

RFP _____ - EXHIBIT B
SAMPLE DESIGN SERVICES PRICE AGREEMENT

CITY OF PORTLAND

PRICE AGREEMENT NUMBER _____

On-Call Permitting Services

As authorized by Portland City Code 5.10, this Design Services Price Agreement ("Price Agreement") is entered into by and between the City of Portland ("City," or "Bureau") and _____, ("Consultant").

Effective Date and Term

The initial term of this Price Agreement ("Initial Term") shall begin on XXX ("Effective Date") and shall expire one (1) year later unless terminated sooner as provided herein. The parties may agree, by mutual written consent, to extend this Price Agreement on the same terms and conditions set forth in the Initial Term for additional years, taken individually or in multiple years, up to four (4) more years. At least thirty (30) days prior to the expiration of the Initial Term, or any extension thereof, the parties shall commence discussions if they desire to extend the Price Agreement. However, nothing binds or requires either party to extend this Price Agreement. The total term of this Price Agreement, with all extensions, shall not exceed five (5) years.

Consideration

- (a) City agrees to pay Consultant a sum not to exceed _____ Dollars (\$_____) to complete work in accordance with the Statement of Work (SOW) and Compensation, attached hereto as Exhibits A and B.
- (b) City will pay Consultant in accordance with the Compensation section, attached hereto as Exhibit B.

CONSULTANT DATA AND CERTIFICATION

Name: [INSERT FULL LEGAL NAME] _____

Address: _____

Business Designation
(check one):

☐ Limited Liability Co
(LLC)

☐ Individual

☐ Sole

Proprietorship

☐ Public Service
Corp.

☐

Partnership

☐

Corporation

☐

Government/Nonprofit

Payment information will be reported to the IRS under the name provided above. Information must be provided prior to contract approval.

TERMS AND CONDITIONS

1) Standard of Care

In providing services under this Contract, the Consultant shall exercise that degree of skill and care ordinarily used by other reputable members of Consultant's profession, practicing in the same or similar locality and under similar circumstances (the "Standard of Care").

2) Effect of Expiration

Expiration of the Term shall not extinguish, prejudice, or limit either party's right to enforce this Price Agreement with respect to any default or uncorrected defect in performance.

3) Time/Late Delivery (02/25)

The Parties agree that time is of the essence. By executing this Contract and accepting the SOW, Consultant agrees that the time limits specified in the Statement of Work are reasonable. Consultant shall use best efforts to minimize any delay. If Consultant anticipates any delay that may prevent timely performance of Consultant's obligations under this Contract, Consultant 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. By accepting late or otherwise inadequate performance of Consultant's obligations, the City will not waive its rights to require timely performance of Consultant's obligations thereafter. In the event that any specified delivery date is not met, Consultant shall be liable for any loss, expense, or damage resulting from the delay, and the City may obtain substitute services from another source and bill all additional costs directly to the Consultant, who shall remain financially liable for all additional acquisition costs.

4) Order of Precedence

This Price Agreement consists of these Terms and Conditions, the SOW, all Exhibits, and the City's RFP and Consultant's Proposal. Any apparent or alleged conflict between these items will be resolved by using the following order of precedence:

- (a) Amendments executed by the parties after Price Agreement award;
- (b) This form of Price Agreement as executed by the Parties, including all Exhibits;
- (c) Task Orders issued from this Price Agreement;

- (d) RFP Requirements as set forth in City's RFP, including without limitations all Exhibits and any Addenda; and
- (e) Consultant's Proposal in response to the RFP, including without limitation, to all supplementary materials.

5) Early Termination of Price Agreement

- (a) The City may terminate this Price Agreement for convenience at any time for any reason deemed appropriate in its sole discretion. Termination shall be effective immediately upon City's delivery of a written notice of termination to Consultant.
- (b) Either party may terminate this Price Agreement in the event of a material breach by the other party that is not timely cured. Before termination is permitted, the party seeking termination shall give the other party written notice of the nature of the alleged breach, its intent to terminate, and provide fifteen (15) calendar days within which to cure the breach. If the breach is not cured within 15 days, the party seeking termination may terminate immediately by giving written notice that the Price Agreement is terminated.

6) Remedies and Payment on Early Termination

- (a) If the City terminates pursuant to 5(a) above, the City shall pay the Consultant for work performed in accordance with the Price Agreement prior to the date of the termination notice. No other costs or loss of anticipated profits shall be due or payable.
- (b) If the City terminates pursuant to 5(b) above, the City is entitled all remedies available at law or equity. In addition, Consultant shall pay the City for the costs to defend any claim, and all damages, costs, and sums incurred by the City as a result of the breach.
- (c) If the Consultant terminates the Price Agreement pursuant to subsection 5(b), the Consultant's sole remedy shall be payment for work completed prior to date of City's receipt of the termination notice. No other costs, loss of anticipated profits or consequential damages shall be paid.
- (d) If the City's termination under Section 5(b) was wrongful, the termination shall be automatically converted to one for convenience and the Consultant shall be paid as if the Price Agreement was terminated under Section 5(a).
- (e) In the event of early termination, the Consultant's work product completed prior to the date of termination shall be deemed the property of the City and copies and/or data shall be immediately released to the City.

