

187762

MEMORANDUM OF AGREEMENT**Between****MULTNOMAH COUNTY DRAINAGE DISTRICT****And the****CITY OF PORTLAND, by and through the PORTLAND BUREAU OF
TRANSPORTATION**

This Memorandum of Agreement ("MOA") is by and between the Multnomah County Drainage District ("MCDD"), a drainage district of the State of Oregon, and the City of Portland, a municipal corporation of the State of Oregon, by and through the City of Portland Bureau of Transportation ("PBOT"). The purpose of this agreement is to provide for expedited Section 408 permitting for a PBOT project impacting the Columbia River Levee managed by MCDD.

RECITALS

- A. MCDD, Peninsula Drainage District No. 1 ("PEN 1"), Peninsula Drainage District No. 2 ("PEN 2"), and Sandy Drainage Improvement Company ("SDIC") operate and maintain levees and drainage facilities along and in the vicinity of the Columbia River that lie within their respective jurisdictional boundaries (the "Levees"), among other duties. The Levees were originally constructed around 1916 and have been periodically upgraded by the U.S. Army Corps of Engineers (the "USACE"), and are therefore federally authorized. Through intergovernmental agreements, MCDD has general management authority over PEN 1, PEN 2, and SDIC. All references to MCDD in this agreement will mean MCDD acting on its behalf and on behalf of the other three drainage entities.
- B. PBOT desires to install three segments of off-street bicycle and pedestrian pathways and one segment of an on-street pathway, with a crossing signal along Marine Drive within the boundaries of the Columbia River Levees managed by MCDD (the "Project"). The Project is part of Oregon's Congestion Mitigation and Air Quality Improvement program, paid for by federal transportation funds awarded by Metro and administered by the Oregon Department of Transportation. PBOT has been actively advancing the Project through design, with a target bid date of April 2016, and construction planned for the summer of 2016. Design is currently 70 percent complete. All required right-of-way for the Project is owned by the City of Portland.
- C. Because the Project requires a drilling investigation into the Levee to determine the appropriate foundation for the signal as well as drilling to install the signal, PBOT must obtain a permit from USACE pursuant to 33 U.S.C. § 408 ("Section 408"). As required by USACE's guidance on Section 408, a permitting request to USACE must come from the local sponsor of the federally-authorized Levee, MCDD. USACE will not consider a permit request without the endorsement from the local sponsor.

- D. For endorsement purposes, MCDD reviews a proposed project's impact to the levee based on a number of factors, including those specified by USACE and by MCDD's statutory authorities, and operations and maintenance needs.
- E. MCDD conducts its Section 408 reviews by utilizing in-house staff and contracted technical consultants. MCDD is in the process of development of permit review fees to recover its actual costs of conducting Section 408 permit reviews. Given the Project time frame, PBOT and MCDD desire to expedite the permitting process prior to enactment of such fees. The purpose of this MOA is to provide for an expedited review by MCDD of a Section 408 permit and to provide for reimbursement of MCDD's costs of conducting the review by PBOT.

ARTICLE I

MCDD Responsibility

1. Upon receipt of a complete Section 408 application for the Project by PBOT, MCDD agrees to conduct an expedited review of the application, including retention of the necessary technical expertise to complete the review, and, if supported by the review, endorse the Project for Section 408 permit approval by USACE. Endorsement by MCDD does not guarantee approval by USACE.
2. At the conclusion of the MCDD review of PBOT's Section 408 permit application, MCDD will submit a written invoice detailing its actual costs for processing the permit to PBOT. For the purposes of this review, "actual costs" include the fully-loaded salary and payroll costs of MCDD employees participating in the review. Such costs will be prorated on an hourly basis based upon a 2,080-hour work year. Such costs will also include MCDD's direct expenses of conducting the review, if any, and MCDD's actual costs of retaining the necessary professional and technical consultants (including engineering and legal) to complete the review.

ARTICLE II

PBOT Responsibility

1. PBOT will submit a complete application for a Section 408 permit for the Project in a timely manner, and submit any additional requested information necessary for MCDD to make a final determination on the permit in a timely manner.
2. Upon MCDD's endorsement of the Project and submission of the Project application to USACE, PBOT must continue to cooperate and assist MCDD to ensure approval of the Project by USACE, including diligently providing additional information or documents USACE may request to further evaluate the Project for approval of a Section 408 permit.
3. Within 30 days of receipt of MCDD's invoice described in Article I (2), PBOT shall remit payment in full to MCDD.

ARTICLE III

General Provisions

1. Access to Records. Both Parties and their duly authorized representatives shall have access to the books, documents, papers, and records that are directly pertinent to the agreement for the purpose of making audits, examinations, excerpts, and transcripts.
2. Force Majeure. Neither party shall be held responsible to the other for any delay or default caused by fire, riot, civil commotion, war, act of God, or any other like condition or event which is beyond its reasonable control and which by the exercise of reasonable diligence it is unable to prevent.
3. Severability. If any of the provisions of this MOA are held to be invalid or unenforceable, the remaining provisions will remain valid and binding upon the Parties.
4. 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.
5. Amendments. The Parties may amend this MOA from time to time by mutual written agreement signed by the authorized representatives.
6. Compliance with Law. The Parties agree to abide by all laws and regulations applicable to this agreement.
7. Integration. This MOA constitutes the entire understanding 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.
8. Execution. This MOA 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.

187762

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Agreement this _____ day of _____, 2016.

**MULTNOMAH COUNTY DRAINAGE
DISTRICT**

By: _____

Its: _____

Date: _____

THE CITY OF PORTLAND, by and
through its elected officials.

By: _____

Commissioner-in-charge

Date:: _____

By: _____

APPROVED AS TO LEGAL
SUFFICIENCY

By: _____

City Attorney

Cate: _____