

EXHIBIT A**CITY OF PORTLAND
AGREEMENT FOR PROFESSIONAL, TECHNICAL, OR EXPERT SERVICES****CONTRACT NO.** _____**SHORT TITLE OF WORK PROJECT:
On-Call Environmental Site Investigations and Related Services**

This contract is between the City of Portland ("City," or "Bureau") and _____, hereafter called Contractor.
The City's Contract Coordinator for this contract is Taryn Meyer.

Effective Date and Duration

This contract shall become effective on January 1, 2013. This contract shall expire, unless otherwise terminated or extended, on December 31, 2015.

Consideration

- (a) City agrees to pay Contractor a sum not to exceed \$250,000 for accomplishment of the work. As services will be requested as needed, the City does not guarantee that the total dollar limit of the contract will be reached.
- (b) Interim payments shall be made to Contractor according to the schedule identified in the STATEMENT OF THE WORK AND PAYMENT SCHEDULE.

CONTRACTOR DATA AND CERTIFICATION

Name (please print): _____

Address: _____

Employer Identification Number (EIN) _____

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

City of Portland Business License # _____

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.

TERMS AND CONDITIONS

1. Standard of Care: Contractor shall perform all services under this contract using that care, skill and diligence that would ordinarily be used by similar professionals in this community in similar circumstances.

2. Effect of Expiration

Passage of the contract expiration date 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 corrected.

3. Order of Precedence

This contract consists of these Terms and Conditions, the Statement of Work and Payment Schedule, and any exhibits that are attached. Any apparent or alleged conflict between these items will be resolved by using the following order of precedence: a) these Terms and Conditions; b) Statement of Work and Payment Schedule; and c) any exhibits attached to the contract.

4. Early Termination of Contract

- (a) The City may terminate this Contract for convenience at any time for any reason deemed appropriate in its sole discretion. Termination is effective immediately upon notice of termination given by the City.

(b) Either party may terminate this Contract in the event of a material breach by the other party that is not cured. Before termination is permitted, the party seeking termination shall give the other party written notice of the breach, its intent to terminate and fifteen (15) calendar days to cure the breach. If the breach is not cured within 15 days, the party seeking termination may terminate immediately by giving written notice that the Contract is terminated.

5. Remedies and Payment on Early Termination

- (a) If the City terminates pursuant to 4(a) above, the City shall pay the Contractor for work performed in accordance with the Contract prior to the termination date. No other costs or loss of anticipated profits shall be paid.
- (b) If the City terminates pursuant to 4(b) above, the City is entitled all remedies available at law or equity. In addition, Contractor shall pay the City all damages, costs and sums incurred by the City as a result of the breach.
- (c) If the Contractor justifiably terminates the contract pursuant to subsection 4(b), the Contractor's only remedy is payment for work prior to the termination. No other costs or loss of anticipated profits shall be paid.
- (d) If the City's termination under Section 4(b) was wrongful, the termination shall be automatically converted to one for convenience and the Contractor shall be paid as if the Contract was terminated under Section 4(a).
- (e) In the event of early termination the Contractor's work product before the date of termination becomes property of the City.

6. 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.

7. Compliance with Applicable Law

Contractor shall comply with all applicable federal, state and local laws and regulations. Contractor agrees it currently is in compliance with all tax laws.

8. Indemnification for Property Damage and Personal Injury

Contractor shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from all claims, losses, damages, and costs (including reasonable attorney fees) for personal injury and property damage arising out of the intentional or negligent acts or omissions of the Contractor, its Subcontractors, suppliers, employees or agents in the performance of its services. Nothing in this paragraph requires the Contractor or its insurer to indemnify the City for claims of personal injury or property damage caused by the negligence of the City. This duty shall survive the expiration or termination of this contract.

9. Insurance

During the term of this contract, Contractor shall maintain in force at its own expense, the 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) Commercial 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 Insureds, but only with respect to the Contractor's services to be provided under this Contract:

Required by Bureau X

Waived by Bureau

- (c) 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:

Required by Bureau X

Waived by Bureau

- (d) Professional Liability insurance with a combined single limit of not less than \$1,000,000 per claim, incident, or occurrence. If insurance is provided on a "claims made" basis the Contractor shall acquire "tail" coverage or continue the same coverage for three years after completion of the contract, provided coverage is available and economically feasible. If not feasible, contractor shall notify City immediately.

