus on the needs of under-represented groups.
- h. Site-specific outreach: The Consultant will assist the City in compiling site-specific information from Task 3 through Task 5 and will support site-specific community outreach for up to three (3) sites.
- i. Internal Engagement: The Consultant will support City efforts to engage City staff, including planners and land managers, by attending up to four (4) internal agency meetings.

2.3 Community Engagement Summary Report: Based on the outreach and input gathered in Task 2.2, the Consultant will prepare summary report(s) of engagement methods and key input themes.

Task 2 Deliverables

- *Project Advisory Committee meetings & materials*
- *Project Advisory Committee Report*
- *Draft content for public information and notification*
- *Data for interactive mapping tool*
- *Open house #1, #2 materials*
- *Youth Focus Group strategy and materials*
- *Community partnership meeting strategy and materials*
- *Social Media updates*
- *Videos (Optional)*
- *Community Engagement Summary Report*

Task 2 Meetings:

- *Advisory Committee meetings, up to ten (10), plus planning meetings, up to ten (10)*
- *Two open houses, plus two (2) planning meetings*
- *Agency meetings, up to four (4)*
- *Site specific outreach, for up to three (3) sites*

TASK 3. VISION, BEST PRACTICES AND NEEDS

For Task 3, the Consultant will rely on available data sources, including GIS datasets available through BPS and agency partners, Metro, census data, Oregon State Park ridership data, and data from the Outdoor Foundation's Outdoor Recreation Participation Report.

3.1 Vision, Goals and Objectives: The Consultant will develop the Plan's vision, goals and/or objectives with input from the Project Advisory Committee and the general public.

3.2: Impacts of Off-Road Cycling Assessment: The Consultant will develop a narrative description of potential positive and negative impacts of off-road cycling and review them with City and partner agencies, the Project Advisory Committee and with the community as part of the public outreach process.

Potential impacts to be considered include those to:

- The environment (e.g. wildlife, vegetation, soil, and water resources including streams and wetlands)
- The health and safety of park and trail users, including user conflicts and perceived nuisance activity, based on best practice research for off-road cycling adapted to the Portland context.
- The city's economic activity and tourism (based on an analysis provided by the City)

3.3. Best Practices/Facility Typologies: The Consultant will provide a technical memo outlining standard facility typologies that reflect best practices in sustainable trail and facility planning, design, and management to provide a variety of user experiences, meet multiple goals, maximize benefits and limit user conflicts and negative impacts. The Consultant will provide examples of approaches used by the City of Portland and other jurisdictions to address these issues.

3.4: Existing Conditions and Needs Assessment: The Consultant will conduct an assessment of existing conditions, which will be the basis for identifying facility needs, such as gaps in the network, geographic inequities, and lack of facilities for identified users groups. The existing conditions and needs assessment will inform the site assessment and system planning components of the project.

- a. Existing infrastructure: The Consultant will provide an assessment of existing off-road natural surface cycling infrastructure based on available data, including existing trails and facilities open to use by people on bikes, as well as other places being used for off-road cycling. This inventory will aim to identify trails and facilities by type, location and length. The assessment will identify facilities that are already well-suited for off-road cycling in terms of perceived or actual environmental and social impacts and those that require some type of new or upgraded infrastructure or mitigation to become so.
- b. Existing use patterns: The Consultant will use a variety of existing data sources and technical tools to understand current conditions and the usage of existing facilities. These include Metro data, crowd-sourced information gained from the City's mapping tool and Strava data. Additional tools, such as radar to analyze user speeds, and drone videography may be employed as needed to deepen the understanding of trail user trends and risks, and helps to identify community-wide and site-specific risk-management and conflict-resolution techniques.
- c. Ridership demographics: Based on Census data and ridership surveys completed by Oregon State Parks, the Consultant will estimate current ridership demographics in Portland.
- d. Ridership trends: The Consultant will summarize demographic and recreational trends that may impact future ridership and will provide a rough estimate of future demand. The City will provide future population estimates, including available demographic breakdowns, to support this analysis.

Task 3 Deliverables

- *Visions and Goals, Process Overview and Summary*
- *Impact Assessment: Challenges and Opportunities Matrix and Summary, Draft and Final*
- *Off-Road Cycling Design, Planning and Management Best Practices Report, Draft and Final*
- *Facilities Typology Technical Memo, Draft and Final*
- *Existing Conditions and Needs Report, Draft and Final*

TASK 4: SYSTEM PLANNING

4.1 Site Suitability Criteria development and screening of candidate sites: The Consultant will develop draft site-suitability criteria, based on their expertise and in coordination with City staff. Draft criteria will be presented to the Project Advisory Committee for review and refinement. The criteria will include:

- Location criteria (size, facility type, proximity to existing network and amenities, compatibility with nearby land uses, etc.) and
- Off-road cycling-specific criteria (size, topography/terrain, soil types, vegetation/tree canopy, water resources, other natural resources and sensitive areas, compatibility) and other requirements.

