

INTERGOVERNMENTAL AGREEMENT

Portland Stream Habitat Surveys (04/01/2019-03/31/2023—60 months)

This Intergovernmental Agreement (IGA) is entered into by and between the City of Portland (CITY) acting by and through its Bureau of Environmental Services, hereafter called **BES** and the State of Oregon, acting by and through its Oregon Department of Fish and Wildlife, hereafter called **ODFW**.

This IGA is authorized pursuant to ORS 190.110 and becomes effective upon full execution of this document.

PURPOSE

BES and **ODFW** desire to work together to conduct field investigations of stream habitat in certain waterways, process those data and report them to **BES** for the purposes of furthering **BES'** implementation of the Stormwater System Plan and the Portland Watershed Management Plan.

By this IGA, **ODFW** agrees to provide the necessary personnel, equipment and expertise to collect and process stream habitat data in the city of Portland using **ODFW's** Aquatic Inventories Project Field Survey Methods or other appropriate methodology, such as side-scan sonar methods for large, non-wadeable streams, along with additional specific data requested by **BES** and identified in the Statement of Work and Budget attached hereto as Exhibits A and B, and **BES** agrees to reimburse **ODFW** for costs associated with the provision of these services as described in this document.

GENERAL PROVISIONS

1. **Effective Date and Duration.** This IGA is effective on **April 1, 2019** or the date of execution by both parties, whichever date occurs first. Unless earlier terminated or extended, this IGA shall expire when **ODFW's** completed performance has been accepted by **BES** or **March 31, 2023**, whichever date occurs first.
2. **Statement of Work.** The Statement of Work, (the "Work") including the delivery schedule for such Work, is contained in Exhibit A. **ODFW** agrees to perform the Work in accordance with the terms and conditions of this IGA.
3. **Consideration.** **BES** agrees to pay **ODFW** a sum not to exceed **\$ 498,686.00** as allocated in Exhibit B.
4. **Project Representatives.** Each party has designated a project manager to be the formal representative for this project. All reports, notices, and other communications required under or relating to this IGA shall be directed to the appropriate individual.

ODFW No.: _____
 COP BES No.: _____

BES Project Manager

Julia Bond
 City of Portland
 1120 SW Fifth Ave., Suite 1000
 Portland, OR 97204
 Phone: (503) 823-7753
 Fax: (503) 823-6995
 Email: julia.bond@portlandoregon.gov

ODFW Project Manager

Peggy Kavanagh
 Oregon Department of Fish and Wildlife
 28655 Hwy 34
 Corvallis, OR 97333
 Phone: (541) 757-5124
 Fax: (541) 757-4102
 Email: peggy.kavanagh@oregonstate.edu

5. **Subcontracts.** ODFW shall not enter into any subcontracts for any of the work scheduled under this IGA without obtaining prior written consent from the **BES** Project Manager. **BES** may use this IGA to act as a fiscal agent for other entities who wish to continue **ODFW's** stream surveys at their own expense in the watersheds listed in Exhibit A, but that are outside the city boundaries.
6. **IGA Documents.** This IGA consists of the following documents, which are listed, in descending order of precedence: This IGA less all exhibits, attached Exhibit A, Statement of Work, and Exhibit B, Budget. All attached Exhibits are hereby incorporated for reference.
7. **Amendments.** The terms of this IGA shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties, and approved as required.
8. **Reimbursement.**
 - A. **ODFW** shall submit itemized invoices to **BES** for reimbursement of services performed; noting the project, City IGA number, and **BES** DPO number and the allocation of costs in accordance with line items identified in Exhibit B.
 - B. Costs incurred for travel shall be reimbursed to the extent that they do not exceed on a daily basis per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations and all travel has been approved by the **BES** Project Manager and identified in Exhibit B. Generally, **BES** will allow reimbursement of travel costs only if travel is directly attributed to specific tasks and to a location outside the city's boundaries.
 - C. Non-itemized or incomplete billings shall be detained for payment processing until **ODFW** has supplied correct information to **BES**.
 - D. **ODFW** shall submit to **BES** a monthly invoice for costs incurred during the preceding month no later than 45 days following the end of that performance period. **BES** shall not be liable for reimbursement of costs after that date.
 - E. Invoices shall be submitted in duplicate, identifying the City IGA number to:

Julia Bond
 City of Portland, Bureau of Environmental Services
 1120 SW Fifth Avenue, Room 1000
 Portland, OR 97204

BES shall pay all approved invoices within 30 days.

