

CITY OF PORTLAND
CONTRACT FOR GOODS AND SERVICES
for
TRUTH AND RECONCILIATION CONSULTATION SERVICES

Contract Number: 3000XXXX

As authorized by PCC 5.68, this Contract is made effective on _____ (“Effective Date”) by and between the City of Portland (“City”), a municipal corporation of the State of Oregon, and _____ (“Contractor”), a(n) _____ 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 XXX, XX 2028, **with the City’s option to extend for an additional five (5) years, for a total not to exceed ten (10) years.** The total not-to-exceed amount under this Contract for the initial Term shall be \$ _____.

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

For City of Portland:	For Contractor:
Name: Andre Miller	Name:
Title: Project Manager	Title:
Address: 1221 SW 4 th Avenue, Room 230	Address:
City, State: Portland, OR 97204	City, State:
e-mail: Andre.Miller@portlandoregon.gov	e-mail:
Copy to: Mark Ariza	Copy to:
Procurement Services	
1120 SW 5 th Ave.	
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 \$_____ for accomplishment of the Project.
- (c) Payments shall be made to Contractor according to the schedule identified in Exhibit A, the Contractor’s Price.

Recitals:

WHEREAS, to further its government operations, the City of Portland desires to _____ (the “Project”); and

WHEREAS, the City issued Request for Proposal (RFP) 00001979 for _____

WHEREAS, Contractor, in its Proposal dated _____ and submitted in response to the City’s RFP represented that it has the knowledge, experience, and expertise in _____ for _____; and

WHEREAS, the City selected Contractor based on its Proposal;

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1 DEFINITIONS (10/19)

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.

“Acceptance” (10/19) means the Deliverable demonstrates to the City’s satisfaction that the Deliverable conforms to and operates according to the Acceptance Criteria, and if required, has successfully completed Acceptance review, and for Deliverables not requiring Acceptance Testing that the Deliverable conforms to the Acceptance Criteria or the City’s Specifications.

“Acceptance Certificate” (11/18) means a written instrument by which the City notifies Contractor that a Deliverable has been Accepted or Accepted with exceptions, and Acceptance Criteria have been met or waived, in whole or in part.

“Acceptance Criteria” (11/18) means functionality and performance requirements determined by the City, based upon the Specifications, which must be satisfied prior to City’s Acceptance of a Deliverable. City and Contractor shall agree upon written Acceptance Criteria.

“Acceptance Date” (11/18) means the date on which the City issues an Acceptance Certificate for the Deliverable(s).

“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.

“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 the City by Contractor under this Contract.

“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 the City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Contract.

“Defect” (10/19) means any error, problem, condition, bug, or other partial or complete inability of a Service, Deliverable or component thereof, to operate in accordance with the applicable Specifications.

“Final Acceptance” (11/18) means the City has determined that all Deliverables have successfully completed Acceptance Testing, which demonstrates to the City’s satisfaction that all Deliverables conform to and operate according to the Acceptance Criteria, applicable Documentation, and Contractor’s representations; and that for Deliverables not requiring Acceptance Testing, that the Deliverables conform to the Acceptance Criteria or the City’s specified requirements.

“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 specific individuals identified in Section 3.11 to fill Key Positions.

“Key Position” (11/18) means a job position critical to the success of the Project as identified in Section 3.11 of this Contract.

“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.

“Proposal” (10/19) means Contractor’s response to the City’s RFP referenced on page one of this Contract.

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

“Specifications” (10/19) means the most current cumulative statement of capabilities, functionality, and performance requirements for the System and its components as set out in the Acceptance Criteria, Change Orders, the Statement of Work, Documentation, Contractor’s representations, Contractor’s Proposal and Proposal Clarifications, and the City’s Request for Proposals.

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

“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 the 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, Contractor's Price
4. Change Orders
5. Exhibit B, Statement of Work
6. Exhibit C, City RFP No. 00001971
7. Exhibit D, Contractor's Proposal
8. Exhibit E - Sample Documents: E-1, Sample Status Reports, E-2 Certificate of Acceptance, E-3 Change Order
9. Contractor's Hyperlinks

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.
- 3.2 Point of Contact. (09/17) Contractor shall be the sole point of contact for the City with regard to this Contract and the System.
- 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. The 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) The City and Contractor can agree to make changes, at any time to a Statement of Work or **Task Order** 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.
- 3.4 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, the 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, the 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 the 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) The City is required to track certain types of contract data for reporting purposes. Items which the 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 in its Proposal.
- 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 Payment shall be issued by the City net thirty (30) Calendar Days from receipt of a complete and acceptable invoice from Contractor. Contractor invoices must contain Contractor's name and address; invoice number; date of invoice; Contract number and date; description of Products and/or Services; quantity, unit price, (where appropriate), and total amount; City-

required reporting, if any, and the title and phone number of the person to whom payment is to be sent. The City may stipulate how line items are entered on an invoice to ensure compatibility with the City's accounting and financial systems and to facilitate payment to Contractor.

3.7.2 The City makes payments via electronic fund transfers through the Automated Clearing House (ACH) network. To initiate payment of invoices, Contractor shall execute the City's standard ACH Vendor Payment Authorization Agreement. Upon verification of the data provided, the ACH Vendor Payment Authorization Agreement will authorize the 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. The 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) The 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) The 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 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 Personnel.

