

**ORDINANCE No.**

\*Authorize a retroactive sole source contract with GSI Water Solutions, Inc. for CERCLA and Risk Assessment Technical Assistance at the Portland Harbor Superfund Site in the amount of \$2,500,000 (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. In 2005, BES awarded a contract to GSI Water Solutions, Inc. formerly Groundwater Solutions, to provide these services. GSI was selected through a competitive process (RFP No. BES024) in accordance with Section 5.68 of the City Code.
2. On September 7, 2005, Council approved Contract No. 36324 with GSI Water Solutions, Inc. to provide CERCLA and Risk Assessment technical assistance at the Portland Harbor Superfund site, Ordinance No. 179552. The contract was renewed through October 25, 2010.
3. On October 13, 2010, Ordinance No. 184155 authorized the extension and renewal of the contract through October 25, 2015 for a total of 10 years.
4. On October 14, 2015, Ordinance No. 187378 authorized the extension and renewal periods through October 25, 2020, and it authorized the expenditure of up to \$500,000 per year for up to five years, for a not-to-exceed total of \$2,500,000, through amendments to the contract.
5. Section 2-105 of the City Charter provides for entering into contracts for a period not exceeding five years and the extension or renewal thereof not to exceed an additional five years. A retroactive administrative adjustment to the contract extension granted in Ordinance No. 187378 is necessary to conform with the Charter.
6. The Portland Harbor technical and legal processes have not been completed. The services required of GSI for technical assistance for the cleanup are the continuation of services that GSI has been providing. These services cannot be interrupted because the City is obligated to perform Portland Harbor work pursuant to formal agreements with EPA and DEQ.
7. The City is in a critical phase of the project that will determine the City's long-term future involvement at the Site. A contractor with historical knowledge of the Portland Harbor RI/FS process, and knowledge of various stakeholder issues, and City-specific operations and activities, will provide valuable and efficient support for future City decision making in this complex project.
8. In accordance with Portland City Code 5.68, a public notice of Sole Source Procurement was posted on March 21, 2018, Project No. 00000887, and received no challenges. This sole source contract is being acquired as an exception to the competitive selection process identified in Portland City Code 5.68 and the PTE Services Manual.

9. Funds are available in the Environmental Remediation Fund, FY2017-2018 budget, Bureau of Environmental Services, ESDR000004, Account No. 521000.
10. As of June 30, 2018, BES has expended approximately \$910,000 of the \$2,500,000 in funds authorized by Ordinance No. 187378. Therefore, no less than \$1,500,000 in funds remain authorized and available to BES to perform the CERCLA and Risk Assessment Technical Assistance services authorized by Ordinance No. 187378.

NOW, THEREFORE, the Council directs:

- a. The Commissioner-in-Charge is authorized to execute a five-year contract with GSI Water Solutions, Inc. in a form substantially in accordance with the agreement attached as Exhibit A, for the purpose described in Section 1, retroactive to October 25, 2015 and expiring October 25, 2020 in an amount not to exceed \$2,500,000.
- b. The Commissioner in Charge is authorized to execute amendments to the contract, as necessary, provided such amendments do not increase the contract value by more than 25%.
- c. The Commissioner-in-Charge is authorized to execute amendments renewing the contract beyond five years through 2025 as may become necessary for continued Portland Harbor technical and legal processes, provided a sole source public notice is issued and no challenges are received in accordance to Portland City code 5.68 and the PTE Services Manual.

Section 2. The Council declares that an emergency exists because the City's involvement in the Portland Harbor Superfund CERCLA process is ongoing and continuing this support is critical to City risk management decision making; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council,  
Commissioner Nick Fish

Annie Von Burg  
August 9, 2018

Cost object – ESDR000004, Account 529000 -ord

**Mary Hull Caballero**  
Auditor of the City of Portland  
By

Deputy

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

**CONTRACT NUMBER \_\_\_\_\_**

**TITLE OF WORK PROJECT  
CERCLA and Risk Assessment Technical Assistance**

This Contract is between the City of Portland ("City," or "Bureau") and Groundwater Solutions Inc., dba GSI Water Solutions, Inc., hereafter called Consultant. The City's Project Manager for this Contract is Annie Von Burg.

**Effective Date and Duration**

This Contract is retroactively effective to October 25, 2015, and replaces contract number C36324. Amendments to contract number C36324 are incorporated herein and are retroactively effective to their respective effective dates. This contract shall expire, unless otherwise terminated or extended, on October 24, 2020.

