



M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Contract with Environmental Science Associates,  
California Corporation, for On-Call Environmental Consultation Services – 2016

<b>Purpose/Outcomes</b>	Approval to proceed with a contract for On-Call Environmental Consultation Services - 2016.
<b>Dollar Amount and Fiscal Impact</b>	The contract value is: up to \$50,000, with a total contract not to exceed of \$200,000.
<b>Funding Source</b>	County Road Fund: \$50,000.
<b>Duration</b>	The contract will be in place for a 1-year period with the option for 3 renewals, leading us into the year 2020.
<b>Previous Board Contact</b>	None.
<b>Strategic Plan Alignment</b>	This work promises to honor, utilize, promote and invest in our natural resources.
<b>Contact Person</b>	Devin Patterson, DTD Engineering, Bridge Scour/Fish-Passage Project Coordinator 503-742-4666.

**BACKGROUND:**

The Clackamas County Department of Transportation and Development recently requested proposals for on-call environmental consultation services. A total of 12 proposals were received. The 12 proposals were scored and ranked by three employees of DTD. Five separate scoring criteria were used and a total of 100 points were available. The two consultants with the highest number of points out of 100 were selected.

Work may include, but not be limited to: site visits for wetland delineation; determination of bank-full width and ordinary high water; compliance monitoring; reports relating to wetland delineation; no-rise analysis; stream stability; fish salvage; environmental technical studies; acquiring permits from local, state and federal agencies and acting as a liaison on behalf of Clackamas County in regulatory-based discussions; and, providing assistance and guidance with respect to cultural resource regulations.

This contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends that the Board approve and sign this contract with Environmental Science Associates, A California Corporation, for On-Call Environmental Consultation Services - 2016.

Respectfully submitted,  
Mike Bezner, PE  
Transportation Engineering Manager

Placed on the October 27, 2016 agenda by the Procurement Division.



**GEORGE MARLTON, JD**  
PROCUREMENT DIVISION DIRECTOR

**PROCUREMENT DIVISION**

**PUBLIC SERVICES BUILDING**  
2051 KAEN ROAD | OREGON CITY, OR 97045

October 27, 2016

## MEMORANDUM TO THE BOARD OF COUNTY COMMISSIONERS

Please place on the Board Agenda of **October 27, 2016**, this contract with Environmental Science Associates, A California Corporation for **On-Call Environmental Consultation Services - 2016**. This project was requested by Devin Patterson, DTD Engineering Division and was publicly advertised in accordance with ORS 279. Thirty-three proposal packets were requested and sent out with twelve proposal responses received: AKS Engineering; Biohabitats; Cascade Environmental; Cascara Ecological; Environmental Science Associates; Henderson Environmental; Mason, Bruce & Girard; OBEC Consulting; Parametrix; Point Environmental; Summit Solutions; and SWCA Environmental. A selection panel reviewed and evaluated the Request for Proposals based on the selection criteria outlined in the RFP documents. Parametrix, Inc. and Environmental Science Associates, A California Corporation were the highest ranking firms and were selected to enter into contract. The annual contract amount is not to exceed \$50,000.00 with a total contract compensation not to exceed \$200,000.00. The contract term is from contract execution through June 30, 2020. This contract has been reviewed and approved by County Counsel. Funds for this project are budgeted under account line 215-7433-00-431000 for fiscal years 2016/2017, 2017/2018, 2018/2019/ and 2019/2020.

Respectfully Submitted,

Kathryn M. Holder  
Procurement Staff

This Professional Services Contract (“Contract”) is entered into between **ENVIRONMENTAL SCIENCE ASSOCIATES, A CALIFORNIA CORPORATION**, (“Contractor”) and Clackamas County (“County”) to provide **ON-CALL ENVIRONMENTAL CONSULTATION SERVICES – 2016**.

## **I**      **SCOPE**

This Contract covers the services as described in the Request for Proposals and the Contractor’s Proposal Response. Upon notification from the County, a scope for specific work will be mutually developed with the Contractor for work to be delivered, an estimated time for delivery, fee basis (either fixed or time and material), and a not-to-exceed price. A Field Purchase Order or an amendment to this Contract must be issued by the County before any such work may begin, which shall incorporate by reference all applicable provisions of this Contract. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The Contract shall commence upon contract execution and continue through June 30, 2020.

## **II.**      **COMPENSATION:**

Invoices submitted for payment in connection with this agreement shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly and will be paid net 30 days from receipt of invoice. This contract has a County fiscal year not to exceed amount of **\$50,000.00** with a maximum compensation authorized under this Contract of **\$200,000.00**. This agreement covers the period beginning from **contract execution and continuing through June 30, 2020**.

**B.**      The Contractor is engaged hereby as an independent contractor and will be so deemed for purposes of the following:

**1.**      The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract. The Contractor at all times shall observe and comply with all federal and state laws and lawful regulations issued there under and local bylaws, ordinances, regulations and codes which in any manner affect the activities of the Contractor under this Contract, and further shall observe and comply with all orders or decrees as exist at present and those which may be enacted later by bodies or tribunals having any jurisdiction or authority over such activities of the Contractor.

**2.**      The Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Any violation shall entitle the County to terminate this Contract, to pursue and recover any all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

a.      Termination of this Contract, in whole or in part;

b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to the Contractor, in an amount equal to the County's setoff right, without penalty; and

c. Initiation of an action of proceeding for damages, specific performance, declaratory or injunctive relief. The County shall be entitled to recover any and all damages suffered as the result of the Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and the County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**3.** This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Contract to the Contractor are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System).

**4.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified and pay employees for the term of work in accordance with this Contract as an insured employer under Oregon Revised Statutes ("ORS") 279B.020 and ORS 279B.235, which are incorporated herein by this reference.

