



PORTLAND PARKS
& RECREATION

**Intergovernmental Agreement
Between Portland Parks & Recreation and
Multnomah County Drainage District
Project: Whitaker Ponds Natural Area - Culvert Replacement Project**

Recitals:

The City of Portland (City), a municipality of the State of Oregon, through its Bureau of Parks and Recreation (Parks or PP&R) is the **OWNER** of certain real property known as **Whitaker Ponds Natural Area (Park)** located within Multnomah County Drainage District #1, a Special District of the State of Oregon, and the Columbia Slough Watershed, northeast Portland, Multnomah County, State of Oregon.

Multnomah County Drainage District (MCDD) ("District") requires access to the Park to remove existing, obstructed, non-functioning culvert between east and west ponds and replace with new culvert to mitigate seasonal flooding.

Agreed:

- 1) **Grant a Permit of Entry.** The District is hereby granted a Right of Entry Permit to enter the Park for the purposes described in Section 3 of this Permit. The Right of Entry Permit granted herein shall expire on December 31, 2012. The location of the work is illustrated on Attachment A hereto ("Premises").
- 2) **Acceptance of Premises.** District has examined the Premises and accepts them in an "as is" condition and as agreed upon in the pre-construction photo survey. Photo survey shall take place a minimum of 3 days prior to start of work. City or its officers, agents or employees have made no representations or warranties, express or implied, as to the condition of the Premises. City shall have no liability to District for any damage or injury caused by the condition of the Premises.
- 3) **Scope of Work or Use.** The Work authorized by this IGA is described in Attachment B, C & D (MCDD Construction Scope, Proposed Culvert Design & Cost Estimate).

All work associated with the project will be completed to industry standards in a first class professional manner with the highest and best work and safety standards and practices.

Specific project plans will be considered incorporated into the IGA by reference. The scope of work or use defined herein or attached constitutes the entirety of the expected use or scope of work. No changes to the scope of work or use are authorized without the prior written approval and change order of both PP&R & MCDD.

- 4) **As-Builts.** District shall keep accurate maps and records, including the approved as-built construction plans and specifications of the bridge and improvements located in the Park. District shall provide to Parks within sixty (60) days of the project being complete copies of

maps, records and as-builts, in paper form and PDF that are complete and stamped by MCDD's engineer or assignee.

- 5) **Park or Trail Closures.** Permitted work will not result in the Park being closed at any time without PP&R approval. District will take reasonable precautions to avoid conflicts between the permitted work and the public's use of the Park. Direct connectivity to all trails may be disrupted for as much time as needed to remove the existing culvert and replace with the new culvert. Although this will disrupt connectivity, it will not close the use of all the trails. Demarcation of closures will utilize warning signs and flagging per Section 12.
- 6) **Project Manager.** District shall coordinate with Parks Project Manager, Travis Ruybal, RLA Capital project manager, who may be reached at: (503) 823-5487. MCDD Construction Manager will be Byron Woltersdorf, PE (503) 281-5675 ex 308 office. The Parks Project Manager will be provided at least **forty-eight (48)** hours notice prior to commencement of work under this IGA.
- 7) **Locates.** District shall not begin any excavation or other subsurface activity in the Park without first contacting the One-Call Locates number and shall explicitly indicate the property is owned/managed by City of Portland, Parks & Recreation. One-Call Locates phone number is: 1-800-332-2344. District shall also contact Mike VanYserloo, Parks Locates, at (503) 823-1611 at least **seventy-two (72)** hours before commencing excavation or other subsurface activities on the Park.
- 8) **Trees and Urban Forestry.** For projects where there are potential tree impacts either above or below ground, Parks shall include Dave Kahler from Urban Forestry in the Pre-Construction meeting and any other meetings. Mr. Kahler can be reached at (503) 823-1691 or by cell at (503) 823-8194. It is the responsibility of parks to contact Mr. Kahler. The District shall strictly manage construction limits to ensure the minimum disruption to existing vegetation. It is up to PP&R to trim tree canopy for the use of over head cranes and excavators to minimize the potential of damaging limbs that may be in the way. It is also the responsibility of PP&R to provide any mitigation of trees that may have to be removed because for the culvert removal, and replacement.
- 9) **Equipment and/or Materials to be used on site.** Equipment to be used includes but not limited to standard and specialized construction equipment, which may include back hoes, track hoes, a crane, and bulldozers. Materials may include gravel aggregate, Rip-Rap stone, straw, metal or plastic culvert, wood, steel, soil & vegetation.

