

CITY OF PORTLAND
PRICE AGREEMENT FOR SERVICES
for
PORTLAND HARBOR SUPERFUND SITE TECHNICAL ASSISTANCE

Price Agreement Number: _____

As authorized by 5.68 and Ordinance _____, this Price Agreement is made effective on _____ (“Effective Date”) by and between the City of Portland (“City”), a municipal corporation of the State of Oregon, and Groundwater Solutions Inc., dba GSI Water Solutions, Inc. (“Contractor”), an Oregon corporation, by and through their duly authorized representatives. This Price Agreement may refer to the City and Contractor individually as a “Party” or jointly as the “Parties.”

The initial Term of this Price Agreement shall be from the Effective Date through September 30, 2025, with the City’s option to extend for an additional 5 years, for a total not to exceed 10 years. The total not-to-exceed amount under this Price Agreement for the initial Term shall be \$1,650,000.

Services shall be performed at direction the Office of the City Attorney. Administration of the Price Agreement and facilitation for delivery of Services shall be by the City’s Project Manager. Party contacts and Contractor’s and City’s Project Manager for this Price Agreement are:

For City of Portland:	For Contractor:
Name: Dawn Sanders	Name: Kathy Roush
Title: Technical Program Manager	Title: Principal
Address: 1120 SW Fifth Ave	Address: 55 SW Yamhill, Suite 400
City, State: Portland, OR	City, State: Portland, OR
e-mail: dawn.sanders@portlandoregon.gov	e-mail: kroush@gsi.com
Copy to: Mark Ariza	Copy to: BES Contracts Division
Procurement Services	Bureau of Environmental Services
1120 SW 5 th Ave.	888 SW 5 th Ave.
Portland OR 97204	Portland OR 97204

Scope and Consideration

- (a) Contractor shall perform the Services and provide the Deliverables set forth in the Statement of Work by the due dates specified in the Price Agreement.

(b) NON-EXCLUSIVE AGREEMENT/PRICE AGREEMENT (6/2020): The City may, but is not required, to purchase Services under this Price Agreement. Services will be requested on an as

needed basis, therefore there is no guarantee of Services requested under any resulting agreement. This Price Agreement does not establish an exclusive arrangement between the City and Contractor, and the City retains the right to purchase the same or similar Services from other providers.

(c) Payments shall be made to Contractor according to the schedule identified in Exhibit A, the Contractor's Price.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1 DEFINITIONS (10/19)

General Definitions. (11/18) These definitions apply to the entire Price Agreement, subsequent Amendments, and any Change Orders or Task Orders, unless modified in an Amendment. If any definition contains a substantive provision conferring rights and/or obligations upon a Party, then effect shall be given to the substantive provision.

"Acceptance" (10/19) means the Deliverable demonstrates to the City's satisfaction that the Deliverable conforms to applicable Documentation, Contractor's representations, and the City's Specifications.

"Affiliates" (11/18) means, for Contractor, any individual, association, partnership, corporation or other entity controlling, controlled by, or under common control. The term "control" means the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract, agreement or otherwise.

"Amendment" (12/18) means a written document required to be signed by both Parties when in any way altering the Master Terms and Conditions of the Price Agreement, Price Agreement amount, or substantially altering a Statement of Work.

"Business Day" (11/18) means a twenty-four hour day, excluding weekends and City holidays, beginning at midnight and ending at midnight twenty-four hours later.

"Calendar Day" (11/18) means a twenty-four hour day, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later.

"Change Order" (12/18) means a document, agreed and signed by both Parties, that changes an existing Statement of Work or Task Order. Change Orders cannot change Price Agreement amount or Master Terms and Conditions.

"COBID Certified" (09/2020) means an entity certified by the State of Oregon Certification Office for Business Inclusion and Diversity as a Disadvantaged, Minority-owned, Women-owned, Service-disabled Veteran Owned, or Emerging Small Business.

“Confidential Information” (06/2020) means any information that is disclosed in written, graphic or machine-recognizable form and is marked or labeled at the time of disclosure as being Confidential or its equivalent, or, if the information is in verbal or visual form, it is identified as Confidential or proprietary at the time of disclosure, or a reasonable time thereafter. Information shall always be considered Confidential Information, whether or not it is marked or identified as such, if it is described by one or more of the following categories: (1) non-public financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Information Protection Act; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.345(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) information which is exempt from disclosure per Oregon Public Records Law; (6) all communications, documents, and information of any type or format that is obtained directly or indirectly subject to the attorney/client privilege, attorney work product doctrine, joint defense privilege, common interest privilege, or is confidential pursuant to agreements to which the City is a party; (7) information which is exempt per federal laws (including but not limited to copyright, HIPAA); and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems including without limitation, data and information systems, any software code and related materials and processes, Customizations, Configurations, Updates, Upgrades; and any Documentation. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving Party; is already lawfully known to the receiving Party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Price Agreement or any other agreement between the Parties or of any applicable protective or similar order, in the receiving Party’s possession without any obligation restricting disclosure; is independently developed by the receiving Party, as shown by reasonable written documentation, without breach of this Price Agreement; or is explicitly approved for release by written authorization of the disclosing Party.

“Price Agreement” (11/18) means the Master Terms and Conditions including all exhibits, attachments and schedules and their constituent parts listed in the Order of Precedence or incorporated by reference.

“Price Agreement Price” (10/19) means the not-to-exceed price agreed upon by the Parties for all Services.

“Deliverable(s)” (11/18) means the Services, Documentation or documents or tangible work products described in the Statement of Work to be provided to the City by Contractor under this Price Agreement.

“Documentation” (10/19) means user manuals and other written materials in any form that describe the features or functions of the Deliverables and Services, including but not limited to published specifications, online instructions and help, marketing materials, technical manuals, and operating instructions provided by Contractor to the City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Price Agreement.

“Defect” (10/19) means any error, problem, condition, bug, or other partial or complete inability of a Service, Deliverable or component thereof, to operate in accordance with the applicable Specifications.

“Final Acceptance” (11/18) means the City has determined that all Deliverables conform to applicable Documentation, Contractor’s representations, and the City’s Specifications.

“Force Majeure Event” (11/18) means an exceptional, unforeseeable, and unavoidable occurrence beyond the reasonable control of the affected Party, such as, riots, epidemics, war, government regulations, labor disputes, fire, natural phenomena, or other causes beyond such Party’s reasonable control.

“Intellectual Property Rights (IPR)” (11/18) means any patent rights, copyrights, trade secrets, trade names, service marks, trademarks, trade dress, moral rights, know-how and any other similar rights or intangible assets to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations, or reissues of the foregoing now or hereafter in force.

“Key Personnel” (11/18) means the specific individuals identified in Section 3.11 to fill Key Positions.

“Key Position” (11/18) means a job position critical to the success of the Project as identified in Section 3.11 of this Price Agreement.

“Master Terms and Conditions” (11/18) means the body of text from the preamble through the signature page of this Price Agreement.

“Material Breach” (11/18) means any breach of this Price Agreement that causes, caused, or may cause substantial harm to the non-breaching Party or substantially deprives the non-breaching Party of the benefit it reasonably expected under this Price Agreement.

“Personally Identifiable Information (PII)” (06/2020) means information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context, as described in the Oregon Consumer Information Protection Act.

“Project” (10/19) means the overall delivery of the Services including, without limitation, design, development, integration, implementation, testing, support, and any Deliverables any of which Contractor may be providing in whole or in part.

“Services” (10/19) means ordinary or professional services performed by Contractor under this Price Agreement.

“Specifications” (10/19) means the most current cumulative statement of requirements for Deliverables as set out in Task Orders, Change Orders, the Statement of Work, Documentation, and Contractor’s representations.

“Statement of Work” (SOW) (10/19) means the written detailed specifications of the Services(s) to be delivered to the City by Contractor, including any Change Orders or Task Orders subject to the terms and conditions of this Price Agreement.

“Subcontractor” (11/18) means any person or entity under the control of Contractor, other than an employee of Contractor, utilized by Contractor to perform all or part of this Price Agreement.

“Task Order” (10/19) means any written request or document issued by the City and signed by both Parties for additional Service(s) to be provided under this Price Agreement. Task Orders may include the description of Services, price, payment schedule, Project and performance schedule, due dates, milestones and Deliverables.

“Term” (11/18) means the period of time that this Price Agreement is in effect as stated on page one.

SECTION 2 ORDER OF PRECEDENCE

2.1 Order of Precedence. (09/17) In the event there is a conflict or ambiguity between the terms and conditions of one portion of this Price Agreement with another portion of this Price Agreement, the conflict or ambiguity will be resolved in accordance with the order of precedence below. This order of precedence designates which portion of the Price Agreement takes precedence over the other for purposes of interpretation. Contractor’s hyperlinks contained herein will not supersede or alter the Master Terms and Conditions. For the avoidance of doubt, no other terms and conditions will override the Parties’ obligations in the Confidentiality, Indemnification, or Choice of Law provisions in these Master Terms and Conditions. In this Price Agreement the order of precedence shall be:

1. Amendments
2. Master Terms and Conditions
3. Exhibit A, Contractor’s Price
4. Exhibit F, Change Orders
5. Exhibit E, Task Orders
6. Exhibit B, Statement of Work

SECTION 3 GENERAL AND ADMINISTRATIVE PROVISIONS

3.1 Term. (09/17) This Price Agreement shall begin on the Effective Date and end upon the expiration date set forth on page one of this Price Agreement unless terminated or extended under the applicable Price Agreement provisions.

3.2 Point of Contact. (09/17) Contractor shall be the sole point of contact for the City with regard to this Price Agreement.

3.2.1 Written Notifications. (10/18) All notices to, and other written communication between the Parties shall be deemed received five (5) Business Days after being sent by first class mail, or upon receipt when sent by courier services, or by e-mail. All notices and written communications shall be sent to the Parties set forth on page 1 of the Price Agreement, or to such other places as they may designate by like notice from time to time. Each Party shall provide written notice of any changes to the Party's contacts within thirty (30) Calendar Days.

