



CITY OF PORTLAND

CONTRACT FOR
ENHANCED SERVICE DISTRICT MANAGEMENT SERVICES
FOR
THE LLOYD ENHANCED SERVICE DISTRICT

Contract Number: 30008687

As authorized by City Code Chapter 6.06, this Contract is made effective on February 1, 2024 (“Effective Date”) by and between the City of Portland (“City”), a municipal corporation of the State of Oregon, and the Lloyd BID Inc (“Contractor”), a(n) non-profit 501(c)(3) corporation, by and through their duly authorized representatives. This Contract may refer to the City and Contractor individually as a “Party” or jointly as the “Parties.”

The initial Term of this Contract shall be from the Effective Date through January 31, 2029, with City’s option to extend for an additional five (5) year term, commencing on the expiration of the original term. The total not-to-exceed amount under this Contract for the initial Term shall be \$3,550,000.00 , subject to annual review of the scope of work and budget.

Party contacts and Contractor’s and City’s Project Manager for this Contract are:

For City of Portland:	For Contractor:
Name: Devin Reynolds	Name: Owen Ronchelli
Title: ESD Coordinator	Title: Lloyd BID Inc Executive Director
Address: 1120 SW Fifth Avenue, Suite 901	Address: 700 NE Multnomah Street, Suite 340
City, State: Portland, Oregon 97204	City, State: Portland, OR 97232
e-mail: devin.reynolds@portlandoregon.gov	e-mail: owen@golloyd.org
Copy to:	Copy to:
Procurement Services C/O Scott Karter	
1120 SW 5 th Ave., Suite 1040	
Portland OR 97204	

Scope and Consideration

- (a) Contractor shall perform the Services and provide the Deliverables set forth in the Statement of Work by the due dates specified in the Contract.

- (b) City agrees to pay Contractor a sum not to exceed \$3,905,000.00 (\$3,550,000.00 plus 10% contingency if revenues exceed projections) for accomplishment of the Project.
- (c) A draft annual budget for the initial fiscal year (February 1, 2024 to January 31, 2025) is attached and incorporated hereto as Exhibit A. Lloyd BID Inc shall propose a final budget for City's review no later than 30 days after execution of this Contract. Upon City concurrence, a final budget for the initial fiscal year will be adopted, and will replace and supplement initial Exhibit A. The Parties will amend the annual budget for subsequent fiscal years in accordance with this Contract, and the amended annual budget will be administratively adopted by the Parties and will be incorporated as supplement to Exhibit A.

Recitals:

Pursuant to City Ordinance No. 191561, the Lloyd ESD was reauthorized on 12/20/2023.

This Contract is authorized by City Ordinance No. 191562 approved by City Council on 12/20/2023, effective on February 1, 2024.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1 DEFINITIONS

General Definitions. (11/18) These definitions apply to the entire Contract, subsequent Amendments, and any Change Orders or Task Orders, unless modified in an Amendment. If any definition contains a substantive provision conferring rights and/or obligations upon a Party, then effect shall be given to the substantive provision.

"Affiliates" (11/18) means, for Contractor, any individual, association, partnership, corporation or other entity controlling, controlled by, or under common control. The term "control" means the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract, agreement or otherwise.

"Amendment" (12/18) means a written document required to be signed by both Parties when in any way altering the Master Terms and Conditions of the Contract, Contract amount, or substantially altering a Statement of Work.

"Business Day" (11/18) means a twenty-four hour day, excluding weekends and City holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Calendar Day” (11/18) means a twenty-four hour day, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Change Order” (12/18) means a document, agreed and signed by both Parties, that changes an existing Statement of Work or Task Order. Change Orders cannot change Contract amount or Master Terms and Conditions.

“City Services” means those municipal public services provided within the District by City and specifically described in Exhibit C.

“Confidential Information” (08/19) means any information that is disclosed in written, graphic or machine-recognizable form and is marked or labeled at the time of disclosure as being Confidential or its equivalent, or, if the information is in verbal or visual form, it is identified as Confidential or proprietary at the time of disclosure, or a reasonable time thereafter. Information shall always be considered Confidential Information, whether or not it is marked or identified as such, if it is described by one or more of the following categories: (1) non-public financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.345(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) information which is exempt from disclosure per Oregon Public Records Law; (6) attorney/client privileged communications; (7) information which is exempt per federal laws (including but not limited to copyright, HIPPA); and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems including without limitation, data and information systems, any software code and related materials and processes, Customizations, Configurations, Updates, Upgrades; and any Documentation. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving Party; is already lawfully known to the receiving Party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Contract or any other agreement between the Parties or of any applicable protective or similar order, in the receiving Party’s possession without any obligation restricting disclosure; is independently developed by the receiving Party, as shown by reasonable written documentation, without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing Party.

“Contract” (11/18) means the Master Terms and Conditions including all exhibits, attachments and schedules and their constituent parts listed in the Order of Precedence or incorporated by reference.

“Contract Price” (10/19) means the not-to-exceed price agreed upon by the Parties for all Services.

“Deliverable(s)” (11/18) means the Services, Documentation or documents or tangible work products described in the Statement of Work to be provided to City by Contractor under this Contract.

“District” or “Lloyd District” means the enhanced services district established Portland City Code (PCC) Chapter 6.06 and specifically described in PCC 6.06.250.

“Division” means the Revenue Division of the Bureau of Revenue and Financial Services, of the Office of Management and Finance, of the City of Portland, which has responsibility over PCC Chapter 6.06.

“Documentation” (10/19) means user manuals and other written materials in any form that describe the features or functions of the Deliverables and Services, including but not limited to published specifications, online instructions and help, marketing materials, technical manuals, and operating instructions provided by Contractor to City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Contract.

“Force Majeure Event” (11/18) means an exceptional and unavoidable occurrence beyond the reasonable control of the affected Party, such as, riots, epidemics, war, government regulations, labor disputes, fire, natural phenomena, or other causes beyond such Party’s reasonable control.

“Goods” means materials supplied by Contractor under this Contract.

“Intellectual Property Rights (IPR)” (11/18) means any patent rights, copyrights, trade secrets, trade names, service marks, trademarks, trade dress, moral rights, know-how and any other similar rights or intangible assets to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations, or reissues of the foregoing now or hereafter in force.

“Key Personnel” (11/18) means the individuals identified in Section 3.9.1 of this Contract with leadership, supervisory or managerial responsibility to perform services on behalf of Contractor.

“Key Position” (11/18) means a job position critical to the success of the Project as identified in Section 3.9.1 of this Contract.

“License Fee” or “District License Fee” means the fee assessed under Portland City Code Chapter 6.06 for the Lloyd District.

“Master Terms and Conditions” (11/18) means the body of text from the preamble through the signature page of this Contract.

“Material Breach” (11/18) means any breach of this Contract that causes, caused, or may cause substantial harm to the non-breaching Party or substantially deprives the non-breaching Party of the benefit it reasonably expected under this Contract.

“Personally Identifiable Information (PII)” (11/18) means information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context, as described in the Oregon Consumer Identity Theft Protection Act.

“Project” (10/19) means the overall delivery of the Services including, without limitation, design, development, integration, implementation, testing, support, and any Deliverables any of which Contractor may be providing in whole or in part.

“Services” (10/19) or “District Services” means both ordinary and professional services performed by Contractor under this Contract.

“Specifications” (10/19)* means the most current cumulative statement of capabilities, functionality, and performance requirements for this Contract.

“Statement of Work” (SOW) (10/19)* means the written detailed specifications of the Product(s) and Services(s) to be delivered to City by Contractor, including any Change Orders or Task Orders subject to the terms and conditions of this Contract. as provided in Exhibit B.

“Subcontractor” (11/18) means any person or entity under the control of Contractor, other than an employee of Contractor, utilized by Contractor to perform all or part of this Contract.

“Task Order” (10/19) means any written request or document issued by City and signed by both Parties for additional Service(s) to be provided under this Contract. Task Orders shall document the description of Services, price, payment schedule, Project and performance schedule, due dates, milestones and Deliverables.

“Term” (11/18) means the period of time that this Contract is in effect as stated on page one.

SECTION 2 ORDER OF PRECEDENCE

2.1 Order of Precedence. (09/17)* In the event there is a conflict or ambiguity between the terms and conditions of one portion of this Contract with another portion of this Contract, the conflict or ambiguity will be resolved in accordance with the order of precedence

below. This order of precedence designates which portion of the Contract takes precedence over the other for purposes of interpretation. Contractor's hyperlinks contained herein will not supersede or alter the Master Terms and Conditions. For the avoidance of doubt, no other terms and conditions will override the Parties' obligations in the Confidentiality, Indemnification, or Choice of Law provisions in these Master Terms and Conditions. In this Contract the order of precedence shall be:

1. Amendments
2. Master Terms and Conditions
3. Exhibit A – Five Year Contract Budget and Annual Budget
4. Exhibit B – Statement of Work
5. Exhibit C – City Basic Services
6. Exhibit D – License Fee Administration Services

SECTION 3 GENERAL AND ADMINISTRATIVE PROVISIONS

- 3.1 Term. (09/17)* This Contract shall begin on the Effective Date and end upon the expiration date set forth on page one of this Contract unless terminated or extended under the applicable Contract provisions.

