

ATTACHMENT

183871

CITY OF PORTLAND
AGREEMENT FOR PROFESSIONAL, TECHNICAL, OR EXPERT
SERVICES

CONTRACT NO. _____

SHORT TITLE OF WORK PROJECT:
Laboratory Services

This contract is between the City of Portland, acting by and through its Elected Officials, hereafter called "City," and TestAmerica Laboratories, Inc., hereafter called Contractor. The City's Project Manager for this contract is Charles Lytle.

Effective Date and Duration

This contract shall become effective on July 1, 2010. This contract shall expire, unless otherwise terminated or extended, on June 30, 2013.

Consideration

- (a) City agrees to pay Contractor a sum not to exceed \$1,050,000.00 for accomplishment of the work.
(b) Payments shall be made to Contractor according to the schedule identified in the STATEMENT OF THE WORK.

CONTRACTOR DATA AND CERTIFICATION

Name (please print): TestAmerica Laboratories, Inc.

Address: 9405 SW Nimbus Ave., Beaverton, OR 97008

Employer Identification Number (EIN) 23-2919996

[INDEPENDENT CONTRACTORS: DO NOT PROVIDE SOCIAL SECURITY NUMBER (SSN) - LEAVE BLANK IF NO EIN]

City of Portland Business License # 642334

Citizenship: Nonresident alien ___ Yes ___ No

Business Designation (check one): ___ Individual ___ Sole Proprietorship ___ Partnership ☒ Corporation
___ Limited Liability Co (LLC) ___ Estate/Trust ___ Public Service Corp. ___ Government/Nonprofit

Payment information will be reported to the IRS under the name and taxpayer I.D. number provided above. Information must be provided prior to contract approval. Information not matching IRS records could subject you to 20 percent backup withholding.

STANDARD CONTRACT PROVISIONS FOR
PROFESSIONAL, TECHNICAL & EXPERT SERVICES (MANDATORY PROVISIONS)

1. Access to Records

The Contractor shall maintain, and the City of Portland ("City") and its duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by the City.

2. Audits

- (a) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this agreement at any time in the course of the agreement and during the three (3) year period established by section 1, Access to Records. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.
(b) If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the City.
(c) If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies provided under section 5, Early Termination of Agreement and section 7, Remedies.

3. **Effective Date and Duration**

The passage of the contract expiration date (as recorded on reverse side) shall not extinguish, prejudice, or limit either party's right to enforce this contract with respect to any default or defect in performance that has not been cured.

4. **Order of Precedence**

This contract consists of the terms and conditions of this contract, the Request for Proposals (RFP) issued by the City, if any, and the Contractor's proposal in response to the RFP. In the event of any apparent or alleged conflict between these various documents, the following order of precedence shall apply to resolve the conflict: a) this contract's terms and conditions, b) the City's RFP, and c) the Contractor's proposal in response to the RFP.

5. **Early Termination of Agreement**

- (a) The City and the Contractor, by mutual written agreement, may terminate this Agreement at any time.
- (b) The City, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- (c) Either the City or the Contractor may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

6. **Payment on Early Termination**

- (a) In the event of termination under subsection 5(a) or 5(b), **Early Termination of Agreement** hereof, the City shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.
- (b) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (a) of this section.
- (c) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided in section 7(a), **Remedies**.
- (d) In the event of early termination all of the Contractor's work product will become and remain property of the City.

7. **Remedies**

- (a) In the event of termination under subsection 5(c), **Early Termination of Agreement**, hereof, by the City due to a breach by the Contractor, then the City may complete the work either itself, by agreement with another contractor or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, then the Contractor shall pay to the City the amount of the reasonable excess.
- (b) The remedies provided to the City under section 5, **Early Termination of Agreement** and section 7, **Remedies** for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.
- (c) In the event of breach of this Agreement by the City, then the Contractor's remedy shall be limited to termination of the Agreement and receipt of payment as provided in section 5(c), **Early Termination of Agreement** and section 6(b), **Payment on Early Termination** hereof.

8. **Subcontracts and Assignment**

Contractor shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the City. Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

9. **Compliance with Applicable Law**

In connection with its activities under this Agreement, Contractor shall comply with all applicable federal, state and local laws and regulations including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the administrative rules. Contractor shall complete the INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT, which is attached hereto and by this reference made a part hereof.

