



Multnomah County Oregon

# Board of Commissioners & Agenda

connecting citizens with information and services

## BOARD OF COMMISSIONERS

### Ted Wheeler, Chair

501 SE Hawthorne Boulevard, Suite 600  
Portland, Or 97214

Phone: (503) 988-3308 FAX (503) 988-3093

Email: [mult.chair@co.multnomah.or.us](mailto:mult.chair@co.multnomah.or.us)

### Maria Rojo de Steffey, Commission Dist. 1

501 SE Hawthorne Boulevard, Suite 600  
Portland, Or 97214

Phone: (503) 988-5220 FAX (503) 988-5440

Email: [district1@co.multnomah.or.us](mailto:district1@co.multnomah.or.us)

### Jeff Cogen, Commission Dist. 2

501 SE Hawthorne Boulevard, Suite 600  
Portland, Or 97214

Phone: (503) 988-5219 FAX (503) 988-5440

Email: [district2@co.multnomah.or.us](mailto:district2@co.multnomah.or.us)

### Lisa Naito, Commission Dist. 3

501 SE Hawthorne Boulevard, Suite 600  
Portland, Or 97214

Phone: (503) 988-5217 FAX (503) 988-5262

Email: [district3@co.multnomah.or.us](mailto:district3@co.multnomah.or.us)

### Lonnie Roberts, Commission Dist. 4

501 SE Hawthorne Boulevard, Suite 600  
Portland, Or 97214

Phone: (503) 988-5213 FAX (503) 988-5262

Email: [lonnie.j.roberts@co.multnomah.or.us](mailto:lonnie.j.roberts@co.multnomah.or.us)

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## SEPTEMBER 2 & 4, 2008

## BOARD MEETINGS

### FASTLOOK AGENDA ITEMS OF INTEREST

Pg 2	9:00 a.m. Tuesday Executive Session
Pg 2	10:00 a.m. Tuesday Briefing on Public Safety
Pg 3	9:30 a.m. Thursday Opportunity for Public Comment on Non-Agenda Matters
Pg 3	9:35 a.m. Proclamation declaring the Week of September 26 to October 2, 2008, as Minority Enterprise Development Week
Pg 4	9:45 a.m. Public Hearing on Request for Reconsideration of Ric and Lee Ball's Appeal of ITAX Administrator's Final Determination
Pg 4	10:10 a.m. Thursday Opportunity for Board Comment on Non-Agenda Matters

Thursday meetings of the Multnomah County Board of Commissioners are cable-cast live and taped and may be seen by Cable subscribers in Multnomah County at the following times:

Thursday, 9:30 AM, (LIVE) Channel 30  
Saturday, 10:00 AM, Channel 29  
Sunday, 11:00 AM, Channel 30  
Tuesday, 8:15 PM, Channel 29

Produced through MetroEast Community Media  
(503) 667-8848, ext. 332 for further info  
or: <http://www.metroeast.org>

Tuesday, September 2, 2008 – 7:30 AM to 9:00 AM  
Multnomah Building, Third Floor Conference Room 315  
501 SE Hawthorne Boulevard, Portland

## **LOCAL PUBLIC SAFETY COORDINATING COUNCIL EXECUTIVE COMMITTEE MEETING**

A quorum or more of the Multnomah County Board of Commissioners may Attend the Local Public Safety Coordinating Council Executive Committee meeting. This meeting is open to the public. For further information contact Carol Wessinger at (503) 988-5217

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Tuesday, September 2, 2008 - 9:00 AM  
Multnomah Building, Sixth Floor Commissioners Conference Room 635  
501 SE Hawthorne Boulevard, Portland

### **EXECUTIVE SESSION**

- E-1 The Multnomah County Board of Commissioners will meet in Executive Session Pursuant to ORS 192.660(2)(d),(e) and/or (h). Only Representatives of the News Media and Designated Staff are allowed to attend. News Media and All Other Attendees are Specifically Directed Not to Disclose Information that is the Subject of the Session. No Final Decision will be made in the Session. Presented by County Attorney Agnes Sowle. 15-55 MINUTES REQUESTED.
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Tuesday, September 2, 2008 - 10:00 AM  
Multnomah Building, First Floor Commissioners Boardroom 100  
501 SE Hawthorne Boulevard, Portland

### **BOARD BRIEFING**

- B-1 Public Safety Briefing on (1) Options for the Use of Current Jail Space and (2) Potential Impacts of Ballot Measures 61 and 57 on the County's Plan to Open the Wapato Jail
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Thursday, September 4, 2008 - 9:30 AM  
Multnomah Building, First Floor Commissioners Boardroom 100  
501 SE Hawthorne Boulevard, Portland

## **REGULAR MEETING**

### **CONSENT CALENDAR - 9:30 AM**

#### **DEPARTMENT OF COMMUNITY SERVICES**

- C-1 RESOLUTION Setting the Public Hearing Date of September 18, 2008 for the Proposed Transfer of Tax Foreclosed Properties to Local Government Agencies for Non Housing Purposes and Authorizing Publication of Notice in The Daily Journal of Commerce

#### **DEPARTMENT OF COMMUNITY JUSTICE**

- C-2 Budget Modification DCJ-06 Reclasses a Research/Evaluation Analyst 2 to a Research/Evaluation Analyst Senior in the Employees, Community & Clinical Services Division, as Determined by the Class/Comp Unit of Central Human Resources

### **REGULAR AGENDA**

#### **PUBLIC COMMENT - 9:30 AM**

Opportunity for Public Comment on non-agenda matters. Testimony is limited to three minutes per person. Fill out a speaker form available in the Boardroom and turn it into the Board Clerk.

#### **NON-DEPARTMENTAL - 9:30 AM**

- R-1 9:30 A.M. TIME CERTAIN: Reappointment of Claudia Burnett to the REGIONAL ARTS & CULTURE COUNCIL

#### **DEPARTMENT OF COUNTY MANAGEMENT - 9:35 AM**

- R-2 PROCLAMATION Proclaiming the Week of September 26 to October 2, 2008, as Minority Enterprise Development Week in Multnomah County, Oregon

**COUNTY ATTORNEY'S OFFICE – 9:45 AM**

R-3 **9:45 A.M. TIME CERTAIN:** PUBLIC HEARING and Board Decision on Request for Reconsideration of Board Order No. 07-158 Denying Ric and Lee Ball's Appeal of ITAX Administrator's Final Determination

**DEPARTMENT OF HEALTH – 9:55 AM**

R-4 Budget Modification HD-03 Transferring \$178,377 in Fiscal Year 2009 County General Fund Budget Authority from the Department of County Management to the Health Department

**DEPARTMENT OF COMMUNITY SERVICES – 10:00 AM**

R-5 Second Reading of a proposed ORDINANCE Amending Multnomah County Code Chapter 29, Relating to County Flood Hazard Regulations

R-6 RESOLUTION Authorizing a Loan from the Oregon Transportation Infrastructure Fund for the 223<sup>rd</sup> Avenue Railroad Under-crossing Reconstruction Project

**SHERIFF'S OFFICE – 10:10 AM**

R-7 NOTICE OF INTENT to Apply on the Edward Byrne Memorial Justice Grant Program

**BOARD COMMENT – 10:15 AM**

Opportunity (as time allows) for Commissioners to provide informational comments to Board and public on non-agenda items of interest or to discuss legislative issues.



# MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS  
501 S.E. HAWTHORNE BLVD., Room 600  
PORTLAND, OREGON 97204  
(503) 988-5217

LISA NAITO • DISTRICT 3 COMMISSIONER

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## MEMORANDUM

TO: Chair Ted Wheeler  
Commissioner Maria Rojo de Steffey  
Commissioner Jeff Cogen  
Commissioner Lonnie Roberts  
Board Clerk Deb Bogstad

FROM: Keith Falkenberg  
Staff to Commissioner Lisa Naito

DATE: September 4, 2008

RE: Commissioner Naito is ill and will be participating by phone in today's Board Meeting.

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Commissioner Naito is ill and will be participating by phone in today's Board Meeting.

Thank you,  
Keith Falkenberg



**MULTNOMAH COUNTY**  
**AGENDA PLACEMENT REQUEST short form**

**Board Clerk Use Only**

Meeting Date: 09/04/08  
 Agenda Item #: C-1  
 Est. Start Time: 9:30 AM  
 Date Submitted: 08/11/08

**Agenda Title**    **RESOLUTION Setting the Public Hearing Date of September 18, 2008 for the Proposed Transfer of Tax Foreclosed Properties to Local Government Agencies for Non Housing Purposes and Authorizing Publication of Notice in The Daily Journal of Commerce**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

**Date Requested:** September 4, 2008                      **Time Requested:** Consent Item  
**Department:** Community Services                      **Division:** Tax Title  
**Contact(s):** Gary Thomas  
**Phone:** 503-988-3590    **Ext.** 22591    **I/O Address:** 503/4/TT  
**Presenter(s):** Gary Thomas

**General Information**

**1. What action are you requesting from the Board?**

The Tax Title Section is requesting the Board to set September 18, 2008 as a date to receive public testimony concerning the proposed transfer of tax foreclosed properties to local government agencies for non-housing purposes. Further we request the Board to authorize the publication of the required public notice for the proposed hearing pursuant to ORS 271.330(5) and MCC Section 7.407(E).

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

On April 23, 2008 in accordance with MCC Chapter 7, a list of tax foreclosed properties was made available to Government Agencies for non-housing purposes. The County has received requests for thirteen (13) of these properties from the following local governments:

- a. The City of Gresham, Department of Environmental Services has requested two Tax Foreclosed Properties: R111419 and R111420.
- b. Metro Parks and Greenspaces have requested one Tax Foreclosed Property R325134.
- c. The City of Portland, Parks & Recreation Department has requested two Tax Foreclosed Properties: R273447 and R327810.

- d. The City of Portland, Department of Transportation has requested eight Tax Foreclosed Properties: R100383, R110077, R130059, R273431, R297353, R320077, R321530, and R501650.

This action affects our Vibrant Communities Program Offer by placing thirteen Tax Foreclosed Properties back into public use.

**3. Explain the fiscal impact (current year and ongoing).**

The Tax Title Fund has incurred expenses associated with preparation of application materials, newspaper publications, processing transfer requests, preparation of Board documents and recording fees. The proposed transfers of the Properties do not provide for reimbursement to the County for these costs.

**4. Explain any legal and/or policy issues involved.**

No legal issues are anticipated as a result of this action.

**5. Explain any citizen and/or other government participation that has or will take place.**

All public agencies of Multnomah County are invited to participate in the Tax Foreclosed Property transfer process. A notice of this transfer hearing will be published in the Daily Journal of Commerce Public Notice Section.

**Exhibit A (APR)  
Report to the Board (MCC 7.407 (D))  
Properties Requested by Local Governments**

**PARCEL 1:** Requested by the City of Gresham:

- a. Legal Description: LOT B            BALTZ TERRACE
- b. Tax Account No.: R111419
- c. Type of Use:            Street Right of Way
- d. Taxes:                    \$61
- e. County Expenses: \$60

**PARCEL 2:**

- a. Legal Description: LOT C            BALTZ TERRACE
- b. Tax Account No.: R111420
- c. Type of Use:            Street Right of Way
- d. Taxes:                    \$61
- e. County Expenses: \$60

**PARCEL 3:** Requested by Metro:

- a. Legal Description: A parcel of land located in the Northwest Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of Section 20, Township 2 North, Range 1 West, Willamette Meridian, in the County of Multnomah, State of Oregon, said tract being more particularly described as follows:

Commencing at the Southeast corner of the John G. Tomlinson Donation Land Claim No. 52 thence running North 705.3 feet along the East line of said claim to a point on the Northeasterly line of the United Railway Company right-of-way boundary, said point being the true point of beginning of the parcel being described; thence continuing North along the East line of said claim a distance of 301.5 feet to a point on the Southwesterly right-of-way boundary (80 feet Southwesterly from the centerline) of NW St. Helens Road (U.S. Hwy. 30), said point bearing 1402.5 feet Northwesterly along the Southwesterly right-of-way of St. Helens Rd. from the point where said right-of-way intersects the Northeasterly line of the United Railway right-of-way boundary; thence Southeasterly 1402.5 feet along the Southwesterly right-of-way of St. Helens Rd. to a point on the Northeasterly boundary of the United Railway Company right-of-way, said point bearing 1160 feet Southeasterly along the said right-of-way from the true point of beginning; thence Northwesterly 1160 feet along the Northeasterly boundary of the United Railway Company right-of-way to the true point of beginning.

- b. Tax Account No.: R325134
- c. Type of Use:            Natural Area, Possible Future Trail
- d. Taxes:                    \$985
- e. County Expenses: \$206

**PARCEL 4:** Requested by the City of Portland, Parks & Recreation:

- a. Legal Description: N ½ OF LOT 1 BLOCK 35    SOUTHERN PORTLAND
- b. Tax Account No.: R273447

**Exhibit A (APR)  
Report to the Board (MCC 7.407 (D))  
Properties Requested by Local Governments**

- c. Type of Use: Add to Adjacent Park
- d. Taxes: \$2,754
- e. County Expenses: \$452

**PARCEL 5:**

- a. Legal Description: A tract of land in the Northwest One-Quarter of Section 9, Township 1 South, Range 1 East of the Willamette Meridian and described as follows:

Commencing at an iron pipe marking the Northwest corner of "Virginia Heights" and located in the West line of the John Donner Donation Land Claim; thence East, along the North line of said "Virginia Heights", a distance of 431.93 feet to its intersection with the East line of S.W. Clemell Avenue and the point of beginning of the tract of land herein described: thence S16°32'00"E, along the easterly line of said S.W. Clemell Avenue, a distance of 30.00 feet; thence N68°05'00"E, a distance of 77.03 feet to a point; thence West, a distance of 80.00 feet to the point of beginning.

