

Intergovernmental Cooperative Agreement for Portland Harbor Fish Consumption Advisory Outreach Program

This Intergovernmental Cooperative Agreement (Agreement) is entered into among the City of Portland, an Oregon municipal corporation, acting through its Bureau of Environmental Services (City); the State of Oregon, acting by and through its Department of State Lands (State); and the Port of Portland, a special district of the State of Oregon (Port) (collectively the “Funding Participants”), and Multnomah County, a political subdivision of the State of Oregon, acting through its Health Department (MCHD) (Performing Participant). The Funding Participants and the Performing Participant are each a “Participant,” and collectively the “Participants.”

This Agreement is authorized pursuant to ORS 190.010 as between the units of local governments and 190.110 as between the State and the units of local government.

Recitals

- A. In January 2017, the U.S. Environmental Protection Agency (EPA) issued a Record of Decision for the Portland Harbor Superfund Site. The selected remedy includes implementation of institutional controls to reduce human exposure to contaminated fish which includes fish consumption advisories and community outreach on a short-term and long-term basis.
- B. The Funding Participants under this Agreement have been notified by EPA of their potential liabilities for the Portland Harbor Superfund Site.
- C. The Performing Participant provides health education and community outreach within the boundaries of the Portland Harbor Superfund Site. The Performing Participant is capable and willing to develop, implement and administer a fish consumption advisory outreach program.
- D. The Funding Participants and Performing Participant recognize the sediment cleanup will likely take many years to complete and, therefore, share a mutual interest in facilitating fish consumption advisory community outreach immediately to ensure that these communications are taking place while EPA and potentially responsible parties move toward full implementation of the institutional controls required by the remedy.
- E. The Funding Participants would like to cooperate with each other and the Performing Participant to fund a fish consumption advisory outreach program implemented by the Performing Participant.

Purpose

By this Agreement, the Funding Participants agree to jointly fund a fish consumption advisory outreach program implemented by the Performing Participant. Without admitting any fact, responsibility, fault or liability, or waiving any rights, claims, privileges or defenses related to the Portland Harbor Superfund Site, the Funding Participants wish to cooperate with each other and the Performing Participant to effect this purpose.

General Provisions

1. **Effective Date and Duration.** This Agreement is effective from the date of execution by all Participants (Effective Date). Unless earlier terminated or extended, this Agreement is operative until the earlier of: (a) two years from the Effective Date; or (b) any statement of work approved by the Funding Participants to implement a fish consumption advisory outreach program is completed

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and payment for this work by the Funding Participants to the Performing Participant has been completed. This Agreement may be extended only by written agreement between all Participants.

2. **Participant Representatives.** Representatives of each Participant are listed below. Participants may change representatives as needed by providing written notice to the other Participants.

City of Portland

Project Manager: Annie Von Burg
Organization: City of Portland, Bureau of Environmental Services
Phone: 503.823.7859
Email: Annie.VonBurg@portlandoregon.gov

Port of Portland

Project Manager: Ann Gravatt
Organization: Port of Portland
Phone: 503.415.6510
Email: ann.gravatt@portofportland.com

State of Oregon

Project Manager: Jim McKenna
Organization: State of Oregon, Governor's Natural Resources Office
Phone: 503.510.9349
Email: jim.j.mckenna@oregon.gov
With invoices to: accounts.payable.dsl@dsl.state.or.us

Multnomah County:

Project Manager: Andrea Hamberg
Organization: Multnomah County, Environmental Health
Phone: 503.988.9406
Email: andrea.hamberg@multco.us

3. **Performing Participant Statement of Work**

- a. On or before June 1, 2018, the Performing Participant shall develop a Statement of Work (SOW) to effectuate a Fish Consumption Advisory Outreach Program (Program) that substantially includes the following components:
 - i. Funding of a 100% FTE MCHD Health Educator devoted to the Program.
 - ii. Development and implementation of a communications plan for the Program based on research, other relevant community involvement plans, consultation with community partner organizations and interviews with fisher people.
 - iii. Development, preparation, printing and dissemination of communications to further the purposes of the Program.
 - iv. Provision of translation services for Program communications.

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- v. Issuance of contracts to community partners to support communication outreach to target communities, including those disproportionately impacted by contamination in Portland Harbor.
 - vi. Development of strategies to ensure effective coordination among MCHD, Oregon Health Authority, EPA and other agency stakeholders.
- b. The SOW shall also include the following minimum requirements:
 - i. Description of the Program, tasks and deliverables.
 - ii. Program schedule with interim goals for all major tasks and deliverables.
 - iii. Annual Program budget which separately identifies the tasks to be performed and associated costs.
 - iv. Quarterly meetings with the Funding Participants to discuss Program progress, tasks performed, estimated budget per task and actual expenditures per task.
- c. Upon the Funding Participants' approval of the SOW, the SOW shall be expressly made a part of this Agreement as though fully set forth herein.

4. Work Implementation

- a. Approval of the SOW and any modifications to the SOW must be acknowledged in writing by all Participants.
- b. The Funding Participants' oversight of the Performing Participant's work under the SOW is focused on effective communication of the fish advisories. The SOW shall not include the development or review of the technical basis of the fish advisories.
- c. The Participants agree that payments made to the Performing Participant under this Agreement shall be full compensation for work performed under the SOW, for services rendered and for all labor and materials necessary to perform the SOW.
- d. The Participants agree that the Performing Participant shall fully cooperate with an audit to account for all expenses, if necessary.