(a) **Indemnity - Claims for Other than Professional Liability**

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses arising out of death, or bodily injury to persons, or property damage caused by the negligence of the City.

(b) Indemnity - Claims for Professional Liability

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses caused by the negligence of the City.

(c) Indemnity - Standard of Care

If Contractor's services involve engineering or consulting, the standard of care applicable to Contractor's service will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time such services are performed. Contractor will re-perform any services not meeting this standard without additional compensation.

10. Insurance

During the term of this contract Contractor shall maintain in force at its own expense, each insurance noted below:

- (a) Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).

- (b) ☒ Required and attached or Waived by City Attorney: _____

General Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract, and shall provide that City of Portland, and its agents, officers, and employees are Additional Insured but only with respect to the Contractor's services to be provided under this Contract:

- (c) ☒ Required and attached or Waived by City Attorney: _____

Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or nonowned vehicles, as applicable:

- (d) ☒ Required and attached or Waived by City Attorney: _____

Professional Liability insurance with a combined single limit of not less than \$1,000,000 per claim, incident, or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract. If insurance coverage is provided on a "claims made" basis, the successful Proposer shall acquire a "tail" coverage or continue the same coverage for three years after completion of the contract, provided coverage is available and economically feasible. If such coverage is not available or economically feasible, contractor shall notify City immediately.

- (e) On all types of insurance. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from the Contractor or its insurer(s) to the City.

- (f) Certificates of insurance. As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to the City at the time contractor returns signed contracts. The certificate will specify all of the parties who are Additional Insured and will include the 30-day cancellation clause and 10-day non-payment clause that provides that the insurance shall not terminate or be cancelled without 30 days or 10 days written notice first being given to the City Auditor. Insuring companies or entities are subject to City acceptance. If requested, complete policy copies shall be provided to the City. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

11. Ownership of Work Product

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

12. Nondiscrimination

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

13. Successors in Interest

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

14. Severability

The parties agree that if any term or provision of this contract 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 contract did not contain the particular term or provision held to be invalid.

15. Waiver

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

16. Errors

The Contractor shall perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

17. Governing Law

The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Multnomah County Oregon.

18. Amendments

All changes to this contract, including changes to the scope of work and contract amount, must be made by written amendment and approved by the Purchasing Agent to be valid. Any amendment that increases the original contract amount by more than 25% must be approved by the City Council to be valid.

19. Business License

The Contractor shall obtain a City of Portland business license as required by PCC 7.02 prior to beginning work under this Agreement. The Contractor shall provide a business license number in the space provided on page one of this Agreement. Additionally, the Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full term of this contract. Failure to be in compliance may result in payments due under this contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.

20. Prohibited Interest

(a) No City officer or employee during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

(b) No City officer or employee who participated in the award of this Agreement shall be employed by the Contractor during the period of the Agreement.

21. Payment to Vendors and Subcontractors

The Contractor shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The Contractor shall not take or fail to take any action in a manner that causes the City or any materials that the Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

Merger Clause

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE IF MADE, SHALL BE EFFECTIVE ONLY IN SPECIFIC INSTANCES AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE OR SHE HAS READ THIS CONTRACT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

OPTIONAL PROVISIONS (selected by City Project Manager)

- 22. Arbitration:** /X/ Not Applicable / ___ / Applicable (consult with City Attorney's Office before finalizing as applicable)

(a) Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Contractor and the City within sixty (60) days of notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Multnomah. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any litigation arising out of or in connection with this Agreement, shall be conducted in Portland, Oregon, shall be governed by the laws of the State of Oregon, and shall be as speedy as reasonably possible. The applicable arbitration rules for the Multnomah County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within forty-five (45) days of the first meeting with the Contractor and the City. Insofar as the Contractor and the City legally may do so, they agree to be bound by the decision of the arbitrator.

(b) Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Agreement for undisputed portions of work.

23. Progress Reports: /___/ Applicable /X/ Not Applicable

The Contractor shall provide monthly progress reports to the Project Manager. If applicable, the STATEMENT OF THE WORK should list what information the Contractor must include in monthly progress reports.

24. Contractor's Personnel: /___/ Applicable /X/ Not Applicable

The Contractor shall assign the following personnel to do the work in the capacities designated: If applicable, list selected personnel in the STATEMENT OF THE WORK. The Contractor shall not change personnel assignments without the prior written consent of the City.