The site-suitability criteria will be tested in the field on three sites and then refined as needed. Once completed, the site-suitability criteria, along with the results from the needs assessment, will be used to identify potential sites and other system connections. The site-suitability criteria and screening process will be developed using the best available existing data, without additional collection of site-specific data. Additional site-specific information and data may be collected for priority sites in Task 4.2.

4.2 Site Feasibility Assessment for potential sites: The Consultant will conduct site feasibility assessments for priority sites. The Consultant will gather necessary data; including GPS-enabled video mapping of select trails; analyze data through geometry editing, attribute collection, spatial and network analysis; and create informative and visually appealing maps. Coordination with land managers and/or site visits may be necessary to confirm feasibility. The site feasibility assessments will include but may not be limited to:

- Size, location, terrain, etc. of potential sites
- User profiles and related potential design and management considerations
- Significant ownership, legal, and regulatory restrictions
- Existing plans
- Environmental factors (e.g. wildlife, vegetation, soil, and water resources including streams and wetlands)
- Historic, cultural resources
- Infrastructure needs, such as utility easements, maintenance and access needs
- Impacts to adjacent property owners.

4.3 Draft System Plan/Map: The Consultant will use the analysis in Tasks 3 and 4 to develop a draft comprehensive System Plan/Map of off-road cycling trails and facilities. The System Plan/Map will identify recommended trail or facility improvements that provide a spectrum of off-road cycling opportunities on City-owned, or potentially partner-owned, lands. The System Plan/Map should identify facility locations and types, general alignments, general design and management considerations, and planning level estimated costs.

4.4. Design and Management Recommendations: The Consultant will provide a detailed design and management plan to enhance trail safety and reduce user conflicts, address facility impacts, and leverage existing trail and user groups. The Plan will include general recommendations by facility type, such as trail use, time-based use, share-the-trail programs, wayfinding and signage, annual and major maintenance, and programming.

The design recommendations will integrate risk management solutions that promote positive and safe experiences for all users. The Consultant will follow risk management guidelines set forth by organizations such as: USDA Forest Service, California State Parks, International Mountain Bicycling Association (IMBA), and "The Whistler Trail Standards" set forth by the Whistler Municipal Parks Department. The Consultant will also utilize successful examples of risk management practices from public and private off-road cycling facilities across North America.

4.5. Implementation Strategy: The Consultant will develop an Implementation Strategy that will identify potential funding sources; partnership opportunities; significant permitting requirements; amendments to adopted plans, zoning codes, and bureau policies; revised trail definitions; and other measures that will facilitate Plan implementation. The implementation strategy will also include a discussion of prioritization of future improvements.

Task 4 Deliverables

- *Site Assessment, Draft and Final*

- *Site Suitability Criteria, Draft and Final*
- *Site Suitability Maps and Summary, Draft and Final*
- *Systems Plan/Map – Draft and Final*
- *Design and Management Recommendations Plan, Draft and Final*
- *Implementation Strategy, Draft and Final*

TASK 5. DRAFT OFF-ROAD CYCLING MASTER PLAN AND PUBLIC REVIEW

5.1 Draft Off-road Cycling Master Plan: The Consultant will develop a draft Plan, including the following components developed for other tasks:

- Vision, Goals and Objectives;
- Process Overview and Summary;
- Impact Assessment: Challenges and Opportunities Matrix and Summary;
- Existing Conditions and Needs Report;
- Off-Road Cycling Design, Planning and Management Best Practices Report,
- Facilities Typology Technical Memo,
- Site Assessment; Site Suitability Criteria; Site Suitably Maps and Summary;
- Systems Plan/Map including data, maps, graphics, and appendices.
- Design and Management Recommendations
- Implementation Strategy

5.2 Community and partner review and input: The Consultant will solicit feedback on the draft plan from internal and external partners, the Project Advisory Committee, and the general public, including preparation of necessary presentation materials. The Consultant will summarize key themes of public comment.

Task 5 Deliverables

- *Draft Off-road Cycling Master Plan, including text, graphics, and maps*
- *Presentation materials*
- *Summary of public comments*

TASK 6. PROPOSED OFF-ROAD CYCLING MASTER PLAN AND CITY COUNCIL REVIEW

6.1 Proposed Off-road Cycling Master Plan: The Consultant will work with the project manager to refine the draft plan into a Proposed Master Plan.

6.2 City Council Review: The Consultant will develop and attend a presentation to the City Council.

Task 6 Deliverables

- *Proposed Portland Off-road Cycling Master Plan, including text, graphics, maps, and appendices*
- *City Council PowerPoint presentation*

Task 6 Meetings

- *City Council presentation*