

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

CONTRACT NO. \_\_\_\_\_

**SHORT TITLE OF WORK PROJECT:  
Pathogen Catchment Budget Model Modification**

This contract is between the City of Portland, acting by and through its Elected Officials, hereafter called "City," and Ecwise Australia Pty Ltd, hereafter called Contractor. The City's Project Manager for this contract is Yone Akagi.

**Effective Date and Duration**

This contract shall become effective on October 27, 2010. This contract shall expire, unless otherwise terminated or extended, on June 30, 2011.

**Consideration**

- (a) City agrees to pay Contractor a sum not to exceed \$307,404 for accomplishment of the work.  
 (b) Interim payments shall be made to Contractor according to the schedule identified in the STATEMENT OF THE WORK AND PAYMENT SCHEDULE.

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**CONTRACTOR DATA AND CERTIFICATION**

Name (please print): \_\_\_\_\_

Address: \_\_\_\_\_

Employer Identification Number (EIN) \_\_\_\_\_

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

City of Portland Business License # \_\_\_\_\_

Citizenship: Nonresident alien  Yes  No

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

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

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

**1. Access to Records**

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

**2. Audits**

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

### 3. **Effective Date and Duration**

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

### 4. **Order of Precedence**

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

### 5. **Early Termination of Agreement**

(a) The City and the Contractor, by mutual written agreement, may terminate this Agreement at any time.

(b) The City, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion.

(c) Either the City or the Contractor may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

### 6. **Payment on Early Termination**

(a) In the event of termination under subsection 5(a) or 5(b), **Early Termination of Agreement** hereof, the City shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.

(b) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (a) of this section.

(c) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7(a), **Remedies**.

(d) In the event of early termination all of the Contractor's work product will become and remain property of the City.

### 7. **Remedies**

(a) In the event of termination under subsection 5(c), **Early Termination of Agreement**, hereof, by the City due to a breach by the Contractor, then the City may complete the work either itself, by agreement with another contractor or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, then the Contractor shall pay to the City the amount of the reasonable excess.

(b) The remedies provided to the City under section 5, **Early Termination of Agreement** and section 7, **Remedies** for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.

(c) In the event of breach of this Agreement by the City, then the Contractor's remedy shall be limited to termination of the Agreement and receipt of payment as provided in section 5(c), **Early Termination of Agreement** and section 6(b), **Payment on Early Termination** hereof.

### 8. **Subcontracts and Assignment**

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

### 9. **Compliance with Applicable Law**

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

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

Contractor shall defend the City of Portland, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, but excluding consequential loss, loss of profits, loss of business opportunity or economic loss, or special, contingent or penal damages, directly resulting from or arising out of the activities of the Contractor or its agents or employees under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses arising out of death, or bodily injury to persons, or property damage caused wholly or in part by the actions, acts, or negligence of the City, its contractors, its officers and employees, its agents, or any third party.

**(b) Indemnity - Claims for Professional Liability**

Contractor shall perform all services using that care, skill and diligence that would ordinarily be used by similar professionals in this community in similar circumstances.

**(c) Indemnity - Standard of Care**

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

**(d) Limitation of Liability**

Notwithstanding any other provision of the Contract and to the fullest extent permitted by law:

- (a) the total cumulative liability of the Contractor, its subcontractors and any of their related company to the City for all claims, losses, damages, and expenses in any way arising from or related to the performance of work under this contract, whether arising under breach of contract or warranty, tort (including negligence), indemnity, strict liability or other basis of legal liability, shall be limited as follows:
- (i) for claims for personal injury or death of any person, to an aggregate amount of \$2,500,000; and
  - (ii) for all other claims, to an aggregate amount of \$1,000,000.
- (b) the Contractor, its subcontractors and any of their related companies on one side and City on the other side shall not be responsible or held liable to each other for special, indirect, incidental, punitive, exemplary, or consequential loss or damages, or for loss of actual or anticipated profits, investment, product, use, goodwill, opportunity, or revenue, business interruption, cost of capital or replacement goods, services, facilities or power, governmental and regulatory sanctions, and claims of customers for all such damages, whether arising under breach of contract or warranty, tort, strict liability, indemnity, or any other theory or legal liability.
- (c) the City must take all reasonable steps to minimize the cost, expense, liability, loss or damage it has suffered or is likely to suffer as a result of an event giving rise to an indemnity under the Contract.

