



CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No. 102-2016

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR
ENGINEERING SERVICES FOR THE RIVERFRONT PARK BEACH REPAIR.**

WHEREAS, the Riverfront Park beach area was significantly damaged during the storm event of December 6-23, 2015; and

WHEREAS, The engineering services for the design and construction management services are best contracted out for the identified project; and

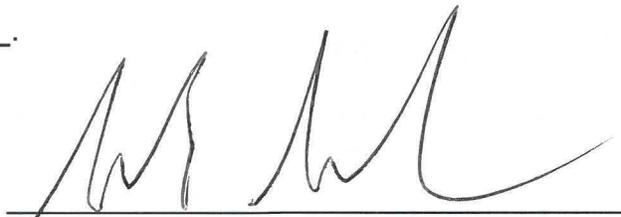
WHEREAS, a formal competitive request for proposal process following Chapter 70 of the City's Public Contracting Rules was conducted; and

WHEREAS, Environmental Science Associates (ESA) is recommended as the most qualified firm for the project; and

Now, Therefore, be it Resolved that the City of Milwaukie authorizes the City Manager to execute a contract for engineering services in the amount not to exceed \$110,585 with Environmental Science Associates (ESA).

Introduced and adopted by the City Council on 9/6/16.

This resolution is effective on 9/6/16.



Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Pat DuVal, City Recorder



City Attorney



ENGINEERING SERVICES AGREEMENT WITH THE CITY OF MILWAUKIE, OREGON FOR RIVERFRONT PARK BEACH REPAIR

THIS AGREEMENT, made and entered into this 25th day of July, 2016, by and between the City of Milwaukie, a municipal corporation, hereinafter referred to as the "City," and ESA at 819 SE Morrison Street Suite 310, Portland, OR 97214, whose authorized representative is Kenneth M. Vigil, and having a principal being a registered engineer of the State of Oregon, hereinafter referred to as the "Engineer."

RECITALS

WHEREAS, the City's Fiscal Year 2016-2017 budget provides for the design of Riverfront Park beach repair and mitigation; and

WHEREAS, the accomplishment of the work and services described in this Agreement is necessary and essential to the public works improvement program of the City; and

WHEREAS, the City desires to engage the Engineer to render professional engineering services for the project described in this Agreement, and the Engineer is willing and qualified to perform such services;

THEREFORE, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

1. Engineer's Scope of Services

The Engineer shall perform professional engineering services relevant to the Project in accordance with the terms and conditions set forth herein, and as provided in Exhibit A, which is attached hereto and by this reference made a part of this Agreement.

2. Effective Date and Duration

This agreement shall become effective upon the date of execution by the City and shall expire, unless otherwise terminated or extended, on completion of the work or October 31, 2017, whichever comes first. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. Engineer's Fee

A. Basic Fee

1) As compensation for Basic Services as described in Exhibit A of this Agreement, and for services required in the fulfillment of Paragraph 1, the Engineer shall be paid on an hourly rate based upon the "Schedule of Rates" in Exhibit A of this agreement, which shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement. The Basic Fee shall not exceed the amount of one hundred ten thousand five hundred eighty five dollars (\$110,585) without prior written authorization.

2) The parties hereto do expressly agree that the Basic Fee is based upon the Scope of Services provided in Exhibit A and is not necessarily related to the estimated construction cost of the Project. In the event that the actual construction cost differs from the estimated construction cost, the Engineer's compensation will not be

adjusted unless the Scope of Services changes and is authorized and accepted by the City.

B. Payment Schedule for Basic Fee

Payments shall be made upon receipt of billings based on the work completed. Billings shall be submitted by the Engineer periodically, but not more frequently than monthly. Payment by the City shall release the City from any further obligation for payment to the engineer for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

C. Payment for Special Services

Only when directed in writing by the City, and signed by both parties as an addendum to this Agreement, the Engineer shall furnish or acquire for the City the professional and technical services based on the hourly rate schedule as described in Exhibit A of this contract for minor project additions and/or alterations.