- b. Tax Account No.: R327810
- c. Type of Use: Add to Adjacent Park
- d. Taxes: \$67
- e. County Expenses: \$59

**PARCEL 6:** Requested by the City of Portland, Office of Transportation:

- a. Legal Description: That part of Lot 1, Block 2, ACADEMY HEIGHTS, lying North of the North line of Rocky Butte Road, EXCEPTING therefrom that part of NE Cliff St. accruing thereto (Ord 164925) and lying in the plat of CLIFF VIEW ESTATES, in the County of Multnomah and State of Oregon.

- b. Tax Account No.: R100383
- c. Type of Use: Future LID
- d. Taxes: \$77
- e. County Expenses: \$80

**PARCEL 7:**

- a. Legal Description: LOT A ASHBURN ESTATES
- b. Tax Account No.: R110077
- c. Type of Use: Street Right of Way
- d. Taxes: \$61
- e. County Expenses: \$54

**PARCEL 8:**

- a. Legal Description: CASMUR AC S 5' OF LOT 24
- b. Tax Account No.: R130059
- c. Type of Use: Street Right of Way

**Exhibit A (APR)**  
**Report to the Board (MCC 7.407 (D))**  
**Properties Requested by Local Governments**

d. Taxes: \$79  
e. County Expenses: \$0

**PARCEL 9:**

a. Legal Description: The real property interest described in that certain TAX FORECLOSURE DEED dated the 29th day of December 1944; recorded on December 29, 1944; at Book 895 and Page 170 in the Multnomah County Deed Records; being the listed property interest that begins with "Southern Portland" and that is the last property interest of the list on Page 196 of said TAX FORECLOSURE DEED.

b. Tax Account No.: 273431  
c. Type of Use: Street Right of Way  
d. Taxes: \$20  
e. County Expenses: \$0

**PARCEL 10:**

a. Legal Description: EXC W 38' LOT 10 BLOCK 1            WAGGENERS ADD  
b. Tax Account No.: R297353  
c. Type of Use: Street Right of Way  
d. Taxes: \$312  
e. County Expenses: \$71

**PARCEL 11:**

a. Legal Description: A tract of land in the Southeast One-Quarter of Section 34, Township 1 North, Range 2 East, of the Willamette Meridian, Multnomah County, Oregon and described as follows:

Being that part of the Northwest Quarter of the Southeast Quarter of said Section 34, Township 1 North, Range 2 East, of the Willamette Meridian, Multnomah County Oregon, and lying:

Northerly of the Northerly Right of Way line of N.E. Davis Street, said street as-platted and illustrated on the plat of "Fashion Homes", recorded in Plat Book 1186, Page 49, January 25, 1955, and the plat of "Rodale Acres", recorded in Plat Book 1189, Page 5, March 26, 1956, Multnomah County Plat records;

Southerly of the South line of that tract of land conveyed to Edward L. Hynson, by deed recorded in Book 436, Page 469, February 16, 1936;

Westerly of the Westerly Right of Way line of N.E. 113th Avenue (Co.Rd.No.2828 & No.2148 formerly known as Petrain Ave.), if said line were projected Southerly from the South to the Edward L. Hynson tract to the Northerly Right of Way line of said N.E. Davis Street;

Easterly of the Easterly Right of Way line of N.E. 111th Avenue (Co.Rd.No.2281), if said line were projected Southerly from the South line of the Edward L. Hynson tract to the Northerly right-of-way line of said N.E. Davis Street.

**Exhibit A (APR)**  
**Report to the Board (MCC 7.407 (D))**  
**Properties Requested by Local Governments**

- b. Tax Account No.: R320077
- c. Type of Use: Street Right of Way
- d. Taxes: \$191
- e. County Expenses: \$0

**PARCEL 12:**

- a. Legal Description: A tract of land situated in the J. Fleming Donation Land Claim in Section 30, Township 1 North, Range 3 East of the Willamette Meridian, Multnomah County, Oregon, described as follows:

Beginning at the Northwest corner of Lot 9, Block 10, Highwood , as recorded June 6, 1977 in Plat Book 1207, Page 54, Multnomah County Plat Records; thence Easterly, along the North line of Lots 8 and 9 of said Block 10, Highwood, to the West line of Tract "D" of Highwood as recorded June 18, 1974 in Plat Book 1205 Page 26; thence Northerly, along the West line of said Tract "D", to the Southeast corner of that certain tract of land conveyed to Angelo and Leona Cereghino by deed recorded February 11, 1955 in Book 1705, Page 278, Multnomah County Deed Records; thence West, along the South line of said Cereghino tract, to the East line of N.E. 162<sup>nd</sup> Ave; thence South, along the East right-of-way line of said N.E. 162<sup>nd</sup> Ave. to the point of beginning.

- b. Tax Account No.: R321530
- c. Type of Use: Future Pedestrian Connectivity
- d. Taxes: \$267
- e. County Expenses: \$65

**PARCEL 13:**

- a. Legal Description: BLOCK 25; SE OF N COLUMBIA BLVD; LOT 14 COLLEGE PL
- b. Tax Account No.: R501650
- c. Type of Use: Street Right of Way
- d. Taxes: \$153
- e. County Expenses: \$59

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**Required Signature**

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**Department/  
Agency Director:**

*M. Cecilia Johnson*

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**Date: 08/08/08**

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BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. \_\_\_\_\_**

Setting the Public Hearing Date of September 18, 2008 for the Proposed Transfer of Tax Foreclosed Properties to Local Government Agencies for Non Housing Purposes and Authorizing Publication of Notice in The Daily Journal of Commerce

**The Multnomah County Board of Commissioners Finds:**

- a. ORS 271.330 and Multnomah County Code Chapter subsection 7.407 authorize Multnomah County to transfer Tax Foreclosed Real Property to other governmental bodies provided the property is used for a public purpose.
- b. Exhibit A to this resolution describes the thirteen (13) properties for which the County received requests for transfer as authorized under the above cited State Law and County Code provisions.
- c. The City of Gresham has requested the transfer of properties identified in Exhibit A as Parcel Numbers 1 & 2.
- d. Metro Parks and Greenspaces have requested the transfer of the property identified in Exhibit A as Parcel Number 3.
- e. The City of Portland, Parks and Recreation Department has requested the transfer of properties identified in Exhibit A as Parcel Numbers 4 & 5.
- f. The City of Portland, Office of Transportation has requested the transfer of properties identified in Exhibit A as Parcel Numbers 6 through 13.
- g. The Tax Title Section has presented a report to the Board as required under MCC 7.407(D) for the properties proposed for transfer.

**The Multnomah County Board of Commissioners Resolves:**

1. As allowed under ORS 271.330(5) and MCC 7.407(E); these requests by government agencies for transfer of the above described tax foreclosed properties for non-housing purposes are set for a further public hearing before this Board on September 18, 2008 at 9:30 a.m.
2. The Tax Title Division is directed to publish notice of the public hearing in a newspaper of general circulation for two successive weeks. The notice shall be in a form consistent with that set forth in Exhibit A, attached to this Resolution and incorporated by this reference and shall:

- a. Advise the public of the County's intention to transfer these properties;
  - b. Describe the properties proposed for transfer;
  - c. Identify the date, time and location of the hearing;
  - d. State that the Board will accept objections and comments concerning the transfer at the hearing;
  - e. Advise how a copy of the Department's report can be obtained.
3. The Tax Title Division shall mail a copy of the notice to the local government applicants and other persons requesting such notice.