The limitations of liability outlined in this subclause 9(d) survive the expiry or earlier termination of the Contract.

**(e) Warranties**

All express and implied warranties, guarantees and conditions under statute or general law as to design, assembly, installation, materials or workmanship, or performance of the services, are expressly excluded. Nothing in this Agreement will be read or implied to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law which by law cannot be excluded, restricted or modified. The Contractor's liability for any breach of a condition or warranty implied by law which by law cannot be excluded, is hereby limited to at the election of the Contractor:

- (1) the supplying of the service again; or
- (2) the payment of the cost of having the services supplied again.

**10. Insurance**

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

- (a) Workers' Compensation insurance in compliance with the law of the state or territory in which the work under the Contract will be performed.

- (b)  Required and attached or  Waived by City Attorney: \_\_\_\_\_

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

- (c)  Required and attached or  Waived by City Attorney: \_\_\_\_\_

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

- (d)  Required and attached or  Waived by City Attorney: \_\_\_\_\_  
Professional Liability insurance with a combined single limit of not less than \$1,000,000 per claim, incident, or occurrence and in aggregate. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract. If insurance coverage is provided on a "claims made" basis, the Contractor shall acquire a 'tail' coverage or continue the same coverage for three years after completion of the contract, provided coverage is available and economically feasible. If such coverage is not available or economically feasible, contractor shall notify City immediately.
- (e) On all types of insurance. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from the Contractor or its insurer(s) to the City.
- (f) Certificates of insurance. As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to the City at the time contractor returns signed contracts. The certificate will specify all of the parties who are Additional Insured and will include the 30-day cancellation clause and 10-day non-payment clause that provides that the insurance shall not terminate or be cancelled without 30 days or 10 days written notice first being given to the City Auditor. Insuring companies or entities are subject to City acceptance. If requested, complete policy copies shall be provided to the City. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

#### 11. Ownership of Work Product

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

The following work products are expressly exempt from becoming the exclusive property of City or being deemed "work for hire" under this clause 11 of the contract: the PCB Model, any pre-existing intellectual property related to the PCB Model as well as any improvements or modifications there (the "Exempt Intellectual Property"). Each party grants to the other party an irrevocable, non-exclusive, royalty free license to utilize the Exempt Intellectual Property to the extent necessary for the purposes of work in the City's watershed. The Contractor shall also be entitled to use all models, test data, reports, and other information developed as part of or arising out of the services for any purpose, including but not limited to, future testing and sampling projects, data comparison, or model development.

#### 12. Nondiscrimination

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub I. No. 101-336) including Title II of that Act, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.13.

##### Successors in Interest

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

#### 14. Severability

The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

#### 15. Waiver

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

#### 16. Errors

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

#### 17. Governing Law

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

**18. Amendments**

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

**19. Business License**

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

**20. Prohibited Interest**

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

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

**21. Payment to Vendors and Subcontractors**

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

**Merger Clause**

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

**OPTIONAL PROVISIONS (selected by City Project Manager)****22. Arbitration: /  / Not Applicable /  / Applicable (consult with City Attorney's Office before finalizing as applicable)**

