

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

**CONTRACT NUMBER 30000**

**TITLE OF WORK PROJECT  
Drug and Alcohol Testing**

This contract is between the City of Portland ("City") by and through its Bureau of Human Resources and Bio-Med Testing Service, Inc. ("Consultant"). The City's Project Manager for this contract is Marquis Fudge.

**Effective Date and Duration**

This contract shall become effective on October 1<sup>st</sup> 2019. This contract shall expire, unless otherwise terminated or extended, on September 30<sup>th</sup> 2024.

**Consideration**

- (a) City agrees to pay Consultant a sum not to exceed \$1,244,150 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): Bio-Med Testing Service, Inc. \_\_\_\_\_

Address: 3110 25<sup>th</sup> Street SE, Salem OR 97302 \_\_\_\_\_

Employer Identification Number (EIN): 931172378 \_\_\_\_\_

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

City of Portland Business Tax Registration Number: 681232 \_\_\_\_\_

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 at any time for any reason deemed appropriate in its sole discretion. Termination is effective immediately upon notice of termination given by the City.  
 (b) Either party may terminate this 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 as a result of 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 as further described at: <http://www.portlandoregon.gov/bibs/article/446806>. In connection with its activities under this Contract, the Contractor 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 as further described at: <http://www.portlandoregon.gov/bibs/article/455735>.

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

Consultant shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from all claims, losses, damages, and costs (including reasonable attorney fees) for personal injury and property damage arising out of the intentional or negligent acts or omissions of the Consultant, its 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 contractor'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 at: <http://www.portlandoregon.gov/bibs/45475>.

**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**

Contractor 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 Contractor as a proposer has competed solely on its own behalf without connection or obligation to, any undisclosed person or firm. Contractor 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, Contractor, 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. Contractor understands that should it elect to employ any former City official/employee during the term of the contract then that the former City official/Contractor 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.

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**STATEMENT OF THE WORK  
AND PAYMENT SCHEDULE**

The City requires services to perform drug, alcohol and steroid testing that shall include a Medical Review Officer (MRO), laboratory services, program support and ongoing City employee and management training. The ongoing training will include, but not limited to, periodic training for commercial driver's licenses (CDL) holders, reasonable suspicion training for managers and supervisors, and training for bureau coordinators.

Medical Review Officer shall review test results, provide opinions on results, provide materials and answer questions regarding positive test results and be available for testifying in arbitration hearings and other proceedings. The administrative services will include, but not be limited to, establishing and maintaining a pools of employees for DOT and non DOT random drug tests, selecting employees for random drug testing, maintaining test records, providing periodic reports, providing training, providing advice on federal DOT regulations and industry standards, and evaluating compliance with federal DOT regulations.

The collection services include, but are not limited to, providing post-accident drug and alcohol testing, reasonable suspicion drug, alcohol and steroid testing, pre-employment drug testing, return to duty drug, alcohol and steroid testing, follow-up drug, alcohol and steroid testing, random drug, steroid, and alcohol testing, and Department of Transportation (DOT) drug and alcohol testing required for commercial driver's licenses.

The laboratory services include, but are not limited to, performing drug, alcohol and steroid testing in compliance with federal DOT or other applicable regulations.

**SCOPE OF WORK**

In addition to arranging specimen collection sites and specimen analysis, consultant shall:

1. If necessary, assist City staff to prepare for arbitration/unemployment hearings resulting from positive tests or other drug and alcohol policy violations.