3.12.1 Key Positions and Personnel. (09/17) For the period of performance until Final Acceptance has been completed, 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

3.12.2 Substitution of Key Personnel. (09/17) Contractor shall make no substitutions of Key Personnel unless the substitution is necessitated by law, illness, death, resignation, or termination of employment. Contractor shall notify the City within ten (10) Calendar Days after the occurrence of any of these events.

Any substitutions or replacements of Key Personnel require the written approval of the City. 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 in Section 3.11.3.

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.

No change in Contract prices may occur as a result of substitution or replacement of Key Personnel.

3.12.3 Security Requirements for Personnel. (09/17) If required by the City, Contractor shall conduct a criminal history/records check of all personnel that will have access to City information, systems, or payments and ensure ongoing security requirements for personnel are maintained.

- 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, the City shall pay to Contractor the portion of the not-to-exceed price attributable to all Deliverables Accepted or Services performed and Accepted through the effective date of the termination. In the event of termination all of Contractor's Work Product to date shall be delivered to the City, and it will become and remain property of the City.
- 3.14 Mutual Agreement. (09/17) The 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) The 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, the 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 the 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 the City wherever possible. Therefore, in accordance with the Principles and the 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.

- 3.25 Packaging. (09/17) All packaging should be minimized to the maximum extent possible without compromising product quality. The 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 the City. Such approval may be withheld in the 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 the City in the general format by the City as a convenience to the Parties only and shall not, by reason of such action, be construed against the 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 the City.
- 3.29 Permissive Cooperative Procurement. (09/17) Pursuant to ORS 279A.215, as additional consideration for this Contract, Contractor agrees to extend an option to purchase any Products or Services covered under this Contract at the same prices as are specified in Exhibit A: Contractor's Price, and under the same terms and conditions, to all public agencies. Each public agency shall execute its own contract with Contractor and shall have the option to negotiate its own terms and conditions.
- 3.30 COVID-19 Requirements. (11/18/20) The Parties acknowledge and agree that this Contract will be executed and performed during the COVID-19 pandemic. While Oregon is under a declaration of emergency associated with the COVID-19 pandemic, Contractor shall comply with all applicable requirements and guidance issued by federal, state and local authorities pertaining to COVID-19 (including but not limited to CDC, OSHA, Governor Brown, Oregon Health Authority, and Multnomah County Health Department). The applicable guidance and requirements include, but are not limited to, those pertaining to Oregon phased reopening and sector activities, reduction in gathering sizes appropriate to the type of location and activity, complying and implementing health protocols, maintaining social distancing, and wearing face coverings. Contractor shall have a satisfactory safety plan and protocols addressing COVID-19 precautions related to Contractor's

activities under this Contract. Contractor shall monitor for updated guidance and requirements and update its plan and protocols accordingly. Contractor shall provide a copy of Contractor's safety plan and protocols to City upon City's request. Contractor is solely responsible for implementing its safety plan and protocols and addressing any COVID-19 related claims pertaining to its activities and provision of Services under this Contract.

COVID -19 Vaccination Requirements. Beginning January 3, 2022, the City of Portland will require proof of COVID-19 vaccination for anybody performing in-person work for at least 15 minutes at the City's indoor facilities. Contractor must attest that its personnel are fully vaccinated for COVID-19 or have a medical or religious exception verified by their employer. This requirement and details may change. Additional information is available on the Procurement Services website: www.portland.gov/omf/brfs/procurement/vendor-vaccine-requirement.

- 3.31 Access to City Facilities. (11/18/20) Contractor agrees that Contractor's physical or remote access to City facilities shall be subject to the security interests and health controls necessary to protect public property, City employees and the public. The City shall not be liable for any delays necessary in granting Contractor access to any portion of the facilities or systems.

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 the 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 the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The 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, the City will maintain the confidentiality of information.
- 4.3 Public Records. (09/17) The 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 the 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 the 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 the City without the 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 the City. In the event of a breach or threatened breach of this Contract, the 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 [provide language translation services, sign language, accommodate service animals, audio, TTY, transcripts..... discuss with PM and see what this may involve]

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 ten (10) 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 Agreement, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to the Agreement or the programs, Products, Services or activities that Contractor is undertaking for City under this Agreement.

- 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 Service(s) and Deliverables 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.

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:

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.

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.

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.

6.2.4.4 Professional Liability. (08/19) Contractor shall acquire insurance to cover damages caused by negligent acts, errors or omissions related to the professional Services, and performance of duties and responsibilities of the Contractor under this Contract in an

amount not less than \$1 million per occurrence and aggregate of \$3 million for all claims per occurrence. In lieu of an occurrence-based policy, Contractor may have claims-made policy in an amount not less than \$1,000,000 per claim and \$3,000,000 annual aggregate, if the Contractor acquires an extended reporting period or tail coverage for not less than three (3) years following the termination or expiration of the Contract.

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 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 shall be resolved, if possible by the Project Manager or their designee on behalf of the City and [REDACTED] 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 [Bureau Head] on behalf of the City and [REDACTED] 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 SOFTWARE LICENSE SPECIFIC PROVISIONS

- 7.1 Application. (09/17) These provisions shall apply to all Software. These Provisions shall cover any Third Party Software supplied by Contractor except where specifically excluded. The terms in this Section supersede and prevail over any embedded, "click-wrap," "shrink-wrap," or hyperlinked terms of license for the Software.