Contractor (directly or indirectly through its subcontractors) shall timely and professionally perform this Contract including but not limited to the obligations identified in Exhibit B – Statement of Work. City shall provide support to Contractor through the City Services described in Exhibit C and subject to the limitation provided therein. Exhibit B and Exhibit C to the Contract shall pertain to fiscal year commencing February 2024 – January 2025 . The Parties will amend the Exhibits B and C for subsequent fiscal years in accordance with this Contract, and the amended Exhibit B and C will be administratively adopted by the Parties as supplements to the Contract. Contractor shall manage and utilize License Fee in accordance with this Contract, and subject to Exhibit A Annual Budget (and any supplements to Exhibit A) and the clarifications on administration and assessment of License Fee as provided in Exhibit D.

- 3.2 Point of Contact. (09/17)* Contractor shall be the sole point of contact for City with regard to this Contract.

- 3.2.1 Written Notifications. (10/18) All notices to, and other written communication between the Parties shall be deemed received five (5) Business Days after being sent by first class mail, or upon receipt when sent by courier services, or by e-mail. All notices and written communications shall be sent to the Parties set forth on page 1 of the Contract, or to such other places as they may designate by like notice from

time to time. Each Party shall provide written notice of any changes to the Party's contacts within thirty (30) Calendar Days.

3.3 Changes to Contract.

3.3.1 Amendment of the Contract. (06/19)* Any changes to the provisions of this Contract shall be in the form of an Amendment. No provision of this Contract may be amended unless such Amendment is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. If the requirements for Amendment of this Contract as described in this section are not satisfied in full, then such Amendments automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect. City reserves the right to make administrative changes to the Contract unilaterally, such as extending option years and increasing compensation. An administrative change means a written Contract change that does not affect the substantive rights of the Parties.

3.3.2 Change Orders to a Statement of Work. (12/18)* City and Contractor can agree to make changes, at any time to a Statement of Work in the form of a Change Order. Contractor agrees to timely alter the delivery of Products or Services accordingly. If such changes materially increase or decrease Contractor's obligations, the Parties shall execute an Amendment to the Contract, and if the amount of such adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified amount.

3.3.3 Delivery Schedule. (09/17) Contractor shall use best efforts to deliver Product(s) and/or Services(s) on time, in accordance with the scheduled delivery date as set forth in this Contract, Statement of Work or Change Order.

3.4 Time is of the Essence. (06/19)* The Parties agree that time is of the essence as to the delivery of Deliverables and performance of Services under this Contract. By executing this Contract and accepting the Statement of Work, Contractor agrees that the time limits specified in the Statement of Work are reasonable. By accepting late or otherwise inadequate performance of Contractor's obligations, City will not waive its rights to require timely performance of Contractor's obligations thereafter.

3.5.1 Late Delivery. (10/19)* In the event that any specified delivery date is not met, Contractor shall be liable for any loss, expense, or damage resulting from delay in delivery or failure to deliver Deliverables or provide Services which is due to any cause except as set forth in Force Majeure. In the event of delay due to any such cause, City may obtain substitute Services from another source and bill all additional costs directly to Contractor who shall remain financially liable for all additional acquisition costs.

- 3.5.2 Best Efforts. (10/19)* Contractor shall use best efforts to minimize any delay in the provision of Deliverables or performance of Services. If Contractor anticipates any delay that may prevent timely performance of Contractor's obligations under this Contract, Contractor shall promptly notify City, including the anticipated length of the delay, the cause of the delay, measures proposed or taken to prevent or minimize the delay, and the timetable for implementation of such measures.
- 3.6 City Reporting Requirements. (12/18)* City is required to track certain types of contract data for reporting purposes. Items which City must report on may include, but are not limited to, Subcontractor utilization, Minority, Women, Emerging Small Business, Service-Disabled Veteran Business Enterprise (D/M/W/ESB/SDVBE) participation and Subcontractor/Supplier Payment. The City will enforce all diversity in workforce and D/M/W/ESB/SDVBE subcontracting commitments made by Contractor.
- 3.7 Payment. (09/17) Payment(s) shall be in accordance with the payment schedule set forth in Exhibit A: Contractor's Price.
- 3.7.1 The City will make payment to the Contractor of net License Fee revenues following the close of each City accounting period (of which there are 12 during the City fiscal year) as soon as the amount thereof received during the accounting period has been determined, and in accordance to the final adopted annual budget pursuant to Exhibit A (and its supplements) for delivery of Statement of Work pursuant to Exhibit B, and subject to the expenses deductions for City administrative services pursuant to Exhibit D. City may make advance payments during any accounting period if City's Manager of the Revenue Bureau determines that sufficient funds have been received to make advance payments.
- 3.7.2 Notwithstanding 3.5.1, City may retain a continuing balance of \$ 10,000 for payments or refunds due to District License Fee payers following appeals under PCC 6.06.100, to be paid Contractor during the last year covered by this Contract.
- 3.7.3 Challenges to District License Fee. The parties acknowledge that there may be uncertainties regarding the District License Fee due to potential challenges to it under certain provisions of law, and that it is necessary to minimize any financial risk to City from such challenges. To minimize this risk, in the event of a challenge asserting that the License Fee is invalid or otherwise unenforceable or subject to limitation, then the following provisions apply
- 3.7.3.1 City may suspend its payments to Contractor pending negotiation of amendments hereto that will assure City's financial risk is minimized and, if the outcome of the challenge is unfavorable, City may apply any net License Fee held by City to such repayments to License Fee payers as may be appropriate.

3.7.3.2 Contractor will defend City and City's officers, agents, and employees against any challenge alleging that the License Fee is invalid or otherwise unenforceable or subject to limitation (including the payment of all attorney fees and costs), and will hold harmless and indemnify City and City's officers, agents, and employees from any monetary claims, damages refund obligations, or other payments they must make arising out of such a challenge. Contractor will consult and cooperate with City in conducting a defense of the License Fee, and City will cooperate in its conduct of the defense. Notwithstanding any other provision of this Contract, Contractor may use any net License Fee which Contractor receives in this Contract to satisfy the hold harmless, defense, and indemnification obligations established by this section or by Section 6.1 (Hold Harmless and Indemnification) before using the License Fee to provide Services.

3.7.3.3 City may require that Contractor provide a letter of credit or similar instrument, or a guaranty, protecting City against financial exposure due to the invalidity of, unenforceability of, or limitation on the License Fee, if City determines that such a letter of credit or similar instrument is necessary or desirable to protect City from risk of financial exposure.

3.7.4 City makes payments via electronic fund transfers through the Automated Clearing House (ACH) network. To initiate payment of invoices, Contractor shall execute City's standard ACH Vendor Payment Authorization Agreement. Upon verification of the data provided, the ACH Vendor Payment Authorization Agreement will authorize City to deposit payment directly into specified Contractor accounts with specified financial institutions. All payments shall be made in United States currency.

3.8 Payment of Taxes/Contractor Shall Withhold. (09/17)* Contractor shall, at its own expense, timely (a) pay all salaries, wages, and other compensation to its employees; (b) withhold, collect, and pay all applicable federal, state, and local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance and any other taxes or charges in connection with its employees; and (c) provide and pay for workers compensation insurance and any statutory or fringe benefits to employees. Contractor shall be solely responsible for all such obligations for its employees. Contractor shall also ensure that any Subcontractor shall comply with the foregoing obligations for its employees. City shall have no duty to pay or withhold such obligations.

3.9 Records and Audits (06/19)

3.9.1 Records Retention. (06/19) Contractor shall maintain current financial records in accordance with Generally Accepted Accounting Principles (GAAP). Contractor

agrees to maintain and retain and retain all financial records, supporting documents, statistical records and all other records pertinent to this Contract during the Term of this Contract and for a minimum of six (6) years after the expiration or termination date of this Contract or until the resolution of all audit questions or claims, whichever is longer.

3.9.2 City Audits. (06/19)* City, either directly or through a designated representative, may conduct financial and performance audits of the billings and Products or Services at any time in the course of the Contract and during the records retention period listed above. Audits shall 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.

3.9.3 Access to Records. (06/19)* City may examine, audit and copy Contractor's books, documents, papers, and records relating to this Contract at any time during the records retention period listed above upon reasonable notice. Copies of applicable records shall be made available upon request.

3.10 Overpayment. (09/17) If an audit discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, then Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices.

3.11 Independent Contractor. (09/17) Contractor is independent of City and, accordingly, this Contract is not entered into as a joint venture, partnership, or agency between the Parties. No employment or agency relationship is or is intended to be created between City and any individual representing Contractor. Employees of Contractor and any authorized Subcontractors shall perform their work under this Contract under Contractor's sole control.

3.12 Independent Contractor. Contractor is independent of the City and, accordingly, this Contract is not entered into as a joint venture, partnership, or agency between the Parties. No employment or agency relationship is or is intended to be created between the City and any individual representing Contractor. Employees of Contractor and any authorized Subcontractors shall perform their work under this Contract under Contractor's sole control.

