

**INTERGOVERNMENTAL AGREEMENT  
MS4 PERMIT**

This Intergovernmental Agreement (“this Agreement”) is by and between the City of Portland (“the City”), a municipal corporation of the state of Oregon, and the Port of Portland (“the Port”), a municipal corporation of the state of Oregon, and is authorized by ORS 190.010.

**RECITALS**

WHEREAS, the City and the Port are co-permittees for municipal separate storm sewer system National Pollution Discharge Elimination System (“NPDES”) permit #101314 (“MS4 Permit”), issued by the Oregon Department of Environmental Quality (“DEQ”).

WHEREAS, the parties wish to allocate responsibility for satisfying various MS4 Permit requirements and related costs.

**AGREEMENT**

1. General

1.1. Except as expressly provided otherwise by this Agreement or where the context requires otherwise, the terms used in this Agreement shall have meanings consistent with 40 CFR Part 122 and the MS4 Permit.

1.2. Except as expressly provided otherwise by this Agreement, each party shall be solely responsible for MS4 Permit compliance with respect to municipal separate storm sewers that it owns or operates.

1.3. To the extent permitted by Oregon law, the City agrees to defend, hold harmless, and indemnify the Port, its commissioners, directors, officers and employees from and against and to reimburse the Port for all claims, actions, damages, injuries, costs, loss or expenses incidental to the investigation and defense thereof, arising out of the acts or omissions of the City, its agents, contractors or employees in the performance of this Agreement. To the extent allowed under Oregon law, the Port agrees to defend, hold harmless, and indemnify the City, its commissioners, employees and agents from and against and to reimburse the City for all claims, actions, damages, injuries, costs, loss or expenses incidental to the investigation and defense thereof, arising out of the acts or omissions of the Port, its agents, contractors or employees in the performance of this Agreement.

1.4. Nothing in this Agreement shall be deemed to supersede or interfere with existing agreements governing the transfer of storm sewers, stormwater treatment facilities, or other utilities from one party to the other. Unless expressly provided otherwise by separate written agreement between the parties, the transfer of a storm sewer or a stormwater treatment facility to one party shall be deemed to transfer all responsibility to that party for MS4 Permit compliance for that sewer or facility.

1.5. The parties shall cooperate on implementation of the MS4 Permit with appropriate actions, resources, and programs.

1.6. The parties shall cooperate generally in the administration of the MS4 Permit, and shall negotiate amendments to this Agreement or separate agreements as necessary to ensure MS4 Permit compliance.

1.7. Exhibit 1 to this Agreement will be updated as needed concurrent with permit renewals or as agreed upon by the City and the Port and will be subject to the payment terms of Sections 4.1, 4.2, 4.3 and 4.4. Changes to Exhibit 1 pursuant to this provision do not constitute an amendment to this Agreement if the total annual payment amount is not increased by more than 20 percent.

## 2. Discharges From One Part of the Municipal Separate Storm Sewer System ("MS4 System") to Another

2.1. The parties shall cooperate on a case-by-case basis as needed to investigate, monitor, and eliminate illicit discharges to each other's portions of the MS4 system.

## 3. City's Duties

3.1. Nothing in this Agreement shall be deemed to make the City the agent of the Port for any purpose. The City shall not represent to DEQ or the Environmental Protection Agency ("EPA") that the City is acting on behalf of the Port without the prior express written authority of the Port's Executive Director. Nothing in this Agreement shall give rise to any right or cause of action in any third party.

3.2. The City shall coordinate the preparation and submittal of all joint reports required of co-permittees under the MS4 Permit. Coordination shall include receiving information from the Port and incorporating that information into such reports. The City shall make available to the Port materials related to joint reports and other MS4 Permit implementation tasks that are coordinated between the permittees and for which the City has lead responsibility.

3.3. The City shall perform environmental monitoring, conduct analyses, and submit monitoring reports as required as part of the MS4 Permit monitoring program in accordance with the City's MS4 Quality Assurance Monitoring Plan ("the QAMP"). The City shall also provide the monitoring data directly to the Port as soon as reasonably possible but in no event later than one month after receiving the data.

3.4. The City's monitoring obligation shall include, without limitation, monitoring necessary to comply with the Total Maximum Daily Load ("TMDL") established by DEQ for the Columbia Slough.

3.5. The City shall update the QAMP as needed and provide any updates to DEQ and the Port. In the event the City makes an MS4 Permit-required request to DEQ to modify the QAMP, the City will notify the Port of the request and of DEQ's response.