Required by Bureau X

Waived by Bureau

- (e) There shall be no cancellation, material change, reduction of limits, or intent not to renew any required insurance without 30 days written notice from the Contractor or its insurer(s) to the City.
- (f) Certificates of insurance. The Contractor shall furnish acceptable insurance certificates to the City showing the required insurance coverage. The certificate will specify all of the parties who are Additional Insureds. Certificates and insurers are subject to City approval. Complete policy copies shall be provided to the City upon request. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

10. Ownership of Work Product

All work product produced by the Contractor under this contract is the exclusive property of the City. "Work Product" includes, but is not limited to: research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form. The 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.

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

11. EEO Certification: In the event Contractor provides in excess of \$2,500.00 for services to the City in any fiscal year, Contractor shall obtain EEO certification from the City.

12. Equal Benefits

Contractor must comply with the City's Equal Benefits program as prescribed by Chapter 3.100 of the Code of the City of Portland. The required documentation must be filed with Procurement Services, City of Portland, prior to contract execution.

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 promptly perform such additional services as may be necessary to correct errors in the services required by this contract without undue delays and without additional cost.

17. Governing Law/Venue

The provisions of this contract shall be interpreted, construed and enforced in accordance with, and governed by, the laws of the State of Oregon without reference to its conflict of laws provisions that might otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this 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 Chief Procurement Officer 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 Contract.

20. Prohibited Conduct

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

21. Payment to Vendors and Subcontractors

The Contractor shall timely pay all subcontractors and suppliers providing services or goods for this Contract.

22. Access to Records

The Contractor shall maintain all records relating to this Contract for three (3) years after final payment. The City may examine, audit and copy the Contractor's books, documents, papers, and records relating to this contract at any time during this period upon reasonable notice. Copies of these records shall be made available upon request. Payment for the reasonable cost of requested copies shall be made by the City.

23. Audits

(a) The City 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 paragraph 22. 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 Government Accountability Office.

(b) If an audit discloses that payments to the Contractor exceed the amount to which the Contractor was entitled, the Contractor shall repay the amount of the excess to the City.

24. Electronic Signatures

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

25. Merger Clause

This Contract encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether verbal or written.

26. Dispute Resolution/Work regardless of disputes

The parties shall participate in mediation to resolve disputes before conducting litigation. The mediation shall occur at a reasonable time after the conclusion of the Contract with a mediator jointly selected by the parties. Notwithstanding any dispute under this Contract, the Contractor shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Contract for undisputed portions of the work. In the event of litigation no attorney fees are recoverable. No different dispute resolution paragraph(s) in this contract or any attachment hereto shall supersede or take precedence over this provision.

27. Progress Reports: /___/ Applicable /_X_/ Not Applicable

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

28. Contractor's Personnel: /___/ Applicable /_X_/ Not Applicable

If applicable, the Contractor shall assign the personnel listed in the Statement of the Work and Payment Schedule for the work required by the Contract and shall not change personnel without the prior written consent of the City, which shall not be unreasonably withheld.

29. Subcontractors

The Contractor shall use the subcontractors identified in its proposals. The Contractor shall not change subcontractor assignments without the prior written consent of the Chief Procurement Officer. Failure to use the identified M/W/ESB subcontractors without prior written consent is a material breach of contract.

30. Third Party Beneficiaries

There are no third party beneficiaries to this contract. Enforcement of this contract is reserved to the parties.

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**STATEMENT OF THE WORK
AND PAYMENT SCHEDULE**

CONTRACT MANAGEMENT

City: Taryn H. Meyer
1120 SW 5th Ave., Rm. 1000
Portland, OR 97204
taryn.meyer@portlandoregon.gov
503-823-5861

Contractor: _____

SCOPE OF WORK

This is an "on-call" contract. Services will be requested as the need arises, therefore there is no guarantee of work to be assigned under the contract, or that the total dollar limit of the contract will be reached.

