

INTERGOVERNMENTAL AGREEMENT
Vegetation Installation and Initial Maintenance – McCormick and Baxter Superfund Site

179858

This Agreement is between the State of Oregon, acting by and through its Department of Environmental Quality (DEQ or Agency) and City of Portland Bureau of Environmental Services (BES).

BES DATA	DEQ DATA
Project Officer: Andi Gresh, Botanic Manager Organization: City of Portland, Bureau of Environmental Services Address: 1120 SW 5 th Avenue #100 Portland, OR 97204-1972 Phone: 503-823-2024 Email: andig@bes.ci.portland.or.us Federal Tax ID: 93-6002236	Project Officer: Kevin Parrett, Project Manager Department of Environmental Quality 811 SW Sixth Ave. Portland, OR 97204 Phone: 503-229-6748 Email: parrett.kevin@deq.state.or.us

- 1. Effective Date and Duration** This Agreement is effective on the date that every party has signed this Agreement and, when required, approved by the Department of Justice. Unless earlier terminated or extended, this Agreement expires **September 30, 2006**.
- 2. Statement of Work** The statement of work (Work), including the delivery schedule is contained in attached Exhibit A. BES agrees to perform the Work in accordance with the terms and conditions of this Agreement.
- 3. Consideration** The maximum, not-to-exceed compensation payable to under this Agreement, which includes any allowable expenses, is **\$137,172**. Interim payments to BES will be made only in accordance with the schedule and requirements described in Exhibit A.
- 4. Agreement Documents.** This Agreement consists of this document and the attached Exhibits A (Statement of Work), B (Planting Plan) and C (Plant List).
- 5. Amendments** The terms of this Agreement will not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.

Termination

- This Agreement may be terminated by mutual consent of both parties or by either party upon 30 days written notice. This notice may be transmitted in person, by mail, facsimile, or by Email.
 - The Agency may terminate this Agreement effective upon delivery of written notice to the BES or at such other date as may be established by the Agency under any of the following conditions:
 - If Agency funding is not obtained and continued at levels sufficient to allow for purchase of the specified services.
 - 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.
 - If the BES fails to perform the work specified herein, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from the Agency, fails to correct such failures within ten (10) days or such longer period as the Agency may authorize.
- 7. Funds Available and Authorized** The Agency certifies at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within the Agency's current appropriation and limitation. BES understands and agrees that Agency's payment of amounts under this Agreement attributable to work performed after the last date of the current biennium is contingent on Agency receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement. In the event the Oregon Legislative Assembly fails to approve sufficient appropriations, limitations, or other expenditure authority, Agency may terminate this Agreement without penalty or liability to the Agency, effective upon the delivery of written notice to BES, with no further liability to BES.
 - 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. Access to Records** BES will maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, BES will maintain any other records pertinent to this Agreement in such a manner as to clearly document BES's performance. The Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to such financial records and other books, documents, papers, plans, records of shipments, and payments and writings of BES that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. BES will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

10. **Compliance with Applicable Law** BES shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. Without limiting the generality of the foregoing, BES expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. DEQ's performance under the Agreement is conditioned upon BES's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235, 279B.270 and the federal 40 CFR Part 35, Subpart O, which are incorporated by reference herein. BES shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

11. **Federal Fund Requirements** Any recipient of grant funds, pursuant to this agreement with the state, shall assume sole liability for that recipient's breach of the conditions of the Grant, and shall, upon recipient's breach of grant conditions that requires the state to return funds to the grantor, hold harmless and indemnify the state for an amount equal to the funds received under this agreement; or if legal limitations apply to the indemnification ability of the recipient of grant funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

12. **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. BES, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

WTR

Approved by BES:

Dean Marriott, BES Director Date

Approved by the State of Oregon

Dept. of Justice by separate document dated: _____

Dept. of Environmental Quality

Dick Pedersen, NWR Division Administrator Date

Paul Slyman, Deputy Director Date

APPROVED AS TO FORM

Sandra Mung...
CITY ATTORNEY

INTERGOVERNMENTAL AGREEMENT
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BACKGROUND

DEQ has recently completed construction of the cleanup remedies at the McCormick & Baxter Superfund Site. These remedies consist of a subsurface barrier wall, sediment cap, and upland soil cap. Additional ongoing cleanup activities include extraction of nonaqueous phase liquids from groundwater and monitoring and maintenance of the remedies. DEQ previously contracted with BES for assistance in designing the vegetation element and developing the long-term maintenance plan for the sediment cap (river bank) and upland soil cap. Exhibit B and C provide the Planting Plan and Plant List. The planting diagram segregates the site into six unique areas and provides the acreages of these areas. The plant list specifies the plant species and planting density for the designated areas. For maintenance purposes, an additional area, the perimeter buffer, is identified in the following Statement of Work.