- 7.2 Grant of License. (09/17) Contractor hereby grants the City a non-exclusive, perpetual, irrevocable license to Access, Use, and benefit from the Software. The City owns the perpetual license regardless of whether or not the City purchases Maintenance and support. Except as otherwise expressly provided in this Contract, Contractor grants this license without restriction.
- 7.3 Third Party Software. (09/17) Contractor shall be responsible for effecting licensure for the City of all Third Party Software required for the System and provided by Contractor under this Contract.
- 7.4 Substitution or Modification of Products at No Charge. (09/17) In the event that Contractor substitutes or modifies the Products, Contractor shall ensure that the new or modified Products shall conform in all aspects to the Specifications. Such substitutions or modifications shall in no way degrade the performance or functionality of the Products, and shall not result in additional cost to the City.
- 7.5 Documentation Explains Use. (09/17) The Documentation shall explain the operation of the System in terms understandable by City personnel of reasonable technical competence.
- 7.6 Copies. (09/17) The City may reproduce the Software and Documentation for a Redundant System, provided that each copy thereby produced shall be marked with Contractor's proprietary markings as delivered to the City. Unlimited copies of Software may be used A) for testing, including testing within a City lab, or other lab as agreed to between the Parties, B) on a mirrored server for purposes of redundancy, back up, archive, and disaster recovery purposes, C) for migration to another platform, and D) in such manner as may be necessary to facilitate the continuation of the City's governmental operations.
- 7.7 Escrow of Source Code. (09/17) The escrow of Source Code for the Software shall be governed by a separately executed Source Code Escrow Agreement. Upon release of the Source Code to the City pursuant to the Source Code Escrow Agreement, the City shall have the right to modify the Source Code. The rights provided in the Source Code Escrow Agreement are in addition to those granted to the City as licensee under this Contract, and the rights granted under the Source Code Escrow Agreement shall not affect the rights granted to the City under this Contract.
- 7.8 Ownership. (09/17) Contractor shall retain all ownership rights and Intellectual Property Rights in pre-existing or independently developed Software. Title to all tangible personal property, including title to the medium or media of delivery of the Software, shall vest in the City upon delivery.
- 7.9 Infringement Indemnity. (09/17) Contractor shall, at its own expense, save, hold harmless, and defend the City, its directors, officers, employees, and agents from and against any and all claims, demands, suits, and actions, and indemnify the City, its directors, officers, employees, and agents from 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 by the Software of any proprietary right or Intellectual Property Right of any person whatsoever. 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.

- 7.9.1 No settlement that prevents the City's continuing Use of the Software shall be made without the City's prior written consent. If any third party claim causes the City's Use of the Software to be endangered, restricted or disrupted, Contractor shall: a) cause the Software to be replaced, at no additional charge, with compatible, functionally equivalent, and non-infringing Software; b) cause the Software to be modified to avoid the infringement; c) obtain a license for the City to continue using the Software and pay any additional fee required for such license; or d) if, after Contractor uses all due diligence or standard of care none of the foregoing alternatives is possible, in addition to other remedies set forth herein Contractor will terminate the license and refund to the City license fees actually paid by the City and any direct damages documented by the City for the affected Software and Documentation.
- 7.10 Security. (09/17) Contractor shall provide immediate notification to the City's Chief Information Security Officer and the City's Project Manager of any security breach that affects City data or systems. Contractor shall provide notification to the City's Project Manager of any incident relating to System integrity such as a computer virus.
- 7.10.1 Contractor shall comply with City of Portland, Bureau of Technology Services Information Security Administrative Rules BTS-2.01, BTS-2.02, BTS-2.04, BTS-2.08, BTS-2.12, BTS-2.14, BTS-2.15, BTS-2.17, and BTS-2.18. These rules are located at: <https://www.portlandoregon.gov/citycode/26821?>. Contractor shall also comply with FIN-2.10 and FIN-2.17, which are located at: <https://www.portlandoregon.gov/citycode/26819>
- 7.10.2 Contractors providing or having access to data containing personally identifiable information (as defined in the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628) must maintain and demonstrate compliance with ORS 646A.600 to 646A.628. Specifically, contractors must develop, implement and maintain reasonable safeguards to protect the security, confidentiality, and integrity of the personal information, including disposal of the data. Contractors must also provide immediate notification to the City of a data security breach and in cooperation with the City, provide notice to affected consumers.
- 7.10.3 Should remote access to City systems or networks be required, Contractor will follow all City policies regarding remote access including completion of a Remote VPN Access Form. The Remote VPN Access Form is available upon request.

7.10.4 If the City furnishes Contractor with City-provided e-mail addresses for Contractor employees or Subcontractors working on the Project, all communications shall take place on such City e-mail addresses and not be moved, copied, or forwarded to private e-mail addresses.

7.11 PCI DSS Requirements.

7.11.1 Any contractor who provides or has access to software, systems, hardware, or devices which process and/or interact with payment card information or payment card holder data must be compliant with the current version of the Payment Card Industry - Data Security Standard (PCI DSS). The most current standards are maintained at:
https://www.pcisecuritystandards.org/security_standards/index.php.

7.11.2 PCI DSS Certification. (09/17) Contractor warrants it will maintain its PCI DSS certification and to secure any cardholder data it possesses in full compliance with the applicable provisions of PCI DSS, as they are updated or amended from time to time. Contractor shall demonstrate its compliance with PCI DSS by annually providing the City an executed Attestation of Compliance.

