

COPY



EAST MULTNOMAH SWCD
PARTNERS IN CONSERVATION PROGRAM (PIC)
PROJECT FUNDING AGREEMENT

Between

City of Portland ("Partner")

And

East Multnomah Soil and Water Conservation District ("District")

Project No: PIC-11-034 Project Name: Eastmoreland Golf Course Culvert and Restoration

PURPOSE

The purpose of this Project Funding Agreement is to clarify District and Partner responsibilities in carrying out a project ("Project") funded by the District's Partners in Conservation Program (PIC).

EFFECTIVE DATE, DURATION, AND DOLLAR LIMITS

This document constitutes the entire agreement between the District and the Partner. It incorporates and includes by this reference the following documents:

- This signed Agreement
- IRS W-9 form if not already on file (to be kept in a secure file in the District office)
- Exhibit A: Scope of Work & Timeline
- Exhibit B: Project Budget
- Exhibit C: Indemnity Agreement for Third Party Contractors
- Exhibit D: Request for Release of Funds Form
- Exhibit E: Other attachments (diagrams, conceptual drawings, etc)

This Agreement shall be effective upon signing by all parties, and shall terminate on December 31, 2013, unless earlier terminated, or unless extended by mutual agreement of the parties hereto.

Work related to this Project is anticipated to be carried out between (dates) June 1, 2011 and February 28, 2013.

Funding in an amount not to exceed \$50,000 is awarded to the Partner for the purpose of carrying out the duties and obligations described in this Agreement. District funds shall be awarded on a reimbursement basis, based on written documentation acceptable to the District of the Partner's actual costs. Work that takes place before this Agreement is signed by all parties will not be reimbursed.

PARTNER RESPONSIBILITIES

The Partner is responsible for managing the Project. The Partner is fully accountable for all District funds received. To be eligible for reimbursement, such funds may be used only for purposes approved by the District.

The Partner shall:

1. Determine the need for and obtain any necessary permits before beginning work.
2. Purchase any materials needed for the Project.
3. Carry out, hire, or contract for the installation of the Project, as described in Exhibit A: Scope of Work. The Partner shall be responsible for the employment, supervision, and work assignments of its employees and/or contractors, and for executing and enforcing any contracts and agreements entered into by the Partner to carry out the Project.
4. Rent or provide any equipment needed for carrying out the Project.
5. The information provided to the District is that the total cost of the Project (cash and in-kind contributions from all sources, including the District) will be an estimated \$195,389. The Partner will follow the instructions in "a" or "b", below, whichever is applicable.
 - a) If this figure is under \$5,000, the Partner will not be required to get bids for materials or labor.
 - b) If this figure is over \$5,000, the Partner shall comply with state and local public contracting requirements and shall provide written documentation to District that Partner has awarded all contracts in accordance with such requirements. The Partner may choose the provider whose bid or quote will best serve the interests of the Partner and the District, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose, and contractor responsibility.
6. If any Project that qualifies as a public improvement project (i.e., construction, reconstruction or major renovation on real property) is expected to or actually does exceed \$50,000 in expenses, the Partner and all contractors shall comply with all prevailing wage requirements pursuant to 279C.800 *et seq.*
7. If the Partner contracts with any contractor(s) to perform work related to this Agreement, the Partner will have the contractor(s) sign C: Indemnity Agreement for Third Party Contractors and will forward that agreement to the District.
8. It is highly recommended that the Partner use only contractors who are licensed, bonded, and insured.
9. Ensure that Project work is carried out and practices are installed according to specifications provided by or agreed to by the District.
10. Within six months of the effective date of this Agreement, demonstrate to the District (through invoicing or a brief progress report) that progress has been made on the Project. Failure to make progress within a reasonable period of time may require an amendment to this Agreement to adjust the timeline and/or Scope of Work.
11. Provide the District with all receipts and invoices (original or photocopy) within 30 days after Project completion. For projects involving more than one phase, conservation practice, or product, reimbursement may be requested (accompanied by receipts/invoices) as phases, practices, or products are completed, rather than at Project completion. Payment will not be made until the District has received the appropriate documentation for that reimbursement request.
12. Provide documentation of the Partner's (and Landowner's, if applicable) in-kind contribution of labor and materials, and of matching funds received from other sources, including cash and in-kind contributions of labor and materials. The Partner is expected to secure matching

- funds to support the Project, in an amount equal to or exceeding the amount provided by the District. This match may include cash, in-kind contributions, or a combination thereof.
13. Fill out and submit the attached Funds Request Form (Exhibit D) with each request for reimbursement, demonstrating in-kind match.
 14. Fill out, sign and submit to the District an IRS form W-9 with or prior to request for reimbursement.
 15. Complete the Project by the date provided in this Agreement.
 16. Submit a written Progress Report by June 30, 2012 and a written Project Completion Report (with photos) to the District within 60 days of the completion of the Project or before the termination date of this Agreement, whichever occurs first. The District may withhold 10% of grant funds until Project Completion Report is submitted and approved.
 17. On-the-ground project: Manage the property and maintain the funded practices for their design life (or ensure that the Landowner does so) as described in the PIC Application forms or as follows (if applicable):
 18. Educational project: Use the products developed under this Agreement for a reasonable amount of time. (In other words, develop educational materials that will be usable for at least two years, and purchase items for workshops, etc. that are of sufficient quality that they will be usable for at least two years.)
 19. Repair or replace work that is damaged by normal use or ordinary natural events. (The Partner is not responsible for repair or replacement due to catastrophic natural events.)
 20. For the design life of the Project, permit the District, its officers, agents, employees, contractors and invitees to enter onto the property where the Project is located for purposes of inspecting the work as it is carried out, and to monitor the condition and effectiveness of the Project following completion. The District shall provide reasonable notice to the Partner of such entry, which shall be at times agreeable to the Partner.
 21. Allow a sign to be placed at the site (at EMSWCD's expense) indicating project type and funding source, and/or allow one or more tours of the Project site if scheduled at a convenient time.
 22. Provide recognition of the District in outreach and educational materials. This may include mention of the District as a sponsor/funder on the Partner's website, newsletters, annual reports, and at project-related events, and inclusion of the District's name and logo on workshop materials, as applicable.

