

City of Portland
Bureau of Environmental Services (BES)
and Portland Bureau of Transportation (PBOT)

Project: SE 83rd Ave. Wastewater Pump Station
Interagency Memorandum of Understanding

Project Geographic Location: 8333 SE Harney Street

Project Phase: Construction

Permit Receiver: Bureau of
Environmental
Services

Permit Provider: Portland Bureau
of Transportation

Project Number: E08376

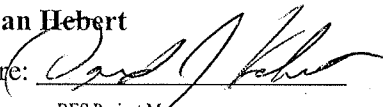
Project Number: TI4179 / EP9165

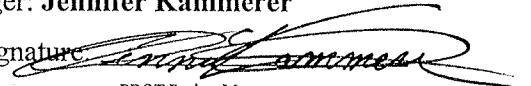
Bureau: BES

Bureau: PBOT

Project Manager: **Dan Hebert**

Project Manager: **Jennifer Kammerer**

Authorized Signature: 

Authorized Signature: 

BES Project Manager

PBOT Project Manager

Date: 5-13-2010

Date: 5.20.10

The following sections are covered in this MOU:

- (1) Project Overview
- (2) Schedule
- (3) Public Works Street Improvement Joint Permit
- (4) Amending the MOU

(1) Project Overview

A&K Designs, Inc. (A&K Designs), was issued Building Permit No. 2009-109640-000-00-CO for on-site construction on its property located at 8333 SE Harney Street. As a condition of Building Permit approval and to comply with current City Code, A&K Designs must construct frontage improvements along SE Harney Street including, but not limited to, curb and gutter, swales, sidewalk, storm system additions, street pavement and street trees.

BES is installing a force main under BES Project No. E08376 that will require trenching through A&K Designs' proposed frontage improvements.

BES has entered into Agreement with A&K Designs to assume construction of A&K Designs' frontage improvements.

BES and PBOT issued a Joint Public Works Street & Stormwater Improvement Permit (Permit) to A&K Designs (as Applicant) and Sierra Construction Company, Inc. (as contractor and provider of the performance guarantee) for the frontage improvements to be constructed under PBOT Job TI4179 & BES Job EP9165).

The Agreement requires BES to assume responsibility for compliance with all provisions of the Permit.

(2) Schedule

Final plans and specifications have been completed. Bidding began on March 15, and the bid opening date took place on April 22. Construction is expected to begin during June 2010, with work completed by July 31, 2011.

(3) Public Works Street Improvement Joint Permit

BES will:

- Obtain signatures from A&K Designs and the BES Director for the Agreement, and obtain Council approval of the signed Agreement.
- Provide a copy of the approved ordinance and Agreement to PBOT for their records.
- Obtain signatures from A&K Designs and for an Assignment of Contract necessary to transfer responsibility for the Revegetation Contract from A&K Designs to BES.
- Provide a revised engineer's O&M Manual for the permitted stormwater facility prior to final acceptance of the project, in accordance with the provisions of the permit.
- Complete the improvements per the terms and conditions of the Permit.
- Contact the PBOT Project Manager for prior approval of any proposed changes, modifications or revisions to the approved plans during construction.
- Be responsible for guaranteeing the repair and maintenance of the improvements for a period of two (2) years from the completion of construction of the improvements.

PBOT will:

- Provide a copy of the signed Permit to BES for their records.
- Release the performance bond provided by A&K Designs' contractor, Sierra Construction Company, Inc., upon payment of the balance of the Project Development & Plan Review Fees required to obtain the Permit, and upon receipt of the approved Agreement from BES.

(4) Amending the MOU

BES or PBOT may amend this MOU only in writing, by mutual consent. The Project Owner BES and PBOT reserve the right to not participate in any work not preapproved by all parties.

ASSIGNMENT OF CONTRACT

The undersigned agree that all obligations assigned to A&K Designs, Inc. in the attached Exhibit A are hereby assigned to and shall be performed by the Pump Station Division of the City of Portland's Bureau of Environmental Services. This assignment shall become effective upon execution of this assignment by both parties.

A&K Designs, Inc.

By: Charles LeeTitle: presidentDate: 4-11-10

Pump Station Division, BES

By: Paul J. KehringTitle: Senior EngineerDate: 4-27-2010

Approved as to form:

APPROVED AS TO FORM

Deputy City Attorney Paula Rengier

CITY ATTORNEY

ATTACHMENT "A"

AGREEMENT FOR CONSTRUCTION MANAGEMENT OF FRONTAGE IMPROVEMENTS ALONG SE HARNEY STREET

The parties to this Agreement are the City of Portland, through its Bureau of Environmental Services (BES) and A & K Designs, Incorporated (A & K Designs).