7.11.3 Compliance with Industry Security Standards. (09/17) Contractor shall provide to the City's agent annual confirmation and evidence of compliance with industry standards for information security controls related to Contract scope of services. Contractor will reasonably accommodate periodic and announced site and security control inspections and process reviews.

7.11.4 Incident Response. (09/17) In the event Contractor becomes aware of a confirmed or suspected security incident involving the unauthorized disclosure or theft of PCI Data, Contractor shall (a) notify The City immediately, (b) cooperate in any investigation, (c) promptly take reasonable measures to prevent further unauthorized access or use of City Data, (d) cooperate with the City's notification to affected individuals if such notification is required by applicable law or regulation, and (e) perform all such other acts, or cooperate with the City's performance of all such other acts, that are required with respect to such security incident by applicable law or regulation, including but not limited to The Oregon Consumer Identity Theft Protection Act. Contractor shall provide assistance as reasonably requested by the City for any additional requirements related to a security incident.

7.11.5 In the event of a security incident, or if, in the City's reasonable opinion, there is a suspected violation of security, fraud, or a potential data or security breach, the City may request an investigation by an independent third-party qualified PCI Forensic Investigator (PFI), at the City's own time and expense. If the investigation finds that such violation, fraud, or breach is the result of Contractor's actions or omissions, Contractor shall reimburse the City for the costs of the PFI.

7.11.6 Contractor shall indemnify the City for any fines or penalties by government or regulatory agencies or financial institutions and related costs if the City is fined or penalized due to lack of PCI DSS compliance on the part of Contractor or the Products or Services. Additionally, any costs or fees incurred by the City due to Contractor's data or security breach or lack of PCI DSS compliance, including but not limited to consumer notification, consumer credit reports, and credit monitoring for potentially affected consumers up to one year, shall be paid directly or reimbursed to the City by Contractor.

7.11.7 IN THE EVENT OF A SECURITY BREACH OF PERSONAL INFORMATION AS DEFINED IN ORS 646A.600 OR CONTRACTOR'S FAILURE TO MAINTAIN PCI DSS COMPLIANCE, THE CITY'S COSTS FOR BREACH NOTICES, CONSUMER CREDIT MONITORING, REGULATORY PENALTIES, FINES, INVESTIGATIONS AND FORENSIC ACTIVITIES ARISING FROM A DATA OR SECURITY BREACH OF PERSONAL INFORMATION OR FROM LACK OF PCI DSS COMPLIANCE SHALL BE CONSIDERED DIRECT DAMAGES.

SECTION 8 PRODUCT WARRANTY AND MAINTENANCE PROVISIONS

These provisions shall apply to all Maintenance Services. These provisions shall cover any Third Party Software supplied by Contractor as a component of the System. Should any ambiguities or conflicts arise between this SECTION 8 and any other terms within this Contract, this Section shall prevail in matters of Maintenance.

- 8.1 Product Warranty Period. (09/17) Contractor shall provide Maintenance at no charge for one year from the date of Final Acceptance.
- 8.2 Maintenance Term. (09/17) The City's obligation to pay for Maintenance commences on the date of expiration of the Product Warranty Period. The price for annual Maintenance is set forth in Exhibit A, Price. Where necessary, prices for Maintenance shall be pro-rated to ensure that Maintenance periods will co-term with this Contract.
- 8.3 Optional Maintenance. (09/17) If the City suspends or discontinues Use of the System, in whole or in part, the City may elect to suspend or discontinue Maintenance and payment of Maintenance Fees for the portion of the System not Used.
- 8.4 Services Included. (09/17) Contractor shall keep the System, and all individual components thereof, conforming to the Specifications and respond to requests by the City. Maintenance shall include the following:

- 8.4.1 Preventive. (09/17) Maintenance shall include the development, release and installation of Updates and Upgrades, and performance monitoring, evaluation, or use of diagnostic applications or tools.
- 8.4.2 Repair. (09/17) Within the time specified in the table below, Contractor shall Repair all Products for which an Error has been identified by Contractor or the City in Maintenance Requests. A workaround or patch which eliminates the symptoms of the particular Error reported, but impairs the City's operations, shall be deemed an interim Repair and cannot last longer than seven (7) Calendar Days, unless otherwise mutually agreed in writing by both Parties.
- 8.4.3 Replacement. (09/17) Contractor shall replace defective Products that cannot be Repaired. Replacement Equipment shall include all current Software and Equipment Updates and Upgrades.
- 8.4.4 Telephone Helpline/Staffing. (09/17) During the Coverage Hours Contractor shall maintain a no-cost telephone helpline. Contractor shall staff the helpline with competent technical consultants who shall be trained in and thoroughly familiar with the System and with the City's applicable Configuration. Telephone support and all communication shall be delivered in English.
- 8.5 Updates and Upgrades. (09/17) Contractor shall automatically provide the City with Upgrades and Updates at no additional cost. Maintenance charges shall not be increased due to such Upgrades or Updates. However, in no event shall modifications, Updates, or Upgrades degrade the core functionality of the Software or any component thereof, or interfere with City's Use of the core functionality of the Software with the original Equipment.

If Contractor plans to modify, Update, or Upgrade the Software in a manner that will cause it to no longer conform to the Specifications or that will require the City to obtain new or additional hardware or other Equipment to enable the City to Use the Software, Contractor shall provide the City at least one year's notice prior to making any such modifications, Updates, or Upgrades and agrees to continue supporting the City's System for an additional year if the City is required to purchase new Equipment to run the modified, Updated, or Upgraded Software.

