

ATTACHMENT A

INTERGOVERNMENTAL REVENUE AGREEMENT
"DEQ Services to the City of Portland under the City's RLF Grant from EPA"

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

CITY OF PORTLAND DATA	DEQ DATA
Agreement Administrator: Jenn Bildersee Organization: Portland Bureau of Environmental Services Address: 1120 SW 5 th Ave., Room 1000 Portland, OR 97204 Federal Tax ID: 93-6002236 Phone: (503) 823-7764 E-mail: jenn.bildersee@portlandoregon.gov	Agreement Administrator: Gil Wistar Organization: Oregon Department of Environmental Quality Address: 811 SW Sixth Ave. Portland, OR 97204 Phone: (503) 229-5512 E-mail: wistar.gil@deq.state.or.us

1. **Background.** In June 2011, the U.S. Environmental Protection Agency (EPA) awarded a Revolving Loan Fund (RLF) grant to the City. This grant is funded through EPA's Brownfields initiative with monies derived from the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended and modified by the Brownfields Revitalization and Environmental Restoration Act of 2002. The purpose of the City's RLF is to make available sub-grants and below-market-rate loans to conduct removal or remedial actions within the City of Portland. EPA's grant conditions require the City to select a "Qualified Environmental Professional" (QEP) responsible for technical consultation (see the "Background" section of Exhibit A for a description of QEP duties). The City selected DEQ as the QEP for its RLF grant, and therefore DEQ will be carrying out the work tasks listed in Exhibit A.
2. **Authority.** DEQ has authority under Oregon Revised Statute (ORS) 465.315 and 465.325 to perform the activities described in Exhibit A. DEQ has authority under ORS 190.110 to cooperate for any lawful purpose with a unit of local government.
3. **Effective Date and Duration.** This Agreement shall become effective on October 1, 2011, or the date at which every party has signed this Agreement, whichever is later. Unless earlier terminated or extended as provided herein, this Agreement shall expire **September 30, 2016**.
4. **Restrictions.** DEQ will exercise independent judgment regarding the assignment of staff, scientific evaluation, conclusions and recommendations under this agreement.
5. **Statement of Work.** Work authorized by this Agreement is set forth in Exhibit A, attached and incorporated by reference into this Agreement.
6. **Consideration.**
 - (a) The City will reimburse DEQ for actual costs of work authorized by this Agreement. Actual costs include, but are not limited to, salary, other payroll expenses, indirect, overhead, and other related direct costs. Invoices will include a list of costs by the following categories:
 - Personal Services (salaries at regular and overtime rates and related benefits);
 - Services & Supplies (including travel);
 - Dept. of Justice (with prior city approval); and
 - Agency/Program Indirect.
 - (b) The maximum, not-to-exceed compensation payable to DEQ under this Agreement is \$50,000.

(c) The City will make payment within thirty (30) days of receipt of City-approved invoices from DEQ. Invoices will be sent to the City's Agreement Administrator.

7. **Agreement Documents.** This Agreement consists of this document and the attached Exhibit A.
8. **Amendments.** The terms of this Agreement may not be waived, altered, modified, supplemented, or amended in any manner whatsoever, except by written instrument signed by both parties. If the maximum compensation amount is increased by amendment of this Agreement, the amendment must be fully effective before DEQ performs work subject to the amendment. No payment will be made for any services performed before the beginning date or after the expiration date or termination date, whichever comes first, of this Agreement.
9. **Termination.** This Agreement may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice to the other party. This notice may be transmitted in person, by mail, facsimile, or Email. If this Agreement is terminated under this section, the City must pay DEQ for actual costs of work authorized by this Agreement and performed by DEQ but not yet paid.
10. **Funds Available and Authorized.** The City certifies at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.
11. **Compliance with Applicable Law.** DEQ will comply with all federal, Oregon, and local laws, regulations, rules, orders and ordinances applicable to this Agreement.
12. **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.
13. **Access to Records.** The City, DEQ, and the Secretary of State's Office of the State of Oregon will share information as needed to carry out this Agreement. The Federal Government and its duly authorized representatives shall have access to the books, documents, papers, and records not otherwise privileged under law of the State of Oregon that are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcript. Any requests by an RLF loan applicant to keep information confidential will be managed by the City and DEQ in accordance with Oregon's Public Records Act.
14. **No Third Party Beneficiaries.** The State of Oregon and the City are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. DEQ is an intended beneficiary of the terms of this Agreement.
15. **Severability.** If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.
16. **Survival.** Sections 6, 9, and 15 of this Agreement shall survive termination or expiration of this Agreement.
17. **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. ALL PARTIES, BY THE SIGNATURE BELOW OF THEIR AUTHORIZED REPRESENTATIVES,

HEREBY ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

Approved by the City of Portland:

Dean Marriott, Director, City of Portland Bureau of Environmental Services

Date

Approved by DEQ:

Wendy Wiles, Administrator, Land Quality

Date

Index/PCA/Project

Jim Roys, Budget Manager

Date

INTERGOVERNMENTAL REVENUE AGREEMENT
"DEQ Services to the City of Portland under the City's RLF Grant from EPA"

R01-13

Agreement # LQ-

A. PURPOSE, BACKGROUND, AND STATEMENTS OF WORKPurpose

The purpose of this Agreement is to define the roles and responsibilities of the Oregon Department of Environmental Quality (DEQ) and the City of Portland Brownfield Program (the City) with respect to activities conducted under Environmental Protection Agency (EPA) Cooperative Agreement #BF-00J45201 (2011) for the implementation of the City's Revolving Loan Fund (RLF) Program. The purpose of the RLF is to make available sub-grants and below-market-rate loans to conduct removal or remedial actions within the City of Portland.

