

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
WEST MULTNOMAH SOIL & WATER CONSERVATION DISTRICT
AND MULTNOMAH COUNTY**

THIS AGREEMENT ("Agreement") is made and entered into by and between MULTNOMAH COUNTY, acting by and through its elected officials, hereinafter referred to as "County"; and WEST MULTNOMAH SOIL & WATER CONSERVATION DISTRICT acting by and through its governing body, hereinafter referred to as "District", both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. ORS 190.003 to 190.030 allows units of local government to enter into agreement for performance of any or all functions and activities which such units have authority to perform; and
2. District is the local sponsor of the Sturgeon Lake Restoration Project (the "Project"). The Project purpose is to restore the hydrologic connectivity of the Columbia River to Sturgeon Lake through Dairy Creek, improving ecological function of Sturgeon Lake within the Lower Columbia River estuary, including the ecological function of Dairy Creek, thereby improving fish and wildlife habitat and providing other environmental benefits.
3. District is working on the Project in conjunction with the Bonneville Power Administration ("BPA"), a federal agency with the U.S. Department of Energy, through its Fish and Wildlife Program. BPA's involvement in the Project is authorized under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 ("Northwest Power Act") (16 U.S.C. § 839b(h)(10)(A)).
4. Sturgeon Lake is a 2,400 acre water body located within the Sauvie Island Wildlife Area, which is managed by the Oregon Department of Fish and Wildlife ("ODFW"). Due to changes in the hydrologic regime of Sauvie Island caused by the construction of U.S. Army Corps of Engineers levees in 1942, Sturgeon Lake has decreased in size and depth. One of Sturgeon Lake's primary feeders is a channel from the Columbia River called Dairy Creek, which is at river mile 98.5. Currently, Dairy Creek's confluence with the Columbia River is plugged by silt, debris and the channel connecting Dairy Creek to Sturgeon Lake has severe flow constrictions due to two inadequately sized and partially plugged culverts at the Reeder Road crossing. Consequently, flows from the Columbia River through Dairy Creek and into upper Sturgeon Lake are infrequent and much reduced in power and limited to higher stages, typically in spring and early summer. Without increased flushing inflow from Dairy Creek, silt will continue to pile up in Sturgeon Lake and it is destined to become increasingly shallow and filled in, resulting in habitat loss for out-migrating salmon that use the lake as a refuge, as well as waterfowl and other wildlife that use the lake as habitat.
5. Approximately 1,700 feet from the mouth, Dairy Creek begins to run in a north-easterly direction immediately to the east of NW Reeder Road, which is a public road right of

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way under the jurisdiction of the County. The Dairy Creek channel, which is the primary connection between Sturgeon Lake and the Columbia River, crosses under NW Reeder Road through two undersized, failing culverts ("Existing Culverts") that have exceeded their useful life.

6. The Project is intended to restore this loss of habitat by restoring the hydrological connectivity of Sturgeon Lake with the Columbia River through replacement of the Existing Culverts with a bridge ("Reeder Road Bridge") that allows for an unconstrained channel underneath Reeder Road. The Reeder Road Bridge is more particularly depicted in the attached Exhibit 1, which is attached hereto and incorporated by reference herein. The Project will also replace the failed debris boom at Dairy Creek's confluence with the Columbia River. The Dairy Creek channel to the east of Reeder Road will be configured to have a low flow channel designed to maximize the period of flow throughout the year so as to provide fish passage between upper Sturgeon Lake and the Columbia River. Riparian function will be restored through the removal of invasive plant species along the upper and top of banks of the channel and replaced with native species that increase shade, organic inputs and habitat.
7. District is responsible for acquiring all land, easements, right-of-way, relocations and disposal sites for the Project.
8. In addition to the County, ODFW, and BPA, District is also working with the following contributors to the Project: Metro Parks and Nature, Oregon Watershed Enhancement Board, Oregon Wildlife Heritage Foundation and the U.S. Army Corps of Engineers, (collectively called "Project Partners").