- 8.6 Training. (09/17) At the City's request, Contractor shall provide training to the City in connection with Upgrades or major Repairs that change the functional operation of the System or any Software or Equipment component whether Repair or alteration is a permanent or interim modification. Training shall be provided at no cost to the City and a time and location convenient to the City.
- 8.7 Version Support. (09/17) If the City elects not to install any Module, Software, or Product Upgrade, Contractor shall, at the City's request, maintain the ability to support up to two (2) earlier versions of the Product(s) in operation. Contractor shall provide the City with at least twelve (12) months' prior written notice, before discontinuing Maintenance in support of

Product(s) currently in use by the City. After such discontinuation, the Contractor shall make available to the City the option of continued support upon payment of a fee that shall not exceed one hundred and ten percent (110%) of the annual Maintenance fee for the most current version of the component Product.

8.8 Redundant Systems. (09/17) Contractor shall provide Maintenance for a Redundant System on the exact same basis as for a primary System. All rights, obligations, warranties, and other Services which apply and extend to a primary System shall apply and extend to an equal extent to a Redundant System.

8.9 Other Standard Services. (09/17) Contractor shall, at no additional cost to the City, provide other standard Services which Contractor offers at no cost to its other customers.

8.10 Priority. (09/17) The following categories shall apply to a Maintenance Request by the City:

Table 8A: Definitions of Priority Levels

Priority Level	Description
1	The System, or a critical function, is not functioning properly, causing significant impact to City governmental operations, and no work-around acceptable to the City is available, or there are Errors that cause data to be lost.
2	A non-critical function or overall performance is materially impaired, or a critical function is not functioning properly, causing significant impact to City governmental operations, and a temporary work-around that is acceptable to the City is available.
3	A problem which does not materially impair the City’s governmental operations but may impact noncritical work. The System is able to accomplish all functions, but not as efficiently as normal, or operations could be improved by correction of a minor Error.
4	The City requires information or assistance about System, such as questions about capabilities, installation, Configuration, operation, or cosmetic issues.

8.11 Response and Resolution Time. (09/17) Contractor shall respond to a Maintenance Request from City within the times specified in this Contract. Such Response Times shall be measured from the time the City requests Maintenance. Contractor shall provide Maintenance as outlined in this Section under the Response and Resolution Times set forth for specific priority levels in the table below.

Table 8B: Error Response and Resolution Commitments

Level	Response Time	Resolution Time	Status Update
-------	---------------	-----------------	---------------

1	1 hour	1 Business Day	Every 2 hours or as otherwise agreed
2	2 hours	3 Business Days	Every 8 hours
3	1 Business Day	10 Business Days or with next Software Upgrade	Weekly
4	5 Business Days	As mutually agreed	As mutually agreed

8.12 Management of Maintenance Requests. (09/17) All Maintenance Requests will be assigned a unique tracking number by Contractor. This unique tracking number will be referenced in all subsequent communications and status updates to the City. Initial responses for all Level 1 and Level 2 Maintenance Requests will be by telephone. Subsequent status updates may be by phone or email, whichever is deemed most appropriate by the City. Any intent to change the priority of a Maintenance Request, by either the City or Contractor, will require agreement by the other Party. Maintenance Requests will remain open and active until both Parties concur in writing that successful resolution has been achieved.

8.13 Escalation. (09/17) If the City is unsatisfied with Contractor’s Response Time or Resolution Time, the following escalation procedure will apply:

8.13.1 The City shall notify Contractor in writing of its intent to escalate. This notice will be sent to Contractor’s Maintenance contact. Upon receipt of this notice, Contractor will contact the City immediately to acknowledge the request and obtain more information.

8.13.2 If within twenty-four (24) hours after the notice of intent to escalate, the City is not satisfied with the response or resolution, the City will contact the following Contractor executives, in the order specified below, to resolve the problem:

Name	Title	Phone	Email

8.13.3 In the case of a Level 1 or Level 2 Error which is not resolved within the Resolution Time stated above, Contractor shall immediately provide expert personnel to resolve the Error, either on-site or by means of secure remote access, at City’s option. All costs incurred in connection with on-site or remote support shall be borne by Contractor. Contractor shall work on the solution until the Error is resolved to the satisfaction of the City. If requested by the City, Contractor will provide a patch or workaround outside the normal release and quality assurance process, including telephone assistance with the implementation of the patch or workaround.

8.13.4 In the case of a Level 3 Error and the next Upgrade is scheduled to be released within ninety (90) Calendar Days of the Maintenance Request, then the Error shall be resolved by the subsequently scheduled release or a mutually agreed upon release schedule. If the Error cannot be resolved by

the subsequently scheduled release, or within a mutually agreed upon release schedule, Contractor shall provide expert personnel off-site to resolve the Error. All remote access and off-site assistance shall be at no additional cost to the City. Contractor shall work on the solution until the Error is resolved to the satisfaction of the City. If requested by the City, Contractor will provide a patch or workaround outside the normal release and quality assurance process, including telephone assistance with the implementation of the patch or workaround.

8.14 Maintenance Remedies.

8.14.1 Failure to Meet Response and Resolution Times. (09/17) In the event Contractor fails to meet the Response and Resolution Times or the requirements for timely status updates within Table 7B for Level 1 or 2, or other timelines as mutually agreed by Contractor and the City, the Maintenance Fees for one month (or one-twelfth (1/12th) of the annual Maintenance Fees) shall be refunded to the City.