ADOPTED this 4th day of September, 2008.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

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Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_  
Matthew O. Ryan, Assistant County Attorney

SUBMITTED BY:

M. Cecilia Johnson, Director, Dept. of Community Services

**EXHIBIT A (RESOLUTION)**

**NOTICE OF PUBLIC HEARING  
BEFORE THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS**

**TIME:** 9:30 A.M., Thursday September 18, 2008

**PLACE:** The Multnomah Building, Room 100  
501 SE Hawthorne Blvd, Portland, Oregon

**SUBJECT:** Proposed Transfer of 13 Multnomah County tax foreclosed real property parcels described below, to other Governmental bodies to be used for public purposes as authorized under ORS 271.330 and Multnomah County Code Chapter 7. The Governments requesting the properties and the descriptions of the properties proposed for transfer are as follows.

**CONTACT INFORMATION:** The County Board will accept objections and comments about the transfers at the meeting. Please contact Tax Title for any additional information or if you would like a copy of the staff report at **503-988-3590**.

**PARCEL NO. 1:** To the CITY OF GRESHAM  
**Tax Account No.:** R111419.  
**Legal Description:** LOT B BALTZ TERRACE

**PARCEL NO. 2:** To the CITY OF GRESHAM  
**Tax Account No.:** R111420  
**Legal Description:** LOT C BALTZ TERRACE

**PARCEL NO. 3:** To METRO  
**Tax Account No.:** R325134  
**Legal Description:** A parcel of land located in the Northwest Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of Section 20, Township 2 North, Range 1 West, Willamette Meridian, in the County of Multnomah, State of Oregon, said tract being more particularly described as follows:

Commencing at the Southeast corner of the John G. Tomlinson Donation Land Claim No. 52 thence running North 705.3 feet along the East line of said claim to a point on the Northeasterly line of the United Railway Company right-of-way boundary, said point being the true point of beginning of the parcel being described; thence continuing North along the East line of said claim a distance of 301.5 feet to a point on the Southwesterly right-of-way boundary (80 feet Southwesterly from the centerline) of NW St. Helens Road (U.S. Hwy. 30), said point bearing 1402.5 feet Northwesterly along the Southwesterly right-of-way of St. Helens Rd. from the point where said right-of-way intersects the Northeasterly line of the United Railway right-of-way boundary; thence Southeasterly 1402.5 feet along the Southwesterly right-of-way of St. Helens Rd. to a point on the Northeasterly boundary of the United Railway Company right-of-way, said point bearing 1160 feet Southeasterly along the said right-of-way from the true point of beginning; thence Northwesterly 1160 feet along the Northeasterly boundary of the United Railway Company right-of-way to the true point of beginning.

**PARCEL NO. 4:** To The CITY OF PORTLAND  
**Tax Account No.:** R273447  
**Legal Description:** N ½ OF LOT 1 BLOCK 35 SOUTHERN PORTLAND

**EXHIBIT A (RESOLUTION)**

**NOTICE OF PUBLIC HEARING  
BEFORE THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS**

**PARCEL NO. 5:** To The CITY OF PORTLAND  
**Tax Account No:** R327810  
**Legal Description:** A tract of land in the Northwest One-Quarter of Section 9, Township 1 South, Range 1 East of the Willamette Meridian and described as follows:

Commencing at an iron pipe marking the Northwest corner of "Virginia Heights" and located in the West line of the John Donner Donation Land Claim; thence East, along the North line of said "Virginia Heights", a distance of 431.93 feet to its intersection with the East line of S.W. Clemell Avenue and the point of beginning of the tract of land herein described: thence S16°32'00"E, along the easterly line of said S.W. Clemell Avenue, a distance of 30.00 feet; thence N68°05'00"E, a distance of 77.03 feet to a point; thence West, a distance of 80.00 feet to the point of beginning.

**PARCEL NO. 6:** To The CITY OF PORTLAND  
**Tax Account No:** R100383  
**Legal Description:** That part of Lot 1, Block 2, ACADEMY HEIGHTS, lying North of the North line of Rocky Butte Road, EXCEPTING therefrom that part of NE Cliff St. accruing thereto (Ord 164925) and lying in the plat of CLIFF VIEW ESTATES, in the County of Multnomah and State of Oregon.

**PARCEL NO. 7:** To The CITY OF PORTLAND  
**Tax Account No:** R110077  
**Legal Description:** LOT A ASHBURN ESTATES

**PARCEL NO. 8:** To The CITY OF PORTLAND  
**Tax Account No:** R130059  
**Legal Description:** CASMUR AC S 5' OF LOT 24

**PARCEL NO. 9:** To The CITY OF PORTLAND  
**Tax Account No:** R273431  
**Legal Description:** The real property interest described in that certain TAX FORECLOSURE DEED dated the 29th day of December 1944; recorded on December 29, 1944; at Book 895 and Page 170 in the Multnomah County Deed Records; being the listed property interest that begins with "Southern Portland" and that is the last property interest of the list on Page 196 of said TAX FORECLOSURE DEED.

**PARCEL NO. 10:** To The CITY OF PORTLAND  
**Tax Account No:** R297353  
**Legal Description:** EXC W 38' LOT 10 BLOCK 1 WAGGENERS ADD

**PARCEL NO. 11:** To The CITY OF PORTLAND  
**Tax Account No:** R320077  
**Legal Description:** A tract of land in the Southeast One-Quarter of Section 34, Township 1 North, Range 2 East, of the Willamette Meridian, Multnomah County, Oregon and described as follows:

Being that part of the Northwest Quarter of the Southeast Quarter of said Section 34, Township 1 North, Range 2 East, of the Willamette Meridian, Multnomah County Oregon, and lying:

**EXHIBIT A (RESOLUTION)**

**NOTICE OF PUBLIC HEARING  
BEFORE THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS**

Northerly of the Northerly Right of Way line of N.E. Davis Street, said street as-platted and illustrated on the plat of "Fashion Homes", recorded in Plat Book 1186, Page 49, January 25, 1955, and the plat of "Rodale Acres", recorded in Plat Book 1189, Page 5, March 26, 1956, Multnomah County Plat records;

Southerly of the South line of that tract of land conveyed to Edward L. Hynson, by deed recorded in Book 436, Page 469, February 16, 1936;

Westerly of the Westerly Right of Way line of N.E. 113th Avenue (Co.Rd.No.2828 & No.2148 formerly known as Petrain Ave.), if said line were projected Southerly from the South to the Edward L. Hynson tract to the Northerly Right of Way line of said N.E. Davis Street;

Easterly of the Easterly Right of Way line of N.E. 111th Avenue (Co.Rd.No.2281), if said line were projected Southerly from the South line of the Edward L. Hynson tract to the Northerly right-of-way line of said N.E. Davis Street.