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

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

**23. Progress Reports: /  / Applicable /  / Not Applicable**

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

**24. Contractor's Personnel: /  / Applicable /  / Not Applicable**

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

25. Subcontractors: / \_\_\_ / Applicable / X / Not Applicable

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

### STATEMENT OF THE WORK AND PAYMENT SCHEDULE

#### BACKGROUND

As part of the City of Portland Water Bureau (PWB) compliance approach to the Long Term 2 Enhanced Surface Water Treatment Rule (LT2) dealing with microbial contamination, PWB is pursuing a variance from treatment. In order to obtain a variance to, the Environmental Protection Agency (EPA) is requiring the PWB to retain the services of an expert Pathogen Fate and Transport modeler to implement modifications to the Pathogen Catchment Budget (PCB) Model to better characterize the concentration, loading within and exported from the Bull Run Watershed. The City of Portland Water Bureau (PWB) has been working for a year and a half to modify the Pathogen Catchment Budget Model (PCB) to the Bull Run Watershed in order to apply for a variance to the treatment requirements of LT2. Through the first phase of the PCB model modification work and recommendations from the Peer Review Panel, the Contractor, and the EPA, additional modifications and subsequent analysis is needed to better characterize the Bull Run Watershed. The City's Project Manager for this contract is Yone Akagi.

#### SCOPE OF WORK

The Contractor shall complete the following:

**Task 1: PCB model application. Work shall be completed by the Contractor by December 1, 2010.**

- 1.1 Prepare data input files for a range of scenarios; including crosschecking of all input files by different team members to ensure that the correct data has been selected.
- 1.2 Run the PCB model with 10 identified scenarios, each with 3 events, as follows:

Scenario	Description of events within the scenario
1. Winter, long ADP (30 day)	Dry (0mm precipitation), Intermediate (25mm precipitation), Wet (130mm precipitation)
2. Summer, long ADP (60 day)	Dry (0mm precipitation), Intermediate (25mm precipitation), Wet (130mm precipitation)
3. Winter, medium ADP (9 day)	Dry (0mm precipitation), Intermediate (25mm precipitation), Wet (130mm precipitation)
4. Summer, short ADP (19 day)	Dry (0mm precipitation), Intermediate (25mm precipitation), Wet (130mm precipitation)
5. Winter, short ADP (5 day)	Dry (0mm precipitation), Wet (130mm precipitation), Large (260mm precipitation)
6. Snowmelt	If there is a bulk movement of snow – to be determined by PWB
7. Post-snowmelt Worst-case scenarios.	Dry (0mm precipitation), Intermediate (130mm precipitation, 150 day ADP), Wet (260mm precipitation, 150 day ADP).
8. Geese for summer	A separate scenario including only geese inputs; results additive to other scenarios
9. Animal Behavior - Riparian, Road and Mature forest land uses	Repeat Scenarios 1-7, with changed animal densities for riparian, road and or mature conifer forest land uses
10. Hibernation effect	Repeat Scenarios 1, 3, 5, 6, 7; with black bear density included and all other animal densities set to 0.

**Task 2: PCB model interpretation and reporting. Work shall be completed by the Contractor by February 1, 2011**

- 2.1 Review model results and prepare graphical presentations of the outputs. These presentations shall include Raster diagrams of the watershed, and xy plots of the predicted loads for each sub-watershed.
- 2.2 Review water quality data for the off-take points (intake, four key stations and Booty lake), including *E. coli*, *Cryptosporidium* and *Giardia* data. The modeled calculated load outputs of the off-take points shall be compared with the water quality data and measured flow and rainfall data for the preceding 24 hours of rainfall to allow categorization of the field conditions with the appropriate modeled scenario. Off-take loadings for similarly categorized events shall

be averaged and compared to the estimated loading predicted by the model for that scenario. The modeled and observed water quality loads shall be compared.

- 2.3 Interpret model outputs for the defined scenarios (Task 1.2), in the context of the watershed conditions and quality of model input data. This shall draw on the data comparison performed in the earlier stage, and incorporate the sensitivity analysis. The interpretation shall combine the quantitative measures with professional opinion to assess the accuracy of the model outputs, and of the confidence in the modeled outputs.
- 2.4 Prepare a final report of the model outputs for the defined scenarios. This shall include a formal written report incorporating tabulated model inputs and outputs, the graphical presentations of the outputs, and the interpretation of the outputs.

