

**INTERGOVERNMENTAL AGREEMENT
BETWEEN TRIMET AND CITY OF PORTLAND BUREAU OF ENVIRONMENTAL
SERVICES FOR ENVIRONMENTAL SAMPLING IN THE WILLAMETTE RIVER**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement"), dated this ____ day of _____ 2008, is entered into by and between the CITY OF PORTLAND BUREAU OF ENVIRONMENTAL SERVICES ("BES"), a municipal corporation of the State of Oregon, and the TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON ("TriMet"), a mass transit district organized under the laws of the State of Oregon.

RECITALS

1. Pursuant to ORS Chapter 190, the parties have the authority to enter into this Agreement.
2. The Willamette River between river miles 12 and 16 is upstream of the Portland Harbor Superfund Site study area and has been used and modified by industry for over 100 years. BES is working to gain a better preliminary understanding of the nature and extent of the hazardous substances that may be present in the Willamette River between river miles 12 and 16.
3. BES has retained GSI Water Solutions, inc., in conformance with Portland City Code Chapter 5.68 regarding procurement of professional, technical, and expert service contracts, to assist the City on various environmental matters including the development and implementation of a Sampling and Analysis Plan for this segment of the river.
4. BES is working in conjunction with the Oregon Department of Environmental Quality to conduct a coordinated sampling effort to ensure that data are collected in a consistent matter and meet appropriate data quality objectives.
5. TriMet intends to build a new bridge across the Willamette River in the vicinity of where the samples will be taken, and information from this sampling effort will help inform the Preliminary Engineering for the bridge.
6. BES agrees that TriMet may participate in this sediment sampling project, that BES will share the results of the data and sampling reports with TriMet, and that TriMet may add sampling sites
7. If TriMet adds site(s) to the Sampling and Analysis Plan, TriMet agrees to pay a portion of costs and expenses incurred in the planning and execution of the Sampling and Analysis Plan for those additional sample sites.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

**ARTICLE I
BES OBLIGATIONS**

1. BES agrees to create and execute a Sampling and Analysis Plan for sediment testing of the Willamette River between river miles 12 and 16. In accordance with this Plan, BES will collect sediment data from a certain number of sample locations as determined by BES. BES agrees to use its best efforts to ensure that data are collected in conformance with the Sampling and Analysis Plan as approved by the Oregon Department of Environmental Quality.
2. BES agrees to allow TriMet to participate in this sediment sampling project by sharing all of the sediment data and results of the sampling reports BES collects and compiles with TriMet.
3. BES further agrees to allow TriMet to participate in this sediment sampling project by permitting

TriMet to add sampling sites within the reasonable vicinity of the other sampling locations in the Sampling and Analysis Plan, provided that the TriMet site does not materially interfere with BES's site or BES's work on the site.

4. BES agrees to cooperate and collaborate as needed to ensure that the sampling data and results of sampling reports are shared with TriMet in a timely and cost effective manner.

5. BES agrees to provide TriMet with an accounting of costs incurred in the planning and execution of the Sampling and Analysis Plan as related to the sampling requested by TriMet. The total amount of invoices submitted to TriMet cannot exceed Fifteen Thousand Dollars (\$15,000.00). BES shall itemize and explain all expenses on the invoices for which payment is claimed.

ARTICLE II **TRIMET OBLIGATIONS**

1. To support BES in performing its environmental sampling and obligations under this Agreement, TriMet shall pay BES up to a total of Fifteen Thousand Dollars (\$15,000.00) towards BES's cost and expenses for planning and conducting the work described in the approved Sampling and Analysis Plan, as well as for providing all of the sampling data and results of sampling reports to TriMet and allowing TriMet to add a sampling site.

2. Upon receipt of a proper invoice, TriMet shall pay to BES the amount of the invoice within thirty (30) days, up to a total amount of invoices that will collectively not exceed Fifteen Thousand Dollars (\$15,000.00). BES will not submit invoices for, and TriMet will not pay, any amount in excess of this maximum amount.

3. TriMet agrees to coordinate with BES in selecting TriMet's sampling sites so as to not materially interfere with BES's sampling site and related work.

