

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

CONTRACT NO. 30001528

**SHORT TITLE OF WORK PROJECT:
On-Call Mains Projects
Type II**

This contract is between the City of Portland, acting by and through its Elected Officials, hereafter called "City," and **Murray, Smith & Associates, Inc.**

Effective Date and Duration

This contract shall become effective on **September 15, 2010**. This contract shall expire, unless otherwise terminated or extended, on **September 15, 2013**.

Consideration

- (a) City agrees to pay Contractor a sum not to exceed **\$500,000** 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.

CONTRACTOR DATA AND CERTIFICATION

Name (please print): Murray, Smith & Associates, Inc.

Address: 121 SW Salmon, Suite 900, Portland, OR 97204

Employer Identification Number (EIN) _____

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

City of Portland Business License # 211425-01

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.

**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, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, 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 by the negligence of the City.

(b) Indemnity - Claims for Professional Liability

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses caused by the negligence of the City.

(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.

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 ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).

- (b) ☒ 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, 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. 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 successful Proposer 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.

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 L. 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 Purchasing Agent 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: /_X_/ 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: / x / 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: / x / 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: / x / Applicable / ___ / 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

WORK REQUIREMENTS

The Contractor shall provide services to the City of Portland Water Bureau (PWB) for on-call miscellaneous professional services on an as-needed basis. There is no guarantee that the total dollar limit of the contract will be reached and there is no guarantee that all categories of services listed below will be required by the PWB. The task order amount may vary dependent upon the amount of work estimated for a particular task/project, but the contract shall not exceed \$500,000 with individual task orders not exceeding \$250,000 for the 3-year term of the contract.

PWB personnel shall provide the general scope of each task/project. The Contractor shall develop and negotiate the specific scope of work, budget and schedule in writing. If accepted, a task order shall be completed by the PWB's Contracts Administration Branch (CAB) and shall be signed by each party. Work to be performed may proceed once all parties have signed the task order.

Work shall be assigned as project needs are identified under this contract. The scope of work, schedule, deliverables and compensation for each project shall be established in writing via a task order prior to commencement of the work. Any changes must be agreed to by the both parties in writing as an amendment to the task order.

Following the notice to proceed issued by CAB, the PWB Project Manager shall work directly with the Contractor for the duration of the task order unless otherwise noted in the task order.

SCOPE OF WORK

The Contractor shall provide services as needed to complete the design of projects or project tasks as requested within potentially limited time frames. The Contractor shall be expected to work closely with designated PWB personnel. PWB shall determine the scope of work for each project.

Each assigned project shall have a maximum monetary limit established in the task order by PWB through negotiation with the successful Proposers prior to commencement of work. Such maximum amount may be exceeded only upon the written approval of the PWB via an amendment to the task order, and only for documented circumstances unforeseen at the time the project was accepted, or for a necessary change in the scope of work as originally requested by PWB.

The successful Proposers will be required to:

- A. Coordinate with other City departments and public and private utilities under the direction of the PWB Project Manager;
- B. Assist in securing land use and construction approvals (including work in environmental zones and conditional use approvals);
- C. Assist in securing other permits from other agencies;
- D. Design each project in accordance with the following:
 - PWB Design Manual
 - PWB CAD Standards
 - Standard Construction Specifications for the City of Portland
 - Portland Water Bureaus Developers Manual
 - American Water Works Association
 - American Association of Testing Materials
 - City Erosion Control Manual
 - Occupational Safety and Health Administration
 - Oregon Administration Rules
 - Uniform Plumbing Code
 - All other applicable PWB manuals, policies and conditions included within the scope of each project.
- E. Design and Construction Phase Engineering Projects related to the replacement of Type II (those larger than Type I) Water mains, at various locations throughout the City. Examples of the types of services to be provided in water main projects Type II are as follows:
 1. Design services which include but are not limited to civil, structural, CAD, electrical, survey, scheduling, report preparation, utility coordination, Quality Assurance/Quality Control (QA/QC), preparation and submission of biddable plans and contract documents, technical writing coordinating with City and other agencies on joint project, and permitting assistance.
 2. Project Management/Coordination
 3. Work Plans
 4. Design Milestone reports
 5. Vicinity maps
 6. Potholing
 7. Erosion and Traffic Control Plans
 8. Services during construction including on-site visits, submittal review, review and respond to construction contractor RFI's, and construction oversight.
 9. Environmental assessment
 10. Geotechnical investigation and reports
 11. Arranging for survey work
 12. Construction management which includes but is not limited to Review of construction materials; response to PWB's construction contractor's requests for information, assistance in preparation of responses to construction claims, change orders, and other miscellaneous documents; construction oversight; prepare Requests for Proposals directed to CM/GC for work considered beyond the Guaranteed Maximum Price (GMP) that may result in change orders issued by PWB; make periodic visits to the site to observe, as an experienced and qualified design engineer of record, the progress and quality of the assigned aspects of the work; provide a written response or report to the PWB of observations and recommendations based on site visits; review shop drawings and submittals for contract compliance; and provide qualified inspection services to support construction.

CONTRACTOR PERSONNEL

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

NAME	ROLE ON PROJECT
Troy Bowers, PE	Principal - in -Charge
Kate Conrad, PE	Primary Project Manager
Matt Hickey, PE	Alternate Project manager
Jim Helton, PE	Technical Advisor
Jeff Jones, PE	Technical Advisor
Susan Gierga, PE	Project Engineer
Lael Alderman, PE	Project Engineer
Brendan O' Sullivan, PE	Project Engineer
Caroline Barlow, PE	Project Engineer

SUBCONTRACTORS

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

NAME	ROLE ON PROJECT
NLV Services, Inc	Surveying
Pacific Geotechnical, LLC	Geotechnical Engineering
Sigma Engineering, Inc.	Structural Engineering
Susan Oman, Landscape Architect	Landscape Architecture
Environmental Science & Assessment, LLC (ESA)	Environmental Consulting and Permitting
Reyes Engineering, Inc.	Electrical and Control system Engineering
BEA consulting, Inc.	Mechanical Engineering
Cascade Corrosion consulting Services, Inc.	Corrosion Control Services
Universal Field Services, Inc.	Right-of-Way /easement Appraisal and Acquisition
JLA Public Involvement, Inc.	Public Involvement
Gabriele Development Services	Permitting/Land Use and Conditional Use
Vac-X	Vacuum Excavation (Potholing)

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

The Contractor shall be paid based on its hourly rates, costs incurred in paying its subcontractors, if any, plus any authorized expenses, as set forth in more detail in the attached Exhibit A, Billing Rates. 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.

Multiplier Information

The multiplier applied to salaries shall not exceed 3.1. The multiplier shall include the following non-reimbursable expenses: fringe benefits, payroll bonuses, autos and other defined perquisites, telecommunications, facsimile services, overhead expenses including but not limited to local and long distance telephone, parking, delivery/courier, general business and professional liability insurance, advertising costs, postage, internal copying, lease of office equipment, mileage and other local travel costs, information technology (including computer time and other related highly specialized equipment), all other direct costs not identified as reimbursable, other indirect costs and profit.

Standard Reimbursable Costs

The following costs shall be reimbursed without mark-up:

- Out-of-Town Travel. Travel (transportation, lodging and per diem) of Contractor and/or experts when specified in the contract or requested by PWB, directly attributed to specific tasks and when to a location outside a 100 mile radius of Contractor's project office. Travel costs shall be reimbursed in accordance

with the City's Travel Expense Guidelines, which are based on the General Services Administration (GSA) per diem rates.