- F. All non-expendable property, procured for the sole use of the execution of this IGA and with IGA funding, including computer hardware and related software, are the sole property of the City and shall be surrendered upon completion of services or termination of this IGA.

9. **Termination.**

- A. The parties may agree to an immediate termination of this IGA or at a time certain upon mutual written consent.
- B. Either party may terminate this IGA effective not less than 30 days from delivery of written notice.
- C. Either party may terminate this IGA effective not less than 10 days from written notice or at such other date as may be established by both parties under any of the following conditions:
- 1) If funding is not obtained and continued at levels sufficient to allow for purchase of the specified services. When possible, and when agreed upon, the IGA may be modified to accommodate a reduction in funds.
 - 2) If federal or state regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this IGA, or are no longer eligible for the funding proposed for payments authorized by this IGA.
- D. Either party may terminate this IGA in the event of a breach by the other party. Prior to such termination, however, the party seeking termination shall give the other party written notice of the party's intent to terminate. If the party has not cured the breach within 10 days or a longer period as granted in the cure notice, the party seeking compliance may terminate this IGA.

10. **Funds Available and Authorized.** Both parties certify that at the time the IGA is written that sufficient funds are available and are authorized or will be authorized through the annual budget approval process for expenditure to finance costs of this IGA within either party's current appropriation and limitation. Both parties understand and agree that payment of amounts under this IGA attributable to work performed after the last date of the current budget period is contingent on either party receiving appropriations, limitations, or other expenditure authority.
11. **Captions.** The captions or headings in this IGA are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this IGA.
12. **Choice of Venue.** Oregon law shall govern this IGA and all rights, obligations and disputes arising out of the IGA. Venue for all disputes and litigation shall be in Multnomah County, Oregon.
13. **Severability/Survival.** If any of the provisions contained in this IGA are held unconstitutional or unenforceable, the enforceability of the remaining provisions shall not be impaired. All

provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this IGA for any cause.

14. **Ownership of Work Product.** All work products, including reports, research data in hard copy or electronic form that result from this IGA, are the exclusive property of **BES**. However, **ODFW** reserves the right to retain copies of such items for its records and **BES** agrees to share any later analysis.
15. **Access to Records.** Both parties and their duly authorized representatives shall have access to the books, documents, papers, and records which are directly pertinent to the specific IGA for the purpose of making audit, examination, excerpts, and transcript.
16. **Compliance with Applicable Law.** Both parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Work under this IGA. Without limiting the generality of the foregoing, parties expressly agrees to comply with: (I) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Both party's performance under this IGA is conditioned upon either parties compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.
17. **No Third Party Beneficiary.** The **BES** and **ODFW** are the only parties to this IGA and as such, are the only parties entitled to enforce its terms. Nothing contained in this IGA gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.
18. **Indemnification.** Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each party agrees to indemnify and defend the other and its officers, employees, agents and representatives from and against all claims, demands, penalties and causes of action of any kind or character relating to or arising from this IGA, including the cost of defense, attorney fees arising in favor of any person on account of personal injury, death or damage to property and arising out of or resulting from the negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, subcontractors or representatives.
19. **Insurance.** Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282 for the duration of this IGA at levels necessary to protect against public body liability. **ODFW** shall treat **BES** as an additional insured under its self-insurance program or endorse any applicable policies covering exposures arising from this IGA to provide such status.
20. **Merger Clause.** This IGA constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this IGA 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 the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this IGA.