8.14.2 Remedies Not Exclusive. (09/17) In addition to any other remedies provided for in this Contract or at law or in equity, the City shall have the right to obtain one or more of the following non-exclusive remedies in the event of any failure of Contractor to meet Maintenance obligations: (a) suspension of payment obligations for Maintenance accruing during the period for which Contractor did not meet Maintenance obligations; (b) a refund of all Maintenance Fees paid by the City to Contractor for the period during which Contractor did not meet Maintenance obligations; and (c) notice to Contractor of Material Breach.

SECTION 9 ACCEPTANCE AND ACCEPTANCE TESTING

9.1 Right to Perform Acceptance Testing. (09/17) Prior to Accepting Deliverables or the System, the City shall have the right to perform Acceptance Testing, or for Deliverables not requiring Acceptance Testing, the City shall have the right to evaluate the Deliverable(s) to ensure they meet Acceptance Criteria. Contractor shall cooperate with the City in the development of Acceptance Criteria and the Acceptance Test Plan that shall codify and set forth the location, date, and other specifications of the test. Acceptance Testing may occur in one or more phases, depending on the integration of contingent products, scalability, performance tuning or other measurable features or milestones.

9.2 Procedure and Timetable. (09/17) Unless otherwise specified,

9.2.1 The City shall commence Acceptance Testing within a reasonable amount of time after receipt of a Deliverable.

9.2.2 Contractor shall provide, at no additional cost, reasonable and appropriate support, assistance, and consultation in order to facilitate Acceptance Testing.

- 9.2.3 City will make all reasonable efforts to complete Acceptance Testing within the time period specified within the Project schedule mutually agreed upon by the Parties in writing. If an Acceptance Test is successful the City shall issue an Acceptance Certificate, a sample of which is attached in Exhibit C.
- 9.3 Failure of Acceptance Test. (09/17) The City will notify Contractor if a Deliverable or a portion of a Deliverable fails to pass an Acceptance Test and will specify in reasonable detail the identified failures and possible reasons for failure. After City's notification, Contractor shall correct the failure within ten (10) Business Days and notify the City that the correction has been completed. After Contractor's correction notification, the City shall perform a second Acceptance Test. If the Deliverable or portion of the Deliverable fails to pass the second Acceptance Test, the City shall notify Contractor in writing, and the City may, in its sole discretion: (a) terminate this Contract with no further liability; (b) require Contractor to replace the Deliverable or defective portion of the Deliverable at no additional cost to the City, (c) require Contractor to make further corrections to prepare for retesting again; (d) Accept the Deliverable at a reduced cost to be negotiated between the Parties; or (e) issue an Acceptance Certificate for an "Acceptance with Exception(s)" in accordance with Sections 9.3.1 and 9.3.2.
- 9.3.1 If the City issues an Acceptance Certificate for an "Acceptance with Exception(s)" the City will list the exception(s) and the date for Contractor's correction of the Error(s). If Error(s) are corrected by the listed date(s) the City agrees to commence further Acceptance Testing of the Deliverable or affected portion(s). If the Deliverable passes the Acceptance Tests, the City will issue an Acceptance Certificate.
- 9.3.2 If a Deliverable fails a second or subsequent Acceptance Test (or in the event of a single Acceptance Test, the Acceptance Test) in no event shall there be an increase to the original price agreed to by the Parties for the Deliverable.
- 9.4 City Acceptance of Failure. (09/17) If the City elects to accept a Deliverable, the System, or any combination of Products even with the failure(s), then the City may request that Contractor issue a refund to the City in an amount equal to a percentage of the full fee value of the Deliverable or System that the Parties mutually determine represents the loss of functionality.
- 9.5 Revocation of Acceptance. (09/17) The City shall have the right to revoke "Acceptance with Exception(s)" if the City granted an "Acceptance with Exception(s)" based on Contractor's commitment to correct the Error within a reasonable period of time, but the Error has not been so corrected. The City shall also have the right to revoke Acceptance if the City accepted the Deliverable without discovery of the Error, and the Acceptance was reasonably induced by Contractor's assurances or by the difficulty of discovery of the Error before Acceptance. Revocation is effective only if it occurs within a reasonable time after the City discovers or should have discovered the reasons for revocation.

- 9.6 Termination Based on Failure of Acceptance. (09/17) If the System fails to pass the Final Acceptance Test(s), the City may terminate this Contract. Contractor shall refund all costs paid for the System or any combination of Products and Services in U.S. Dollars within fifteen (15) Calendar Days of the date of receipt of notice of termination. The refund shall be in cash and not in the form of future credits from Contractor.
- 9.7 No Waiver. (09/17) Acceptance shall not relieve Contractor from its responsibility under any Warranty. Payment for Products or the System or any portion thereof does not constitute Acceptance nor does it constitute a waiver of any Warranty applicable to the City.