D. Certified Cost Records

The Engineer shall furnish certified cost records for all billings pertaining to other than lump sum fees to substantiate all charges. For such purposes, the books of account of the Engineer shall be subject to audit by the City. The Engineer shall complete work and cost records for all billings in accordance with generally accepted accounting principles.

E. Contract Identification

The Engineer shall furnish to the City its employer identification number, as designated by the Internal Revenue Service, or social security number, as the City deems applicable.

F. Payment – General

- 1) Engineer shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 2) Engineer shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime.
- 3) Engineer shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Engineer or all sums which Engineer agrees to pay for such services and all moneys and sums which Engineer collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- 4) The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.
- 5) Engineer shall make payments promptly, as due, to all persons supplying services or materials for work covered under this contract. Engineer shall not permit any lien or claim to be filed or prosecuted against the City on any account of any service or materials furnished.
- 6) If Engineer fails, neglects or refuses to make prompt payment of any claim for labor, materials, or services furnished to Engineer, sub-consultant or subcontractor by any person as such claim becomes due, City may pay such claim and charge the amount of the payment against funds due or to become due to the Engineer. The payment of the

claim in this manner shall not relieve Engineer or its surety from obligation with respect to any unpaid claims.

4. **Ownership of Plans and Documents: Records**

- A. The field notes, design notes, and original drawings of the construction plans, as instruments of service, are and shall remain, the property of the Engineer; however, the City shall be furnished, at no additional cost, one set of previously approved reproducible drawings, on 3 mil minimum thickness mylar as well as diskette in "DWG" or "DXF" format, of the original drawings of the work. The City shall have unlimited authority to use the materials received from the Engineer in any way the City deems necessary. Any use, re-use or alteration of any materials other than as contemplated by the applicable Scope of Services shall be at the City's sole risk, unless written permission has been received from Engineer prior to any such use.
- B. The City shall make copies, for the use of and without cost to the Engineer, of all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the Engineer pursuant to this Agreement, and also make available any other maps, records, or other materials available to the City from any other public agency or body.
- C. The Engineer shall furnish to the City, copies of all maps, records, field notes, and soil tests which were developed in the course of work for the City and for which compensation has been received by the Engineer at no additional expense to the City except as provided elsewhere in this Agreement.

5. **Assignment/Delegation**

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Engineer shall be fully responsible for the negligent acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. **Engineer is Independent Contractor**

- A. The City's project director, or designee, shall be responsible for determining whether Engineer's work product is satisfactory and consistent with this agreement, but Engineer is not subject to the direction and control of the City. Engineer shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 3 of this Agreement.
- B. Engineer is an independent contractor and not an employee of City. Engineer acknowledges Engineer's status as an independent contractor and acknowledges that Engineer is not an employee of the City for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Engineer to provide services under this contract are employees of Engineer and not of City. Engineer acknowledges that it is not entitled to benefits of any kind to which a City employee is entitled and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Engineer is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Engineer under the terms of the agreement, to the full extent of any benefits or other remuneration Engineer receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Engineer or to a third party) as a result of said finding.

- C. The undersigned Engineer hereby 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 the Engineer, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- D. If this payment is to be charged against Federal funds, Engineer certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his/her normal charge for the type of service provided.
- E. Engineer and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- F. Engineer certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- G. Engineer is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7.

Indemnity

- A. The City has relied upon the professional ability and training of the Engineer as a material inducement to enter into this Agreement. Engineer represents to the City that the work under this contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the engineering profession under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Engineer's work by the City shall not operate as a waiver or release. Acceptance of documents by City does not relieve Engineer of any responsibility for negligent or wrongful design deficiencies, errors, or omissions.
- B. Claims for other than Professional Liability. Engineer shall defend, save and hold harmless the City of Milwaukie, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, of whatsoever nature, including intentional acts to the extent resulting from or arising out of the activities of Engineer or its subcontractors, sub-consultants, agents or employees under this contract. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.
- C. Claims for Professional Liability. Engineer shall defend, save and hold harmless the City of Milwaukie, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, to the extent arising out of the professional negligent acts, errors or omissions of Engineer or its subcontractors, sub-consultants, agents or employees in performance of professional services under this agreement. Engineer will use best judgment based on current regulations to ensure ADA compliance.
- D. As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly from the quality of the professional services provided by Engineer, regardless of the type of claim made against the City. A claim for other than professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Engineer unrelated to the quality of professional services provided by Engineer.