3.3 Changes to Price Agreement.

Amendment of the Price Agreement. (06/19) Any changes to the provisions of this Price Agreement shall be in the form of an Amendment. No provision of this Price Agreement may be amended unless such Amendment is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. If the requirements for Amendment of this Price Agreement as described in this section are not satisfied in full, then such Amendments automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect. The Director of the Bureau of Environmental Services, or the Director's Designee, is authorized to execute amendments to the agreement to the extent authorized by Council.

3.3.1 Change Orders to a Statement of Work. (12/18) The City and Contractor can agree to make changes, at any time to a Statement of Work or Task Order in the form of a Change Order. Contractor agrees to timely alter the delivery of Services accordingly. If such changes materially increase or decrease Contractor's obligations, the Parties shall execute an Amendment to the Price Agreement, and if the amount of such adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified amount.

3.4 Time is of the Essence. (06/19) The Parties agree that time is of the essence as to the delivery of Deliverables and performance of Services under this Price Agreement. By executing this Price Agreement and accepting the Statement of Work, Contractor agrees that the time limits specified in the Statement of Work are reasonable. By accepting late or otherwise inadequate performance of Contractor's obligations, the City will not waive its rights to require timely performance of Contractor's obligations thereafter.

3.4.1 Late Delivery. (10/19) In the event that any specified delivery date is not met, Contractor shall be liable for any loss, expense, or damage resulting from delay in delivery or failure to deliver Deliverables or provide Services which is due to any cause except as set forth in Force Majeure. In the event of delay due to any such cause, the City may obtain substitute Services from another source and bill all additional costs directly to Contractor who shall remain financially liable for all additional acquisition costs.

- 3.4.2 Best Efforts. (10/19) Contractor shall use best efforts to minimize any delay in the provision of Deliverables or performance of Services. If Contractor anticipates any delay that may prevent timely performance of Contractor's obligations under this Price Agreement, Contractor shall promptly notify the City, including the anticipated length of the delay, the cause of the delay, measures proposed or taken to prevent or minimize the delay, and the timetable for implementation of such measures.
- 3.5 City Reporting Requirements. (12/18) The City is required to track certain types of contract data for reporting purposes. Items which the City must report on may include, but are not limited to, Subcontractor utilization, participation of COBID-Certified firms, and Subcontractor/Supplier Payment. If Contractor uses Subcontractors, Contractor shall comply with the City's reporting requirements.
- 3.6 Payment. (09/17) Payment(s) shall be in accordance with the payment schedule set forth in Exhibit A: Contractor's Price.
- 3.6.1 Payment shall be issued by the City net thirty (30) Calendar Days from receipt of a complete and acceptable invoice from Contractor. Contractor invoices must contain Contractor's name and address; invoice number; date of invoice; Price Agreement number and date; description of Products and/or Services; quantity, unit price, (where appropriate), and total amount; City-required reporting, if any, and the title and phone number of the person to whom payment is to be sent. The City may stipulate how line items are entered on an invoice to ensure compatibility with the City's accounting and financial systems and to facilitate payment to Contractor.
- 3.6.2 The City makes payments via electronic fund transfers through the Automated Clearing House (ACH) network. To initiate payment of invoices, Contractor shall execute the City's standard ACH Vendor Payment Authorization Agreement. Upon verification of the data provided, the ACH Vendor Payment Authorization Agreement will authorize the City to deposit payment directly into specified Contractor accounts with specified financial institutions. All payments shall be made in United States currency.
- 3.7 Payment of Taxes/Contractor Shall Withhold. (09/17) Contractor shall, at its own expense, timely (a) pay all salaries, wages, and other compensation to its employees; (b) withhold, collect, and pay all applicable federal, state, and local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance and any other taxes or charges in connection with its employees; and (c) provide and pay for workers compensation insurance and any statutory or fringe benefits to employees. Contractor shall be solely responsible for all such obligations for its employees. Contractor shall also ensure that any Subcontractor shall

comply with the foregoing obligations for its employees. The City shall have no duty to pay or withhold such obligations.

3.8 Records and Audits (06/19)

3.8.1 Records Retention. (06/19) Contractor shall maintain current financial records in accordance with Generally Accepted Accounting Principles (GAAP). Contractor agrees to maintain and retain and retain all financial records, supporting documents, statistical records and all other records pertinent to this Price Agreement during the term of this Price Agreement and for a minimum of ten (10) years after the completion of remedial action within the Portland Harbor Superfund Site or until the resolution of all audit questions or claims, whichever is longer. Contractor must retain all non-identical copies of the last draft or final version of any records (including records in electronic form) in the Contractor's possession or control or that came into their possession or control that relate in any manner to the performance of work under this Contract. Contractor must retain copies of all data generated during the performance of the work and not contained in the aforementioned records required to be retained. At the conclusion of the ten (10) year document retention period, the Contractor shall notify the City at least 120 days prior to the destruction of any such records, and, upon request by the City, deliver any such records to the City.

3.8.2 City Audits. (06/19) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and Products or Services at any time in the course of the Price Agreement and during the records retention period listed above. Audits shall 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.

3.8.3 Access to Records. (06/19) The City may examine, audit and copy Contractor's books, documents, papers, and records relating to this Price Agreement at any time during the records retention period listed above upon reasonable notice. Copies of applicable records shall be made available upon request.

3.9 Overpayment. (09/17) If an audit discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, then Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices.

3.10 Independent Contractor. (09/17) Contractor is independent of the City and, accordingly, this Price Agreement is not entered into as a joint venture, partnership, or agency between

the Parties. No employment or agency relationship is or is intended to be created between the City and any individual representing Contractor. Employees of Contractor and any authorized Subcontractors shall perform their work under this Price Agreement under Contractor's sole control.

3.11 Personnel.

3.11.1 Key Positions and Personnel. (09/17) For the period of performance until the Term of this Price Agreement has been completed, the Parties have identified Key Positions and Key Personnel as set forth in the table below, along with the percentage of their time to be allocated to the City's Project:

Name	Title/Role
Kathy Roush	Principal Hydrogeologist
Genevieve Schutzius	Environmental Engineer
Rachel McDermott	Environmental Scientist

3.11.2 Substitution of Key Personnel. (09/17) Contractor shall make no substitutions of Key Personnel unless the substitution is necessitated by law, illness, death, resignation, or termination of employment. Contractor shall notify the City within ten (10) Calendar Days after the occurrence of any of these events.

Any substitutions or replacements of Key Personnel require the written approval of the City. Contractor shall provide the City with the maximum possible period of notice of substitution or replacement of Key Personnel in order to allow for background screening, fingerprint checks, and other investigation as may be required in Section 3.11.3.

For any proposed substitute or replacement Key Personnel, Contractor shall provide the following information to the City: a detailed explanation of the circumstances necessitating the proposed substitution or replacement, a complete resume for the proposed substitute(s), and any additional information requested by the City. Proposed substitutes or replacements should have qualifications comparable to or better than those of the persons being replaced. No change in Price Agreement prices may occur as a result of substitution or replacement of Key Personnel.

3.11.3 Security Requirements for Personnel. (09/17) If required by the City, Contractor shall conduct a criminal history/records check of all personnel that will have access to City information, systems, or payments and ensure ongoing security requirements for personnel are maintained.

- 3.12 Termination. (06/19) The following conditions apply to termination of this Price Agreement. The City, on thirty (30) Calendar Days' written notice to Contractor, may terminate this Price Agreement for any reason in the City's sole discretion. In the event of such termination, the City shall pay to Contractor the portion of the not-to-exceed price attributable to all Deliverables Accepted or Services performed and Accepted through the effective date of the termination. In the event of termination all of Contractor's Work Product to date shall be delivered to the City, and it will become and remain property of the City.
- 3.13 Mutual Agreement. (09/17) The City and Contractor, by mutual written agreement, may terminate this Price Agreement at any time.
- 3.14 Material Breach. (09/17) Either Party may terminate this Price Agreement in the event of a Material Breach of this Price Agreement by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice to cure the Material Breach and of the Party's intent to terminate. If the Party has not entirely cured the Material Breach within thirty (30) Calendar Days of the notice, then the Party giving the notice shall have the option to: (a) terminate this Price Agreement by giving a written notice of termination, (b) seek any remedies in this Price Agreement, in law, or at equity, to the extent not otherwise limited by the terms of this Price Agreement, or (c) any combination thereof.
- 3.15 Force Majeure. (09/17) Either Party may terminate this Price Agreement due to a Force Majeure event as set forth in Section 5.12, Force Majeure.
- 3.16 Bankruptcy. (09/17) The City may terminate this Price Agreement if Contractor: (a) becomes insolvent, makes a general assignment for the benefit of creditors; (b) suffers or permits the appointment of a receiver for its business or assets; (c) becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, and such proceeding has not been dismissed within a sixty (60) Calendar Day period; or (d) has wound up or liquidated, voluntarily or otherwise.
- 3.17 Void Assignment. (09/17) In the event that Contractor assigns its obligations under this Price Agreement to a third party in a manner other than as set forth in Section 5.7, Assignment, the City shall have the option to terminate this Price Agreement without any notice or cure period or further obligation to Contractor or the assignee, and promptly receive a refund for fees paid for Products delivered and/or Services performed by the third party.
- 3.18 Waiver. (09/17) No waiver of any breach of this Price Agreement shall be held to be a waiver of any other or subsequent breach of this Price Agreement. The failure of either Party to insist upon any of its rights under this Price Agreement upon one or more

occasions, or to exercise any of its rights, shall not be deemed a waiver of such rights on any subsequent occasions.