**Task 3: Run additional scenarios (optional). Scenarios submitted by the Contractor by November 15, 2010, and shall be completed by February 1, 2011**

- 3.1 Prepare and modify input data files and run additional scenarios. These scenarios would result from feedback from the review panel or other sources. The exact nature of the scenarios and the time required to modify and cross-check the input files is unknown at this stage. Prior to running any additional scenarios, the City shall notify the contractor of the necessary scenario details; the Contractor shall provide an estimate of the time required to model that specific case. A likely set of scenarios may include storm events followed by other short duration rain events, so as to examine the pathogen loadings and export rates resulting from individual storms. A particular additional scenario would be the comparison of current conditions with historical conditions, so as to examine trends and changes in the watershed pathogen loadings over time. Such a scenario may be substantially larger than other complex scenarios, due to the need to re-assess, change and potentially create many of the input files and spatial databases (such as culverts and animal populations) and may require several modeling runs to adequately evaluate model outputs and interpret results.
- 3.2 Graph and interpret outputs from additional scenarios and include revised input data and description of all model assumptions.

**Task 4: Respond to Peer Review and/or US EPA comments**

- 4.1 Provide written responses to queries, as directed by the City.
- 4.2 Travel to Portland to present the model, and/or for technical meetings with the US EPA, and/or other face-to-face meetings with PWB.
- 4.3 Further incorporation of hydrodynamic modeling. This is anticipated to provide advice and reporting on further interactions of the PCB model with the INFLOW model.
- 4.4 Availability of statistical advice in relation to the PCB model. This is anticipated to perform statistical analysis and provide opinion to assist with reporting.

**Task 5: Model handover and staff training. Work shall be completed by the Contractor by April 15, 2011**

- 5.1 Train two PWB staff members in the use of the web tool. Training is anticipated to include face-to-face instruction, if combined with a visit to Portland, or other type of one-on-one instruction if training cannot be accommodated during such a visit. It may be possible to provide an online tutorial as part of the training.
- 5.2 Handover all input data files constructed for the Bull Run watershed for use with the online version of the PCB model.
- 5.3 Prepare written recommendations of further work required.

**Task 6: Model Adaptations and Modifications.**

The PCB model was initially developed according to environmental conditions found in Australia and has been only minimally applied to watersheds outside of Australia. In order to use the PCB for the Bull Run watershed many adaptations are required. The full extent of these adaptations will not be known until all data has been collected and input into the model. In addition the model adaptations and inputs are being reviewed by both an outside peer review panel and the EPA; it is unknown what additional modifications may be recommended. This task is included for this purpose. Contractor shall coordinate with the City prior to beginning tasks associated with Task 6. All expenditures shall be approved in writing by the City's Project Manager prior to expenditure by the Contractor.

**Table A, Project Budget**

Task	Cost (A\$)
1.1, 1.2: PCB model application	\$ 20,680
2: PCB model interpretation	\$ 57,640
3: Run additional model scenarios (cost per simple scenario \$4,840) (cost per complex scenario \$7,480) (cost per very complex scenario \$29,425) <b>Upper Limiting Total for Task 3 (5 simple, 5 complex, and 1 very complex scenario)</b>	\$91,025
4.1: Respond to Peer Review and/or US EPA comments	\$24,200
4.2: Travel and associated professional time (3 trips of 2 days each for a total of 6 days)	\$27,810
4.3: Further hydrodynamic modeling	\$10,560
4.4: Further statistical analysis	\$5,720
5: Recommendations and handover	\$18,535
<b>Sub-Total</b>	<b>\$256,170</b>
6: * Model adaptations and Modifications	\$51,234
<b>Total</b>	<b>\$307,404</b>

\* All expenditures to Task 6 shall be approved in writing by the City's Project Manager prior to expenditure by the Contractor.

