

**CITY OF PORTLAND, PENINSULA DRAINAGE DISTRICT NO. 1, PENINSULA
DRAINAGE DISTRICT NO. 2, AND MULTNOMAH COUNTY DRAINAGE DISTRICT NO. 1**

**INTERGOVERNMENTAL AGREEMENT FOR STORMWATER MANAGEMENT
SERVICES**

P1-1402-018-IGA
P2-1402-023-IGA
MC-1402-063-IGA

Final Draft March 19, 2014

This Agreement is entered into between the City of Portland (“the City”), a municipal corporation of the State of Oregon as represented by its Bureau of Environmental Services (“BES”), and Multnomah County Drainage District No. 1 (portion within City of Portland boundaries) (“MCDD”), Peninsula Drainage District No. 1 and Peninsula Drainage District No. 2 (individually, a “District;” collectively, “the Districts”), special purpose local governments organized under ORS Chapter 547, under the charters and laws applicable to the City and the Districts for the purposes set forth below.

RECITALS

1. WHEREAS, the City and the Districts have the authority to enter into intergovernmental agreements in accordance with ORS 190.010 and ORS Chapter 547.
2. WHEREAS, the Districts and the City agree that the Districts manage stormwater from City rights-of-way within the Districts and in some cases from areas of the City outside the Districts.
3. WHEREAS, the Districts and the City conducted joint stormwater modeling to quantify the amount of stormwater being managed by the Districts that originates in the City.

TERMS

I. PURPOSE AND INTENT OF AGREEMENT

The purpose and intent of this Agreement is:

- A. To recognize the mission and functions of the City and the Districts and to coordinate the delivery of services.
 1. The Districts provide flood control and stormwater management services within their jurisdictional boundaries in North and Northeast Portland, including management of stormwater runoff from City streets inside and outside District boundaries. These services benefit the City as a whole as well as landowners within the Districts.

2. The City, represented by BES, provides stormwater management, including compliance with water quality regulations and management of stormwater runoff from City streets inside and outside of District boundaries. These services benefit landowners within the Districts as well as the City as a whole.
 3. These functions complement one another and in some instances may overlap. They provide critical services to the public.
- B. To provide a mechanism for payments between the City and the Districts for stormwater management services and to provide a mechanism for reimbursement for the costs of specific tasks performed by one party at the request of the other.
 - C. To provide a framework for coordination of service delivery and projects between the Districts and the City. The City and the Districts have each designated a Project Manager to serve as the primary coordinators of this agreement; however, liaison at all organizational levels is encouraged to foster effective working relationships and project efficiency.
 1. The Districts' Project Manager is the MCDD Natural Resources Project Manager.
 2. The City's Project Manager is the BES Columbia Slough Watershed Manager.
 3. A party may change its designated Project Manager by notifying the other party in writing of the change. Each party agrees to consult with the other party prior to changing its designated Project Manager.

II. SERVICES

- A. The charges assessed to the City under this Agreement are in addition to, and not in lieu of, the Districts' assessments under ORS Chapter 547 for stormwater and levee operations and maintenance assessed to all landowners in the Districts.
- B. The City will pay the Districts for stormwater management services according to the following methodology:
 1. Each District will calculate the stormwater operations and maintenance costs of that District ("Stormwater O&M Costs") and will bill the City for the City's share thereof, as defined by section II.B.2. Stormwater O&M Costs include, but are not limited to, those related to engineering, operations, ditch improvements, ditch maintenance, pump station maintenance, capital renewal and replacement, administrative costs, and associated indirect costs including debt service. Charges assessed to the City under this agreement will not include costs associated with levee reconstruction or maintenance.
 2. The City's share of each District's Stormwater O&M Costs will be calculated according to the following:
 - a. The City's share of each District's Stormwater O&M Costs attributable to the City's rights-of-way within that District ("Participant Share"), which will be calculated according to the current assessment methodology used in the relevant District that pertains to Stormwater O&M Costs; and
 - b. The quantity of stormwater entering each District from property within the City limits but outside of any District's boundaries ("Influent Share"). The Influent Share is intended to

address the portion of the Districts' annual Stormwater O&M Costs attributable to property outside the Districts but within the City. Calculation of the amount will be based on a hydrologic stormwater model developed by MCDD ("MCDD Hydro Model") to determine stormwater flows in each District, which has been made available for City review. Upon approval of this agreement, the City and each District will jointly estimate the following, based on the MCDD Hydro Model and each District's budgeted Stormwater O&M Costs for the applicable fiscal year:

The amount of stormwater that each District manages on an annual basis ("Total Annual Stormwater");

The amount of stormwater arriving from outside each District's boundaries but within the City limits that would enter the District on an annual basis ("Annual Influent City Stormwater"); and

Each District's total Stormwater O&M Costs for the year.

- C. The Influent Share of each District's annual Stormwater O&M Costs to be paid by the City will be calculated as follows:

$$(\text{Annual Influent City Stormwater} / \text{Total Annual Stormwater}) \times 100$$

- D. The rate calculations will separate the costs associated with the City's Influent Share and Participant Share such that the costs will not be double-counted in the calculations. If it is discovered that the costs for Influent and Participant Shares overlap (doubly counting the same costs), the amount will be adjusted to remove the overlap.
- E. The payment from the City to each District will be the Participant Share plus the Influent Share.
- F. Not later than December of each year, the City's Project Manager and the Districts' Project Manager will share updated five-year forecast information on stormwater revenue requirements and reductions or increases in impervious area and City influent stormwater affecting City and District stormwater billing calculations. The parties will update the MCDD Hydro Model at least once every five years unless all parties agree in writing that an update is not necessary. The third party receipted costs associated with updating the MCDD Hydro Model will be split evenly between the Districts and the City. The groundwater portion of the Hydro Model and associated costs to the City will be revisited by the Parties by December 31, 2014. Any revisions to groundwater calculations affecting the City's payments shall be incorporated into this Agreement by amendment.
- G. The Districts' management will provide an estimate of the following fiscal year's charges to the City by January 1st. Final charges will be determined upon adoption by the Districts' boards of the following fiscal year's budget. If the final charges based on an adopted budget increase more than 10 percent (10%) from the original estimate described in the preceding sentence, the City will have the option of incorporating the difference between the estimated charges plus 10% and the final charges into the subsequent year's payment, with appropriate carrying charges.

- H. The Districts will invoice the City quarterly for one-fourth of the fiscal year's stormwater charges. The City will pay the Districts within 30 days following receipt of the Districts' invoices.
- I. Notwithstanding II.B.2.H above, for FY 2013-2014, the City agrees to pay that fiscal year's full charges. MCDD may bill the City for the full amount in one invoice.
- J. The Districts acknowledge that the City has the authority to assess and collect stormwater management fees within the City limits, including those portions of the City also located within the Districts. The City will directly bill its customers located within the Districts for City stormwater services at a percentage of the established off-site City stormwater management rate, beginning on July 1, 2013, and updated on July 1 each year thereafter. The percentages will be as follows:

<u>Date</u>	<u>Percentage</u>
July 1, 2013	25%
July 1, 2014	50%
July 1, 2015	75%
July 1, 2016 and thereafter	100%

- K. Task Orders. Either the Districts or the City may obtain a service from the other on a reimbursable task order basis. The service must support the mission of the requesting party, in the judgment of the requesting party, and be outside the scope of services billed for in sub-sections A and B above. A scope of services and cost must be agreed upon in advance for each such order. The Districts' Project Manager and the City's Project Manager will oversee the preparation and completion of such task orders. Any such task order estimated to exceed \$50,000 in cost requires approval of the governing bodies.

III. 100-YEAR STORM EVENT UPGRADES

- A. This section III is to address the Districts' capacity to convey stormwater from outside the Districts during a 100-year-flood event. Unless otherwise agreed in writing:

By May 1, 2014, and every five years thereafter, the City and each District will jointly estimate the following, based on the MCDD Hydro Model and the capacity of each District's system in existence as of the date the modeling is complete:

1. The amount of stormwater from areas outside each District that would enter that District during a 100-year storm event ("Influent Flood Stormwater");
2. The amount of stormwater arriving from outside each District's boundaries but within the City limits that would enter the District during a 100-year storm event ("Influent City Flood Stormwater"); and
3. Any additional pumping capacity required in order for each District to accommodate Influent Flood Stormwater ("the Flood Capacity Shortfall").