**PARCEL NO. 12:** To the CITY OF PORTLAND

**Tax Account No:** R321530

**Legal Description:** A tract of land situated in the J. Fleming Donation Land Claim in Section 30, Township 1 North, Range 3 East of the Willamette Meridian, Multnomah County, Oregon, described as follows:

Beginning at the Northwest corner of Lot 9, Block 10, Highwood, as recorded June 6, 1977 in Plat Book 1207, Page 54, Multnomah County Plat Records; thence Easterly, along the North line of Lots 8 and 9 of said Block 10, Highwood, to the West line of Tract "D" of Highwood as recorded June 18, 1974 in Plat Book 1205 Page 26; thence Northerly, along the West line of said Tract "D", to the Southeast corner of that certain tract of land conveyed to Angelo and Leona Cereghino by deed recorded February 11, 1955 in Book 1705, Page 278, Multnomah County Deed Records; thence West, along the South line of said Cereghino tract, to the East line of N.E. 162<sup>nd</sup> Ave; thence South, along the East right-of-way line of said N.E. 162<sup>nd</sup> Ave. to the point of beginning.

**PARCEL NO. 13:** To The CITY OF PORTLAND

**Tax Account No:** R501650

**Legal Description:** BLOCK 25; SE OF N COLUMBIA BLVD; LOT 14 COLLEGE PL

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 08-119**

Setting the Public Hearing Date of September 18, 2008 for the Proposed Transfer of Tax Foreclosed Properties to Local Government Agencies for Non Housing Purposes and Authorizing Publication of Notice in The Daily Journal of Commerce

**The Multnomah County Board of Commissioners Finds:**

- a. ORS 271.330 and Multnomah County Code Chapter subsection 7.407 authorize Multnomah County to transfer Tax Foreclosed Real Property to other governmental bodies provided the property is used for a public purpose.
- b. Exhibit A to this resolution describes the thirteen (13) properties for which the County received requests for transfer as authorized under the above cited State Law and County Code provisions.
- c. The City of Gresham has requested the transfer of properties identified in Exhibit A as Parcel Numbers 1 & 2.
- d. Metro Parks and Greenspaces have requested the transfer of the property identified in Exhibit A as Parcel Number 3.
- e. The City of Portland, Parks and Recreation Department has requested the transfer of properties identified in Exhibit A as Parcel Numbers 4 & 5.
- f. The City of Portland, Office of Transportation has requested the transfer of properties identified in Exhibit A as Parcel Numbers 6 through 13.
- g. The Tax Title Section has presented a report to the Board as required under MCC 7.407(D) for the properties proposed for transfer.

**The Multnomah County Board of Commissioners Resolves:**

1. As allowed under ORS 271.330(5) and MCC 7.407(E); these requests by government agencies for transfer of the above described tax foreclosed properties for non-housing purposes are set for a further public hearing before this Board on September 18, 2008 at 9:30 a.m.
2. The Tax Title Division is directed to publish notice of the public hearing in a newspaper of general circulation for two successive weeks. The notice shall be in a form consistent with that set forth in Exhibit A, attached to this Resolution and incorporated by this reference and shall:

- a. Advise the public of the County's intention to transfer these properties;
  - b. Describe the properties proposed for transfer;
  - c. Identify the date, time and location of the hearing;
  - d. State that the Board will accept objections and comments concerning the transfer at the hearing;
  - e. Advise how a copy of the Department's report can be obtained.
3. The Tax Title Division shall mail a copy of the notice to the local government applicants and other persons requesting such notice.

ADOPTED this 4th day of September, 2008.

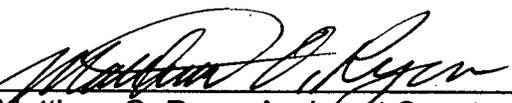


BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
Matthew O. Ryan, Assistant County Attorney

SUBMITTED BY:

M. Cecilia Johnson, Director, Dept. of Community Services

**EXHIBIT A (RESOLUTION)**

**NOTICE OF PUBLIC HEARING  
BEFORE THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS**

**TIME:** 9:30 A.M., Thursday September 18, 2008

**PLACE:** The Multnomah Building, Room 100  
501 SE Hawthorne Blvd, Portland, Oregon

**SUBJECT:** Proposed Transfer of 13 Multnomah County tax foreclosed real property parcels described below, to other Governmental bodies to be used for public purposes as authorized under ORS 271.330 and Multnomah County Code Chapter 7. The Governments requesting the properties and the descriptions of the properties proposed for transfer are as follows.

**CONTACT INFORMATION:** The County Board will accept objections and comments about the transfers at the meeting. Please contact Tax Title for any additional information or if you would like a copy of the staff report at **503-988-3590**.

**PARCEL NO. 1:** To the CITY OF GRESHAM  
**Tax Account No.:** R111419.  
**Legal Description:** LOT B BALTZ TERRACE

**PARCEL NO. 2:** To the CITY OF GRESHAM  
**Tax Account No.:** R111420  
**Legal Description:** LOT C BALTZ TERRACE

**PARCEL NO. 3:** To METRO  
**Tax Account No.:** R325134  
**Legal Description:** A parcel of land located in the Northwest Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of Section 20, Township 2 North, Range 1 West, Willamette Meridian, in the County of Multnomah, State of Oregon, said tract being more particularly described as follows:

Commencing at the Southeast corner of the John G. Tomlinson Donation Land Claim No. 52 thence running North 705.3 feet along the East line of said claim to a point on the Northeasterly line of the United Railway Company right-of-way boundary, said point being the true point of beginning of the parcel being described; thence continuing North along the East line of said claim a distance of 301.5 feet to a point on the Southwesterly right-of-way boundary (80 feet Southwesterly from the centerline) of NW St. Helens Road (U.S. Hwy. 30), said point bearing 1402.5 feet Northwesterly along the Southwesterly right-of-way of St. Helens Rd. from the point where said right-of-way intersects the Northeasterly line of the United Railway right-of-way boundary; thence Southeasterly 1402.5 feet along the Southwesterly right-of-way of St. Helens Rd. to a point on the Northeasterly boundary of the United Railway Company right-of-way, said point bearing 1160 feet Southeasterly along the said right-of-way from the true point of beginning; thence Northwesterly 1160 feet along the Northeasterly boundary of the United Railway Company right-of-way to the true point of beginning.

**PARCEL NO. 4:** To The CITY OF PORTLAND  
**Tax Account No.:** R273447  
**Legal Description:** N ½ OF LOT 1 BLOCK 35 SOUTHERN PORTLAND

**EXHIBIT A (RESOLUTION)**

**NOTICE OF PUBLIC HEARING  
BEFORE THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS**

**PARCEL NO. 5:** To The CITY OF PORTLAND

**Tax Account No:** R327810

**Legal Description:** A tract of land in the Northwest One-Quarter of Section 9, Township 1 South, Range 1 East of the Willamette Meridian and described as follows:

Commencing at an iron pipe marking the Northwest corner of "Virginia Heights" and located in the West line of the John Donner Donation Land Claim; thence East, along the North line of said "Virginia Heights", a distance of 431.93 feet to its intersection with the East line of S.W. Clemell Avenue and the point of beginning of the tract of land herein described: thence S16°32'00"E, along the easterly line of said S.W. Clemell Avenue, a distance of 30.00 feet; thence N68°05'00"E, a distance of 77.03 feet to a point; thence West, a distance of 80.00 feet to the point of beginning.