3.12.1 The Parties have identified Key Positions and Key Personnel as set forth in the table below, along with the percentage of their time to be allocated to the City's Project:

Name	Title/Role	% of Time	Company
Owen Ronchelli	Administrator	20	Go Lloyd
Vacant	Executive Director (future position)	50	Lloyd ESD (likely as a contract employee)

3.12.2 Substitution of Key Personnel. Any substitutions or replacements of Key Personnel require the written approval of the City, which will not be unreasonably withheld provided that Contractor provides sufficient information as required in the paragraph directly below. Contractor shall provide the City with the maximum possible period of notice of substitution or replacement of Key Personnel in order to allow for background screening, fingerprint checks, and other investigation as may be required.

3.12.2.1 For any proposed substitute or replacement Key Personnel, Contractor shall provide the following information to the City: a detailed explanation of the circumstances necessitating the proposed substitution or replacement, a complete resume for the proposed substitute(s), and any additional information requested by the City. Proposed substitutes or replacements should have qualifications comparable to or better than those of the persons being replaced.

3.13 Termination. (06/19)* The following conditions apply to termination of this Contract. The City, on thirty (30) Calendar Days' written notice to Contractor, may terminate this Contract for any reason in the City's sole discretion. In the event of such termination, City shall pay to Contractor the portion of the net License Fee attributable to all Deliverables or Services performed satisfactorily and timely as required by this Contract, through the effective date of the termination. In the event of termination all of Contractor's Work Product to date shall be delivered to City, and it will become and remain property of City

3.13.1 City and Contractor may renew this Contract for up to an additional five (5) year term, commencing on the expiration of the original term. In order to exercise this option, Contractor may not at any time during the term of this Contract have been or be in material default of this Contract. If Contractor at any time during the term of this Contract materially defaulted in its performance of any or the terms and conditions of this Contract, and if Contractor did not cure the default within 30 days' written notice from City, then this option is void. Should Contractor elect to renew the term of this Contract for an additional five (5) year term, it must give City written notice of such election at least six (6) months prior to the expiration of the original term. Within thirty (30) days receipt of Contractor's written notice of election to renew, the City will contact Contractor and arrange for a suitable time and place to

negotiate changes in the terms and conditions of the Contract for the renewal term. Any negotiated changes in the terms and conditions of the Contract must be in writing, and subject to approval by the City Council by ordinance and by Contractor's Board of Directors. If neither party requests any changes in the terms and conditions of the Contract, and if both otherwise wish to have the Contract extended, then it will be extended on the same terms and conditions as found in the original Contract.

- 3.14 Mutual Agreement. (06/19)* City and Contractor, by mutual written agreement, may terminate this Contract at any time.
- 3.15 Material Breach. (09/17) Either Party may terminate this Contract in the event of a Material Breach of this Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice to cure the Material Breach and of the Party's intent to terminate. If the Party has not entirely cured the Material Breach within thirty (30) Calendar Days of the notice, then the Party giving the notice shall have the option to: (a) terminate this Contract by giving a written notice of termination, (b) seek any remedies in this Contract, in law, or at equity, to the extent not otherwise limited by the terms of this Contract, or (c) any combination thereof.
- 3.16 Force Majeure. (09/17) Either Party may terminate this Contract due to a Force Majeure event as set forth in Section 5.12, Force Majeure.
- 3.17 Bankruptcy. (09/17)* City may terminate this Contract if Contractor: (a) becomes insolvent, makes a general assignment for the benefit of creditors; (b) suffers or permits the appointment of a receiver for its business or assets; (c) becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, and such proceeding has not been dismissed within a sixty (60) Calendar Day period; or (d) has wound up or liquidated, voluntarily or otherwise..
- 3.18 Void Assignment. (09/17)* In the event that Contractor assigns its obligations under this Contract to a third party in a manner other than as set forth in Section 5.7, Assignment, City shall have the option to terminate this Contract without any notice or cure period or further obligation to Contractor or the assignee, and promptly receive a refund for fees paid for Products delivered and/or Services performed by the third party.
- 3.19 Waiver. (09/17) No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach of this Contract. The failure of either Party to insist upon any of its rights under this Contract upon one or more occasions, or to exercise any of its rights, shall not be deemed a waiver of such rights on any subsequent occasions.
- 3.20 Severability. (09/17) Any section of this Contract which is held or declared void, invalid, illegal or otherwise not fully enforceable shall not affect any other provision of this

Contract and the remainder of this Contract shall continue to be binding and of full force and effect. This Contract shall be binding upon and inure to the benefit of the City and its successors and assigns.

- 3.21 Business Tax Registration. (09/17) Contractor shall register for a City of Portland business license as required by Chapter 7.02 of the Code of the City of Portland prior to execution of this Contract. Additionally, Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full Term of this Contract. Failure to be in compliance may result in payments due under this Contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law
- 3.22 EEO Certification. (09/17) Contractor shall be certified as an Equal Employment Opportunity Affirmative Action Employer as prescribed by Chapter 5.33.076 of the Code of the City of Portland and maintain its certification throughout the term of this Contract.
- 3.23 Non-Discrimination in Benefits. (09/17) Throughout the term of this Contract, Contractor shall provide and maintain benefits to its employees with domestic partners equivalent to those provided to employees with spouses as prescribed by Chapter 5.33.077 of the Code of the City of Portland..
- 3.24 Sustainability. (12 /18)* Pursuant to City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, Contractor is encouraged to incorporate these Principles into its scope of work with City wherever possible. Therefore, in accordance with the Principles and City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of Products or Services that help to minimize the human health and environmental impacts of City operations. Contractor is encouraged to incorporate environmentally preferable Products or Services into its work performance wherever possible. "Environmentally preferable" means Products or Services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the Product or Service.

If the services provided in this Contract covers janitorial, security or industrial laundry services, Contractor (including its subcontractor(s) if applicable) must comply with the requirements of City's Sustainable Procurement Policy's labor peace requirement ADM 1.09-Attachment 4 (<https://www.portland.gov/omf/brfs/procurement/sustainable-procurement-program/documents/adm-109-sustainable-procurement-0/download>).

- 3.25 Packaging. (09/17)* All packaging should be minimized to the maximum extent possible without compromising product quality. City encourages packaging that is reusable, readily recyclable in local recycling programs, is made from recycled materials, and/or is collected by Contractor for reuse/recycling.
- 3.26 News Releases and Public Announcements. (09/17)* Contractor shall not use the City seal or other representations of the City in its external advertising, marketing, website, or other promotional efforts, nor shall Contractor issue any news release or public announcements pertaining to this Contract or the Project without the express written approval of City. Such approval may be withheld in City's sole discretion. Contractor shall not use the City seal without specific written permission from the City Auditor.
- 3.27 Rule of Construction/Contract Elements/Headings. (09/17)* This Contract has been drafted by City in the general format by City as a convenience to the Parties only and shall not, by reason of such action, be construed against City. Section headings are for ease of reference and convenience only and shall not affect or enter into the interpretation of any portion of this Contract.
- 3.28 Survival. (09/17)* All obligations relating to Confidential Information; indemnification; publicity; representations and warranties; remedies; proprietary rights; limitation of liability; and obligations to make payments of amounts that become due under this Contract prior to termination or expiration shall survive the termination or expiration of this Contract and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between Contractor and City.
- 3.29 Changes in City Code. Both the City and the Contractor recognize that this Contract is conditional upon Chapter 6.06 of the City Code, which may be subject to change prior to the end date of the term of this Contract. Both Parties agree that if City Code change occurs, then any sections of this Contract affected by the City Code change will be renegotiated prior to the end of the term. Both Parties agree that renegotiation will include a reasonable timeline for transition to an amended contract that is fully in compliance with any changes in City Code.

SECTION 4 STATUTORY REQUIREMENTS, PUBLIC RECORDS AND CONFIDENTIALITY

- 4.1 Governing Law and Jurisdiction. (09/17)* This Contract shall be construed according to the laws of the State of Oregon without reference to the conflict of laws' provisions. Any litigation between City and Contractor arising under this Contract or out of work performed under this Contract shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

- 4.2 Public Records Request. (09/17)* Contractor acknowledges that the City of Portland is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information Contractor submitted to the City hereunder may be, by virtue of its possession by City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. City's commitments to maintain certain information confidential under this Contract are all subject to the constraints of Oregon and federal laws. All information submitted by Contractor is public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which Contractor requests and meets an exemption from disclosure consistent with federal or Oregon law. Within the limits and discretion allowed by those laws, City will maintain the confidentiality of information.
- 4.3 Public Records. (09/17) *City will retain one (1) copy of any public records for the express purposes of complying with State of Oregon and Portland City Code public records and archiving laws.
- 4.4 Confidentiality.
- 4.4.1 Contractor's Confidential Information. (08/19)* During the term of this Contract, Contractor may disclose to City, certain Contractor Confidential Information pertaining to Contractor's business. Contractor shall be required to mark Confidential Information CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked, or the Contractor's Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Contract itself shall not be considered Confidential Information. Subject to Section 4.2, the City shall: (1) limit disclosure of Contractor Confidential Information to those directors, employees, contractors and agents of the City who need to know the Contractor Confidential Information in connection with the City Project and who have been informed of confidentiality obligations at least as strict as those contained in this Contract, and (2) exercise reasonable care to protect the confidentiality of the Contractor Confidential Information, at least to the same degree of care as the City employs with respect to protecting its own proprietary and confidential information.
- 4.4.2 City's Confidential Information. (08/19)* Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use City Confidential Information exclusively for the City's benefit in the performance of this Contract. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or

cause or permit to be disclosed to any other person such City Confidential Information. Contractor shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees, subcontractors and agents of Contractor who need to know the City Confidential Information in connection with the City Project and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Contract, (2) exercise reasonable care to protect the confidentiality of the City Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use the Intellectual Property Rights of City without City's prior written consent.