**Consideration**

- (a) City agrees to pay Consultant an initial sum of \$500,000 for accomplishment of the work, or as amended, for a total not to exceed amount of \$2,500,000.
- (b) Interim payments shall be made to Consultant according to the schedule identified in the STATEMENT OF THE WORK AND PAYMENT SCHEDULE.

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**CONSULTANT DATA AND CERTIFICATION**

Name (print full legal name): Groundwater Solutions Inc., dba GSI Water Solutions, Inc.

Address: 55 SW Yamhill Street, Suite 300, Portland, Oregon 97204

City of Portland Business Tax Registration Number: 655331

- 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.

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**TERMS AND CONDITIONS**

**1. Standard of Care**

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

**2. Effect of Expiration**

Passage of the Contract expiration date 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 corrected.

**3. Order of Precedence**

This Contract consists of these Terms and Conditions, the Statement of Work and Payment Schedule, and any exhibits that are attached. Any apparent or alleged conflict between these items will be resolved by using the following order of precedence:

- a) these Terms and Conditions; b) Statement of Work and Payment Schedule; and c) any exhibits attached to the Contract.

**4. Early Termination of Contract**

- (a) The City may terminate this Contract for convenience at any time for any reason deemed appropriate in its sole discretion. Termination is effective immediately upon notice of termination given by the City.
- (b) Either party may terminate this Contract in the event of a material breach by the other party that is not cured. Before termination is permitted, the party seeking termination shall give the other party written notice of the breach, its intent to terminate, and fifteen (15) calendar days to cure the breach. If the breach is not cured within 15 calendar days, the party seeking termination may terminate immediately by giving written notice that the Contract is terminated.

**5. Remedies and Payment on Early Termination**

- (a) If the City terminates pursuant to 4(a) above, the City shall pay the Consultant for work performed in accordance with the Contract prior to the termination date. No other costs or loss of anticipated profits shall be paid.
- (b) If the City terminates pursuant to 4(b) above, the City is entitled all remedies available at law or equity. In addition, Consultant shall pay the City all damages, costs, and sums incurred by the City as a result of the breach.
- (c) If the Consultant justifiably terminates the Contract pursuant to subsection 4(b), the Consultant’s only remedy is payment for work prior to the termination. No other costs or loss of anticipated profits shall be paid.
- (d) If the City’s termination under Section 4(b) was wrongful, the termination shall be automatically converted to one for convenience and the Consultant shall be paid as if the Contract was terminated under Section 4(a).
- (e) In the event of early termination the Consultant's work product before the date of termination becomes property of the City.

**6. Assignment**

Consultant 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 subconsultant, the Consultant shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Consultant hereunder. The Consultant agrees that if subconsultants are employed in the performance of this Agreement, the Consultant and its subconsultants are subject to the requirements and sanctions of ORS Chapter 656, Workers’ Compensation.

**7. Compliance with Applicable Law**

Consultant shall comply with all applicable federal, state, and local laws and regulations. Consultant agrees it currently is in compliance with all tax laws. Consultant shall comply with Title VI of the Civil Rights Act of 1964 and its corresponding regulations. In connection with its activities under this Contract, the Consultant shall comply with all applicable Grant Terms and conditions. This includes all terms and conditions contained in this Contract and, for a Contract involving a grant, the Grant Terms and Conditions.

**8. Indemnification for Property Damage and Personal Injury**

Consultant shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from all claims, losses, damages, and costs (including reasonable attorney fees) for personal injury and property damage arising out of the intentional or negligent acts or omissions of the Consultant, its Subconsultants, suppliers, employees or agents in the performance of its services. Nothing in this paragraph requires the Consultant or its insurer to indemnify the City for claims of personal injury or property damage caused by the negligence of the City. This duty shall survive the expiration or termination of this Contract.

**9. Insurance**

Consultant shall obtain and maintain in full force at Consultant expense, throughout the duration of the Contract and any warranty or extension periods, the required insurance identified below. The City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of the Contract.

- (a) Workers' compensation insurance as required by ORS Chapter 656 and as it may be amended. Unless exempt under ORS Chapter 656, the Consultant and all subconsultants shall maintain coverage for all subject workers.