WHEREAS, BES is constructing the SE 83rd Avenue Pump Station at 8345 SE Harney Street and the Lents Sanitary Sewer Extension and prefers A & K Designs delay required frontage improvements until sewer pipe and force main installation have been completed;

WHEREAS, A & K Designs is responsible for construction of permitted frontage improvements within two years of permit receipt;

WHEREAS, BES and A & K Designs desire to work together to construct stormwater treatment facilities, curb and gutter, sidewalk, driveway and pavement improvements following two, City of Portland BES sewer projects scheduled for construction between September 2009 and February 2011;

WHEREAS, the construction of frontage improvements are necessary to address the requirements for A & K Designs' redevelopment of their property at 8333 SE Harney Street;

WHEREAS, A&K Designs agrees to have BES assume responsibility for construction of required frontage improvements for an agreed-upon, one-time lump sum payment;

WHEREAS, A&K Designs has completed design and permit acquisition for the required frontage improvements, and is positioned to allow BES to assume responsibility for construction of the work on BES' schedule;

NOW, THEREFORE: the parties agree as follows

1. Effective Date and Duration. This Agreement is effective from the date of execution by both parties. Unless earlier terminated or extended, this Agreement shall expire when City has completed and accepted frontage improvement construction.
2. Elements of Work. BES shall provide the following elements of work as necessary to meet the delivery schedule and agrees to perform the following work in accordance with the terms and conditions of this Agreement:
 - a. Coordination: Coordinate the work with the A&K Designs' representative. Where and when applicable, coordinate with the Bureau of Parks and Recreation, Bureau

- of Development Services, Portland Bureau of Transportation, Water Bureau, A&K Designs' contractor and adjacent private property owners.
- b. Access: Maintain access at all times to A&K Designs' facilities.
 - c. Public Outreach: Where and when applicable, provide adequate notice to general public before commencing with the work.
 - d. Work Schedule: Provide A&K Designs' representative with a schedule of the work including start date, significant milestones, and completion date. Provide A&K Designs' representative notice of any change to schedule immediately.
3. Permits. A & K Designs agrees to provide the original copy of permits necessary to complete the work to the City's project manager prior to commencement of construction. Construction shall commence when the City issues Notice to Proceed to the Contractor.
 4. Project Representatives. Each party has designated a project manager to be the formal representative for this project. All reports, notices, and other communications required under or relating to this Agreement shall be directed to the appropriate individual.

City

Project Manager: Dan Hebert
 Organization: City of Portland
 Address: 5001 N. Columbia Blvd.
 Portland, OR 97203
 Phone: (503) 823-2689
 Fax: (503) 823-2478
 Email: danielh@bes.ci.portland.or.us

A & K Designs

Project Manager: Jackie Park
 Organization: A & K Designs, Inc.
 Address: 624 SE Division Place
 Portland, Oregon 97202
 Phone: (503) 238-6514
 Fax: (503) 238-6063
 Email: jackie@akdesignsinc.com

5. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.
6. Termination.
 - A. The parties may agree to an immediate termination of this Agreement or at a time certain upon mutual written consent.

- B. Either party may terminate this Agreement effective not less than 30 days from delivery of written notice.
- C. Either party may terminate this Agreement effective not less than 10 days from written notice or at such other date as may be established by both parties under any of the following conditions:
- 1) 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, or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- D. Should this Agreement be terminated pursuant to this Section 6, and such termination occurs before BES has completed all work contemplated by this Agreement,
- 1) If A & K Designs terminates this agreement and has paid BES an amount in excess of the sum of (a) BES' costs already incurred (including time and materials and any administration costs); and (b) the costs BES will incur to return its facilities to their original location, BES shall refund the difference to A & K Designs; however
 - 2) If BES terminates this Agreement, BES shall be entitled to reimbursement for its costs already incurred (not including costs for materials not actually used on the project contemplated by this Agreement) and shall refund to A&K Designs any difference between amounts received and the amount BES is entitled to, and BES shall bear its own costs incurred to return its facilities to their original condition.
7. Funds Available and Authorized. Both parties certify that at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within either party's current appropriation and limitation.
8. 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.
9. Choice of Venue. Oregon law shall govern this Agreement and all rights, obligations and disputes arising out of the Agreement. Venue for all disputes and litigation shall be in Multnomah County, Oregon.
10. Severability/Survival. If any of the provisions contained in this Agreement are held unconstitutional or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this Agreement for any cause.
11. Access to Records. Both parties and their duly authorized representatives shall have access to the books, documents, papers, and records which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcript.
12. No Third Party Beneficiary. BES and A & K DESIGNS are the only parties to this Agreement and as such, are the only parties entitled to enforce its terms. Nothing

contained 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.