4. TriMet acknowledges that adding sampling points does not guarantee that the samples can be collected in the field or that adequate material will be collected to perform all intended analysis. TriMet also acknowledges that attempting to collect samples will still result in costs to TriMet.

ARTICLE III **GENERAL PROVISIONS**

1. **Relationship of the Parties.** No representative, agent, employee or contractor of one party shall be deemed to be an employee, agent or contractor of the other party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each party hereby specifically disclaims any such relationship.

2. **No Third-Party Beneficiary.** Except as set forth herein, this Agreement is between the parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third-parties unless third-persons are expressly described as intended to be beneficiaries of its terms.

3. **Compliance with Laws.** The parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work.

4. **Project Managers.** All routine correspondence and communication regarding this Agreement shall be between the project managers:

Dave Unsworth
TriMet
710 NE Holladay St.
Portland, Oregon 97232

Rick Applegate
Portland harbor Project Manager
Bureau of Environmental Services
1120 SW 5th Avenue

Phone: (503) 962-2147
Cell: (503) 720-6081
Fax: (503) 962-3863
Email: unsworltd@trimet.org

Portland, Oregon 97204
Phone (503) 823-7094
Cell: (503) 823-8522
Email ricka@BES.ci.portland.or.us

The Project Managers are authorized to approve work and billings, to give notices, to execute amendments to this Agreement that do not increase the total payment amount, to terminate this Agreement and to carry out any other act referred to herein.

5. **Effective and Termination Dates.** This Agreement shall be effective upon execution by both parties and will terminate when the obligations expressed in this Agreement have been fulfilled. The parties may extend the term of the Agreement by mutual written agreement.

6. **Early Termination of Agreement.**

6.1 BES and TriMet, by mutual written agreement, may terminate this Agreement at any time.

6.2 Either BES or TriMet may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give the other party written notice of the breach and of the party's intent to terminate. If the breaching party has not entirely cured the breach within thirty (30) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

7. **Remedies.** The remedies provided under this Agreement shall not be exclusive. The parties also shall be entitled to any other equitable and legal remedies that are available.

8. **Oregon Law, Dispute Resolution and Forum.**

This Agreement shall be construed according to the laws of the State of Oregon. TriMet and BES shall negotiate in good faith to resolve any dispute arising out of this Agreement. Should any dispute arise between the parties concerning this Agreement that is not resolved by mutual agreement described above, it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this Agreement agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement, each party shall select a temporary mediator and those mediators shall jointly select the third mediator who alone shall conduct the mediation. All costs of mediation shall be borne equally by the parties.

9. **Successors and Assigns.** The interests, rights, and benefits conferred by this Agreement, and the obligations assumed there under, shall inure to the benefit of and bind the successors and assigns of the Parties hereto.

10. **Severability/Survivability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken. All provisions concerning indemnity survive the termination of this Agreement for any cause.

11. **Interpretation of Agreement.** This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The Section headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement.

12. **Modification; Waiver.** 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 the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by a party of that or any other provision.

13. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

15. **Access and Inspection of Records.** BES and TriMet shall maintain cost records relating to any reimbursable work by either party under this Agreement. BES and TriMet shall maintain adequate records and shall permit authorized representatives of each party to inspect and audit all work, books, accounts, and other data relating to this Agreement.

16. **Voluntary Agreement.** This is a voluntary agreement and must not be considered an admission of liability, responsibility, fault, or waiver of any right or defense by any party or other entity. The amounts paid by any party or entity towards implementation of the Sampling and Analysis Plan or any other aspect of this sampling effort must not be considered evidence of any relative or apportioned liabilities of any nature.

IN WITNESS WHEREOF, the parties have executed this Agreement effective for the dates noted herein.

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON (TRIMET)**

CITY OF PORTLAND -- BES

By: _____
Neil McFarlane, Executive Director

By: _____
Rick Applegate

Date: _____

Date: _____

Approved as to Form for TriMet

Approved as to Form for City

Britney Colton
Deputy General Counsel

APPROVED AS TO FORM
[Handwritten Signature]

CITY ATTORNEY