- Photocopying/Reproduction Costs. Reproduction of required drawings, reports, specifications, bidding documents, in excess of the number required as part of the contract excluding the cost of reproduction for Contractor's or sub's own use.

Sub-consultant Costs

Compensation for sub-consultants shall be limited to the same restrictions imposed on the Contractor. The maximum markup on sub-consultant services shall not exceed 5%, during the term of the contract.

Adjustment of Hourly Rates Due to Inflation

Annual adjustment of hourly rates shall be considered upon written request from the Contractor. Approval of a request for rate increases is solely within the City's discretion and under no circumstances is the City obligated to approve such a request.

Rate increases are subject to the following limitations:

- No increases shall be granted before the one-year anniversary of the contract;
- No more than one increase shall be granted per contract year;
- Rate increases may not exceed the then-current average inflation rate for the Portland Metropolitan Area (as determined from the US Department of Labor statistics and certified by the City of Portland Auditor);
- Rate increases shall not be retroactive.

Other than the impact of inflation as described above, hourly rates may not be increased. Increases to labor rates shall not increase the not-to-exceed amount of **\$500,000**

PAYMENT TERMS: Net 30 Days

Hourly Rates

The Contractor shall be reimbursed in accordance with the rates listed on the attached Exhibit A, Billing Rates.

Progress Payments

On or before the 15th 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 provide written explanation of deviations from the contract fees and provide measures of correction as necessary to ensure that the project remains on budget. The Contractor shall also attach photocopies of claimed reimbursable expenses. The City'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 should clearly roll up labor and reimbursable costs for the prime and subconsultants – matching the subconsultant invoices. Prior to initial billing, the Contractor shall develop a billing format for approval by the City.

Invoices shall either be e-mailed to: wb.accounts payablesection@ci.portland.or.us (this is the preferred method) or sent to:

City of Portland Water Bureau
Attn: Accounts Payable
1120 SW 5th 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.

Murray, Smith & Associates, Inc.,

BY: 

Date: July 12, 2010

Name: _____

Title: _____

Contract No. _____

Contract Title: On-Call Mains Projects – Type II

CITY OF PORTLAND SIGNATURES:

By: _____

Bureau Director

Date: 10.26.2010

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

APPROVED AS TO FORM


CITY ATTORNEYDate: 7/12/10

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

CONTRACT NO. 30001526

**SHORT TITLE OF WORK PROJECT:
On-Call Mains Projects
Type I**

This contract is between the City of Portland, acting by and through its Elected Officials, hereafter called "City," and **BergerABAM**, hereafter called Contractor. The City's Project Manager for this contract is **Marvin Weber**.

Effective Date and Duration

This contract shall become effective on **September 30, 2010**. This contract shall expire, unless otherwise terminated or extended, on **September 29, 2013**.

Consideration

- (a) City agrees to pay Contractor a sum not to exceed **\$300,000** 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.

CONTRACTOR DATA AND CERTIFICATION

Name (please print): BergerABAM

Address: 700 Northeast Multnomah Street, Suite 900, Portland, OR 97232

Employer Identification Number (EIN)

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

City of Portland Business License # 193966

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.

**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, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, 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 by the negligence of the City.

(b) Indemnity - Claims for Professional Liability

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses caused by the negligence of the City.

(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.

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 ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).

- (b) ☒ 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, 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. 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 successful Proposer 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.

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 L. 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 Purchasing Agent 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: / ☒ X / 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: / x / Applicable / X / 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: / x / 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: / x / Applicable / / 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**

WORK REQUIREMENTS

The Contractor shall provide services to the City of Portland Water Bureau (PWB) for on-call miscellaneous professional services on an as-needed basis. There is no guarantee that the total dollar limit of the contract will be reached and there is no guarantee that all categories of services listed below will be required by the PWB. The task order amount may vary dependent upon the amount of work estimated for a particular task/project, but the contract shall not exceed \$300,000 with individual task orders not exceeding \$100,000 for the 3-year term of the contract.

PWB personnel shall provide the general scope of each task/project. The Contractor shall develop and negotiate the specific scope of work, budget and schedule in writing. If accepted, a task order shall be completed by the PWB's Contracts Administration Branch (CAB) and shall be signed by each party. Work to be performed may proceed once all parties have signed the task order.

Work shall be assigned as project needs are identified under this contract. The scope of work, schedule, deliverables and compensation for each project shall be established in writing via a task order prior to commencement of the work. Any changes must be agreed to by the both parties in writing as an amendment to the task order.

Following the notice to proceed issued by CAB, the PWB Project Manager shall work directly with the Contractor for the duration of the task order unless otherwise noted in the task order.

SCOPE OF WORK

The Contractor shall provide services as needed to complete the design of projects or project tasks as requested within potentially limited time frames. The Contractor shall be expected to work closely with designated PWB personnel. PWB shall determine the scope of work for each project.

Each assigned project shall have a maximum monetary limit established in the task order by PWB through negotiation with the successful Proposers prior to commencement of work. Such maximum amount may be exceeded only upon the written approval of the PWB via an amendment to the task order, and only for documented circumstances unforeseen at the time the project was accepted, or for a necessary change in the scope of work as originally requested by PWB.

The successful Proposers will be required to:

- A. Coordinate with other City departments and public and private utilities under the direction of the PWB Project Manager;
- B. Assist in securing land use and construction approvals (including work in environmental zones and conditional use approvals);
- C. Assist in securing other permits from other agencies;
- D. Design each project in accordance with the following:
 - PWB Design Manual
 - PWB CAD Standards
 - Standard Construction Specifications for the City of Portland
 - Portland Water Bureaus Developers Manual
 - American Water Works Association
 - American Association of Testing Materials
 - City Erosion Control Manual
 - Occupational Safety and Health Administration
 - Oregon Administration Rules
 - Uniform Plumbing Code
 - All other applicable PWB manuals, policies and conditions included within the scope of each project.
- E. Design and Construction Phase Engineering Projects related to the replacement installation of Type I (small 16-inch and less) Water mains at various locations throughout the City. Examples of the types of services to be provided for water main projects Type I are as follows:
 1. Design services which include but are not limited to civil, structural, CAD, electrical, survey, scheduling, report preparation, utility coordination, Quality Assurance/Quality Control (QA/QC), preparation and submission of biddable plans and contract documents, technical writing coordinating with City and other agencies on joint project, and permitting assistance.
 2. Project Management/Coordination
 3. Work Plans
 4. Design Milestone reports
 5. Vicinity maps
 6. Potholing
 7. Erosion and Traffic Control Plans
 8. Services during construction including on-site visits, submittal review, review and respond to construction contractor Requests for Information (RFI's), and construction oversight.
 9. Environmental assessment
 10. Geotechnical investigation and reports
 11. Arranging for survey work
 12. Construction management which includes but is not limited to review of construction materials; response to PWB's construction contractor's requests for information, assistance in preparation of responses to construction claims, change orders, and other miscellaneous documents; construction oversight; prepare Requests for Proposals directed to CM/GC for work considered beyond the Guaranteed Maximum Price (GMP) that may result in change orders issued by PWB; make periodic visits to the site to observe, as an experienced and qualified design engineer of record, the progress and quality of the assigned aspects of the

work; provide a written response or report to the PWB of observations and recommendations based on site visits; review shop drawings and submittals for contract compliance; and provide qualified inspection services to support construction.