Required and attached //  Proof of exemption (i.e., completion of Workers’ Compensation Insurance Statement)

- (b) General commercial liability (CGL) insurance covering bodily injury, personal injury, property damage, including coverage for independent consultant’s protection (required if any work will be subcontracted), premises/operations, Contractual liability, products and completed operations, in per occurrence limit of not less than \$1,000,000, and aggregate limit of not less than \$2,000,000.

Required and attached //  Waived by Bureau Director or designee //  Reduce by Bureau Director or designee

- (c) Automobile liability insurance with coverage of not less than \$1,000,000 each accident, and an umbrella or excess liability coverage of \$2,000,000. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.

Required and attached //  Waived by Bureau Director or designee //  Reduce by Bureau Director or designee

- (d) Professional Liability and/or Errors & Omissions insurance to cover damages caused by negligent acts, errors or omissions related to the professional services, and performance of duties and responsibilities of the Consultant under this Contract in an amount with a combined single limit of not less than \$1,000,000 per occurrence and aggregate of \$3,000,000 for all claims per occurrence. In lieu of an occurrence based policy, Consultant may have claims-made policy in an amount not less than \$1,000,000 per claim and \$3,000,000 annual aggregate, if the Consultant obtains an extended reporting period or tail coverage for not less than three (3) years following the termination or expiration of the Contract.

Required and attached //  Waived by Bureau Director or designee //  Reduce by Bureau Director or designee

Continuous Coverage; Notice of Cancellation: The Consultant agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non-renewal of coverage without thirty (30) calendar days written notice from Consultant to the City. If the insurance is canceled or terminated prior to completion of the Contract, Consultant shall immediately notify the City and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract.

Additional Insured: The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation, shall be without prejudice to coverage otherwise existing, and shall name the City of Portland and its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the Consultant's activities to be performed, or products or services to be provided. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

Certificate(s) of Insurance: Consultant shall provide proof of insurance through acceptable certificate(s) of insurance, including additional insured endorsement form(s) and all other relevant endorsements, to the City prior to the award of the Contract if required by the procurement documents (e.g., request for proposal), or at execution of Contract and prior to any commencement of work or delivery of goods or services under the Contract. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Contract shall be obtained from insurance companies acceptable to the City of Portland. The Consultant shall pay for all deductibles and premium. The City reserves the right to require, at any time, complete, certified copies of required insurance policies, including endorsements evidencing the coverage the required.

Subconsultant(s): Upon request, Consultant shall provide evidence that any subconsultant, if any, performing work or providing goods or service under the Contract has the same types and amounts of coverages as required herein or that the subconsultant is included under Consultant's policy.

#### **10. Ownership of Work Product**

All work product produced by the Consultant under this Contract is the exclusive property of the City. "Work Product" includes, but is not limited to: research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form. The Consultant 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 Consultant 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. Consultant shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Consultant 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 Consultant is an architect, the Work Product is the property of the Consultant-Architect, and by execution of this Contract, the Consultant-Architect grants the City an exclusive and irrevocable license to use that Work Product.

Notwithstanding the above, all pre-existing trademarks, services marks, patents, copyrights, trade secrets, and other proprietary rights of Consultant are and will remain the exclusive property of Consultant.

#### **11. EEO Certification**

The Consultant must be certified prior to Contract execution, as Equal Employment Opportunity Affirmative Action Employers as prescribed by Chapter 5.33.076 of the Code of the City of Portland.

#### **12. Equal Benefits**

Consultant must certify prior to Contract execution, that they do not discriminate by policy or practice in the provision of employee benefits between employees with domestic partners and employees with spouses as prescribed by Chapter 5.33.077 of the Code of the City of Portland.

#### **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 Consultant shall promptly perform such additional services as may be necessary to correct errors in the services required by this Contract without undue delays and without additional cost.

**17. Governing Law/Venue**

The provisions of this Contract shall be interpreted, construed and enforced in accordance with, and governed by, the laws of the State of Oregon without reference to its conflict of laws provisions that might otherwise require the application of the law of any other jurisdiction. 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, Contract amount and D/M/W/ESB subcontracting commitments, must be made by written amendment and approved by the Chief Procurement Officer to be valid. Any amendment that increases the original Contract amount by more than 25% must be approved by the City Council to be valid.

**19. Business Tax Registration**

The Consultant shall obtain a City of Portland business tax registration number as required by PCC 7.02 prior to beginning work under this Contract.