25. Subcontractors: /___/ Applicable /X/ Not Applicable

The City requires Contractors to use the Minority, Women and Emerging Small Business (M/W/ESB) subcontractors identified in their proposals, and as such the Contractor shall assign these subcontractors as listed in the STATEMENT OF THE WORK to perform work in the capacities designated. The Contractor shall not change subcontractor assignments without the prior written consent of the Purchasing Agent.

STATEMENT OF THE WORK AND PAYMENT SCHEDULE

PART I

CONTRACT REQUIREMENTS

SECTION A

GENERAL INFORMATION

1. INTRODUCTION

The City of Portland, Bureau of Environmental Services (BES), Water Pollution Control Laboratory (WPCL) requires environmental analytical services for the analysis of water, wastewater, biosolids, soils, and other matrices for organic, inorganic, and conventional parameters. Two types of services are needed: (1) analyses using well-established methods with standard reporting limits; (2) analyses requiring detection levels below the standard reporting levels published with the methods and/or with extra compounds not listed with the methods. Analyses must be performed following the methods and protocols published by the U.S. EPA, APHA (Standard Methods), ASTM, AOAC, USGS, or other recognized authority and must be conducted under a rigorous quality assurance/quality control (QA/QC) program. For more information about the WPCL service group, please visit...

<http://www.portlandonline.com/bes/index.cfm?c=34103&a=221340>.

This Request For Proposals (RFP) describes the selection process and the requirements for submitting a proposal for this services contract. (Note: Please see Exhibit E Acronyms for definitions of the acronyms used throughout the RFP).

2. BACKGROUND

The WPCL is a full-service environmental laboratory located on the Willamette River in the St. Johns neighborhood of Portland, Oregon. Its critical mission is to provide the City with analyses in support of the following programs:

- NPDES permits for the two wastewater treatment plants operated by the City (water, wastewater, biosolids)
- NPDES storm water permit (water, wastewater, surface runoff, residuals)
- WPCF permit for the City's Class V UIC system (surface runoff, groundwater)
- Portland Harbor CERCLA/SARA (Superfund) project (in-line sediments, residuals, surface runoff)
- BES capital improvement projects (soils, groundwater)
- Industrial Source Control Program (industry wastewater, treatment plant influent and effluent).

In addition, the WPCL analyzes surface water, rivers and streams, residuals, and biota in support of a variety of City initiatives relating to storm water BMPs, water quality status and trends in the rivers, streams, and seasonal runoffs within and bordering the City.

Historically, the majority of the work contracted by WPCL has been EPA water and soils methods for which low-level detection limits and/or non-routine analytes are required by the regulatory authorities. In addition, the City's WPCF permit requires the application of several EPA drinking water (500 series) methods to urban storm water samples. These particular analyses are included in **Table 1(b) in Exhibit B**.

The successful proposer is expected to assist the City's WPCL in the carrying out of all its critical missions.

It is important to note that the low-level and specialty work carried out for the City's WPCF permit and for the Portland Harbor Superfund project are subject to thorough scrutiny by both state and federal regulatory authorities. Work of the highest technical and QA/QC levels is expected.

3. SCOPE OF WORK

The City of Portland, Bureau of Environmental Services, Water Pollution Control Laboratory is seeking proposals from laboratories with demonstrated experience in environmental analytical services for the analysis of water, wastewater, biosolids, soils, and other matrices for organic, inorganic, and conventional parameters. NELAC accreditation is preferred but is not required.

It is anticipated that the successful proposer will enter into a fixed-price, indefinite delivery Professional, Technical, and Expert Services contract in which the actual number of samples and/or analyses may be more or less than the number used for the purpose of developing the cost element of this proposal. The intent of this RFP is to secure a laboratory that will be able to provide the City of Portland with analysis results of the highest quality that are delivered on time and in a manner convenient to the City.

4. PROJECT FUNDING

Annual outside services laboratory costs have averaged approximately \$339,000 over the last four completed fiscal years (July through June). Though there is no guarantee of work under this contract, it is anticipated that the volume of testing needed will not differ drastically from that in recent years.