SECTION 10 TRAVEL

- 10.1 Reimbursement. (09/17) Contractor may be reimbursed, upon advance written approval by authorized City personnel, for certain expenses incurred in connection with personnel assigned to provide services for the City on the City's site. All invoices shall be accompanied by physical or electronic copies of original receipts and any additional supporting documentation that may be appropriate. Reimbursement will be made based on the following guidelines:
- 10.1.1 Commercial Air Travel. (09/17) Commercial air travel reservations are to be arranged based on the lowest coach fare available within a reasonable time frame surrounding the desired arrival or departure time. When possible, air travel arrangements should be reserved at least seven (7) to fourteen (14) Calendar Days in advance. Direct billing for commercial air travel is NOT permitted; however, City may elect to arrange travel reservations on behalf of Contractor personnel. In the event weekend travel is reimbursed, such reimbursement shall be made based on an amount up to and in lieu of any authorized per diem amounts and, if applicable, any other daily expense reimbursement.
- 10.1.2 Rental Cars/Surface Transportation. (09/17) Contractor shall choose the most economical mode of transportation. Except when there is only one person traveling by rented auto, vehicle rental will be reimbursed based on a minimum ratio of one (1) compact auto per two (2) Contractor personnel. Reimbursement for vehicle rental will not be approved for Contractor personnel falling below that ratio. Cost for additional insurance is not reimbursable, nor will reimbursement be permitted for fuel obtained at a vehicle rental agency. City does not assume any liability of any type in connection with rental vehicles reserved or operated by Contractor personnel. Direct billing for rental vehicles is not permitted. If the City's Project Manager chooses to provide a per diem for auto rental, such per diem shall be the same per diem as allowed for City employees. The City will reimburse Contractor for surface transportation such as taxicabs, shuttles, and mass transit, at actual cost when reimbursement requests are accompanied by original receipts.

10.1.3 Lodging. (09/17) Contractor shall arrange for lodging. The City will reimburse Contractor per individual for a daily lodging expenses based on GSA per diem rates; such per diem shall be the same per diem as allowed for City employees. GSA lodging allowances can be found at the U.S. General Services Administration website: <http://www.gsa.gov/perdiem>

10.1.4 Meal and Incidental Expenses (M&IE). (09/17) The City will provide per diem for each full day (eight hours) worked for Contractor personnel assigned to deliver Services. The per diem rate will be the same as the one published on the U.S. General Services Administration website, identified as the Meal and Incidental Expenses (M&IE) for the Portland, Oregon area. GSA per diem rates can be found at the U.S. General Services Administration website: <http://www.gsa.gov/perdiem>

10.2 Non-reimbursable Expenses. (09/17) Expenses incurred for personal entertainment while traveling on the City business are not reimbursable. Personal entertainment includes items such as in-room movie charges, sightseeing, attendance at sporting events, reading materials, gifts, haircuts, etc. Expenses incurred for travel to and from, and parking at, the departure airport are not reimbursable.

OPTIONAL – USE AS NEEDED

Social Media. (7/18) Contractor will manage social media pages in compliance with the City’s Social Media Policy, HR 4.08A. <https://www.portlandoregon.gov/citycode/article/372781>

Video and Audio. (7/18) Contractor will create video or audio in compliance with the Twenty-First Century Communications and Video Accessibility Act of 2010 and the City’s Closed Captioning requirement ARC- BTS 3.04. <https://www.portlandoregon.gov/citycode/article/462666>

Domain Names. (7/18) Any domain names required under this Contract must be acquired by the City per Ordinance No. 177852 and City Code 3.15.070(B)12, or a waiver granted by the City’s Chief Technology Officer. Domain names must be assigned to the City upon termination of this Contract or abandoned, in the City’s sole discretion. <https://www.portlandoregon.gov/citycode/article/524341>

Websites (08/19) Any Contractor’s Website created for the City must be compliant with ARC-BTS 3.02. <https://www.portlandoregon.gov/citycode/article/114337> Contractor shall ensure that the webpages comply with version 2.1 Level AA of the “Web Content Accessibility Guidelines” published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C), or any subsequent version(s) that are published during the term of the Agreement.

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

Authorized Signature

Date

Printed Name and Title

Address: _____

Phone: _____

Email: _____

Contract Number: 30000XXXX

Contract Title: TRUTH AND RECONCILIATION CONSULTATION SERVICES

CITY OF PORTLAND SIGNATURES

By: N/A Date: _____
Bureau Director

By: _____ Date: _____
Chief Procurement Officer

By: N/A Date: _____
Elected Official

Approved:

By: _____ Date: _____
Office of City Auditor

Approved as to Form:

By: _____ Date: _____
Office of City Attorney

Exhibit A
Contractor's Price

SECTION 1 Pricing.

**Exhibit B
Statement of Work**

SECTION 1 SUMMARY

SECTION 2 SCOPE OF WORK

Contractor shall provide the following Services

SECTION 3 TASKS AND DELIVERABLES

The individual Deliverables are described in more detail below:

3.1 Task 1:

3.1.1 Deliverable 1:

3.1.1.1 Acceptance Criteria:

3.1.2 Deliverable 2:

3.1.2.1 Acceptance Criteria:

3.1.3 Deliverable 3:

3.1.3.1 Acceptance Criteria:

3.2 Task 2:

3.2.1 Deliverable 1:

3.2.1.1 Acceptance Criteria:

3.2.2 Deliverable 2:

3.2.2.1 Acceptance Criteria:

3.2.3 Deliverable 3:

3.2.3.1 Acceptance Criteria:

3.3 Task 3:

3.3.1 Deliverable 1:

3.3.1.1 Acceptance Criteria:

3.3.2 Deliverable 2:

3.3.2.1 Acceptance Criteria:

3.3.3 Deliverable 3:

3.3.3.1 Acceptance Criteria:

SECTION 4 PROJECT SCHEDULE

The detailed Project schedule is shown below (or as another Schedule B-X to this Exhibit B) –OR –
The Project shall be completed no later than [insert CALENDAR DATE].