**20. Prohibited Conduct**

The Consultant shall not hire any City employee who evaluated the proposals or authorized the award of this Contract for two years after the date the Contract was authorized without the express written permission of the City and provided the hiring is permitted by state law.

**21. Payment to Vendors and Subconsultants**

The Consultant shall timely pay all subconsultants and suppliers providing services or goods for this Contract.

**22. Access to Records**

The Consultant shall maintain all records relating to this Contract for three (3) years after final payment. The City may examine, audit and copy the Consultant's books, documents, papers, and records relating to this Contract at any time during this period upon reasonable notice. Copies of these records shall be made available upon request. Payment for the reasonable cost of requested copies shall be made by the City.

**23. Audits**

- (a) The City may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by paragraph 22. 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 Government Accountability Office.
- (b) If an audit discloses that payments to the Consultant exceed the amount to which the Consultant was entitled, the Consultant shall repay the amount of the excess to the City.

**24. Electronic Signatures**

The City and Consultant may conduct this transaction, including any Contract amendments, by electronic means, including the use of electronic signatures.

**25. Merger Clause**

This Contract encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether verbal or written.

**26. Dispute Resolution/Work Regardless of Disputes**

The parties shall participate in mediation to resolve disputes before conducting litigation. The mediation shall occur at a reasonable time after the conclusion of the Contract with a mediator jointly selected by the parties. Notwithstanding any dispute under this Contract, the Consultant shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Contract for undisputed portions of the work. In the event of litigation no attorney fees are recoverable. No different dispute resolution paragraph(s) in this Contract or any attachment hereto shall supersede or take precedence over this provision.

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

If applicable, the Consultant shall provide monthly progress reports to the Project Manager as described in the Statement of the Work and Payment Schedule.

**28. Consultant's Personnel:  Applicable /  Not Applicable**

If applicable, the Consultant shall assign the personnel listed in the Statement of the Work and Payment Schedule for the work required by the Contract and shall not change personnel without the prior written consent of the City, which shall not be unreasonably withheld.

**29. Subconsultants**

The Consultant shall use the subconsultants identified in its proposals. The Consultant shall not change subconsultant's assignments without the prior written consent of the Chief Procurement Officer. The City will enforce all social equity Contracting and Disadvantaged, Minority, Women and Emerging Small Business (D/M/W/ESB) subcontracting commitments submitted by

the Consultant in its proposals. Failure to use the identified D/M/W/ESB subconsultants without prior written consent is a material breach of Contract.

For contracts valued \$50,000 or more, the Consultant shall submit monthly subconsultant payment and utilization information electronically to ensure that subconsultants are utilized to the extent proposed, reporting ALL Subconsultants employed in the performance of this Contract. Consultant and its subconsultants shall utilize the City's automated compliance audit process.

### **30. Third Party Beneficiaries**

There are no third-party beneficiaries to this Contract. Enforcement of this Contract is reserved to the parties.

### **31. Conflict of Interest**

Consultant hereby certifies that, if applicable, its Contract proposal is made in good faith without fraud, collusion or connection of any kind with any other proposer of the same request for proposals or other City procurement solicitation(s), that the Consultant as a proposer has competed solely on its own behalf without connection or obligation to, any undisclosed person or firm. Consultant certifies that it is not a City official/employee or a business with which a City official/employee is associated, and that to the best of its knowledge, Consultant, its employee(s), its officer(s) or its director(s) is not a City official/employee or a relative of any City official/employee who: i) has responsibility in making decisions or ability to influence decision-making on the Contract or project to which this Contract pertains; ii) has or will participate in evaluation or management of the Contract; or iii) has or will have financial benefits in the Contract. Consultant understands that should it elect to employ any former City official/employee during the term of the Contract then that the former City official/Consultant employee must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and the City's Charter, Codes and administrative rules, including lobbying prohibitions under Portland City Code Section 2.12.080.

### **32. Respectful Workplace Behavior**

The City of Portland is committed to a respectful work environment, free of harassment, discrimination and retaliation and other inappropriate conduct. Every individual has a right to work in a professional atmosphere where all individuals are treated with respect and dignity. The City's HR Rule 2.02 covers all employees with the City of Portland as well as consultants, vendors or consultants who provide services to the City of Portland. By signing this Contract/Agreement, the Consultant indicates compliance with all terms and conditions contained in this Contract including HR 2.02.