2. If necessary, testify in arbitration/unemployment hearings resulting from positive tests or other drug and alcohol policy violations.
3. All successful Proposer(s) shall be expected to provide translation services as necessary.
4. Coordinate with the City in an ongoing fashion to address changing business needs, such as, but not limited to, the addition of required tests, or changes in regulatory requirements.
5. Ensure a smooth and seamless transition between the current existing service provider and the successful service provider.
6. Provide materials and answer questions regarding positive test results. Successful Proposer should indicate their ability to provide training on DOT reasonable suspicion training for supervisors and employee substance abuse training.
7. Design and establish a comprehensive, cost-effective and ongoing drug and alcohol testing program that is administered through BHR, but coordinated through various operating bureaus and divisions of the City.
8. Provide Administrative Services in support of the drug testing program in a manner consistent with the City's program goals and all federal and state regulations.
  - a. Maintain the medical records at successful Proposer's site/location in keeping with applicable laws.
  - b. Meet records confidentiality requirements.
  - c. Ensure availability of records to the City's Bureau of Human Resources and/or City Attorney as requested.
  - d. Provide the City with reports, as requested, that include the number of drug/alcohol tests performed, the cost of each test, and other data as requested.
  - e. Provide program process ideas and sample forms to be used in efficiently administering an on-going drug and alcohol evaluation program for an organization as large and diverse as the City of Portland.
9. Provide administrative services in support of Department of Transportation (DOT) drug and alcohol testing for commercial driver license testing. Types of tests performed under DOT regulations include: pre-employment drug tests, random drug and alcohol tests, follow-up drug and alcohol tests, return-to-duty drug and alcohol tests, and post-accident drug and alcohol tests, and reasonable suspicion drug and alcohol tests. The service provider must be SAMHSA certified. Successful Proposer shall arrange specimen collection sites as necessary. The City would prefer the use of its physical capacities/pre-employment testing Contractor for specimen collection when such use will result in one stop testing for employees (e.g. specimen collection at the same time and place as the pre-employment medical testing, etc.). To comply with DOT regulations, successful Proposer shall:
  - a. Provide medical opinion and/or rationale for positive test results
  - b. Provide materials and answer questions regarding positive test results.
  - c. Provide reasonable suspicion training for supervisors and substance abuse training for employees.
10. Perform collection and laboratory services for non-DOT Drug and Alcohol Testing as required by City.

On an intermittent basis, the City may need post-accident, or reasonable suspicion drug and alcohol testing completed on specific employees or for specific job classes. The City may need non-DOT random drug and alcohol testing for other employee groups in the future. The successful Proposer's service provider must be SAMHSA certified.

- a. Successful Proposer's Medical Review Officer will provide medical opinion and/or rationale for positive test result.
- b. Successful Proposer's Medical Review Officer will assist City staff to prepare for arbitration/unemployment hearings resulting from positive tests or other drug and alcohol policy violations, and if necessary will
- b. Successful Proposer's Medical Review Officer will assist City staff to prepare for arbitration/unemployment hearings resulting from positive tests or other drug and alcohol policy violations, and if necessary will

11. Provide administrative services in support of drug and alcohol testing for sworn employees of the Portland Police Bureau. Types of tests performed under the Portland Police Bureau's Substance Abuse Policy include: pre-employment drug tests; random drug and steroid tests; follow-up drug, alcohol, and steroid tests; and reasonable suspicion drug, alcohol, and steroid tests. The service provider must be SAMHSA certified. Providers of steroid testing must hold Clinical Laboratory Improvement Amendments (CLIA) or College of American Pathologists (CAP) certification. Successful Proposer shall arrange specimen collection sites as necessary.

- a. Successful Proposer's Medical Review officer will provide medical opinion and/or rationale for positive test results
- b. Successful Proposer's Medical Review Officer will assist City staff to prepare for arbitration/unemployment hearings resulting from positive tests or other drug and alcohol policy violations, and if necessary will testify at such hearings.
- c. Successful Proposer shall provide materials and answer questions regarding positive test results.
- d. Successful Proposer shall provide reasonable suspicion training for supervisors and substance abuse training for employees.
- e. Successful Proposer's administrative and collection services must be available 24 hours per day, 7 days per week to support Police Bureau operations.
- f. Successful Proposer shall provide observers of both genders at the collection facility 24 hours per day, 7 days per week.

Submit a Monthly Sub consultant Payment and Utilization Report by the 15<sup>th</sup> of each month with invoice (reference Part II, Section C.5 of the RFP).

All deliverables and resulting work products from this contract will become the property of the City of Portland. As such, the Contractor and any Subcontractors grant the City the right to copy and distribute (in any and all media and formats) project deliverables for regulatory, project certification/recognition, program development, public education, and/or for any purposes at the sole discretion of the City of Portland.

#### CONSULTANT PERSONNEL

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

NAME	ROLE ON PROJECT
Colleen Wienhoff	Chief Executive Officer
Jenny Pena	Finance/Site Manager
Tina Pinard	Program Manager
Debbie Olivera	Account Manager/Corporate Trainer
Various Medical Personnel	

#### SUBCONSULTANTS

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

NAME	ROLE ON PROJECT	SUBCONTRACT AMOUNT
Legacy Metro Lab	Collection site and Drug testing Laboratory	\$ 239,765
Quest Diagnostic	Steroid testing lab	\$480,200
Dr. Matthew Noble	Medical Review Officer	\$6885

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. An electronic copy of the MUR may be obtained at: <http://www.portlandoregon.gov/bibs/45475>.