NOW THEREFORE, in order to assist the District in meeting its responsibilities with the Project, as well as to maintain the County's right-of-way and any real estate interests associated with the Project, it is agreed by and between the Parties hereto as follows:

AGREEMENT

1. **Term of Agreement.** This Agreement becomes effective upon execution by both Parties and will terminate on either December 31, 2019 or upon completion of the Project, as determined by the Parties, whichever occurs first.
2. **General Purposes of the Agreement**
 - A. The District and County will work in good faith to negotiate and enter into a Temporary Construction and Work Area Easement (the "Temporary Construction Easement") that will authorize the use of the approximately 1.6 acres of NW Reeder Road during Project construction to remove the Existing Culverts, reconfigure the Dairy Creek channel and to construct the Reeder Road Bridge. The County intends to accept ownership and maintenance responsibilities for the Reeder Road Bridge as part of the NW Reeder Road right-of-way.
 - B. The County and the District will work in good faith to negotiate and enter into a separate "Channel Improvement" Intergovernmental Agreement (the "Channel

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Improvement IGA”) that will address the roles and responsibilities of maintaining the Dairy Creek channel for fish passage and hydrologic connectivity between Sturgeon Lake and the Columbia River. This will include District assuming responsibility for channel maintenance and fish passage on behalf of the County for the area underneath the Reeder Road Bridge pursuant to ORS 509.580 to 910 and in OAR 635, Division 412. In both cases, the Channel Improvement IGA will secure ODFW’s responsibility to perform the actual channel and fish passage maintenance operations in fulfillment of the District’s responsibility.

3. County’s Obligations. County agrees to:

- A. Provide funding, in an amount not to exceed THREE HUNDRED THOUSAND DOLLARS (\$300,000.00), to District for: (1) the acquisition of all necessary temporary or permanent real property interests required by the Project; (2) for the construction and installation of the Reeder Road Bridge; and (3) for the construction, operations and maintenance of the Dairy Creek Channel and necessary Project improvements at the channel’s confluence with the Columbia River.
- B. Said funds will be advanced to District for the purposes listed under Section 3A.
- C. Provide District with County’s permanent road purposes or other acceptable easement form or language for inclusion into District’s easements to be acquired for the Project; and for any additional real estate interests from the adjoining landowners needed to secure County’s right to operate, maintain, and access the Reeder Road Bridge.
- D. Participate in the final design and the development of plans and specifications for the Reeder Road Bridge including approval of the final designs and plans for the Reeder Road Bridge.
- E. Upon completion of the Reeder Road Bridge and at County’s sole determination, accept the easement or easement terms described above in Section 3C from District.
- F. Upon completion of the Reeder Road Bridge, accept ownership and maintenance responsibilities of that structure, where said ownership and maintenance responsibilities will be acknowledged in the Temporary Construction Easement.
- G. Process and record County accepted and signed permanent easement forms in the County’s Recorder’s Office. County will be responsible for any recording fees.
- H. Work in good faith with District and ODFW to execute the Channel Improvement IGA.
- I. Grant to the District the Temporary Construction Easement.
- J. County will not be responsible for or involved in any necessary real or personal property acquisitions resulting from Project.

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4. District's Obligations. District agrees to:

- A. Perform, or cause to be performed, right of way acquisition work in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (Federal Act) and any applicable State law, including but not limited to: development and delivery of general information notices, perform appraisals and appraisal reviews, negotiate agreements and obtain permanent easements in a form acceptable to the County Engineer for the Project (hereafter, referred to as "Work").
- B. If District hires a consultant to perform this Work, said consultant must be on the Oregon Department of Transportation's certified list to perform appraisals, appraisal reviews, property acquisition negotiations, and relocation assistance. District shall be responsible to pay invoices and bills due for any consultant services related to the Project.
- C. Provide payments for just compensation to any person found to be entitled to just compensation, provide relocation assistance as required under the Federal Act and State law to any eligible person.
- D. District will only acquire real property interests for the Project, including the Reeder Road Bridge, from willing sellers. District has no eminent domain authority to condemn real property interests for the Project. If all the Project property owners do not willingly convey the property rights necessary for the Project, District will not complete construction of the Project, including but not limited to the Reeder Road Bridge. District will not spend the funds advanced in Section 3A until all of the said necessary property interests are acquired or secured through an option agreement, purchase agreement contingency or similar type of legal instrument between District and the Project property owners.
- E. Enforcement, whether through litigation, mediation, arbitration or any other means, of any agreement to acquire a real property interest from a willing seller for the Project, including the Reeder Road Bridge, is the sole responsibility of District. If District chooses to pursue litigation as contemplated under this section, it will be responsible for all costs, expenses, fees including but not limited to attorney and expert fees incurred in said litigation.
- F. Work with the Project Partners to ensure that the design and construction of the Reeder Road Bridge meets federal, state and County laws, rules, regulations and requirements.
- G. Provide periodic and timely updates to County on the status of the right of way negotiations. District will promptly notify County of any conflicts or complications which arise in property acquisition negotiations.

5. Compensation. District and County agree that no money or funds will be exchanged directly between the Parties as a result of this Agreement, except as otherwise set forth in Section 3A of this Agreement.

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6. Termination

- A. This Agreement may be terminated at any time by mutual agreement of the Parties.
- B. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination.
- C. In the event this Agreement is terminated without completion of the Reeder Road Bridge, regardless of the reason, any unspent monies advanced to District under this Agreement shall be refunded to County, but any money expended by District toward the Project after securing all the necessary property interests pursuant to Section 4D for the project purposes as set forth in Section 2A above is not recoverable.

7. Contact Information.

County's liaison for the Project will be:

Riad Alharithi, PE
Road Engineering Manager
Multnomah County - Transportation Division
1620 SE 190th Ave,
Portland, Oregon 97233
(503) 988-0181
riad.alharithi@multco.us

District's liaison for the Project will be:

Jim Cathcart, District Manager
West Multnomah Soil & Water Conservation District
2701 NW Vaughn Street – Suite 450
Portland, Oregon 97210
(503) 238-4775 Ext. 106
jim@wmswcd.org

8. General Terms

- A. Compliance with Laws. District and County agree to comply with all applicable local, state, and federal ordinances, statutes, laws, rules and regulations.
- B. Negation of Agency and Partnership. Any agreement by either Party to cooperate with the other in connection with any provision of this Agreement shall not be construed as making either Party an agent or partner of the other Party.
- C. Indemnity and Hold Harmless. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, District shall hold harmless and indemnify County, its, officers, employees, and agents

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against any and all claims, damages, losses and expenses (including all attorney(s) fees and costs), arising out of, or resulting from the District's performance of this Agreement when the loss or claim is attributable to the acts or omissions of the District.

Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, County shall hold harmless and indemnify District, its officers, employees, and agents against all claims, damages, losses and expenses (including all attorney(s) fees and costs) arising out of or resulting from County's performance of this Agreement when the loss or claim is attributable to the intentional acts or omissions of County.

- D. Authorization. The Parties certify and represent that the individual(s) signing this Agreement have been authorized to enter into and execute this Agreement, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind each Party.
- E. Exhibits and Recitals. The exhibits and recitals are incorporated into this Agreement by this reference.
- F. Counterparts. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together will constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed will constitute an original.
- G. Entire Agreement. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement will not constitute a waiver by either Party of that or any other provision.
- H. Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- I. Notice. Any notice required or permitted under this Agreement shall be in writing and deemed given when either 1) actually delivered, or 2) three (3) days after deposit in United States certified mail, postage prepaid, addressed to the other Party to the contact at the address listed above in Section 7.
- J. Jurisdiction; Law. This Agreement is executed in the State of Oregon and is subject to Oregon law and jurisdiction. Venue for any trial court proceeding to enforce this

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Agreement shall be in Multnomah County Circuit Court, unless otherwise agreed in writing by the Parties.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

COUNTY


By: Board of County Commissioners

Deborah Kafoury, Chair

Date

DISTRICT

By: West Multnomah Soil & Water
Conservation District



Terri Preeg Riggsby, President

5/10/2017

Date

REVIEWED:

By _____
Courtney Lords
Assistant County Attorney

Date

By _____
William F. Paulus
Attorney for the District

Date

THE STATE OF OREGON, County of Multnomah, ss:
I, the undersigned, a Notary Public in and for the State of Oregon, do hereby certify that the within and foregoing is a true and correct copy of the original of the within and foregoing, as the same appears from the records of the County of Multnomah, State of Oregon, in and to which said original is on file and recorded.

WITNESS MY HAND AND SEAL OF OFFICE

ATTEST:

Notary Public in and for the State of Oregon

My Commission Expires

Notary Public in and for the State of Oregon

RECEIVED

Notary Public in and for the State of Oregon

Notary Public in and for the State of Oregon