5. TIMELINE FOR SELECTION

The following dates are proposed as a timeline for this project:

Written proposals due at 2:00 PM	April 6, 2010
Announcement of short-listed Proposers	April 20, 2010
Completion of site visits	May 4, 2010
Selection committee recommendation	May 7, 2010
Contract approved by City Council	June 2, 2010
Work begins	July 1, 2010

The City reserves the right to make adjustments to the above noted schedule as necessary.

SECTION B

WORK REQUIREMENTS

1. TECHNICAL OR REQUIRED SERVICES

The successful proposer (Laboratory) will perform the following services: (1) analyses using well-established methods with standard reporting limits; (2) analyses requiring detection levels below the standard reporting levels published with the methods and/or with extra compounds not listed with the methods. Reference **Exhibit B, Cost Matrix** of this RFP for lists of the anticipated analyses. **The listing of a particular analysis is not a guarantee that it will be requested during the contract period.**

The lists of analyses provided on Exhibit B are not all-inclusive. **It is possible that analyses other than those listed on Exhibit B will be requested during the contract period.** For example, some specialty analyses that may be required on an infrequent basis are identified in Exhibit D to the RFP.

a. Turn-Around Time Requirements

Turn-around time is defined as the number of working days (every calendar day excluding Saturdays, Sundays, and legal holidays recognized by the City of Portland) between sample receipt at the Laboratory and the transmission of the final report. The Laboratory must possess the ability to meet the following:

bioassays	40 working days (8 weeks)
dioxins/furans	20 working days (4 weeks)
co-planar PCB congeners	20 working days (4 weeks)
all other analyses	10 working days (2 weeks)

The Laboratory must notify WPCL as soon as possible by e-mail and telephone if any analysis will not be reported within the required turn-around time. The City reserves the right to invoke the following price reductions for reports submitted past the turn-around time requirements listed above:

1 – 5 working days past turn-around time	-10%
6 – 10 working days past turn-around time	-25%
≥ 11 working days past turn-around time	-50%

The receipt and use of late analyses by the City does not waive the contract requirements to produce the analyses in a timely fashion. Frequent submissions of late analyses is cause for termination of the contract for a material breach of contract pursuant to Paragraph 5(c). Notwithstanding anything to the contrary in paragraph 5, the City is only required to give one notice of cure if analyses are received late. Thereafter, termination by the city may occur without further or additional notices.

b. Contract Required Detection Limits

For the analyses listed in **Table 1(a) of Exhibit B**, the required detection limits for all analytes will generally be as published in the specified methods. It is recognized that difficult matrices may necessitate an increase in detection limits for particular analytes. Corrective actions or alternate procedures will be selected by mutual agreement between the Laboratory and WPCL.

For the analyses requiring low-level detection limits [**Table 1(b) of Exhibit B**], the required method reporting limits will be as listed in **Exhibit C**. WPCL considers the following terms to be identical: method reporting limit (MRL), practical quantitation limit (PQL), quantitation limit (QL), limit of quantitation (LOQ). All of these terms are strictly defined following guidance from Oregon DEQ: "...the lowest level at which the entire analytic [sic] system must give a recognizable signal and acceptable calibration for the analyte. It is equivalent to the concentration of the lowest calibration standard, assuming that all method-specified sample weights, volumes, and cleanup procedures have been employed. The [MRL, QL, PQL, LOQ...] is the lowest concentration at which a method can quantify a concentration of a pollutant in a sample..."

2. SUBCONTRACTING

It is understood that a single laboratory may not have the instrumentation to perform all of the analyses called out in the RFP. Subcontracting is permitted, although it is required that the Laboratory will do the majority of the analyses listed in the tables in **Exhibit B**. The Laboratory must handle all sample shipping to the subcontractor and all invoicing. WPCL reserves the right to request further information about subcontractors unknown to it and to reject any subcontractor if any such subcontractor is unable to provide suitable documentation in regards to qualifications, experience, or QA program. All subcontracted work must be approved in advance, and

subcontracted work must be clearly marked as such, with the name, address, contact person, and phone number of the subcontractor. Rejection of subcontractors by the City is not grounds for an increase in compensation or price under this contract.

**3. WORK
PERFORMED BY
THE CITY**

The WPCL Sample Custodian or Designated Alternate will receive samples from the field, add appropriate preservative (if required), correctly label sample containers, place the containers in a designated area of the sample receiving refrigerator, fill out chain-of-custody (COC) forms, and contact the Laboratory by telephone that samples are ready for pick up. Rush analyses will be clearly marked on the COC forms, and WPCL will contact the Laboratory regarding rush turn-around requirements as soon as possible.