13. Merger Clause. This Agreement 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 the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

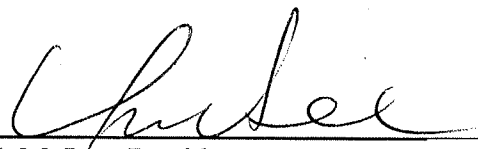
In consideration of work performed by BES to construct frontage improvements:

A & K Designs agrees to pay BES the total one-time, not to exceed, lump-sum amount of \$36,981.35, which is A & K Designs' complete share of BES' total cost. Payment shall be made within thirty days of receipt of an invoice from BES. The invoice shall be sent upon completion of the work; and,

This Agreement constitutes the entire agreement and supersedes any and all prior agreements and understandings and shall be governed by the laws of the State of Oregon.

DATED this 11 day of Apr, 2010 ^{Jan}

A & K DESIGNS, INC.

By: 
I. M. Lee, President

Date: 4-11-10

183940

CITY OF PORTLAND
BUREAU OF ENVIRONMENTAL SERVICES

By: _____
Dean Marriott, Director

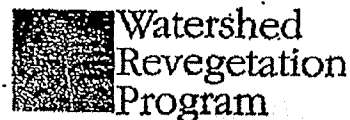
Date: _____

Approved as to Form:

APPROVED AS TO FORM

By: _____
Office of City Attorney
CITY ATTORNEY

Date: 5/27/10



City of Portland
Bureau of Environmental Services
Watershed Revegetation Program
AGREEMENT FOR VEGETATION SERVICES

Project Name: SE Harney - 83rd Greenstreet
Project Address (or cross streets): SE Harney St. and SE 83rd Ave.
Applicant/Contractor: Am K Designs, Inc.
BES Job # EP9165
WRP Project # 2527

PURPOSE

The purpose of this agreement for services is to provide permit applicants/contractors with landscape services for stormwater facilities that treat public stormwater. The permit applicant benefits from City expertise in landscaping stormwater facilities required by permit, thorough plant establishment (planting, watering, weeding, cleaning, mulching and other landscape treatments) during the two-year warranty period. The City benefits by ensuring thorough plant establishment and performance of the facility that will be maintained by the City following the warranty period.

Projects which utilized the Watershed Revegetation Program Agreement for Vegetation Services will be exempt from the 10-month and 20-month inspections of vegetation establishment. The City becomes the responsible party for establishing vegetation to treat stormwater within the facility. All other permitted elements (structural, inlets, etc.) are not exempt from the warranty period.

Facility Objectives and Performance: (to be evaluated during warranty checks, if applicable)

- Provide vegetated side-slopes with low-growing woody shrubs and perennial herbs
- Create 100% coverage of herbaceous sedges and/or rushes within the inundated stormwater treatment area
- Establish 90% survival on the plants shown on the permit drawings
- Remove accumulated sediment as needed to ensure adequate stormwater storage area
- Remove garbage and other undesirable debris from the facility treatment areas, side-slopes, inlets, and outlets
- Irrigate facility as necessary to establish plant cover and survival criteria listed above.
- Protect and restore facility from the impacts of adjacent construction, development, vehicular, and pedestrian activities.

By partnering with the Watershed Revegetation Program, the applicant/contractor is no longer responsible for vegetation performance, swale cleaning and other non-structural swale maintenance items that will be inspected periodically during the warranty period.

APPLICANT/CONTRACTOR

Permit and Billing Contact: (print name)

Mailing Address:

Phone numbers:

Am K Designs, Inc.
1624 SE Division Street, Portland, OR 97202
(503) 238-6711

CITY REVEGETATION CONTACT (please mail signed agreement and check to the contact below):

Jeremy Person
City of Portland Environmental Services
1120 SW Fifth Avenue, Room 1000
Portland, OR 97204
503-823-2024

PROJECT COSTS

The cost of this project is \$ 5,541.48, according to the attached budget. The Applicant/contractor's share of this cost is 100%. Implementation of this project is contingent full payment of project costs at the time of permit issuance. No additional funds will be requested of the applicant.