CONTRACTOR PERSONNEL

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

NAME	ROLE ON PROJECT
Tom Wilcox, PE	Project Principal
David Bick, PE	Project Manager
Shawn Ellis, PE	Civil Design
Dan Johnston, PE, LEED AP	Civil Design
Matt Huxley, PE	Civil Design
James Bohanek, EIT	Civil Design
Hod Wells, PE, LEED AP	Structural Design
Bob Lee	Construction Inspection
Bob Kohli	Construction inspection
Javier Moncada, EIT	Construction Inspection

SUBCONTRACTORS

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

NAME	ROLE ON PROJECT
Cascade Design Professionals, Inc.	Engineering
Bluedot Group	Survey
Pacific Geotechnical, LLC	Geotechnical Engineering
Epsilon Engineering, Inc.	Electrical Engineering

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

The Contractor shall be paid based on its hourly rates, costs incurred in paying its subcontractors, if any, plus any authorized expenses, as set forth in more detail in the attached Exhibit A, Billing Rates. 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.

Multiplier Information

The multiplier applied to salaries shall not exceed 3.1. The multiplier shall include the following non-reimbursable expenses: fringe benefits, payroll bonuses, autos and other defined perquisites, telecommunications, facsimile services, overhead expenses including but not limited to local and long distance telephone, parking, delivery/courier, general business and professional liability insurance, advertising costs, postage, internal copying, lease of office equipment, mileage and other local travel costs, information technology (including computer time and other related highly specialized equipment), all other direct costs not identified as reimbursable, other indirect costs and profit.

Standard Reimbursable Costs

The following costs shall be reimbursed without mark-up:

- Out-of-Town Travel. Travel (transportation, lodging and per diem) of Contractor and/or experts when specified in the contract or requested by PWB, directly attributed to specific tasks and when to a location outside a 100 mile radius of Contractor's project office. Travel costs shall be reimbursed in accordance with the City's Travel Expense Guidelines, which are based on the General Services Administration (GSA) per diem rates.

- Photocopying/Reproduction Costs. Reproduction of required drawings, reports, specifications, bidding documents, in excess of the number required as part of the contract excluding the cost of reproduction for Contractor's or sub's own use.

Sub-consultant Costs

Compensation for sub-consultants shall be limited to the same restrictions imposed on the Contractor. The maximum markup on sub-consultant services shall not exceed 5%, during the term of the contract.

Adjustment of Hourly Rates Due to Inflation

Annual adjustment of hourly rates shall be considered upon written request from the Contractor. Approval of a request for rate increases is solely within the City's discretion and under no circumstances is the City obligated to approve such a request.

Rate increases are subject to the following limitations:

- No increases shall be granted before the one-year anniversary of the contract;
- No more than one increase shall be granted per contract year;
- Rate increases may not exceed the then-current average inflation rate for the Portland Metropolitan Area (as determined from the US Department of Labor statistics and certified by the City of Portland Auditor);
- Rate increases shall not be retroactive.

Other than the impact of inflation as described above, hourly rates may not be increased. Increases to labor rates shall not increase the not-to-exceed amount of **\$300,000**.

PAYMENT TERMS: Net 30 Days

Hourly Rates

The Contractor shall be reimbursed in accordance with the rates listed on the attached Exhibit A, Billing Rates.

Progress Payments

On or before the 15th 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 provide written explanation of deviations from the contract fees and provide measures of correction as necessary to ensure that the project remains on budget. The Contractor shall also attach photocopies of claimed reimbursable expenses. The City'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 should clearly roll up labor and reimbursable costs for the prime and subconsultants – matching the subconsultant invoices. Prior to initial billing, the Contractor shall develop a billing format for approval by the City.

Invoices shall either be e-mailed to: wb.accounts payablesection@ci.portland.or.us (this is the preferred method) or sent to:

City of Portland Water Bureau
Attn: Accounts Payable
1120 SW 5th 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 Thomas R. Nelson Date 7/12/2010 Entity Berger ABAM Inc.

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.

BergerABAM,

BY: Thomas R. Wilcox Date: 7/12/2010

Name: THOMAS R. WILCOX

Title: VICE PRESIDENT

184249

Contract No. _____

Contract Title: On-Call Mains Projects - Type I

CITY OF PORTLAND SIGNATURES:

By:  Date: 10.26.2010
Bureau Director


By: _____ Date: _____
Chief Procurement Officer

By: _____ Date: _____
Elected Official

Approved:

By: _____ Date: _____
Office of City Auditor

Approved as to Form:

By: APPROVED AS TO FORM Date: 7/19/10
Office of City Attorney

CITY ATTORNEY

SUBJECT TO INSURANCE APPROVAL

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

CONTRACT NO. 30001527

**SHORT TITLE OF WORK PROJECT:
On-Call Mains Projects
Type I**

This contract is between the City of Portland, acting by and through its Elected Officials, hereafter called "City," and **OTAK, Inc.**, hereafter called Contractor. The City's Project Manager for this contract is **Marvin Weber**.

Effective Date and Duration

This contract shall become effective on **September 30, 2010**. This contract shall expire, unless otherwise terminated or extended, on **September 29, 2013**.

Consideration

- (a) City agrees to pay Contractor a sum not to exceed **\$300,000** 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.

CONTRACTOR DATA AND CERTIFICATION

Name (please print): OTAK, Inc.

Address: 17355 SW Boones Ferry Road, Lake Oswego, OR 97035

Employer Identification Number (EIN) 93-0788869

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

City of Portland Business License # 381523

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.

**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, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, 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 by the negligence of the City.

(b) Indemnity - Claims for Professional Liability

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses caused by the negligence of the City.

(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.

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 ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).

- (b) ☒ 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, 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. 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 successful Proposer 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.

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 L. 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 Purchasing Agent 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: / X / 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: / x / Applicable / X / 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: / x 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: / x / Applicable / ___ / 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

WORK REQUIREMENTS

The Contractor shall provide services to the City of Portland Water Bureau (PWB) for on-call miscellaneous professional services on an as-needed basis. There is no guarantee that the total dollar limit of the contract will be reached and there is no guarantee that all categories of services listed below will be required by the PWB. The task order amount may vary dependent upon the amount of work estimated for a particular task/project, but the contract shall not exceed \$300,000 with individual task orders not exceeding \$100,000 for the 3-year term of the contract.

PWB personnel shall provide the general scope of each task/project. The Contractor shall develop and negotiate the specific scope of work, budget and schedule in writing. If accepted, a task order shall be completed by the PWB's Contracts Administration Branch (CAB) and shall be signed by each party. Work to be performed may proceed once all parties have signed the task order.

Work shall be assigned as project needs are identified under this contract. The scope of work, schedule, deliverables and compensation for each project shall be established in writing via a task order prior to commencement of the work. Any changes must be agreed to by the both parties in writing as an amendment to the task order.

Following the notice to proceed issued by CAB, the PWB Project Manager shall work directly with the Contractor for the duration of the task order unless otherwise noted in the task order.

SCOPE OF WORK

The Contractor shall provide services as needed to complete the design of projects or project tasks as requested within potentially limited time frames. The Contractor shall be expected to work closely with designated PWB personnel. PWB shall determine the scope of work for each project.