3.6. The City shall coordinate with the Port to review and comment on proposed modifications to the QAMP made in conjunction with MS4 Permit renewal.

3.7. The City shall conduct inspections of stormwater management facilities (“SMFs”) on tenant-occupied Port properties described in paragraph 3.7.1 below, as agreed upon by the Port. Inspections shall be conducted in accordance with the City’s established schedules. In addition, the City shall:

3.7.1. Provide the Port with a list of facilities subject to inspection under this paragraph and the planned frequency of inspection thereof, updated at least annually in consultation with the Port. The parties will cooperate as necessary to allocate responsibility for all facilities requiring inspection.

3.7.2. Provide the Port with copies of SMF inspection results for each facility inspected. The City will reference the Facility Identification number (or other appropriate identifier) with submittal of the results to enable the Port to track these inspections.

3.7.3. Send notice of the facility deficiencies to the responsible party and copy the Port.

3.7.4. On a quarterly basis, notify the Port of new facilities that have been identified.

3.7.5. Track the total number of SMF inspections conducted each fiscal year on Port property for inclusion in the Port’s Annual Compliance reports.

3.8. The City, as an agent of DEQ, shall:

3.8.1. Administer NPDES 1200-COLS, 1200-A, or 1200-Z permits issued to industrial facilities operated by Port tenants (other than Port tenants at Portland International Airport that are co-permittees with the Port on one or more 1200 series NPDES permits or those permits over which DEQ retains oversight).

3.8.2. Refer to DEQ for permitting any Port tenants that (A) are required to obtain permits under 40 CFR 122.26(b)(14)(i-ix) and (xi) and (15) and Table 2 (“Additional Industrial Activities Covered in the 1200-COLS permit”); and (B) that discharge stormwater from their industrial areas to surface waters of the state or to storm drains that discharge to surface waters. In order to implement this requirement, the City agrees to identify facilities needing permits by such means as building permit reviews and sweeps.

3.8.3. The City will notify facility owners and DEQ of permit requirements within 30 days of determining that a permit is required. The City will then take any other appropriate actions to facilitate permit issuance, including sending the tenant a permit application (with a copy to the Port) and forwarding the application to DEQ.

#### 4. Port's Duties

4.1. On an annual basis, the Port shall pay the City 12.7 percent of the costs actually incurred by the City to conduct environmental monitoring required in the City's QAMP, subject to the Port Maximum Annual Payment for NPDES environmental monitoring ("the Maximum NPDES Payment") as specified in Task 6 of Exhibit 1 to this Agreement. If 12.7 percent of the City's actual environmental monitoring costs incurred is greater than the Maximum NPDES Payment by more than 10 percent, the City may request Port approval to increase the Port payment. The City shall explain the reasons for the increase and obtain Port approval of the increase prior to submitting the invoice to the Port. The Port will not unreasonably withhold approval. The Port's payment shall be due 30 days after the Port receives the City's invoice for the monitoring services rendered.

4.2. If the monitoring requirements of the City's MS4 Quality Assurance Monitoring Plan outlined in Section 4.1 and Exhibit 1 change, the Port's payment of 12.7 percent can be applied to different or additional monitoring activities so long as the City provides the Port with ten days' written notice of its intent and the total monitoring costs do not exceed the Maximum NPDES Payment.

4.3. The Port agrees to pay 50 percent of the actual costs incurred by the City for implementation of Tasks 1 through 4 of Exhibit 1 to this Agreement that are coordinated between the permittees, subject to the Port Maximum Annual Payment for each task, as specified on Exhibit 1. These tasks may include permit fees and reimbursement for consultant services rendered for coordinated tasks. If the Port's 50 percent cost share for any of Tasks 1 through 4 exceeds the Port Maximum Annual Payment amounts for those tasks by more than 10 percent, the City shall explain the reasons for the increase and obtain Port approval of the increase prior to submitting the invoice to the Port. The Port will not unreasonably withhold approval. The Port's payment shall be due 30 days after the Port receives the City's invoice.

#### 5. Port Lead for Consultant Services

5.1. In addition to shared services outlined in Sections 3 and 4 and Exhibit 1, the Port and City may agree to coordinate required consultant services for permit implementation, including the permit renewal application, through the Port as the lead.

5.2. In the event the Port retains the consultant for shared services, the following procedures apply:

5.2.1. The City and Port shall agree in writing to the scope of work and budget for the consultant. Changes to the scope of work and budget for the consultant will not constitute amendments to this Agreement.

5.2.2. The City agrees to reimburse the Port for 50 percent of its share of the actual costs incurred for the work. In the event the consultant performs tasks under the agreed scope of work for the City only, the City will reimburse the Port for 100 percent of the actual cost.

5.2.3. The Port will submit an invoice to the City, and the City will pay the Port for the City's share of the consultant services within 30 days of receiving the invoice from the Port.

5.3. The parties' agreement to share the costs of additional services pursuant to this section does not constitute an amendment to this Agreement.

## 6. Intergovernmental Cooperation

6.1. Nothing in this Agreement shall be deemed to preclude the parties from agreeing, by modification of this Agreement or by a separate intergovernmental agreement, to allocate any of the duties arising under the NPDES municipal stormwater requirements.

6.2. The parties shall conduct meetings of their respective representatives from time to time to coordinate NPDES municipal stormwater activities.

## 7. Term

This Agreement shall be effective upon execution by both parties and shall terminate upon expiration of the MS4 Permit. If the MS4 Permit is extended or renewed, the term of this Agreement shall extend automatically to conform to the extended term of the MS4 Permit.

## 8. Termination

Either party may terminate this Agreement upon 90 calendar days' written notice to the other party. Nothing in this Agreement shall be deemed to prevent a party from terminating this Agreement under Oregon law for a breach by the other party, or from exercising other contractual rights or remedies under Oregon law. In the event of termination under this section, the parties shall cooperate on completing any work then underway pursuant to Sections 3, 4, or 5. Compensation shall be made for any work performed, or costs incurred, up to the date on which notice of termination is given.

## 9. Dispute Resolution

If disputes arise under this Agreement or with respect to NPDES stormwater issues, the parties agree to negotiate in good faith to resolve the disputes in a cost effective manner. If the parties cannot resolve the dispute by negotiation, the parties agree to submit the dispute to mediation before a mediator agreed upon by the parties. If the parties cannot agree upon a mediator, either party may ask the Presiding Judge in Multnomah County Circuit Court to designate a neutral mediator. That designation shall be binding upon the parties. Regardless of the outcome of the mediation, the parties shall share the costs of the mediation equally. If the mediation fails to resolve the dispute, the parties may agree to submit the dispute to arbitration, or either party may initiate litigation in an appropriate court to resolve the dispute.

10. Amendments

This Agreement may be amended only by written amendments signed by an authorized representative of each party. The parties shall amend this Agreement as necessary to conform to any MS4 Permit amendments.

11. Integration

This Agreement is the entire agreement of the parties regarding the same subject and, except for the agreements described in paragraph 1.4 of this Agreement, supersedes all prior and contemporaneous communications or agreements regarding the same subject. By execution of this Agreement, the 2007 City of Portland/Port of Portland Intergovernmental Agreement Number 52955 is terminated.

12. Severability

If any part of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable for any reason whatsoever, the remainder of this Agreement shall continue in full force and effect.

13. Authority

The individuals signed below warrant that they have full authority to execute the Agreement on behalf of the party for whom they sign.

THE CITY OF PORTLAND

THE PORT OF PORTLAND

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM

APPROVED AS TO LEGAL  
SUFFICIENCY FOR THE PORT

By: \_\_\_\_\_  
Deputy City Attorney

By: \_\_\_\_\_  
Counsel for Port of Portland

## EXHIBIT 1

CITY TASK	PORT MAXIMUM ANNUAL PAYMENT
(1) Prepare the annual report, permit renewal documents, and other permit required submittals <sup>a</sup>	\$ 4,000
(2) Facilitate committee meetings <sup>a</sup>	\$2,000
(3) Payment of Annual Water Quality Compliance Determination Fee to DEQ <sup>a</sup>	\$3,000
(4) Permit modification fee <sup>a</sup>	\$1,000
(5) Regional Coalition for Clean Rivers support	\$2,000
(6) NPDES environmental monitoring	\$30,000

## Notes:

- a. The Port's cost share for Task numbers 1, 2, 3, and 4 is 50 percent of the City fiscal year cost with the goal to apportion costs evenly between the Port and the City, subject to the terms of Section 4.2 of the IGA.
- b. This amount represents the Port's maximum annual share calculated at 12.7 percent of the total City budget. The Port will pay 12.7 percent of the actual costs incurred by the City to conduct environmental monitoring in accordance with the City's 2011 MS4 Quality Assurance Monitoring Plan, subject to the terms of Section 4.1 of the IGA.

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