5. Funding and Reimbursement

- a. The Funding Participants agree to equally share costs paid directly to the Performing Participant to conduct the approved SOW. Unless otherwise agreed to in writing, the only costs to be shared pursuant to this Agreement are the costs paid to the Performing Participant for implementation of the approved SOW. In no event will the total cost for implementation of the SOW exceed \$345,000, unless agreed to in writing by each Funding Participant.

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- b. Each Funding Participant confirms that it has authorized funding sources as described below:
 - i. The City has authorized up to \$115,000 for services conducted in Fiscal Years 2017 through 2019.
 - ii. The Port has authorized up to \$115,000 for services conducted in Fiscal Years 2017 through 2019.
 - iii. The State has authorized up to \$115,000 for services conducted in Fiscal Years 2017 through 2019.
- c. Notwithstanding subsection b, above, the State of Oregon's payment obligations under this Agreement are conditioned upon State receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. Performing Participant is not entitled to receive payment under this Agreement from any part of Oregon state government other than the Department of State Lands. 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 State of Oregon. State represents that it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.
- d. Each Funding Participant agrees to transfer funds to the Performing Participant to be drawn upon to pay the Performing Participant's contract costs. Funds transfer will occur as follows:
 - i. The Performing Participant will issue an invoice in the amount of \$57,500 to each Funding Participant within 30 days of the Effective Date of the Agreement.
 - ii. Each Funding Participant will transfer \$57,500 to the Performing Participant within 30 days of receipt of the invoice referenced in Section 5(d)(i).
 - iii. Twelve months after the date of hire of the Performing Participant's Health Educator as described in Section 3(a)(i), the Performing Participant will issue a second invoice in the amount of \$57,500 to each Funding Participant.
 - iv. Each Funding Participant will transfer \$57,500 to the Performing Participant within 30 days of receipt of the second invoice referenced in Section 5(d)(iii).
- e. Performing Participant will track all funds transferred to it under this Agreement by work breakdown structure or cost center and ensure that such funds are dedicated to implementation of the SOW and used for no other purpose. County shall apply any earnings that accrue from such funds to bank account fees and necessary administrative costs.
- f. Any funds collected in excess of those required to pay contracted obligations to the Performing Participant shall be divided into equal amounts for each Funding Participant and returned to the Funding Participants within 90 days of expiration or termination of this Agreement, unless otherwise agreed to in writing.
- g. Each Participant's own agency administrative costs for implementing this Agreement are to be borne solely by the respective Participant.

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6. **Non-Waiver of Privileges.** The Participants are or may become, 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.
7. **Termination.** A Participant may withdraw from this Agreement 30 days after providing written notice to the remaining Participants. If two Funding Participants withdraw or the Performing Participant withdraws, the Agreement is terminated. If a single Funding Participant withdraws from the Agreement before its expiration or termination, that Funding Participant remains obligated to fund its proportional share of the SOW that the Performing Participant was required to perform at the time of the Funding Participant's withdrawal. If the Performing Participant withdraws from the Agreement, the Performing Participant remains obligated to either perform the SOW for which it received funds from the Funding Parties as of the date of withdrawal or return to the Funding Participants all funds received for the portions of the SOW that have not been performed as of the date of withdrawal. Provisions concerning the non-waiver of privilege and indemnity will survive the withdrawal from or termination of this Agreement for any cause.
8. **Amendments.** The terms of this Agreement shall be modified only by written agreement by all Participants.
9. **Captions and Headings.** The captions and headings in this Agreement are for convenience only and do not define or limit the scope or intent of any provision of the Agreement.
10. **Choice of Venue.** Oregon law will govern this Agreement and all rights, obligations and disputes arising out of the Agreement. Venue for all claims arising out of the Agreement will be in Multnomah County Circuit Court, Multnomah County, Oregon.
11. **Severability/Survival.** If any provision of the Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.
12. **No Third-Party Beneficiary.** The only beneficiaries to this Agreement are the Participants and thus the only parties entitled to enforce its terms. Nothing in this Agreement gives or will be construed to give or provide any benefit to third parties unless the third persons are expressly described as intended to be beneficiaries of its terms.
13. **Indemnification.** Subject to the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, and Article XI Section 10 of the Oregon Constitution, Performing Participant agrees to indemnify and defend the Funding Participants and their officers, employees, agents and representatives from and against all claims, demands, penalties and causes of action of any kind or character relating to or arising from this Agreement, including the cost of defense, attorney fees arising in favor of any person on account of personal injury, death or damage to property and arising out of our resulting from the negligent or other legally culpable acts or omission of

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Performing Participant, its employees, agents, subcontractors or representatives.

14. **Merger.** This Agreement constitutes the entire understanding among the Participants with respect to its subject matter. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement.

15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Each person signing this Agreement represents and warrants that he or she is duly authorized to enter into this Agreement by the Participant on whose behalf that person is signing.

City of Portland

State of Oregon

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Port of Portland

Multnomah County

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____