

**CITY OF NEWPORT, OREGON
CONTRACT FOR OCEAN BIOACCUMULATION SURVEY**

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (City), and The State of Oregon acting by and through the State Board of Higher Education on behalf of Oregon State University (Contractor). This agreement shall be effective when signed by both parties.

RECITALS

- A. Contractor has the training, ability, knowledge, and experience to provide services desired by the City.
- B. City selected Contractor to provide services pursuant to a request for proposal process, consistent with its public contracting rules.

TERMS OF AGREEMENT

1. SERVICES TO BE PROVIDED

Contractor shall provide the services described in the request for proposals and in Contractor's proposal (Exhibit A to this agreement). Payment shall not be made for any other services without the written agreement by the City. Contractor may have contact with the public in the course of performing this contract and shall maintain good relations with the public. Failure to maintain good relations with the public shall constitute a breach of the contract. The City may treat the failure to maintain good relations as a non-curable breach allowing the City to terminate the contract and to disqualify Contractor from future work for the City.

2. TERM

The term of this agreement shall begin June 1, 2012 and shall expire, unless otherwise terminated or extended, on August 31, 2013.

3. COMPENSATION

Contractor shall be compensated as described in Exhibit B to this agreement.

4. ASSIGNMENT/DELEGATION

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other.

5. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor certifies that:

- A. Contractor acknowledges that Contractor is an independent contractor as defined by ORS 670.700 and not an employee of City, Contractor shall not be entitled to benefits of any kind to which an employee of City is entitled, and Contractor shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of the finding. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.
- B. Contractor represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection this Agreement, except as specifically declared in writing.
- C. Contractor will obtain permits and licenses required in order to deliver services under this Agreement.
- D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

6. INDEMNIFICATION

City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws.

Subject to the limitations of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), Contractor shall indemnify, City and its officers, employees and agents against any liability for personal injury or damage to life or property arising from Contractor's negligent actions or those of its officers, agents or employees under this Agreement provided, however, Contractor shall not be required to indemnify City for any such liability arising out of the wrongful acts of employees or agents of City.

Subject to the limitations of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), City shall indemnify Contractor and its officers, employees and agents against any liability for personal

injury or damage to life or property arising from City's negligent actions or those of its officers, agents or employees under this Agreement, provided, however, City shall not be required to indemnify Contractor for any such liability arising out of the wrongful acts of employees or agents of Contractor.

7. INSURANCE

Contractor, as an agency of the State of Oregon, is self-insured through the Insurance Fund of the Oregon State Treasury under ORS 278.425, and maintains adequate and appropriate types of insurance coverage in amounts no less than state law requires for workers' compensation, comprehensive general liability covering both bodily injury and property damage, and automobile liability covering both bodily injury and property damage.

8. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS

All notices, bills and payments shall be made in writing and may be given by personal delivery or mail. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices and other information:

City:

Jim Voetberg
City Manager
City of Newport
169 SW Coast Highway
Newport, Oregon 97365
Business Phone: 541.574.0613

Contractor:

Patricia A. Hawk, Director
Office of Sponsored Programs
B308 Kerr Administration Bldg.
Oregon State University
Corvallis, OR 97331-2140
Phone: 541.737.4933
Fax: 541.737.3093
Email: Research.Contracts@oregonstate.edu

Notices mailed to the address provided for notice in this section shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery.

9. MERGER

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

10. TERMINATION WITHOUT CAUSE

City or Contractor may terminate this Agreement for any reason upon thirty (30) days written notice to the other party.

If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered, including non-cancellable obligations, to the date of termination.

11. TERMINATION WITH CAUSE

A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

1. If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
2. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
3. If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
4. If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:

1. If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or

2. If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.
3. If Contractor fails to eliminate a conflict as described in Section 11 of this agreement.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (B), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor.

12. ACCESS TO RECORDS

City shall have access to books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

13. FORCE MAJEURE

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of nature or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall within 10 days from the beginning of the delay, notify the other party in writing of the cause of delay and its probable extent. The notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate the cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

14. NON-WAIVER

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

15. NON-DISCRIMINATION

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, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

16. ERRORS

Contractor, in performing its obligations under this Agreement, will complete the project in a timely, professional, efficient manner and shall exercise the degree of skill and care required by customarily accepted good professional practices and procedures used at institutions performing scientific research.

In the event that City wishes Contractor to take corrective actions pertaining to the work, Contractor shall negotiate corrective action tasks in good faith and perform agreed-upon additional work without undue delay.

17. EXTRA WORK

Only the City Manager may authorize additional work not described in Exhibit A. Failure of Contractor to secure written authorization for work not described in Exhibit A shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

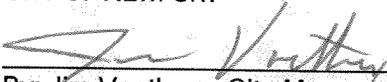
19. GOVERNING LAW

The provisions of this Agreement 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 Agreement must be brought in the appropriate court of the State of Oregon.

20. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

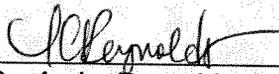
Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279B, the provisions of which are hereby made a part of this agreement. (See Exhibit C.)