4. The City's percentage share of the Flood Capacity Shortfall ("the City's Flood Share") will be calculated as follows:

$$(\text{Influent City Flood Stormwater} / \text{Influent Flood Stormwater}) \times 100$$

The City's Flood Share will then be applied to the total cost of remedying the Flood Capacity Shortfall, if any, according to the methods described in section III.B.

- B. Unless otherwise agreed in writing, within two years of a determination that a Flood Capacity Shortfall exists, the City and the Districts will jointly determine the most objectively and reasonably cost-effective method(s) for addressing the Flood Capacity Shortfall. The City will then implement the selected method(s) within an additional two years. Those methods may consist of either of the following, or a combination thereof:
1. Payment(s) by the City to the Districts of a sum proportionate to the City's Share (or a portion thereof, if this option is combined with section III.B.2). These funds must be used by the Districts to help finance capital upgrades to address the Flood Capacity Shortfall. Any schedule of payments will be incorporated into this Agreement by amendment.
 2. Capital upgrades to the Districts' systems performed by the City at its expense, including design, permitting, planning, mitigation, and construction.
- C. Any capital upgrades performed under this section III.B.:
1. Must comply with the accreditation standards, criteria, and timelines set by the Army Corps of Engineers and the Federal Emergency Management Agency; and
 2. May remain under the ownership and maintenance responsibility of the City, or, by mutual agreement, the Districts. Any such responsibility of the Districts will be incorporated into this Agreement by amendment.
- D. Any capital upgrades or improvements that are associated with levee reconstruction or maintenance are not addressed in this Agreement and the City will not be assessed for levee maintenance or upgrades through this Agreement.

IV. ADMINISTRATION OF CONTRACT

Through current intergovernmental agreements signed by the Boards of Supervisors of Peninsula Drainage District No. 1 and Peninsula Drainage District No. 2, the Multnomah County Drainage District No. 1 (MCDD) is designated to administer this agreement on behalf of those two Districts. All payments should be made directly to the appropriate District. In the event that specified MCDD personnel are no longer able to administer this Agreement, the Executive Director of MCDD shall designate new MCDD staff to administer the Agreement. All parties will be notified in writing if such change occurs. In the event that current intergovernmental agreements are terminated such that MCDD

personnel are no longer able to administer this Agreement, the relevant District's board shall designate an administrator for this Agreement.

V. TERM OF AGREEMENT

This Agreement will be effective retroactively to July 1, 2013 and remain in effect for an initial period of 25 years, with automatic yearly renewals thereafter, until either:

- (1) The execution of a new agreement between the Districts and the City that explicitly terminates this Agreement; or
- (2) The termination of this Agreement in accordance with Section XV below.

VI. SEVERABILITY

If any of the provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions will remain valid and binding upon the parties.

VII. WAIVER

A waiver by either party of any provision, condition, or covenant of this Agreement may not be construed by the other party as a waiver or subsequent breach of the same by the other party.

VIII. INTERPRETATION

This Agreement was prepared as a joint effort of the City and the Districts and must be construed as such.

IX. LIMITATION ON THE ROLE OF THE DISTRICTS

Neither this Agreement nor the Districts' provision of services will operate to make the Districts owners, operators, generators, transporters, treaters, storers, or arrangers within the meaning of the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation Recovery Act, and equivalent state and local laws. Neither this Agreement nor the Districts' provision of services, without more, will operate to make the Districts dischargers of any pollutant under the Clean Water Act and equivalent state and local laws.

X. INDEMNIFICATION

Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each party hereby agrees to protect, defend, hold harmless, and indemnify the other, its officers, employees and agents of and from any claims, damages, compensation, suits, actions and expenses, including reasonable attorney's fees, occasioned in whole or in part by the negligent acts, errors or omissions of the indemnitor or its employees, while in any way engaged in the performance of this Agreement. In addition, each party will be solely responsible for any contract claims, delay damages, or similar items arising from or caused by the negligent or wrongful action or inaction of the party.