- 4.4.3 Scope. (09/17) This Contract shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. Contractor's confidentiality obligations under this Contract shall survive termination or expiration of this Contract.
- 4.4.4 Equitable Relief. (12/18)* Contractor acknowledges that unauthorized disclosure of City Confidential Information will result in irreparable harm to City. In the event of a breach or threatened breach of this Contract, City may obtain injunctive relief prohibiting the breach, in addition to any other appropriate legal or equitable relief. The Parties agree that, notwithstanding any other section of this Contract, in the event of a breach or a threatened breach of Contract terms related to Confidential Information or Intellectual Property Rights, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.
- 4.4.5 Discovery of Documents. (06/19) In the event a court of competent jurisdiction orders the release of Confidential Information submitted by one Party, the other Party will notify the Party whose Confidential Information is being requested to be disclosed of the request. The Party receiving the request shall allow the other Party to participate in the response at its own expense. Each Party will comply with any effective court order.

SECTION 5 CONTRACTOR PERFORMANCE AND WARRANTIES

- 5.1 General Warranties. (09/17) Contractor makes the following warranties:

- 5.1.1 Capacity. (09/17) Contractor warrants it has the legal authority and capacity to enter into and perform this Contract.
- 5.1.2 Authority to Conduct Business. (08/19) Contractor warrants it is lawfully organized and constituted and duly authorized to operate and do business in all places where it shall be required to do business under this Contract, and that it has obtained or will obtain all necessary licenses and permits required in connection with this Contract.
- 5.1.3 Disclosure of Litigation. (09/17) Contractor warrants that as of the Effective Date there are no suits, actions, other proceedings, or reasonable anticipation thereof, in any judicial or quasi-judicial forum that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will immediately notify the City in writing if, during the Term of this Contract, Contractor becomes aware of, or has reasonable anticipation of, any lawsuits, actions, or proceedings in any judicial or quasi-judicial forum that involves Contractor or any Subcontractor and that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract.
- 5.1.4 Conflict of Interest. (09/17) Contractor warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under this Contract.
- 5.1.5 Compliance with Applicable Law. (09/17) Contractor warrants it has complied and shall comply with all applicable federal, state, and local laws and regulations of its domicile and wherever performance occurs during the term of this Contract. Contractor warrants it is currently in compliance with all tax laws.
- 5.1.6 Public Contracts. (09/17) Contractor shall observe all applicable state and local laws pertaining to public contracts. ORS Chapters 279A and 279B require every public contract to contain certain provisions. To the extent applicable, ORS 279B.220, 279B.230 and 279B.235 are incorporated into this Agreement by reference.
- 5.1.7 Compliance with Civil Rights Act. (09/17) Contractor warrants it is in compliance 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>
- 5.1.8 Respectful Workplace Behavior. (09/17) The City 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 of the City as well as contractors, vendors or consultants who provide services to the City of Portland. Contractor warrants its

compliance with terms and conditions HR 2.02 as further described at:
<https://www.portlandoregon.gov/citycode/27929>

- 5.2 Grant Funding. (02/18). This Contract is currently not using grant funding. However, in the event that City acquires or uses grant funding to pay for any portion of this Contract, the City and Contractor agree to Amend the Contract to include the federally required terms and conditions. General grant terms may be found at <http://www.portlandoregon.gov/bibs/article/455735>
- 5.3 Compliance with Non-Discrimination Laws and Regulations.
- 5.3.1 Nondiscrimination. (06/19) Pursuant to all City, State, and federal non-discrimination and civil rights laws, Contractor, with regard to the work performed by it during this Contract, shall not discriminate on the grounds of race, color, national origin, including limited English proficiency, sex, sexual orientation, gender identity, age, religion or non-religion, disability, marital status, family status, or source of income, including in employment practices, the selection and retention of subcontractors, including procurements of materials and leases of equipment.
- 5.3.2 Solicitations for Subcontractors, Including Procurements of Materials and Equipment. (06/19) In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract relative to nondiscrimination on the grounds of race, color, national origin, sex, sexual orientation, age, religion, disability, marital status, or family relationships.
- 5.3.3 Sanctions for Noncompliance. (09/17) In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City shall impose such contract sanctions as it or any state or federal agency may determine to be appropriate, including, but not limited to withholding of payments to Contractor under this Contract until Contractor complies, and/or cancellation, termination, or suspension of this Contract, in whole or in part.
- 5.3.4 ADA Compliance. (07/18) Contractor shall comply with the Americans With Disabilities Act (ADA), including any duty the ADA may impose on City or Contractor as a result of the Products, Services or activities requested to be provided for City under this Agreement.

At minimum, Contractor shall do the following:

Contractor shall work with the ESD Coordinator to ensure all reports and information provided to the public are accessible to all persons; that all persons are able to

participate in public processes and decision making, including persons with limited English proficiency; and that negative impacts do not disproportionately fall on persons of color or low income communities.

Contractor shall document each ADA request for modification to the Products or Services and Contractor's fulfillment of the request. If Contractor determines that it is unable to promptly fulfill the request for modification under the ADA, Contractor will contact the City contract manager within the same business day, proving reasons why Contractor is unable to fulfill the request for modification and to identify alternate accessibility options that Contractor can perform.

Within fifteen (15) Business Days after receipt, City and Contractor shall advise the other Party in writing, and provide the other Party with copies (as applicable) of any notices alleging violation of or noncompliance with the ADA relating to the Contract, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to the Contract or the programs, Products, Services or activities that Contractor is undertaking for City under this Contract.

5.3.5 Required Reporting. (05/19) If any person or class of persons files a complaint with Contractor alleging discrimination under Title VI of the Civil Rights Act of 1964 (race, color, or national origin, including limited English proficiency), Contractor will notify the City of Portland of the complaint and cooperate with any investigation related to the complaint. Notifications shall be sent to Title VI Program Manager, 421 SW 6th Ave, Suite 500, Portland, Oregon 97204, or title6complaints@portlandoregon.gov.

5.4 Goods and Service(s) Warranties. (10/19) Contractor makes the following warranties:

5.4.1 No Third-Party Conflict or Infringement. (01/19) As of the Effective Date, Contractor warrants the execution and performance of this Contract, shall not contravene the terms of any contracts with third parties or any third-party Intellectual Property Right; and, as of the Effective Date of this Contract, there are no actual or threatened legal actions with respect to the matters in this provision. Contractor agrees to promptly notify the City, in writing, if during the Term of the Contract, a potential third-party conflict or infringement of third-party Intellectual Property Rights arises.

5.4.2 No Encumbrances. (08/19) All Deliverables provided by Contractor under this Contract shall be transferred to the City free and clear of any and all restrictions of transfer or distribution and free and clear of any and all liens, claims, security interests, liabilities and encumbrances of any kind.

- 5.4.3 Conformance with Specifications. (01/19) Contractor warrants that the Deliverables and Services shall operate in conformance with the Specifications.
- 5.4.4 Compliance with Law. (10/19) Contractor warrants that the Deliverables conform to all requirements of applicable law, including all applicable health, safety, privacy, data security and environmental laws and regulations.
- 5.4.5 Industry Standards. (10/19) Contractor warrants that the Services performed under this Contract will meet the standards of skill and diligence normally employed by persons performing the same or similar services.
- 5.4.6 Substitution or Modification of Products at No Charge. (03/19) In the event that Contractor substitutes or modifies the Deliverables, Contractor shall ensure that the new or modified Deliverables shall conform in all aspects to the Specifications. Such substitutions or modifications shall in no way degrade the performance or functionality of the Deliverables and shall not result in additional cost to the City.
- 5.5 No Waiver of Warranties or Representation. (10/19) Performance of Services shall not be construed to represent Acceptance nor relieve Contractor from its responsibility under any representation or warranty. If the City makes a payment prior to Final Acceptance, the payment does not grant a waiver of any representation or warranty by Contractor.
- 5.6 No Third Party to Benefit. (09/17) This Contract is entered into for the benefit of the City and Contractor. Except as set forth herein, nothing in this Contract shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a Party to this Contract to maintain a suit for breach of contract, personal injuries, property damage, or any other relief in law or equity in connection with this Contract.
- 5.7 Assignment. (08/19) Neither Party shall assign, transfer, or delegate all or any part of this Contract, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld. For purposes of this Section, the acquisition, merger, consolidation or change in control of Contractor or any assignment by operation of law shall be considered an assignment of this Contract that requires the City's prior written consent. Notwithstanding the foregoing: (a) in the event that the City's business needs change or the City enters into an agreement with a provider for outsourcing services, Contractor agrees that the City shall have the right to assign this Contract to a successor of all, substantially all, or specified area(s) of the City's business, including an outsourcing provider, upon written notice to the other Party, and (b) Contractor may, without the City's consent, but upon prior written notice to the City, assign its right to payment under this Contract or grant a security interest in such payment to any third

party without requiring that the third party be liable for the obligations of Contractor under this Contract. Any attempted assignment or delegation in violation of this Section shall be void..