- 3.19 Severability. (09/17) Any section of this Price Agreement which is held or declared void, invalid, illegal or otherwise not fully enforceable shall not affect any other provision of this Price Agreement and the remainder of this Price Agreement shall continue to be binding and of full force and effect. This Price Agreement shall be binding upon and inure to the benefit of the City and its successors and assigns.
- 3.20 Business Tax Registration. (09/17) Contractor shall register for a City of Portland business license as required by Chapter 7.02 of the Code of the City of Portland prior to execution of this Price Agreement. Additionally, 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 Price Agreement. Failure to be in compliance may result in payments due under this Price Agreement to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.
- 3.21 EEO Certification. (09/17) Contractor shall be certified as an Equal Employment Opportunity Affirmative Action Employer as prescribed by Chapter 5.33.076 of the Code of the City of Portland and maintain its certification throughout the term of this Price Agreement.
- 3.22 Non-Discrimination in Benefits. (09/17) Throughout the term of this Price Agreement, Contractor shall provide and maintain benefits to its employees with domestic partners equivalent to those provided to employees with spouses as prescribed by Chapter 5.33.077 of the Code of the City of Portland.
- 3.23 Sustainability. (12 /18) Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, Contractor is encouraged to incorporate these Principles into its scope of work with the City wherever possible. Therefore, in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of Products or Services that help to minimize the human health and environmental impacts of City operations. Contractor is encouraged to incorporate environmentally preferable Products or Services into its work performance wherever possible. "Environmentally preferable" means Products or Services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the Product or Service.

- 3.24 Packaging. (09/17) All packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, readily recyclable in local recycling programs, is made from recycled materials, and/or is collected by Contractor for reuse/recycling.
- 3.25 News Releases and Public Announcements. (09/17) Contractor shall not use the City seal or other representations of the City in its external advertising, marketing, website, or other promotional efforts, nor shall Contractor issue any news release or public announcements pertaining to this Price Agreement or the Project without the express written approval of the City. Such approval may be withheld in the City's sole discretion. Contractor shall not use the City seal without specific written permission from the City Auditor.
- 3.26 Rule of Construction/Price Agreement Elements/Headings. (09/17) This Price Agreement has been drafted by the City in the general format by the City as a convenience to the Parties only and shall not, by reason of such action, be construed against the City. Section headings are for ease of reference and convenience only and shall not affect or enter into the interpretation of any portion of this Price Agreement.
- 3.27 Survival. (09/17) All obligations relating to Confidential Information; indemnification; publicity; representations and warranties; remedies; proprietary rights; limitation of liability; and obligations to make payments of amounts that become due under this Price Agreement prior to termination or expiration shall survive the termination or expiration of this Price Agreement and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between Contractor and the City.

SECTION 4 STATUTORY REQUIREMENTS, PUBLIC RECORDS AND CONFIDENTIALITY

- 4.1 Governing Law and Jurisdiction. (09/17) This Price Agreement shall be construed according to the laws of the State of Oregon without reference to the conflict of laws' provisions. Any litigation between the City and Contractor arising under this Price Agreement or out of work performed under this Price Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.
- 4.2 Public Records Request. (09/17) Contractor acknowledges that the City of Portland is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information Contractor submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The City's commitments to maintain certain information confidential under this Price Agreement are all subject to the constraints of Oregon and

federal laws. All information submitted by Contractor is public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which Contractor requests and meets an exemption from disclosure consistent with federal or Oregon law. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.

4.3 Public Records. (09/17) The City will retain one (1) copy of any public records for the express purposes of complying with State of Oregon and Portland City Code public records and archiving laws.

4.4 Confidentiality.

4.4.1 Contractor's Confidential Information. (08/19) During the term of this Price Agreement, Contractor may disclose to the City, certain Contractor Confidential Information pertaining to Contractor's business. Contractor shall be required to mark Confidential Information CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked, or the Contractor's Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Price Agreement itself shall not be considered Confidential Information. Subject to Section 4.2, the City shall: (1) limit disclosure of Contractor Confidential Information to those directors, employees, contractors and agents of the City who need to know the Contractor Confidential Information in connection with the City Project and who have been informed of confidentiality obligations at least as strict as those contained in this Price Agreement, and (2) exercise reasonable care to protect the confidentiality of the Contractor Confidential Information, at least to the same degree of care as the City employs with respect to protecting its own proprietary and confidential information.

4.4.2 City's Confidential Privileged Information. (08/19) All communications, deliverables, and other documents exchanged under this contract shall be considered Confidential Information unless the City explicitly identifies it as non-Confidential Information. Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use City Confidential Information exclusively for the City's benefit in the performance of this Price Agreement. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Contractor shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees, subcontractors

and agents of Contractor who need to know the City Confidential Information in connection with the City Project and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Price Agreement, (2) exercise reasonable care to protect the confidentiality and applicable privileges of the City Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary, privileged and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use the Intellectual Property Rights of the City without the City's prior written consent. All employees of Contractor or Subcontractors providing Deliverables or Services to the City pursuant to this agreement shall sign a Portland Harbor Confidentiality Agreement, attached as Exhibit D to this Price Agreement.

- 4.4.3 Scope. (09/17) This Price Agreement shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. Contractor's confidentiality obligations under this Price Agreement shall survive termination or expiration of this Price Agreement.
- 4.4.4 Equitable Relief. (12/18) Contractor acknowledges that unauthorized disclosure of City Confidential Information will result in irreparable harm to the City. In the event of a breach or threatened breach of this Price Agreement, the City may obtain injunctive relief prohibiting the breach, in addition to any other appropriate legal or equitable relief. The Parties agree that, notwithstanding any other section of this Price Agreement, in the event of a breach or a threatened breach of Price Agreement terms related to Confidential Information or Intellectual Property Rights, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.
- 4.4.5 Discovery of Documents. (06/19) In the event a court of competent jurisdiction orders the release of Confidential Information submitted by one Party, the other Party will notify the Party whose Confidential Information is being requested to be disclosed of the request. The Party receiving the request shall allow the other Party to participate in the response at its own expense. Each Party will comply with any effective court order.

SECTION 5 CONTRACTOR PERFORMANCE AND WARRANTIES

5.1 General Warranties. (09/17) Contractor makes the following warranties:

- 5.1.1 Capacity. (09/17) Contractor warrants it has the legal authority and capacity to enter into and perform this Price Agreement.
- 5.1.2 Authority to Conduct Business. (08/19) Contractor warrants it is lawfully organized and constituted and duly authorized to operate and do business in all places where it shall be required to do business under this Price Agreement, and that it has obtained or will obtain all necessary licenses and permits required in connection with this Price Agreement.
- 5.1.3 Disclosure of Litigation. (09/17) Contractor warrants that as of the Effective Date there are no suits, actions, other proceedings, or reasonable anticipation thereof, in any judicial or quasi-judicial forum that will or may adversely affect Contractor's ability to fulfill its obligations under this Price Agreement. Contractor further warrants that it will immediately notify the City in writing if, during the Term of this Price Agreement, Contractor becomes aware of, or has reasonable anticipation of, any lawsuits, actions, or proceedings in any judicial or quasi-judicial forum that involves Contractor or any Subcontractor and that will or may adversely affect Contractor's ability to fulfill its obligations under this Price Agreement.
- 5.1.4 Conflict of Interest. (09/17) Contractor warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under this Price Agreement. Contractor warrants that it has disclosed any potential conflicts in Exhibit C and acknowledges its ongoing obligation to disclose potential conflicts to the City. Contractor agrees that all Key Personnel or other employees performing work under this Price Agreement may be individually evaluated to ensure that they have no conflict of interest with their duties under this Price Agreement.
- 5.1.5 Compliance with Applicable Law. (09/17) Contractor warrants it has complied and shall comply with all applicable federal, state, and local laws and regulations of its domicile and wherever performance occurs during the term of this Price Agreement. Contractor warrants it is currently in compliance with all tax laws.
- 5.1.6 Public Contracts. (09/17) Contractor shall observe all applicable state and local laws pertaining to public contracts. ORS Chapters 279A and 279B require every public contract to contain certain provisions. To the extent applicable,

ORS 279B.220, 279B.230 and 279B.235 are incorporated into this Price Agreement by reference.

- 5.1.7 Compliance with Civil Rights Act. (09/17) Contractor warrants it is in compliance with Title VI of the Civil Rights Act of 1964 and its corresponding regulations as further described at: <http://www.portlandoregon.gov/bibs/article/446806>
- 5.1.8 Respectful Workplace Behavior. (09/17) The City is committed to a respectful work environment, free of harassment, discrimination and retaliation and other inappropriate conduct. Every individual has a right to work in a professional atmosphere where all individuals are treated with respect and dignity. The City's HR Rule 2.02 covers all employees of the City as well as contractors, vendors or consultants who provide services to the City of Portland. Contractor warrants its compliance with terms and conditions HR 2.02 as further described at: <https://www.portlandoregon.gov/citycode/27929>
- 5.2 Grant Funding. (02/18). This Price Agreement is currently not using grant funding. However, in the event that City acquires or uses grant funding to pay for any portion of this Price Agreement, the City and Contractor agree to Amend the Price Agreement to include the federally required terms and conditions. General grant terms may be found at <http://www.portlandoregon.gov/bibs/article/455735>
- 5.3 Compliance with Non-Discrimination Laws and Regulations.
- 5.3.1 Nondiscrimination. (06/19) Pursuant to all City, State, and federal non-discrimination and civil rights laws, Contractor, with regard to the work performed by it during this Price Agreement, shall not discriminate on the grounds of race, color, national origin, including limited English proficiency, sex, sexual orientation, gender identity, age, religion or non-religion, disability, marital status, family status, or source of income, including in employment practices, the selection and retention of subcontractors, including procurements of materials and leases of equipment.
- 5.3.2 Solicitations for Subcontractors, Including Procurements of Materials and Equipment. (06/19) In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Price Agreement relative to nondiscrimination on the grounds of race, color, national origin, sex, sexual orientation, age, religion, disability, marital status, or family relationships.