Each assigned project shall have a maximum monetary limit established in the task order by PWB through negotiation with the successful Proposers prior to commencement of work. Such maximum amount may be exceeded only upon the written approval of the PWB via an amendment to the task order, and only for documented circumstances unforeseen at the time the project was accepted, or for a necessary change in the scope of work as originally requested by PWB.

The successful Proposers will be required to:

- A. Coordinate with other City departments and public and private utilities under the direction of the PWB Project Manager;
- B. Assist in securing land use and construction approvals (including work in environmental zones and conditional use approvals);
- C. Assist in securing other permits from other agencies;
- D. Design each project in accordance with the following:
 - PWB Design Manual
 - PWB CAD Standards
 - Standard Construction Specifications for the City of Portland
 - Portland Water Bureaus Developers Manual
 - American Water Works Association
 - American Association of Testing Materials
 - City Erosion Control Manual
 - Occupational Safety and Health Administration
 - Oregon Administration Rules
 - Uniform Plumbing Code
 - All other applicable PWB manuals, policies and conditions included within the scope of each project.
- E. Design and Construction Phase Engineering Projects related to the replacement installation of Type I (small 16-inch and less) Water mains at various locations throughout the City. Examples of the types of services to be provided for water main projects Type I are as follows:
 1. Design services which include but are not limited to civil, structural, CAD, electrical, survey, scheduling, report preparation, utility coordination, Quality Assurance/Quality Control (QA/QC), preparation and submission of biddable plans and contract documents, technical writing coordinating with City and other agencies on joint project, and permitting assistance.
 2. Project Management/Coordination
 3. Work Plans
 4. Design Milestone reports
 5. Vicinity maps
 6. Potholing
 7. Erosion and Traffic Control Plans
 8. Services during construction including on-site visits, submittal review, review and respond to construction contractor Requests for Information (RFI's), and construction oversight.
 9. Environmental assessment
 10. Geotechnical investigation and reports
 11. Arranging for survey work
 12. Construction management which includes but is not limited to review of construction materials; response to PWB's construction contractor's requests for information, assistance in preparation of responses to construction claims, change orders, and other miscellaneous documents; construction oversight; prepare Requests for Proposals directed to CM/GC for work considered beyond the Guaranteed Maximum Price (GMP) that may result in change orders issued by PWB; make periodic visits to the site to observe, as an

experienced and qualified design engineer of record, the progress and quality of the assigned aspects of the work; provide a written response or report to the PWB of observations and recommendations based on site visits; review shop drawings and submittals for contract compliance; and provide qualified inspection services to support construction.

CONTRACTOR PERSONNEL

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

NAME	ROLE ON PROJECT
Mike Peebles, PE	Principal-in-Charge
Scott Shumaker, PE	Project Manager/ QA/QC
Sarah Espinosa, PE	Utilities Coordination
Jack Carlson, PLS	Survey
Kelly Freeman, PE, SE	Structural Design
Ian Fabik, PE	Erosion and Traffic Control/Task Leader/Civil Design
Jeff Harrington, PE	Task leaders/Civil Design
Kristen Ballou, PE	Task leaders/Civil Design
Ian Machan, PE	Construction Manager

SUBCONTRACTORS

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

NAME	ROLE ON PROJECT
Environmental Science & Assessment	Environmental Assessments
Ash Creek Associates	Geotechnical Investigation and Reports
Vac-X	Potholing
Bradford Consulting Engineers	Electrical
NW Engineers	Civil Engineering

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

The Contractor shall be paid based on its hourly rates, costs incurred in paying its subcontractors, if any, plus any authorized expenses, as set forth in more detail in the attached Exhibit A, Billing Rates. 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.

Multiplier Information

The multiplier applied to salaries shall not exceed 3.1. The multiplier shall include the following non-reimbursable expenses: fringe benefits, payroll bonuses, autos and other defined perquisites, telecommunications, facsimile services, overhead expenses including but not limited to local and long distance telephone, parking, delivery/courier, general business and professional liability insurance, advertising costs, postage, internal copying, lease of office equipment, mileage and other local travel costs, information technology (including computer time and other related highly specialized equipment), all other direct costs not identified as reimbursable, other indirect costs and profit.

Standard Reimbursable Costs

The following costs shall be reimbursed without mark-up:

- Out-of-Town Travel. Travel (transportation, lodging and per diem) of Contractor and/or experts when specified in the contract or requested by PWB, directly attributed to specific tasks and when to a location outside a 100 mile radius of Contractor's project office. Travel costs shall be reimbursed in accordance with the City's Travel Expense Guidelines, which are based on the General Services Administration (GSA) per diem rates.

- Photocopying/Reproduction Costs. Reproduction of required drawings, reports, specifications, bidding documents, in excess of the number required as part of the contract excluding the cost of reproduction for Contractor's or sub's own use.

Sub-consultant Costs

Compensation for sub-consultants shall be limited to the same restrictions imposed on the Contractor. The maximum markup on sub-consultant services shall not exceed 5%, during the term of the contract.

Adjustment of Hourly Rates Due to Inflation

Annual adjustment of hourly rates shall be considered upon written request from the Contractor. Approval of a request for rate increases is solely within the City's discretion and under no circumstances is the City obligated to approve such a request.

Rate increases are subject to the following limitations:

- No increases shall be granted before the one-year anniversary of the contract;
- No more than one increase shall be granted per contract year;
- Rate increases may not exceed the then-current average inflation rate for the Portland Metropolitan Area (as determined from the US Department of Labor statistics and certified by the City of Portland Auditor);
- Rate increases shall not be retroactive.

Other than the impact of inflation as described above, hourly rates may not be increased. Increases to labor rates shall not increase the not-to-exceed amount of \$300,000.

PAYMENT TERMS: Net 30 Days

Hourly Rates

The Contractor shall be reimbursed in accordance with the rates listed on the attached Exhibit A, Billing Rates.

Progress Payments

On or before the 15th 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 provide written explanation of deviations from the contract fees and provide measures of correction as necessary to ensure that the project remains on budget. The Contractor shall also attach photocopies of claimed reimbursable expenses. The City'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 should clearly roll up labor and reimbursable costs for the prime and subconsultants – matching the subconsultant invoices. Prior to initial billing, the Contractor shall develop a billing format for approval by the City.

Invoices shall either be e-mailed to: wb.accountspayablesection@ci.portland.or.us (this is the preferred method) or sent to:

City of Portland Water Bureau
Attn: Accounts Payable
1120 SW 5th 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 Michael Peebles Date 7/12/10 Entity Obk, Inc
MICHAEL PEEBLES

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.

OTAK, Inc.,

BY: _____ Date: _____


Name: _____

Title: _____

Contract No. _____

Contract Title: On-Call Mains Projects – Type I

CITY OF PORTLAND SIGNATURES:

By: 
Bureau DirectorDate: 10.26.2010By: _____
Chief Procurement Officer

Date: _____

By: _____
Elected Official

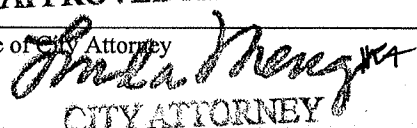
Date: _____

Approved:

By: _____
Office of City Auditor

Date: _____

Approved as to Form:

By: APPROVED AS TO FORM
Office of City AttorneyDate: 7/19/10
CITY ATTORNEY

OTAK, INC.