ODFW No.: _____
COP BES No.: _____

21. **BES Accounting Data.** The funding for the Work identified in Exhibits A and B will be shared as follows: Stormwater System Plan - \$ 498,686.00.

FY 18-19

Vendor Number _____ GL Fund Number _____ Account _____
Center Code ESWS000014 Amount \$ 49,870
PTS: _____ / _____ / _____ / _____
Proj. Org. TW CC

FY 19-20

Vendor Number _____ GL Fund Number _____ Account _____
Center Code ESWS000014 Amount \$ 124,671
PTS: _____ / _____ / _____ / _____
Proj. Org. TW CC

FY 20-21

Vendor Number _____ GL Fund Number _____ Account _____
Center Code ESWS000014 Amount \$ 124,671
PTS: _____ / _____ / _____ / _____
Proj. Org. TW CC

FY 21-22

Vendor Number _____ GL Fund Number _____ Account _____
Center Code ESWS000014 Amount \$ 124,671
PTS: _____ / _____ / _____ / _____
Proj. Org. TW CC

FY 22-23

Vendor Number _____ GL Fund Number _____ Account _____
Center Code ESWS000014 Amount \$ 74,803
PTS: _____ / _____ / _____ / _____
Proj. Org. TW CC

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Executed in triplicate by the duly authorized representatives of the parties.

CITY OF PORTLAND

**OREGON DEPARTMENT OF FISH
AND WILDLIFE**

Elected Official or Delegate Date

Erica Kleiner Date
Deputy Director for Administration

Bureau Director Date

Approved for Legal Sufficiency,

City Auditor Date

Tax ID No. 930655103

Approved as to form Date
by City Attorney:

Exhibit A**STATEMENT OF WORK****Overview**

The City of Portland is committed to natural resource protection and sustainable development, managing its urban watersheds in a way that protects public health and the environment in a way that preserves and restores the health of Portland's watersheds. The City's uses an integrated approach to improving watershed health that is built on a scientifically sound foundation, addressing the sources and causes of environmental problems, such as stormwater, rather than focusing on symptoms. To implement this approach, scientists at the City rely on robust datasets that can be used to evaluate and prioritize our natural stormwater assets and our aquatic resources. This proposal provides the scope of work and budget for conducting stream habitat surveys in Portland, Oregon. The surveys will be conducted by the Oregon Department of Fish and Wildlife (ODFW) and the data collected will to describe geomorphic, instream, and riparian features important to native salmonids. Findings from the proposed stream habitat surveys will be used to, (a) inform the City's Stormwater System Plan, (b) compare stream conditions to similar surveys completed approximately 20 years ago to assess how the streams in Portland have changed, and (c) guide planning and design decisions for future watershed restoration projects.

The Bureau of Environmental Services (BES) is currently developing the Stormwater System Plan (SWSP), a citywide planning effort to develop an asset management strategy for the City's stormwater system. As part of the SWSP asset management framework, natural stream channels are defined as assets, allowing BES to characterize and evaluate the risks to the City's aquatic resources using the same approach the bureau uses to assess built stormwater infrastructure. To support the SWSP, BES is initiating the Asset Inventory and Condition Assessment (AICA) program to assess the condition of the City's stormwater system, including streams. The stream habitat surveys included in this scope of work will provide detailed information on the characteristics of the Portland's streams. With the results from the condition assessments in hand, BES can evaluate the risks to the City's stormwater assets, identify areas of concern, and target future resource investment.

In addition to supporting the SWSP, the stream surveys will provide valuable information that will support the City's watershed restoration efforts. As noted above, the data collected through the surveys can be used to characterize stream conditions, and BES uses this type of information to determine the distribution and availability of habitat to support fish and other aquatic organisms. Scientists at the City regularly use the data from such surveys when evaluated stream condition and the availability of habitat for salmonids listed under the Endangered Species Act (ESA).

