

Metro Contract Number XXXXX

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This Goods and Services Contract ("Contract") is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter ("Metro"), and [CONTRACTOR NAME], A(N) STATE ENTITY TYPE ("Contractor").

## TERMS AND CONDITIONS

In exchange for the promises and other consideration set forth below, the parties agree as follows:

### 1. Effective Date

This Contract is effective on the date last executed by the parties below.

### 2. Term

Unless terminated or extended as set forth herein, this Contract expires on MONTH XX, 20XX.

### 3. Goods Described; Unit Prices; Scope of Work

Contractor will supply to Metro the goods described on Attachment A. Metro may need any or all of the goods listed on Attachment A during the term, and Metro has sole discretion to select only those goods needed from time to time during the term. In addition, Contractor will perform the work and provide the services described in the Scope of Work included in Attachment B. To the extent that Attachment A or Attachment B conflicts with any terms and conditions set forth in the body of this Contract, the terms and conditions of this Contract control. Contractor's performance under this Contract must use the care, skill, and diligence that would originally be used by similar professionals in this community in similar circumstances.

### 4. Payment

- a. Metro agrees to pay Contractor for goods supplied in an acceptable condition at the unit prices identified on Attachment A. Metro is not responsible for payment for any materials, expenses or costs other than those that are specifically included in Attachment A.
- b. The maximum amount Metro will pay under this Contract for performance of the Scope of Work set forth in Attachment B will not exceed [\$CONTRACT MAX]. Metro agrees to pay Contractor for services performed in accordance with the payment schedule identified in the attached Scope of Work.
- c. Metro may withhold payment in Metro's discretion to protect Metro against loss, damage, or claim that may result from Contractor's performance or failure to perform under this Contract.

### 5. Delivery Requirements

Delivery must be F.O.B. Metro at the designated point as set forth in Attachment A or at F.O.B. Metro's principal place of business, if no designated point is listed in Attachment A. Contractor will pay all transportation costs, insurance, freight, and handling charges. Responsibility and liability for loss or damage remains with Contractor until final inspection and acceptance by Metro, after which responsibility passes to Metro, except as to latent defects, fraud, and Contractor's warranty obligations.

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All additional delivery requirements, including time, are, as set forth in Attachment A. Tender of delivery alone does not establish Metro's duty to accept the goods.

## 6. Title

Title to goods purchased passes to Metro at F.O.B. the designated point in Attachment A, or if not provided for, at F.O.B. Metro's principal place of business, and subject to Metro's right to reject upon inspection.

## 7. Inspections

Goods furnished under this Contract are subject to inspection and test by Metro at a time and place determined by Metro. Metro has the right to reject any and all goods upon inspection and without obligation of identifying any particular defect. If Metro finds goods furnished to be incomplete or not in compliance with solicitation specifications, Metro may, in its sole discretion, return the goods to Contractor, at Contractor's expense, and require Contractor to correct without charge (and at Contractor's expense) or require Contractor to deliver them at a reduced price. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by Metro, Metro may reject the goods and cancel the Contract in whole or in part. Nothing in this paragraph limits Metro's rights as buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080. Notwithstanding prior payment, payment does not constitute final acceptance. Acceptance of a part of any commercial unit does not constitute acceptance of the entire unit.

## 8. Warranties

Unless otherwise stated, all goods must be merchantable, new, current model, and both workmanship and materials of excellent quality. All goods must carry full manufacturer warranties. Contractor warrants and guarantees that all goods must be free from defects in labor, materials and manufacture, must be in compliance with solicitation specifications, and must be fit for Metro's purpose. All implied and expressed warranty provisions of the Uniform Commercial Code (ORS Chapter 72) are incorporated in this Contract regardless of whether or not Metro has examined the goods, sample or model. All warranties run to Metro. Contractor warrants that title of the goods will be good, marketable, and free from any security interest or encumbrance. Contractor further warrants that the goods furnished will be free of the rightful claim of any third person and do not infringe any patent, registered trademark, or copyright.

## 9. Termination; Breach

Metro may terminate this Contract at any time, for any reason, by giving Contractor written notice seven (7) days before the proposed termination date. Contractor is entitled to payment for work performed under this Contract up to the termination date identified in Metro's written notice of termination. Metro is not liable to Contractor for any damages whatsoever relating to Metro's termination of the Contract. In the event of a Contractor's breach of contract, termination by Metro does not waive any claim or remedy Metro may have against Contractor for breach of contract including but not limited to incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. In the event of repeated breach of public and/or private contracts, Contractor is subject to disqualification for Metro contracts, as provided in ORS Chapter 279B.