In addition, the WPCL will identify a single point of contact for all contract-related issues.

3. DELIVERABLES

The Laboratory shall submit signed, formal data reports via email in Adobe pdf format. Additionally, the Laboratory shall make the data available in a standard electronic data deliverable format. The Laboratory shall include relevant analytical system and matrix batch QC results with data reports. Details of the content and submission of data packages will be negotiated with the successful proposer after contract award.

Data reports for the low-level and specialty work carried out for the City's WPCF permit and for the Portland Harbor Superfund project must contain the method detection limit (MDL) and the method reporting limit (MRL) for each analyte. Results below the MRL but above the MDL must be reported and flagged as estimated using the capital letter J.

All data reports and other submissions resulting from this contract are the property of the City of Portland.

**4. PLACE OF
PERFORMANCE**

All analytical work will take place primarily at the Laboratory's facility. The Laboratory will be responsible for communication with and receipt of data and invoicing from any subcontractor(s).

**5. PERIOD OF
PERFORMANCE**

The initial term of the contract shall be three (3) years with the option of two (2), one-year extensions. It is anticipated that the initial three-year contract term will begin on July 1, 2010, and end on June 30, 2013.

6. PUBLIC SAFETY

Public safety may require limiting access to public work sites, public facilities, and public offices, sometimes without advance notice. The Proposer shall anticipate delays in such places and include the cost of delay in the proposed cost. The Laboratory's employees and agents shall carry sufficient identification to show by whom they are employed and display it upon request to security personnel. City project managers have discretion to require the Laboratory's employees and agents to be escorted to and from any public office, facility or work site if national or local security appears to require it.

7. INSURANCE

The successful Proposer(s) shall agree to maintain continuous, uninterrupted coverage of all insurance as required by the City. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without a 30-day written notice, or a 10-day written notice for non-payment from the successful Proposer or its insurer(s) to the City.

Workers' Compensation Insurance in compliance with ORS 656.017,

which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (firms with one or more employees, unless exempt under ORS 656.027).

General Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract, and shall provide that the City of Portland, and its agents, officers, and employees are Additional Insureds but only with respect to the successful Proposer's services to be provided under this Contract.

Automobile Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

Professional Liability Insurance with a combined single limit of not less than \$1,000,000 per claim, incident, or occurrence. This is to cover damages caused by negligent acts, errors or omissions related to the professional services to be provided under this contract. If insurance coverage is provided on a "claims made" basis, the successful Proposer shall acquire a "tail" coverage or continue the same coverage for three years after completion of the contract, provided coverage is available and economically feasible. If such coverage is not available or economically feasible, contractor shall notify City immediately.

Certificates of Insurance: As evidence of the insurance coverages, the successful Proposer shall furnish acceptable insurance certificates to the City at the time signed contracts are returned to the City. The certificate will specify all of the parties who are Additional Insureds and will include a 30-day cancellation clause a 10-day non-payment clause as identified above. Insuring companies or entities are subject to City acceptance. If requested, complete policy copies shall be provided to the City. The successful Proposer shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

PART II**COST MATRIX****1. Analysis Cost Matrix**

For Tables 1(a) and 1(b) below, enter the unit cost for each listed analysis. Multiply the unit cost by the estimated number of samples for the total cost per line item. Then add all the line item totals to arrive at the total cost for all the samples and analyses listed in the tables. Unit cost is the determinant in the case of mathematical error.

The number of samples is annual estimated. The actual number of samples may be more or less. The listing of a particular analysis is not a guarantee that it will be requested during the contract period.