- 5.3.3 Sanctions for Noncompliance. (09/17) In the event of Contractor's noncompliance with the nondiscrimination provisions of this Price Agreement, the City shall impose such contract sanctions as it or any state or federal agency may determine to be appropriate, including, but not limited to withholding of payments to Contractor under this Price Agreement until Contractor complies, and/or cancellation, termination, or suspension of this Price Agreement, in whole or in part.
- 5.3.4 ADA Compliance. (07/18) Contractor shall comply with the Americans With Disabilities Act (ADA), including any duty the ADA may impose on City or Contractor as a result of the Products, Services or activities requested to be provided for City under this Agreement.

At minimum, Contractor shall do the following:

Contractor shall document each ADA request for modification to the Products or Services and Contractor's fulfillment of the request. If Contractor determines that it is unable to promptly fulfill the request for modification under the ADA, Contractor will contact the City Price Agreement manager within the same business day, proving reasons why Contractor is unable to fulfill the request for modification and to identify alternate accessibility options that Contractor can perform.

Within ten (10) Business Days after receipt, City and Contractor shall advise the other Party in writing, and provide the other Party with copies (as applicable) of any notices alleging violation of or noncompliance with the ADA relating to the Agreement, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to the Agreement or the programs, Products, Services or activities that Contractor is undertaking for City under this Agreement.

- 5.3.5 Required Reporting. (05/19) If any person or class of persons files a complaint with Contractor alleging discrimination under Title VI of the Civil Rights Act of 1964 (race, color, or national origin, including limited English proficiency), Contractor will notify the City of Portland of the complaint and cooperate with any investigation related to the complaint. Notifications shall be sent to Title VI Program Manager, 421 SW 6th Ave, Suite 500, Portland, Oregon 97204, or title6complaints@portlandoregon.gov.

- 5.4 Service(s) and Deliverables Warranties. (10/19) Contractor makes the following warranties:
- 5.4.1 No Third-Party Conflict or Infringement. (01/19) As of the Effective Date, Contractor warrants the execution and performance of this Price Agreement, shall not contravene the terms of any contracts with third parties or any third-party Intellectual Property Right; and, as of the Effective Date of this Price Agreement, there are no actual or threatened legal actions with respect to the matters in this provision. Contractor agrees to promptly notify the City, in writing, if during the Term of the Price Agreement, a potential third-party conflict or infringement of third-party Intellectual Property Rights arises.
 - 5.4.2 No Encumbrances. (08/19) All Deliverables provided by Contractor under this Price Agreement shall be transferred to the City free and clear of any and all restrictions of transfer or distribution and free and clear of any and all liens, claims, security interests, liabilities and encumbrances of any kind.
 - 5.4.3 Conformance with Specifications. (01/19) Contractor warrants that the Deliverables and Services shall operate in conformance with the Specifications.
 - 5.4.4 Compliance with Law. (10/19) Contractor warrants that the Deliverables conform to all requirements of applicable law, including all applicable health, safety, privacy, data security and environmental laws and regulations.
 - 5.4.5 Industry Standards. (10/19) Contractor warrants that the Services performed under this Price Agreement will meet the standards of skill and diligence normally employed by persons performing the same or similar services.
 - 5.4.6 Substitution or Modification of Products at No Charge. (03/19) In the event that Contractor substitutes or modifies the Deliverables, Contractor shall ensure that the new or modified Deliverables shall conform in all aspects to the Specifications. Such substitutions or modifications shall in no way degrade the performance or functionality of the Deliverables and shall not result in additional cost to the City.
- 5.5 No Waiver of Warranties or Representation. (10/19) Performance of Services shall not be construed to represent Acceptance nor relieve Contractor from its responsibility under any representation or warranty. If the City makes a payment prior to Final Acceptance, the payment does not grant a waiver of any representation or warranty by Contractor.
- 5.6 No Third Party to Benefit. (09/17) This Price Agreement is entered into for the benefit of the City and Contractor. Except as set forth herein, nothing in this Price Agreement shall

be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a Party to this Price Agreement to maintain a suit for breach of contract, personal injuries, property damage, or any other relief in law or equity in connection with this Price Agreement.

- 5.7 Assignment. (08/19) Neither Party shall assign, transfer, or delegate all or any part of this Price Agreement, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld. For purposes of this Section, the acquisition, merger, consolidation or change in control of Contractor or any assignment by operation of law shall be considered an assignment of this Price Agreement that requires the City's prior written consent. Notwithstanding the foregoing: (a) in the event that the City's business needs change or the City enters into an agreement with a provider for outsourcing services, Contractor agrees that the City shall have the right to assign this Price Agreement to a successor of all, substantially all, or specified area(s) of the City's business, including an outsourcing provider, upon written notice to the other Party, and (b) Contractor may, without the City's consent, but upon prior written notice to the City, assign its right to payment under this Price Agreement or grant a security interest in such payment to any third party without requiring that the third party be liable for the obligations of Contractor under this Price Agreement. Any attempted assignment or delegation in violation of this Section shall be void.
- 5.8 Notice of Change in Financial Condition. (09/17) Contractor must maintain a financial condition commensurate with the requirements of this Price Agreement. If, during the Term of this Price Agreement, Contractor experiences a change in its financial condition which may adversely affect its ability to perform the obligations of this Price Agreement, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in financial condition is sufficient grounds for terminating this Price Agreement.
- 5.9 Notice of Change in Ownership. (09/17) If, during the Term of this Price Agreement, Contractor experiences a change in ownership or control, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in ownership or control is sufficient grounds for terminating this Price Agreement.
- 5.10 Subcontractors. (10/19) Contractor shall not subcontract any work under this Price Agreement without the City's prior written consent. Contractor shall be fully responsible for the acts and omissions of its Subcontractors, including any Affiliates, at all levels, and of their agents and employees. Contractor shall ensure that all applicable provisions of this Price Agreement (including those relating to Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The City reserves the right to review any agreements between Contractor and its Subcontractors for Services authorized under this Price Agreement.

If Contractor uses Subcontractors and Contractor desires to replace any COBID-Certified Subcontractors/suppliers under this Price Agreement, all substitution requests must have approval from the City's Chief Procurement Officer before such substitutions can be made. In no event shall Contractor subcontract any work, assign any rights, or delegate any obligations under this Price Agreement

- 5.11 Flow-down Clauses. (01/19) Contractor shall include the following clauses, or substantially similar language, in its subcontracts under this Price Agreement:

Section 3.8, Records and Audits

Section 4.4, Confidentiality

Section 5.3, Compliance with Non-Discrimination Laws and Regulations

Section 6.1, Hold Harmless and Indemnification

Section 6.2, Insurance

- 5.12 Force Majeure. (01/19)

5.12.1 In the event that either Party is unable to perform any of its obligations under this Price Agreement due to a Force Majeure Event not the fault of the affected Party, the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, the performance obligations affected by the Force Majeure event shall immediately be suspended.

5.12.2 If the period of nonperformance exceeds fifteen (15) Calendar Days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Price Agreement or any Statement of Work.

5.12.3 If the period of nonperformance due to a Force Majeure Event does not exceed fifteen (15) Calendar Days, such nonperformance shall automatically extend the Project schedule for a period equal to the duration of such events. Any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event.

5.12.4 If the period of nonperformance due to Force Majeure Event is longer than fifteen (15) Calendar Days, the Parties shall negotiate options for mitigation of the Force Majeure Event.

- 5.13 Ownership of Property. (06/19) All work product produced by the Contractor under this Price Agreement 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 Consultant-Architect, and by execution of this Price Agreement, 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. Contractor hereby grants to the City a non-exclusive, perpetual, irrevocable license, with the right to sublicense, to disclose, copy, distribute, display, perform, prepare derivative works of and otherwise exploit any pre-existing Intellectual Property Rights incorporated into the Work Product(s).

SECTION 6 INDEMNIFICATION, INSURANCE, BONDING, LIQUIDATED DAMAGES

6.1 Hold Harmless and Indemnification. (08/19)

- 6.1.1 Contractor shall indemnify, defend, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, demands, suits, and actions for all losses, damages, liabilities, costs and expenses (including all attorneys’ fees and costs), resulting from or arising out of the actions, errors, or omissions of Contractor or its officers, employees, Subcontractors, or agents for all operations other than those related to professional Services under this Price Agreement.
- 6.1.2 Professional Services Indemnity. Contractor shall indemnify and hold harmless the City of Portland, its officers, agents, and employees, from all claims, demands, suits, and actions for all losses, damages, liabilities, costs and expenses (including all attorneys’ fees and costs), resulting from or arising out of the negligent actions, errors, or omissions of Contractor or its officers, employees, Subcontractors, or agents in the performance of professional Services under this Price Agreement.
- 6.1.3 Infringement Indemnity. (08/19) Contractor shall indemnify, defend, and hold harmless the City, its directors, officers, employees, and agents from and against any and all claims, demands, suits, and actions for any damages, liabilities, losses,

costs, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged misappropriation, violation, or infringement of any proprietary right or Intellectual Property Right of any person whosoever. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise.