BES will also use the stream survey data to assess how the Portland's streams have changed over time. Streams in Portland were surveyed in 1999 and 2000 by the Oregon Department of Fish and Wildlife, providing a baseline against which BES staff can assess habitat changes. This information will allow the City to evaluate the success of past restoration work and identify areas where targeted investment may provide substantial improvements to watershed health and ESA-listed salmonids.

Most stream habitat survey methods rely on low-flow conditions during the summer to survey a stream reach when water levels are low and wading it possible. The Columbia Slough, however, is a unique aquatic system that is distinct from Portland's other waterbodies. It is a slow-moving, tidally influence,

non-wadeable system that includes a series of lakes and waterways that run parallel to the Columbia River for approximately 29 km through heavily developed, both industrial and residential, neighborhoods. Consequently, standard stream habitat survey methods cannot be applied to the Columbia Slough without modification. ODFW is developing an alternative survey technique that uses side-scan sonar to map non-wadeable stream channels. The new methodology uses a hydroacoustic device that produces imagery of stream channel features below the water along the entire stream channel. In addition to mapping channel features, the technology is can be used to classify substrate types and identify land wood beneath the water surface. ODFW is in the process of testing the application of the methodology in Oregon.

BES will collaborate with ODFW to utilize the new methodology to survey stream habitat in the Columbia Slough. The pilot methodology is based on delineating habitat units in a manner that is consistent with ODFW's Methods for Stream Habitat and Snorkel Surveys for the Aquatic Inventories Project that will be used to survey the City's wadeable streams. While the survey methods used for the Columbia Slough will differ, the approach employed by both methods of delineating and characterizing habitat units will allow for consistent stream condition assessments and characterization across Portland's watersheds. In the event that the side-scan sonar methodology is deemed ineffective in the Columbia Slough, BES desires to work with ODFW to develop an alternative that can be tested and deployed during the term of this agreement.

Objective and Tasks

Objective: Conduct stream habitat surveys of the city of Portland's wadeable and non-wadeable streams.

Task 1: Conduct stream habitat surveys within the Portland metropolitan area using ODFW's *Methods for Stream Habitat Surveys: Aquatic Inventory Project* protocol.

Aquatic habitat surveys are designed to describe geomorphic, instream, and riparian features important to native salmonids. ODFW will provide the personnel and perform habitat surveys in the Portland metropolitan area watersheds using the protocol described in the *Methods for Stream Habitat Surveys: Aquatic Inventory Project* as referenced and available on the ODFW Aquatic Inventory Project website (<https://nrimp.dfw.state.or.us/crl/default.aspx?pn=AI>). Additionally, ODFW will enter the data, prepare the reports, convert to Geographic Information System (GIS) and post on the AQI website.

The objective of the aquatic habitat surveys is to describe the status of instream habitat during summer base flow. ODFW will describe channel morphology, instream habitat character, and riparian conditions. ODFW will also identify potential barriers to anadromous fish passage, the abundance of invasive herbaceous species (as determined by both parties) at riparian transects, and will document the location of pipe outlets, culvert entries, and exposed pipes adjacent to the stream. If requested by BES, ODFW may extend the AQI survey methods to include the characterization of additional stream habitat units not surveyed under the standard implementation of the AQI protocol to support BES' geomorphic characterization of the surveyed stream reaches. BES and ODFW will work together to determine and document any changes to the methods to characterize additional stream habitat units. Both parties recognize that extending the survey methods will increase the time required to complete the stream surveys

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and will reduce the distance that can be surveyed during a single field season. Any budget or survey distance adjustments necessitated by the additional data collection will be documented through a written agreement between both parties.

Table 1 below includes the list of streams and distances as proposed for survey beginning in 2019. Watersheds include Johnson Creek, Tryon Creek, Tualatin River, and Willamette River. The total combined distance is approximately 119 km. Approximately 25 km of the proposed survey reaches are located outside of the city limits. These areas have been included because BES' sewer and stormwater assets such as sanitary pipes extend beyond the city limits, including the areas where BES provides services. The proposed stream surveys include reaches where BES assets are located, as well as areas that are directly connected to the stream reaches where those assets are present. Contiguous stream surveys are essential to BES' planning efforts.