District assumes all risk for any damage to their equipment while working under the authority of this IGA. District shall keep all equipment within the confined work zone. All vehicles brought into the Park must be marked as District vehicles belonging to the District, or its contractors or subcontractors, if any. Personal vehicles belonging to District's employees or contractors shall park in designated park public parking lots.

- 10) **Maintenance, Repair and Restoration.** During construction or future repair work, District, at its cost, shall maintain the Premises in a neat condition, free of trash and debris, in good or better than existing condition (as seen in the pre-construction photo survey per Section 2), order and repair. District shall repair, at its cost and with prior written approval by Parks, any damage to the Park or surrounding City of Portland property caused by the work project and/or its entry or occupancy of the Park under this IGA. Restoration shall be made to conditions equal to or better than those pre-existing the District's work. This does not include any mitigation restoration.
- 11) **Security.** District is responsible for providing, signage, coning, and/or fencing to keep people away from equipment and work areas and to warn Park users of any hazards. District shall give Parks prompt notice of any condition, disturbance, accident or occurrence on the Park related work area to their use or occupancy of the Park which might create a hazard to users of the Park property.
- 12) **Ownership of Improvements.** All improvements shall become the property of City upon completion of construction to the satisfaction of City's Project Manager.
- 13) **Ongoing Maintenance.** District agrees to maintain and repair the culvert and other improvements constructed under this IGA in perpetuity.
- 14) **Indemnification. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution,** District shall indemnify and hold harmless the City and Portland Parks & Recreation, their officers, directors, agents and employees from any and all liability, damages, expenses, attorneys fees, causes of action, suits, claims or judgments, arising out of or connected with (i) District's entry, use or occupancy of the Park, (ii) any failure of District to comply with the terms of this IGA or any violation of law or ordinance, and (iii) the acts or omissions of District or subcontractors ; provided, however, the District shall not be liable for claims caused by the sole negligence of the City, its officers, directors, agents and employees.

Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, City and Portland Parks & Recreation shall indemnify and hold harmless the District, their officers, directors, agents and employees from any and all liability, damages, expenses, attorneys fees, causes of action, suits, claims or judgments, arising out of or connected with (i) City and PP&Rs', use or occupancy of the Park, and (ii) the acts or omissions of City or Bureaus; provided, however, the City shall not be liable for claims caused by the negligence of the District, its officers, directors, agents and employees.

City, its officers, directors, agents and employees shall not be liable for any damage to equipment or any other property of District or to any person in or upon the Park including but not limited to damage by fire, explosion, electricity, flooding, vandalism, water or rain, or any other cause whatsoever unless caused by or due to the sole negligence of City, its officers, directors, agents and employees.

District, as a material part of the consideration to the City, hereby assumes all risk of damage to property or injury to persons in, upon or about the Park work area from any cause other than the City's sole negligence, and District waives all claims in respect thereof against City.

- 15) **Insurance.** District shall maintain public liability and property damage insurance that protects the District and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the District's work under this IGA. The insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insured's the City and its officers, agents and employees. Notwithstanding the naming of additional insured's, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between on the policy.

The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the Property Manager, Portland Parks and Recreation. If the insurance is canceled or terminated prior to completion of the Permit, the District shall provide a new policy with the same terms. The District shall maintain continuous, uninterrupted coverage for the duration of the Permit. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by the District.

District shall maintain on file with the Property Manager, Parks and Recreation, a certificate of insurance certifying the coverage required under this IGA. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this IGA by the City.

District and all employers working under this IGA shall comply with Oregon's workers compensation law, Oregon Revised Statutes Chapter 656 that requires subject employers to provide workers' compensation coverage for all their subject workers. The District shall maintain workers' compensation insurance coverage for the duration of this IGA. In the event the District's workers compensation insurance coverage is due to expire during the term of this IGA, the District shall timely renew their insurance, either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and the District shall provide the City of Portland such further certification of workers' compensation insurance as renewals of said insurance occur.

District shall require all contractors or subcontractors working pursuant to this IGA to meet the same indemnification and insurance requirements (Sections 14 and 15) of this IGA) that are required of District. All required Certificates of Insurance are attached to this IGA.