8. **Insurance**

Engineer and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover risks arising directly or indirectly out of Engineer's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder.

The policy or policies of insurance maintained by the Engineer and its subcontractors shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

Engineer shall obtain, at Engineer's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract and Product and Completed Operations. Such insurance shall be primary and non-contributory. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$3,000,000
Products-Completed Operations Aggregate	3,000,000
Personal & Advertising Injury	3,000,000
Each Occurrence	2,000,000
Fire Damage (Any one fire)	500,000
Medical Expense (Any one person)	5,000

B. Professional Liability

Engineer shall obtain, at Engineer's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent act. Combined single limit per occurrence shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$3,000,000 and filed on a "claims-made" form.

C. Commercial Automobile Insurance

Engineer shall also obtain, at engineer's expense, and keep in effect during the term of the contract Commercial Automobile Liability coverage on an "occurrence" form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

D. Workers' Compensation Insurance

The Engineer, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers that complies with ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

E. Additional Insured Provision

The Commercial General Liability Insurance Policy and Automobile Policy shall include the City its officers, directors, and employees as additional insureds with respect to this contract. Coverage will be endorsed to provide a per project aggregate.

- F. Extended Reporting Coverage
If any of the aforementioned liability insurance is arranged on a "claims made" basis, Extended Reporting coverage will be required at the completion of this contract to a duration of 24 months or the maximum time period the Engineer's insurer will provide such if less than 24 months. Engineer will be responsible for furnishing certification of Extended Reporting coverage as described or continuous "claims made" liability coverage for 24 months following contract completion. Continuous "claims made" coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this contract. Coverage will be endorsed to provide a per project aggregate.
- G. Notice of Cancellation
There shall be no cancellation, material change, or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 days' notice of cancellation provision shall be physically endorsed on to the policy.
- H. Insurance Carrier Rating
Coverage provided by the Engineer must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- I. Certificates of Insurance
As evidence of the insurance coverage required by the contract, the Engineer shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. A renewal certificate will be sent to the address below ten days prior to coverage expiration.
- Certificates of Insurance should read "Insurance certificate pertaining to contract for (Name of project) . The City of Milwaukie, its officers, directors and employees shall be added as additional insureds with respects to this contract. Insured coverage is primary" in the description portion of certificate.
- J. Primary Coverage Clarification
The parties agree that Engineer's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.
- K. Cross-Liability Clause
A cross-liability clause or separation of insureds clause will be included in general liability.

Engineer's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without 30 days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

City of Milwaukie
Attn: Finance
10722 SE Main Street
Milwaukie, Oregon 97222

Business Phone: 503-786-7555
Business Fax: 503-653-2444
Email Address: finance@milwaukieoregon.gov

Such policies or certificates must be delivered prior to commencement of the work. Thirty days cancellation notice shall be provided City by mail to the name at the address listed above in event of cancellation or non-renewal of the insurance.

The procuring of such required insurance shall not be construed to limit Engineer's liability hereunder. Notwithstanding said insurance, Engineer shall be obligated for the total amount of any damage, injury, or loss to the extent caused by negligence or wrongful acts in the performance of services with this contract.

9. Termination Without Cause

At any time and without cause, City shall have the right, in its sole discretion, to terminate this Agreement by giving 14 days prior written notice to Engineer. If City terminates the contract pursuant to this paragraph, it shall pay Engineer for services rendered to the date of termination.

10. Termination With Cause

A. City may terminate this Agreement effective upon delivery of written notice to Engineer, 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 Engineer, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Engineer becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Engineer, if a receiver or trustee is appointed for Engineer, or if there is an assignment for the benefit of creditors of Engineer.

