

**INTERGOVERNMENTAL AGREEMENT  
Downtown Reach Sediment Sampling**

**THIS INTERGOVERNMENTAL AGREEMENT** ("IGA" or "Agreement") is made between the STATE OF OREGON through its Department of Transportation ("ODOT") and the CITY OF PORTLAND ("City") through its Bureau of Environmental Services (each, a "Party," collectively, the "Parties").

**RECITALS**

1. By the authority granted in Oregon Revised Statute ("ORS") 190.110, State agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Between 2008 and 2011, the Oregon Department of Environmental Quality ("DEQ") and several other interested parties—including City—conducted two phases of sediment investigation between Willamette River miles (RM) 12 and 16 (aka the Downtown Reach). Those investigations identified potential data gaps and areas of sediment contamination that led DEQ to conclude that more investigation is necessary.
3. DEQ has determined that additional sediment sampling for contaminants of interest in the Downtown Reach in the vicinity of ODOT-owned outfalls WR-309, WR-315 and WR-314, and City-owned outfalls OF-40, OF-36 and OF-37 is necessary to protect public health, safety and welfare and the environment. Relying upon its hazardous substance cleanup authorities under ORS chapter 465, DEQ has requested that ODOT and City coordinate and perform this sediment sampling and provide DEQ with the resulting data.
4. City has an Agreement for Professional, Technical or Expert Services: contract 36324, dated October 27, 2005 with Groundwater Solutions Inc., (GSI) for services that include sediment sampling and data reporting (that contract, the GSI Contract). Specific scopes of work are incorporated into the GSI Contract through task orders approved by the City.
5. City and ODOT have collaborated to develop a scope of work for a single sediment sampling effort to provide DEQ with the information requested from ODOT and City. City and ODOT intend to continue collaborating to ensure that this work is conducted in a cost-effective manner for both Parties.

**THEREFORE**, the Parties agree as follows:

**A. TERMS OF AGREEMENT**

1. Collaboration. ODOT and City agree to collaborate as set forth in this agreement to complete the sediment sampling that DEQ has requested in the vicinity of ODOT-owned outfalls WR-309, WR-315 and WR-314, and City-owned outfalls OF-40, OF-36 and OF-37 and to provide the resulting sediment data to DEQ.

2. Contracting with GSI. The Parties agree that the City will contract with GSI to perform the tasks described in Exhibit A ("Work"). A task order substantially similar to Exhibit A will be incorporated into the GSI Contract as Task Order No. 67 after its execution by City and GSI. Task Order No. 67 will implement a scope of work to be negotiated with DEQ that is substantially similar to the Exhibit B. City and ODOT will agree on the final form of the Task Order No. 67 and scope of work before Task Order No. 67 is executed by City and GSI. ODOT has reviewed the GSI Contract and agrees to fund half of the Work conducted under the terms of this Agreement and Task Order No. 67 including work completed before this IGA is executed but after September 11, 2017. These funding provisions remain subject to the Joint Funding limitations of this IGA.
3. Joint Funding. ODOT and City agree to each fund 50 percent of the actual costs for the tasks described in Exhibit A conducted in conformance with the scope of work. The initial estimated budget for the Work is \$200,200 but is not based on a scope of work that is agreed to by DEQ and may change. ODOT and City agree to each fund up to \$100,100 each for a total of \$200,200 for GSI costs without additional written approval between City and ODOT. ODOT will fund its 50 percent share with State funds. ODOT and City will agree on the budget limit to be included in the GSI Task Order No. 67. Costs beyond the estimated budget in Task Order No. 67 will be approved by ODOT and City through a signed, written amendment to this IGA before they are incurred and will also be evenly shared between the Parties unless otherwise agreed to by the Parties
4. Approval of Subcontractors. City and ODOT approve of the use of specified subcontractors for certain services as described in Exhibit A. City's contract with GSI requires notice and approval of subcontractors in advance. If GSI provides City with notice that an additional or different subcontractor is proposed from those listed in Exhibit A, City will notify ODOT and provide ODOT with a reasonable amount of time to object or agree to the proposal. Selection of an additional or different subcontractor requires approval by both City and ODOT.
5. Work Oversight. ODOT and City will coordinate and jointly attend substantive meetings with GSI or DEQ regarding this Work.
6. Finalization of Documents. ODOT and City agree that finalization of reports and plans produced under the tasks identified in Exhibit A (e.g., Sediment Sampling Work Plan, Field Sampling and Sediment Sampling Data Report) and submittal thereof to DEQ requires written and mutual approval from ODOT and City.
7. Ownership of Work Product. ODOT and City agree that they are co-owners of and have reciprocal rights in all GSI work products produced under the tasks described in Exhibit A.
8. Schedule. ODOT and City agree that it is imperative that the Work be conducted in conformance with DEQ approved schedules. The Parties agree to provide adequate