**PARCEL NO. 6:** To The CITY OF PORTLAND

**Tax Account No:** R100383

**Legal Description:** That part of Lot 1, Block 2, ACADEMY HEIGHTS, lying North of the North line of Rocky Butte Road, EXCEPTING therefrom that part of NE Cliff St. accruing thereto (Ord 164925) and lying in the plat of CLIFF VIEW ESTATES, in the County of Multnomah and State of Oregon.

**PARCEL NO. 7:** To The CITY OF PORTLAND

**Tax Account No:** R110077

**Legal Description:** LOT A ASHBURN ESTATES

**PARCEL NO. 8:** To The CITY OF PORTLAND

**Tax Account No:** R130059

**Legal Description:** CASMUR AC S 5' OF LOT 24

**PARCEL NO. 9:** To The CITY OF PORTLAND

**Tax Account No:** R273431

**Legal Description:** The real property interest described in that certain TAX FORECLOSURE DEED dated the 29th day of December 1944; recorded on December 29, 1944; at Book 895 and Page 170 in the Multnomah County Deed Records; being the listed property interest that begins with "Southern Portland" and that is the last property interest of the list on Page 196 of said TAX FORECLOSURE DEED.

**PARCEL NO. 10:** To The CITY OF PORTLAND

**Tax Account No:** R297353

**Legal Description:** EXC W 38' LOT 10 BLOCK 1 WAGGENERS ADD

**PARCEL NO. 11:** To The CITY OF PORTLAND

**Tax Account No:** R320077

**Legal Description:** A tract of land in the Southeast One-Quarter of Section 34, Township 1 North, Range 2 East, of the Willamette Meridian, Multnomah County, Oregon and described as follows:

Being that part of the Northwest Quarter of the Southeast Quarter of said Section 34, Township 1 North, Range 2 East, of the Willamette Meridian, Multnomah County Oregon, and lying:

**EXHIBIT A (RESOLUTION)**

**NOTICE OF PUBLIC HEARING  
BEFORE THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS**

Northerly of the Northerly Right of Way line of N.E. Davis Street, said street as-platted and illustrated on the plat of "Fashion Homes", recorded in Plat Book 1186, Page 49, January 25, 1955, and the plat of "Rodale Acres", recorded in Plat Book 1189, Page 5, March 26, 1956, Multnomah County Plat records;

Southerly of the South line of that tract of land conveyed to Edward L. Hynson, by deed recorded in Book 436, Page 469, February 16, 1936;

Westerly of the Westerly Right of Way line of N.E. 113th Avenue (Co.Rd.No.2828 & No.2148 formerly known as Petrain Ave.), if said line were projected Southerly from the South to the Edward L. Hynson tract to the Northerly Right of Way line of said N.E. Davis Street;

Easterly of the Easterly Right of Way line of N.E. 111th Avenue (Co.Rd.No.2281), if said line were projected Southerly from the South line of the Edward L. Hynson tract to the Northerly right-of-way line of said N.E. Davis Street.

**PARCEL NO. 12:** To the CITY OF PORTLAND

**Tax Account No:** R321530

**Legal Description:** A tract of land situated in the J. Fleming Donation Land Claim in Section 30, Township 1 North, Range 3 East of the Willamette Meridian, Multnomah County, Oregon, described as follows:

Beginning at the Northwest corner of Lot 9, Block 10, Highwood, as recorded June 6, 1977 in Plat Book 1207, Page 54, Multnomah County Plat Records; thence Easterly, along the North line of Lots 8 and 9 of said Block 10, Highwood, to the West line of Tract "D" of Highwood as recorded June 18, 1974 in Plat Book 1205 Page 26; thence Northerly, along the West line of said Tract "D", to the Southeast corner of that certain tract of land conveyed to Angelo and Leona Cereghino by deed recorded February 11, 1955 in Book 1705, Page 278, Multnomah County Deed Records; thence West, along the South line of said Cereghino tract, to the East line of N.E. 162<sup>nd</sup> Ave; thence South, along the East right-of-way line of said N.E. 162<sup>nd</sup> Ave. to the point of beginning.

**PARCEL NO. 13:** To The CITY OF PORTLAND

**Tax Account No:** R501650

**Legal Description:** BLOCK 25; SE OF N COLUMBIA BLVD; LOT 14 COLLEGE PL



**MULTNOMAH COUNTY**  
**AGENDA PLACEMENT REQUEST (long form)**

APPROVED : MULTNOMAH COUNTY  
 BOARD OF COMMISSIONERS  
 AGENDA # C-2 DATE 9-4-08  
 ANA KARNES, ASST BOARD CLERK

**Board Clerk Use Only**

Meeting Date: 9/04/08  
 Agenda Item #: C-2  
 Est. Start Time: 9:30 AM  
 Date Submitted: 8/20/08

**BUDGET MODIFICATION: DCJ - 06**

**Agenda Title:** Budget Modification DCJ-06 Reclassifies a Research/Evaluation Analyst 2 to a Research/Evaluation Analyst Senior in the Employees, Community & Clinical Services Division, as Determined by the Class/Comp Unit of Central Human Resources.

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

**Requested Meeting:** September 4, 2008      **Amount of Time Needed:** N/A  
**Department:** Dept. of Community Justice      **Division:** Employee, Community & Clinical Services Division  
**Contact(s):** Shaun Coldwell  
**Phone:** 503-988-3961      **Ext.** 83961      **I/O Address:** 503 / 250  
**Presenter(s):** Consent Calendar

**General Information**

**1. What action are you requesting from the Board?**

The Department of Community Justice (DCJ) requests approval of a budget modification to reclassify a Research/Evaluation Analyst 2 position which has been reviewed by the Class/Comp Unit of Central Human Resources.

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

Reclassification of a vacant 1.00 FTE Research/Evaluation Analyst 2 (6086) position to a Research/Evaluation Analyst Senior (6087) was approved for recommendation to the Board of County Commissioners by the Class/Comp Unit of Central Human Resources on August 18, 2008, to be effective August 18, 2008.

This position will take a lead role and provide advanced professional and master/expert evaluation and research methodology support for the Quality Systems Management & Evaluation Services unit

in DCJ. Essential functions include: design/conduct standard to complex and multi-faceted evaluations; make policy and practice recommendations as part of evaluation findings; design and monitor complex process and outcome performance measures to monitor changes for desired effect; conduct standard to complex data analysis in response to special requests from DCJ administrators and other internal/external partners; provide data summaries to DCJ managers and assist in understanding/applying data to improve unit functionality; design/develop large-scale research projects; provide input into standard to complex research designs and analytic techniques; and provide guidance on implementing more rigorous evaluation efforts. These functions and scope of responsibility are consistent with the Research/Evaluation Analyst Senior (6087) classification.