XI. TIMING AND COORDINATION

The City and Districts will take all reasonable steps within their abilities to perform their work under this Agreement in an efficient and timely manner.

XII. AMENDMENT OF AGREEMENT

The City and the Districts may amend this Agreement from time to time by mutual written agreement signed by the Districts' Executive Director and the Director of the Bureau of Environmental Services (collectively "Directors").

XIII. LAWS AND REGULATIONS

The City and the District agree to abide by all applicable laws and regulations.

XIV. INTEGRATION

This Agreement constitutes the entire agreement between the parties on the subject matter and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind on the subject. No course of dealing between the parties and no usage of trade will be relevant to supplement any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement will not be relevant to determine the meaning of this Agreement.

XV. TERMINATION OF THIS AGREEMENT

- A. At any time, either party may unilaterally or by mutual written agreement terminate this Agreement upon proper notice to the other party, which termination will not take effect until two years later.
- B. A notice of termination may be withdrawn at any time prior to the termination date with the written approval of both parties' Directors.
- C. If the City, by ordinance or resolution, abandons its policy of directly billing its customers within the Districts as explained in Section II.J, this Agreement will terminate at the end of the fiscal year in which the ordinance or resolution was passed, so long as the ordinance or resolution is passed 90 days or more prior to the end of the fiscal year. If such ordinance or resolution is passed less than 90 days prior to the end of the fiscal year, this Agreement will terminate at the end of the following fiscal year.
- D. If a court of competent jurisdiction determines that the City's policy of directly billing its customers within the Districts as explained in Section II.B is unenforceable, this Agreement will terminate at the end of the fiscal year in which the judgment was made, so long as the judgment is made 90 days or more prior to the end of the fiscal year. If such ordinance or resolution is passed less than 90 days prior to the end of the fiscal year, the Agreement will terminate at the end of the following fiscal year.

- E. Upon the effective date of a termination of this Agreement, the parties will have 30 days to generate and pay final invoices for services rendered and received. Any ongoing capital construction begun under this Agreement and supervised by the City will be completed within a reasonable time after the effective date of termination. Any ongoing capital construction begun under this Agreement and supervised by any of the Districts will be completed within a reasonable time after the effective date of termination. The City will pay its full share of any ongoing construction begun under this Agreement and supervised by the Districts upon completion of the construction project.

XVI. DEFAULT

Any failure of any party to comply with an obligation under this Agreement will be considered a default and another party may terminate this Agreement as provided under Section XV. However, a non-defaulting party must notify the defaulting party in writing of the default, and the defaulting party must be given a minimum of thirty days to cure the default.

XVII. CHOICE OF LAW/VENUE

This Agreement and all rights, obligations and disputes arising out of the Agreement will be governed by Oregon law. All disputes and litigation arising out of this Agreement will be decided by the state courts in Oregon. Venue for all disputes and litigation will be in the Circuit Court for Multnomah County, Oregon.

XVIII. COUNTERPARTS EXECUTION

This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original, and such counterparts will constitute one and the same instrument. For the convenience of the parties, the execution pages of any executed counterpart may be detached and reattached to any other executed counterpart to form one or more documents that are fully executed. This Agreement will not be effective until all parties have executed this Agreement or a counterpart of this Agreement. Execution of this Agreement may be accomplished by electronic means.

**PENINSULA DRAINAGE DISTRICT NO. 1
PENINSULA DRAINAGE DISTRICT NO. 2
MULTNOMAH COUNTY DRAINAGE DISTRICT NO. 1**

BY:

Date:

Name: Reed Wagner

Title: Executive Director

IGA Nos. P1-1402-018-IGA
P2-1402-023-IGA
MC-1402-063-IGA

IGA Title: City of Portland Stormwater IGA

CITY OF PORTLAND SIGNATURES:

By:

Bureau Director

Date:

Approved as to Form:

By:

APPROVED AS TO FORM



CITY ATTORNEY

Date:

5/28/14