- 6.1.4 Contractor shall indemnify, defend, and hold harmless the City against any taxes, premiums, assessments, and other liabilities (including penalties and interest) that the City may be required to pay arising from Deliverables and Services provided by Contractor under this Price Agreement. The City of Portland, as a municipal corporation of the State of Oregon, is a tax-exempt unit of local government under the laws of the State of Oregon and is not liable for any taxes.
- 6.2 Insurance. (08/19) Contractor shall not commence work until Contractor has met the insurance requirements in this section and Contractor has provided insurance certificates approved by the City Attorney. Contractor shall acquire insurance issued by insurance companies or financial institutions with an AM Best rating of A- or better and duly licensed, admitted and authorized to do business in the State of Oregon.
- 6.2.1 Insurance Certificate. (08/19) As evidence of the required insurance coverage, Contractor shall provide compliant insurance certificates, including required endorsements, to the City prior to execution of the Price Agreement. The certificates shall list the City as certificate holder. Contractor shall maintain continuous, uninterrupted coverage for the Term of this Price Agreement and to provide insurance certificates demonstrating the required coverage for the Term of this Price Agreement. Contractor's failure to maintain insurance as required by this Price Agreement constitutes a Material Breach of this Price Agreement. Contractor must notify the City in writing thirty (30) Calendar Days prior to a cancellation, non-renewal, or changes to the insurance policy.
- 6.2.2 Additional Insureds. (08/19) For commercial general liability coverage, Contractor shall provide City with a blanket additional insured endorsement form that names the City of Portland, Oregon, and its officers, agents and employees, as an additional insured. The additional insured endorsement must be attached to the general liability certificate of insurance.
- 6.2.3 Insurance Costs. (08/19) Contractor shall be financially responsible for all premiums, deductibles, self-insured retentions, and self-insurance.
- 6.2.4 Coverage Requirements. (08/19) Contractor shall comply with the following insurance requirements:

- 6.2.4.1 Commercial General Liability. (08/19) Contractor shall acquire commercial general liability (“CGL”) and property damage insurance coverage in an amount not less than \$1 million per occurrence for damage to property or personal injury arising from Contractor’s work under this Price Agreement, and an aggregate limit of not less than \$2 million.
- Required and attached Reduced by Authorized Bureau Director Waived by Authorized Bureau Director
- 6.2.4.2 Automobile Liability. (08/19) Contractor shall acquire automobile liability insurance to cover bodily injury and property damage in an amount not less than \$1 million for each accident and an umbrella or excess liability coverage of \$2 million. Contractor’s insurance must cover damages or injuries arising out Contractor’s use of any vehicle.
- Required and attached Reduced by Authorized Bureau Director Waived by Authorized Bureau Director
- 6.2.4.3 Workers’ Compensation. (08/19) Contractor shall comply with Oregon workers’ compensation law, ORS Chapter 656, as it may be amended. If Contractor is required by ORS Chapter 656 to carry workers’ compensation insurance, Contractor shall acquire workers’ compensation coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers’ compensation insurance on file with the City for the entire period during which work is performed under this Price Agreement. Contractor shall acquire workers compensation coverage in an amount not less than \$1 million each accident, \$1 million disease each employee, and \$1 million disease policy limit.
- Required and attached Proof of exemption (Complete Independent Contractor Certification Statement)
- 6.2.4.4 Professional Liability. (08/19) Contractor shall acquire insurance to cover damages caused by negligent acts, errors or omissions related to the professional Services, and performance of duties and responsibilities of the Contractor under this Price Agreement in an amount not less than \$1 million per occurrence and aggregate of \$3 million for all claims per occurrence. In lieu of an occurrence-based policy, Contractor may have claims-made policy in an amount not less than \$1,000,000 per claim and \$3,000,000 annual aggregate, if the Contractor acquires an extended reporting period or tail coverage for not less than three (3) years following the termination or expiration of the Price Agreement.

Required and attached Reduced by Authorized Bureau Director Waived by Authorized Bureau Director

- 6.2.5 Insurance Requirements for Subcontractors. (08/19) Contractor shall contractually require its Subcontractors to acquire and maintain for the duration of this Price Agreement insurance equal to the minimum coverage limits required above.
- 6.3 Rolling Estoppel. (09/17) Unless otherwise notified by Contractor, it shall be understood that the City shall have met all its obligations under this Price Agreement. The City will be conclusively deemed to have fulfilled its obligations, unless it receives written notification of a failure to meet such obligations in the next status report, or within ten (10) Business Days following such failure, whichever is sooner, and Contractor identifies the specific failure in that notification. The City's failure to meet obligations must be described in terms of how it has affected the Project schedule or a specific performance requirement of Contractor.
- 6.3.1 Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in Project timetable, the standards of performance under this Price Agreement, or the Price Agreement price, if Contractor knew of that problem and failed to provide notification to the City as set forth above or to include it in the applicable status report to the City's project manager.
- 6.3.2 In the event Contractor identifies a situation that is impairing Contractor's ability to perform for any reason, Contractor's notification should contain Contractor's suggested solutions to the situation. These suggestions should be in sufficient detail so that the City's Project Manager can make a prompt decision as to the best method of dealing with the problem and continuing the Project in an unimpeded fashion.
- 6.4 Dispute Resolution. (09/17) Contractor shall cooperate with the City to ensure that all claims and controversies which arise during this Price Agreement will be resolved as expeditiously as possible in accordance with the following resolution procedure:
- 6.4.1 Any dispute between the City and Contractor shall be resolved, if possible, by the City's Project Manager or their designee on behalf of the City and the Contractor's Project Manager on behalf of Contractor.
- 6.4.2 If the Project Manager or the Project Manager's designee and Contractor are unable to resolve any dispute within three (3) Business Days after notice of such dispute is given by either Party to the other, the matter shall be submitted to the Director of the Bureau of Environmental Services or delegate on behalf of the

City and the president of the Contractor on behalf of Contractor for resolution, if possible.

- 6.4.3 Should any dispute arise between the Parties concerning this Price Agreement that is not resolved by mutual agreement above, it is agreed that such dispute will be submitted to mandatory mediated negotiation prior to any Party's commencing arbitration or litigation. In such an event, the Parties to this Price Agreement agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.
- 6.4.4 Should an equitable solution not result from the foregoing, the City and Contractor shall be free to pursue other remedies allowed under this Price Agreement.
- 6.4.5 Unless ordered by the City to suspend performance of all or any portion of Contractor's Services, Contractor shall proceed with the performance of such Services without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures. During the pendency of any of the foregoing dispute resolution procedures, the City shall continue to make all payments that are not in dispute while having the right to withhold payments that are in dispute.
- 6.5 Remedies. (09/17) The remedies provided in this Price Agreement are cumulative and may be exercised concurrently or separately. In the event of any Material Breach by Contractor, which Material Breach shall not have been cured as agreed to between the Parties, the City shall have the ability to pursue the City's rights at law or equity. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other.
- 6.6 Cost of Cover. (09/17) In the event of termination of this Price Agreement by the City due to a Material Breach by Contractor, then the City may complete the Project itself, by agreement with another contractor, or by a combination thereof. After termination, in the event the cost of completing the Project exceeds the amount the City would have paid Contractor to complete the Project under this Price Agreement, then Contractor shall pay to the City the amount of the reasonable excess.

SECTION 7 SOFTWARE LICENSE SPECIFIC PROVISIONS

- 7.1 Application. (09/17) These provisions shall apply to all software. These provisions shall cover any third-party software supplied by Contractor except where specifically excluded.

The terms in this section supersede and prevail over any embedded, “click-wrap,” “shrink-wrap,” or hyperlinked terms of license for software.

- 7.2 Grant of License. (09/17) Contractor shall grant the City a non-exclusive license to access, use, and benefit from any software created by Contractor for the City under this Price Agreement for the Term of this Price Agreement. Except as otherwise expressly provided in this Price Agreement, Contractor grants this license without restriction.
- 7.3 Third Party Software. (09/17) Contractor shall be responsible for effecting licensure for the City for all third-party software provided by Contractor under this Price Agreement.
- 7.4 Infringement Indemnity. (09/17) Contractor shall, at its own expense, save, hold harmless, and defend the City, its directors, officers, employees, and agents from and against any and all claims, demands, suits, and actions, and indemnify the City, its directors, officers, employees, and agents from any damages, liabilities, losses, costs, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged misappropriation, violation, or infringement of any software of any proprietary right or Intellectual Property Right of any person whatsoever. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise.
- 7.5 Security. (09/17) Contractor shall provide immediate notification to the City’s Chief Information Security Officer and the City’s Project Manager of any security breach that affects City data or systems. Contractor shall provide notification to the City’s Project Manager of any incident relating to City data or systems such as a computer virus.
- 7.5.1 Contractor shall comply with City of Portland, Bureau of Technology Services Information Security Administrative Rules BTS-2.01, BTS-2.02, BTS-2.04, BTS-2.08, BTS-2.12, BTS-2.14, BTS-2.15, BTS-2.17, and BTS-2.18. These rules are located at: <https://www.portlandoregon.gov/citycode/26821>.
- 7.5.2 Should remote access to City systems or networks be required, Contractor will follow all City policies regarding remote access including completion of a Remote VPN Access Form. The Remote VPN Access Form is available upon request.
- 7.5.3 If the City furnishes Contractor with City-provided e-mail addresses for Contractor employees or Subcontractors working on the Project, all communications shall take place on such City e-mail addresses and not be moved, copied, or forwarded to private e-mail addresses.

SECTION 8 ACCEPTANCE

- 8.1 Right to Evaluate Deliverables. (09/17) Prior to Accepting Deliverables, the City shall have the right to review and inspect the Deliverable(s) to ensure they conform to applicable documentation, Contractor's representations, and the City's Specifications.
- 8.2 Failure of Acceptance. (*) The City will notify Contractor if a Deliverable or portion of a Deliverable contains a Defect or otherwise fails to conform to applicable Documentation, Contractor's representations, and the City's Specifications. After City's notification, Contractor shall correct the failure within a reasonable time depending on the Deliverable, not to exceed ten (10) Business Days and notify the City that the correction has been completed.
- 8.3 City Acceptance of Failure. (09/17) If the City elects to accept a Deliverable even with the failure(s), then the City may request that Contractor issue a refund to the City in an amount equal to a percentage of the full fee value of the Deliverable that the Parties mutually determine represents the loss of functionality.
- 8.4 Revocation of Acceptance. (09/17) The City shall have the right to revoke Acceptance if the City accepted the Deliverable without discovery of the failure(s), and the Acceptance was reasonably induced by Contractor's assurances or by the difficulty of discovery of the failure(s) before Acceptance. Revocation is effective only if it occurs within a reasonable time after the City discovers or should have discovered the reasons for revocation.
- 8.5 No Waiver. (09/17) Acceptance shall not relieve Contractor from its responsibility under any Warranty. Payment for Deliverables or any portion thereof does not constitute Acceptance nor does it constitute a waiver of any Warranty applicable to the City.