BREAKDOWN OF BILLING RATES AND DIRECT NON-LABOR RATES

Classification	Lowest Salary	Highest Salary	Multiplier	Lowest Billing Rate	Highest Billing Rate
Sr. PIC/Sr. PM Civil	\$64.90	\$70.68	3.0	\$195.00	\$212.00
Civil Engineer X	\$56.22	\$59.06	3.0	\$169.00	\$177.00
Civil Engineer IX	\$52.88	\$55.52	3.0	\$159.00	\$167.00
Civil Engineer VIII	\$46.00	\$53.00	3.0	\$138.00	\$159.00
Civil Engineer VII	\$45.00	\$47.51	3.0	\$135.00	\$143.00
Civil Engineer VI	\$41.14	\$44.63	3.0	\$123.00	\$134.00
Civil Engineer V	\$39.66	\$42.91	3.0	\$119.00	\$129.00
Civil Engineer IV	\$36.06	\$37.86	3.0	\$108.00	\$114.00
Civil Engineer III	\$32.93	\$36.44	3.0	\$99.00	\$109.00
Civil Engineer II	\$29.00	\$33.74	3.0	\$87.00	\$101.00
Civil Engineer I	\$25.75	\$30.29	3.0	\$77.00	\$91.00
Engineering Designer IV	\$31.50	\$33.08	3.0	\$95.00	\$99.00
Engineering Designer III	\$27.26	\$29.75	3.0	\$82.00	\$89.00
Engineering Designer II	\$25.00	\$28.27	3.0	\$75.00	\$85.00
Engineering Designer I	\$23.08	\$24.23	3.0	\$69.00	\$73.00
Engineering Technician VI	\$34.14	\$38.87	3.0	\$102.00	\$117.00
Engineering Technician V	\$30.00	\$34.32	3.0	\$90.00	\$103.00
Engineering Technician IV	\$26.44	\$29.48	3.0	\$79.00	\$88.00
Engineering Technician III	\$23.56	\$26.00	3.0	\$71.00	\$78.00
Engineering Technician II	\$21.32	\$22.39	3.0	\$64.00	\$67.00
Engineering Technician I	\$18.50	\$19.43	3.0	\$56.00	\$58.00
Landscape Architect V	\$38.46	\$40.38	3.0	\$115.00	\$121.00
Landscape Architect IV	\$34.13	\$37.36	3.0	\$102.00	\$112.00
Landscape Architect III	\$32.69	\$35.33	3.0	\$98.00	\$106.00
Landscape Technician III	\$24.04	\$27.26	3.0	\$72.00	\$82.00
Landscape Technician II	\$22.60	\$24.23	3.0	\$68.00	\$73.00
Landscape Technician I	\$20.00	\$22.71	3.0	\$60.00	\$68.00
Planner III	\$40.87	\$42.91	3.0	\$123.00	\$129.00
Planner II	\$28.85	\$36.75	3.0	\$87.00	\$110.00
Planner I	\$26.44	\$27.76	3.0	\$79.00	\$83.00
Planner Associate III	\$23.08	\$24.74	3.0	\$69.00	\$74.00
Planner Associate II	\$21.15	\$22.21	3.0	\$63.00	\$67.00
Planner Associate I	\$20.19	\$21.20	3.0	\$61.00	\$64.00
Sr. GIS Specialist Planner	\$29.71	\$31.20	3.0	\$89.00	\$94.00
GIS Specialist	\$25.48	\$26.75	3.0	\$76.00	\$80.00
PIC/PLS - Sr. Manager	\$64.90	\$68.15	3.0	\$195.00	\$204.00
PLS Sr. Manager	\$43.27	\$51.49	3.0	\$130.00	\$154.00
PLS - Project Manager	\$38.73	\$40.67	3.0	\$116.00	\$122.00
Sr. Professional Land Surveyor	\$33.65	\$36.75	3.0	\$101.00	\$110.00
Professional Land Surveyor	\$28.38	\$31.50	3.0	\$85.00	\$95.00
Survey Technician	\$27.50	\$31.50	3.0	\$83.00	\$95.00
Survey Tech II, Sr. Field Party Chief	\$23.00	\$26.78	3.0	\$69.00	\$80.00
Sr. Field Survey Technician II	\$22.00	\$23.63	3.0	\$66.00	\$71.00
Sr. Field Survey Technician I	\$19.50	\$21.00	3.0	\$59.00	\$63.00
Field Survey Technician	\$18.00	\$18.90	3.0	\$54.00	\$57.00
Project Administrative Assistant	\$22.74	\$23.88	3.0	\$68.00	\$72.00
Contract Administrator	\$27.03	\$28.38	3.0	\$81.00	\$85.00

Rates will be adjusted annually as stated in the Statement of Work and Payment Schedule.

Client shall be invoiced based on the actual rate of pay paid to the specific employee performing the work/tasks, but not to exceed the maximum Billing Rate for the employee's classification.

Approved costs incurred outside the Statement of Work will be reimbursed at cost. Subconsultants will be charged at cost plus 10%.

Client shall reimburse Otak for travel expenses incurred under this Agreement according to the rates set forth by the Joint Travel Regulations that are in effect on the date when the travel occurs.

SUBCONSULTANTS
BREAKDOWN OF BILLING RATES AND DIRECT NON-LABOR RATES

Classification	Lowest Salary	Highest Salary	Multiplier	Lowest Billing Rate	Highest Billing Rate
Bradford Consulting Engineers, Inc.					
CAD Technician I	\$21.00	\$23.00	3.1	\$65.00	\$71.00
CAD Technician II	\$22.00	\$24.00	3.1	\$68.00	\$74.00
CAD Technician III	\$23.00	\$25.00	3.1	\$71.00	\$78.00
Designer I	\$25.00	\$27.00	3.1	\$78.00	\$84.00
Designer II	\$26.00	\$28.00	3.1	\$81.00	\$87.00
Designer III	\$31.00	\$33.00	3.1	\$96.00	\$102.00
Sr. Designer or Sr. Project Coordinator	\$34.00	\$37.00	3.1	\$105.00	\$115.00
Engineering Intern	\$23.00	\$25.00	3.1	\$71.00	\$78.00
Engineering or Architectural Assistant I	\$27.00	\$29.00	3.1	\$84.00	\$90.00
Engineering or Architectural Assistant II	\$30.00	\$32.00	3.1	\$93.00	\$99.00
Engineering or Architectural Associate III	\$32.00	\$35.00	3.1	\$99.00	\$109.00
Engineer IV/Architect IV	\$35.00	\$40.00	3.1	\$109.00	\$124.00
Sr. Engineer V/Architect V	\$37.00	\$41.00	3.1	\$115.00	\$127.00
Department or Project Manager	\$44.00	\$49.00	3.1	\$136.00	\$152.00
Principal	\$53.00	\$58.00	3.1	\$164.00	\$180.00
Administrative Assistant I & II	\$16.00	\$18.00	3.1	\$50.00	\$56.00
Administrative Assistant III	\$19.00	\$21.00	3.1	\$59.00	\$65.00
IT Support Personnel	\$37.00	\$41.00	3.1	\$115.00	\$127.00
Data Center Architect/Thermal	\$92.00	\$95.00	3.1	\$285.00	\$295.00
Van Caren Associates, Inc.					
Principal	\$54.45	\$62.00	3.1	\$169.00	\$192.00
Senior Associate	\$49.85	\$49.85	3.1	\$155.00	\$155.00
Associate	\$42.79	\$45.25	3.1	\$133.00	\$140.00
Senior Project	\$34.75	\$37.45	3.1	\$108.00	\$116.00
Project	\$29.81	\$31.05	3.1	\$92.00	\$96.00
Senior Staff	\$28.30	\$28.30	3.1	\$88.00	\$88.00
Staff	\$20.20	\$25.00	3.1	\$63.00	\$78.00
Administrative	\$16.00	\$24.75	3.1	\$50.00	\$77.00
Drafter	\$21.85	\$21.85	3.1	\$68.00	\$68.00
W. J. Engineering					
Principal/Sr. Environmental Scientist	\$46.00	\$48.30	2.668	\$123.00	\$129.00
Sr. Wetland Scientist/Wildlife Biologist	\$38.75	\$40.70	2.668	\$103.00	\$109.00
Sr. Wetland Scientist/Botanist	\$37.50	\$39.40	2.668	\$100.00	\$105.00
Wetland Scientist	\$26.00	\$27.30	2.668	\$69.00	\$73.00
Accounting	\$25.80	\$27.10	2.668	\$69.00	\$72.00
W. J. Engineering					
Project Manager/Engineer	\$42.00	\$48.00	3.0	\$126.00	\$144.00
Project Designer	\$30.00	\$35.00	3.0	\$90.00	\$105.00
Project Coordinator	\$15.00	\$20.00	3.0	\$45.00	\$60.00
VAC					
	Rate	Unit			
Mobilization	\$525.00	each			
Pothole	\$542.00	each			
Core/Restoration of Hard Surface	\$14.50	per inch			
Traffic Control	Cost + 10%				
Project Mnt.	\$88.00	hour			