staff and reasonable turn-around times on decision making and will make every effort to ensure that these schedules are met.

9. Field Representative. ODOT shall have the option, but is not required, to provide an ODOT field representative at its own expense to accompany, observe and advise the sediment sample collection team during sample collection.
10. Individual Party Costs. Aside from the costs of Work completed by GSI and its subcontractors under the tasks identified in Exhibit A, ODOT and City shall be exclusively responsible for all costs and expenses related to their own employees' and contractors' performance of work related to the Statement of Work including, but not limited to, retirement contributions, workers' compensation, unemployment taxes and State and federal income tax withholdings. ODOT and City intend to each pay one half of DEQ's total oversight costs that are associated with this Work. ODOT and City shall notify DEQ that its oversight costs are to be split evenly between ODOT and City for this Work.
11. Payment of GSI Invoices. City will provide ODOT with an opportunity to review and object to GSI invoices before the City Project Manager certifies the invoice as in conformance with Task Order No. 67 and GSI Contract regarding hourly rates, reimbursable costs, subconsultant costs and payment of invoices. In accordance with Task Order No. 67, GSI will provide ODOT and the City with identical invoices simultaneously. The City will wait at least 20 days from receipt of the invoice to certify the invoice. If ODOT requests clarification or objects to approval of the invoice, the City will inform GSI of the request or objection and City and ODOT will endeavor in good faith to resolve the issue by consensus. ODOT's confirmation or lack of objection shall not be deemed a waiver of its right to later contest GSI's performance of the Work, including Work already paid for. ODOT shall pay GSI within 30 days of the City's certification of invoices for Work under the tasks identified in Exhibit A. Once an invoice is certified, ODOT is obligated to pay for one half of the Work that GSI has conducted.
12. Effect of Non-Payment. If ODOT fails to timely pay GSI for approved worked performed under Task Order 67, the City may terminate its IGA with ODOT and Task Order 67 and may pursue all legal remedies against ODOT to secure reimbursement of any funds due to GSI for work completed and unpaid by ODOT.
13. Expert Testimony. The State acknowledges that the GSI Contract prohibits GSI from providing expert testimony or assist another to testify as an expert on behalf of the State in any matter where the City has an adverse interest.
14. Non-Waiver of Privileges. The Parties are collectively or individually parties to separate joint defense, joint prosecution, confidentiality and/or common interest agreements related to liabilities associated with the Portland Harbor Superfund Site. Nothing in this Agreement alters or waives rights, duties or privileges under any such agreement.