SECTION 9 TRAVEL

- 9.1 Reimbursement. (09/17) Contractor may be reimbursed, upon advance written approval by authorized City personnel, for certain expenses incurred in connection with personnel assigned to provide services for the City on the City's site. All invoices shall be accompanied by physical or electronic copies of original receipts and any additional supporting documentation that may be appropriate. Reimbursement will be made based on the following guidelines:
- 9.1.1 Commercial Air Travel. (09/17) Commercial air travel reservations are to be arranged based on the lowest coach fare available within a reasonable time frame surrounding the desired arrival or departure time. When possible, air travel arrangements should be reserved at least seven (7) to fourteen (14) Calendar Days in advance. Direct billing for commercial air travel is NOT permitted; however,

City may elect to arrange travel reservations on behalf of Contractor personnel. In the event weekend travel is reimbursed, such reimbursement shall be made based on an amount up to and in lieu of any authorized per diem amounts and, if applicable, any other daily expense reimbursement.

- 9.1.2 Rental Cars/Surface Transportation. (09/17) Contractor shall choose the most economical mode of transportation. Except when there is only one person traveling by rented auto, vehicle rental will be reimbursed based on a minimum ratio of one (1) compact auto per two (2) Contractor personnel. Reimbursement for vehicle rental will not be approved for Contractor personnel falling below that ratio. Cost for additional insurance is not reimbursable, nor will reimbursement be permitted for fuel obtained at a vehicle rental agency. City does not assume any liability of any type in connection with rental vehicles reserved or operated by Contractor personnel. Direct billing for rental vehicles is not permitted. If the City's Project Manager chooses to provide a per diem for auto rental, such per diem shall be the same per diem as allowed for City employees. The City will reimburse Contractor for surface transportation such as taxicabs, shuttles, and mass transit, at actual cost when reimbursement requests are accompanied by original receipts.
- 9.1.3 Lodging. (09/17) Contractor shall arrange for lodging. The City will reimburse Contractor per individual for a daily lodging expenses based on GSA per diem rates; such per diem shall be the same per diem as allowed for City employees. GSA lodging allowances can be found at the U.S. General Services Administration website: <http://www.gsa.gov/perdiem>
- 9.1.4 Meal and Incidental Expenses (M&IE). (09/17) The City will provide per diem for each full day (eight hours) worked for Contractor personnel assigned to deliver Services. The per diem rate will be the same as the one published on the U.S. General Services Administration website, identified as the Meal and Incidental Expenses (M&IE) for the Portland, Oregon area. GSA per diem rates can be found at the U.S. General Services Administration website: <http://www.gsa.gov/perdiem>
- 9.2 Non-reimbursable Expenses. (09/17) Expenses incurred for personal entertainment while traveling on the City business are not reimbursable. Personal entertainment includes items such as in-room movie charges, sightseeing, attendance at sporting events, reading materials, gifts, haircuts, etc. Expenses incurred for travel to and from, and parking at, the departure airport are not reimbursable.
- 9.3 Attorney Work Product. All work performed under Task Orders from the City's Project Manager is at the direction of and under the supervision of the Portland City Attorney's

Office. All work performed and generated by Contractor shall be considered attorney work product.

Price Agreement Number:

Price Agreement Title: PORTLAND HARBOR SUPERFUND SITE TECHNICAL ASSISTANCE

CITY OF PORTLAND SIGNATURES

By: N/A
Bureau Director

Date: _____

By: _____
Chief Procurement Officer

Date: _____

By: N/A
Elected Official

Date: _____

Approved:

By: _____
Office of City Auditor

Date: _____

Approved as to Form:

By: _____
Office of City Attorney

Date: _____

Exhibit A
Contractor's Price

SECTION 1 COMPENSATION

- 1.1 Compensation for this Price Agreement shall not exceed the amount referenced in the Master Terms and Conditions unless modified by Amendment.

SECTION 2 CONTRACTOR AND SUBCONTRACT RATES

- 2.1 Contractor Rates - The billing rates for Contractor staff shall not exceed those rates defined below. Contractor rates include hourly billing rate mark-up (including but not limited to: 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, information technology (including computer time and CAD services and other related highly specialized equipment), and profit.

CLASSIFICATION	RATE
Principal	\$180-\$265
Supervising	\$160-\$200
Managing	\$140-\$170
Consulting	\$125-\$150
Project	\$110-\$135
Staff	\$95-\$120
Intern	\$50-\$70
GIS/Graphics/Database	\$100-\$150
Editor/Documents	\$115-\$140
Administration	\$70-\$120

- 2.1.1 Contractor's hourly rate for trial preparation and expert witness testimony is 1.5 times the standard billing rate under 2.1.

2.2 Subcontractors – The Subcontractors for this Price Agreement are identified below. Modification to this table is subject to the Master Terms and Conditions, Section 5.10, Subcontractors:

SUBCONTRACTOR	COBID CERTIFICATION	SCOPE OF WORK
NONE		

- 2.2.1 Contractor may charge an additional 3% mark-up on subcontracted Services for administrative services to the Subcontractor. This mark-up must be clearly denoted on any submitted Invoice.
- 2.2.2 Contractor shall make full payment to its Subcontractors within ten (10) Business Days following receipt of any payment made by the City to Contractor.
- 2.3 Subcontractor Rates – The billing rate for Subcontractor staff shall not exceed those rates defined below and are subject to the same requirements as the Contractor rates found in Section 2.1 of this Exhibit:

SUBCONTRACTOR	CLASSIFICATION	RATE
NONE		

- 2.4 Rate Increases – Rate increases are subject to the approval of the City and are at its sole discretion. Under no circumstances is the City obligated to approve rate increases.
 - 2.4.1 Adjustment of Labor Rates Due to Inflation – Upon written request of the Contractor, the City may increase rates due to inflation, subject to the following:
 - 2.4.1.1 No increases shall be granted before the one-year anniversary of the Price Agreement;
 - 2.4.1.2 No more than one increase shall be granted per year of the Price Agreement;
 - 2.4.1.3 Rate increases may not exceed the preceding calendar year’s Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) West Region Class Size A average inflation rate (as determined by the U.S. Bureau of Labor Statistics); and
 - 2.4.1.4 No rate increases shall apply to services delivered retroactively.

SECTION 3 SPECIAL INVOICE REQUIREMENTS

3.1 Invoices must comply with any invoice-related instructions within the associated Task Order(s).

SECTION 4 REIMBURSABLE COSTS

- 4.1 Allowable Reimbursable Costs – The following reimbursable costs are allowed under this Price Agreement. Reimbursable costs are only authorized if identified on a Task Order.
- 4.1.1 Travel – Travel requirements are defined in the Master Terms and Conditions, Section 9 Travel.
- 4.1.2 Photocopying/Reproduction Costs - The City will reimburse the following direct costs of copying and reproduction that cannot be handled by Consultant in-house and are sent to an outside vendor.
- Documents that must be copied at a facility (such as the Oregon Historical Society);
 - More than 5 copies of documents greater than 40 pages in length; and
 - Other copying and reproduction needs, such as maps or scanning projects, that Consultant's in-house capabilities cannot produce.
- A receipt will be required for reimbursement. All photocopies and reproductions must be double-sided unless the City’s Project Manager approves single-sided photocopies or reproduction in the reimbursement request. The Contractor shall make all attempts to use materials that are fully recyclable and contain post-consumer waste (PCW) recycled content.
- 4.1.3 Shipping Charges - Upon written request from the Consultant and prior approval from the City's Project Manager, the City will reimburse the direct FedEx and/or UPS charges for shipping field samples to/from a laboratory. Receipts will be required for reimbursement. Approval of a request for reimbursement of FedEx and/or UPS charges is solely within the City's discretion and under no circumstances is the City obligated to approve such a request.
- 4.1.4 Outside Equipment Rental - Upon written request from the Consultant and prior approval from the City's Project Manager, the City will reimburse the direct costs of equipment rentals needed in the collection of field samples. Receipts will be required for reimbursement. Approval of a request for reimbursement of equipment rentals is solely within the City’s discretion and under no circumstances is the City obligated to approve such a request.
- 4.2 Non-Reimbursable Expenses - In addition to the expenses listed under Contractor Rates in Section or Subcontractor Rates defined in Sections 2.1 and 2.3, non-reimbursable expenses include local mileage and other local travel costs, including travel within 100-mile radius of Portland, Oregon, toll charges, parking fees, local train fare, local taxicab fares, and local ridesharing fares.
- 4.3 Other reimbursable costs not associated with the Contractor or Subcontractor Rates defined in Sections 2.1 and 2.3 or explicitly prohibited by this Price Agreement may be approved at the City’s sole discretion.

- 4.4 Reimbursement – Reimbursement for any reimbursable costs must be approved in advance by the City’s Project Manager or other authorized personnel. All reimbursement requests must be accompanied by physical or electronic copies of the original receipts and any additional supporting documentation that may be appropriate or requested by the City’s Project Manager.

SECTION 5 TASK ORDERS

- 5.1 Work Authorization – Work performed under this Price Agreement must be authorized via a written Task Order (sample attached as Exhibit E).
- 5.2 Task Order Not-to-Exceed – The not-to-exceed amount will be identified on each issued Task Order. Unless modified by Change Order, Contractor will not be paid more than this amount. The not-to-exceed amount listed on the Task Order represents the maximum allowable expense and is not a guarantee of payment or amount.
- 5.3 Task Order Change Orders – Change Orders may be issued which modify the not-to-exceed amount. Any increase over 25% must be approved by the BES Director and the Chief Procurement Officer.

Exhibit B
Statement of Work

SECTION 6 SUMMARY

The Office of the City Attorney and Bureau of Environmental Services (BES) require technical assistance in support of liability management, defense and other legal interests related to the Portland Harbor Superfund Site. Work will be conducted on an on-call basis and will typically have short turn-around times to meet legal deadlines.

SECTION 7 SCOPE OF WORK

Services will be under the direction of legal counsel as the need arises, therefore there is no guarantee of work to be assigned under this Price Agreement, or that the total not to exceed amount of this Price Agreement will be consumed.