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 Engineer, may terminate the whole or any part of this Agreement:

- 1) If Engineer fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Engineer 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 days or such other period as City may authorize.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Engineer 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), Engineer 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 Engineer bear to the total services otherwise required to be performed for such total fee; Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

11. Non-Waiver

The failure of either party to insist upon or enforce strict performance by the other party 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.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments

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

City	Contractor
City of Milwaukie	Company: ESA
Attn: Accounts Payable	Attn: Kenneth Vigil
10722 SE Main Street	819 SE Morrison Street Suite 310
Milwaukie, Oregon 97222	Portland, OR 97214
Phone: 503-786-7523	Phone: 503-274-2010
Fax: 503-786-7528	Fax: 503-274-2024
Email Address: finance@milwaukieoregon.gov	Email Address: kvigil@esassoc.com

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

13. 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.

14. Force Majeure

Neither City nor Engineer 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 disabled, including but not restricted to, an act of God 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 disabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. Non-Discrimination

Engineer agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Engineer also shall comply with the Americans with Disabilities Act of 1990, as amended, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

16. Errors

Engineer shall perform such additional work as may be necessary to correct negligent errors in the work required under this Agreement without undue delays and without additional cost.

17. Extra (Changes) Work

Only Charles Eaton, the Engineering Director may authorize extra (and/or change) work. Failure of Engineer to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Engineer thereafter shall be entitled to no compensation whatsoever for the performance of such work.

18. 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.

19. Compliance With Applicable Law

Engineer shall comply with all applicable federal, state, local laws and ordinances, including but not limited to ORS 279B.020, 279B.220, 279B.225, 279B.230, and 279B.235, which are incorporated herein. If Engineer is a foreign contractor as defined in ORS 279A.120, Engineer shall comply with that section and the City must satisfy itself that the requirements of ORS 279A.120 have been complied with by Engineer before City issues final payment under this agreement. Engineer shall not provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of City in connection with this Agreement in violation of ORS chapter 244.

20. Conflict Between Terms

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

21. Access to Records

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

22. Audit

Engineer shall maintain records to help assure conformance with the terms and conditions of this Agreement, and to help assure adequate performance and accurate expenditures within the contract period. Engineer agrees to permit City, the State of Oregon, the federal government, or their duly

authorized representatives to audit all records pertaining to this Agreement to help assure the accurate expenditure of funds.

23. Severability

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

24. Complete Agreement

This Agreement and attached exhibit(s) constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement 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 Agreement. Engineer, by the signature of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Engineer has executed this Agreement on the date hereinabove first written.

CITY OF MILWAUKIE



Signature

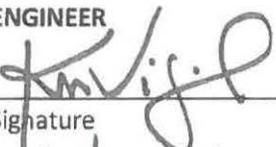
William Monahan, City Manager

Print Name & Title

9/14/16

Date

ENGINEER



Signature

Kenneth M. Vigil, Vice President

Print Name & Title

9/12/2016

Date



619 SE Morrison Street
Suite 310
Portland, OR 97214
503.274.2010 phone
503.274.2024 fax

www.esassoc.com

Attachment A

date September 9, 2016
to Rick Buen, PE, City of Milwaukie
from Ken Vigil, PE and Ryan Makie, PE, Environmental Science Associates (ESA)
subject Riverfront Park Beach Repair Scope of Services

Thank you for asking ESA to provide this scope and fee estimate for design services to repair the existing beach erosion at Riverfront Park in Milwaukie. The purpose of this memorandum is to outline a general scope and budget to complete the work.

UNDERSTANDING

The City of Milwaukie is currently redeveloping Riverfront Park, providing an improved boat ramp, parking area, pedestrian paths, and other site amenities. The redevelopment project has been broken into several phases and construction of Phase 2 was recently completed. With the completion of Phase 2, the previous boat ramp was removed and a new boat ramp was constructed further south on the eastern bank of the Willamette River. A new beach area was constructed in the area of the previous boat ramp, and the beach provides easy access to the Willamette River for uses including hand-carry boat launching. Construction of Phase 2 was completed in late summer of 2015.