7) Non-Availability of Funds (02/25)

Every obligation of the City under this Price Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of the City's obligations. If funds are not allocated and available for the continuance of this Price Agreement, the Price Agreement may be terminated by the City at the end of the period for which the funds are available. No

liability shall accrue to the City if this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

8) Assignment

Consultant shall not subcontract, assign, or transfer any of the work scheduled under this agreement without the prior written consent of the City. Notwithstanding City consent, the Consultant shall remain responsible for full performance hereunder. The Consultant agrees that if subcontractors are employed in the performance of the SOW under this Price Agreement, both Consultant and any subcontractors remain subject to the requirements of ORS Chapter 656, Workers' Compensation.

9) Compliance with Applicable Laws; Funding Requirements

Consultant shall perform all services in accordance with all applicable federal, state, and local laws and regulations, including without limitations tax laws and terms and conditions incident to receipt of any grant funds. Consultant represents and warrants that it is and will remain in compliance with all laws and expressly represents that it is and shall remain in compliance with Title VI of the Civil Rights Act of 1964 and its corresponding regulations during the Term of this Price Agreement.

10) Respectful Workplace Behavior

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 Human Resources Administrative Rule (HRAR) 2.02 covers all employees of the City as well as consultants, vendors or contractors who provide services to the City. Consultant warrants its compliance with the terms and conditions of HRAR 2.02 as further described at:

<https://www.portlandoregon.gov/citycode/27929>.

11) Indemnification for Property Damage Bodily and Personal Injury (02/25)

(a) Claims Unrelated to Professional Liability:

Consultant shall indemnify, defend, save, and hold the City, and its officers, agents, and employees, from and against all claims, losses, damages, and costs, including reasonable attorney fees, for personal injury and property damage arising out of the wrongful acts or omissions of the Consultant or its Subcontractors, Subconsultants, suppliers, employees, or agents in the performance of Consultant's services under the Contract.

(a) Claims Based on Professional Liability:

To the fullest extent permitted by law, and except to the extent prohibited under ORS 30.140(4), Consultant shall indemnify, defend, save, and hold harmless City and its officers, members, agents, and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, arising out of the professionally negligent acts, errors or omissions of Consultant or its Subconsultants, agents, or employees in the performance of Consultant's professional services under the Contract.

12) Insurance

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

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

☒ Required and attached // ☐ Certified statement of exemption (i.e., completion of Independent Contractor Certification Statement or similar)

- (b) Commercial General Liability (02/25) Consultant shall acquire commercial general liability ("CGL") and property insurance coverage in an amount not less than \$2 million per occurrence for damage to property or personal injury arising from Consultant's work under this Contract.

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

- (c) Automobile Liability (02/25) Consultant shall acquire automobile liability insurance to cover bodily injury and property damage in an amount not less than \$2 million for each accident. Consultant's insurance must cover damage or injuries arising out of Consultant's use of any vehicle.

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

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

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

- (e) [Optional Insurance where drones might be used, delete if not needed] Aviation Liability (02/25)

Drone operator(s) shall acquire aviation liability and property damage insurance coverage in an amount not less than \$1 million per occurrence for damage to property or personal injury arising from Contractor's Drone work under this Contract.

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

Continuous Coverage; Notice of Cancellation:

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

Additional Insured:

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

Certificate(s) of Insurance:

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

Subconsultant(s):

Consultant shall contractually require its Subconsultants to acquire and maintain in effect until full performance of their Work under this Price Agreement, insurance equal to the minimum coverage limits required above.

13) Ownership of Work Product

All work product produced by the Consultant under this Price Agreement is the exclusive property of the City upon payment in full to Consultant as set forth in this Price Agreement.

“Work Product” includes, but is not limited to research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form. The Consultant and the City intend that such Work Product shall be deemed “work made for hire” of which the City shall be deemed the author. If for any reason a Work Product is deemed not to be a “work made for hire,” the Consultant hereby irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Consultant shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Consultant waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. If the Consultant is an architect, the Work Product is the property of the Consultant-Architect, and by execution of this Price Agreement, the Consultant-Architect grants the City an exclusive and irrevocable license to use that Work Product. City’s alteration of Consultant’s Work Product or its use by City for any other purpose shall be at City’s sole risk.

Notwithstanding the above, all pre-existing trademarks, services marks, patents, copyrights, trade secrets, and other proprietary rights of Consultant are and will remain the exclusive property of Consultant.