## 10. Insurance

Contractor will purchase and maintain for the duration of the Contract, at Contractor's expense, the following types of insurance, covering Contractor, its employees, subcontractors, and Agents:

- a. ISO (Insurance Services Office) approved Commercial General Liability policy, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence. The policy must include coverage for bodily injury, death, property damage, personal injury, products/completed operations, contractual liability assumed under this Contract;
- b. Automobile insurance with coverage for bodily injury and property damage and with limits not less than \$1,000,000 per accident or combined single limit;
- c. Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$1,000,000 per accident or disease;

**\*\* Discuss with Risk Management APPROPRIATE additional coverage, including: Liquor, Builder's Risk (Course of Construction and Special Perils), Cyber Liability or Technology Professional Liability Errors and Omissions Insurance, Pollution Liability, AVIATION, Crime and Employee Dishonesty, Freeform, Excess.**

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, Metro is entitled to the broader coverage and/or higher limits maintained by Contractor. Coverage will be primary and noncontributory with any other insurance and self-insurance. Contract waives subrogation rights under all insurance policies. Insurance is to be placed with insurers authorized to conduct business in the state of Oregon with current A.M. Best's rating of no less than A:VII or Standard & Poor's BBB. Contractor will ensure that any subcontractor performing work or providing services under this Contract has the same types and amounts of insurance coverages as required herein or that the subcontractor is included under Contractor's policy. Metro reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Contractor will provide Metro with a Certificate of Insurance and additionally insured endorsements as evidence of compliance with these coverage requirements prior to any commencement of work or delivery of services. Contractor will e-mail the Certificate of Insurance (referencing this Metro Contract number) to [submitdocuments@oregonmetro.gov](mailto:submitdocuments@oregonmetro.gov). Metro reserves the right to require, at any time, complete, certified copies of required insurance policies. Contractor will ensure that any subcontractor performing work or providing services under this Contract has the same types and amounts of insurance coverages as required herein or that the subcontractor is included under Contractor's policy.

## 11. Indemnification

Contractor will defend, indemnify and hold harmless, Metro, and its agents, employees and officials (the "indemnitees") from and against any and all liabilities, claims, demands, damages, actions, costs, penalties, losses and expenses (including any attorney's fees in defense of Metro or any attorney's fees incurred in enforcing this provision) on account of personal injury, death, violation of any intellectual property rights, claim of infringement, or any damage to or loss of property or revenues arising out of or in any way connected with its performance of this Contract, or resulting in whole or in part from any act, omission, negligence, fault or violation of law or ordinance by Contractor, its employees, agents, sub-contractors, directors or officers. If Contractor is required to defend the indemnitees, Metro is entitled to select the legal counsel used. If Contractor refuses or fails to defend as required, the

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indemnitees may, at their sole option, settle or defend any claims, and Contractor must, upon demand, pay to Metro the full costs of any settlement, judgment, or defense, including all expenses and attorney's fees. This indemnification provision will not apply to claims resulting from the sole negligence of Metro. This indemnification provision must be interpreted in the broadest possible scope of favor to Metro and will survive expiration or earlier termination of this Contract.

## 12. Ownership of Documents

Unless otherwise provided in this Contract, all Work Product produced by Contractor under this Contract, whether completed, partially completed, or in draft form, is the exclusive property of Metro. "Work Product" is defined to include all research, reports, programs, drawings, recordings, photographs, data, inventions, discovery, work of authorship, trade secret, or other tangible or intangible item and all intellectual property rights therein. Metro and Contractor agree that all Work Product is deemed "a work made for hire," authored by Metro. If for any reason the Work Product is deemed not to be "a work made for hire," Contractor irrevocably assigns and transfers to Metro all its rights, title and interest in the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Metro's request, Contractor will promptly provide Metro with electronic versions of all Work Product produced or recorded in electronic media.

## 13. Retention and Access to Records; Audits

- a. Contractor must maintain and retain all "Contract Records" for six (6) years following termination or expiration of this Contract. For purposes of this section, "Contract Records" is defined to include all books, documents, papers, plans, records, electronic or otherwise necessary to clearly document Contractor's performance and compliance with all requirements imposed on Contractor under the terms of this Contract. Contractor must maintain fiscal records in accordance with Generally Accepted Accounting Principles.
- b. Metro may inspect, examine or audit the Contract Records at any time during the six-year period, upon reasonable notice. If the original Contract Records are located outside the boundaries of the Metro region or upon Metro's request, Contractor will provide Metro with copies of the Contract Records. If Metro's inspection, examination or audit reveals that Metro is owed any sum of money or establishes that any portion of any claim made against Metro by Contractor is not warranted, Contractor will pay all costs incurred by Metro in conducting the inspection, examination or audit. Metro may withhold these costs from any sum that is due or that becomes due from Metro.