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## **STATEMENT OF THE WORK AND PAYMENT SCHEDULE**

### **SCOPE OF WORK**

The Bureau of Environmental Services requires the following services:

1. Technical assistance in the Portland Harbor RI/FS process. Anticipated services include:
  - Review of LWG common consultant and Agency work products, and participation in meetings with LWG common consultants and Agency representatives to ensure that deliverables produced by the LWG are technically sound, are in full compliance with relevant statutory and regulatory provisions and reflect City priorities
  - Technical assistance with the RI/FS human health and eco risk assessment process. Anticipated services include:
    - Document review and meeting attendance
    - Advise staff on specific human and ecological risk assessment issues, including, but not limited to:
    - Development of human health and ecological risk exposure assumptions and scenarios;
    - Development of risk assessments;
    - Interface of eco risk assessment with natural resource damage assessments (NRDA)
2. Technical assistance on specific CERCLA related issues, including, but not limited to:
  - Consideration of groundwater as a non-point source
  - Impact of early actions in the overall site cleanup strategy
  - Source control remedies that are protective of the final remedies
  - Development of Feasibility Study
  - Development of Record of Decision
  - Review and analysis of EPA's Proposed Plan
  - Review and analysis of EPA's Record of Decision
  - Evaluation of remediation strategies
3. Technical assistance in liability management and allocation issues. Specific services could include:

- Work with City Attorney and outside legal counsel on liability management activities
  - Assist in development of cost allocation documentation
  - Assist in compiling information as required by regulatory enforcement actions and third-party litigation.
  - Identification of contamination sources and pathways, including ability to use forensic chemistry to fingerprint contaminants
4. Advise City Superfund staff on a long-term strategy and approach in the Superfund work. Provide CERCLA, Risk Assessment and liability management and allocation, strategic program development, options development, and identification of key opportunities and barriers as they relate to City priorities and interests.

Work will be assigned by task order. Scope of work, deliverables, schedule, and compensation for each task order will be established in writing prior to commencement of the work. Any changes to the cost, scope of work or schedule must be agreed to by the consultant and the City in writing as an amendment to the task order. The estimated annual cost for the services described herein is \$500,000. The running contract balance, however, will be the not-to-exceed limit. Since work, schedule and deliverables will be authorized through task orders based on project needs, there is no guarantee this amount of money will be spent.

All task orders assigned under contract number C36324 shall be assigned under the terms of this contract upon its effective date.

**CONSULTANT PERSONNEL**

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

NAME	ROLE ON PROJECT
David Livesay	Contract Manager

**SUBCONSULTANTS**

Subconsultants utilization shall be negotiated and identified in the individual Task Orders.

The City will enforce all social equity contracting and D/M/W/ESB subcontracting commitments identified in the individual Task Orders. Consultant shall not add, eliminate, or replace any Subconsultant assignments as identified in each Task Order without the prior written consent of the Chief Procurement Officer; failure to use the D/M/W/ESB Subconsultants identified in a Task Order without prior written consent is a material breach of the Price Agreement. Any changes must be reported and submitted to the PTE Contract Compliance Specialist on the Subconsultant Change Request Form found on Procurement Services’ website under Contractor Resources. All changes to this Price Agreement, including changes to the D/M/W/ESB subcontracting commitments, must be made by written amendment and approved by the Chief Procurement Officer to be valid.

For contracts valued \$50,000 or more, the Consultant shall submit monthly subconsultant payment and utilization information electronically to ensure that subconsultants are utilized to the extent proposed, reporting ALL Subconsultants employed in the performance of this Contract. Consultant and its subconsultants shall utilize the City’s automated compliance audit process. More information on this process may be viewed on the City’s Procurement Services website at <https://www.portlandoregon.gov/brfs/75932>.

**COMPENSATION**

The maximum that the Consultant can be paid on this Contract is the initial sum of \$500,000, or as amended to \$2,500,000 (hereafter the “not to exceed” amount). The “not to exceed” amount includes all payments to be made pursuant to this Contract, including reimbursable expenses, if any. Nothing in this Contract requires the City to pay for work that does not meet the Standard of Care or other requirements of the Contract. The actual amount to be paid Consultant may be less than that amount.