DISTRICT RESPONSIBILITIES

The District is responsible for providing partial funding to the Partner to carry out the Project as described below and in the project budget.

The District shall:

1. Reimburse the Partner for agreed-upon Project costs incurred during the period of this Agreement, in the amounts established under this Agreement.
2. Monitor progress and effectiveness of the Project at agreed-upon frequencies.
3. Prepare reports about the Project, including but not limited to the results and condition of the work, which shall be public records.
4. Any time it is determined that the work to be completed under this Agreement is not being done in the prescribed time and manner, advise the Partner of any issues or concerns and request, if necessary, an amendment to this Agreement to reflect any adjustments, including the dollar amount of the contract.
5. If the Partner receives payments from the District exceeding \$600 in any calendar year, the payments may be considered reportable income by the IRS. The District may submit a

1099-MISC form to the IRS and to the Partner for the tax year(s) if applicable. The Partner should consult a tax advisor about reporting the payments as income and about whether the Project-related expenses may be included as deductions on the Partner's tax returns.

PROJECT MANAGERS

All reports, correspondence, and required documentation shall be directed to the appropriate Project Manager.

For the District:

Lissa Adams, Finance and Grants Manager
 East Multnomah Soil & Water Conservation District
 5211 N Williams Ave
 Portland, OR 97217
 Phone: 503-222-7645 x 117
 Fax: 503-935-5359
 Email: lissa@emswcd.org

For the Partner:

Chad Smith
 City of Portland, Environmental Services
 1120 SW 5th Ave., Suite 1000
 Portland, OR 97204
 Phone: 503-823-5838
 Email: chad.smith@portlandoregon.gov

OTHER TERMS of this Agreement

Ownership:

- On-the-ground project: After completion of the Project, all improvements funded with District funds and affixed to the land shall become the property of the Partner or Landowner, whichever is applicable. Improvements not affixed to the land and funded with District funds, such as unused/excess materials and portable equipment, will become the property of the District at the District's discretion.
- Educational project: After completion of the Project, all educational materials and other products funded with District funds shall become the property of the Partner or Fiscal Agent, whichever is applicable. Supplies not used for the Project and funded with District funds, such as unused/excess materials and portable equipment, will become the property of the District at the District's discretion. Upon receiving permission from the Partner (or other original author), the District may use these products in its own outreach and program work, and may incorporate all or part of the content of these products into District materials (such as workshop notebooks and lists of resources). In doing so, the District must acknowledge the Partner (or other original author) as the author/developer of the relevant materials.

Compliance with applicable law:

- The Partner will comply with all federal, state and local laws and ordinances applicable to the work to be done under this Agreement.
- The Partner is responsible for complying with Oregon public contracting laws (e.g., Oregon Revised Statutes 279A, 279B, 279C) as they may apply to the Project.

- If the Project qualifies as a public improvement project (i.e., construction, reconstruction or major renovation on real property) and is expected to or actually does exceed \$50,000, the Partner and all contractors working on the Project shall comply with all prevailing wage requirements pursuant to 279C.800 *et seq.*

Liability and indemnification:

- The Partner and the District shall each be solely responsible for any damage or any third-party liability which may arise from that party's respective acts or omissions under this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution.
- In carrying out its duties and obligations under this Agreement, the Partner shall indemnify, hold harmless, and defend the District, its officers, directors, agents and employees, against any and all losses, claims, damages and expenses, including reasonable and necessary attorney's fees, to the extent any such losses, claims, damages and expenses are due to the acts or omissions of the Partner, its officers, directors, agents and employees. The Partner shall have no obligation to indemnify the District should any such losses, claims, damages and expenses result, in whole or in part, from acts, omissions, willful misconduct or gross negligence of the District, its affiliates, officers, directors, agents and employees.
- Any contractor or other third party that enters into an agreement with, or on behalf of, the Partner pursuant to this Agreement shall be required to execute the Indemnity Agreement attached hereto as Exhibit C.

Nondiscrimination:

- For work related to this Agreement, the Partner agrees to comply with the District's policy of prohibiting discrimination on the basis of race, color, national origin, age, disability, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisals, or because all or part of an individual's income is derived from any public assistance program.

Return of District funds:

- If any of the practices or products funded under this Agreement fail within their design life due to circumstances within the Partner's control (e.g., neglect, failure to protect and maintain the practices, destruction of the practice before the expiration of its design life, or other actions which cause the funded practice to become non-viable), the Partner hereby agrees to refund to the District some or all of the funds provided for those practices or products, as determined by the District.
- The Partner shall not be responsible for, and the District shall not be obligated to replace, failed practices or products if such failure is caused by force majeure (e.g., catastrophic weather events, earthquake, wildfire, drought, or other significant events beyond either party's control).
- Any funds disbursed to the Partner under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement must be returned to the District promptly, not later than 30 days after the District's written demand.

Termination of agreement:

- The District or the Partner may terminate this Agreement at any time by giving thirty (30) days written notice to the other.
- If a notice of termination is given, the Partner shall halt work and shall make all reasonable efforts to cancel any commitments that are dependent on District funds.