During the time period of December 6, 2015 to December 23, 2015, a prolonged intense rainfall event resulted in substantial erosion on the bank of the Willamette River at Riverfront Park. During the storm, the bank erosion was likely caused by a combination of a sanitary sewer manhole that overflowed across the new path down to the new beach area, runoff from the grass slope between the new sidewalk and road, and Willamette River flows or wave action.

The sanitary sewer manhole overflow was caused by substantial inflow/infiltration into the system that increased pressures and displaced the sanitary manhole lid. City maintenance crews have since replaced the lid and it is now properly locked and grouted. It is still possible that another intense and prolonged rainfall event could displace the sanitary manhole lid again in the future.

It will not be possible for the project team to secure the various permits required for work within ordinary high water (OHW) prior to the end of this year's in-water work period for the Willamette River (July 1 – Oct. 31). To manage this constraint, the beach repair project will be broken up into two phases. Initially, ESA to provide a brief memorandum that will describe a temporary fix using hand tools, erosion control fabric, and new plantings that will not require any additional permitting. For the second phase, ESA will design a more durable restoration project that will include work within OHW, which will require permit approvals from the Oregon Department of State Lands (DSL) and U.S. Army Corps of Engineers.

The Federal Emergency Management Agency (FEMA) declared December 6, 2015 to December 23, 2015 as a severe weather related disaster. The City is applying for FEMA disaster relief funding to repair the damage to the beach that was caused during the December 2015 event. To support the FEMA disaster relief application, this scope and budget will include both design and anticipated construction costs for both phases of the project.

SCOPE OF SERVICES

Project Management

ESA will work to maintain good communication for the duration of the project. This communication is expected to include routine phone calls and emails. We will manage our consultant team by directing their work and incorporating their deliverables into the project deliverables submitted to the City. Project Management also involves the preparation of monthly invoices. The invoices will be sent to the City for review and approval.

Deliverables: Monthly invoices

Task 1. Temporary Stabilization Memorandum – Fall 2016

ESA will complete a brief Temporary Stabilization Memorandum that will propose several work items to be completed by a landscape contractor. The proposed work items will temporarily stabilize the beach to limit erosion from progressing further over the winter of 2016/2017. The memorandum will be written with the intent of instructing a landscape contractor on the work to be done, but will not include bid documents (construction plans and specifications).

The work items to be completed in fall 2016 will only include limited regrading of the site and no work will occur within OHW. This work will not require any additional permit approvals.

ESA will provide a draft of the memorandum to the City for review and comment before finalizing.

Deliverable: Draft and Final Temporary Stabilization Memorandum

Task 2. 30% Design Development

ESA has teamed with Statewide Surveying who will provide site survey. The survey will be conducted after the summer 2016 work has been completed. The site survey will be limited to topographic ground shots. The topographic ground shots will extend into the Willamette River a reasonable distance that is accessible to crews wearing waders. Detailed bathymetric survey beyond wading in a short distance is not included in this scope of work. It is assumed that the City can provide survey of property boundaries and key underground utilities.

ESA will develop the detailed restoration design to a 30% level of detail. The design will focus on restoring the Willamette River bank that has eroded. If feasible, the design will also include a pathway from the existing sidewalk to the beach area that meets ADA requirements. We do not propose any work on the riverbed. The 30% design drawings will include approximately 8 sheets. ESA will also complete a 30% construction cost estimate.

The 30% Design Development deliverable will be submitted to the City for review and comment. ESA will meet with the City to discuss the 30% comments.

Deliverables: Site survey, 30% Design Submittal (construction plans and cost estimate)

Task 3. 60% Design Development

ESA will incorporate all comments received on the previous submittal and develop the detailed restoration design to a 60% level of detail. The 60% design drawings will include approximately 8 sheets (10 if a retaining wall is required). ESA will also complete a 60% technical specification outline and a construction cost estimate.

We understand that the City will take the lead on completing the project environmental permit applications. ESA will provide the city with quantity calculations and key permit figures that show the impact areas and work to be completed. The City will incorporate these items into the project environmental permit applications.