Contractor will perform the following tasks as requested by written task order:

- a. Perform Phase II ESA's; Level 2 ESA's; environmental sampling for water and sewer construction and repairs, street improvements, property acquisitions, facilities, and water quality facilities; environmental investigations for stream and wetland restorations; Regulatory Agency [i.e., Environmental Protection Agency (EPA), Oregon DEQ, and federal, state and city permitting] required investigations, cleanup, and closure reporting. Perform Sediment Evaluation Framework Investigations for 404 permitting purposes; Ecological and Cleanup Risk-Based Closures; Conceptual Site Models; Remedial Investigation/Feasibility Studies; and testing and disposal of Investigative Derived Waste (IDW).
- b. Environmental sampling and/or monitoring. Perform soil, sediment, groundwater, surface water, air and other media sample collection and analysis for a variety of contaminants [Resources Conservation and Recovery Act (RCRA), Toxic Substances Control Act (TSCA), etc.], and periodic monitoring of piezometers, monitoring wells, soil gas survey probes, and indoor air quality.
- c. Remediation of soil, sediment, groundwater and surface water and other contaminated materials. Contaminated sites may include undeveloped land; commercial, residential and industrial properties; streams; wetlands; and other properties contaminated with hazardous materials. Remediation of contaminated building materials may be included in the work. Provide oversight of remedial and demolition activities and removal of associated hazardous materials. Develop remedial action plans and feasibility studies.
- d. Contaminated Media Management. Provide services and develop plans for the management (excavation, hauling, disposal) of contaminated media and hazardous waste anticipated or unanticipated for various City projects including capital improvement and operating projects.
- e. Environmental Oversight. Provide environmental oversight during design and construction of City projects including field monitoring of contaminated sites, verification sampling of media (soil, sediment, groundwater, surface water, air and various other media).
- f. Quality Assurance Project Plans (QAPP) and Sampling Analysis Plans (SAP). Required by EPA for projects funded by Federal Brownfield's Program and by regulatory agencies for regulated sites.
- g. Experience, knowledge, and understanding of DEQ, EPA, and other federal, state and local regulatory guidance documents and policies is necessary.
- h. Knowledge and understanding of Portland Harbor issues is required as the CSA program also provides support to the City's Portland Harbor Superfund program for properties associated with Portland Harbor.

Deliverables

Contractor shall submit a Monthly Subconsultant Payment and Utilization Report by the 15th of each month with the invoice. Additional deliverables for each specific project shall be defined in the individual Task Order.

TASK ORDERS

Contract services provided will be authorized via Task Orders issued by the City's On-Call Contracts Coordinator for the CSA Program.

Individual projects will be assigned as project needs are identified. Where multiple contracts have been awarded, Task Orders will be assigned on a rotational basis as equitably as practicable.

The scope of work, schedule, deliverables, names of any subcontractors utilized for the project, names of staff assigned and associated hourly rates, and total compensation for each project will be established in writing via a Task Order prior to commencement of the work. Contractor shall not perform any work prior to issuance of a fully-executed Task Order.

Any changes to the cost, scope of work or schedule must be agreed to by the Contractor and the City in writing as an amendment to the Task Order. Each assigned project will have a maximum monetary limit established in writing on the Task Order. Such maximum amount may be exceeded only upon the written amendment of the Task Order and only for documented circumstances unforeseen at the time the project was accepted, or for a necessary change in the scope of work as originally requested by the City.

Following issuance of the fully-executed Task Order by the CSA On-Call Contracts Coordinator, the Project Manager will work directly with the Contractor for the duration of the project unless otherwise noted in the Task Order. Contractor shall submit all work progress reports to the City's Project Manager identified in the Task Order. Contractor shall submit all invoices to the CSA On-Call Contracts Coordinator.

The BES Bureau Director shall approve Task Orders and Task Order amendments in the following scenarios: 1) When amending the Task Order to increase compensation by more than 25% of the original Task Order amount or 2) When a Task Order exceeds \$75,000.

WORK PERFORMED BY THE CITY

The City will determine the scope of work for each project. The City shall assign a project manager to oversee Contractor's work and provide support as needed. Other specific duties the City will perform for each project shall be identified in the individual Task Order.