**Table B: Rate Schedule**

Project role	Daily rate (A\$, inc. GST)	Hourly rate (A\$, inc. GST)
Project Director	\$1,760	\$220
Project Manager	\$1,320	\$165
PCB modeling specialist	\$1,760	\$220
Software specialist	\$1,045	\$130
Modeling specialist	\$1,760	\$220
Statistician	\$1,320	\$165

**CONTRACTOR PERSONNEL**

The Contractor shall assign the following personnel to do the work in the capacities designated:

NAME	ROLE ON PROJECT
Christobel Ferguson	Project Director
Malcolm Warnecke	Project Manager
Barry Croke	PCB modeling specialist
Ambrose Andrews	Software specialist
Justin Brookes or Matt Hipsey	Modeling specialist
Martin Krogh	Statistician

**SUBCONTRACTORS**

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

NAME	ROLE ON PROJECT
n/a	

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



**COMPENSATION**

Contractor shall be paid the not to exceed amount of **\$307,404**. The Contractor will be paid based on its hourly rates, costs incurred in paying its subcontractors, if any, plus any authorized expenses, as set forth in this Contract. The "not to exceed amount" is the maximum amount of compensation due the Contractor for all the work required by the contract. Errors in estimating the number of hours necessary to perform the work is the sole responsibility of the Contractor. There shall be no mark-up on hourly rates, subconsultant costs or standard reimbursable under this Contract.

**PAYMENT TERMS: Net 30 Days****Hourly Rates**

The Contractor shall be reimbursed in accordance with the rates listed on the attached Exhibit xxx, Summary of Project Fee.

**Progress Payments**

On or before the 15<sup>th</sup> of each month, the Contractor shall submit to the Water Bureau's Accounts Payable an invoice for work performed by the Contractor during the preceding month. The invoice shall contain the City's Contract Number and set out all items for payment including, but not limited to: the name of the individual, labor category, direct labor rate, hours worked during the period, tasks performed, and the percentage of work successfully completed for each task. The Contractor shall also attach photocopies of claimed reimbursable expenses. The PWB's Project Manager shall stamp and approve all Subconsultant invoices and note on the Subconsultant invoice what they are approving as "billable" under the contract. The billing from the prime shall clearly roll up labor and reimbursable costs for the prime and if an amendment authorizes the contractor to include subconsultants, the billing from the prime shall clearly roll up labor and reimbursable costs- matching the Subconsultant invoices. Prior to initial billing, the Contractor shall develop a billing format for approval by the PWB.

Invoices shall either be e-mailed to: [wbaps@portlandoregon.gov](mailto:wbaps@portlandoregon.gov) (this is the preferred method) or sent to:

**City of Portland Water Bureau  
Attn: Portland Water Bureau Accounts Payable  
1120 SW 5<sup>th</sup> Avenue, Room 609  
Portland, OR 97204**

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

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

INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

SECTION A

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

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_ Entity \_\_\_\_\_

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

SECTION B

ORS 670.600 Independent contractor standards. As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. The contracted work meets the following standards:

- 1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

City Project Manager Signature \_\_\_\_\_ Date \_\_\_\_\_

SECTION C

Independent contractor certifies he/she meets the following standards:

- 1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;
2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Contractor check four or more of the following:

- A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;
C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;
D. Labor or services are performed only pursuant to written contracts;
E. Labor or services are performed for two or more different persons within a period of one year; or
F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

**CONTRACTOR SIGNATURE:**

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

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

I, the undersigned, agree to perform work outlined in this contract in accordance to the STANDARD CONTRACT PROVISIONS, the terms and conditions, made part of this contract by reference, and the STATEMENT OF THE WORK made part of this contract by reference; hereby certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; hereby certify that my business is certified as an Equal Employment Opportunity Affirmative Action Employer and is in compliance with the Equal Benefits Program as prescribed by Chapter 3.100 of Code of the City of Portland; and hereby certify I am an independent contractor as defined in ORS 670.600.

Ecowise Australia Pty Ltd

BY: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contract No. \_\_\_\_\_

Contract Title: \_\_\_\_\_

**CITY OF PORTLAND SIGNATURES:**

By: \_\_\_\_\_  
Bureau Director

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chief Procurement Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Elected Official

Date: \_\_\_\_\_

Approved:

By: \_\_\_\_\_  
Office of City Auditor

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
Office of City Attorney

Date: \_\_\_\_\_