Rates will be adjusted annually as stated in the Statement of Work and Payment Schedule.

Approved costs incurred outside the Statement of Work will be reimbursed at cost.

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

CONTRACT NO. 30001536

SHORT TITLE OF WORK PROJECT:
On-Call Mains Projects
Type II

This contract is between the City of Portland, acting by and through its Elected Officials, hereafter called "City," and ACE Consultants, Inc.

Effective Date and Duration

This contract shall become effective on September 15, 2010. This contract shall expire, unless otherwise terminated or extended, on September 14, 2013.

Consideration

- (a) City agrees to pay Contractor a sum not to exceed \$500,000 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.

CONTRACTOR DATA AND CERTIFICATION

Name (please print): ACE Consultants, Inc.

Address: 4755 SW Watson Avenue, Suite 200 Beaverton, OR 97005

Employer Identification Number (EIN) _____

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

City of Portland Business License # 421572

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.

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, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, 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 by the negligence of the City.

(b) Indemnity - Claims for Professional Liability

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses caused by the negligence of the City.

(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.

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 ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).

- (b) ☒ 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, 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. 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 successful Proposer 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 Contractor may retain for its own use all work products. Except for purposes of the work contemplated by this agreement, any reuse of work products by the City without verification or adaptation by the Contractor for the specific purposes intended shall be at the City's sole risk and without liability or legal exposure to the Contractor.

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 L. 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 Purchasing Agent 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: / x / 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: / x / 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: / x / Applicable / ___ / 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

WORK REQUIREMENTS

The Contractor shall provide services to the City of Portland Water Bureau (PWB) for on-call miscellaneous professional services on an as-needed basis. There is no guarantee that the total dollar limit of the contract will be reached and there is no guarantee that all categories of services listed below will be required by the PWB. The task order amount may vary dependent upon the amount of work estimated for a particular task/project, but the contract shall not exceed \$500,000 with individual task orders not exceeding \$250,000 for the 3-year term of the contract.

PWB personnel shall provide the general scope of each task/project. The Contractor shall develop and negotiate the specific scope of work, budget and schedule in writing. If accepted, a task order shall be completed by the PWB's Contracts Administration Branch (CAB) and shall be signed by each party. Work to be performed may proceed once all parties have signed the task order.

Work shall be assigned as project needs are identified under this contract. The scope of work, schedule, deliverables and compensation for each project shall be established in writing via a task order prior to commencement of the work. Any changes must be agreed to by the both parties in writing as an amendment to the task order.

Following the notice to proceed issued by CAB, the PWB Project Manager shall work directly with the Contractor for the duration of the task order unless otherwise noted in the task order.

SCOPE OF WORK

The Contractor shall provide services as needed to complete the design of projects or project tasks as requested within potentially limited time frames. The Contractor shall be expected to work closely with designated PWB personnel. PWB shall determine the scope of work for each project.

Each assigned project shall have a maximum monetary limit established in the task order by PWB through negotiation with the successful Proposers prior to commencement of work. Such maximum amount may be exceeded only upon the written approval of the PWB via an amendment to the task order, and only for documented circumstances unforeseen at the time the project was accepted, or for a necessary change in the scope of work as originally requested by PWB.

The successful Proposers will be required to:

- A. Coordinate with other City departments and public and private utilities under the direction of the PWB Project Manager;
- B. Assist in securing land use and construction approvals (including work in environmental zones and conditional use approvals);
- C. Assist in securing other permits from other agencies;
- D. Design each project in accordance with the following:
 - PWB Design Manual
 - PWB CAD Standards
 - Standard Construction Specifications for the City of Portland
 - Portland Water Bureaus Developers Manual
 - American Water Works Association
 - American Association of Testing Materials
 - City Erosion Control Manual
 - Occupational Safety and Health Administration
 - Oregon Administration Rules
 - Uniform Plumbing Code
 - All other applicable PWB manuals, policies and conditions included within the scope of each project.
- E. Design and Construction Phase Engineering Projects related to the replacement of Type II (those larger than Type I) Water mains, at various locations throughout the City. Examples of the types of services to be provided in water main projects Type II are as follows:
 1. Design services which include but are not limited to civil, structural, CAD, electrical, survey, scheduling, report preparation, utility coordination, Quality Assurance/Quality Control (QA/QC), preparation and submission of biddable plans and contract documents, technical writing coordinating with City and other agencies on joint project, and permitting assistance.
 2. Project Management/Coordination
 3. Work Plans
 4. Design Milestone reports
 5. Vicinity maps
 6. Potholing
 7. Erosion and Traffic Control Plans
 8. Services during construction including on-site visits, submittal review, review and respond to construction contractor RFI's, and construction oversight.
 9. Environmental assessment
 10. Geotechnical investigation and reports
 11. Arranging for survey work
 12. Construction management which includes but is not limited to Review of construction materials; response to PWB's construction contractor's requests for information, assistance in preparation of responses to construction claims, change orders, and other miscellaneous documents; construction oversight; prepare Requests for Proposals directed to CM/GC for work considered beyond the Guaranteed Maximum Price (GMP) that may result in change orders issued by PWB; make periodic visits to the site to observe, as an

experienced and qualified design engineer of record, the progress and quality of the assigned aspects of the work; provide a written response or report to the PWB of observations and recommendations based on site visits; review shop drawings and submittals for contract compliance; and provide qualified inspection services to support construction.