14) Business Tax Registration

The Consultant shall obtain a City of Portland business tax registration number as required by Portland City Code (“PCC”) 7.02 prior to beginning work under this Price Agreement.

15) Successors in Interest

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

16) Severability

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

17) Waiver

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

18) Errors

The Consultant shall, without cost to the City, promptly correct errors or omissions related to the services required by this Price Agreement.

19) Governing Law/Venue

The provisions of this Price Agreement shall be interpreted, construed and enforced in accordance with, and governed by, the laws of the State of Oregon without reference to its conflict of laws provisions that might otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this Price Agreement must be brought in the appropriate court in Multnomah County, Oregon.

20) Amendments; Change Orders (02/25)

Any changes to the provisions of this Price Agreement's dollar amount, must be made by written amendment and approved by the Chief Procurement Officer or City Council to be valid. Any other changes to the provisions of this Price Agreement, including changes to the scope of work, key personnel, Subconsultants or other changes, must be made by written amendment and approved as pursuant to Portland City Code (PCC) 5.10.

- (a) Amendment of the Price Agreement. Any changes to the provisions of this Price Agreement shall be in the form of an Amendment. Amendments must be in writing, must be approved as to form by the City Attorney, and must be executed in writing by authorized representatives of the Parties.
- (b) Change Orders to a Statement of Work. Amendments to the Scope of Work shall be made through the use of a Change Order that modifies a Statement of Work or Task Order.

21) Prohibited Conduct

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

22) Payment to Vendors and Subconsultants

The Consultant shall timely pay all Subconsultants and suppliers providing services or goods for this Price Agreement. If the Consultant fails to make timely payments to its Subcontractors, Subconsultants, or suppliers, the City is entitled to take any action permitted by law, including, but not limited to, the following:

- (a) Withhold all or part of any progress payment until Consultant makes payment;
- (b) Find that the Consultant is not a qualified bidder for future projects per the City's consideration of the Consultant's record of past performance pursuant to ORS 279C.110(3);
- (c) Directly make payment to the Subcontractor, Subconsultant, and supplier who has not received proper payment; and

(d) Terminate the Price Agreement for and Event of Default as provided herein.

23) Records and Audits

- (a) Records Retention. (02/25) The Consultant and its subconsultants and suppliers shall maintain all fiscal records relating to the Price Agreement in accordance with generally accepted accounting principles. The Consultant and its subconsultants shall maintain all other records necessary to clearly document their performance of the work and any claims for additional compensation or requests for additional contract time arising from or relating to their performance under the Price Agreement.

The Consultant shall include in its subcontracts, purchase orders and all other written agreements a provision requiring all subconsultants, material suppliers, providers of rented operated equipment and persons submitting cost or pricing data according to the term of a contract, at all tiers, to comply with this section.

- (b) City Audits. (02/25) The City, either directly or through a designated representative, may conduct financial and performance audits of the billing 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.

- (c) Access to Records (02/25) The City and its authorized representatives shall have timely access to, and an opportunity to inspect, examine, copy and audit all books and records relating to the Price Agreement, for any reason, upon reasonable notice.

- i) Such books and records shall be maintained by the Consultant and all subconsultants, suppliers and persons with cost or pricing data for a minimum period of six (6) years from the date of Final Payment under the Price Agreement, or until the conclusion of any audit, controversy, litigation, dispute or claim arising out of, or related to, the Price Agreement, whichever is longer.
- ii) The Consultant and all subconsultants, suppliers, and persons with cost or pricing data shall maintain all records in such a manner that providing a complete copy is neither unreasonably time consuming nor unreasonably burdensome for the Consultant or the City. Failure to maintain the records in this manner shall not be an excuse for not providing the records.
- iii) The Consultant and all subconsultants, suppliers, and persons with cost or pricing data shall produce all such books and records in Portland, Oregon, regardless of whether the records are produced pursuant to this provision of the Price Agreement or as a result of a claim, litigation, arbitration or other proceeding. The Consultant or a subconsultant, supplier, or other person may produce the books and records elsewhere if it fully compensates the City for the reasonable costs of travel to and from the place

where the records are produced and the reasonable cost of any employee's time in having to travel.

- (d) Overpayment. (02/25) If an audit discloses that payments to the Consultant were in excess of the amount to which the Consultant was entitled, the Consultant 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.

24) Electronic Signatures

The City and Consultant may conduct this transaction, including any Price Agreement amendments, by electronic means, including through the use of electronic signatures.

25) Merger Clause

This Price Agreement, and the Price Agreement Documents identified at Section 3 above shall be deemed to encompass the entire agreement of the parties and supersede all previous understandings and agreements between the parties, whether verbal or written.