This position is located in FY 2009 Program Offer 50003 – DCJ Quality Systems Management & Evaluation Services.

**3. Explain the fiscal impact (current year and ongoing).**

For current year FY-2009 this reclassification increases ECCS's personnel expense budget by \$6,531. The increased personnel expense budget is offset by a decrease of \$(6,531) in the Business Services Division professional services budget, respectively. This position is ongoing and is expected to be included in the FY2010 budget submittal.

**4. Explain any legal and/or policy issues involved.**

Local 88 represented employees have a contractual right to appeal and arbitrate the outcome of a reclassification request, which would include Board action to disapprove the request. It is the policy of Multnomah County to make all employment decisions without regard to race, religion, color, national origin, sex, age marital status, disability, political affiliations, sexual orientation, or any other nonmerit factor.

**5. Explain any citizen and/or other government participation that has or will take place.**

N/A

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## ATTACHMENT A

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### **Budget Modification**

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If the request is a Budget Modification, please answer all of the following in detail:

- **What revenue is being changed and why?**

N/A

- **What budgets are increased/decreased?**

Employee, Community & Clinical Services Divisions personnel budget increases by \$6,531 in the county general fund.

Business Services professional services budget decreases by \$(6,531) in the county general fund respectively.

- **What do the changes accomplish?**

Approval of a reclassification decision from the Class/Comp Unit of Central Human Resources.

- **Do any personnel actions result from this budget modification? Explain.**

No because this position is currently vacant.

- **How will the county indirect, central finance and human resources and departmental overhead costs be covered?**

N/A

- **Is the revenue one-time-only in nature? Will the function be ongoing? What plans are in place to identify a sufficient ongoing funding stream?**

N/A

- **If a grant, what period does the grant cover?**

N/A

- **If a grant, when the grant expires, what are funding plans?**

N/A

<p><i>NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense &amp; Revenues Worksheet and/or a Budget Modification Personnel Worksheet.</i></p>
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## ATTACHMENT B

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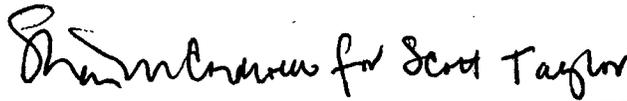
BUDGET MODIFICATION: DCJ - 06

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### Required Signatures

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Elected Official or  
Department/  
Agency Director:



Date: 08/20/08

Budget Analyst:



Date: 08/20/08

Department HR:



Date: 08/20/08

Countywide HR:



Date: 08/21/08

Budget Modification ID: **DCJ-06**

### EXPENDITURES & REVENUES

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with SAP.

Budget/Fiscal Year: 2009

Line No.	Fund Center	Fund Code	Program #	Func. Area	Internal Order	Accounting Unit		Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
						Cost Center	WBS Element						
1	50-00	1000	50001	50		509600		60170	24,216	17,685	(6,531)		Professional Services
2										0		(6,531)	Reduce Business Svcs
3										0			
4	50-05	1000	50003	50		500300		60000	918,177	920,169	1,992		Permanent
5	50-05	1000	50003	50		500300		60130	269,922	274,331	4,409		Fringe
6	50-05	1000	50003	50		500300		60140	242,461	242,591	130		Insurance
7										0		6,531	Increase R&E for position reclass to RE Ayst Sr
8										0			
9	72-10	3500		20		705210		50316		(130)	(130)		Service Reimb, Insurance
10	72-10	3500		20		705210		60330		130	130		Claims Paid, Insurance
11										0		0	
12										0			
13										0			
14										0			
15										0			
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28										0			
29										0			
											0	0	Total - Page 1
											0	0	GRAND TOTAL



MULTNOMAH COUNTY BOARD OF COMMISSIONERS  
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk

\*\*\*This form is a public record\*\*\*

MEETING DATE: 9-4-08

SUBJECT: Sellwood Bridge

AGENDA NUMBER OR TOPIC: \_\_\_\_\_

FOR: \_\_\_\_\_ AGAINST: \_\_\_\_\_ THE ABOVE AGENDA ITEM

NAME: Ron Swaren

ADDRESS: 1543 SE Umatilla St.

CITY/STATE/ZIP: Portland, OR 97202

PHONE: DAYS: 971-223-5178 EVES: \_\_\_\_\_

EMAIL: \_\_\_\_\_ FAX: \_\_\_\_\_

SPECIFIC ISSUE: Sellwood Bridge

WRITTEN TESTIMONY: The present-concrete railings and sidewalk add between 600-900 lbs of weight to the structure. Replacing these with pre fabricated sidewalk and lighter metal railings MIGHT result in overall weight reduction

offset by increased weight with new structural steel.

**IF YOU WISH TO ADDRESS THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

**IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.



**MULTNOMAH COUNTY**  
**AGENDA PLACEMENT REQUEST (short form)**

**Board Clerk Use Only**

**Meeting Date:** 09/04/08  
**Agenda Item #:** R-1  
**Est. Start Time:** 9:30 AM  
**Date Submitted:** 08/18/08

**Agenda Title:** **Reappointment of Claudia Burnett to the REGIONAL ARTS & CULTURE COUNCIL**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

**Requested Meeting Date:** September 4, 2008      **Amount of Time Needed:** 5 mins  
**Department:** Non-Departmental      **Division:** Chair's Office  
**Contact(s):** Ted Wheeler, Tara Bowen-Biggs  
**Phone:** (503)988-3308      **Ext.** 83953      **I/O Address:** 503/600  
**Presenter(s):** Eloise Damrosch Executive Director, Regional Arts and Culture Council

**General Information**

**1. What action are you requesting from the Board?**

Recommend Board approval of reappointment of Claudia Burnett for her third term serving on the Board of Directors of the Regional Arts and Culture Council.

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

The Regional Arts & Culture Council (RACC) is the steward of public investment in arts and culture, and along with partner organizations, works to create an environment in which the arts and culture of the region can flourish and prosper. Through vision, leadership and services, RACC works to integrate arts and culture in all aspects of community life. RACC's five primary services are advocacy and development, grants to artists and organizations, public art, information and arts education. The RACC Board of Directors consists of 16-25 members. Five directors are appointed by the Multnomah County Chair with approval of the Board of County Commissioners; six directors are appointed by the Mayor of the City of Portland; two directors are appointed by Clackamas County Board Chair; two directors are appointed by the Washington County Board Chair; two directors are appointed by the Metro Council President, and eight directors are elected at large by the RACC Board. Board members are appointed for two-year terms beginning on July 1 and expiring

June 30 and are eligible for up to three consecutive terms.

**3. Explain the fiscal impact (current year and ongoing).**

No fiscal impact

**4. Explain any legal and/or policy issues involved.**

No legal and/or policy issues involved.

