



Metro

600 NE Grand Ave.  
Portland, OR 97232-2736  
503-797-1700

## Personal Services Agreement

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Metro Contract No. 933246

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, OR 97232-2736, and Ducks Unlimited, Inc., referred to herein as "Contractor," located at 17700 SE Mill Plain Blvd, Suite 100, Vancouver, WA 98683.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. **Duration.** This personal services agreement shall be effective February 19, 2015 and shall remain in effect until and including December 31, 2017 unless terminated or extended as provided in this Agreement. This agreement may be renewed or extended for 1 additional one-year period at Metro's sole discretion.
2. **Scope of Work.** Contractor shall provide all services and materials specified in the attached "Attachment A – Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. **Payment.** Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed EIGHTY-ONE THOUSAND, ONE-HUNDRED AND SEVENTY-TWO AND 00/100<sup>TH</sup> DOLLARS (\$81,172.00). Payment shall be made by Metro on a Net 30 day basis upon approval of Contractor invoice.
4. **Insurance.** Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
  - (a) The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. Contractor's coverage will be primary as respects Metro;
  - (b) Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000 per accident or disease; and
  - (c) Professional Liability Insurance, with limits of not less than \$1,000,000 per occurrence, covering personal injury and property damage arising from errors, omissions or malpractice.

Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS on Commercial General Liability insurance policy.

Contractor shall provide to Metro 30 days notice of any material change or policy cancellation.

Contractor shall provide Metro with a Certificate of Insurance complying with this article upon return of the Contractor signed agreement to Metro. Certificate of Insurance shall identify the Metro contract number.

5. **Indemnification.** Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.



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6. Ownership of Documents and Maintenance of Records. Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this agreement are Work Products and are the property of Metro, including but not limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon Metro request, Contractor shall promptly provide Metro with an electronic version of all Work Products that have been produced or recorded in electronic media. Metro and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such Work Products.

a. Contractor and subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:

- (1) The performance of the contractor, including but not limited to the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the contractor or subcontractor under the terms of the contract or subcontract;
- (2) Any claims arising from or relating to the performance of the contractor or subcontractor under a public contract;
- (3) Any cost and pricing data relating to the contract; and
- (4) Payments made to all suppliers and subcontractors.

b. Contractor and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.

c. Contractor and subcontractors shall make records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.

d. Contractor and subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.

e. Contractor and subcontractors agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the Contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

f. Contractor and subcontractors agree that in the event such records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the Contractor or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from Metro.



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g. Failure of the Contractor or subcontractor to keep or disclose records as required by this document or any solicitation document may result in debarment as a bidder or proposer for future Metro contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the Contractor or subcontractor is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

7. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

8. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

9. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

10. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapters 279A, 279B and 279C, and the recycling provisions of ORS 279B.025 to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

11. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

12. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party without Metro's written consent.

13. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor seven (7) days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

14. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

15. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties. Metro may approve changes and modifications to the original contract, including deletions of work, order of additional materials, and additional services reasonably related to the original work scope. Contractor may propose changes in the work that Contractor believes are necessary, will result in higher quality work, improve safety, decrease the amount of the contract, or otherwise result in a better or more efficient work product. If such changes are approved by



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Metro, they shall be executed by written contract amendment signed by both parties. Such changes shall not relieve Contractor of any obligation or warranty under the contract. No oral statements by either party shall modify or affect the terms of the contract.

16. Severability. The parties agree that any provision of this Contract that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Contract shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of them and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid and enforceable shall be automatically added to this Contract in lieu of the illegal, invalid, or unenforceable provision. Any failure by METRO to enforce a provision of the Contract is not to be construed as a waiver by METRO of this right to do so.

17. Counterparts. This Contract may be executed in counterparts or multiples, any one of which will have the full force of an original.

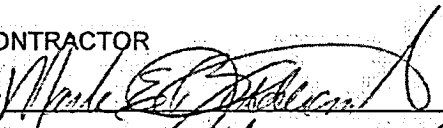
18. Delivery of Notices. Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered, certified or electronic mail or fax as follows:

To Contractor: Steve Liske  
Ducks Unlimited  
PACIFIC NORTHWEST FIELD OFFICE  
17700 SE Mill Plain Blvd. Ste. 100  
Vancouver, WA 98683


To Metro: Metro Procurement Services  
600 NE Grand Ave  
Portland, Oregon 97232  
503-797-1791 fax

With Copy to: Jeff Merrill  
600 NE Grand Ave  
Portland, Oregon 97232  
503-797-1849  
jeff.merrill@oregonmetro.gov

CONTRACTOR

By   
Print Name MARK E. Biddlecomb  
Date 3/25/15

METRO

By   
Print Name Jeff Merrill  
Date 3/24/15

## Scope of Work – Attachment A

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### 1. Purpose and Goal of Work

In Fall of 2014 the Natural Areas Team began a project to design and implement repairs and upgrades on three water control structures (WCS) that control water levels at two Metro natural areas, Smith and Bybee wetlands (one structure) and Multnomah Channel Marsh (two structures). These repairs and upgrades will be based on operational safety concerns, the desire for more flexible functionality for the structures and any structural repairs found to be necessary.

The Natural Areas Program will contract with Ducks Unlimited for engineering and project management services to accomplish the WCS repairs and upgrades.