- 5.8 Notice of Change in Financial Condition. (09/17) Contractor must maintain a financial condition commensurate with the requirements of this Contract. If, during the Term of this Contract, Contractor experiences a change in its financial condition which may adversely affect its ability to perform the obligations of this Contract, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in financial condition is sufficient grounds for terminating this Contract.
- 5.9 Notice of Change in Ownership. (09/17) If, during the Term of this Contract, Contractor experiences a change in ownership or control, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in ownership or control is sufficient grounds for terminating this Contract.
- 5.10 Subcontractors. (10/19) Contractor shall not subcontract any work under this Contract without the City's prior written consent. Contractor shall be fully responsible for the acts and omissions of its Subcontractors, including any Affiliates, at all levels, and of their agents and employees. Contractor shall ensure that all applicable provisions of this Contract (including those relating to Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The City reserves the right to review any agreements between Contractor and its Subcontractors for Services authorized under this Contract.

Contractor will follow the City of Portland's Sustainable Contracting Policy and Fair Wage Policy for all subcontract work.

All D/M/W/ESB/SDVBE (COBID Certified) Subcontractors/suppliers identified in Contractor's proposals shall be used in their proposed capacity during Contract performance. If Contractor desires to replace any D/M/W/ESB/SDVBE Subcontractors/suppliers under this Contract all substitution requests must have approval from the City's Chief Procurement Officer before such substitutions can be made. In no event shall Contractor subcontract any work, assign any rights, or delegate any obligations under this Contract without the City's prior written consent.

- 5.11 Flow-down Clauses. (01/19) Contractor shall include the following clauses, or substantially similar language, in its subcontracts under this Contract:

Section 4.4, Confidentiality

Section 5.3, Compliance with Non-Discrimination Laws and Regulations

Section 6.1, Hold Harmless and Indemnification

Section 6.2, Insurance

5.12 Force Majeure. (01/19)

- 5.12.1 In the event that either Party is unable to perform any of its obligations under this Contract due to a Force Majeure Event not the fault of the affected Party, the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, the performance obligations affected by the Force Majeure event shall immediately be suspended.
- 5.12.2 If the period of nonperformance exceeds fifteen (15) Calendar Days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract or any Statement of Work.
- 5.12.3 If the period of nonperformance due to a Force Majeure Event does not exceed fifteen (15) Calendar Days, such nonperformance shall automatically extend the Project schedule for a period equal to the duration of such events. Any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event.
- 5.12.4 If the period of nonperformance due to Force Majeure Event is longer than fifteen (15) Calendar Days, the Parties shall negotiate options for mitigation of the Force Majeure Event.
- 5.13 Ownership of Property. (06/19) All work product produced by the Contractor 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 Contractor and the City intend that such Work Product shall be deemed "work made for hire" of which the City shall be deemed the author. If for any reason a Work Product is deemed not to be a "work made for hire," the Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Contractor waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. If the Contractor is an architect, the Work Product is the property of the Consultant-Architect, and by execution of this Contract, the Contractor-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 Contractor are and will remain the exclusive property of Contractor. Contractor hereby grants to the City a non-exclusive, perpetual, irrevocable license, with the right to sublicense, to disclose, copy, distribute, display, perform, prepare derivative works of and otherwise exploit any pre-existing Intellectual Property Rights incorporated into the Work Product(s).

SECTION 6 INDEMNIFICATION, INSURANCE, BONDING, LIQUIDATED DAMAGES

6.1 Hold Harmless and Indemnification. (08/19)

- 6.1.1 Contractor shall indemnify, defend and hold harmless the City of Portland, its officers, agents, and employees, from all claims, demands, suits, and actions for all losses, damages, liabilities, costs and expenses (including all attorneys' fees and costs), resulting from or arising out of the actions, errors, or omissions of Contractor or its officers, employees, Subcontractors, or agents under this Contract.
- 6.1.2 Infringement Indemnity. (08/19) Contractor shall indemnify, defend, and hold harmless the City, its directors, officers, employees, and agents from and against any and all claims, demands, suits, and actions for any damages, liabilities, losses, costs, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged misappropriation, violation, or infringement of any proprietary right or Intellectual Property Right of any person whosoever. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise.
- 6.1.3 Contractor shall indemnify, defend, and hold harmless the City against any taxes, premiums, assessments, and other liabilities (including penalties and interest) that the City may be required to pay arising from Deliverables and Services provided by Contractor under this Contract. The City of Portland, as a municipal corporation of the State of Oregon, is a tax-exempt unit of local government under the laws of the State of Oregon and is not liable for any taxes.

6.2 Insurance. (08/19) Contractor shall not commence work until Contractor has met the insurance requirements in this section and Contractor has provided insurance certificates approved by the City Attorney. Contractor shall acquire insurance issued by insurance companies or financial institutions with an AM Best rating of A- or better and duly licensed, admitted and authorized to do business in the State of Oregon.

- 6.2.1 Insurance Certificate. (08/19) As evidence of the required insurance coverage, Contractor shall provide compliant insurance certificates, including required endorsements, to the City prior to execution of the Contract. The certificates shall list the City as certificate holder. Contractor shall maintain continuous, uninterrupted coverage for the Term of this Contract and to provide insurance certificates demonstrating the required coverage for the Term of this Contract. Contractor's failure to maintain insurance as required by this Contract constitutes a Material Breach of this Contract. Contractor must notify the City in writing thirty (30) Calendar Days prior to a cancellation, non-renewal, or changes to the insurance policy.
- 6.2.2 Additional Insureds. (08/19) For commercial general liability coverage, Contractor shall provide City with a blanket additional insured endorsement form that names the City of Portland, Oregon, and its officers, agents and employees, as an additional insured. The additional insured endorsement must be attached to the general liability certificate of insurance.
- 6.2.3 Insurance Costs. (08/19) Contractor shall be financially responsible for all premiums, deductibles, self-insured retentions, and self-insurance.
- 6.2.4 Coverage Requirements. (08/19) Contractor shall comply with the following insurance requirements, except for the initial contract commencement on 2/1/24 through 2/15/24, where \$1 million per occurrence for Commercial General Liability and \$1 million for each accidental for Automotive Liability would be acceptable :
- 6.2.4.1 Commercial General Liability. (08/19) Contractor shall acquire commercial general liability ("CGL") and property damage insurance coverage in an amount not less than \$2 million per occurrence for damage to property or personal injury arising from Contractor's work under this Contract.
☒ Required and attached ☐ Reduced by Authorized Bureau Director ☐ Waived by Authorized Bureau Director
- 6.2.4.2 Automobile Liability. (08/19) Contractor shall acquire automobile liability insurance to cover bodily injury and property damage in an amount not less than \$2 million for each accident. Contractor's insurance must cover damages or injuries arising out Contractor's use of any vehicle.
☒ Required and attached ☐ Reduced by Authorized Bureau Director ☐ Waived by Authorized Bureau Director
- 6.2.4.3 Workers' Compensation. (08/19) Contractor shall comply with Oregon workers' compensation law, ORS Chapter 656, as it may be amended. If Contractor is required by ORS Chapter 656 to carry workers' compensation insurance,

Contractor shall acquire workers' compensation coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City for the entire period during which work is performed under this Contract. Contractor shall acquire workers compensation coverage in an amount not less than \$1 million each accident, \$1 million disease each employee, and \$1 million disease policy limit.

☒ Required and attached ☐ Proof of exemption (Complete Independent Contractor Certification Statement)

OPTIONAL ADDITIONAL INSURANCE CLAUSES – USE AS NEEDED.

6.2.5 Insurance Requirements for Subcontractors. (08/19) Contractor shall contractually require its Subcontractors to acquire and maintain for the duration of this Contract insurance equal to the minimum coverage limits required above.

6.3 Rolling Estoppel. (09/17) Unless otherwise notified by Contractor, it shall be understood that the City shall have met all its obligations under this Contract. The City will be conclusively deemed to have fulfilled its obligations, unless it receives written notification of a failure to meet such obligations described in the process outlined in Exhibits B and C in the next status report, or within ten (10) Business Days following such failure, whichever is sooner, and Contractor identifies the specific failure in that notification. The City's failure to meet obligations must be described in terms of how it has affected the Project schedule or a specific performance requirement of Contractor.

6.3.1 Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in Project timetable, the standards of performance under this Contract, or the Contract price, if Contractor knew of that problem and failed to provide notification to the City as set forth above or to include it in the applicable status report to the City's project manager.

6.3.2 In the event Contractor identifies a situation that is impairing Contractor's ability to perform for any reason, Contractor's notification should contain Contractor's suggested solutions to the situation. These suggestions should be in sufficient detail so that the City's Project Manager can make a prompt decision as to the best method of dealing with the problem and continuing the Project in an unimpeded fashion.