**B. GENERAL PROVISIONS**

1. Effective Date and Duration. The term of this Agreement begins on the date all required signatures are obtained and terminates upon completion of the Work and final payment by both Parties unless terminated earlier in accordance with the Termination provisions below
2. Termination.
  - a) This Agreement may be terminated by either Party upon thirty (30) days' written notice.
  - b) Either Party may terminate this Agreement effective upon delivery of written notice to the other under any of the following conditions:
    - i) If either Party fails to provide timely payment of its share of the cost of the Work.
    - ii) If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow it, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
    - iii) If federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or either Party is prohibited from paying for such work from the planned funding source.
  - c) Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  - d) ODOT and City acknowledge that termination of the IGA and Work under the Task Order could negatively impact their ability to comply with DEQ requirements and any agreements between the Parties and DEQ regarding performance of this Work or any other related work being conducted by ODOT and City.
3. Project Representatives. Each Party has designated a Project Manager to be the formal representative for this Work. All reports, notices and other communications required under or relating to this IGA shall be directed to the designated Project Manager. Each Party shall notify the other Party in writing of any contact information changes during the term of this IGA.

City

Project Manager: Cindy Ryals  
 Organization: City of Portland  
 1120 SW Fifth Avenue, Room 1000  
 Portland, OR 97204  
 Phone: (503) 823-5830  
 Email: [Cindy.Ryals@portlandoregon.gov](mailto:Cindy.Ryals@portlandoregon.gov)

ODOT

Andrea Goodwin  
 Oregon Department of Transportation  
 123 NW Flanders St.  
 Portland, OR 97209  
 (503) 731-3095  
[andrea.m.goodwin@odot.state.or.us](mailto:andrea.m.goodwin@odot.state.or.us)

4. Funds Available and Authorized. Both Parties certify that, at the time the IGA is written, sufficient funds are available and authorized for expenditure to finance costs of this IGA within either Party's current appropriation and limitation. The Parties acknowledge that each of its payment obligations under this Agreement are conditioned upon the Party receiving funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow it, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. GSI is not entitled to receive payment under this Agreement from any part of Oregon state government other than ODOT. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the City or the State of Oregon.
5. Captions. The captions or headings in this IGA are for convenience only and in no way define or limit the scope or intent of any provisions of this IGA.
6. Choice of Venue. Oregon law shall govern this IGA and all rights, obligations and disputes arising out of the IGA. Venue for all disputes and litigation shall be in the Circuit Court for Multnomah County, Oregon.
7. Severability/Survival. If any of the provisions contained in this IGA 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 IGA for any cause.
8. Access to Records. Both Parties acknowledge and agrees that each Party, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of each Party which are directly pertinent to this specific IGA for the purpose of making audit, examination, excerpts and transcripts for a period of six (6) years after completion of the Work. Copies of applicable records shall be made available upon request.
9. Compliance with Applicable Laws. The Parties shall comply with all federal, State and local laws, regulations, executive orders and ordinances applicable to the Work under this IGA.



10. Indemnification.

- a) If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third-Party Claim") against State or City with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third-Party Claim and deliver to the other Party a copy of the claim, process and all legal pleadings with respect to the Third-Party Claim. Each Party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third-Party Claim.
- b) With respect to a Third Party Claim for which State is jointly liable with City (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by City in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of City on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
- c) With respect to a Third-Party Claim for which City is jointly liable with State (or would be if joined in the Third-Party Claim), City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of City on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of City on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

11. Denial of Liability. Neither Party admits any liability or violation of law by virtue of entering this IGA. Neither this IGA, nor any action taken by the Parties pursuant to this IGA, shall constitute, be interpreted, construed or used as evidence of any admission of liability, law, or fact, a waiver of any right or defense, nor an estoppel against either Party.
12. No Third-Party Beneficiary. City and ODOT are the only parties to this IGA and, as such, are the only parties to enforce its terms. Nothing contained in this IGA 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. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
14. Counterparts. This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement. Each copy of this Agreement shall constitute an original.
15. Merger. This Agreement and attached exhibit constitute the entire agreement between the Parties regarding the subject matter. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. 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 State or City to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.

**THE PARTIES**, certify that the individuals signing this IGA have been authorized to execute this Agreement on behalf of State or City under the direction or approval of its governing body.

**CITY OF PORTLAND**, by and through its  
Bureau of Environmental Services

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By \_\_\_\_\_  
Counsel

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_