### 2. Description of the Scope of Work

#### Phase I

#### Analysis/Information Gathering:

Contractor will review and analyze the outcomes of three information gathering processes that are underway to inform the parameters of the project:

1. A list of functional requirements/requests from the Science Team members that manage the WCS
2. A safety analysis by the Natural Areas Land Management Team utilizing a 'job hazard analysis' process and a safety analysis by SAIF Corporation, Metro's insurance underwriter
3. A structural analysis of the WCS to catalog any structural repairs needed (conducted by KPFF Consulting Engineers).

Analysis and Information gathering may involve further meetings, site visits, email and phone calls with science staff, land management staff, risk management staff and consulting structural engineers to refine functional requirements, safety concerns and structural concerns. It may also involve communication with permitting/regulatory agencies such as NOAA and ODFW.

#### Design recommendations report:

Based on analysis and information gathering, Ducks Unlimited will prepare a report containing design recommendations for each WCS that will meet the safety, functional and structural repairs and upgrades that are necessary and/or desired. When warranted, multiple recommendations for each modification/upgrade will be provided for review and evaluation by Metro staff. Cost estimates will also be provided for Metro's use in reviewing and evaluating each recommendation. Design recommendations should not be limited to 'engineered' solutions but, when applicable, will include the development of operations or processes that solve relevant challenges.

## Scope of Work — Attachment A

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### Phase II scope development:

Following review and discussion of design recommendations with Metro, Contractor will develop an updated scope and budget for the proposed Phase II, to provide professional engineering services for the development of contract and permitting documents necessary for construction of the selected repairs and upgrades.

### Phase II (proposed)

#### Construction design services:

Based on chosen design recommendations, Contractor will produce engineering construction plans and design specifications where needed, that will direct the construction of WCS upgrades and repairs.

#### Bid documents and bid support services:

Contractor will combine the design plans and specifications, detailing all the work included in the project for use in project bidding and construction. Project bid document deliverables and bidding support services will include the following:

- Project construction plans
- Project construction specifications
- Engineers construction cost estimate
- Bid sheet
- Assist Metro in determining appropriate qualification requirements for bidders.
- Participate in an on-site pre-bid meeting/walk through with contractors.

#### Permitting:

Obtain necessary permits for the implementation of construction of WCS upgrades and repairs.

#### Construction Administration and support services:

Contractor will provide the following construction administration and support services:

- Review contractor bids and assist Metro with contractor selections
- Participate in pre-construction meeting with Metro and the selected contractor
- Review contractor shop drawings/submittals
- Perform intermediate inspections of construction activities to ensure compliance with the plans, specifications and Metro requirements.
- Respond to contractor requests for information
- Provide a final inspection, create a list of incomplete or deficient items and coordinate with the contractor to make any necessary corrections.

### **3. Payment and Billing**

Contractor shall perform the above work for a maximum price not to exceed EIGHTY-ONE THOUSAND, ONE-HUNDRED AND SEVENTY-TWO AND 00/100<sup>TH</sup> DOLLARS (\$81,172.00). This price includes all work associated with Phase I, and an estimate for work to be completed in Phase II. The estimate for Phase II will be updated as a part of the final task in Phase I, as described above



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# Scope of Work – Attachment A

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## COST PROPOSAL Metro Water Control Structure Modifications

TASK	Staff					Sub-consultant	Sum Hours	Task Costs
	Senior Engineer	Regional Engineer	Regional Biologist	Professional Surveyor	Drafting Technician			
	\$138	\$138	\$113	\$104	\$87			
<b>Phase I</b>								
Analysis/Information gathering	12	40	12	0	1		65	\$8,619
Design recommendations report	8	60	16	0	8		92	\$11,888
Phase II scope development	4	8	2	0	0		14	\$1,882
<b>Phase II</b>								
Construction design services	12	80	8		80		180	\$20,560
Design Survey & TBMs		24		24				
Bid documents and bid support services	0	24	0	0	0		24	\$3,312
Permitting	0	8	40	0	8		56	\$6,320
Construction administration and support services	8	96	0	0	0		104	\$14,352
<b>Sum Hours</b>	<b>44</b>	<b>340</b>	<b>78</b>	<b>24</b>	<b>97</b>		<b>535</b>	
<b>Sum Staff Costs</b>	<b>\$6,072</b>	<b>\$46,920</b>	<b>\$8,814</b>	<b>\$2,496</b>	<b>\$8,439</b>			<b>\$72,741</b>
<b>Indirect Costs (11.59%)</b>	<b>\$704</b>	<b>\$5,438</b>	<b>\$1,022</b>	<b>\$289</b>	<b>\$978</b>			<b>\$8,431</b>
<b>Total Cost</b>	<b>\$6,776</b>	<b>\$52,358</b>	<b>\$9,836</b>	<b>\$2,785</b>	<b>\$9,417</b>			<b>\$81,172</b>



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## Scope of Work — Attachment A

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The maximum price includes all fees, costs and expenses of whatever nature. Each of Metro's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing invoices shall include the Metro contract number, Contractor name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of work performed and expenses incurred during the billing period, and will not be submitted more frequently than once a month. Contractor's billing invoices shall be sent to [metroaccountspayable@oregonmetro.gov](mailto:metroaccountspayable@oregonmetro.gov). The Metro contract number shall be referenced in the email subject line. Contractor's billing invoices for goods and/or services through June 30 shall be submitted to Metro by June 30. Payment shall be made by Metro on a Net 30 day basis upon approval of Contractor invoice.