## 14. State Law Required Contract Provisions

- a. As required by ORS 279B.045, Contractor represents and warrants that it has complied with all applicable tax laws, including but not limited to ORS 305.620 and ORS Chapters 316, 317 and 318. Contractor will continue to comply with all applicable tax laws during the term of this Contract, and failure to comply with such tax laws during the term of this Contract is a default for which Metro may terminate the Contract and seek damages and other relief available under applicable law.
- b. As required by ORS 279B.220, Contractor must make payment promptly, as due, to all persons supplying to Contractor labor or materials for the performance of the work provided for in the Contract; pay any and all contributions or amounts due the Industrial Accident Fund from

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Contractor or subcontractor in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against Metro on account of any labor or materials furnished; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

- c. As required by ORS 279B.230, Contractor must promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services. Furthermore, all subject employers working under this Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- d. In accordance with the OR-OSHA Hazard Communication Rules in OAR Chapter 437, Division 155, Contractor must provide Metro with a Material Safety Data Sheet for any goods provided under this contract which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437-155-005(2); 437-155-025). In addition, Contractor must label, tag or mark such goods.

## 15. Compliance with Law

Contractor must comply with all federal, state, and local laws, rules, regulations, orders and ordinances applicable to this Contract and/or Contractor's performance of its obligations under this Contract. This requirement includes, but is not limited to, compliance with ORS Chapters 72 and 279, 279A-C, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, ORS 659A.142, and all amendment of and regulations and administrative rules established pursuant to those laws. Contractor may not discriminate against any person(s), employee, applicant for employment or subcontractors, including procurement of materials or leases of equipment, based on race, color, religion, sex, national origin, age, marital status, familial status, gender identity, sexual orientation, disability for which a reasonable accommodation can be made or any other status protected by law.

## 16. Safety and Health Requirements

In performance of the Scope of Work under this Contract, Contractor must comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all state and local safety and health requirements, including those of the State Workers' Compensation Division. In addition to all applicable laws and regulations, Contractor must also follow all rules and policies (including, without limitation, any COVID-related rules and policies) adopted by Metro that govern contractor work and are designed to protect the safety and health of Metro employees, customers, and the public. Metro will provide Contractor with any such applicable rules and policies.

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## 17. Notice

Except as otherwise expressly provided in this Contract, notices must be given in writing by personal delivery, mail, postage prepaid, or e-mail to Contractor or Metro, addressed below:

Metro:	Contractor:
Metro	[XXXXXXXXXXXXXX]
Attn: Office of Metro Attorney	ATTN: [XXXXXXXXXXXX]
600 NE Grand Ave.	[XXXXXXXXXXXX]
Portland, OR 97232	[XXXXXXXXXXXX, XX XXXXX]

Notice sent by e-mail must also be sent by mail, postage prepaid. Notice sent by e-mail is effective the day after receipt. Notice personally given is effective upon receipt. Notice sent by overnight delivery service is effective the day after delivery. Notice given by mail is effective three (3) days after deposit in the United States mail. Either party may change the person or address to whom notice is given by providing written notice to the other party prior to the effective date of the change.

## 18. Governing Law; Venue

This contract is 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. The parties must bring any action or suits involving this Contract in the appropriate court in Multnomah County, Oregon.

## 19. Assignment; Subcontractors

Contractor may not subcontract, assign, or transfer any obligation under this Contract without the prior written consent of Metro. Notwithstanding Metro approval of a subcontractor:

- a. Contractor remains obligated for the full performance of this Contract and Metro incurs no obligation other than its obligations to Contractor in this Contract;
- b. Contractor and its subcontractors are subject to the requirements of ORS Chapter 656, Worker's Compensation; and
- c. Any such subcontractors must obtain the same types and amounts of insurance coverages as set forth in this Contract or that such subcontractors be included under Contractor's policies.

## 20. No Waiver of Claims

Metro cannot waive any term or condition of this Contract unless the waiver is in writing and signed by Metro. Waiver by Metro of any breach of this Contract is not a waiver of any subsequent breach of the same or any other provision of this Contract. No delay or omission in the exercise of any right or remedy of Metro upon default by Contractor will impair that right or remedy, or be construed as a waiver.

## 21. Merger; Modification

This Contract encompasses the entire agreement of the parties and supersedes all previous understanding and practices between the parties. All changes to this Contract, including modifications to the Scope of Work and payment schedule, must be made by written amendment signed by both

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parties. Subject to the foregoing, Metro may approve changes and modifications to this Contract, including deletions of work and additional services reasonably related to the original Scope of Work. No changes in price, quantity, or quality of goods will be recognized without prior acceptance by Metro in writing.