Contractor shall provide the following Services:

1. Work at the direction of the Office of the City Attorney with BES, outside experts and outside legal counsel on legal support activities.
2. Assist with technical and documentation issues regarding Portland Harbor non-judicial settlement activities.
3. Assist with regulatory enforcement actions and third-party litigation.
4. Prepare expert testimony for submission in legal proceedings and non-judicial negotiations.

SECTION 8 TASKS AND SCHEDULE

Work performed under this Price Agreement must be authorized in writing via Task Order (sample attached as Exhibit E) signed by the City and the Contractor. The scope of work, schedule, deliverables, compensation, key personnel, subcontractors, COBID Certified firms' utilization, and compensation for each project will be defined in the Task Order prior to commencement of the work. Any change to the scope of work, schedule, deliverables, COBID Certified firms' utilization, and compensation must be agreed upon by the City and Contractor in writing as a Change Order to the Task Order (sample attached as Exhibit F).

The budget over the period of the Price Agreement for the services described herein is \$1,650,000. The running Price Agreement balance, however, will be the not-to-exceed limit. Since work, schedule and deliverables will be authorized through Task Orders based on project needs, there is no guarantee this amount of money will be spent.

The Bureau Director and the Chief Procurement Officer shall approve Task Order Change Orders when changing the Task Order to increase compensation is greater than 25% of the original Task Order amount.

Compensation for each Task Order will be determined through negotiation with the Contractor based on the scope of work, the hours the Contractor estimates for performance of the work and the 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, the Contractor will be paid for the actual hours necessary to complete the Task Order. If the 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.

The Contractor must be able to start the work per the Task Order no later than seven (7) calendar days from the date of the Notice to Proceed as projects often require work with short deadlines. If the Contractor is unable or unwilling to complete the project within the required time, it shall so state in writing to the City's Project Manager (PM) and shall forfeit the Task Order within 24 hours of being notified. Following the execution of each Task Order, the BES PM will work directly with the Contractor for the duration of the project unless otherwise noted on the Task Order.

SECTION 9 PROJECT MANAGEMENT

9.1 Status Reports

Contractor shall summarize activities under this Price Agreement in written weekly status reports submitted to the City Project Manager. The status reports are due on the first day of the week and shall include summaries of all activities completed in the prior week and anticipated work for the current week. The report shall include a list of any schedule or budget issues, and a proposed method of resolution.

9.2 Confidentiality

All communications, deliverables, and other documents exchanged under this contract shall be considered Confidential Information unless the City explicitly identifies it as non-Confidential Information.

9.3 Project Managers

The City's Project Manager will be Dawn Sanders. The City may change City's Project Manager from time to time upon written notice to Contractor. Contact Information:

Dawn.Sanders@portlandoregon.gov
(503) 823-7263

The Contractor's Project Manager will be Kathy Roush. Contact Information:

kroush@gsiws.com

(971) 200-8527

EXHIBIT C

Conflict Disclosure

Conflicts.

Potential Conflicts. The Consultant represents that it has disclosed all known potential conflicts related to the work to be performed under this Price Agreement with any entities with potential interests adverse to the City of Portland. Such potential conflicts are listed below. This list will be revised, if necessary, during the contract term. The Consultant's obligation to disclose potential conflicts is an ongoing obligation during the term of this Price Agreement. Nothing in this Price Agreement shall restrict the Consultant's ability to perform work for others that is unrelated to the work performed for the City under this Price Agreement.

Actual Conflicts. Under the conditions listed below, the Consultant can perform work for others that is related to the work performed for the City under this Price Agreement:

- The Consultant obtains written consent from all parties acknowledging the Price Agreement with the City and waiving any objections to the conflict.
- The Consultant will not provide expert witness testimony or assist another to testify as an expert adverse to the City of Portland concerning any issues related to the Portland Harbor Superfund Site.

The following table identifies all organizations or entities associated with the Portland Harbor Superfund site for which the team members either currently provide or have provided services.

Organization	Project Details
Groundwater Solutions, Inc. (GSI)	
Oregon Department of Environmental Quality (DEQ)	GSI is a subcontractor to Hart Crowser on a contract to DEQ to provide technical services on orphan projects at locations across the State. <ul style="list-style-type: none"> - Provided technical review of groundwater data for the Rhone Poulenc site on behalf of DEQ. - Conducted sediment sampling on behalf of DEQ in the upriver reach portion of the Willamette River, upstream of Portland Harbor area.
Weyerhaeuser	GSI was retained in September 2020 to assist with allocation at Portland Harbor related to their vessel operations. This will include preparation of technical memorandums and assistance with briefings during allocation activities.
Stoel Rives LLP	GSI was retained to assist Stoel Rives on a confidential client matter involving natural occurrence of arsenic in groundwater. The Portland City Attorney's Office provided a conflict waiver for this project in June 2018. This work is expected to be completed in 2020.
Port of Portland	GSI provides consulting services to the Port to (1) assist in maintaining existing water rights for use in the non-potable water system on Port facilities and (2) to identify and initialize water conservation measures and related tasks for starting up and expanding the Port's non-potable water system as demand arises.
Port of Portland – Willamette Cove	In 2020, GSI was contracted to provide technical support of the development of the sufficiency assessment and in-water remedial design for the Willamette Cove area of Portland Harbor. GSI is working for the City of Portland, the Port of Portland, and the State of Oregon. This is a five-year contract.

Lower Willamette Group (LWG)	In 2003 and 2004, GSI provided technical support to the LWG in developing a groundwater conceptual site model (CSM). GSI has not worked for the LWG since that time.
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Organization	Project Details
City of Portland, Bureau of Environmental Services	<p>GSI has provided technical assistance to BES in the City’s participation in the Portland Harbor Superfund Site. During this same period, GSI has provided technical assistance to the City’s stormwater source control program related to Portland Harbor.</p> <p>In 2019, GSI was contracted to provide technical support for the development of the needs assessment for the Information Management Plan for the City of Portland and State of Oregon. This project will end in early 2021.</p>
City of Portland, Bureau of Water Works (Bureau)	<p>GSI's staff has managed and provided technical support for several contracts to provide on-call environmental and hydrogeologic services to the Bureau. Currently, GSI is a subconsultant to Pacific Groundwater Group on a technical services contract. In 2019, GSI was awarded a 3-year technical services contract as the prime consultant. Through our experience with Bureau contracts, GSI has developed extensive expertise in the geologic and groundwater conditions in the area in the eastside of Portland. Our work with the Bureau includes</p> <p>(1) collection and interpretation of hydrogeologic data, including assisting with groundwater level data collection and stratigraphic interpretations in aquifers and overlying sediments, (2) a deep well drilling program to evaluate the potential of the basalt aquifer for water supply development, (3) development of a detailed conceptual model of the aquifers in near the Columbia South Shore Wellfield and an investigation of potential sources of chlorinated solvent contamination detected in the aquifers, (4) assistance with the Bureau's wellhead protection program, (5) providing technical review of reports and work plans for various groundwater remedial investigations being conducted near the CSSW.</p>
Oregon Department of Transportation (ODOT)	<p>In 2017 and 2018, GSI assisted ODOT in inventorying and managing Oregon Department of Water Resources water right permits and certificates for all of their facilities in Oregon.</p> <p>GSI is also participating in a project jointly funded by ODOT and the City of Portland to evaluate sediment chemistry in the Lower Downtown Reach of the Willamette River upriver from the Portland Harbor Superfund Site.</p>
River Mile 11E Group	<p>Since 2013, GSI has provided technical services to the River Mile 11E group as a subcontractor to Dalton Olmstead and Fuglevand (DOF). This work involved characterization of in-water sediments, porewater, river bank soils and upland groundwater. Information from predesign investigations was used to prepare an assessment of recontamination potential. GSI is currently providing technical support to the remedial design team.</p>

Exhibit D**Portland Harbor Confidentiality Agreement**

Parties to this Agreement:

1. City of Portland
2. _____ (“GSI Employee” or “Employee”)

Whereas:

- A. GSI Water Solutions, Inc (GSI) is contracted by the City of Portland, Bureau of Environmental Services (BES), to provide consulting services regarding environmental contamination related to the Portland Harbor Superfund Site (“GSI Price Agreement”).
- B. GSI has retained Employee, who will perform portions of this work.
- C. GSI performs work at the direction of Bureau of Environmental Services (BES) that is confidential under the terms of the City’s agreement with the Portland Harbor Federal Superfund Site Participation and Common Interest Group. In addition, the City has and will enter into other agreements regarding joint defense, settlement or other issues related to Portland Harbor liabilities. Employee may generate, receive or otherwise learn of information that is confidential pursuant to some or all of the agreements referenced in this paragraph.
- D. GSI also performs work at the direction of the City Attorney’s Office to assist in the provision of confidential and privileged legal advice to the City in anticipation of litigation and in preparation for trial. Directly or indirectly, Employee may generate, receive or otherwise learn of information that is confidential under the attorney-client privilege, joint defense privilege, common defense privilege, attorney work product doctrine, certain settlement agreements or other agreements.
- E. It is critical that GSI and its employees maintain the confidentiality of the work that they perform for the City to preserve the City’s evidentiary and nondisclosure privileges and to comply with the City’s contractual obligations. Disclosure of confidential information could result in damage to the City as a result of compromising the City’s legal positions or as breach of the City’s contractual obligations.

The City of Portland and GSI Employee agree as follows:

1. “Confidential Information” means any information that is disclosed in written, graphic or machine-recognizable form and is marked or labeled at the time of disclosure as being Confidential or its equivalent, or, if the information is in verbal or visual form, it is identified as Confidential or proprietary at the time of disclosure, or a reasonable time thereafter. Information shall always be considered Confidential Information, whether or not it is

marked or identified as such, if it is described by one or more of the following categories: (1) non-public financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.345(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) information which is exempt from disclosure per Oregon Public Records Law; (6) all communications, documents, and information of any type or format that is obtained directly or indirectly subject to the attorney/client privilege, attorney work product doctrine, joint defense privilege, common interest privilege, or is confidential pursuant to agreements to which the City is a party; (7) information which is exempt per federal laws (including but not limited to copyright, HIPAA); and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems including without limitation, data and information systems, any software code and related materials and processes, Customizations, Configurations, Updates, Upgrades; and any Documentation. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving Party; is already lawfully known to the receiving Party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Price Agreement or any other agreement between the Parties or of any applicable protective or similar order, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party, as shown by reasonable written documentation, without breach of this Price Agreement; or is explicitly approved for release by written authorization of the disclosing Party.