(a) Analyses Requiring Standard Method Reporting Limits

CATEGORY	MATRIX	METHOD REFERENCE	METHOD NAME	EST. # SAMPLES ^a	UNIT COST ^b	TOTAL COST (EST #) x (UNIT COST)
Organics	Water	EPA 608	organochlorine pesticides/PCBs	35	\$120	\$4,200
		EPA 8081B	organochlorine pesticides	30	\$70	\$2,100
		EPA 1668	co-planar PCBs by HR-GC/MS	10	\$400	\$4,000
		EPA 1668	209 PCB congeners by HR-GC/MS	10	\$775	\$7,750
		EPA 1613B	dioxins/furans by HR-GC/MS	10	\$525	\$5,250
		NWHCID-Gx	gasoline	15	\$42	\$630
	Soil/Sludge	EPA 8151	chlorinated herbicides	5	\$125	\$625
		EPA 8141	organophosphorus pesticides	5	\$135	\$675
		EPA 8081B	organochlorine pesticides	20	\$70	\$1,400
		EPA 8260B	volatile organics	80	\$85	\$6,800
		EPA 8260B	BTEX	5	\$55	\$275
		EPA 8260	volatile Table II PP organics ^c	10	\$135	\$1,350
		EPA 8270D	semi-volatile organics	20	\$225	\$4,500
		EPA 8270D	semi-vol Table II PP organics ^c	10	\$250	\$2,500
		EPA 1613B	dioxins/furans by HR-GC/MS	10	\$525	\$5,250
		EPA 1668	co-planar PCBs by HR-GC/MS	15	\$400	\$6,000
		EPA 1668	209 PCB congeners by HR-GC/MS	45	\$775	\$34,875
		EPA 9023	extractible organic halides	10	\$65	\$650
		NWHCID-Gx	gasoline	30	\$42	\$1,260
Misc.	Water	EPA 415.1	total organic carbon	70	\$25	\$1,750
		EPA 415.1	dissolved organic carbon	5	\$25	\$125
		EPA 370.1	silica	10	\$30	\$300
		EPA 420.1	phenols	15	\$42	\$630
		EPA/DEQ ^d	bioassay	6	\$4,000	\$24,000
		PSEP ^e	organotin compounds	5	\$235	\$1,175
		PSEP ^f	particle size	20	\$135	\$2,700
	Soil/Sludge	ASTM	grain size	50	\$100	\$5,000
		EPA 9060	total organic carbon	70	\$55	\$3,850
		PSEP ^e	organotin compounds	5	\$235	\$1,175
TOTAL COST FOR ALL ANALYSES						\$130,795

(b) Analyses Requiring Low-Level Method Reporting Limits

MATRIX	METHOD REFERENCE	METHOD NAME	PART III MRL TABLE	EST. # SAMPLES ^a	UNIT COST ^b	TOTAL COST (EST #) x (UNIT COST)
Water	EPA 515.3	2,4-D, dinoseb, picloram, PCP	III (1)	260	\$125	\$32,500
	EPA 525.2	Alachlor, Atrazine		15	\$235	\$3,525
	EPA 531.2	Carbofuran		15	\$120	\$1,800
	EPA 547	Glyphosate		15	\$120	\$1,800
	EPA 548.1	Endothall		15	\$130	\$1,950
	EPA 549.2	Diquat		15	\$130	\$1,950
	EPA 552.2	Dalapon		15	\$65	\$975
	Mod. EPA 8081B	organochlorine pesticides	III (2)	40	\$225	\$9,000
	EPA 8270D	semi-volatile organics	III (3)	50	\$350	\$17,500
	EPA 8270-SIM	PAHs + phthalates	III (4)	300	\$180	\$54,000
Soil/Sludge	Mod. EPA 8081B	organochlorine pesticides	III (2)	40	\$225	\$9,000
	EPA 8270D	semi-volatile organics	III (3)	30	\$350	\$10,500
	EPA 8270-SIM	PAHs + phthalates	III (4)	50	\$180	\$9,000
TOTAL COST FOR ALL ANALYSES						\$153,500

(c) Footnotes For Cost Matrix Tables

^a Number of samples is annual estimated. Actual number may be more or less.

^b Unit cost is the determinator in case of mathematical error.

^c PP = priority pollutant list referenced at 40 CFR 136 plus o-cresol, p-cresol, n-decane, and/or n-octadecane.

^d Chronic definitive water flea (*Ceriodaphnia dubia*), fathead minnow (*Pimehales promelas*) and algae (*Selenastrum capricornutum*) as referenced in *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (EPA/600/4-91/002) and *Whole Effluent toxicity Guidance Document* (Oregon DEQ, January 1993).

^e Puget Sound Estuary Program: *Recommended Guidelines for Measuring Selected Environmental Parameters in Puget Sound, Organic Compounds, Appendix A, Organotin Compounds.*

^f Puget Sound Estuary Program: *Recommended Guidelines for Measuring Selected Environmental Parameters in Puget Sound, Sediment Conventional, Particle Size.*

2. Non-Listed Analytes

Provide the price discount (as percent) for analyses not called-out in Tables 1a and 1b.