One draft copy of the permit figures will be submitted to the City for review and comment before finalizing. The 60% Design Development Package will be submitted to the City for review and comment. ESA will meet with the City to discuss the 60% comments.

Deliverables: Permit quantities, draft and final permit figures, 60% Design Submittal (construction plans, technical specification outline, and cost estimate)

Task 4. 90% Design Development

ESA will incorporate all comments received on the previous submittal and develop the detailed restoration design to a 90% level of detail. The 90% design drawings will include approximately 8 sheets (10 if a retaining wall is required). ESA will also complete 90% technical specifications and construction cost estimate.

The 90% Design Development Package will be submitted to the City for review and comment. If needed, ESA will meet with the City to discuss the 90% comments.

Deliverables: 90% Design Submittal (construction plans, technical specifications, and cost estimate)

Task 5. Final Construction Documents

ESA will incorporate all comments received on the previous submittal and finalize the project construction documents (plans, technical specifications, and cost estimate). The construction plans and technical specifications will be stamped by an engineer licensed in the State of Oregon.

Deliverables: Final Construction Documents

SCHEDULE

After receiving notice to proceed (NTP), we will work diligently to complete the Temporary Stabilization Memorandum to facilitate the completion of the landscape contractor work before the start of the rainy season. The following is a list of the project deliverables with anticipated completion dates. These completion dates are approximate for planning purposes assuming we receive notice to proceed by Friday September 16, 2016.

- Draft Temporary Stabilization Memorandum – October 3, 2016
- Final Temporary Stabilization Memorandum – October 10, 2016
- Site Survey – 3 weeks after completion of temporary stabilization site work (Assume complete on November 4, 2016)
- 30% Design Submittal (plans and cost) – December 1, 2016
- 60% Design Submittal (plans, spec, cost) – January 16, 2016
- Permit quantities – January 16, 2016
- Draft Permit Figures – January 16, 2016
- Final Permit Figures – January 30, 2016
- 90% Design Submittal (plans, spec, cost) – February 13, 2016
- Final Construction Documents – March 13, 2016

DESIGN FEES

See attached **Table 1 - Design Fee** for staff rates and labor hours. The not-to-exceed design fee is **\$110,585**. This design fee includes the contingency tasks itemized on the design fee table.

The purpose of this budget estimate is to outline the general level of effort associated with each task. We reserve the right to transfer labor hours between tasks, while still meeting the overall not-to-exceed budget amount for the total project.

ENGINEER'S ESTIMATE OF PROBABLE CONSTRUCTION COSTS (FOR PLANNING ONLY)

Table 2 – Engineer's Estimate of Probable Construction Costs (attached) shows the site work that we anticipate will be needed for Phase 1 and Phase 2 of the Riverfront Beach Restoration Project. This construction cost estimate is being provided to support the FEMA disaster relief application being completed by the City. As design progresses these costs could change. The total construction cost for each project phase is summarized below and have been rounded.

- Phase 1 Construction of temporary stabilization – **\$20,000**
- Phase 2 Construction of detailed stabilization – **\$83,000** (Does not include contingency items)

