



185492

PORTLAND PARKS
& RECREATION

**Intergovernmental Agreement
Between Portland Parks & Recreation and
Peninsula Drainage District 2
Project(s): Columbia Slough Trail "Denver Ave to Vancouver Ave"**

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 holder of trail easements over certain real properties that make up portions of the Columbia Slough Trail. Those easements grant Parks the right to construct and operate public trails.

Parks wishes to begin construction of a new trail segments: The Columbia Slough Trail "Denver Ave to Vancouver Ave" which is depicted in Attachments A hereto (Premises").

This trail segment is located within Peninsula Drainage District #2, a Special District of the State of Oregon, and the Columbia Slough Watershed, northeast Portland, Multnomah County, State of Oregon.

Parks owns or holds easements over all properties located within the Premises, with the exception of the property described as 1N1E10BB 1300 (collectively, the easement held by Parks will be referred to as the "Park Easements" or "Park"). Parks continues to work to acquire an easement on this parcel. All trail easements on the levees are within the Peninsula Drainage District #2 ("PDD2 or District") levee rights-of-way.

PDD2 requires reinforcement of existing levees prior to completion of trail construction which will fill critical missing links in the overall 40 mile loop trail network.

Parks and PDD2 agree that PDD2 will reinforce the levee within the Premises subject to the terms and conditions contained herein. Once the levee has been sufficiently reinforced, Parks will build public trails on top of such levee.

Agreed:

- 1) **Work proximity and Premises** The location of the work is illustrated on Attachment A & C hereto ("Premises"). PDD2 will perform work on those parcels under authority granted to it by law or PDD2 easements (or acquire such rights if necessary), and PDD2 grants Parks the right, as its agent, to enter those parcels and perform any work required of it under this IGA that is needed to reinforce the levees.
- 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.** Each party agrees to perform the work as described & illustrated in Attachments B, C & D (Scope of Work, Grading & Erosion Control Plans & Cost Estimate). All work described in the Scope of Work will be completed by December 31, 2012.

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

Specific project plans will be considered incorporated into the IGA by reference and date. 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 & PDD2.

- 4) **As-Builts.** District shall keep accurate maps and records, including the approved as-built construction plans and specifications of the improvements located in the Premises. 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 PDD2 engineer or assignee.
- 5) **Project Manager.** District shall coordinate with Parks Project Manager, Travis Ruybal, RLA Capital Project Manager II, who may be reached at: (503) 823-5487. PDD2 Construction Manager & Engineer of Record will be Byron Woltersdorf, PE (503) 281-5675 ex 308. The Parks Project Manager will be provided at least **forty-eight (48)** hours notice prior to commencement of work under this IGA.
- 6) **Locates.** District shall not begin any excavation or other subsurface activity on the Park without first contacting the One-Call Locates number and shall explicitly indicate the property/easement is owned/managed by City of Portland, Parks & Recreation. One-Call Locates phone number is: 1-800-332-2344.
- 7) **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 meeting the Army Corps of Engineers and District's standards may include sand, soil, gravel aggregate & erosion control measures.
- District assumes all risk for any damage to their equipment while working under the authority of this IGA. All vehicles brought onto the Trail must be marked as District vehicles belonging to the District, or its contractors or subcontractors, if any.
- 8) **Maintenance, Repair and Restoration.** During construction, 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 surrounding City of Portland property or Park Easements caused by the work project and/or its entry or occupancy of the Parks Easements 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.

It is understood that Parks will build a paved trail on the levee once PDD2 completes the work under this agreement. If the trail is ever damaged as a result of future PDD2's repair work to the levee, PDD2 shall not be responsible for any repair or restoration of the trail so long as the damage was not the result of PDD2's gross negligence or willful misconduct. Except in emergency situations, PDD2 will coordinate levee repair work with Parks in an effort to mitigate damage to the trail.

