

**MEMORANDUM OF AGREEMENT NO.
BETWEEN
THE CITY OF PORTLAND
AND
WATER SERVICES ASSOCIATION OF AUSTRALIA
FOR
ASSET MANAGEMENT BENCHMARKING PROJECT**

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made by and between the City of Portland ("City"), a municipal corporation of the State of Oregon, acting through Portland Bureau of Environmental Services ("BES"), and Water Services Association of Australia, Level 8 469 Latrobe Street, Melbourne Victoria Australia 3000 ("Provider").

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| <ol style="list-style-type: none"> 1. EFFECTIVE DATE This Agreement shall be effective on the date it is signed by both parties ("Effective Date"). 2. TERM OF AGREEMENT The term of this Agreement shall commence on the Effective Date and expire ("Completion Date") as stated in ATTACHMENT B – TERMS AND CONDITIONS, attached hereto and made a part of this Agreement. 3. SCOPE OF SERVICES Provider shall perform the services described in ATTACHMENT A – SCOPE OF SERVICES AND SCHEDULE, (the "Project") attached hereto and made a part of this Agreement. <u>Digital Materials</u>: Provider shall provide digital materials, including reports, data, maps, graphs and photos that are compatible with current Portland BES file and data formats. All digital materials become the property of the City of Portland. 4. BILLING AND PAYMENT Provider shall submit invoices to the Bureau and the Bureau shall pay Provider up to the Total Dollar Amount, all in accordance with ATTACHMENT B – TERMS AND CONDITIONS, attached hereto and made a part of this Agreement. 5. NO JOINT UNDERTAKING Nothing in this Agreement shall be construed to make or render the parties hereto partners, joint ventures or participants in any joint undertaking whatsoever. 6. SCHEDULE The parties shall comply with the schedule appearing in ATTACHMENT A – SCOPE OF SERVICES AND SCHEDULE. Compliance with the schedule is important to successful completion of the Project. The parties shall promptly and regularly notify each other of any occurrences affecting the schedule and shall attempt to agree upon an amended schedule if necessary or appropriate, to be effective upon execution of an Amendment to this Agreement in accordance with Section 19. Notwithstanding, failure to comply with the schedule shall constitute a Default and be grounds for termination unless or until any Amendment is executed. 7. NO THIRD PARTY BENEFICIARIES This Agreement is entered into solely for the mutual benefit of the parties hereto. This Agreement is not entered into with the intent that it shall benefit either party's agents, | <p>assigns, consultants or contractors, and no such other person or entity shall be a third party beneficiary of this Agreement.</p> <ol style="list-style-type: none"> 8. PUBLICATION Each party may publish the results of the Project, and may acknowledge its respective role in and support of the Project. 9. INDEMNIFICATION The Provider does hereby release and shall defend, indemnify, and hold the City and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Provider's performance of the services contemplated by this Agreement to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Agreement by the Provider, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its employees and agents, the Provider waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Provider acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Agreement. 10. INSURANCE
No insurance certification is required. 11. ASSIGNMENT This Agreement shall not be assigned in whole or in part by either party without the prior written approval of the other party. 12. COMPLIANCE WITH LAW The parties to this Agreement shall comply with all Federal, State, and local laws and ordinances. 13. DEFAULT AND TERMINATION Failure to keep or perform any term or condition of this Agreement shall be a default hereunder (a "Default").

Upon a Default, the aggrieved party shall provide written notice to the defaulting party, specifying the nature of the Default, and the aggrieved party's intention to terminate this Agreement if the Default is |
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not corrected within thirty (30) days of the date of the notice.

If the defaulting party fails to cure within the stated period, the aggrieved party may thereafter terminate this Agreement without any further proceedings.

The aggrieved party will have available to it all remedies provided at law and equity.

- 14. CITY ABILITY TO TERMINATE DUE TO LACK OF APPROPRIATIONS** It is understood that funds for the payment of the services to be provided hereunder are allocated out of monies received by the City from funding for the services to be provided hereunder may be decreased or eliminated by executive or legislative action. Therefore, the parties agree that notwithstanding any other provision of this Agreement, if said funding is decreased or eliminated, or if in the judgment of the executive or legislative authority of the City, continuation of this Agreement would be an unnecessary expenditure of public funds, then the City may terminate this Agreement without further obligation to Provider after the City has given Provider written notice of such termination at least thirty (30) days prior to the effective date of termination and documentation of such executive or legislative action.
- 15. SEVERABILITY** If any provision of this Agreement or any provision of any law, rule or document incorporated by reference into this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which legally can be given effect without the invalid provision. To this end, the provisions of this Agreement are declared to be severable.