- 16) **Hazardous Materials.** No materials shall be stored, used, manufactured or disposed of within the Park or the surrounding City property except in compliance with all federal, state and local laws, provided that in no case may there be stored, used, manufactured or disposed of within the Park or surrounding City property any hazardous substances, as defined by ORS 465.200 and implementing regulations of the State of Oregon Department of Environmental Quality or which constitute a public health hazard, as defined by rules of the Oregon State Health Division, and no condition shall be permitted within the Park or surrounding Park property which constitutes a health hazard, as defined by the rules of the Health Division.
- 17) **Compliance with Laws.** In connection with its activities under this IGA, District shall comply with all applicable federal, state and local laws and regulations. District shall correct at District's own expense any failure of compliance created by the fault or use of District or their agents, employees or invitees. PP&R is not responsible for determining and acquiring all other permits, licenses and approvals that may be required for this project that the District does not already possess. This IGA does not bind the City to take any particular course of action in regard to adjudicating other permit applications which are necessary to make the intended use of the Premises.
- 18) **Notice.** All notices under this IGA shall be in writing and shall be deemed validly given if sent by first class or certified mail, nationally recognized courier or facsimile transmission, and shall be effective upon receipt. Notices should be addressed as follows:
- To PARKS: City of Portland
Parks and Recreation – Property Manager
1120 SW 5th Avenue, Room 1302
Portland, OR 97204-1933
- To DISTRICT: Multnomah County Drainage District #1
Attn: Byron Woltersdorf, PE District Engineer
1880 NE Elrod Drive
Portland, OR 97211
- 19) **Entry by City.** Parks reserves the right to enter upon the Park for any purposes, including inspection. City inspections are for the sole benefit of the City and do not constitute or imply acceptance of any work as conforming to the requirements of this IGA. The presence or absence of a City inspector does not relieve District from any requirement of this IGA, nor is the inspector authorized to change any term or requirement of this IGA without the written authorization of the Parks' Property Manager. Nothing in this entry IGA limits the District from its right to enter the park or ponds and perform future maintenance or flood fighting activities as outlined in ORS 547.

- 20) **Oregon Law and Forum.** This IGA shall be governed by the laws of the State of Oregon. Any suit or action arising under this IGA shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.
- 21) **Waiver of Breach.** The waiver by the City of the breach of any condition, covenant, or agreement herein contained to be kept, observed and performed by the District shall in no way impair the right of the City to avail itself of any subsequent breach thereof. No waiver is effective unless such waiver is in writing and signed by the waiving party.
- 22) **Termination.** This IGA may be terminated with the mutual consent of the Parties. Additionally, it may be terminated by either party if the other party is in default and has not, within a reasonable period of time and after notice, cured any violations of terms and conditions of the IGA.
- 23) **No Liens.** District shall keep the Premises and adjacent City property used in connection with this IGA free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of District.
- 24) **Entire Agreement.** This IGA contains the entire agreement between PP&R and the District and supersedes all prior written or oral discussions or agreements.
- 25) **Illegality.** If any provision of this IGA is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this IGA, and this IGA shall remain in full force and effect without such invalid, illegal, or unenforceable provision.
- 26) **Assignability.** This IGA is not assignable.
- 27) **Payment.** PP&R will pay MCDD a sum not to exceed \$10,408.28 towards the equipment and materials costs, as laid out in the Project Cost Estimate D within 30 days of invoice from MCDD. MCDD shall submit invoice to Parks Project manager. The labor costs outlined with this Project Cost Estimate D will be the responsibility of MCDD. Items and work outside of the scope as described herein require a change order and payment will be made on a separate invoice for extra work performed.
- 28) **Records.** District will keep all financial, vendor, and operating records relating to its activities under this IGA and, upon reasonable notice, make all such records available to City for the purpose of inspection, copying, and audit by City or its agents.

IN WITNESS WHEREOF, the parties have caused this IGA of Entry to be executed in triplicate on the dates shown below.

DISTRICT

Dave Hendricks
Print Name

Executive Director
Title

[Signature]
Signature

11-28-2011
Date

Counterparts. The parties listed above may execute this instrument in two or more counterparts, and when taken together will constitute one and the same instrument.

CITY OF PORTLAND, BUREAU OF PARKS AND RECREATION

Mike Abbate
Director of Parks and Recreation

Date

APPROVED AS TO FORM

[Signature]
Chief Deputy City Attorney

Attachment A
Whitaker Ponds – Bridge Project



Attachment B – Scope of Work**A. The following is a summary of duties and work to be accomplished by MCDD & PP&R.****Work Summary:**

The Multnomah County Drainage District (MCDD) shall be responsible for permitting, designing and constructing a new drainage culvert as shown in Exhibit C Culvert Replacement Design below. MCDD will hire required consultants if necessary to complete proposed work and provide overall project and construction management from concept to completion. Below is a summary of work to complete the proposed project.