Because the levee is a federal flood protection system and regulated by US Army Corps of Engineering (USACE) standards, any restoration or maintenance work, other than regular maintenance, to be performed on the trail will need to be coordinated with the District prior to work being performed. Said work may require permit approval from USACE

- 9) **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 Easements related work area to their use or occupancy of the Park Easements which might create a hazard to users of the Park property.
- 10) **Ownership of Improvements.** The levees shall remain the sole responsibility of PDD2. Parks shall be permitted to construct, maintain, and operate a public trail on the levees once they have been reinforced in accordance with section 8.
- 11) **Ongoing Maintenance.** District agrees to maintain and repair the earthwork reinforcement constructed under this IGA in perpetuity. Parks agrees to maintain and repair the paved trail and the aggregate base constructed under this IGA in perpetuity.
- 12) **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 Easement, (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 Premises 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.** Both parties shall maintain public liability and property damage insurance or self-insurance that protects the District and the City and their officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from that party'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 the other party, its officers, agents and employees as additional insureds. 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 other party's Project Manager. If the insurance is canceled or terminated prior to completion of the Permit, the party shall provide a new policy with the same terms. Both parties shall maintain continuous, uninterrupted coverage for the duration of this IGA. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by the party.

Both parties shall provide the other party with a certificate of insurance or self-insurance certifying the coverage required under this IGA. The adequacy of the insurance shall be subject to the approval of the party's attorney. Failure to maintain liability insurance shall be cause for immediate termination of this IGA by the other party.

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 parties shall maintain

workers' compensation insurance coverage for the duration of this IGA. In the event a party's workers compensation insurance coverage is due to expire during the term of this IGA, the party 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 shall provide further certification of workers' compensation insurance as renewals of said insurance occur.

The parties 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 party. 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 Trail Easement Area 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 Trail Easement Area 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: Peninsula Drainage District #2
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 Premises 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 Trail Easement Area and perform future maintenance or flood fighting activities as outlined in ORS 547 and CFR 33.
- 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 PDD2 a sum not to exceed \$157,080.00 towards the equipment and materials costs, as stated in Attachment D Project Cost Estimate within 30 days of

invoice from PDD2. PDD2 shall submit invoice to Parks Project manager. 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.

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

DISTRICT

Dave Hewsdricks
Print Name

[Signature]
Signature

Executive Director
Title

6/21/12
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 Abbaté
Director of Parks and Recreation