6.4 Dispute Resolution. (09/17) Contractor shall cooperate with the City to ensure that all claims and controversies which arise during this Contract will be resolved as expeditiously as possible in accordance with the following resolution procedure:

- 6.4.1 Any dispute between the City and Contractor, including any dispute related to a party's scope of work that is not resolved after following the complaint procedure set forth in Exhibit B and Exhibit C, shall be resolved, if possible by the Project Manager or their designee on behalf of the City and the Administrator on behalf of Contractor.
- 6.4.2 If the Project Manager or the Project Manager's designee and Contractor are unable to resolve any dispute within three (3) Business Days after notice of such dispute is given by either Party to the other, the matter shall be submitted to the Chief Administrative Officer on behalf of the City and the Administrator on behalf of Contractor for resolution, if possible.
- 6.4.3 Should any dispute arise between the Parties concerning this Contract that is not resolved by mutual agreement above, it is agreed that such dispute will be submitted to mandatory mediated negotiation prior to any Party's commencing arbitration or litigation. In such an event, the Parties to this Contract agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.
- 6.4.4 Should an equitable solution not result from the foregoing, the City and Contractor shall be free to pursue other remedies allowed under this Contract.
- 6.4.5 Unless ordered by the City to suspend performance of all or any portion of Contractor's Services, Contractor shall proceed with the performance of such Services without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures. During the pendency of any of the foregoing dispute resolution procedures, the City shall continue to make all payments that are not in dispute while having the right to withhold payments that are in dispute.
- 6.5 Remedies. (09/17) The remedies provided in this Contract are cumulative and may be exercised concurrently or separately. In the event of any Material Breach by Contractor, which Material Breach shall not have been cured as agreed to between the Parties, the City shall have the ability to pursue the City's rights at law or equity. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other.
- 6.6 Cost of Cover. (09/17) In the event of termination of this Contract by the City due to a Material Breach by Contractor, then the City may complete the Project itself, by agreement with another contractor, or by a combination thereof. After termination, in the event the cost of completing the Project exceeds the amount the City would have paid

Contractor to complete the Project under this Contract, then Contractor shall pay to the City the amount of the reasonable excess.

SECTION 7 MISCELLANEOUS

7.1 Transition from Previous Contract.

- 7.4.1 Given it is understood by both Parties that this contract contains significant changes compared to the previous contract between them, it is agreed that the Contractor will have two months from the Effective Date to implement all terms and conditions contained within the main body of the contract, and six months from the Effective Date to implement all terms and conditions contained within Exhibit B: the Lloyd Enhanced Service District Annual Statement of Work.
- 7.4.2 Notwithstanding Section 7.4.1, the ESD Coordinator will have discretion to allow additional time (in excess of six months from the Effective Date) for Contractor to implement specific provisions of Exhibit B: the Lloyd Enhanced Service District Annual Statement of Work. Contractor will submit a request for such additional time in writing to the ESD Coordinator. The writing will describe the terms and conditions of Exhibit B for which additional time for implementation is requested, the reason Contractor is requesting additional time, and the new date by which Contractor will comply with applicable terms and conditions of Exhibit B. The ESD Coordinator and Contractor will mutually agree in writing to the terms of any additional time for implementation.

SIGNATURE PAGE

(08/19)

Contractor represents that Contractor has had the opportunity to consult with its own independently selected attorney in the review of this Contract. Neither Party has relied upon any representations or statements made by the other Party that are not specifically set forth in this Contract.

This Contract constitutes the entire agreement between the City and Contractor and supersedes all prior and contemporaneous proposals and oral and written agreements, between the Parties on this subject, and any different or additional terms on a City purchase order or Contractor quotation or invoice.

The Parties agree that they may execute this Contract and any Amendments to this Contract, by electronic means, including the use of electronic signatures.

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.

IN WITNESS WHEREOF, the Parties hereby cause this Contract to be executed.

CONTRACTOR



1/31/24

Authorized Signature

Date

Hank Ashforth, Lloyd ESD Chair

Printed Name and Title

Address: 700 NE Multnomah St, Ste 340

Phone: 503-236-6441

Email: owen@golloyd.org

Contract Number: 30008687

Contract Title: Contract for Enhanced Service District Management Services for the Lloyd Enhanced Service District

CITY OF PORTLAND SIGNATURES

By: _____ Date: February 20, 2024
Michael Jordan, Chief Administrative Officer

By: N/A _____ Date: _____
Biko Taylor, Chief Procurement Officer

By: N/A _____ Date: _____
Mayor Ted Wheeler

Approved:

By: N/A _____ Date: _____
Office of City Auditor

Approved as to Form:

By: Approved as to From LLaw _____ Date: _____
Office of City Attorney

Digitally signed by Approved as to From LLaw
Date: 2024.02.16 15:22:15 -08'00'

Exhibit A
The Lloyd Enhanced Service District

The Lloyd Services Program
Five Year Contract Budget and Annual Budget
February 1, 2024 – January 31, 2029

for the Contract

for Enhanced Service District Management Services
Between City of Portland and The Lloyd BID Inc

1. Projected Five Year Contract Budget: \$3,550,000

Year 1: February 1 2024 – January 31, 2025:	\$669,000
Year 2: February 1, 2025 – January 31, 2026:	\$689,000
Year 3: February 1, 2026 – January 31, 2027:	\$710,000
Year 4: February 1, 2027 – January 31, 2028:	\$731,000
Year 5: February 1, 2028 – January 31, 2029:	\$751,000

2. Year 1: February 1, 2024 - January 31, 2025 Annual Budget

The draft annual budget for the initial fiscal year (February 1, 2024 to January 31, 2025) is as shown below and incorporated hereto as Exhibit A. Lloyd BID Inc shall propose a final budget for City's review no later than 30 days after execution of this Contract. Upon City concurrence, a final budget for the initial fiscal year will be adopted, and will replace and supplement initial Exhibit A. The Parties will amend the annual budget for subsequent fiscal years in accordance with this Contract, and the amended annual budget will be administratively adopted by the Parties and will be incorporated as supplement to Exhibit A.

	Expanded Services Budget
	2024
REVENUES	
Existing Revenue Collected (current rates)	\$540,966
Estimated Assessment Increase: rates adjusted for inflation; caps increase	\$128,034
Total Projected Revenue (via Dept. of Revenue)	\$669,000
EXPENSES	
Existing Programs	
Trash for Peace	\$0
Go Lloyd	\$207,030
Lloyd EcoDistrict	\$160,000
Lloyd Community Association*	\$20,000

Holladay landscape islands	\$16,995
Special projects (<i>miscellaneous initiatives - e.g., banners</i>)	\$25,750
Existing / New Organizational Operations	
Consulting (Existing)	\$7,725
Organizational expenses (Existing)	\$6,798
ESD Administrative support (Existing)	\$14,336
Executive Director (part-time) (New)	\$80,000
Marketing & Communications staff person (New)	\$0
Potential New Programs	
Cleaning & Ambassadors: (2) bike cleaners, (1) graffiti abatement (New)	\$181,245
Right 2 Dream Too rest area operations (50%) (New)	\$15,000
Graffiti Removal Reimbursement Grants to business owners* (New)	\$20,000
Total Expenses	\$734,879
ANNUAL SURPLUS/DEFICIT	
Annual Budget Differential	(\$65,879)

**Exhibit B
Statement of Work**

The Lloyd ENHANCED SERVICE DISTRICT

**ANNUAL STATEMENT OF WORK
February 1, 2024 – January 31, 2025**

for the Contract

**for Enhanced Service District Management Services
Between City of Portland and the Lloyd BID Inc**

The Lloyd B.I.D., Inc. (“Lloyd”) Board of Directors shall oversee the Lloyd Services Program, which performs services requested and funded by property owners and managers within the Lloyd Enhanced Service District (“District”), and agreed to with the City of Portland (“City”). The Executive Director of Lloyd will supervise the Lloyd Services Program. This Annual Statement of Work applies to services during the February 1, 2024 – January 31, 2025, District license year.

As described in further detail below, the Lloyd Services Program operations will consist of:

- The Go Lloyd program;
- The Lloyd EcoDistrict program;
- The Lloyd Community Association program;
- Right 2 Dream Too Funding;
- The Holladay Street Landscaping program; and
- The Cleaning program.

The Lloyd Program will provide the following services:

- I. **Enhanced Service Districts Evaluation.** The Lloyd Services Program will be a participant in the City’s process to evaluate governance and services within the Enhanced Service Districts, as recommended by the August 2020 audit by the City Auditor, through audit completion, and of the ongoing Enhanced Service District citywide program.
- II. **Go Lloyd Program**
 - A. Lloyd will provide funding to the Transportation Management Association known as Go Lloyd to support their mission of providing transportation services and promoting alternative transportation and commuting opportunities in the Lloyd neighborhood, such as public transit, walking, and biking.
 - B. The funding will be provided for use in the Go Lloyd general fund.

- C. Go Lloyd programs supported include business-to-business outreach and education, individualized trip planning assistance to employees and residents, a transportation store in the Lloyd neighborhood, management of the Lloyd Cycle Station, Universal Transit Pass program administration, a wide variety of educational programs, and numerous community events.
- D. These programs are meant to connect people and places by creating partnerships and transportation solutions via cooperative, business supported programs promoting efficient, balanced transportation systems and land use patterns.