The Consultant is entitled to receive progress payments for its work pursuant to the Contract as provided in more detail below. The City will pay Consultant based on these invoices for acceptable work performed and approved until the “not to exceed” amount is reached. Thereafter, Consultant must complete work based on the Contract without additional compensation unless there is a change to the scope of work.

Any estimate of the hours necessary to perform the work is not binding on the City. The Consultant remains responsible if the estimate proves to be incorrect. Exceeding the number of estimated hours of work does not impose any liability on the City for additional payment.

If work is completed before the “not to exceed” amount is reached, the Consultant’s compensation will be based on the Consultant’s bills previously submitted for acceptable work performed and approved.

**PAYMENT TERMS: Net 30 Days**



### **Hourly Rates**

The billing rates shall not exceed those set forth below:

Classification	Name	2015-2016 Billing Rate	Multiplier
Principal	Livesay, David	190.00	2.77
	Blischke, Heidi	185.00	2.82
	Burt, Walter	177.25	2.87
	Pratt, Randy	183.37	2.85
Supervising	Fowler, Julia	170.00	3.10
	Anderson, James	170.00	3.11
	Demsey, Karen	155.16	3.00
Managing	Hughes, Erin	130.28	3.12
	Smith, Libby	126.23	3.15
Consulting	Davidson, Andrew	116.16	3.04
	Fowler, Renee	80.91	2.59
Project	Kuhlmeier, Steven	99.20	3.07
	Gorski, Jacob	90.95	3.15
	Hingst, Mary	85.37	2.93
GIS/Graphics	Palmer, Nicole	94.30	2.81
Editor/Documents	Carroll, Jill	103.88	3.00
Administration	Cartwright, Vicki	115.60	2.96
	Mackey, Emily	91.05	2.91
	Steensma, Nancy	60.05	2.78
Average Multiplier			2.95

### **Non-Reimbursable Expenses**

The hourly billing rates 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 (travel within 100-mile radius of Consultant's office), information technology, all other direct costs not identified as reimbursable, other indirect costs and profit.

### **Reimbursable Costs**

Any reimbursable costs shall be specifically identified in the task order. City will not reimburse Consultant for costs, including travel expenses, not specifically identified in the contract and/or task order as payable. Allowable costs will be reimbursed without mark-up.

**Out-of-Town Travel.** Travel costs (transportation, lodging and per diem) of Consultant when specified in the task order, directly attributed to specific tasks, and to a location outside of a 100-mile radius of the Consultant's project office will 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.** The City will reimburse the following direct costs of copying and reproduction that cannot be handled by Consultant in-house and are sent to an outside vendor. A receipt will be required for reimbursement.

- Documents that must be copied at a facility (such as the Oregon Historical Society);
- More than 5 copies of documents greater than 40 pages in length; and
- Other copying and reproduction needs, such as maps or scanning projects, that Consultant's in-house capabilities cannot produce.

**Rental Vehicles and Fuel.** Upon written request from the Consultant and prior approval from the City's Project Manager, the City will reimburse the direct costs of rental vehicles and fuel needed for the project. A receipt will be required for reimbursement. Approval of a request for reimbursement of rental vehicles and fuel is solely within the City's discretion and under no circumstances is the City obligated to approve such a request.

**Shipping Charges.** Upon written request from the Consultant and prior approval from the City's Project Manager, the City will reimburse the direct FedEx and/or UPS charges for shipping field samples to/from a laboratory. Receipts will be required for

reimbursement. Approval of a request for reimbursement of FedEx and/or UPS charges is solely within the City's discretion and under no circumstances is the City obligated to approve such a request.

Outside Equipment Rental. Upon written request from the Consultant and prior approval from the City's Project Manager, the City will reimburse the direct costs of equipment rentals needed in the collection of field samples. Receipts will be required for reimbursement. Approval of a request for reimbursement of equipment rentals is solely within the City's discretion and under no circumstances is the City obligated to approve such a request.

#### **Subconsultant Costs**

Compensation for subconsultants shall be limited to the same restrictions imposed on the Consultant. The maximum markup on subconsultant services shall not exceed 5%.

#### **Adjustment of Labor Rates Due to Inflation**

Annual adjustment of hourly rates will be considered upon written request from the Consultant. 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 more than one increase shall be granted per Contract year;
- Rate increases may not exceed the preceding calendar year's Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) average inflation rate for the Portland Metropolitan Area (as determined from the U.S. Bureau of Labor Statistics);
- Rate increases shall not be retroactive.