Table 1 – Streams to be Surveyed

Watershed	Stream Name	Proposed Survey Length (km)	Survey Length Included but Outside City Limits (km)
Columbia Slough	Wilkes Creek	1.5	0.0
Johnson Creek	Clatsop Creek	2.0	1.0
	Crystal Springs Creek	3.2	0.0
	Deardorff Creek	1.6	0.3
	Errol Creek	0.7	0.0
	Jenne Creek	0.8	0.3
	Johnson Creek	20.7	6.7
	Kelley Creek	1.5	0.8
	Mitchell Creek	2.5	1.9
	Veterans Creek	2.7	1.8
	Wahoo Creek	1.4	0.0
Tryon Creek	Tryon Creek Tributaries	8.0	1.6
	Falling Creek	2.4	0.0
	Tryon Creek	7.6	2.5
Tualatin River	Ash Creek - North Fork	1.6	0.2
	Ash Creek - South Fork	1.2	0.0
	Cedar Mill Creek	8.8	0.9
	Columbia Creek	1.4	0.6
	Columbia Creek Tributary	0.8	0.2
	Fanno Creek	4.4	0.1
	Ivey Creek	0.9	0.0
	Lowell Creek	1.5	0.0

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Watershed	Stream Name	Proposed Survey Length (km)	Survey Length Included but Outside City Limits (km)
	Pendleton Creek	1.7	0.1
	Vermont Creek	3.4	0.3
	Woods Creek	3.1	0.0
Willamette River Tributaries	Balch Canyon	4.9	2.7
	Doane Creek	2.6	0.0
	Forest Park Stream	14.1	0.4
	Miller Creek	2.8	1.8
	River View Streams	2.9	0.3
	Saltzman Creek	1.9	0.0
	Stephens Creek	3.5	0.0
	Stephens Creek Tributaries	1.5	0.0
	Total	118.9	24.5

BES will provide ODFW with a map of proposed survey reaches with specified priorities for surveying. BES and ODFW recognize that the priority, listed streams, and distances above may change due to landowner permissions, safety concerns, or other unforeseen circumstances. Both parties will communicate any necessary modifications to the proposed streams to the other in a timely manner.

Deliverables: Written reports including text, table, graphs, photos, and GIS coverages. ODFW will also provide interpretation, additional consulting, and coordination as needed to City and BES staff.

Schedule: Surveys and reports will be completed within the following timeline over three field seasons beginning in 2019. Field preparation will be conducted between April 1 and May 31 of each year. Surveys will be conducted by ODFW between June 1 and October 15 of each year. Data analysis, final reports, and GIS layers will be completed and delivered to BES no later than April 30 of each year following the prior field season. All data collection and analysis will be completed and delivered to BES no later than March 31, 2023. Preliminary findings will be provided as available to meet any interim needs of the City. ODFW will provide technical assistance at any time.

Task 2: Conduct stream habitat surveys in the Columbia Slough within the Portland metropolitan area using the ODFW's draft methodology for large, non-wadeable streams using side-scan sonar.

Aquatic habitat surveys are designed to describe geomorphic, instream, and riparian features important to native salmonids. ODFW's existing survey protocol described in the *Methods for Stream Habitat surveys: Aquatic Inventory Project* is limited to wadeable stream channels. ODFW's AQI is currently developing and testing an alternative survey protocol that uses side-scan sonar to map and characterize aquatic habitat in non-wadeable stream channels. As with the

wadeable protocol, the non-wadeable protocol will describe channel morphology, instream habitat character, and riparian conditions.

The non-wadeable survey protocol is still under development and has not yet been finalized by ODFW. AQI will be developing and testing the non-wadeable survey protocols in the Columbia Slough. BES will work collaboratively on this endeavor by assisting with access, equipment, and other resources at their disposal. ODFW will conduct the surveys of the Columbia Slough in kind, however, future changes or additional surveys may be charged at cost upon written agreement between both parties. BES will receive the data and analytical results from this effort. Future surveys (or re-surveys) in these non-wadeable waters may be conducted depending on funding, timelines, and needs of BES.