Assume ≤ 10 samples per year.

20%

3. Surcharge For Rapid Turn-Around

On occasion, WPCL may require a turn-around time faster than the contract required two weeks (ten working days). WPCL will make every effort to notify the contract lab in advance the analyses, number of samples, and expedited turn-around requirements. Provide the surcharge (as percent) for the following rapid turn-around times.

6 – 9 working days

25%

3 – 5 working days

50%

< 3 working days

75%

4. Ancillary Costs

Cost per visit for sample pick-up at WPCL	<u>0</u>
Cost per report for including QA/QC data	<u>0</u>
Cost per report for EPA Contract Laboratory Program deliverables	<u>15%</u>
Cost per batch for shipping and invoicing subcontracted analyses	<u>0</u>
Cost per sample for digestion of fish tissue	<u>n/a</u>

PART III

LOW-LEVEL METHOD REPORTING LIMIT REQUIREMENTS FOR METHODS IN PART II (1) (b)

1. EPA Method 515.3

COMPOUND	µg/L
2,4,5-T	0.10
2,4,5-TP (Silvex)	0.10
2,4-D	0.10
2,4-DB	0.40
3,5-Dichlorobenzoic acid	0.20
Acifluorfen	0.20
Bentazon	0.40
Dicamba	0.20
Dichlorprop	0.40
Dinoseb	0.10
Pentachlorophenol	0.04
Picloram	0.40

2. EPA Method 8081B

COMPOUND	ng/L	µg/Kg
4,4'-DDD	0.5	1.0
4,4'-DDE	0.5	1.0
4,4'-DDT	0.5	1.0
Aldrin	0.5	1.0
Alpha-BHC	0.5	1.0
Alpha-Chlordane	0.5	1.0
Beta-BHC	0.5	1.0
Delta-BHC	0.5	1.0
Dieldrin	0.5	1.0
Endosulfan I	0.5	1.0
Endosulfan II	0.5	1.0
Endosulfan Sulfate	0.5	1.0
Endrin	0.5	1.0
Endrin Aldehyde	0.5	1.0
Endrin Ketone	0.5	1.0
Gamma-BHC(Lindane)	0.5	1.0
Gamma-Chlordane	0.5	1.0
Heptachlor	0.5	1.0
Heptachlor Epoxide	0.5	1.0
Methoxychlor	0.5	1.0
Toxaphene	25	50.0

3. EPA Method 8270D

COMPOUND	µg/L	µg/Kg	COMPOUND	µg/L	µg/Kg
1,2,4-Trichlorobenzene	0.2	10.0	Benzo(g,h,i)perylene	0.2	10.0
1,2-Dichlorobenzene	0.2	10.0	Benzo(k)fluoranthene	0.2	10.0
1,3-Dichlorobenzene	0.2	10.0	Benzoic acid	5.0	200.0
1,4-Dichlorobenzene	0.2	10.0	Benzyl alcohol	0.5	20.0
2,4,5-Trichlorophenol	0.5	10.0	Bis(2-chloroethoxy) methane	0.2	10.0
2,4,6-Trichlorophenol	0.5	10.0	Bis(2-chloroethyl) ether	0.2	10.0
2,4-Dichlorophenol	0.5	10.0	Bis(2-chloroisopropyl) ether	0.2	10.0
2,4-Dimethylphenol	4.0	50.0	Bis(2-ethylhexyl) phthalate	1.0	100.0
2,4-Dinitrophenol	4.0	200.0	Butyl benzyl phthalate	0.2	10.0
2,4-Dinitrotoluene	0.2	10.0	Chrysene	0.2	10.0
2,6-Dinitrotoluene	0.2	10.0	Dibenzo(a,h)anthracene	0.2	10.0
2-Chloronaphthalene	0.2	10.0	Dibenzofuran	0.2	10.0
2-Chlorophenol	0.5	10.0	Diethyl phthalate	0.2	10.0
2-Methylnaphthalene	0.2	10.0	Dimethyl phthalate	0.2	10.0
2-Methylphenol	0.5	10.0	Di-n-butyl phthalate	0.2	20.0
2-Nitroaniline	0.2	20.0	Di-n-octyl phthalate	0.2	10.0
2-Nitrophenol	0.5	10.0	Fluoranthene	0.2	10.0
3,3'-Dichlorobenzidine	2.0	100.0	Fluorene	0.2	10.0
3-Nitroaniline	1.0	20.0	Hexachlorobenzene	0.2	10.0
4,6-Dinitro-2-methylphenol	2.0	100.0	Hexachlorobutadiene	0.2	10.0
4-Bromophenylphenyl ether	0.2	10.0	Hexachlorocyclopentadiene	0.2	50.0
4-Chloro-3-methylphenol	0.5	10.0	Hexachloroethane	0.2	10.0
4-Chloroaniline	0.2	10.0	Indeno(1,2,3-cd)pyrene	0.2	10.0
4-Chlorophenylphenyl ether	0.2	10.0	Isophorone	0.2	10.0
4-Methylphenol	0.5	10.0	Naphthalene	0.2	10.0
4-Nitroaniline	1.0	20.0	Nitrobenzene	0.2	10.0
4-Nitrophenol	2.0	100.0	N-Nitrosodi-n-propylamine	0.2	10.0
Acenaphthene	0.2	10.0	N-Nitrosodiphenylamine	0.2	10.0
Acenaphthylene	0.2	10.0	Pentachlorophenol	1.0	100.0
Anthracene	0.2	10.0	Phenanthrene	0.2	10.0
Benzo(a)anthracene	0.2	10.0	Phenol	0.5	30.0
Benzo(a)pyrene	0.2	10.0	Pyrene	0.2	10.0
Benzo(b)fluoranthene	0.2	10.0			