#### COMPENSATION

The maximum that the Consultant can be paid on this contract is \$1,244,150 (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.

The agreed schedule of fees for specific service is listed below:

<u>DOT Drug Tests</u> Pre-employment, Random, Reasonable Suspicion, Post-Accident, Return-to-Duty, Follow-up Includes Collection Fee, MRO Fee, Lab Fees, Shipping Fees	\$65 / Test
<u>DOT Split Specimen Confirmation</u> Includes shipping to Secondary Lab, and confirmation test	\$200 / Test
<u>SAMHSA Certified Non-DOT Tests</u> Includes Collection Fee, MRO Fee, Lab Fees, Shipping Fees	\$ 40 / Test
<u>Breath Alcohol Tests (DOT and Non-DOT)</u> Includes initial and confirmatory tests	\$35 / Test
<u>Steroid Anabolic Panel</u> Includes Collection Fee, MRO Fee, Lab Fees, Shipping Fees	\$110 / Test
<u>Supervisor- Reasonable Suspicion Training</u> DOT required training or Non DOT supervisor Training (Minimum 2-Hour)	\$250 / hour
<u>DER Training</u> Designated Employer Representative Training Includes: DER responsibilities, record retention, DOT compliance Best practices and Service Agent compliance	\$ 99 / person
<u>Employee Education</u> DOT Compliant or Other (Minimum 2-Hour)	\$250 / hour
<u>Arbitration/Testimony</u> Includes preparation of documents Phone interviews and Telephonic Testimony	\$300 / hour
<u>Courtroom or On-site Testimony</u>	\$500 / hour

#### **Progress Payments**

On or before the 15<sup>th</sup> of each month, the Consultant shall submit to the City's Project Manager an invoice for work performed by the Consultant during the preceding month. The invoice shall contain the City's Contract Number and set out all items for payment including, but not limited to: the name of the individual, labor category, direct labor rate, hours worked during the period, and tasks performed. The 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 which is available on the City's website at: <http://www.portlandoregon.gov/bfs/article/409834>.

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

WORKERS' COMPENSATION INSURANCE STATEMENT

IF YOUR FIRM HAS CURRENT WORKERS' COMPENSATION INSURANCE, CONTRACTOR 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.

Contractor Signature: Jenny Pease Date: 7/16/19 Entity: Bio-Med Testing Service Inc

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

As an independent contractor, 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 contractor in the previous year; and
- 3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Contractor: check four or more of the following:

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

Contractor Signature

Date

FOR CITY USE ONLY

PROJECT MANAGER-COMplete ONLY IF CONTRACTOR DOES NOT HAVE WORKER'S COMPENSATION INSURANCE 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 result;
- 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 contractor as defined in ORS 670.600.

Jenny Pena, Manager, Bio-Med Testing Service, Inc.

BY:  Date: 7/16/19

Name: Jenny Pena

Title: Manager

CONTRACT NUMBER: 3000

CONTRACT TITLE: Drug and Alcohol Testing

CITY OF PORTLAND SIGNATURES:

By: Senilda Summers-McGehee/CS Date: 8/14/19  
Bureau Director

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

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

Approved:

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

Approved as to Form:

By: Glenn Fullilove Date: 7.16.19  
Office of City Attorney



## Oregon Workers' Compensation Certificate of Insurance


**Certificate holder:**

CITY OF PORTLAND  
1120 SW FIFTH AVENUE ROOM 404  
PORTLAND, OR 97204

The policy of insurance listed below has been issued to the insured named below for the policy period indicated. The insurance afforded by this policy is subject to all the terms, exclusions and conditions of such policy; this policy is subject to change or cancellation at any time.

Insured		Producer/contact	
Bio-Med Testing Service Inc 3110 25th St SE Salem, Or 97302-1333		SAIF Corporation SAIF Corporation	
Issued		Limits of liability	
04/04/2019		Bodily Injury by Accident	\$1,000,000 each accident
Policy	624973	Bodily Injury by Disease	\$1,000,000 each employee
Period	11/01/2018 to 11/01/2019	Body Injury by Disease	\$1,000,000 policy limit

**Description of operations/locations/special items**
**Important**

This certificate is issued as a matter of information only and confers no rights to the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies above. This certificate does not constitute a contract between the issuing insurer, authorized representative or producer and the certificate holder.

Authorized representative

Kerry Barnett  
President and CEO

400 High Street SE  
Salem, OR 97312  
P: 800.285.8525  
F: 503.584.9812