Date

APPROVED AS TO FORM

James H. Van Dyke
Chief Deputy City Attorney
CITY ATTORNEY 6/21/12

**Attachment B – Scope of Work
Columbia Slough Trail – “Denver to Vancouver Ave”**

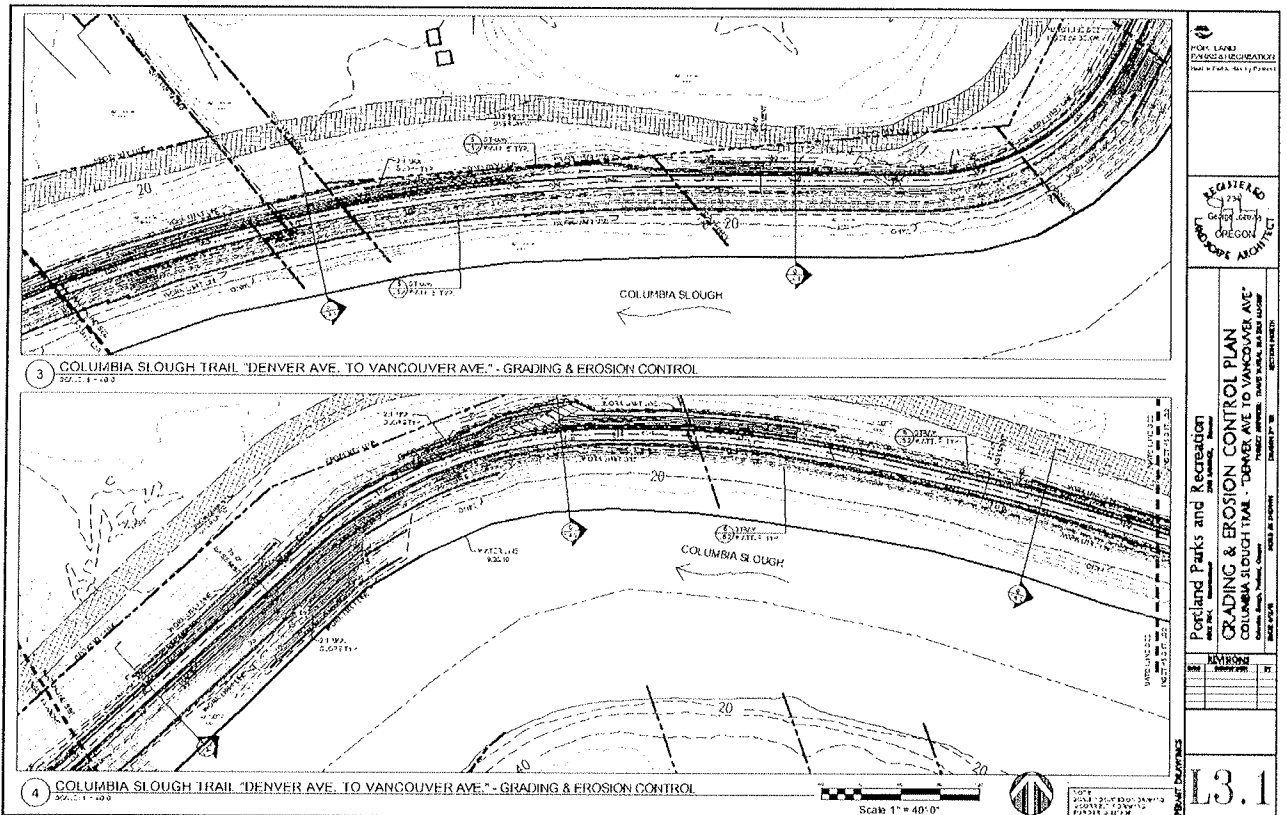
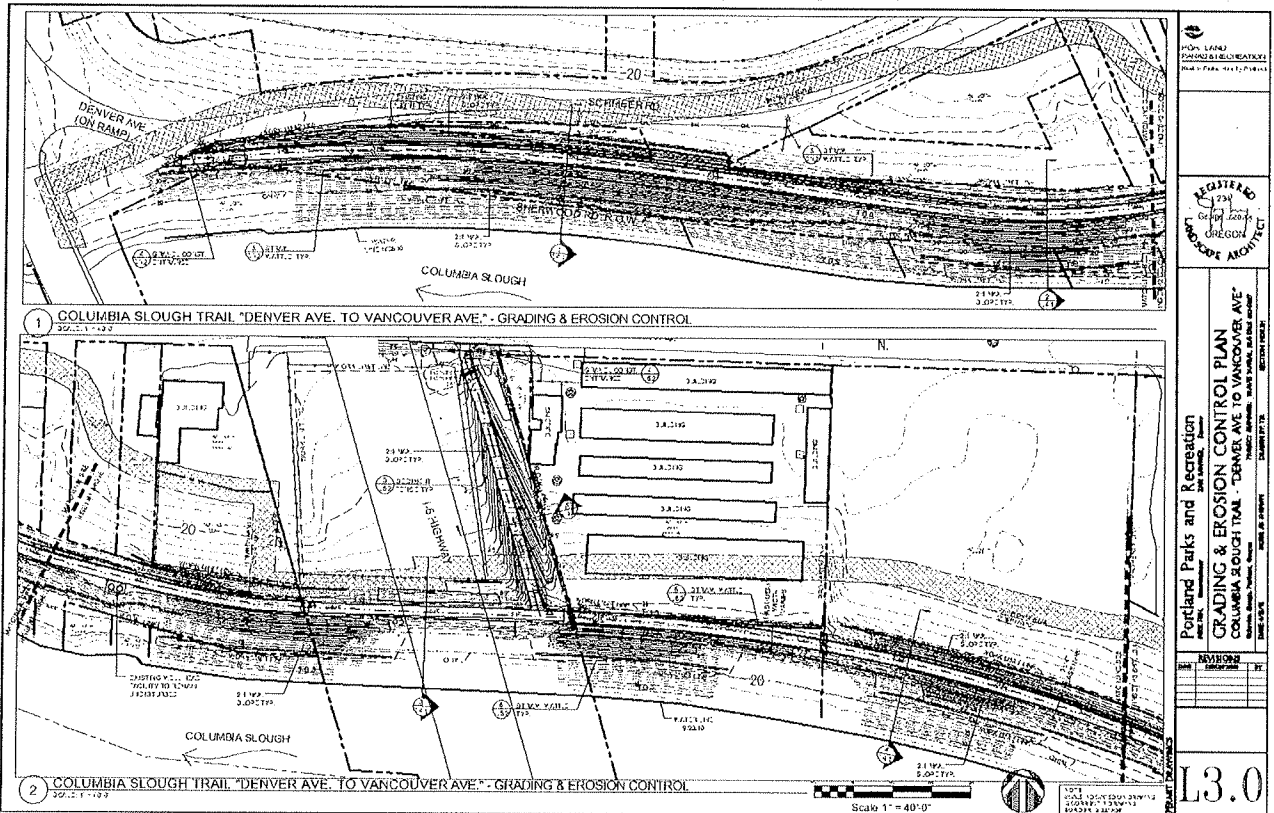
- **The following is a summary of duties and work to be accomplished by PDD2 & PP&R.**