This agreement may be amended to extend the end date and to provide for future maintenance and related activities.

STATEMENT OF WORK**Task 1: Irrigation System Installation**

BES will design and install an above-ground irrigation system for the purpose of providing targeted and efficient water dispersal throughout the Natural Tree/Shrub Areas, Stormwater Swale Shrub Area, and Pond Sideslopes Area. Additionally, BES will design and install a linear irrigation system along the fence-line that will shoot over the gravel road and irrigate the Upper Riparian Area. BES will furnish all irrigation materials, assemble the irrigation systems, trouble shoot the irrigation systems, and train DEQ staff and representatives on the operation and maintenance of the irrigation system. Connection of the irrigation system to the water main will be provided by DEQ at a location to be specified by BES. Installation of the irrigation system will occur before Vegetation Installation (Task 3).

Task 2: Community Outreach Assistance

BES will assist DEQ in coordinating with local neighborhoods, volunteer groups, and other interested parties before and during the cleanup remedy construction completion celebration and community tree planting event planned for February 2006. BES's assistance will be limited to approximately 40 hours staff time.

Task 3: Vegetation Installation (Planting)

BES will install the vegetation as specified in the attached Planting Plan and Plant List (Exhibit B and C). BES will furnish and install plants, tubes, stakes, cages, mulch, and any other materials necessary to assure proper installation and long-term survival of the vegetation. Vegetation installation will occur during February or March 2006. Additional seeding, if needed, may occur in April 2006.

Task 4: Vegetation Establishment

BES will provide maintenance of the vegetation, as needed, through September 30, 2006. Maintenance may include herbicide application in April and September 2006; manual irrigation (i.e., hand watering) in May, July, and September 2006; and manual cutting of invasive plants in July 2006. The need for specific maintenance activities will depend on weather and other unpredictable variables. As such, BES will make recommendations to and obtain approval by the DEQ Project Manager before executing maintenance activities. The following table identifies the vegetation areas and types of maintenance potentially needed.

	Lower Riparian	Upper Riparian	Pond Sideslopes Shrub Area	Stormwater Swale Shrub Area	Perimeter Buffer	Natural Tree/Shrub Area	Open Space/Grassland	Infiltration Pont
Herbicide Application (April, September)	yes	yes	yes	yes	yes	yes	yes	no
Manual Irrigation (May, July, September)	yes	no	no	no	no	no	no	no
Manual Cutting (July)	yes	yes	yes	yes	yes	yes	no	yes

CONSIDERATION: Upon satisfactory completion of each Statement of Work Task specified above, interim payments will be made to BES following Agency's review and approval of billings submitted by BES. The invoices will itemize by the Tasks described below. Invoices must be sent to Contracts Office, Department of Environmental Quality, 811 SW Sixth Ave, Portland, OR 97204. Invoices are subject to the review and approval of the DEQ Project Officer.

Interim payments will be sent to City of Portland, Bureau of Environmental Services Accounting, 1120 SW 5th Avenue, Room 1000, Portland, OR 97204-1972, Attn: Duane Carlson.

Tasks 1 through 3 will be invoiced to DEQ at the fixed prices listed below. Task 4 will be invoiced to DEQ based on the unit rates listed.

Task 1 Irrigation System Installation	\$ 34,897
Task 2 Community Outreach Assistance	\$ 1,986
Task 3 Vegetation Installation (Planting)	\$ 55,561
Task 4 Vegetation Establishment	Not to Exceed \$ 44,728 (based on unit rates below)
Herbicide Application (April) - \$390.81 per acre	
Herbicide Application (September) - \$403.56 per acre	
Manual Irrigation (May, July, September) - \$0.57 per acre	
Manual Cutting (July) - \$668.06 per acre	

TRAVEL AND OTHER EXPENSES:

Travel and other expenses of BES will not be reimbursed by Agency.