CONTRACTOR PERSONNEL

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

NAME	ROLE ON PROJECT
Wen Jou, PE	Principal Engineer
Robert Vivian, PE	Principal Engineer
August Van Spalding, PE	Project Structural Engineer
Steve B. Swanson, BSCE	Survey Chief/ Senior Project Designer

SUBCONTRACTORS

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

NAME	ROLE ON PROJECT
MWH	Construction Management
MFIA, Inc.	Electrical Engineering
GRI	Geotechnical Engineering
Environmental Science & Assessment	Environmental Assessment, Permitting and Environmental Review
Baarspul Consulting, Inc.	Civil Engineering
Cascade Corrosion Consulting Services	Corrosion Control

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

The Contractor shall be paid based on its hourly rates, costs incurred in paying its subcontractors, if any, plus any authorized expenses, as set forth in more detail in the attached Exhibit A, Billing Rates. 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.

Multiplier Information

The multiplier applied to salaries shall not exceed 3.1. The multiplier shall include the following non-reimbursable expenses: fringe benefits, payroll bonuses, autos and other defined perquisites, telecommunications, facsimile services, overhead expenses including but not limited to local and long distance telephone, parking, delivery/courier, general business and professional liability insurance, advertising costs, postage, internal copying, lease of office equipment, mileage and other local travel costs, information technology (including computer time and other related highly specialized equipment), all other direct costs not identified as reimbursable, other indirect costs and profit.

Standard Reimbursable Costs

The following costs shall be reimbursed without mark-up:

- Out-of-Town Travel. Travel (transportation, lodging and per diem) of Contractor and/or experts when specified in the contract or requested by PWB, directly attributed to specific tasks and when to a location outside a 100 mile radius of Contractor's project office. Travel costs shall be reimbursed in accordance with the City's Travel Expense Guidelines, which are based on the General Services Administration (GSA) per diem rates.
- Photocopying/Reproduction Costs. Reproduction of required drawings, reports, specifications, bidding documents, in excess of the number required as part of the contract excluding the cost of reproduction for Contractor's or sub's own use.

Sub-consultant Costs

Compensation for sub-consultants shall be limited to the same restrictions imposed on the Contractor. The maximum markup on sub-consultant services shall not exceed 5%, during the term of the contract.

Adjustment of Hourly Rates Due to Inflation

Annual adjustment of hourly rates shall be considered upon written request from the Contractor. Approval of a request for rate increases is solely within the City's discretion and under no circumstances is the City obligated to approve such a request.

Rate increases are subject to the following limitations:

- No increases shall be granted before the one-year anniversary of the contract;
- No more than one increase shall be granted per contract year;
- Rate increases may not exceed the then-current average inflation rate for the Portland Metropolitan Area (as determined from the US Department of Labor statistics and certified by the City of Portland Auditor);
- Rate increases shall not be retroactive.

Other than the impact of inflation as described above, hourly rates may not be increased. Increases to labor rates shall not increase the not-to-exceed amount of **\$500,000**

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

The Contractor shall be reimbursed in accordance with the rates listed on the attached Exhibit A, Billing Rates.

Progress Payments

On or before the 15th 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 provide written explanation of deviations from the contract fees and provide measures of correction as necessary to ensure that the project remains on budget. The Contractor shall also attach photocopies of claimed reimbursable expenses. The City'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 should clearly roll up labor and reimbursable costs for the prime and subconsultants – matching the subconsultant invoices. Prior to initial billing, the Contractor shall develop a billing format for approval by the City.

Invoices shall either be e-mailed to: wb.accountspayablesection@ci.portland.or.us (this is the preferred method) or sent to:

City of Portland Water Bureau
Attn: Accounts Payable
1120 SW 5th 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 Wendy J. Jones Date 7/27/10 Entity ACE Consultants, Inc.

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 Wendy J. Jones

Date 7/27/10

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.

ACE Consultants, Inc.

BY: Wen H. Jou Date: 7/27/10

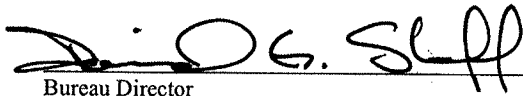
Name: Wen H. Jou

Title: Principal

Contract No. _____

Contract Title: On-Call Mains Projects - Type II

CITY OF PORTLAND SIGNATURES:

By: 
Bureau DirectorDate: 10.26.2010By: _____
Chief Procurement Officer

Date: _____

By: _____
Elected Official

Date: _____

Approved:

By: _____
Office of City Auditor

Date: _____

Approved as to Form:

By: APPROVED AS TO FORM
Office of City AttorneyDate: 10/25/10
CITY ATTORNEY

SUBJECT TO INSURANCE APPROVAL

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

CONTRACT NO. 30001537

**SHORT TITLE OF WORK PROJECT:
On-Call Mains Projects
Type I**

This contract is between the City of Portland, acting by and through its Elected Officials, hereafter called "City," and **Kennedy Jenks Consultants, Inc.**, hereafter called Contractor. The City's Project Manager for this contract is **Marvin Weber**.

Effective Date and Duration

This contract shall become effective on **September 30, 2010**. This contract shall expire, unless otherwise terminated or extended, on **September 30, 2013**.

Consideration

- (a) City agrees to pay Contractor a sum not to exceed **\$300,000** 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.

CONTRACTOR DATA AND CERTIFICATION

Name (please print): Kennedy Jenks Consultants

Address: 200 SW Market Street, Suite 500, Portland, OR 97201

Employer Identification Number (EIN) 94-2147007

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

City of Portland Business License # 414828

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.

**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, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, 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 by the negligence of the City.

(b) Indemnity - Claims for Professional Liability

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses caused by the negligence of the City.

(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.

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 ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).

- (b) ☒ 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, 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. 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 successful Proposer 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. Reuse of Contractor's work product by City for other than its intended use under this agreement shall be at City's sole risk.

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 L. 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 Purchasing Agent 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: / X / 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: / x / Applicable / X / 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: / x 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: / x / Applicable / ___ / 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

WORK REQUIREMENTS

The Contractor shall provide services to the City of Portland Water Bureau (PWB) for on-call miscellaneous professional services on an as-needed basis. There is no guarantee that the total dollar limit of the contract will be reached and there is no guarantee that all categories of services listed below will be required by the PWB. The task order amount may vary dependent upon the amount of work estimated for a particular task/project, but the contract shall not exceed \$300,000 with individual task orders not exceeding \$100,000 for the 3-year term of the contract.

PWB personnel shall provide the general scope of each task/project. The Contractor shall develop and negotiate the specific scope of work, budget and schedule in writing. If accepted, a task order shall be completed by the PWB's Contracts Administration Branch (CAB) and shall be signed by each party. Work to be performed may proceed once all parties have signed the task order.

Work shall be assigned as project needs are identified under this contract. The scope of work, schedule, deliverables and compensation for each project shall be established in writing via a task order prior to commencement of the work. Any changes must be agreed to by the both parties in writing as an amendment to the task order.

Following the notice to proceed issued by CAB, the PWB Project Manager shall work directly with the Contractor for the duration of the task order unless otherwise noted in the task order.

SCOPE OF WORK

The Contractor shall provide services as needed to complete the design of projects or project tasks as requested within potentially limited time frames. The Contractor shall be expected to work closely with designated PWB personnel. PWB shall determine the scope of work for each project.

Each assigned project shall have a maximum monetary limit established in the task order by PWB through negotiation with the successful Proposers prior to commencement of work. Such maximum amount may be exceeded only upon the written approval of the PWB via an amendment to the task order, and only for documented circumstances unforeseen at the time the project was accepted, or for a necessary change in the scope of work as originally requested by PWB.

