

Intergovernmental Drainage Facility Maintenance and Service Agreement

SD-1312-016-IGA

This Intergovernmental Agreement ("IGA") is entered into by the Sandy Drainage Improvement Company, a public drainage corporation organized under ORS 554.005 to ORS 554.340 ("SDIC"); and Multnomah County, a political subdivision of the State of Oregon ("County") (collectively, "the Parties") pursuant to ORS Chapter 190 and ORS 554.260 for the Purposes of Providing Drainage Services (Agreement) in certain areas of unincorporated Multnomah County that are west of the Sandy River and within the cities of Troutdale and Fairview.

RECITALS

- A. SDIC is responsible for the maintenance of certain drainage facilities it operates that are linked together by existing right of way to drainage facilities under the jurisdiction of the County.
- B. Presently SDIC maintains the County's drainage facilities as part of the ongoing maintenance work of SDIC's facilities. This work has been done by SDIC without the benefit of a written agreement between the parties.
- C. The Parties believe it is in the best interests of the public to continue the current practice under a written agreement that describes the work to be performed and specifically identifies the areas where the work is to be conducted.

AGREEMENT

I. PURPOSE

The purpose of this agreement is to:

- A. Provide for the maintenance of specific County drainage facilities by SDIC within the area bounded by NE 223rd Ave, NE Marine Drive, and west of the Sandy River, located within the cities of Troutdale and Fairview ("Maintenance Service Area" or "MSA") as particularly described in the attached Exhibit A.
- B. Identify the specific County Facilities to be serviced under this Agreement and the services to be performed by SDIC on those facilities in the MSA.
- C. Provide for monitoring of the services delivered by SDIC.
- D. Provide for Country payment for the service provided by SDIC.

II. DEFINITIONS

- A. County Road: All public roads under the jurisdiction of Multnomah County as defined by ORS

368.001 (1), (5) and (6) which have been formally adopted and accepted or legalized by the Board of County Commissioners as County roads and designated as such by the County Engineer.

- B. Roadway Facilities: Public infrastructure and improvements within the right-of-way of County Roads including, but not limited to: pavement surface and subsurface, pavement markings, signs, traffic signals, shoulders, ditches, culverts, storm sewers, manholes, sumps, catch basins, and trash racks.
- C. Drainage Facilities: Roadway Facilities designed specifically and installed for the control or containment of stormwater or runoff water in conjunction with the public road, including but not limited to: ditches, culverts, storm sewers, manholes, sumps, catch basins, and trash racks.
- D. Maintenance: Ordinary maintenance and repair work necessary to preserve Roadway Facilities.
- E. Drainage Facility Maintenance: Cleaning and routine maintenance of Drainage Facilities to maintain the flow of storm and runoff water and the general condition of the system.
- F. Emergency Events: Events including snow and ice, wind storms, flooding, and other natural events and/or human caused events affecting Drainage Facilities that require immediate action to protect people or property.
- G. Maintained Ditch: An open Drainage Facility ditch, which directs water into a stormwater conveyance system.

III. TERMS AND CONDITIONS

- A. Term. The term of this Agreement shall begin July 1, 2013 and will expire July 1, 2018, subject to early termination rights of the Parties as further provided herein.
- B. Mutual Indemnity. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, as applicable to a local public body, the County shall indemnify, defend and hold harmless SDIC, its officers, agents, and employees, from and against all liability, loss and costs arising out of or resulting from the acts of County, its officers, employees and agents in the performance of this agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300 as applicable to a local public body SDIC shall indemnify, defend and hold harmless County, its officers, agents, and employees, from and against all liability, loss and costs arising out of or resulting from the acts of SDIC, its officers, employees and agents in the performance of this agreement.
- C. Insurance. Each party shall be responsible for providing worker's compensation insurance as required by law. The County is self-insured for general liability and workers compensation.

SDIC is not self-insured and shall provide proof of insurance through Multnomah County Drainage District No. 1 ("MCDD"), the entity that manages SDIC. County is to be added as an additional insured to the following liability insurance coverage and policies:

- a. General Liability Insurance of not less than One Million Dollars (\$1,000,000.00).
 - b. Comprehensive automobile liability insurance of not less than One Million (\$1,000,000.00) per occurrence.
 - c. Workers' Compensation insurance as required by law.
 - d. Auto Liability insurance of not less than One Million Dollars (\$1,000,000.00).
 - e. Professional Liability insurance where applicable.
- D. This Is The Entire Agreement. This Agreement constitutes the entire Agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.
- E. Right-of-Way Permit. This Agreement constitutes a County Right-of-Way Permit for SDIC's work done in compliance with this Agreement.
- F. Adherence to Law. Each party shall comply with all federal, state and local laws and ordinances applicable to this agreement.
- G. Non-Discrimination. Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
- H. Access to Records. Each party shall have access to the books, documents and other records of the other which are related to this agreement for the purpose of examination, copying and audit, unless otherwise limited by law.
- I. Subcontracts and Assignment. Neither party will subcontract or assign any part of this agreement without the written consent of the other party. SDIC's contracting with Multnomah County Drainage District to perform maintenance work under this agreement shall not be a violation of this sub-section.
- J. Early Termination. This Agreement may be terminated as follows:
1. County and SDIC, by mutual written agreement, may terminate this Contract at any time.
 2. County or SDIC may individually terminate this Agreement for any reason on 120 days written notice to the other party.
 3. Either County or SDIC may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination. Parties further agree to consider Alternative

Disputes Resolution prior to termination.

IV. SDIC RESPONSIBILITIES

- A. Scope of Services. SDIC shall provide Maintenance Services in a manner consistent with applicable operations and maintenance best management practices as set forth in the County's Stormwater Management Plan for the current County National Pollution Discharge Elimination System ("NPDES") Municipal Stormwater Permit.
- B. Routine Maintenance
1. SDIC shall conduct regular inspections at least twice a calendar year (April-October) of the County's facilities in the MSA.
 2. Drainage Facility Maintenance. SDIC will provide the following routine maintenance services:
 - a. Culvert maintenance. SDIC shall clean and maintain culverts to SDIC standards.
 - b. Ditch maintenance. SDIC shall clean and maintain ditches to SDIC standards.
 - c. Trash rack maintenance. SDIC shall clean and repair trash racks to SDIC standards.
 - d. Catch basin maintenance, sumps and storm sewer maintenance. SDIC shall clean and repair maintenance, sumps and storm sewer to SDIC standards.
 - e. Maintenance for drainage facilities will be limited to facilities in the right-of-way and within adequate easements when the facility is located on private property. SDIC will notify the County if the easement is insufficient for proper maintenance.
 3. Lane Closure Requirements.
 - a. SDIC will conduct all work in the public right of way in compliance with a County approved Traffic Control Plan.
 - b. SDIC is required to obtain written County approval before any lane closures of any county road in the MSA, except in a flood emergency event. SDIC shall immediately notify the County upon its determination to close a lane or the entirety of a county road because of a flood emergency event. SDIC staff shall remain at the flood emergency road closure site until an authorized County representative arrives.
 4. Reporting. If SDIC staff during the course and scope of its performance has a good faith reason to believe that there is a code violation, nuisance, road hazard or similar condition within the MSA in the public right of way, or encroaching into the right of way from abutting property, SDIC shall advise the County representative in writing as soon as practicably possible of the date, location and the nature of the condition.
- C. Non-Routine Maintenance. SDIC is authorized to perform the following non-routine maintenance tasks in the MSA:
1. Replace grates.
 2. Repair slope failures.
 3. Remove beaver dams from culverts.
 4. SDIC will notify the County immediately upon observation of a chemical spill. Parties agree that County has an alternate method for hazardous spill containment and cleanup.

SDIC agrees to attempt to contain any immediate danger spills to the best of their ability and within their certifications.

5. Any other requests from Multnomah County for similar kinds of work in the MSA.

D. Emergency Response.

1. SDIC will maintain 24 hour emergency response capabilities.
2. SDIC will respond to emergencies as set forth in Section VI.

- E. Disposal of Waste, Refuse, Toxic and Hazardous Materials. SDIC will transport and dispose of all waste, refuse, toxic and hazardous materials arising from maintenance activities on Drainage Facilities in the MSA, in compliance with all applicable Federal, State or local environmental laws, codes or regulations; except as provided for in Section VI.

V. COUNTY RESPONSIBILITIES

- A. Coordination of Operational Changes and Improvements. The County will notify SDIC of changes to the County's Drainage Facilities in the MSA.

B. Easements.

1. The County shall inventory and identify the boundaries of the County's right of way interests in the MSA including but not limited to deeds, road purpose deeds, and slope and drainage easements to assess the current status of these interests. The parties will stipulate to certain minimum area standards for easements.
2. Upon the written notice to the County by SDIC that an existing easement access is not in conformance with the minimum area standards, the Parties agree to meet to discuss alternatives and options to address the situation.
3. If the County agrees with SDIC's position under sub-section B.2 herein, the County reserves the right to withdraw a drainage facility or to procure a perpetual or temporary easement or use permit from the property owner. The choice is solely in the County's discretion.

- C. Code Enforcement. The County will be responsible for notification of property owners regarding and enforcement of code violations, whether on private property or in the public right of way.

VI. EMERGENCY RESPONSE

- A. SDIC shall perform first emergency response for Drainage Facilities in the MSA for all Emergency Events.
- B. In the event that SDIC determines that additional emergency response is needed to handle an Emergency Event, SDIC will notify the County representative at the emergency contact phone number as soon as practical and shall cooperate with the County and any third party public agencies or contractor hired by the County to respond to the Emergency Event until the County

authorizes SDIC to stand down.

- C. In the event of a hazardous or toxic material spill, release or discharge, SDIC shall contact the County representative at the emergency contact phone number as soon as practical and shall cooperate with the County and any third party public agency or contractor hired by the County to respond to the hazardous or toxic material Emergency Event until the County expressly authorizes SDIC to stand down.
- D. When a party responsible for a hazardous or toxic material spill, release or discharge has been identified, the County will be responsible for sending the clean-up bill to the identified party.

VII. INVOICE AND PAYMENT

A. Annual Invoice.

- 1. SDIC shall annually submit a written invoice on its letterhead for all routine maintenance services provided under Section IV.B not later than June 30th of the fiscal year in which the expenses were incurred. The invoice shall include a report of the locations, dates, hours and type of routine maintenance service performed during the fiscal year.
- 2. The annual SDIC invoice shall include a bill for any non-routine services, including Emergency Services, performed by SDIC that were authorized under Section IV.C. during the fiscal year in which the expenses were incurred. The invoice shall include a report of the locations, dates, hours and type of non-routine services performed.

B. Payment.

Upon receipt of the annual SDIC invoice, the County shall have 30 days to review the invoice. The County will pay SDIC up to \$6,500.00 per fiscal year (or as adjusted by addendum under VII.C) for the routine maintenance services if the invoice reasonably confirms that SDIC performed the required maintenance services in the MSA. The County will pay for the non-routine services, including Emergency Services, at the actual SDIC employee hourly rate and the County approved cost or expense reimbursement rate.

C. Adjustment.

Not less than 90 days before June 30th of each fiscal year, SDIC shall have the right to request an adjustment of the compensation rates under this Section for the upcoming fiscal year. If SDIC requests a rate adjustment, the parties shall mutually agree to any rate readjustment under this Section. SDIC shall provide new rate tables when rates change at the start of renewal proposal. The Parties will amend the Agreement to reflect any agreed upon changes in the rates under this Section.

VIII: PROJECT MANAGEMENT

A. SDIC project managers will be:

- 1. Administrative Issues: Natural Resources Program Manager. Administrative issues includes contract negotiation, tracking of costs, and coordinating the delivery of reporting

materials to the County.

Sunny Simpkins, Natural Resources Program Manager
(503) 281-5675 x 313 office
(503) 705-4944 cell
ssimpkins@mcdd.org

2. Operational Issues: Operations Manager. Operation issues includes day to day provision of drainage facility services.

Josh McNamee, Operations Manager
(503) 281-5675 x 310 office
(503) 201-0509 cell
jmcnamee@mcdd.org

3. Emergency Contact Representative: (Name and street address, phone numbers, email, or other electronic contact information).
Either of the two contacts above.

B. The County's project managers will be:

1. Administrative Issues: Road Maintenance Operations Manager. Administrative issues includes contract negotiation, tracking of costs, and arranging for service payments to SDIC.

John Niiyama
[503-988-5050](tel:503-988-5050) ext 29611 office
[503-703-5647](tel:503-703-5647) cell
john.niiyama@multco.us

2. Operational Issues: District 4/ESC Supervisor. Operation issues includes day to day provision of drainage facility services.

Tim Burke
[503-988-5050](tel:503-988-5050) ext 29612 office
[503-314-3003](tel:503-314-3003) cell
tim.burke@multco.us


3. Emergency Contact Representative:

John Niiyama
[503-988-5050](tel:503-988-5050) ext 29611 office
[503-703-5647](tel:503-703-5647) cell
john.niiyama@multco.us

- C. A Party may change a designated project manager by written notification to the other party containing the name, title, and contact information for such party.

IT IS SO AGREED:

SANDY DRAINAGE IMPROVEMENT
COMPANY

By: 
Reed Wagner, Executive Director of
Sandy Drainage Improvement Company

Date: 7/2/14

COUNTY OF MULTNOMAH

By: _____
Deborah Kafoury, Chair of the
Multnomah County Commission

Date: _____

APPROVED AS TO FORM:

By: _____
Jenny M. Madkour, County Attorney