III. Lloyd EcoDistrict Program

- A. Lloyd will provide funding to the Lloyd EcoDistrict to support its mission of working with community members in the Lloyd neighborhood to facilitate conversation, resource sharing, and development while engaging with residents, small and large businesses, and partner organizations to foster a more connected place for people to live, work, and play.
- B. The funding will be provided for use in the Lloyd EcoDistrict general fund.
- C. Lloyd EcoDistrict programs supported include providing sustainability and community engagement-based services to Lloyd neighborhood employers and residents, as well as the development and implementation of the Lloyd EcoDistrict Roadmap energy action plan and the Waste Reduction Action Plan.

IV. Lloyd Community Association Program

- A. Lloyd will provide funding to the Lloyd Community Association to support its mission of promoting and enhancing the Lloyd community as a desirable and livable place where neighborhood stakeholders and visitors can patronize and/or conduct business.
- B. The funding will specifically be used to provide part-time administrative support to the Lloyd Community Association.

V. Right 2 Dream Too Funding

- A. Lloyd will provide funding to the nonprofit Right 2 Dream Too rest area to support its mission of providing safe and stable temporary accommodations for houseless individuals in the District for those who cannot access traditional shelters or affordable housing.
- B. The funding will cover a portion of Right 2 Dream Too's yearly operations and will ensure the program continues to serve the houseless community in the Lloyd Enhanced Service District.

VI. Holladay Street Landscaping Program

- A. Lloyd will coordinate the maintaining of the landscape islands on NE Holladay Street between NE 1st Avenue and NE 13th Avenue in cooperation with the City

of Portland (i.e., appropriate bureau responsible for right-of-way maintenance). This will include:

1. Maintaining and irrigating plantings;
 2. Removal of weeds year-round and dead leaves in the fall;
 3. Bark dusting; and
 4. Litter removal.
- B. The goal of the program is to improve the appearance of the streetscape, making Holladay a more visually appealing and welcoming transportation corridor.

VII. Cleaning Program – General Cleaning

- A. Lloyd will provide a cleaning team to patrol the District and perform general cleaning services, including trash, needles, and discarded furniture from neighborhood streets.
- B. In the performance of their duties, the cleaning team will be equipped with specially outfitted tricycles equipped with cleaning tools. They will also provide trash bags to individuals living in unsanctioned camps within the Lloyd neighborhood and will refer individuals seeking assistance to nearby service providers.
- C. The cleaning team will wear uniforms identifying them as Lloyd workers, and serve as a first point of contact for visitors coming to the neighborhood.
- D. Lloyd is contracting with Central City Concern to provide these services for the District.

VIII. Cleaning Program – Graffiti Removal

- A. Lloyd will provide graffiti removal services upon the request of property managers within the District and be equipped with a truck and the necessary tools to remove graffiti from walls and sidewalks.
- B. Lloyd is contracting with Central City Concern to provide these services for the District.

IX. City & Community Relations

- A. Lloyd will maintain a collaborative working relationship with the City to promote a clean and welcoming environment for all members of the community, along with a healthy and accessible business climate.
- B. Lloyd will proactively maintain strong collaborative relationships with diverse District stakeholders to promote frequent and consistent input into Lloyd's programs by:
 1. Collaborating with the City of Portland Enhanced Service District Coordinator and other City officials to work with Lloyd stakeholders, including BIPOC, houseless, and other historically underserved and marginalized communities, through committees, task forces, and other outreach to ensure consistent input from impacted communities;

2. Collecting and making public relevant data on the activities and effectiveness of said programs;
3. Hosting an annual public meeting where the latest data pertaining to said programs is presented and community members are given an opportunity to raise concerns and provide feedback;
4. Assisting the City with maintaining consistent input from District stakeholders; and
5. Ensuring that Lloyd meets all of its periodic disclosure requirements to the City.

X. Administration, Transparency, and Accountability

- A. Lloyd shall employ personnel or retain contractors to provide all management and carry out all administrative duties necessary in overseeing the Lloyd Services Program.
- B. The Lloyd Board of Directors shall be responsible for employing or contracting for personnel necessary to carry out the programs of the District and for making determinations regarding qualifications and experience.
- C. The Lloyd Board of Directors shall provide funds for adequate operating facilities necessary to enable required personnel to be efficient and operate in a professional manner.
- D. Lloyd shall establish a financial management system that allows the tracking and documentation of all expenses incurred in carrying out the District's programs, and will produce an annual financial report confirming that all financial statements fairly represent the revenues and expenses incurred for that year and the financial position of Lloyd.
 1. A chart of accounts to provide for the proper financial statement classification of payments made in the performance of the services related to the District's programs.
 2. A system of authorizing contracts for subcontracted services that will include the maintenance of invoices and other documents to substantiate the nature of, delivery date, and amount of payments;
 3. An internal control system that provides assurance that all other expenditures are properly authorized and have adequate supporting documentation to substantiate the nature of, receipt date, and amount of payments;
 4. Personnel records, payroll records, and time reporting information (if applicable) to the extent required by organizational policy for personnel employed herein;
 5. Quarterly financial reports that include information about the District's programs including budget versus actual comparisons; and,
- E. Lloyd agrees to partially fund the City of Portland Enhanced Service District Coordinator position during City of Portland fiscal year 2024-25, \$6,000.00

(roughly 1% of projected budget) in year one with future amounts to be negotiated in updated scopes of work

- F. Lloyd will provide quarterly financial statements to the City of Portland Enhanced Service District Coordinator.
 - 1. The City of Portland Enhanced Service District Coordinator will be given access to Lloyd financial records and contracts upon request.
- G. Lloyd will provide a quarterly report on its cleaning programs to the City of Portland Enhanced Service District Coordinator.
- H. Lloyd will provide an annual report to the City of Portland Enhanced Service District Coordinator, make the report publicly available, and present the report to City Council at least once per fiscal year. This annual report will include:
 - 1. Financial information such as a statement of financial position, statement of activities, statement of functional expenses, and statement of cash flows;
 - 2. Descriptions of programs, including relevant statistics to aid in highlighting each program's scope and effectiveness;
 - 3. Descriptions of activities related to stakeholder outreach and engagement;
 - 4. List of firms and organizations contracted with and for what purpose; and
 - 5. Information as agreed upon by Lloyd and the City of Portland Enhanced Service District Coordinator.
- I. Lloyd Business Improvement District and the City of Portland may submit a concern or complaint about each party's service commitments detailed in their respective scopes of work. Concerns or complaints must be sent, in writing, to the City of Portland Enhanced Service District Coordinator. Upon receipt, the City of Portland Enhanced Service District Coordinator will have fifteen (15) business days to review and formally respond. In the event of a written complaint, both parties agree to work with the City of Portland Enhanced Service Districts Coordinator to reach a joint resolution based on the scopes of work.
- J. Lloyd will follow and comply with the City of Portland Sustainable Procurement Policy.
- K. The City of Portland Enhanced Service District Coordinator will serve as an ex-officio non-voting member of the Lloyd Business Improvement District Board of Directors.

Exhibit C
City Basic Services

Annual Maintenance Services in Support of Contractor
February 1, 2024 – January 31, 2025

for the Contract

for Enhanced Service District Management Services
Between City of Portland and the Lloyd BID Inc

Except as otherwise provided in this Contract, and within the limitation imposed by the City Charter and Oregon Law, and subject to annual City fiscal year budget availability, during the February 1, 2024 – January 31, 2025 Contract year, the City will strive to maintain public services within the District, with regards to the land that is owned by the City such as a city park, or the land that the City manages such as the public right of ways of streets and sidewalks, at the following activity levels:

Basic Services

1. Bureau of Planning and Sustainability

1.1. Public Trash Cans

1.1.1. Daily trash can collection 7 days per week

1.1.2. Maintenance and graffiti removal as needed

1.2. Graffiti Abatement

1.2.1. Graffiti abatement is conducted on City-owned property or public right-of-way as budget and capacity allows.

1.2.2. Addressing Graffiti abatement on private land is the private owner's responsibility, and the City's recourse is to do a code enforcement action to legally compel action, or negotiate with the property owner to allow the City to do abatement on behalf of the owner and then charge the owner.

1.2.3. The City of Portland's Graffiti Program does not guarantee graffiti removal assistance for all circumstances and locations.

1.3. Graffiti Abatement on Private Property

1.3.1. Graffiti abate on private property requires an agreement between the City and private property owner and consists of the following options:

1.3.1.1. BPS supplying private property owner with graffiti removal supplies, as supply and budget allow. Private property owner must request supplies and can do so via this webpage: www.portland.gov/bps/graffiti/volunteer

1.3.1.2. BPS may offer limited graffiti removal services at no cost or reduced cost to residents, small businesses, and non-profit organizations who meet eligibility requirements. Please review eligibility at this webpage:

www.portland.gov/bps/graffiti/about-graffiti. Private property owners must review eligibility and if criterion is met, must then request graffiti abatement services from BPS via this webpage: www.portland.gov/bps/graffiti/request-services

3.1.1. The City of Portland's Graffiti Program does not guarantee graffiti removal assistance for all circumstances and locations.