Background

The City's RLF grant is funded through EPA's Brownfields initiative with monies derived from the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended and modified by the Brownfields Revitalization and Environmental Restoration Act of 2002. The uses of these funds are therefore limited to those allowable under that legislation and consistent with the National Contingency Plan (NCP). As lead agency and grant recipient, the City is responsible for financial expertise, reporting, and ultimate management of the RLF. DEQ's role is to provide environmental expertise to the City as *Qualified Environmental Professional* (QEP) for the RLF. According to EPA, the general role of the QEP is to:

- Ensure that cleanups comply with the appropriate State cleanup program statutes and rules.
- Review cleanup plans, alternative analyses, and public comments.
- Monitor cleanup activities (generally applies only in states lacking voluntary cleanup programs).

Statement of Work – the City

The City will act as Fund Manager for the RLF. The City has entered into a cooperative agreement with EPA and has agreed to disburse sub-grant and loan funds as appropriate to successful applicants. The City is responsible for managing the funds it receives from EPA, as well as funds that it subsequently receives as loan repayments, in accordance with the cooperative agreement, applicable laws and regulations, and prudent lending practices. The City is also responsible for providing required progress reports to EPA in a timely manner.

The City is responsible for assuring that appropriate cleanup plans satisfying CERCLA and NCP requirements (referenced in the cooperative agreement) are reviewed by DEQ and submitted to EPA.

The City, in its discretion, will determine whether loan or sub-grant application materials are complete. A loan or sub-grant application may be deemed complete by the City when all required materials and financial data have been submitted by the applicant. If an application has been deemed complete, the City will draft a Complete Loan or Sub-Grant Application Memo for the project file. Copies of the Complete Loan or Sub-Grant Application and Memo will be forwarded to the applicant and to DEQ.

Statement of Work – DEQ

DEQ will act as QEP under the City's RLF. For each site at which the City submits to DEQ a Complete Loan or Sub-Grant Application, DEQ's QEP responsibilities include:

- Completing an EPA Region 10 Site Eligibility Determination Outline to determine site eligibility. (This determination ensures that cleanup costs to be funded under the RLF are eligible: if the City has any questions when sub-grantees request reimbursements, DEQ can review these requests to confirm that proposed costs are associated with eligible cleanup activities.)

- Commenting on draft community-relations plans.
- Proposing a cleanup approach that meets EPA Region 10's Clean + Green Policy's best management practices.
- Providing an assessment of the selected remedy using the *Analysis of Brownfield Cleanup Alternatives* (ABCA) process.
- Providing confirmation that public comment period requirements have been met for the ABCA.
- Ensuring Endangered Species Act requirements have been met.
- Ensuring National Historic Preservation Act requirements have been met.

DEQ Response Timeline for Individual Applications

Timeline	Activity	Outcome
Within 5 working days	DEQ receipt of complete loan or sub-grant application from the City	DEQ issues written acknowledgment of receipt.
Within 15 working days	DEQ issuance of written acknowledgment	DEQ issues Concurrence Memo or written response of ineligibility.
Within 30 calendar days	Completion of public comment period for proposed ABCA	DEQ prepares responses to public comments, if any, and certifies ABCA as meeting state requirements.

DEQ will meet as necessary with potential applicants to review loan and sub-grant program eligibility requirements, removal or remedial action activities, etc. DEQ will also attend meetings as necessary to review the City's findings and recommendations regarding the applicant's eligibility and proposed remedial action activities.

B. Invoicing and Payment

1. DEQ shall have no obligation to perform work related to the City's RLF that is not subject to reimbursement under this Agreement.
2. DEQ will issue invoices within 30 days following a month when there was cost-recoverable activity under this Agreement. Payments shall be made to DEQ following the City's review and approval of billings submitted by DEQ. Such review shall be completed and, if the invoice is approved by the City, payment issued within 30 days of receipt of the invoice. If the City has questions or concerns about an invoice, the City's Agreement Administrator should contact DEQ's Agreement Administrator as soon as possible to work through any billing issues. Invoices will be for the total of reimbursable costs; DEQ will provide a breakdown of hours spent per site if requested by the City.
3. DEQ shall not submit invoices for, nor will the City pay, any amount in excess of the maximum compensation amount set forth in this Agreement. If this maximum compensation amount is increased by amendment of this Agreement, the amendment must be fully effective before DEQ performs work subject to the amendment. No payment will be made for any services performed before the beginning date or after the expiration date or termination date, whichever comes first, of this Agreement.