## **22. Severability**

If any term of this Contract is held to be illegal, invalid or unenforceable, it will not affect the remainder of this Contract, which will be construed as if the illegal, invalid, or unenforceable term had never been contained in this Contract. Notwithstanding the foregoing, if an essential purpose of this Contract would be defeated by the loss of the illegal, invalid, or unenforceable term, then the parties will seek in good faith to agree on replacing the removed term or condition with a valid provision that will most nearly and fairly approach the effect of the removed term and the intent of the parties in entering into this Contract. If the parties cannot reach agreement on a replacement for the illegal, invalid, or unenforceable provision, the Contract will terminate upon written notice delivered by one party to the other.

## **23. No Third-Party Beneficiaries**

There are no third-party beneficiaries to this Contract. Only Metro and Contractor are entitled to enforce its terms.

## **24. Attorney Fees**

Each party is responsible for its own attorney fees, expenses, and costs in any action, suit, proceeding, or appeal.

## **25. Confidentiality; Media Contacts**

All information relating to financial, accounting and investment matters of Metro is confidential and Contractor cannot disclose that information. Contractor (and any subcontractor) is prohibited from providing news releases, press releases, or any other written statement to a member of the news media regarding this project, without Metro's prior written authorization.

## **26. Cooperative Purchasing**

Pursuant to ORS 279A and the Metro contract code, Metro participates in an Intergovernmental Cooperative Purchasing program by which other public agencies have the ability to purchase the goods and services under the terms and conditions of this awarded Contract. Any such purchases will be between Contractor and the participating public agency and will not impact Contractor's obligation to Metro under this contract. Any estimated purchase volumes listed herein do not include volumes for the other public agencies, and Metro makes no guarantee as to their participation in any purchase. Contractor may also decline to extend the prices and terms of this Contract to any or all other public agencies.

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**27. Counterparts; Signatures**

This Contract may be executed in counterparts or multiples, any one of which has the full force of an original. Metro and Contractor may conduct this transaction, including any amendments, by electronic means, including the use of electronic signature. The undersigned have executed this Contract, dated effective as of the date indicated below.

**CONTRACTOR:**

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**METRO:**

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_



# Goods and Services Contract



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## Unit Prices - Attachment A

### Project Name

[REPLACE WITH PROJECT NAME]

### Metro Project Manager

Name: [PM\_NAME]

Address: [METRO\_ADDRESS]

Telephone: [PM\_TELEPHONE]

Email: [PM\_EMAIL]

### Detailed Description of Goods

No.	Description	QTY	Unit	Unit Price	Total
Total					

### Delivery Schedule

[DELIVERY\_SCHEDULE]

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**Scope of Work - Attachment B**

**General Purpose and Goal of Work**

[XXXXXXXXXXXXXXXXXXXXXX]

**Detailed Description of the Scope of Work**

[XXXXXXXXXXXXXXXXXXXXXX]

**Deliverables**

[XXXXXXXXXXXXXXXXXXXXXX]

**\*\*\* Rule S\_KEYPERSONNEL (Key Personnel Clause) \*\*\***

This is just a placeholder for personnel names, not a clause or part of the contract language.

**\*\*\* Rule S\_SUBCONTRACTORLIST (Subcontractor clause) \*\*\***

This is just a placeholder for personnel names, not a clause or part of the contract language.

**\*\*\* Rule REIMBURSEMENTS\_ALLOW (Reimbursable expenses if allow) \*\*\***

Metro will compensate Contractor for the agreed upon reimbursable expenses (without markup), identified below. Reimbursable Expenses are included in the not to exceed Maximum Contract Price. To be reimbursable, Reimbursable Expenses must be evidenced by copies of third-party invoices and receipts delivered to Metro.

List of Reimbursable Expenses: XXXXXXXXXXXXXXXXXXXXXXXXXXXXX

**Invoices**

To receive payment, Contractor's billing invoices must include the Metro contract number, Contractor name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of work performed and reimbursable expenses incurred during the billing period in sufficient detail to support Metro's allocation of services rendered and reimbursable expenses to specific project components. Invoices cannot be submitted more frequently than once a month. Invoices must be sent to [metroaccountspayable@oregonmetro.gov](mailto:metroaccountspayable@oregonmetro.gov). Contractor must reference the Metro contract number and the contractor name in the e-mail subject line. The parties agree that

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all payments due and owing under this Contract will be made through automated clearing house (“ACH”) transfers from Metro’s designated account directly to Contractor’s designated account. To initiate payment of invoices, Contractor will execute Metro’s standard Vendor Payment Authorization Agreement, which will authorize Metro to deposit payment for services rendered directly into Contractor’s accounts with Contractor’s financial institution.

## **Payment**

Metro will pay Contractor within thirty (30) days of receipt of a complete invoice or within fifteen (15) days after approval of Contractor's invoice. If Metro determines that Contractor's invoice is not complete, Metro will send a written notice to Contractor requesting the necessary information to complete the invoice. Payment is not considered acceptance or approval of work or waiver of any defects.