ASSUMPTIONS/EXCLUSIONS

- We assume the City will take the lead on completing all permit applications. If requested, ESA would be happy to provide additional scope and budget to take the lead on this work for the City.
- Detailed bathymetric survey of the Willamette River in the project vicinity is excluded from this scope of work.
- The detailed restoration design will not include any work on the riverbed.
- Engineering design of modifications to the existing sanitary and storm sewers or engineering design of additional stormwater management facilities is excluded from this scope of work.
- A number of contingency tasks have been included on Table 1 –Design Fee and these have been provided to support the FEMA disaster relief application being completed by the City. It is unclear if these professional services will be needed at this point.
- Given the time constraints for completing this scope and budget memorandum, and the uncertainty of the contingency tasks, we have not coordinated with our geotechnical and structural subconsultants. Costs for their design services are preliminary estimates that will need to be revisited if these contingency items are implemented.
- We assume the city will complete the administrative and contracting (front-end) portions of the bid package. ESA will provide the construction plans, technical specifications, and bid item list with estimated quantities.
- The temporary stabilization measures will improve existing conditions at the beach. However, these measures may not be sufficient to manage erosion if we experience severe weather conditions, prior to completing the detailed restoration design and construction.
- We are proposing a robust but practical approach for the detailed restoration design based on our understanding of the site and our previous work on the Willamette River. However, hydraulic modeling, geomorphic analysis, bathymetric survey and additional site reviews can be added to further inform the design, if desired by the City. We would be happy to provide a scope and budget for these additional reviews if requested.
- The pathway from the existing sidewalk to the beach area will be designed to American with Disabilities Act (ADA) standards, if possible. That said, it is unclear if ADA requirements would need to be met for a pathway to this beach. Since site constraints (topography) and functionality may preclude ADA design, we will review the applicability of ADA standards and potentially exclude a pathway from the design, if applicable standards cannot be met.

**Table 2 - Engineer's Estimate of Probable Construction Cost
Milwaukie Riverfront Beach Restoration**

July 14, 2016

Phase 1 - Temporary Stabilization

Item No.	Item Description	Unit Price	Unit	Estimated Quantity	Total
1	Mobilization	-	LS	1	\$1,850
2	Erosion Control	-	LS	1	\$5,000
3	Demo	-	LS	1	\$5,000
4	Grading	-	LS	1	\$7,000
5	Seeding	\$1.00	SF	1500	\$1,500

Total \$20,350

Phase 2 - Detailed Restoration

Item No.	Item Description	Unit Price	Unit	Estimated Quantity	Total
1	Mobilization	-	LS	1	\$7,500
2	Erosion Control	-	LS	1	\$8,000
3	Work Area Isolation	-	LS	1	\$20,000
4	Demo	-	LS	1	\$5,000
5	Grading	-	LS	1	\$10,000
6	Soil Wrapped Wall	-	LS	1	\$15,000
7	Large Woody Debris	\$1,500.00	EA	5	\$7,500
8	Pathway to Beach	-	LS	1	\$2,000
9	Planting	\$5.00	SF	1500	\$7,500

Base Project Total \$82,500

Phase 2 - Contingency Items

Item No.	Item Description	Unit Price	Unit	Estimated Quantity	Total
1	Retaining Wall	-	LS	1	\$20,000

Contingency Item Total \$20,000



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/13/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Woodruff-Sawyer & Co. 50 California Street, Floor 12 San Francisco CA 94111	CONTACT NAME: Jaclyn Grewohl PHONE (A/C, No, Ext): 415-391-2141 E-MAIL ADDRESS: jgrewohl@wsandco.com	FAX (A/C, No): 415-989-9923	
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED ENVISCI-01 Environmental Science Associates 550 Kearny Street, Ste 800 San Francisco, CA 94108	INSURER A: Greenwich Insurance Company		22322
	INSURER B: XL Specialty Insurance Company		37885
	INSURER C:		
	INSURER D:		
	INSURER E:		

COVERAGES

CERTIFICATE NUMBER: 742150912

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab <input checked="" type="checkbox"/> Stop Gap GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: No Deductible	Y		GEC001336713	1/1/2016	1/1/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> No Ded.	Y		AEC001336513	1/1/2016	1/1/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			UEC001336613	1/1/2016	1/1/2017	EACH OCCURRENCE \$2,000,000 AGGREGATE \$2,000,000 \$
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WEC001337413	1/1/2016	1/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
B	<input checked="" type="checkbox"/> Professional Liability Cov. A. Claims Made Retro Date: 10/1/89			PEC001336813	1/1/2016	1/1/2017	Each Occurrence: \$3,000,000 Aggregate: \$3,000,000 Retention: \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

REPLACES CERTIFICATE ISSUED 09/09/16. D160484.00; Milwaukie Riverfront Park Bank Repair Engineering. The City of Milwaukie, its officers, directors and employees are named additional insured on General Liability and Auto Liability coverages per endorsements XIL 2037 07 04 (Ed. 0413), XIL 2010 07 04 (Ed. 0413) and XIC 411 1013 attached. Coverage is primary & non-contributory per endorsement XIL 424 0605 attached. Separation of Insureds is included in the policy contract. Policies contain a 30 day notice of cancellation and a 10 day notice of cancellation for non-payment of premium.