The successful Proposers will be required to:

- A. Coordinate with other City departments and public and private utilities under the direction of the PWB Project Manager;
- B. Assist in securing land use and construction approvals (including work in environmental zones and conditional use approvals);
- C. Assist in securing other permits from other agencies;
- D. Design each project in accordance with the following:
 - PWB Design Manual
 - PWB CAD Standards
 - Standard Construction Specifications for the City of Portland
 - Portland Water Bureaus Developers Manual
 - American Water Works Association
 - American Association of Testing Materials
 - City Erosion Control Manual
 - Occupational Safety and Health Administration
 - Oregon Administration Rules
 - Uniform Plumbing Code
 - All other applicable PWB manuals, policies and conditions included within the scope of each project.
- E. Design and Construction Phase Engineering Projects related to the replacement installation of Type I (small 16-inch and less) Water mains at various locations throughout the City. Examples of the types of services to be provided for water main projects Type I are as follows:
 1. Design services which include but are not limited to civil, structural, CAD, electrical, survey, scheduling, report preparation, utility coordination, Quality Assurance/Quality Control (QA/QC), preparation and submission of biddable plans and contract documents, technical writing coordinating with City and other agencies on joint project, and permitting assistance.
 2. Project Management/Coordination
 3. Work Plans
 4. Design Milestone reports
 5. Vicinity maps
 6. Potholing
 7. Erosion and Traffic Control Plans
 8. Services during construction including on-site visits, submittal review, review and respond to construction contractor Requests for Information (RFI's), and construction oversight.
 9. Environmental assessment
 10. Geotechnical investigation and reports
 11. Arranging for survey work
 12. Construction management which includes but is not limited to review of construction materials; response to PWB's construction contractor's requests for information, assistance in preparation of responses to construction claims, change orders, and other miscellaneous documents; construction oversight; prepare Requests for Proposals directed to CM/GC for work considered beyond the Guaranteed Maximum Price (GMP) that may result in change orders issued by PWB; make periodic visits to the site to observe, as an experienced and qualified design engineer of record, the progress and quality of the assigned aspects of the work; provide a written response or report to the PWB of observations and recommendations based on site

visits; review shop drawings and submittals for contract compliance; and provide qualified inspection services to support construction.

CONTRACTOR PERSONNEL

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

NAME	ROLE ON PROJECT
Travis Tormanen, PE	Principal-in-Charge
Allen Shewey, PE	Technical Advisors
Alex Peterson, PE	Technical Advisors
Bill Yates, PE	Technical Advisors
Aaron Eder, PE	Project Manager
Gordon Munro, PE	Project Manager
Erik Hoovestol, PE	Project Manager
Brad Moore, PE	Alternative Procurement Advisor
Brooke Harrison, PE	Project engineer
Tyler Anderson, EIT	Engineering Staff
Stan Lasselle	Designer
Jeff Faunce, PE	Constructability Review, Construction Management
Susan Kohnle	Construction Administration

SUBCONTRACTORS

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

NAME	ROLE ON PROJECT
Convergent Pacific	Structural Engineering
Staheli Trenchless Consultants	Trenchless Engineering
LanPacific	Land Use & Permitting
Pacific Geotechnical	Geotechnical Engineering
Dave Mills Consulting	Surveying
CardnoTBE	Potholing
COAT Flagging	Traffic Control Plans
Shapiro-Didway	Landscape Architecture

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

The Contractor shall be paid based on its hourly rates, costs incurred in paying its subcontractors, if any, plus any authorized expenses, as set forth in more detail in the attached Exhibit A, Billing Rates. 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.

Multiplier Information

The multiplier applied to salaries shall not exceed 3.1. The multiplier shall include the following non-reimbursable expenses: fringe benefits, payroll bonuses, autos and other defined perquisites, telecommunications, facsimile services, overhead expenses including but not limited to local and long distance telephone, parking, delivery/courier, general business and professional liability insurance, advertising costs, postage, internal copying, lease of office equipment, mileage and other local travel costs, information technology (including computer time and other related highly specialized equipment), all other direct costs not identified as reimbursable, other indirect costs and profit.

Standard Reimbursable Costs

The following costs shall be reimbursed without mark-up:

- Out-of-Town Travel. Travel (transportation, lodging and per diem) of Contractor and/or experts when specified in the contract or requested by PWB, directly attributed to specific tasks and when to a location outside a 100 mile radius of Contractor's project office. Travel costs shall be reimbursed in accordance with the City's Travel Expense Guidelines, which are based on the General Services Administration (GSA) per diem rates.
- Photocopying/Reproduction Costs. Reproduction of required drawings, reports, specifications, bidding documents, in excess of the number required as part of the contract excluding the cost of reproduction for Contractor's or sub's own use.

Sub-consultant Costs

Compensation for sub-consultants shall be limited to the same restrictions imposed on the Contractor. The maximum markup on sub-consultant services shall not exceed 5%, during the term of the contract.

Adjustment of Hourly Rates Due to Inflation

Annual adjustment of hourly rates shall be considered upon written request from the Contractor. Approval of a request for rate increases is solely within the City's discretion and under no circumstances is the City obligated to approve such a request.

Rate increases are subject to the following limitations:

- No increases shall be granted before the one-year anniversary of the contract;
- No more than one increase shall be granted per contract year;
- Rate increases may not exceed the then-current average inflation rate for the Portland Metropolitan Area (as determined from the US Department of Labor statistics and certified by the City of Portland Auditor);
- Rate increases shall not be retroactive.

Other than the impact of inflation as described above, hourly rates may not be increased. Increases to labor rates shall not increase the not-to-exceed amount of \$300,000

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

The Contractor shall be reimbursed in accordance with the rates listed on the attached Exhibit A, Billing Rates.

Progress Payments

On or before the 15th 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 provide written explanation of deviations from the contract fees and provide measures of correction as necessary to ensure that the project remains on budget. The Contractor shall also attach photocopies of claimed reimbursable expenses. The City'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 should clearly roll up labor and reimbursable costs for the prime and subconsultants – matching the subconsultant invoices. Prior to initial billing, the Contractor shall develop a billing format for approval by the City.

Invoices shall either be e-mailed to: wb.accountspayablesection@ci.portland.or.us (this is the preferred method) or sent to:

City of Portland Water Bureau
Attn: Accounts Payable
1120 SW 5th 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

J. Ray Jones

Date

7-27-10

Entity

Kennedy/Jenks

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:

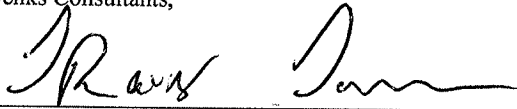
This contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same Agreement.

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.

Kennedy Jenks Consultants,

BY: _____



Date: _____

7-27-10

Name: _____

TRAVIS TORMANEN

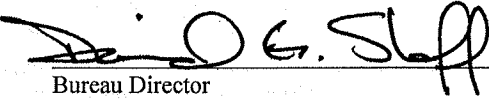
Title: _____

VICE PRESIDENT

Contract No. _____

Contract Title: On-Call Mains Projects- Type I

CITY OF PORTLAND SIGNATURES:

By: 
Bureau Director

Date: 10.26.2010

By: _____
Chief Procurement Officer

Date: _____

By: _____
Elected Official

Date: _____

Approved:

By: _____
Office of City Auditor

Date: _____

Approved as to Form:

APPROVED AS TO FORM

By: 
Office of City Attorney

Date: August 6, 2010

CITY ATTORNEY
8/6/2010