SECTION 5 PROJECT MANAGEMENT

5.1 Status Reports

Contractor shall summarize activities under this Contract in written weekly/monthly status reports submitted to the City Project Manager. The status reports are due on the first day of the week/month and shall include summaries of all activities and Deliverables completed in the prior week/month. The report shall include a list of any delayed items, a description of the cause of the delay, schedule impact, and a proposed method of resolution. Delayed items shall be carried over onto subsequent reports until resolved.

5.2 Place of Performance

Contractor shall provide City with services at City locations as directed by the City Project Manager. Some portions of the work will be performed at Contractor facilities as agreed with the City Project Manager.

5.3 Project Managers

The City's Project Manager will be Andre Miller. The City may change City's Project Manager from time to time upon written notice to Contractor. Contact Information:

The Contractor's Project Manager will be _____. Contact Information:

5.4 Acceptance Criteria and Acceptance Test Plan


Acceptance Criteria and the Acceptance review plan shall be reviewed jointly by the City's Project Manager and Contractor's Project Manager. When agreed, the Acceptance Criteria and review plan shall be attached and incorporated here in this Statement of Work as Exhibit B-1.

Exhibit C - City RFP #00001979

Exhibit D, Contractor's Proposal

**Exhibit E
Sample Forms**

Exhibit E-1: STATUS REPORT

	BUREAU NAME	Bureau Logo
Contractor		Project Title
Contract No.		Report Date
Contract Date		Submitted by:

1. Key Status Indicators:

Description	No	Yes	Explanation
Has scope changed?			
Will target dates slip?			
Are there resource problems?			
Any other issues?			

2. Major Activities Completed For Reporting Week (Key Accomplishments):

Activity	Comment(s)

3. Major Activities Planned For Reporting Week and Not Completed:

Activity	Comment(s)

4. Major Activities Planned For Next Week:

Activity	Comment(s)

5. Status of Key Team Deliverables:

Deliverable	Comment(s)

6. Major Issues Requiring Immediate Attention:

Issue	Resolution

7. Weekly Summary of Performance by Individual

Individual's Name:

Scheduled Activities	complete	incomplete	Comment(s)

Individual's Name:

Scheduled Activities	complete	incomplete	Comment(s)

Exhibit E-2: FINAL ACCEPTANCE CERTIFICATE
(08/19)

On this ____ day of _____, 20__, the City certifies **Final** Acceptance of **(name Deliverable(s))**, in accordance with Contract No. _____. This Certificate of Acceptance is issued subject to and in accordance with the Contract, all defined terms having the meanings as set forth in the Contract, and without prejudice to any claims which subsequently may arise in connection with Defects in the **Deliverables** (or combination of Products) described herein.

-- OR --

FINAL ACCEPTANCE CERTIFICATE WITH EXCEPTIONS

On this ____ day of _____, 20__, the City certifies **Final** Acceptance of **(name of Deliverable(s))**, in accordance with Contract No. _____. This Certificate of **Final** Acceptance is issued subject to the following exceptions:

- 1.
- 2.
- 3.

Exceptions must be completed by _____. If Exceptions are not completed by _____, the City may revoke **Final** Acceptance of the Deliverables.

This Certificate of **Final** Acceptance is issued subject to and in accordance with the Contract, all defined terms having the meanings as set forth in the Contract, and without prejudice to any claims which subsequently may arise in connection with Defects in the Deliverable(s) described herein.


CITY OF PORTLAND

Authorized Signature Date

Printed Name

Title

Exhibit E-3: CHANGE ORDER

	BUREAU NAME	LOGO

CHANGE ORDER

Contractor		Project Title	
Contract No.		Change Order No.	*SAMPLE*
Contract Date		Change Order Date	

Select	Type	Description and Reason for Change	Modification to:
<input type="checkbox"/>	Time		Project Schedule and/or Contract
<input type="checkbox"/>	Scope or Specifications		Statement of Work Acceptance Test Plan
<input type="checkbox"/>	Deliverables		Statement of Work Acceptance Test Plan
<input type="checkbox"/>	Price		Statement of Work and/or Contract
<input type="checkbox"/>	Terms and Conditions		Request Amendment to Contract
<input type="checkbox"/>	Other		

1. Additional time is necessary and the Project Schedule for the Statement of Work or a specific Deliverable is hereby extended through **(DATE)** or modified as shown on the attached Project Schedule.
2. Additional work or a change in work or Specifications is necessary. **For example, changes to the Statement of Work, Deliverables and/or the Acceptance.**
3. A price adjustment is necessary for the following Deliverables. These changes will NOT affect the total not-to-exceed value of the Contract. **For example, price changes that show the original price and the modified price.**

4. An Amendment to the Contract is requested for the following reasons. **For example, any change to the total value of the Contract, the term or ending date of the Contract, or the Contract terms and conditions requires an Amendment.**

The Change Order is subject to the terms and conditions of the above-referenced Contract.

The rest of the Statement of Work shall remain unchanged and in full force and effect.

CITY OF PORTLAND

CONTRACTOR

Authorized Signature

Date

Authorized Signature

Date

Printed Name

Printed Name

City Project Manager

Title

Title