1. Obtain any necessary permits from regulatory agencies having jurisdiction over this work.
2. Proposed culvert design shall meet the design criteria discussed with BES, Parks and MCDD.
3. Removal & disposal of existing, obstructed, non-functioning culvert between east and west ponds and replace with new culvert.
4. Delivery and installation of the new culvert and associated appurtenances.
5. Hire and manage the contract and schedule of any required consultants to complete the proposed work
6. Order utility locates per item 8. Locates above.
7. Temporary Enclosure Systems:
 - a. Provide temporary high visible construction fencing around the work area. Coordinate location of fencing with Owner's Representative prior to installation.
 - b. Provide temporary barriers to protect materials, equipment, new work, existing facilities, construction personnel, and public.
 - c. Remove, or provide locking mechanisms and protective measures for equipment left over night or weekends to prevent vandalism and theft to materials, equipment or new work.
8. Install and maintain temporary gravel construction access as necessary.
9. Spread earthwork spoils on site to the satisfaction of the PP&R representative. The contractor shall grade and smooth the site to correspond with the surrounding topography. Contractor to provide structural fill materials as required.
10. Upon completion of the work, leave site clean and free of debris to the satisfaction of PP&R representative.

Attachment B continued.

11. Schedule a preconstruction & progress meetings with PP&R representative.
12. Schedule: work shall be complete no later than thirty (360) calendar days from issuance of Notice-To-Proceed

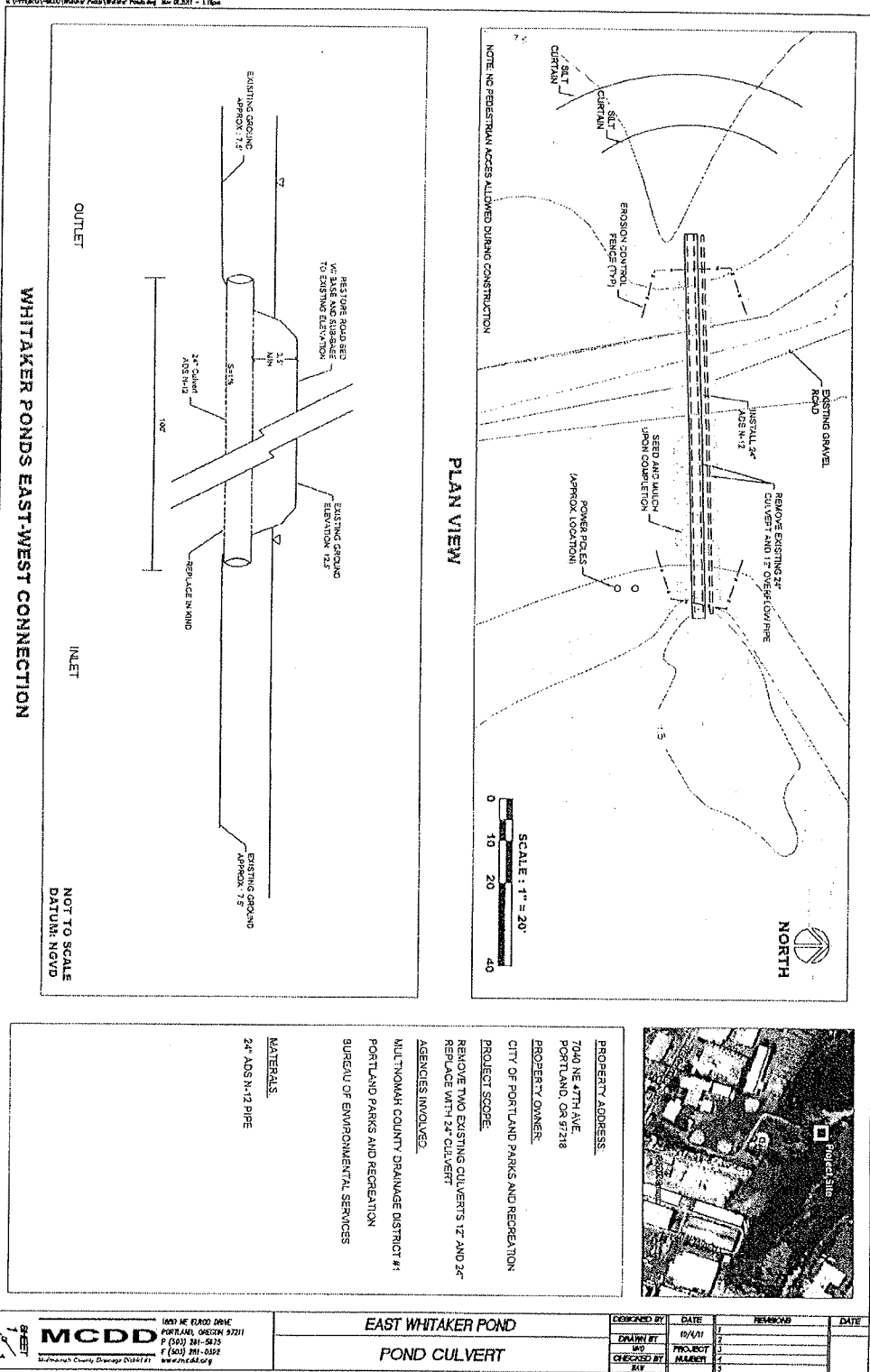
B. The following are general responsibilities of MCDD while performing the above work:

1. Conduct work in a professional manner.
2. Exercise care in all operations to protect all existing utilities and structures and to avoid disturbance and/or damage.
3. When necessary, flaggers, barriers and warning devices are the responsibility of MCDD.

C. The following are general responsibilities of PP&R to assist MCDD to accomplish the above work:

1. Provide park access to complete proposed work.
2. Communicate with the public on proposed improvements and schedule.
3. Coordinate with MCDD, BES and PP&R staff to minimize interruptions or conflicts during time of construction.

Attachment C Culvert Replacement Design



© 1996-2000 Bentley Systems, Incorporated. All rights reserved. BAA009170-1/000

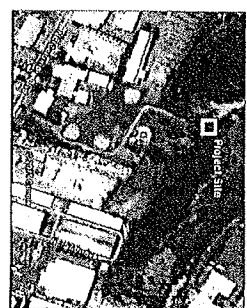
PROPERTY ADDRESS:
7040 NE 47TH AVE.
PORTLAND, OR 97218

PROPERTY OWNER:
CITY OF PORTLAND PARKS AND RECREATION

PROJECT SCOPE:
REMOVE TWO EXISTING CULVERTS 12" AND 24"
REPLACE WITH 24" CULVERT

AGENCIES INVOLVED:
MULTNOMAH COUNTY DRAINAGE DISTRICT #1
PORTLAND PARKS AND RECREATION
BUREAU OF ENVIRONMENTAL SERVICES

MATERIALS:
24" ADS N-12 PIPE



MCDD Multnomah County Drainage District #1		EAST WHITAKER POND POND CULVERT		DESIGNED BY	DATE	REVISION	DATE
1000 NE CLATSOP DRIVE PORTLAND, OREGON 97232 P (503) 388-5175 F (503) 388-5192 www.mcdd.org				DRAWN BY	10/11/11		
				AND			
				CHECKED BY	PROJECT		
				BY	RELEASED		

**Attachment D
Project Cost Estimate**

East Whitaker Pond
Project: Pond Leveler/Beveaver Deciever

10/27/2011

By J.Krueger
Rev BAW

Cost Quote for Project Work-

Labor	Quantity	Per Hour Cost	Hours	Sub Totals
Supervisor	1	\$49.24	15	\$738.60
Operator	1	\$44.66	25	\$1,116.50
Operator	1	\$43.58	10	\$435.80
Utility Worker	1	\$22.82	25	\$570.50
Utility Worker	1	\$15.00	25	\$375.00
Engineer	1	\$60.00	30	\$1,800.00
				\$5,036.40

Equipment	Quantity	Per Hour Cost	Hours	Sub Totals
Pickup	1	\$20.24	30	\$607.20
Dump Truck	2	\$78.59	8	\$1,257.44
Transport and Trailer	1	\$78.59	2	\$157.18
Compactor	1	\$10.00	8	\$80.00
Boat	1	\$13.00	16	\$208.00
Misc. Tools	2	\$10.00	16	\$320.00
Survey Equipment	1	\$15.00	8	\$120.00
				\$2,749.82

Materials	Quantity	Cost	Sub Totals
Base/Sub Base Material (tons)	65	\$9.95	\$646.75
Bank Stabalization 4"x6" (tons)	24	\$14.85	\$356.40
Fence 2"x4"x72"x100'	2	\$124.99	\$249.98
Fence 2"x4"x48"x100'	2	\$79.99	\$159.98
Posts 10'	10	\$13.99	\$139.90
90 deg. 36" Elbow ADS N12	1	\$320.00	\$320.00
24" ADS N12 Corrugated Pipe x 20'	6	\$932.60	\$5,595.60
Straw Bale	18	\$4.95	\$89.10
Grass Seed (25 lbs)	1	\$61.75	\$61.75
Black plastic Pipe and union	6	\$6.50	\$39.00
			\$7,658.46

Note- Materials pricing is only valid for 30 days

Total Cost-	\$15,444.68
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