Work Summary:

The **Peninsula Drainage District #2** (PDD2) shall be responsible for permitting and constructing levee earthwork reinforcement as shown in Attachment C - Columbia Slough Grading & Erosion Control Plans. PDD2 will hire required consultants and/or contractors 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 grading reinforcement work shall be in direct compliance with Army Corps of Engineers Encroachment permit requirements and construction plans used to obtain those permits (additional sets of construction plans will be provided upon request).
 3. Delivery and installation of erosion control measures as illustrated on construction plans.
 4. Hire and manage the contract and schedule of any required consultants and/or contractors to complete the proposed work
 5. Upon completion of the work, leave site clean and free of debris.
 6. Schedule a preconstruction & progress meetings with PP&R representative.
 7. Schedule: work shall be complete no later than December 31st 2012.
 8. If necessary provide; flaggers, barriers and warning devices alerting trail users of construction activity.
 9. Inform property owners of proposed work.
- **The following are general responsibilities of PP&R to assist PDD2 to accomplish the above work:**
 1. Provide payment per Section 27 of this IGA.

Attachment C – Grading & Erosion Control Plans Columbia Slough Trail – “Denver to Vancouver Ave”



**Attachment D – Cost Estimate
Columbia Slough Trail – “Denver to Vancouver Ave”**



14118 SE 35th Vancouver WA 98683
Phone 503.793.1038 Fax 503.775.4210 CCB 80682
Jason Ashe Cell 503.793.1037

Friday, May 04, 2012

**Columbia Slough
Stripping, Grading, and Erosion**

Page One of Two

NTA's proposal for this project includes the following major items of work:

- 1.) Plans provided by MCDD drawn by City of Portland
- 2.) This proposal is based on mutually acceptable contract terms and conditions.
- 3.) Mobilization of NTA's equipment.
- 4.) Erosion Control Items as required by the plans.
- 5.) Clearing and grubbing of grass as required, MCDD will mow.
- 6.) Furnish and install all materials required to raise the levee elevation to required elevations.
- 7.) Clean up and restore effected areas, hydro seed or bmp's as needed. "Hydroseeding". Pricing includes provision and installation of an erosion control seed mix consisting of 80% perennial ryegrass and 20% creeping red fescue. Seed will be applied at a rate of 120 lbs/Acre. The seed mixture will be mixed with tackified wood fiber mulch and applied with hydraulic machinery

NTA's proposal for this project does not include the following items of work:

- 1.) Items not specifically included in the line item bid or inclusions above are specifically excluded.
- 2.) Handling or disposal of contaminated or hazardous materials.
- 3.) Cost of permits and time to obtain permits is not included.
- 4.) Rock excavation or removal of boulders that cannot be handled by a 40,000 LB Excavator.
- 5.) Grade staking, layout, or inspection. NEED STAKING
- 6.) Installing or furnishing any landscaping materials or irrigation.
- 7.) Repair of any existing damaged pipe, or utility structure.

**Attachment D (Continued) – Cost Estimate
Columbia Slough Trail – “Denver to Vancouver Ave”**



14118 SE 35th Vancouver WA 98683
Phone 503.793.1038 Fax 503.775.4210 CCB 80682
Jason Ashe Cell 503.793.1037

Friday, May 04, 2012

**Columbia Slough
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Pricing for this proposal is as follows:

Columbia Slough					
Item #	Description	Quantity	UOM	Unit Price	Bid Total
1	Mobilization	1	EA	\$3,172.50	\$3,172.50
2	Unsupported Silt Fence	500	LF	\$1.50	\$750.00
3	Straw Waddles	11075	LF	\$2.20	\$24,365.00
4	Stripping	2450	BCY	\$8.25	\$20,212.50
5	Fill & Grade Material	5200	TCY	\$20.00	\$104,000.00
6	Hydroseed	1	Acre	\$1,500.00	\$1,500.00
Total Proposal Amount					\$154,000.00

THIS PROPOSAL IS VALID FOR THE PERIOD OF TEN DAYS. FURTHER, THIS PROPOSAL IS BASED ON PAYMENT OF RETENTION WITHIN 15 DAYS OF COMPLETION AND ACCEPTANCE OF NTA'S SCOPE OF WORK.