Other than the impact of inflation as described above, hourly rates may not be increased unless approved by the City due to special circumstances.

#### **Progress Payments**

On or before the 15<sup>th</sup> of each month, the Consultant shall submit to the City's Project Manager an invoice for work performed by the Consultant 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, and tasks performed. The Consultant shall also attach photocopies of claimed reimbursable expenses, if applicable. The Consultant 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 Consultant shall develop a billing format for approval by the City.

The City shall pay all amounts to which no dispute exists within 30 calendar 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 Consultant shall make full payment to its subconsultants within 10 business days following receipt of any payment made by the City to Consultant.

#### **ACH Payments**

It is the City's policy to pay its Consultant invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, Consultant shall execute the City's standard ACH Vendor Payment Authorization Agreement.

Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for services rendered directly into Consultant accounts with financial institutions. All payments shall be in United States currency.

**WORKERS' COMPENSATION INSURANCE STATEMENT**

**IF YOUR FIRM HAS CURRENT WORKERS' COMPENSATION INSURANCE, CONSULTANT MUST SIGN HERE:**

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

Consultant Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Entity: \_\_\_\_\_

**IF YOUR FIRM DOES NOT HAVE CURRENT WORKERS' COMPENSATION INSURANCE, CONSULTANT MUST COMPLETE THE FOLLOWING INDEPENDENT CONSULTANT CERTIFICATION STATEMENT:**

As an independent Consultant, I certify that I meet 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 Consultant 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. Consultant: 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.

\_\_\_\_\_  
Consultant Signature

\_\_\_\_\_  
Date

**FOR CITY USE ONLY**

**PROJECT MANAGER-COMplete ONLY IF CONSULTANT DOES NOT HAVE WORKER'S COMPENSATION INSURANCE**

ORS 670.600 Independent Consultant 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 consultant" 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

**EXHIBIT A**

**Conflict Disclosure**

**Conflicts.**

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

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

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

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

<b>Organization</b>	<b>Project Details</b>
<b>Groundwater Solutions, Inc.</b>	
Oregon Department of Environmental Quality (DEQ)	GSI is a subcontractor to Hart Crowser on a contract to DEQ to provide technical services on orphan projects at locations across the State.
Stoel Rives LLP.	GSI was retained to assist Stoel Rives on a confidential client matter involving natural occurrence of arsenic in groundwater. The Portland City Attorney's office provided a conflict waiver for this project In June 2018. This work is expected to be completed in 2018.
Port of Portland	GSI provides consulting services to the Port to (1) assist in maintaining existing water rights for use in the non-potable water system on Port facilities and (2) to identify and initialize water conservation measures and related tasks for starting up and expanding the Port's non-potable water system as demand arises.
Lower Willamette Group (LWG)	In 2003 and 2004 GSI provided technical support to the LWG in developing a groundwater conceptual site model (CSM). GSI has not worked for the LWG since that time.
City of Portland, Bureau of Environmental Services (BES)	GSI has provided technical assistance to BES in the City's participation in the Portland Harbor Superfund Site. During this same period, GSI has also provided technical assistance to the City's stormwater source control program related to Portland Harbor.

Organization	Project Details
City of Portland, Bureau of Water Works (Bureau)	<p>GSI's staff has managed and provided technical support on several contracts to provide on-call environmental and hydrogeologic services to the Bureau in the Columbia South Shore Wellfield (CSSW). Currently, GSI is a subconsultant to Pacific Groundwater Group on a technical services contract. In addition, GSI recently was awarded a 3-year technical services contract with the Bureau as the prime consultant. The CSSW consists of approximately 32 high-capacity water supply wells that serve as a supplemental and backup water supply for the City of Portland and surrounding communities. Through our experience with Bureau contracts, GSI has developed extensive expertise in the geologic and groundwater conditions in the area in the eastside of Portland. Our work with the Bureau includes (1) collection and interpretation of hydrogeologic data, including assisting with groundwater level data collection and stratigraphic interpretations in aquifers and overlying sediments (ongoing work), (2) a deep well drilling program to evaluate the potential of the basalt aquifer for water supply development (prior contract), (3) development of a detailed conceptual model of the aquifers near the CSSW and an investigation of potential sources of chlorinated solvent contamination detected in the aquifers (ongoing work), (4) assistance with the Bureau's wellhead protection program (prior contracts), (5) provided technical review of reports and work plans for various groundwater remedial investigations being conducted near the CSSW (prior contracts).</p>
Oregon Department of Transportation (ODOT)	<p>In 2017 and 2018 GSI assisted ODOT in inventorying and managing Oregon Department of Water Resources water right permits and certificates for all of their facilities in Oregon.</p> <p>GSI is also participating in a project jointly funded by ODOT and the City of Portland to evaluate sediment chemistry in the Lower Downtown Reach of the Willamette River upriver from the Portland Harbor Superfund site.</p>
River Mile 11E Group	<p>Since 2013 GSI has provided technical services to the River Mile 11E group as a subcontractor to Dalton Olmstead and Fuglevand (DOF). This work involved characterization of in-water sediments, porewater, river bank soils and upland groundwater. Information from predesign investigations was used to prepare an assessment of recontamination potential. GSI is currently providing technical support to the remedial design team.</p>