The total combined survey distance is approximately 40 km, which includes both primary and secondary channels. BES will provide ODFW with a map of proposed survey reaches with specified priorities for surveying. BES and ODFW recognize that the priority, listed streams, and distances above may change due to landowner permissions, safety concerns, or other unforeseen circumstances. Both parties will communicate any necessary modifications to the proposed streams to the other in a timely manner.

Deliverables: ODFW provide BES with the survey data and analytical results from this effort.

Schedule: ODFW will conduct stream surveys in the Slough during the spring of 2019. ODFW will coordinate with BES when scheduling the surveys to facilitate site access and coordinate resources.

Task 3: BES Coordination of stream habitat surveys in an expanded survey area outside of the city of Portland.

Task 3 allows for the survey area to include streams beyond the City's urban services boundary (and not identified in Task 1) to further support integrated watershed management. Survey's conducted under Task 3 will follow the same processes and procedure as outlined in Task 1. Neither the City or ODFW are required to utilize the language found in this section to enter into Agreements with outside agencies or organizations to perform this Work and will only do so after consultation with the other.

Funding for any surveys performed under Task 3 will be supplied by outside agencies or organizations through other Agreements. The City's contribution to this task, other than the work outlined herein, is limited to work in kind.

For Task 3, BES will act as the Fiscal Intermediary (FI) body between ODFW and the outside agencies or organizations. FI tasks include:

- Receiving invoicing from ODFW for services rendered under Task 3,
- Submitting invoicing to outside agencies or organizations as applicable and within 30 days of receiving invoicing,
- Receiving payment from outside agencies or organizations per the terms of their individual Agreements, and

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- Submitting payment to ODFW for services rendered under Task 3 within 30 days of receiving payment from outside agencies or organizations.

In addition to serving as FI for Task 3, BES agrees to coordinate with ODFW and outside agencies or organizations on survey scheduling as needed.

Deliverables and Schedule will follow the general parameters as those found in Task 1. BES reserves the right to adjust the schedule and deliverables as needed in consultation with ODFW per the terms of the individual Agreements with each outside agency or organization.

Exhibit B

Task 1 Budget (per field crew)

All costs shown are Not to Exceed (NTE), as such, final billed costs may not equal the totals shown below but may not exceed those totals. ODFW budgets are based on the number of field crews deployed for data collection. The budget for Task 1 is based on the deployment of five (5) field crews.

Personnel Costs	Per Field Crew Estimated Cost	Total NTE
EBA-Field Surveyor (1517.150)	\$20,181	\$100,905
EBA-Field Surveyor (1517.156)	\$20,181	\$100,905
NRS-2 Crew Leader (2020.097)	\$28,270	\$141,350
Personnel Costs Sub-Total	\$68,632	\$343,160
Travel		
Vehicles	\$5,000	\$25,000
Commercial and Non-Commercial Travel	\$2,200	\$11,000
Travel Sub-Total	\$7,200	\$36,000
Supplies		
Office supplies & network	\$550	\$2,750
Field supplies	\$800	\$4,000
Cell phone	\$250	\$1,250
Supplies Sub-Total	\$1,600	\$8,000
Services		
Safety Training	\$100	\$500
Total Direct Costs NTE	\$77,532	\$387,660
Maximum Indirect Cost NTE (28.64% of Billed Direct Costs)	\$22,205	\$111,026
Total Project NTE	\$99,737	\$498,686

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No budget is included at this time for Task 2. ODFW will conduct the surveys of the Columbia Slough described in Task 2 as work in kind, however, future changes or additional surveys may be charged at cost upon written agreement between both parties.

Task 3 Budget

Funding for any surveys performed under Task 3 will be supplied by outside agencies or organizations through other Agreements. The City's contribution to this task, other than the work outlined in the Task 3 scope, is limited to work in kind.