4. Portland Bureau of Transportation (PBOT)

4.1. Streets and Right-of-Way

4.1.1. PBOT will maintain all street resurfacing, signage, signals/signal cabinets, striping, paving crosswalks, bike lanes, light poles, parking meters, and public garages.

4.2. Resurfacing and Paving

4.2.1. As needed base on PBOT's Pavement Condition Index (PCI) as budget allows.

4.3. Striping of Right-of-Way

4.3.1. Annually as budget allows

4.4. Signals and Signal Cabinets

4.4.1. Proactive monthly graffiti inspections and abatement are done by contractor

(GRS). Additionally, City can request spot locations for removal within 5 days.

Graffiti containing sensitive messages (e.g., hateful, racist) is addressed within 1 day.

4.5. Crosswalks

4.5.1. To be maintained such that they are functional and safe.

4.6. Light Poles

4.6.1. Proactive monthly graffiti inspections and abatement are done by contractor

(GRS). Additionally, City can request spot locations for removal within 5 days.

Graffiti containing sensitive messages (e.g., hateful, racist) is addressed within 1 day.

4.7. Parking Meters

4.7.1. Proactive graffiti inspections and abatement are done daily. Battery maintenance is done daily before 9am.

4.8. Bike Lanes

4.8.1. To be maintained such that they are functional and safe.

4.9. Street Sweeping

4.9.1. To occur at minimum 3 to 4 times annually

5. Portland Parks and Recreation (PPR)

5.1. Litter Pick Up

5.1.1. To occur daily at Holladay Park

5.2. Trash Receptical Changing

5.2.1. To occur 2x's daily at Holladay Park

5.3. Irrigation Repair and Landscape Maintenance

5.3.1. To occur as needed at Holladay Park

5.4. Planter Maintenance

5.4.1. To occur as needed at Holladay Park

5.5. Fountain Maintenance

5.5.1. Inspections of fountain at Holladay are done M-F during Summer months and on a reduced frequency during Winter months. All fountains are winterized to prepare for cold weather.

6. Portland Police Bureau

6.1. Public Safety

6.1.1. The level of service provided by the Portland Police Bureau as of February 1, 2024 is assigned and adjusted by the Central Precinct command staff for each shift and patrol district based on such factors as the number of calls for service within each police patrol district, the priority calls for service, time of day, day of week, geographical factors, and other factors.

7. Portland Streetcar

7.1. Trash Can Collection at Portland Streetcar Stations

7.1.1. To occur 2x's weekly with priority response to hazards (e.g., needles bio-hazards and scattered trash).

7.2. General Cleaning of Litter, Benches, and Ticket Machines at Portland Streetcar Stations

7.2.1. Inspections are done weekly.

7.3. Graffiti Removal at Portland Streetcar Stations

7.3.1. Inspections are done weekly with most instances of graffiti addressed the same day as reported with immediate response to hate-graffiti.

7.4. Power Washing of Portland Streetcar Stations

7.4.1. To occur as needed

7.5. Replacement of Shelter Glass at Portland Streetcar Stations

7.5.1. Repairs are generally performed within 30 days of being reported

7.5.2. *Shelters seeing repeated vandalism may have extended repair times.*

Reporting and Disputes of Service

8. The City will provide to the Lloyd BID Inc periodic reports documenting the services provided under and in accordance with this Exhibit C on a schedule to be agree upon between the Lloyd BID Inc and the City.

9. The Lloyd BID Inc and the City of Portland may submit a concern or complaint about each party's service commitments detailed in their respective scopes of work.

9.1. Concerns or complaints must be sent, in writing, to the City of Portland Enhanced Service District Coordinator.

9.2. Upon receipt, the City of Portland Enhanced Service District Coordinator will have fifteen (15) business days to review and formally respond.

9.3. In the event of a written complaint, both parties agree to work with the City of Portland Enhanced Service District Coordinator to reach a joint resolution based on the scopes of work.

10. The City may change the levels of services required by this exhibit in in the event of unusual fiscal or other emergency conditions. The City Council has the sole discretion to make the determination whether such conditions exist. In the event the City wishes or intends to make such a change, then the City will refer the proposed changes as expeditiously as is reasonable to the Lloyd BID Inc for its review and comment. If the City makes such a change, the Lloyd BID Inc has the right to change or adjust services it provides under this Contract as appropriate to respond to the City changes, so that a coherent and rational set of services is provided within the District. Such changes will be accomplished through an amended Lloyd BID Inc Annual Statement of Work (Exhibit B to the Contract), to be submitted to the City for review, comment, and approval.

Exhibit D

License Fee Administration Services in Support of Contractor February 1, 2024 – January 31, 2029

for the Contract

for Enhanced Service District Management Services Between City of Portland and The Lloyd BID Inc

The Division will administer the License Fee calculations, billing, collections, database, and appeals. The City reserves the right, at its option, to subcontract out for any or all of these administrative functions. The Lloyd BID Inc will provide assistance on these administrative functions as follows:

1. Overall Program Management. The Division will administer the License Fee program in accordance with City Code 6.06 and with a view toward the continued goodwill of District property managers towards the Lloyd BID Inc and the City.
2. Customer Service. The Lloyd BID Inc, in providing assistance to the Division, will practice good customer service in relation to license fee payers. The Lloyd BID Inc will also respect and protect the Division's authority to make final determinations regarding collections, appeals, and questions of compliance with City Code Chapter 6.06.
3. Receiving Payments. The Division will receive all license payments (excluding voluntary payments made directly to the Lloyd BID Inc) and enter them to the License Fee fund maintained by the City. If the Lloyd BID Inc receives a voluntary payment for license fees, it must notify the Division within fourteen (14) days of receipt for the Division to correctly calculate the license collection fees owed for any given license year. Voluntary payments are included in the Division's calculation for cost of service.
4. Appeals. The Division has sole authority to decide appeals, consistent with the provisions of City Code Chapter 6.06, but it may consult with the Lloyd BID Inc regarding appeals. If the Division provides the Lloyd BID Inc with a copy of an appeal but does not receive comments from the Lloyd BID Inc within 7 days of the Division's providing the copy, the Division is deemed to have fulfilled its consultation responsibilities under this subsection. The Lloyd BID Inc will provide timely responses to Division requests for information needed to decide appeals and for comments on appeals.
5. Collections and Collection Litigation Costs
 - 5.1. Collections. The Lloyd BID Inc will monitor payments and encourage the Lloyd BID Inc property managers to make license fee payments in a timely manner.

However, the Division is responsible for actual collections and has sole authority to waive penalties and/or other finance charges.

- 5.2. Collection Litigation Costs. City costs related to District License Fee collection litigation will be billed separately to the Lloyd BID Inc and will be payable and deducted from the next disbursement of funds to the Lloyd BID Inc, provided that the amount so billed, payable, and deducted in relation to any particular collection case may not exceed the amount collected as a result of that case. The City, at the written request of the Lloyd BID Inc, will provide written documentation of any amount so billed, payable, and deducted. The term "City costs" as used in this subsection means:
 - 5.2.1. City costs and disbursements as defined in ORCP 68(AX2);
 - 5.2.2. City attorney fees as defined in ORCP 68(A)(1) with the cost of City Attorney's Office staff based on actual hourly costs of Office staff; and
 - 5.2.3. the cost of Revenue Division staff time based on actual hourly costs of Division staff, all without the addition of an overhead charge.
6. Service Problems. Whenever the Division receives comments that are about the Lloyd BID Inc District Services, the Division will notify of those comments as soon as is reasonably possible. The Division may notify by telephone, electronic mail, or otherwise. The Lloyd BID Inc must reasonably attempt to resolve all service-related problems and inform the Division of its efforts at resolution.
7. Divisions Administration Costs:
 - 7.1. The City will provide collection services to the Lloyd BID Inc for a fee of 2% of the total District License Fee billings for each year in this Contract beginning on or after February 1, 2024. The base for the administration fee shall include any voluntary payments made in lieu of the license fee under Chapter 6.06. Both parties agree that the Lloyd BID Inc is not entitled to any civil penalties collected under Chapter 6.06, that such penalties shall be used to partially offset the Division's costs of administration, and the City will not include them in any disbursements to the Lloyd BID Inc. The City will deduct its fees from the License Fees collected. The deduction will coincide with each of the two annual disbursement cycles.
 - 7.2. In addition to the 2% fee in subsection 7.1 above, an allocation of direct overhead charges will be deducted to arrive at the net License Fee revenues payable to the Lloyd BID Inc. Direct overhead charges include, but may not be limited to, General Fund Overhead (GFOH) charge, Integrated Tax System (ITS) cost-sharing charge and Enterprise Business System (EBS) services. .

8. Division's Other Costs. Other costs for work provided by the Revenue Division to the Lloyd BID Inc not directly related to collection services outlined in subsections 5 (Collection Litigation Costs) and 7 (Division's Administration Costs), must be agreed upon in advance by the Division and the Lloyd BID Inc. Those costs will be billed to the Lloyd BID Inc separately, and they will be payable and deducted from the next Division disbursement of funds to the Lloyd BID Inc. Division's Administrative Costs are different than Collection Litigation Costs.