**C.** The Contractor certifies that, at present, he or she, if an individual is not a program, County, or Federal employee.

**D.** The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

### **III. CONSTRAINTS**

The Contractor agrees:

**A.** If the services to be provided pursuant to Section I Scope are professional and/or consultative, the Contractor shall not delegate the responsibility for providing those services to any other individual or agency.

**B.** Pursuant to the requirements of state law, the following terms and conditions are made a part of this Contract:

**1.** The Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract.
  - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract.
  - c. Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- 2.** If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract.
- 3.** The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which are incorporated herein by this reference.

All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

- 4.** The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.
- 5.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 6.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work as described in Attachment A under this Contract.
- 7.** To the extent the Contractor is negligent, the Contractor shall indemnify, hold harmless and defend the County, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the negligent acts, errors, omissions, or fault of the Contractor or the Contractor's employees or agents.
- 8.** The Contractor's failure to perform the scope of work identified or failure to meet established performance standards shall be subject to consequences that include but are not limited to any or all of:

- a. Reducing or withholding payment;

- b. Requiring the Contractor to perform, at the Contractor's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or
- c. Declaring a default, terminating the Contract and seeking damages and other relief under the terms of the Contract or other applicable law.

**IV. INSURANCE REQUIREMENTS**

**A. Commercial General Liability**

Required by County       Not required by County

The Contractor agrees to furnish the County evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence / \$2,000,000 general annual aggregate for personal injury and property damage for the protection of the County, its officers, elected officials, agents and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**B. Automobile Liability**

Required by County       Not required by County

The Contractor agrees to furnish the County evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the County, its officers, elected officials, agents and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**C. Professional Liability**

Required by County       Not required by County

The Contractor agrees to furnish the County evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of the County, its officers, elected officials, agents and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**D. POLLUTION LIABILITY INSURANCE**

Required by County

Not required by County

The Contractor shall obtain, at the Contractor's expense and keep in effect during the term of the Contract, Contractor's Pollution Liability insurance covering the Contractor's liability for a third party bodily injury and property damage arising from pollution conditions caused by the Contractor while performing their operations under the Contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the County. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance. The policy's limits shall not be less than \$1,000,000 each loss / \$1,000,000 aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this Contract. Any self-insured retention / deductible amount shall be submitted to the County for review and approval.

**E. If** the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**F. If** any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided the coverage's retroactive date is on or before the effective date of this Contract.

**G.** The insurance, other than the professional liability and workers compensation insurance, shall include the County as an additional insured. Proof of insurance must include a copy of the endorsement showing the County as an additional insured. Such insurance shall provide thirty (30) days written notice to the County in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**H.** The Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County in writing.

**V. LAWS, REGULATION AND ORDERS AND TAX LAW COVENANT**

**A.** The Contractor at all times shall observe and comply with all federal and state laws and lawful regulations issued there under and local bylaws, ordinances, regulations and codes which in any manner affect the activities of the Contractor under this Contract, and further shall observe and comply with all orders or decrees as exist at present and those which may be enacted later by bodies or tribunals having any jurisdiction or authority over such activities of the Contractor.

**B.** The Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Any violation shall entitle the County to terminate this Contract, to pursue and recover any all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

1. Termination of this Contract, in whole or in part;
2. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to the Contractor, in an amount equal to the County's setoff right, without penalty; and
3. Initiation of an action of proceeding for damages, specific performance, declaratory or injunctive relief. The County shall be entitled to recover any and all damages suffered as the result of the Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and the County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**C.** The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

1. All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316,317, and 318;
2. Any tax provisions imposed by a political subdivision of this state that applied to the Contractor, to the Contractor's property, operations, receipts, or income, or to the Contractor's performance of or compensation for any work performed by the Contractor;
3. Any tax provisions imposed by a political subdivision of this state that applied to the Contractor, or to goods, services, or property, whether tangible or intangible, provided by the Contractor; and
4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

## **VI. SUBCONTRACTS:**

The Contractor shall be responsible to the County for the actions of persons and firms performing subcontract work. The Contractor certifies that the Contractor has not discriminated and will not discriminate against any minority, women or emerging small business enterprise that is owned or controlled by or that employs a disabled veteran, in obtaining any subcontract.

The Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County in writing.

## **VII. TERMINATION - AMENDMENT**

**A.** This Contract may be terminated for the following reasons:

- 1.** This Contract may be terminated at any time by mutual consent of the parties, or by County for convenience upon thirty (30) days' written notice to the Contractor;
- 2.** The County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County if:
  - a.** Federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County is prohibited from paying for such work from the planned funding source; or
  - b.** Any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed.
- 3.** This Contract may also be immediately terminated by the County for default (including breach of Contract) if:
  - a.** The Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or
  - b.** The Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger the performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days;
- 4.** If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, the County may terminate this Contract without further liability by giving the Contractor not less than thirty (30) days' notice.

**B.** This Contract and any amendments to this contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County.

**C.** This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

**VIII. EXECUTION AND COUNTERPARTS**

This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

By signature below, the parties agree to this Contract, effective upon the date of the last signature below.

Environmental Science Associates,  
A California Corporation  
819 SE Morrison Street, Suite 310  
Portland, OR 97214

Board of County Commissioners

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Name / Title (Printed)

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number / Fax Number

APPROVED AS TO FORM

\_\_\_\_\_  
380121-91

\_\_\_\_\_  
\*Oregon Business Registry #

\_\_\_\_\_  
County Counsel

\_\_\_\_\_  
FBC California  
Entity Type / State of Formation

\_\_\_\_\_  
Date

\*Please do not provide assumed business names or trade names. Please provide only the correct legal name of the entity or individual entering into the Contract as shown in the State of Oregon Business Registry.