SCOPE OF SERVICES

The City will deliver the following services for this project:

1. Prepare planting plan and plant establishment treatment schedule to meet the requirements of the City of Portland Stormwater Management Manual.
2. Inspect topsoil prior to placement, to meet the requirements on the permitted plans
3. Provide post-construction erosion control within the facility to stabilize soil, as shown on the plans
4. Source and acquire all plant material and plant according to the final plans. The City will interchange bare-root, containerized, and B&B plant material to meet the design intent
5. Irrigate the site as needed to establish plant material to meet performance criteria
6. Mulch the site annually
7. Remove excessive sediment buildup
8. Interplant as needed to adapt to site conditions and performance
9. Clean garbage and other undesirable debris
10. Monitor for vegetation establishment through the end of the warranty period, at which time the City assumes responsibility for the project.
11. Work with the permit holder to ensure that project implementation follows the permit, construction documents, design intent, and field conditions.
12. Ensure prompt delivery of services with adequate coordination with other contractors.
13. Provide all necessary labor and other miscellaneous work incidental to completion of the project, unless otherwise specified in this agreement.
14. Install project signage, if appropriate
15. Perform treatments specific to this agreement for maintenance and monitoring of project site(s) as and listed in the table below:

Schedule	Task	Details
Spring or Autumn 2009*	Planting	<ul style="list-style-type: none"> • Inspect and approve topsoil • Install required erosion control material, as shown on plans • Provide all plant materials and labor
Spring 2009 through December 2011*	Maintenance & Monitoring	<ul style="list-style-type: none"> • Will occur through the two-year warranty period. • Will occur monthly, or as needed. • Plant replacement, as needed. Perform vegetation management. By pulling undesirable, non-native vegetation until planted trees and groundcovers are established. • Mulching • Irrigation as needed

		• Provide monitoring results upon request to the Applicant/contractor.
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* The City reserves the right to adjust the type and timing of treatments within the project budget to optimize project success, including but not limited to:

- Delaying planting treatments until weather and hydrology are optimal for plant establishment
- Substitute plant material type, size, and species to meet site conditions, design intent, and local availability.

PERMIT/PROJECT AUTHORITY RESPONSIBILITIES:

1. Construct the facility according to the plans, specifications and permits
2. Divert flow from entering facilities until directed otherwise by City staff
3. Meet all permit requirements, including controlling sediment and stormwater runoff from the adjacent construction off site and into adjacent areas including the facility
4. Submit topsoil testing documentation to the City Revegetation Contact
5. Provide five (5) days notice to City for providing final erosion control. Planting services will be scheduled within 30 days if within the fall or spring planting seasons.
6. Allow and provide access for representatives of the City to enter upon the premises of the Project site(s) for the purposes of installing, maintaining, and monitoring the Project. Access shall accommodate all site preparation, installation and maintenance activities. City workers or agents shall carry credentials identifying them as City workers or agents when they are present at the Project site(s). City activities at the site will be limited to normal working hours, 7 AM to 5:30 PM Monday through Friday, unless otherwise agreed upon between City Project Manager and the site owner.
7. Inform contractors, builders, and other project partners that the City will require that the facility be protected from adjacent activities, during the two-year warranty period.
8. Prevent adjacent building and construction impacts on the stormwater facility
9. Mitigate for dumping any debris into the facility
10. Submit payment to the WRP for payment of their share of the Project cost prior to permit approval.

DISCLAIMER

The City will not be responsible for costs or work associated with remedying faulty construction that does not meet the plans and permits. The City will not be responsible for erosion control on the larger construction site beyond the facility. The Permit/Project Authority shall remedy any and all deleterious effects of adjacent construction work on the site and in the facility.

MODIFICATION

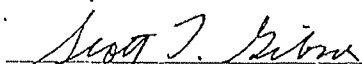
The terms of this agreement may be modified by the mutual written consent of both parties.

TERM OF CONTRACT

The agreement shall terminate two years after the final completion by the contractor of City-accepted work. The City may terminate the contract in the event that above conditions are not met by the Permit/Project Authority, in which case the warranty items become the responsibility of the Permit/Project Authority.


Permit/Project Authority

7-29-09
Date


City of Portland Chief Engineer

2-1-10
Date