4. EPA Method 8270-SIM

COMPOUND	µg/L	µg/Kg
Acenaphthene	0.02	10.0
Acenaphthylene	0.02	10.0
Anthracene	0.02	10.0
Benzo(a)anthracene	0.01	10.0
Benzo(a)pyrene	0.01	10.0
Benzo(b)fluoranthene	0.01	10.0
Benzo(ghi)perylene	0.02	10.0
Benzo(k)fluoranthene	0.01	10.0
Bis(2-ethylhexyl) phthalate	1.00	20.0
Butyl benzyl phthalate	1.00	20.0
Chrysene	0.01	10.0
Dibenzo(a,h)anthracene	0.01	10.0
Diethyl phthalate	1.00	20.0
Dimethyl phthalate	1.00	20.0
Di-n-butyl phthalate	1.00	20.0
Di-n-octyl phthalate	1.00	20.0
Fluoranthene	0.02	10.0
Fluorene	0.02	10.0
Indeno(1,2,3-cd)pyrene	0.01	10.0
Naphthalene	0.02	10.0
Phenanthrene	0.02	10.0
Pyrene	0.02	10.0

INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT**SECTION A**

CONTRACTOR CERTIFICATION I, undersigned, am authorized to act on behalf of entity designated below, hereby certify that entity has current Workers' Compensation Insurance.

Contractor Signature _____ Date _____ Entity _____

If entity does not have Workers' Compensation Insurance, City Project Manager and Contractor complete the remainder of this form.

SECTION B

ORS 670.600 Independent contractor 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 contractor" 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

SECTION C

Independent contractor certifies he/she meets 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 contractor 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. Contractor 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.

Contractor Signature

Date

CONTRACTOR SIGNATURE:

This contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same Agreement.

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

I, the undersigned, agree to perform work outlined in this contract in accordance to the STANDARD CONTRACT PROVISIONS, the terms and conditions, made part of this contract by reference, and the STATEMENT OF THE WORK made part of this contract by reference; 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 Chapter 3.100 of Code of the City of Portland; and hereby certify I am an independent contractor as defined in ORS 670.600.

Contractor Name Here

BY: _____ Date: _____

Name: _____

Title: _____

Contract No. _____

Contract Title: _____

CITY OF PORTLAND SIGNATURES:By: _____
Bureau Director

Date: _____

By: _____
Purchasing Agent

Date: _____

By: _____
Elected Official

Date: _____

Approved:

By: _____
Office of City Auditor

Date: _____

Approved as to Form:

By: _____
Office of City Attorney

Date: _____

APPROVED AS TO FORM ^{dup}
CITY ATTORNEY