CERTIFICATE HOLDER

CANCELLATION

City of Milwaukie Attn: Roderick Buen 6101 SE Johnson Creek Boulevard Milwaukie OR 97206	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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This endorsement, effective 12:01 a.m., January 1, 2016 forms a part of Policy No. GEC001336713 issued to ENVIRONMENTAL SCIENCE ASSOCIATES by Greenwich Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –
SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
ANY PERSON OR ORGANIZATION THAT YOU ARE REQUIRED IN A WRITTEN CONTRACT OR WRITTEN AGREEMENT TO INCLUDE AS AN ADDITIONAL INSURED PROVIDED THE "BODILY INJURY" OR "PROPERTY DAMAGE" OCCURS SUBSEQUENT TO THE EXECUTION OF THE WRITTEN CONTRACT OR WRITTEN AGREEMENT.	Various
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

All other terms and conditions of this policy remain unchanged.

This endorsement, effective 12:01 a.m., January 1, 2016 forms a part of Policy No. AEC001336513 issued to ENVIRONMENTAL SCIENCE ASSOCIATES by XL Specialty Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTOMATIC ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
AUTO DEALERS COVERAGE FORM

A. **COVERED AUTOS LIABILITY COVERAGE, Who Is An Insured**, is amended to include as an "insured" any person or organization you are required in a written contract to name as an additional insured, but only for "bodily injury" or "property damage" otherwise covered under this policy caused, in whole or in part, by the negligent acts or omissions of:

1. You, while using a covered "auto"; or
2. Any other person, except the additional insured or any employee or agent of the additional insured, operating a covered "auto" with your permission;

Provided that:

- a. The written contract is in effect during the policy period of this policy;
- b. The written contract was signed by you and executed prior to the "accident" causing "bodily injury" or "property damage" for which liability coverage is sought; and
- c. Such person or organization is an "insured" solely to the extent required by the contract, but in no event if such person or organization is solely negligent.

B. The Limits of Insurance provided for the Additional Insured shall not be greater than those required by contract and, in no event shall the Limits of Insurance set forth in this policy be increased by the contract.

C. **General Conditions, Other Insurance** is amended as follows:

Any coverage provided hereunder shall be excess over any other valid and collectible insurance available to the additional insured whether such insurance is primary, excess, contingent or on any other basis unless the contract specifically requires that this policy be primary.

All terms, conditions, exclusions and limitations of this policy shall apply to the liability coverage provided to any additional insured, and in no event shall such coverage be enlarged or expanded by reason of the contract.

All other terms and conditions of this policy remain unchanged.

This endorsement, effective 12:01 a.m., January 1, 2016 forms a part of Policy No. GEC001336713 issued to ENVIRONMENTAL SCIENCE ASSOCIATES by Greenwich Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
ANY PERSON OR ORGANIZATION THAT YOU ARE REQUIRED IN A WRITTEN CONTRACT OR WRITTEN AGREEMENT TO INCLUDE AS AN ADDITIONAL INSURED PROVIDED THE "BODILY INJURY" OR "PROPERTY DAMAGE" OCCURS SUBSEQUENT TO THE EXECUTION OF THE WRITTEN CONTRACT OR WRITTEN AGREEMENT.	Various
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

All other terms and conditions of this policy remain unchanged.

This endorsement, effective 12:01 a.m., January 1, 2016 forms a part of Policy No. GEC001336713 issued to ENVIRONMENTAL SCIENCE ASSOCIATES by Greenwich Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY INSURANCE CLAUSE ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS COVERAGE PART

It is agreed that to the extent that insurance is afforded to any Additional Insured under this policy, this insurance shall apply as primary and not contributing with any insurance carried by such Additional Insured, as required by written contract.

All other terms and conditions of this policy remain unchanged.