SUBCONTRACTORS

The Contractor shall assign the following subcontractors to perform work in the capacities designated:

NAME	ROLE ON PROJECT

The City will enforce all diversity in workforce and Minority, Women and Emerging Small Business (M/W/ESB) subcontracting commitments submitted by the Contractor in its Proposal. For contracts valued \$100,000 or more, the Contractor shall submit a Monthly Subconsultant Payment and Utilization Report (MUR), made part of this contract by reference, reporting ALL subcontractors employed in the performance of this agreement. An electronic copy of the MUR may be obtained at: <http://www.portlandonline.com/shared/cfm/image.cfm?id=119851>.

COMPENSATION

Contractor will be paid based on its hourly rates, costs incurred in paying its subcontractors, if any, plus any authorized expenses as set forth in more detail below.

Compensation for each Task Order will be determined through negotiation based on the scope of work, the hours Contractor estimates for performance of the work and Contractor's hourly rates, subject to a predetermined cap for the maximum compensation for the particular Task Order. If the work requires fewer hours than those estimated, Contractor will be paid for the actual hours necessary to complete the Task Order. If Contractor underestimates the number of hours that are required to perform the work, the negotiated maximum compensation for the Task Order shall be the cap of the compensation to be paid. Compensation may be amended for documentable circumstances not reasonably foreseeable to either party at the time the Task Order was issued, or for changes to the scope of work or deliverables requested by the City.

Hourly Rates

The billing rates shall not exceed those set forth below:

Billing Rates

Hourly billing rates shall include the following non-reimbursable expenses: fringe benefits, payroll bonuses, autos and other defined perquisites, telecommunications, facsimile services, overhead expenses including but not limited to local and long distance telephone, parking, delivery/courier, general business and professional liability insurance, advertising costs, postage, internal copying, lease of office equipment, mileage and other local travel costs, information technology (including computer time and CAD services and other related highly specialized equipment), all other direct costs not identified as reimbursable, other indirect costs and profit.

Hourly rates shall remain the same through the 3-year term of the contract.

Reimbursable Costs

Any reimbursable costs shall be specifically identified in the contract and/or task order. City will not reimburse Contractor for costs, including travel expenses, not specifically identified in the contract and/or task order as payable. Allowable costs will be reimbursed without mark-up.

If travel (transportation, lodging and per diem) of Consultant is specified in the contract and/or task order, costs will be reimbursed in accordance with the City's Travel Expense Guidelines which are based on the General Services Administration (GSA) per diem rates. Generally, City will allow reimbursement of travel costs only if travel is directly attributed to specific tasks and to a location outside a 100-mile radius of Consultant's project office.

Subconsultant Costs

Compensation for subconsultants shall be limited to the same restrictions imposed on the Consultant. The markup on subconsultant services for this contract is ____%.

Progress Payments

On or before the 15th of each month, the Contractor shall submit to the CSA Contract Coordinator an invoice for work performed by the Contractor during the preceding month. The invoice shall contain the City's contract number and task order number and set out all items for payment including, but not limited to: the name of the individual, labor category, direct labor rate, hours worked during the period, and tasks performed. The Contractor shall also attach photocopies of claimed reimbursable expenses, if applicable. The Contractor shall stamp and approve all subconsultant invoices and note on the subconsultant invoice what they are approving as "billable" under the contract. The billing from the prime should clearly roll up labor and reimbursable costs for the prime and subconsultants – matching the subconsultant invoices. Prior to initial billing, the Contractor shall develop a billing format for approval by the City.

The City shall pay all amounts to which no dispute exists within 30 days of receipt of the invoice. Payment of any bill, however, does not preclude the City from later determining that an error in payment was made and from withholding the disputed sum from the next progress payment until the dispute is resolved.

The Contractor shall make full payment to its subcontractors within 10 business days following receipt of any payment made by the City to Contractor.

PAYMENT TERMS: Net 30 Days

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.

<INSERT CONTRACTOR'S NAME>

BY: _____ Date: _____

Name: _____

Title: _____

Contract No. _____

Contract Title: On-Call Environmental Site Investigations

CITY OF PORTLAND SIGNATURES:

By: n/a Date: _____
Bureau Director

By: n/a Date: _____
Chief Procurement Officer

By: _____ Date: _____
Elected Official

Approved:

By: _____ Date: _____
Office of City Auditor

Approved as to Form: **APPROVED AS TO FORM**
James H. Van Dyke *HDS*
By: _____
Office of City Attorney **CITY ATTORNEY**

Date: 11/16/12