2. Confidential Information shall not apply to any portion of the Confidential Information which (i) is or becomes generally available to the public through no fault of GSI or GSI Employee except in the instance of inadvertent disclosure; (ii) becomes available to GSI on a non-confidential basis except in the instance of inadvertent disclosure; or (iii) was known to GSI or its employees on a non-confidential basis and not in contravention of applicable law or a confidentiality or other similar agreement prior to its disclosure by the City Attorney's Office, BES, or one of their representatives.
3. Confidential Information shall not be disclosed by Employee to any person within the GSI organization who will not be involved in providing services to the City under GSI's Price Agreement.
4. Unless ordered to do so by a court of competent jurisdiction, Confidential Information shall not be disclosed by Employee to any person outside of GSI's organization unless authorized by the BES Portland Harbor Project Manager and the City Attorney's Office in writing.
5. All information provided to the Employee shall remain the property of the City of Portland, may not be used for any purpose not authorized in the Price Agreement and shall be returned to the City upon request.

- 6. Unless ordered to do so by a court of competent jurisdiction, Employee shall not provide or help prepare testimony relating to the work performed by GSI for the City in any civil or administrative proceeding for any party other than the City of Portland. In addition, Employee shall not provide expert testimony against the City regarding any matter related to the Portland Harbor Superfund Site.
- 7. The City may seek injunctive relief and/or specific performance in Multnomah County Circuit Court against Employee for breach or anticipated breach of any provision of this Agreement without proof of any actual or special damages.
- 8. The Obligations of this Agreement shall survive termination by any means of this Agreement or the GSI Price Agreement with the City. The obligations of this Agreement shall survive Employee’s termination of employment at GSI.
- 9. No amendment to this Agreement shall be effective without the written acknowledgement and consent of the City of Portland and GSI Employee.
- 10. This Agreement is binding on the City of Portland and GSI Employee, their agents, successors, assigns, officers, directors and principals.
- 11. If any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any the law, the validity of the remaining terms shall not be affected.

EMPLOYEE

Dated: _____

Employee of GSI Groundwater Solutions, Inc.

CITY OF PORTLAND

Dated: _____

By: _____
Portland Harbor Project Manager
Bureau of Environmental Services

**Exhibit E
Task Order**

Price Agreement # [PA NUMBER]

Task Order # _____



**CITY OF PORTLAND
BUREAU OF ENVIRONMENTAL SERVICES
TASK ORDER FOR [NAME OF SERVICE]**

SECTION 1 - NON-CONFIDENTIAL MATERIAL

Instructions – Complete this section and submit to Procurement Services **prior** to issuing Task Order to Contractor.

TASK ORDER INFORMATION

Contractor Name: [Name of Contractor]
City Project Manager: [Name of City Project Manager] Contractor Project Manager: [Contractor Name]
Task Order Execution Date: [Start Date] Task Order End Date: [End Date]
Project Name: [Project/Task Order Name]
Task Order Compensation: [Total NTE]

SUBCONTRACTOR UTILIZATION

The following Subcontractor(s) have been identified as working on this Task Order.

NAME OF SUBCONTRACTOR	CERTIFICATION TYPE (MUST BE DBE, MBE, WBE, SDV, ESB, OR NONE)	TOTAL DOLLARS COMMITTED

Procurement Services or delegate to complete this section		
Cumulative D/M/WBE, SDV, ESB Participation for this Entire Contract		
Current D/M/WBE, SDV, ESB Participation is \$ _____; Subcontract Total: _____%; Contract Total ____%		
Proposed D/M/WBE, SDV, ESB Participation is \$ _____; Subcontract Total: _____%; Contract Total ____%		

Procurement Approval to Proceed

The Chief Procurement Officer (CPO) or delegate shall approve all Task Orders prior to issue in order to ensure utilization of COBID Certified firms.

Chief Procurement Officer (or delegate)

Date

SECTION 2 - CONFIDENTIAL MATERIAL

The material found in this section is confidential and privileged. This material is confidential and privileged because it contains communications, documents, and/or information that is subject to the attorney-client privilege, attorney work product doctrine, joint defense privilege, common interest privilege, agreements to which the City is a party, or otherwise is Confidential Information as defined in the original Price Agreement. No material found in this section may be released to parties who have not signed the appropriate non-disclosure agreements without Director approval.

IMPORTANT – Task Orders may not be issued until Approval to Proceed is received from the CPO or delegate.

SERVICES TO BE PERFORMED

Contractor is directed to perform the following Services:

- 1. Service 1
 - 1.1. Tasks for Service 1
- 2. Service 2
 - 2.1. Tasks for Service 2
- 3. Etc.

CONTRACTOR PERSONNEL

Contractor shall assign the following Key Staff to perform the work in the capacities designated. As required, other Contractor and Subcontractor staff may perform work associated with this Task Order:

CONTRACTOR KEY STAFF NAME	ROLE ON PROJECT

COMPENSATION

The maximum compensation for this Task Order is \$[Amount in Section 1] unless authorized by written Change Order. The hourly rates shall match those rates listed in the Price Agreement and in effect at the time the work was performed.

REIMBURSABLE COSTS

The following reimbursable costs are authorized for this Task Order:

REIMBURSABLE COST AND REFERENCE	NOT TO EXCEED AMOUNT

SUPPLEMENTAL MATERIAL

Any Supplemental Material associated with this Task Order is herein attached and incorporated as Exhibit A. All Supplemental Material is confidential and privileged and subject to the same release requirements as this Section.

APPROVAL

All provisions of the original Price Agreement shall remain in full force and effect.

In witness hereof, the parties have duly executed this Task Order as of the Execution Date listed in Section 1.

CONTRACTOR:

CITY OF PORTLAND:

BY: _____

BY: _____

DATE: _____

DATE: _____

**Exhibit F
Change Order**

**Price Agreement # [PA NUMBER]
Task Order # _____
Change Order # _____**



**CITY OF PORTLAND
BUREAU OF ENVIRONMENTAL SERVICES
TASK ORDER FOR [NAME OF SERVICE]**

SECTION 1 - NON-CONFIDENTIAL MATERIAL

Instructions – Complete this section and submit to Procurement Services **prior** to issuing Change Order to Contractor.

CHANGE ORDER

This Change Order is made effective: [DATE]

Select all that apply:

- The City Project Manager for this Task Order is changed from [NAME] to [NAME].
- The Contractor Project Manager for this Task Order is changed from [NAME] to [NAME].
- Subcontractors have changed as follows:

NAME OF SUBCONTRACTOR	COBID CERTIFICATION TYPE	CURRENT TOTAL DOLLARS COMMITTED	INCREASE/ DECREASE IN COMPENSATION	REVISED DOLLARS COMMITTED	CHANGE IN DOLLARS

Procurement Services or delegate to complete this section (if required)
Cumulative COBID Participation for this Entire Contract
Current COBID Participation is \$ _____; Subcontract Total: _____%; Contract Total ____%
Proposed COBID Participation is \$ _____; Subcontract Total: _____%; Contract Total ____%

- Additional time is necessary and the Task Order end date is hereby extended to [DATE].
- Compensation modification is necessary. Compensation is modified as follows:

CHANGE ORDER NUMBER	CURRENT COMPENSATION	CHANGE IN COMPENSATION	NEW COMPENSATION	PERCENTAGE CHANGE FROM ORIGINAL

Note: If percentage change from original exceeds 25%, CPO approval **must be obtained prior** to issuing Change Order.

- Change defined in Confidential Material in Section 2

PROCUREMENT APPROVAL

The Chief Procurement Officer (CPO) or delegate shall approve all Change Orders prior to issue if the utilization by COBID firms is modified or if the requested increased compensation exceeds 25% of the original Task Order.

- CPO Approval Not Required**
- CPO Approval Required**

Chief Procurement Officer (or delegate)

Date

SECTION 2 - CONFIDENTIAL MATERIAL

The material found in this section is confidential and privileged. This material is confidential and privileged because it contains communications, documents, and/or information that is subject to the attorney-client privilege, attorney work product doctrine, joint defense privilege, common interest privilege, agreements to which the City is a party, or otherwise is Confidential Information as defined in the original Price Agreement. No material found in this section may be released to parties who have not signed the appropriate non-disclosure agreements without Director approval.

IMPORTANT – Change Order may not be issued until Approval to Proceed is received from the CPO or delegate, if required.

CHANGE ORDER

Select all that apply:

KEY STAFF NAME	ROLE ON PROJECT	CHANGE

- Key Contractor Personnel have changed as follows:
- The Services to be Performed have changed as follows:
 - 4. Change to Service X
 - 4.1. Changed Tasks for Service X

- 5. Change to Service Y
 - 5.1. Changed Tasks for Service Y
- 6. Etc.

- Supplemental Material in Exhibit A is hereby struck and replaced with the attached material herein attached and incorporated as Exhibit A. All Supplemental Material is confidential and privileged and subject to the same release requirements as this Section.
- Reimbursable Costs have changed as follows:

REIMBURSABLE COST AND REFERENCE	CURRENT NOT TO EXCEED AMOUNT	CHANGE IN NOT TO EXCEED AMOUNT	REVISED NOT TO EXCEED AMOUNT

APPROVAL

All provisions of the original Price Agreement shall remain in full force and effect. The rest of the provisions of the original Task Order shall remain unchanged and in full force and effect.

In witness hereof, the parties have duly executed this Change Order as of the Effective Date listed in Section 1.

CONTRACTOR:
 BY: _____
 DATE: _____

CITY OF PORTLAND:
 BY: _____
 DATE: _____