26) Dispute Resolution/Work Regardless of Disputes

The parties shall participate in mediation to resolve disputes before conducting litigation. The mediation shall occur at a reasonable time after the conclusion of the Price Agreement with a mediator jointly selected by the parties. For any claim or dispute that is subject to mediation under this section, the statute of limitations and statute of repose shall not begin to run until the time period set forth in Section 31 below or upon the conclusion of mediation, whichever is later. Notwithstanding any dispute under this Price Agreement, the Consultant shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Price Agreement for undisputed portions of the work. In the event of litigation, no attorney fees are recoverable. No different dispute resolution paragraph(s) in this Price Agreement or any attachment hereto shall supersede or take precedence over this provision.

27) Progress Reports: ☒/ Applicable ☐/ Not Applicable

If applicable, the Consultant shall provide monthly progress reports to the Project Manager as described in the Statement of the Work and Payment Schedule.

28) Consultant's Key Personnel: ☒/ Applicable ☐/ Not Applicable

If applicable, the Consultant shall assign the Key Personnel listed in the Statement of the Work and Payment Schedule for the work required by the Price Agreement and shall not change Key Personnel without the prior written consent of the City, which shall not be unreasonably withheld. Notwithstanding anything to the contrary herein, Consultant shall, within 30 (thirty) days of receipt a request from the City replace any Key Person who is not meeting City performance requirements.

The Consultant agrees that the primary personnel assigned to perform the services shall be listed in in the Statement of Work and Consultant shall not change such personnel without the prior

written consent of the authorized representative of the City as designated in the SOW. The City will enforce all social equity contracting for Disadvantaged Business Enterprise, Minority Business Enterprise, Women Business Enterprise, Emerging Small Business and Veteran Business Enterprise (DBE/MBE/WBE/ESB/VBE) Subconsultant commitments submitted by the Consultant in its proposals. Failure to use the identified DBE/MBE/WBE/ESB/VBE Subconsultants without prior written consent is a material breach of contract.

29) Third Party Beneficiaries

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

30) Conflict of Interest

Consultant hereby certifies that, if applicable, its Price Agreement proposal was made in good faith without fraud, collusion or connection of any kind with any other proposer of the same request for proposals or other City procurement solicitation(s), and that the Consultant as a proposer competed solely on its own behalf and without connection or obligation to any undisclosed person or firm. Consultant certifies that it is not a City official/employee or a business with which a City official/employee is associated, and that to the best of its knowledge, Consultant, its employee(s), its officer(s) or its director(s) are not City officials/employees or a relative of any City official/employee who:

- (a) has responsibility in making decisions or ability to influence decision-making on the Price Agreement or project to which this Price Agreement pertains;
- (b) has or will participate in evaluation or management of the Price Agreement; or
- (c) has or will have financial benefits in the Price Agreement.

Consultant understands that should it elect to employ any former City official/employee during the term of the Price Agreement then that the former City official/Consultant employee must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and the City's Charter, Codes and administrative rules, including lobbying prohibitions under Portland City Code Section 2.12.080.

31) Contractual Statute of Limitations/Statute of Repose for Design Services Claims

The statute of limitations applicable to Design Services provided pursuant to this Price Agreement shall be 2 years from the date of final completion of the project. The statute of repose applicable to Design Services provided pursuant to this Price Agreement shall be 10 years from Final Completion of the Project. The statute of limitations and statute of repose set forth herein shall not begin to run until the Project reaches Final Completion, regardless of discovery of any condition, act, error, or omission. This provision shall be included in any Subconsultant agreement executed by the Consultant for the performance of services.

32) Notices and Communications

All notices and other communications concerning this Price Agreement shall bear the Price Agreement number assigned by the City. Notices and other communications may be delivered personally, by facsimile, email, by regular, certified or registered mail or other commercial delivery service. A notice to the City will be effective only if it is delivered to that person designated in writing in either:

- (a) the Notice of Award of this Price Agreement,
- (b) the Notice to Proceed under this Price Agreement, or
- (c) to another individual specifically designated by this Price Agreement.

A notice to the Consultant shall be effective if it is delivered to the individual who signed this Price Agreement on behalf of Consultant at the address shown with that signature, to a corporate officer if Consultant is a corporation, to a general partner if Consultant is a partnership, or to another individual designated in writing by the Consultant in the Price Agreement or in a written notice to the City.

33) Safety (02/25)

Consultant shall ensure that all Work is performed in a safe manner protective of workers and the environment. Accordingly, Consultant shall maintain in place a safety plan that provides for compliance with all safety laws and regulations in effect during the Term. Consultant shall bear the cost of compliance with its safety plan. The City agrees to increase Consultant's compensation only in the event of a change of law that directly and actually results in an increase in Consultant's costs of compliance with the new law. The City reserves the right but not the obligation to issue a "stop work" order in the event of a potential life safety risk as determined at the City's discretion.

34) Access to Facilities

Consultant agrees that Consultant'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 Consultant access to any portion of the facilities or systems.

35) Force Majeure

- (a) If a Force Majeure Event occurs, the Party that is prevented by that Force Majeure Event from performing any one or more obligations under this Price Agreement (the "Nonperforming Party") will be excused from performing those obligations, on condition that (1) the Nonperforming Party used reasonable efforts to perform those obligations, (2) the Nonperforming Party's inability to perform those obligations is not due to its failure to take reasonable measures to protect itself against the event or circumstance giving rise to the Force Majeure Event, and (3) the Nonperforming Party complies with its obligations under section 33(c).

- (b) For purposes of this Agreement, “Force Majeure Event” means, with respect to a Party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents a party from complying with any of its obligations under this Price Agreement, except that a Force Majeure Event will not include a strike or other labor unrest that affects only one Party, an increase in prices, or a change in law.
- (c) Upon occurrence of a Force Majeure Event, the Nonperforming Party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long that Party expects it to last. Thereafter the Nonperforming Party shall update that information as reasonably necessary. During a Force Majeure Event, the Nonperforming Party shall use reasonable efforts to limit damages to the other party and to resume its performance under this Price Agreement.

36) Attachments

The following attachments are incorporated into this Price Agreement.

- (a) Exhibit A – Statement of Work
- (b) Exhibit B – Compensation
- (c) Exhibit C - _____

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CONSULTANT SIGNATURE:

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

This Price Agreement constitutes the entire agreement between the City and Consultant 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 Consultant quotation or invoice.

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

This Price Agreement 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 Price Agreement to be executed.

I, the undersigned, agree to perform work outlined in this Price Agreement in accordance to the Terms and Conditions and the Statement of Work (Exhibit A); hereby certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; hereby certify that my business is certified as an Equal Employment Opportunity Affirmative Action Employer and is in compliance with the Equal Benefits Program as prescribed by Chapters 5.33.076 and 5.33.077 of the Public Contracting Rules of the City of Portland; and hereby certify I am an independent consultant as defined in ORS 670.600

[INSERT Consultant's Legal Name]

BY:_____ Date:_____

Name:_____

Title:_____

CONTRACT NUMBER: 3100XXXX

CONTRACT TITLE: PROJECT TITLE

CITY OF PORTLAND SIGNATURES:

By: _____
Deputy City Administrator

Date: _____

By: _____
Chief Procurement Officer

Date: _____

Approved:

By: _____
Office of City Auditor

Date: _____

Approved as to Form:

By: _____
Office of City Attorney

Date: _____

Consultant's and City's Project Manager for this Price Agreement are:

For City of Portland:	For Consultant:
Name:	Name:
Title:	Title:
Address:	Address:
City, State:	City, State:
e-mail:	e-mail:
Copy to:	Copy to:

1. CONSULTANT KEY PERSONNEL

The Consultant shall assign the following Key Personnel to do the work in the capacities designated and agrees not to substitute these personnel while working on the Price Agreement without the express approval of the City, which approval shall not unreasonably be withheld:

NAME	ROLE ON PROJECT

2. SUB CONSULTANTS

Subconsultants for each specific project shall be negotiated and identified in the individual Task Orders.

The City will enforce all social equity contracting and subcontracting commitments of COBID (Certification Office for Business Inclusion and Diversity) certified firms identified in the individual Task Orders. Consultant shall not add, eliminate, or replace any Subconsultant assignments as identified in each Task Order without the prior written consent of the Chief Procurement Officer; failure to use the COBID certified Subconsultants identified in a Task Order without prior written consent is a material breach of the Price Agreement. Any changes must be reported and submitted to the PTE Price Agreement Compliance Specialist on the Subconsultant Change Request Form found on Procurement Services' website under Consultant Resources. All changes to this Price Agreement, including changes to the subcontracting commitments of COBID certified firm, must be made by written amendment and approved by the Chief Procurement Officer to be valid.

For Price Agreements valued \$50,000 or more, the Consultant shall submit subconsultant payment and utilization information electronically in the Price Agreement Compliance Reporting System, reporting ALL subconsultants employed in the performance of this agreement. More

information on this process may be viewed on the City Procurement website at:
<https://www.portlandoregon.gov/brfs/75932>.

3. TASK ORDERS

Work performed under this Price Agreement must be authorized via written Task Orders signed by the City and Consultant. The scope of work, schedule, deliverables, key personnel, subconsultants, Disadvantaged, Minority, Women, Veteran and Emerging Small Business (D/M/W/V/ESB) firms' utilization, and compensation for each project will be defined in the Task Order prior to commencement of the work. Any change to the scope of work, schedule, deliverables, D/M/W/V/ESB utilization, and compensation must be agreed upon by the City and Consultant in writing as an amendment to the Task Order.

Task Orders will be negotiated based on capability and availability of staff as project needs are defined and shall not exceed \$_____ for each Task Order. All Task Orders will be negotiated with the intent to maximize utilization of COBID certified firms. In the interest of achieving the most advantageous agreement, the City may engage multiple consultants in parallel or serial Task Order negotiations. In the event the City and a Consultant cannot reach a favorable agreement for a specific Task Order, the City shall terminate negotiations and commence negotiations with another Consultant from the list. Continual difficulties in negotiating compensation caps or maximum utilization of COBID certified firms, or repeated unavailability or inability to perform Task Orders may result in removal of a Consultant from the list and cancellation of the Consultant's Price Agreement with the City.

Work that involves only direct conversations seeking professional advice from the Consultant will not require a Task Order but will be logged by the Consultant and the City's Project Manager. The log shall include the date and the estimated amount of time that assistance was provided.

Consultant must start the work authorized in the Task Order no later than five (5) calendar days from the date of the notice to Proceed. If Consultant is unable or unwilling to complete any Task Order within the required time, Consultant shall notify the City's Project Manager in writing and forfeit the Task Order.

Following the execution of each Task Order, the City's assigned Project Manager or designated Design Task Manager will work directly with Consultant for the duration of the project unless otherwise noted on the Task Order.

In the event that the Price Agreement's not-to-exceed amount is consumed prior to the end of the Price Agreement's term, Consultant may be removed from the on-call rotation list.

4. SCOPE OF WORK

The Consultant shall provide _____ services as needed to _____ for projects or project tasks as requested within specified time frames and must work closely with designated City personnel.

The Consultant may be called on to perform any combination of the tasks listed below. For each identified project, the City will provide the general scope of work. The Consultant will develop and negotiate the specific scope of work, budget, deliverables and schedule. These details shall be agreed upon in writing by the Consultant and the City in individual Task Orders for each project.

Equity in utilization of subconsultants is of paramount importance to the City for the work anticipated under this Price Agreement, and as such the Consultant has committed to support the City's equity and corporate responsibility initiatives to increase COBID certified firms' participation. In accordance with City Council's direction to provide for maximum utilization of COBID certified firms, each negotiated Task Order shall include COBID certified firms as subconsultants to the maximum extent possible. The City has set an aspirational goal of 30% minimum utilization of COBID certified firms based on total Task Order amount. Consultants are required to make good faith efforts to contract with COBID certified subconsultants.

4.1. For any work under this Price Agreement the Consultant shall:

4.1.1. Proceed with minimal direction and supervision.

4.1.2. Provide Project Management and coordination of design elements.

4.1.3. Provide monthly status reports on budget, schedule and work completed for each task order when invoices are submitted.

4.1.4.

4.1.5.

4.1.6. Comply with applicable design guidelines including:

4.1.6.1. _____;

4.1.6.2. _____;

4.1.6.3. _____;

4.2. Examples of the types of services to be provided are described below:

4.2.1. _____

4.2.2. _____

4.2.3. _____

4.3. **Sustainability Requirements** (as defined in the RFP)

4.3.1. _____

4.3.2. _____

4.4. **Work Performed by the City**

The City has assigned a Project Manager to oversee the Consultant's work and provide support as needed. The City's Project Manager or delegate will have the sole authority to issue Task Orders to Price Agreements; however, issued Task Orders may have a separate

assigned manager. The City will make available copies of the appropriate design guidelines and standards manuals.

The City will also provide the following services as requested:
(permitting, as-built drawings, etc.)

4.4.1. _____

4.4.2. _____

4.4.3. _____

Other project specific duties the City will perform shall be identified in the individual Task Orders.

4.5. Deliverables

Deliverables and schedules for each project shall be negotiated and defined in the individual Task Orders.

All deliverables and resulting work products from this Price Agreement will become the property of the City of Portland. As such, the Consultant and any subconsultants/subcontractors grant the City the right to copy and distributed (in any and all media and formats) project deliverables for any purposes at the sole discretion of the City of Portland.

5. AUTHORIZATION TO PROCEED

Irrespective of the effective date of the Price Agreement, the Consultant shall not proceed with any work required under this Price Agreement without a written authorization to proceed from the City. Any work performed or expenses incurred by the Consultant prior to the Consultant's receipt of authorization to proceed shall be entirely at the Consultant's risk.

1. Compensation

- 1.1. The City agrees to pay Consultant a sum not to exceed \$_____ for the work ordered and accepted during the Initial Term, and if services are extended a sum not to exceed each additional year, based on the hourly rates and any City approved reimbursable costs identified below. The "not to exceed" amount includes all payments to be made pursuant to this Price Agreement, including reimbursable expenses, if any. Nothing in this Price Agreement requires the City to pay for work that does not meet the Standard of Care or other requirements of the Price Agreement. The actual amount to be paid Consultant may be less than that amount.
- 1.2. Compensation for each Task Order will be determined through negotiation with the Consultant based on the scope of work, the hours the Consultant estimates for performance of the work and the Consultant's billing rates (identified in Exhibit C), subject to a predetermined cap for the maximum compensation for the specific Task Order. If the work requires fewer hours than those estimated, the Consultant will be paid for the actual hours necessary to complete the Task Order. If the Consultant underestimates the number of hours that are required to perform the work, the negotiated maximum compensation for the Task Order shall be the cap of the compensation to be paid. Compensation may be amended for documentable circumstances not reasonably foreseeable to either party at the time the Task Order was issued, or for changes to the scope of work or deliverables requested by the City.
- 1.3. The Consultant is entitled to receive progress payments for its work pursuant to the Price Agreement as provided in more detail below. The City will pay Consultant based on these invoices for acceptable work performed and approved until the "not to exceed" amount is reached. Thereafter, Consultant must complete work based on the Price Agreement without additional compensation unless there is a change to the scope of work.

2. Standard Reimbursable Costs

The following costs will be reimbursed without cost-increase:

- 2.1. If pre-approved by the City, allowable costs of travel shall be determined in accordance with the General Services Administration (GSA) per diem rates in effect on the date of this Price Agreement. Consultant's time spent traveling to the Portland area, however, will not be reimbursed. All costs incurred for local travel within the Portland metropolitan area, and a 100-mile radius, including but not limited to, vehicle mileage and parking fees are considered as included in the overhead rate, and shall not be reimbursed separately.
- 2.2. Personal expenditures or expenditures not related to the Price Agreement are not eligible for reimbursement.

3. Hourly Rates

- 3.1. The Consultant shall be compensated in accordance with the hourly rates set forth in attached Exhibit C, Hourly Billing Rate Table. In no way shall the cost of hours billed by the Consultant exceed the total Price Agreement amount throughout the term of this Price Agreement.

3.2. Discretionary Adjustment of Labor Rates Due to Inflation

Annual adjustment of hourly rates will be considered upon written request from the Consultant. Approval of a request for rate increases is solely within the City's discretion and under no circumstances is the City obligated to approve such a request.

Rate increases are subject to the following limitations:

3.2.1. No increases will be granted before the one-year anniversary of the Price Agreement;

3.2.2. No more than one increase shall be granted per Price Agreement year;

3.2.3. Rate increases may not exceed the average of the last half of the preceding calendar year's Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the West Region Class Size A average inflation rate (as determined from the US Bureau of Labor Statistics);

3.2.4. Rate increases shall not be retroactive.

Other than as stated above, hourly rates may not be increased.

4. Subconsultant Costs

Compensation for subconsultants shall be subject to the same billing restrictions and requirements as those of the Consultant. Consultant may bill subconsultant services at cost plus a ___% mark-up [do not exceed 5%] and shall not be subject to any cost increase. Other Direct Expenses, as stated under Standard Reimbursable Costs, shall be billed at cost without mark-up. Allowable subconsultant services can only be marked-up once. For example, the Consultant is not allowed to mark-up on a second-tier subconsultant's allowable expenses if it has already been marked-up by the Consultant's subconsultant. Mark-up is not allowable when using intergovernmental resources to complete work and will not be accepted.

5. Progress Payments

5.1. Compensation to the Consultant shall be based on the following:

5.1.1. Invoices submitted to the City including the appropriate required information as outlined below and all supporting documentation relating to charges expressed on the invoice.

5.1.2. The invoice shall be submitted to _____.

5.1.3. Detailed monthly Project Progress Reports submitted to the City Project Manager by email.

5.1.4. Payment Terms: Net 30 Days

- 5.2. The Consultant is required to follow Generally Accepted Accounting Principles (GAAP). Personal expenditures or expenditures not related to the Project or part of the Price Agreement are not eligible for reimbursement. On or before the 15th of each month, the Consultant shall submit to the City Accounts Payable Department an invoice for work performed by the Consultant during the preceding month.
- 5.3. The Consultant shall enter all pertinent information below on their invoice in order for the City to review and authorize processing of invoices for payment.
 - 5.3.1. Price Agreement Number, Task Order Number, and any other identifying information requested by the City
 - 5.3.2. Invoice date
 - 5.3.3. Date range during which the services are being invoiced for work provided
 - 5.3.4. Invoice number
 - 5.3.5. City Project Manager's name
 - 5.3.6. Amount being invoiced for the current invoice
 - 5.3.7. Consultant shall describe all services performed with particularity and by whom it was performed (Consultant's individuals or subconsultant, labor category, direct labor rate, hours worked during the period) and shall itemize and explain all expenses for which reimbursement is claimed. If reimbursable expenses are authorized, identify by line item categories, 1) Travel Expenses and 2) General Reimbursable Expenses. Note: Invoices for Basic Services under a specific Task shall be for completed Basic Services only and shall indicate the percentage of the total Basic Services for that Task that the amount invoiced represents
 - 5.3.8. The Consultant shall also attach photocopies of claimed reimbursable expenses, as applicable and preapproved authorization document from the City Project Manager
 - 5.3.9. The Consultant shall stamp and approve all subconsultant invoices and note on subconsultant invoice what they are approving as "billable" under the Price Agreement
 - 5.3.10. The billing from the Consultant must clearly roll up labor and reimbursable costs for the prime and subconsultants – matching the subconsultant invoices
 - 5.3.11. To the extent the City disputes any portion of the amount requested in the application for payment, the City shall indicate the undisputed amounts and the amounts that are in dispute. The City shall pay the undisputed amounts and indicate to whom such payments shall be made. The Consultant shall make such payments

