

Exhibit C
Heron Terms and Conditions of Use

SECTION 1 PURPOSE

The City of Portland, Bureau of Environmental Services (BES) utilizes a cloud-based platform (Heron) to assist in tracking work performed on Capital Improvement Projects (CIP) and certain non-Capital Improvement Projects (non-CIP).

Use of Heron is required for this Contract and Contractor agrees to adhere to the Terms and Conditions of Use found in this Exhibit.

Failure to adhere to these Terms may result in a Material Breach of Contract.

SECTION 2 DEFINITIONS

Scope. The following Definitions are specific to this Exhibit C and apply only to the terms found therein.

“Authorized User(s)” Identified Contractor staff who have undergone appropriate Heron training and been issued a username and password.

“Confidential Information” 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 Information 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, HIPAA); 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 Price Agreement 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 Price Agreement; or is explicitly approved for release by written authorization of the disclosing Party.

“Electronic Document” The electronic form or image of project communications that can be stored on and retrieved from an electronic storage device through a collaboration system over the Internet, including all written and graphic products produced with computer software or converted to electronic form or electronic image by computer software. All scanned Electronic Documents must be formatted in Portable Document Format (PDF).

“Heron” A web-based project management and collaboration system currently hosted on the e-Builder platform which facilitates real-time communication of project data, documents, and project information to assist in the management of BES projects.

“Secure Documents” A secure form of the original or created electronic document that communicates the content and information of the original document and prevents alteration of the original document.

SECTION 3 TERMS AND CONDITIONS OF USE

3.1 Access to Heron.

- 3.1.1 No Warranty or Guarantee of Access. The City does not warranty or guarantee access to Heron. It is the responsibility of Contractor to notify the City in the event of Heron access issues and unexpected downtime. The City will make a good faith effort to inform Contractor of any schedule downtime or unexpected technical issues which may impact use but does not guarantee notice.

- 3.1.2 Authorized Users. Contractor shall ensure that only Authorized Users are allowed to access Heron. Sharing of usernames and passwords is strictly forbidden.
- 3.1.2.1 Termination of Access. The City reserves the right to terminate an Authorized User at its sole discretion with no notice to Contractor. Contractor will notify City within one (1) Business Day of any Authorized User who no longer meets the criteria of an Authorized User or whose access needs to be terminated (e.g. resignation or termination of employment).
- 3.1.2.2 Training. All Contractor staff who access Heron are required to attend a minimum of one (1) hour of training prior to being issued a username and password. As required, Contractor will make staff available for additional required trainings through the life of this Contract as may be deemed necessary (e.g. new requirements training, corrective action for improper use, etc.).
- 3.1.2.2.1 Location. Training will take place at a location as directed by the City or via video conferencing or telepresence (e.g., Microsoft Teams, Zoom, or other telepresence software).
- 3.1.2.2.2 Waiver. Contractor staff who have attend training in the previous two (2) years and have an active Heron account may request a waiver for the training requirements listed above. This waiver is granted at the sole discretion of the City.
- 3.1.2.3 Point of Contact. Contractor will identify one Authorized User as a point of contact for Heron related issues and concerns within ten (10) Business Days of Contract execution.
- 3.1.3 Minimum Technology Standards. To access Heron, Contractor will ensure that Authorized Users are provided computer and software technology which meets or exceeds the following minimum standards.
- 3.1.3.1 Operating System. Microsoft Windows 7 or later; Mac OS X v 10.8 or later.
- 3.1.3.2 Client Browser. Internet Explorer 11; Google Chrome 29.01 or later; Mozilla Firefox 35.01 or later; Safari 6.0.4 or later; Safari for iOS mobile v6.1 or later; Microsoft Edge, Google Chrome for iOS; Google Chrome for Android.
- 3.1.3.3 Internet Connection. Broadband internet connection recommended.
- 3.1.3.4 Updates to Minimum Technology Standards. Updates to the Minimum Technology Standards listed will be shared in writing with all Authorized Users a minimum of thirty (30) Calendar Days prior to implementation. It is the responsibility of Contractor to ensure that Authorized Users receive appropriate updates and equipment to meet any updated standard.
- 3.2 Project Communications. Contractor will utilize Heron to report work progress and communicate project updates to the City's Project Manager. Examples of specific reportable items include: formal project communications, project documentation, and other required reports.
- 3.3 Invoicing. Contractor will utilize Heron to submit invoicing and status reporting as outlined in the Contract.
- 3.4 Document Management. Contractor will ensure that documents are attached to the appropriate Heron process. All documents will be in the form of an Electronic Document unless otherwise directed by the City's Project Manager.
- 3.5 Amendments, Task Orders, and Change Orders. Amendments, Task Orders, and Change Orders may be sent via Heron as Secure Documents for signature. Signature by Contractor is binding once returned.
- 3.6 Confidential Information. Material which contains Confidential Information is prohibited from being uploaded to Heron.
- 3.7 Alternative Work Product Submissions.

- 3.7.1 Physical Submission. Specific work products (e.g. notarized document) may be required to be submitted in physical form. Any product which must be submitted physically is defined in the Contract or will be defined on issued Task Order(s).
- 3.7.2 System Downtime. In the event Heron is unavailable, Contractor shall continue to perform work and maintain records until such time as Heron becomes available. Once available, Contractor shall upload any records which are germane to the work being performed.
- 3.8 Modification or Discontinuation of Heron Services. The City reserves the right to modify or discontinue use of Heron at any time. Contractor will be provided notice of modification or discontinuation 1) upon notice due to exigent circumstances or Force Majeure event, or 2) thirty (30) Calendar Days prior to modification or discontinuation.