CITY OF NEWPORT


By: Jim Voetberg, City Manager

7/2/12
Date

CONTRACTOR


By: Aedra Reynolds, Sr. Grant and Contract Officer

6-29-12
Date

EXHIBIT A
SERVICES TO BE PROVIDED

SCOPE OF SERVICES

1. Contractor shall perform a quantitative assessment of bioaccumulation in the area of the outfall and designated reference areas shown in Attachment 1 of the Request for Proposals.
 - a. Resident indicator animals such as flat fish, crabs, clams or mussels, and benthic infauna shall be analyzed for bioaccumulation.
 - b. The animals used may be obtained by any permitted collection method or from "caged" experiments to determine the extent of bioaccumulation.
 - c. Proposals shall take into consideration that these locations are in highly energetic soft sand environments with difficult access.
2. Required analyses are:
 - a. A complete ICP-MS scan for metals up to 35 elements.
 - b. A GC-MS scan for trace organic compounds including phenolics and PCB congeners.
3. Study Site. The study site is illustrated in Attachment 1 of the Request for Proposals. Details of the physical characteristics of the sites are presented in "Comprehensive Survey of the Aquatic Community in the Area of Georgia-Pacific Outfall 001"(2110), available by request. This phase of the study shall consider three areas and adjacent beaches:
 - a. G-P Outfall Primary Survey Area (City of Newport coast);
 - b. Reference Survey Area North (north of Yaquina Head);
 - c. Reference Survey Area South (south of Yaquina Bay jetties).
4. Permits. Contractor shall obtain the necessary scientific sampling permits.
5. Target Animals. Samples of at least three types of animals, such as a mollusk, a crustacean, and a flat fish, that live in the mixing zone and may bioaccumulate contaminants shall be studied. Examples include razor clams (*Siliqua patula*), mussels (*Mytilus* spp), dungeness crab (*Cancer magister*), and flat fish.
6. Sampling Methodology and Specifications. To obtain as representative a sample as possible, specimen compositing shall be conducted. Each composite sample shall consist of at least ten specimens of a given organism. Morphometrics should be performed on each organism. An effort shall be made to obtain a similar distribution

of sizes of organisms within each composite sample.

Proposers should detail sampling and handling procedures within the proposal.

7. The whole specimen shall be included in the sample with the exception of mollusk shells. The tissue shall be well mixed and sub-sampled as appropriate.

For each of the three target species, composite sampling, utilizing appropriate methodology, shall consist of tissue from at least ten specimens with the exception of flat fish, obtained from each of the three Survey Areas. A total number of tissue composites shall be obtained for chemical analysis to best obtain a representative coverage of sample data.

8. Sampling Schedule. The three sampling areas shall be sampled during late summer or early fall.
9. Deliverables. The Contractor shall, within eight months of the initiation of sampling, deliver to the City of Newport a draft report. A final report shall be delivered to the City of Newport within two months after the draft report is reviewed by the City and returned to the proposers. The report shall contain an executive summary, a description of the sampling and testing methods, a complete accounting of test results, and a recommended plan for risk assessment if bioaccumulation is observed.

**EXHIBIT B
RATES/COSTS**

A. Field Sampling

ITEM	COST
	\$
Boat	
Oil Change	2,500.00
Truck Rental	136.00
Gas for Boat	3,552.00
Diving	
Tanks: Air Fills	250.00
Mesh Collection Bags	48.00
Crabbing	
Pots	1,500.00
Floats	300.00
Sinking Line	330.00
Bait Bags	47.85
Bait for Pots	200.00
Trawling	
Swivel Shackle	35.00
Extra Shackles (Large)	12.70
Extra Shackles (Small)	16.00
Tarred Marlin Line	30.00
Tickler Chain	30.00
Cod End/Trawl Mesh	1,700.00
Braided Line	44.00
Block	30.00
Clamming	
Shovels	100.00
Miscellaneous	
Coolers	50.00
Electrical Tape	5.00
Packing Tape	5.00
Fid	9.00
Ziplocs	60.00
Dry Ice: Trawling	37.50
Dry Ice: Crabbing	60.00
Dry Ice: Clamming	22.50
Dry Ice: Shipping	75.00
TOTAL	11,185.55

B. Sample and Composite Preparation

ITEM	COST
	\$
Morphometrics and Tissue Processing - 125 Total Samples	4,795
TOTAL	4,795

C. Analytical Chemistry

ITEM	COST
	\$
Elements	
Trace Metals	26,715
Trace Mercury	4,110
Organics	0
Acid Extractable Compounds	10,275
Percent Lipids	4,110
Organochlorine Pesticides and PCBs	26,715
PBDE Congeners	17,125
TOTAL	89,050

D. Summary of Total Costs

ITEM	COST
	\$
Personnel Costs	
Scott Heppell	3,354
Sarah Henkel	5,200
Selina Heppell	0
Kristin Politano	4,334
Vince Politano	4,334
Total Salaries	17,222
Fringe Benefits	
Fringe Benefits - Scott Heppell	1,610
Fringe Benefits - Sarah Henkel	2,756
Fringe Benefits - Selina Heppell	0
Fringe Benefits - Kristin Politano	2,774
Fringe Benefits - Vince Politano	2,817
Total Fringe Benefits	9,957
Total Salaries and Fringe Benefits	27,178

Field, Analytical and Miscellaneous Costs	
Domestic Travel	200.00
Field and Laboratory Supplies	4,998
Fees and Services	93,845
Boat Fees and Maintenance	6,188
Postage and Shipping	2,500
Total Direct Costs	134,909
F&A	35,076
TOTAL CONTRACT AMOUNT	169,985.34

EXHIBIT C
RELEVANT PROVISIONS OF ORS CHAPTER 279B

279B.220 Conditions concerning payment, contributions, liens, withholding. Every public contract shall contain a condition that the contractor shall:

1. Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
2. Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
3. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

279B.230 Condition concerning payment for medical care and providing workers' compensation.

1. Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
2. Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c]

279B.235 Condition concerning hours of labor.

1. An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
2. In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS

653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

3. (a) Except as provided in subsection (4) of this section, contracts for services must contain a provision that requires that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.