**CONSULTANT 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 Consultant 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 Chapters 5.33.076 and 5.33.077 of Code of the City of Portland; and hereby certify I am an independent consultant as defined in ORS 670.600.

**Groundwater Solutions Inc., dba GSI Water Solutions, Inc.**

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

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

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

**CONTRACT NUMBER:** \_\_\_\_\_

**CONTRACT TITLE:** CERCLA and Risk Assessment Technical Assistance

**CITY OF PORTLAND SIGNATURES:**

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

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

Approved:

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

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

Approved as to Form:

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

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

## **IMPACT STATEMENT**

**Legislation title:** \*Authorize a retroactive sole source contract with GSI Water Solutions, Inc. for CERCLA and Risk Assessment Technical Assistance at the Portland Harbor Superfund Site in the amount of \$2,500,000 (Ordinance)

**Contact name:** Annie Von Burg

**Contact phone:** 503-823-7859

**Presenter name:** Michael Jordan

### **Purpose of proposed legislation and background information:**

#### **Purpose:**

In October 2015, Council approved a contract extension through an eleventh year (2016) with options to renew for four additional one-year periods (2016-2020). The presentation to Council recognized that the Portland Harbor was at a critical phase and that the contractor's historical knowledge was necessary to continue to meet the City's legal and technical obligations for Portland Harbor pursuant to formal agreements with EPA and DEQ.

The contract presented to Council in October of 2015 should have been entered into as a sole source contract rather than a contract extension. This legislation provides an administrative correction by retroactively entering into a sole source contract under the same terms as the current contract with an effective date of October 25, 2015, expiring October 25, 2020.

#### **Background:**

The EPA administrative cleanup and settlement process for Portland Harbor has taken longer than anticipated when the City originally contracted with GSI in 2005. The initial contractor selection was through a competitive process (RFP No. BES024) pursuant to Section 5.68 of the Portland City Code. GSI submitted the only response to the RFP. In 2010, two GSI Contracts (no. C36324 for CERCLA technical assistance and no. C36325 for related source control technical assistance) were extended for an additional 5 years with Council approval. During those 10 years, GSI provided technical assistance to the City during the remedial investigation and feasibility study phases of Portland Harbor Superfund cleanup and the development and implementation of the City's source control program for Portland Harbor. In 2015, Council approved additional extensions of the GSI contracts.

The services required of GSI for technical assistance for source control actions are the continuation of services that GSI has been providing. GSI's knowledge of the development of the City's technical and legal positions is unique and could not be matched by any other consultant and still meet the City's schedule obligations with EPA and DEQ.

#### **Financial and budgetary impacts:**

BES is not seeking additional funding through this sole source contract as those funds were previously authorized under Ordinance No. 187378, so there are no financial or budgetary impacts.



The legislation does not affect current or future staffing needs.

**Community impacts and community involvement:**

The City is currently developing a Portland Harbor public involvement program that is focused on engagement and education for the superfund site. The focus of the program is to ensure the public, specifically those most impacted by the cleanup, has access to information on the progress of the cleanup and has an opportunity to participate in the cleanup process. Grants have been issued to community groups to assist BES staff design the public involvement program.

**100% Renewable Goal:**

- Not applicable

**Budgetary Impact Worksheet**

**Does this action change appropriations?**

- YES: Please complete the information below.
- NO: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount