

DEQ Agreement # _____
 City of Portland Agreement # _____

INTERGOVERNMENTAL AGREEMENT
Funding for Portland Harbor Stormwater Source Control Coordination

This Intergovernmental Agreement (IGA) is entered into by and between the **City of Portland (CITY)** acting by and through its Bureau of Environmental Services (BES) and the State of Oregon, acting by and through its **Department of Environmental Quality (DEQ)**.

This IGA is authorized pursuant to ORS 190.110.

PURPOSE

CITY and DEQ are working together to address stormwater source control in Portland Harbor. By this IGA, DEQ agrees to continue providing the services of a Portland Harbor Stormwater Source Control Coordinator (the "Work") as identified in the STATEMENT OF WORK AND BUDGET and CITY agrees to continue reimbursing DEQ for costs associated with the provision of the Work as described in this IGA. DEQ agrees to perform the Work in accordance with the terms and conditions of this IGA.

GENERAL PROVISIONS

1. Effective Date and Duration. This IGA is effective from the date of execution by both parties. Unless earlier terminated or extended, this IGA shall expire on **June 30, 2017**. The parties may, by mutual consent, amend this IGA provided a written IGA amendment is executed by both parties.
2. Consideration. CITY agrees to reimburse DEQ for the actual costs associated with providing the services described in this IGA up to the maximum, not to exceed amounts below:

\$60,000 for the period beginning on the effective date and ending on June 30, 2017

If the parties agree to renew this IGA, reimbursement for the additional term will be determined and described in the written IGA amendment.

3. Project Representatives. Each party has designated a project manager to be the formal representative for this project. All reports, notices, and other communications required under or relating to this IGA shall be directed to the appropriate individual.

CITY

Project Manager: Dawn Sanders
 Organization: City of Portland, BES
 Address: 1120 SW Fifth Ave., Suite 1000
 Portland, OR 97204
 Phone: (503) 823-7263
 Email: dawn.sanders@portlandoregon.gov

DEQ

Project Manager: Keith Johnson
 Organization: State of Oregon DEQ
 Address: 700 NE Multnomah St, Suite 600
 Portland, OR 97232
 Phone: 503-229-6431
 Email: johnson.keith@deq.state.or.us

4. Subcontracts. DEQ will provide written notice to the CITY Project Manager before subcontracting for any Work scheduled under this IGA.
5. Amendments. The terms of this IGA will not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.
6. Reimbursement.
 - A. DEQ will submit itemized invoices to CITY for reimbursement of all approved actual costs related to Work performed; noting the project and CITY contract number and the allocation of costs in accordance with following line items:
 - Personal Services (salary at regular and/or overtime rates and related benefits),
 - Services and supplies; and
 - Agency Indirect.

- B. This IGA does not provide reimbursement for any training, travel, lodging or meals unless specifically authorized in writing by the CITY Project Manager prior to any such expenditure.
- C. Non-itemized or incomplete billings will be detained for payment processing until DEQ has supplied correct information.
- D. DEQ will submit to CITY monthly invoices for costs incurred during the preceding month no later than 45 days following the end of that month. Invoices will be submitted in duplicate, identifying the CITY IGA number to:

Dawn Sanders
City of Portland
Bureau of Environmental Services
1120 SW Fifth Avenue, Room 1000
Portland, OR 97204

CITY will pay all approved invoices within 30 days.

- E. All non-expendable property, including computer hardware and related software, acquired in the provision of these services must be pre-approved by the CITY Project Manager and are the sole property of CITY and will be surrendered upon completion of services or termination of this IGA.

7. Termination.

- A. The parties may agree to an immediate termination of this IGA or at a time certain upon mutual written consent.
- B. Either party may terminate this IGA effective not less than 30 days from delivery of written notice.
- C. Either party may terminate this IGA effective not less than 10 days from written notice or at such other date as may be established by both parties under any of the following conditions:
 - 1) If funding is not obtained and continued at levels sufficient to allow for purchase of the specified services. When possible, and when agreed upon, the IGA may be modified to accommodate a reduction in funds.
 - 2) 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 IGA, or are no longer eligible for the funding proposed for payments authorized by this IGA.
- D. Either party may terminate this IGA in the event of a breach by the other party. Prior to such termination, however, the party seeking termination will give the other party written notice of the party's intent to terminate. If the party has not cured the breach within 10 days or a longer period as granted in the cure notice, the party seeking compliance may terminate this IGA.
- E. The City's obligations under section 6 of this IGA survive termination for any Work performed but not yet paid at the time of termination.

8. Funds Available and Authorized. Both parties certify that at the time the IGA is written that sufficient funds are available and authorized for expenditure to finance costs of this IGA within either party's current appropriation and limitation. Both parties understand and agree that payment of amounts under this IGA attributable to Work performed after the last date of the current budget period is contingent on either party receiving appropriations, limitations, or other expenditure authority.

9. Captions. The captions or headings in this IGA are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this IGA.

10. Choice of Venue. Oregon law will govern this IGA and all rights, obligations and disputes arising out of the IGA. Venue for all disputes and litigation will be in Multnomah County, Oregon.

11. Severability/Survival. If any of the provisions contained in this IGA are held unconstitutional or unenforceable, the enforceability of the remaining provisions will not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest will survive the termination of this IGA for any cause.

12. Access to Records. Both parties and their duly authorized representatives will have access to the books, documents, papers, and records which are directly pertinent to the specific IGA for the purpose of making audit, examination, excerpts, and transcript.

13. Compliance with Applicable Law. Both parties will comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Work under this IGA.
14. No Third Party Beneficiary. The CITY and DEQ are the only parties to this IGA and as such, are the only parties entitled to enforce its terms. Nothing contained in this IGA gives or will 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.
15. Contribution.
 - 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 a party (the "Notified Party") with respect to which the other party ("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. Either 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 the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.
 - B. With respect to a Third Party Claim for which CITY is jointly liable with DEQ (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 DEQ in such proportion as is appropriate to reflect the relative fault of CITY on the one hand and of DEQ 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 DEQ 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 CITY had sole liability in the proceeding.
 - C. With respect to a Third Party Claim for which DEQ is jointly liable with CITY (or would be if joined in the Third Party Claim), DEQ 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 DEQ 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 DEQ 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. DEQ's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.
16. Alternative Dispute Resolution. The parties will attempt in good faith to resolve any dispute arising out of this IGA. This may be done at any management level, including at a level higher than persons directly responsible for administration of the IGA. 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.
17. Merger Clause. This IGA constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this IGA 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 IGA.

STATEMENT OF WORK AND BUDGET

Continue Funding for Portland Harbor Stormwater Source Control Coordination

The DEQ and EPA Portland Harbor Joint Source Control Strategy (December 2005) states: “A detailed understanding of stormwater discharge quality and quantity to Portland Harbor is needed to evaluate potential adverse impacts to the Willamette River. This information will be utilized to identify, prioritize, and implement stormwater source control measures to prevent contamination of river sediments and recontamination of river sediments following the Portland Harbor clean up.”

A 5-year IGA was established in 2004 to fund a position within DEQ to support the achievement of these objectives. In February 2006, DEQ hired a Natural Resource Specialist (NRS) 4 with the appropriate qualifications to act as the Portland Harbor Stormwater Source Control Coordinator (Coordinator) to implement the scope of work described in the original IGA and subsequent annual amendments to renew it through June 30, 2015.

This IGA continues that work and relationship, by supporting DEQ’s work to coordinate regional water quality and cleanup activities related to the Harbor. DEQ staff, including but not limited to Cleanup Program and Water Quality Program managers, other technical staff and administrative support staff may charge to this IGA for work covered in the attached scope. Costs related to staff activities related to this scope are eligible for reimbursement, as long as total reimbursement under the IGA does not exceed the dollar amount described in Section 2 on page 1 of this IGA. The IGA does not cover reimbursement for cost-recoverable time related to the DEQ’s involvement in oversight of active cleanup sites.

Coordination Scope of Work

Programmatic Regulatory Assistance

One of the questions concerning the Portland Harbor Superfund project is whether the existing DEQ industrial discharge permits, and any future proposed modifications, sufficiently protect sediment quality from key pollutants discharged to the Superfund site via stormwater. As part of the comprehensive stormwater plan proposed by DEQ, the following tasks may need to be conducted:

1. Evaluate water quality benchmarks and performance measures in stormwater permits to determine if they protect sediment quality, address the appropriate analytes, and are appropriate to address cumulative impacts from multiple facilities discharging to a single conveyance system.
2. Determine whether sites not currently required to obtain stormwater permits should be required to have stormwater controls and, if so, what regulatory mechanism is appropriate.
3. Facilitate coordination between DEQ and City stormwater and source control programs, including the City’s industrial stormwater inspection program and permitting processes for redevelopment of sites, and provide input on how these programs may address current or previous contamination and other Portland Harbor issues.
4. Evaluate feasibility and benefits of alternative stormwater permit options, including a basin-specific general stormwater permit similar to the 1200-COLS and other new NPDES permit options under consideration by the DEQ Water Quality program.

Appropriate DEQ Water Quality staff, DEQ Portland Harbor Cleanup Staff and City Superfund and Stormwater staff will establish or participate in regular meetings to ensure close cross-program coordination on Portland Harbor stormwater policy development.

Site-Specific Technical Assistance

Coordination will focus on stormwater and water quality issues related to upland sites that would affect the Portland Harbor Superfund area. While the City is focused on promoting adequate source control at upland sites that discharge to the municipal stormwater conveyance system, DEQ staff work on any upland site that drains stormwater to the river within Portland Harbor. Tasks anticipated include:

1. Implement cross-program efforts within DEQ, in coordination with the City and EPA, to ensure the objectives of the Outfalls IGA (DEQ No. LQVC-NWR-03-10) are satisfied.

2. Ensure DEQ Cleanup project managers coordinate Portland Harbor upland cleanup work with City outfalls investigation work, to the extent practicable and feasible; and, solicit and consider BES comments on proposed site discovery, assessment, source control actions, remedy selection, and cleanup activities directly related to discharges to the City collection system.
3. Provide consistency in stormwater evaluations and decisions between cleanup sites.
4. Maintain and update DEQ's stormwater guidance and decision-making framework consistent with Portland Harbor cleanup objectives and in coordination with stakeholders, including the City.

Prevention of Recontamination Via Stormwater

The coordination work will facilitate consistent application of the comprehensive stormwater source control approach to recontamination prevention. Tasks may include:

1. Development of an approach to demonstrate stormwater source control sufficiency to prevent recontamination, in lieu of comprehensive end-of-pipe outfall discharge monitoring and loading analyses. Develop tools, such as a comprehensive Portland Harbor stormwater and stormwater solids database, to support the demonstration of effectiveness of the stormwater source control process and City Outfalls investigation. Identify data needs and develop data collection plans and guidelines.
2. Conduct literature reviews and contact regulatory agencies in other states as necessary to collect information on regulatory models, research projects, cleanup activities and other experiences that could inform Portland Harbor stormwater source control efforts.

Coordination Budget

Invoiced amounts may vary between estimated line items below.

Estimated Budget for July 1, 2015 to June 30, 2017 \$60,000.

Annual Budget includes:

Estimated Personal Services:
(Salary and related benefits)

Estimated Services and Supplies
(Miscellaneous expenses such as photographic supplies, such as photographic supplies and processing, postage and public notices)

Estimated Indirect Costs (19.33%)
(Percentage of direct employee compensation covering services such as accounting Information systems, office space, supervision and management)

Total Annual Budget \$ 30,000

This IGA may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same IGA.

The parties agree CITY and DEQ may conduct this transaction, including any contract amendments, by electronic means, including the use of electronic signatures.

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: _____
Nina DeConcini, NWR Division Administrator

Date: _____

BY: _____
Joni Hammond, Deputy Director

Date: _____

Approved for legal sufficiency by the OR Dept. of Justice by separate document dated: _____

CITY OF PORTLAND

BY: _____
Michael Jordan, Director of Bureau of Environmental Services

Date: _____

Approved as to form:

City Attorney

Date: _____