to itself and to subconsultants as indicated by the City for such undisputed amounts. The City and Consultant and, if applicable, the subconsultant shall then work to reach agreement on the disputed amounts.

- 5.4. Prior to initial billing, the Consultant shall develop a billing format for approval by the City. Submission of the draft billing document shall be emailed to the City Project Manager for final review and approval.

6. ACH Payments

It is the City's policy to pay its Consultant invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, Consultants shall execute the City's standard ACH Vendor Payment Authorization Agreement and provide required documentation. Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for services rendered directly into Consultant accounts with financial institutions. All payments shall be in United States currency.

PRICE AGREEMENT NUMBER 3100...

Task Order Number:

Project: project name

Project No: project number

The Price Agreement by and between **Consultant Name**, hereinafter called Consultant, and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called City, provides for **Type of service** on-call services.

Original Price Agreement Value:

NTE Amount:

Previous Task Order Amounts:

Total of all Task Orders to Date:

As directed in the Price Agreement, this executed Task Order directs Consultant to perform the services as outlined below.

A.1 Project Background:

A.2 Scope:

A.3 Requirements:

Consultant must perform the following task(s):

A.3.1

A.3.2

A.3.3

A.4 Deliverables and Schedule:

Deliverables and Schedule for this Task Order shall include:

- 1.
- 2.
- 3.

All deliverables must be completed in an approved format.

A.5 Period of Performance:

The period of performance for this Task Order 'is NTP through **Click to enter a date..**

A.6 Key Personnel for this Task Order:

The Consultant shall assign the following key personnel to do the work in the capacities designated. Consultant may not change personnel unless authorized by a written Amendment to the Task Order.

NAME	ROLE ON PROJECT
------	-----------------

Exhibit D – Sample Task Order

A.7 Hours and Cost:

The maximum compensation for this Task Order shall not exceed \$amt of request unless authorized by a written Amendment to the Task Order. The hourly rates shall be as indicated in the Price Agreement. The Tasks breakdown of the not-to-exceed amount is shown in the table below **OR** Exhibit XX to this Task Order (**CHOOSE PREFERRED OPTION**). Consultant may not reallocate compensation between Tasks without the written approval of the Project Manager.

TASK NO.	DESCRIPTION	HOURS	TASK AMOUNT NOT TO EXCEED
	AUTHORIZED TOTALS		

Standard Reimbursable Costs:

The following costs will be reimbursed without mark-up:

- **
- **

A.8 SUBCONSULTANT Participation for this Task Order:

Consultant agrees they will use the following subconsultant(s) on this Task Order in the following Total Dollar amounts and Percentages listed. Consultant may not change subconsultants unless authorized by a written Amendment to the Task Order.

SUBCONSULTANT(S) TO BE USED	COBID CERTIFICATION (DBE, MBE, WBE, SDV, ESB or NONE)	ROLE ON PROJECT	TOTAL DOLLARS COMMITTED	PERCENTAGE
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	

If aspirational COBID certified subconsultant participation is not possible for this Task Order, provide justification below:

All provisions of the original Price Agreement shall remain in full force and effect.

This Task Order 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 Task Order.

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

CONSULTANT:

By: _____

Date: _____

Name: _____

CITY OF PORTLAND:

Project Manager

Date: _____

Chief Procurement Officer

Date: _____

(remove this form if Consultant has Workers' Compensation Insurance)

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

As an independent Consultant, I certify that I meet the following standards:

1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;
2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent Consultant in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Consultant: check four or more of the following:
 - ☐ A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
 - ☐ B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;
 - ☐ C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;
 - ☐ D. Labor or services are performed only pursuant to written contracts;
 - ☐ E. Labor or services are performed for two or more different persons within a period of one year; or
 - ☐ F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Consultant Signature _____ Date _____

FOR CITY USE ONLY

PROJECT MANANGER-COMPLETE ONLY IF CONSULTANT DOES NOT HAVE WORKER'S COMPENSATION INSURANCE

ORS 670.600 Independent Consultant standards. As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent Consultant" if the standards of this section are met. The contracted work meets the following standards:

1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

City Project Manager Signature_____Date_____