- 16. APPLICABLE LAW** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. The jurisdiction and venue of any action brought hereunder shall be in the Circuit of Multnomah County.
- 17. AUDIT** During the progress of the Project and for a period of no less than three years from the Completion Date, each party will keep and make available for each other's inspection and audit all records pertaining to the Project, including accounting records. The parties shall furnish to each other copies of these records upon request and shall maintain the records in accordance with work order accounting procedures prescribed by the Division of Municipal Corporations of the State Auditor's Office.
- 18. NOTICES** All notices to the parties to this Agreement shall be in writing and addressed to those persons identified on ATTACHMENT B - TERMS AND CONDITIONS.
- 19. AMENDMENT** This Agreement shall not be amended or modified except in writing and signed by both parties hereto. The Director of the Bureau of Environmental Services is authorized to make amendments to this Agreement on behalf of the City except for any amendment that would increase total City payments due by more than 25% of the original contract amount.
- 20. ENTIRE AGREEMENT** This Agreement and any written attachments or Amendments thereto, constitutes the complete contractual agreement of the parties and any oral representations or understandings not incorporated herein are excluded.

WATER SERVICES ASSOCIATION OF AUSTRALIA

Level 8 469 Latrobe Street
Melbourne Victoria Australia 3000

By: Ross J Young 19/05/08
Signature Date
ROSS YOUNG
[Type or Print Name]
EXECUTIVE DIRECTOR
[Type or Print Title]

PORTLAND BUREAU OF ENVIRONMENTAL SERVICES
The City of Portland

By: _____
Signature Date
Dean Marriott
PORTLAND BUREAU OF ENVIRONMENTAL SERVICES

ATTACHMENTS:

- A - SCOPE OF SERVICES AND SCHEDULE
- B - TERMS AND CONDITIONS

ATTACHMENT B
(BES Agreement No.)

TERMS AND CONDITIONS

EFFECTIVE DATE	COMPLETION DATE	DOLLAR AMOUNT
	December 31, 2008	Not-to-exceed \$38,000 (US Dollars)
BASIS OF PAYMENT (Hourly rate, lump sum, etc.) and INTERVALS OF PAYMENT (If you have a Cost Breakdown, Attach as ATTACHMENT B-1)		
<p>The basis of payment is a one-time lump sum, to be billed after delivery of the final report to Portland of Environmental Services. The lump sum amount shall not exceed \$38,000 (USD). The invoice shall be submitted in USD. The lump sum amount covers program participation (includes inception program in the US for North American participants, assistance being provided during data collection and validation, two days of practice interviews, industry and utility reports and participation in the Best Practice Workshop), Aquamark software licensing fee, and consultant travel expenses.</p>		
PROVIDER SHALL SUBMIT INVOICES TO:	INVOICES SHALL INCLUDE THE FOLLOWING:	
<p>Lester E. Lee Portland Bureau of Environmental Services 1120 SW 5th Avenue, 10th Floor Portland, Oregon 97204</p>	<p>Invoice date and number BES Agreement Number Period covered by the invoice Breakdown of charges Description of services performed</p>	
SUBCONTRACTORS OR SUB-CONSULTANTS AUTHORIZED (Enter "NONE" if not applicable)		
NONE		
NAME OF BUSINESS OR AGENCY KEY PERSONNEL ESSENTIAL TO THE PROJECT		
Peter Gee, Project Director		
NAME AND ADDRESS OF PORTLAND BUREAU OF ENVIRONMENTAL SERVICE'S PROJECT MANAGER		
<p>Lester E. Lee Portland Bureau of Environmental Services 1120 SW 5th Avenue, 10th Floor Portland, Oregon 97204</p>		
BUSINESS / AGENCY NAME AND ADDRESS FOR DELIVERY OF NOTICES	BES'S NAME AND ADDRESS FOR DELIVERY OF NOTICES	
<p>Peter Gee Water Services Association of Australia Level 8 469 Latrobe Street Melbourne Victoria Australia 3000</p>	<p>Lester E. Lee Portland Bureau of Environmental Services 1120 SW 5th Avenue, 10th Floor Portland, Oregon 97204</p>	

ATTACHMENT A
(BES Agreement No.)

SCOPE OF SERVICES AND SCHEDULE

Portland Bureau of Environmental Services (BES) shall participate in an Australian Benchmarking Project on Asset Management for water and wastewater utilities. As a result of this participation, the following services will be provided to BES by Water Services Association of Australia:

1. Provide BES with the data collection forms to use in the exercise.
2. The assessment team shall work with designated BES staff to review and validate the benchmarking data provided by BES.
3. The assessment team shall conduct interviews with designated BES staff, collect relevant documentation, consolidate all analyses, develop draft report, and provide draft report to BES.
4. A final report, including leading participant practices in each activity benchmarked and an improvement plan specific to BES, will be provided to BES. Later, in the Fall 2008, WSAA shall invite BES to participate in a workshop in Australia following the completion of the benchmarking analysis. BES shall absorb its own costs associated with any visit to Australia.