

Metro Contract Number [xxxxxx]

This Services Contract (this "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 [MONTHXX, 20XX].

3. **Scope of Work**

Contractor will perform the work and provide the services described in the Scope of Work attached as Attachment A and incorporated herein. To the extent that the Scope of Work conflicts with any terms and conditions set forth in the body of this Contract, the terms and conditions control. Contractor's performance under this Contract must use the care, skill and diligence that would ordinarily be used by similar professionals in this community in similar circumstances.

4. **Payment**

The maximum amount Metro will pay under this Contract will not exceed [XXXXX.XX] ("Maximum Contract Price"). Metro agrees to pay Contractor for services performed in accordance with the payment schedule identified in the attached Scope of Work. 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. **Early Termination**

Metro may terminate this Contract at any time 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 the written notice of termination.

6. **Independent Contractor**

Metro and Contractor have entered into this Contract for the purpose of establishing an independent contractor relationship. The parties agree that nothing in this contract may be construed as an employment, partnership, joint venture, or joint employer relationship between Metro and Contractor. Contractor will provide all tools or equipment necessary to carry out this Contract, and will exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Contract and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Contract; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Contract. Contractor

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will identify and certify tax status and identification number through execution of IRS Form W-9 prior to submitting any request for payment to Metro.

7. 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;
- d. * If Contractor providing professional services, include the following: [Professional Liability appropriate to Contractor's profession, with limits of not less than \$1,000,000 per occurrence or claim.];

** 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. 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.

8. Indemnification

* If Contractor providing professional services, use the following language: [Contractor will indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims,

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demands, damages, actions, losses and expenses, including attorney's fees, arising out of its negligent acts, errors or omission in the performance of professional services under this Contract.

With respect to all claims, demands, damages, actions, losses, and expenses which do not arise out of the performance of professional services, Contractor agrees to defend, indemnify and hold harmless, Metro and its officers, directors, agents, employees and elected and appointed 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 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, subcontractors, directors or officers. In the event that Contractor refuses or fails to defend as required, the 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 indemnity provision will not apply to claims resulting from the sole negligence of Metro. This indemnification provision will be interpreted in the broadest possible scope of favor of Metro and will survive expiration or earlier termination of this Contract.]

* If Contractor is NOT providing professional services, use the following language: [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 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.]

9. 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 "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.

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Notwithstanding the above, all pre-existing trademarks, service marks, patents, copyrights, trade secrets, and other property of Contractor are and will remain exclusive property of Contractor, and Contractor grants Metro a royalty-free, irrevocable, transferable, sublicensable, worldwide, perpetual license to use, reproduce, and modify all such pre-existing intellectual property rights embedded in the work product.

10. Retention and Access to Records; Audits

Contractor must maintain and retain all "Contract Records" for six 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.

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.

11. State Law Required Contract Provisions

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 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.

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.

12. 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,

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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.

13. 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.

14. 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:

Metro
Attn: [XXXXXXXXXX]
600 NE Grand Ave
Portland, OR 97232

Contractor:

[XXXXXXXXXXXXX]
Attn: [XXXXXXXXXXXXX]
[XXXXXXXXXXXXX]
[XXXXXXXXXXXXX, XX XXXXXX]

with a copy to:

Office of the Metro Attorney
600 NE Grand Ave
Portland, OR 97232

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.

15. 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.

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16. 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.

17. 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.

18. 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 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.

19. 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.

20. No Third-Party Beneficiaries

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

21. Attorney Fees

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

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22. 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.

23. Cooperative Procurement

Pursuant to ORS 279A and the Metro contract code, Metro participates in an Intergovernmental Cooperative Purchasing program by which other public agencies will 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 decline to extend the prices and terms of this solicitation to any or all other public agencies upon execution of this Contract. Unless Contractor specifically declines to participate in the program by initialing below, Contractor agrees to participate in the Intergovernmental Cooperative Purchasing program.

Contractor declines to participate in the Intergovernmental Cooperative Purchasing Program as indicated by the following initials. _____

24. 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 _____

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Scope of Work - Attachment A

Project Name:

[REPLACE WITH PROJECT NAME]

Metro Project Manager:

Name: [PM_NAME]

Address: [PM METRO_ADDRESS]

Telephone: [PM_TELEPHONE]

Email: [PM_EMAIL]

General Purpose and Goal of Work:

[XXXXXXXXXXXXXXXXXXXXX]

Detailed Description of the Scope of Work:

[XXXXXXXXXXXXXXXXXXXXX]

Deliverables:

[XXXXXXXXXXXXXXXXXXXXX]

Contractor Key Personnel:

<u>Name:</u>	<u>Role on Project</u>

Approved Subcontractors:

<u>Subcontractor Name:</u>	<u>Role on Project/Subcontract Amount</u>

Payment Schedule and Billing:

[Contractor is entitled to receive progress payments for services provided and accepted by Metro and reimbursable expenses incurred and accepted by Metro, until the not to exceed Maximum Contract Price is reached.]

[Work tasks performed under this Contract must be authorized via a written work order sent by Metro and accepted by Contractor. The scope of work, schedule, deliverables, and compensation for each tasked work order project will be defined in the task order prior to commencement of the work. Any later change to the scope of work, schedule, deliverables, and compensation for such tasked work order project must be approved by both Metro and Contractor.]

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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. Contractor must reference the Metro Contract number and the Contractor name in the e-mail subject line. The parties agree that 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.

[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:

[XXXXXXXXXXXXXXXXXXXXXXXXXX]