**5. Explain any citizen and/or other government participation that has or will take place.**

N/A

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**Required Signature**

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Elected Official or  
Department/  
Agency Director:



Date: 8/18/08



**MULTNOMAH COUNTY**  
**AGENDA PLACEMENT REQUEST (short form)**

**Board Clerk Use Only**

**Meeting Date:** 09/04/08  
**Agenda Item #:** R-2  
**Est. Start Time:** 9:35 AM  
**Date Submitted:** 8/21/08

**Agenda Title:** **PROCLAMATION Proclaiming the Week of September 26 to October 2, 2008, as Minority Enterprise Development Week in Multnomah County, Oregon**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

**Requested Meeting Date:** September 4, 2008      **Amount of Time Needed:** 10 minutes  
**Department:** Finance Risk Management      **Division:** Finance/Risk Mgmt - CPCA  
**Contact(s):** Teresa Mary Bliven  
**Phone:** 503-988-5111      **Ext.** 26106      **I/O Address:** 503/4  
**Presenter(s):** Brain Smith and Mindy Harris

**General Information**

1. **What action are you requesting from the Board?**  
     Approval of Proclamation.
2. **Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**  
     The National MED Week was designated by Proclamation to the President of the United States in 1983. It recognizes and promotes the achievements of Minority-owned business enterprises across the nation. The week is co-sponsored by the Minority Business Development Agency of the U.S. Department of Commerce and the U.S. Small Business Administration. Locally, in Multnomah County an Annual Luncheon and Tradeshow honors the accomplishments of Minority-owned businesses within the region.
3. **Explain the fiscal impact (current year and ongoing).**  
     None
4. **Explain any legal and/or policy issues involved.**  
     None

5. Explain any citizen and/or other government participation that has or will take place.

None

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**Required Signature**

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**Elected Official or  
Department/  
Agency Director:**

*Mindy Harris*

---

**Date:** 8/21/08

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BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

PROCLAMATION NO. \_\_\_\_\_

Proclaiming the Week of September 26 to October 2, 2008, as Minority Enterprise Development Week in Multnomah County, Oregon

**The Multnomah County Board of Commissioners Finds:**

- A. Multnomah County's growth and prosperity depends on the full participation of all residents at every level of our economy.
- B. Each year, Minority entrepreneurs return valuable resources to our community in the form of taxes, wages and employment for thousands of workers.
- C. Throughout our Nation over 4.1 million Minority-owned firms earn a total of \$694.1 billion in revenue and employ 4.8 million employees.
- D. Minority entrepreneurs are an indispensable force in our economy. More minorities own businesses than ever before providing innovations, products and services across Multnomah County.
- E. Minority Entrepreneurs serve as leaders, mentors, teachers and models for our youth who are our business and civic leaders of tomorrow.
- F. Recognizing the contributions that minority enterprises make to the social and economic fabric of our County, we will continue to remove any barriers that prevent talented men and women of every racial and ethnic background from participating fully in Multnomah County's economy.
- G. Multnomah County celebrates the achievements and accomplishments of minority business owners; we are delighted to pay them tribute for their contributions on behalf of Multnomah County's economic growth.

**The Multnomah County Board of Commissioners Proclaims:**

- 1. September 26 to October 2, 2008, as MINORITY ENTERPRISE DEVELOPMENT WEEK IN MULTNOMAH COUNTY, OREGON, to thank all our minority business owners for their contributions to the County and to show our continuing commitment to the promotion of minority business opportunities.

ADOPTED this 4th day of September, 2008.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

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Ted Wheeler, County Chair

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Maria Rojo de Steffey,  
Commissioner District 1

(Allow 2" space for County Seal)

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Jeff Cogen,  
Commissioner District 2

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Lisa Naito,  
Commissioner District 3

---

Lonnie Roberts,  
Commissioner District 4

SUBMITTED BY:

Carol M. Ford, Director, Dept. of County Management)

Page 2 of 2 – Proclamation: Proclaiming the Week of September 26 to October 1, 2008,  
as Minority Enterprise Development Week in Multnomah County, Oregon

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**PROCLAMATION NO.- 08-120**

Proclaiming the Week of September 26 to October 2, 2008, as Minority Enterprise Development Week in Multnomah County, Oregon

**The Multnomah County Board of Commissioners Finds:**

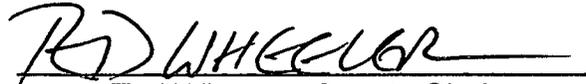
- A. Multnomah County's growth and prosperity depends on the full participation of all residents at every level of our economy.
- B. Each year, Minority entrepreneurs return valuable resources to our community in the form of taxes, wages and employment for thousands of workers.
- C. Throughout our Nation over 4.1 million Minority-owned firms earn a total of \$694.1 billion in revenue and employ 4.8 million employees.
- D. Minority entrepreneurs are an indispensable force in our economy. More minorities own businesses than ever before providing innovations, products and services across Multnomah County.
- E. Minority Entrepreneurs serve as leaders, mentors, teachers and models for our youth who are our business and civic leaders of tomorrow.
- F. Recognizing the contributions that minority enterprises make to the social and economic fabric of our County, we will continue to remove any barriers that prevent talented men and women of every racial and ethnic background from participating fully in Multnomah County's economy.
- G. Multnomah County celebrates the achievements and accomplishments of minority business owners; we are delighted to pay them tribute for their contributions on behalf of Multnomah County's economic growth.

**The Multnomah County Board of Commissioners Proclaims:**

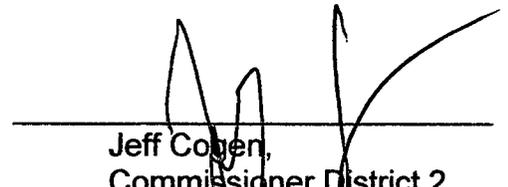
1. September 26 to October 2, 2008, as MINORITY ENTERPRISE DEVELOPMENT WEEK IN MULTNOMAH COUNTY, OREGON, to thank all our minority business owners for their contributions to the County and to show our continuing commitment to the promotion of minority business opportunities.

ADOPTED this 4th day of September, 2008.

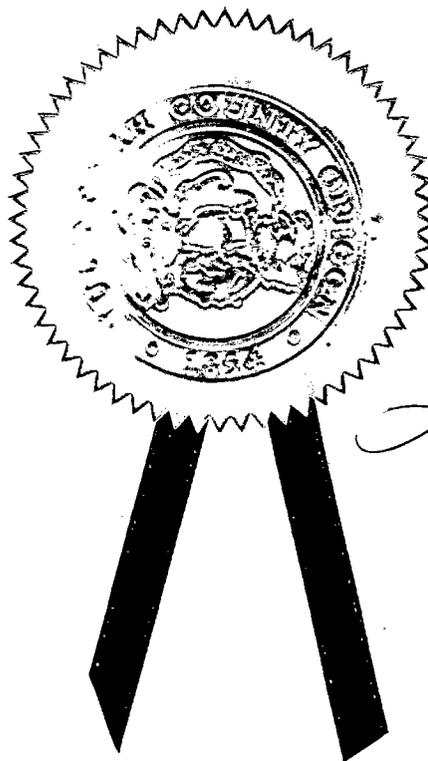
BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Ted Wheeler, County Chair

  
Maria Rojo de Steffey,  
Commissioner District 1

  
Jeff Cogen,  
Commissioner District 2

  
Lisa Naito,  
Commissioner District 3



  
Lonnie Roberts,  
Commissioner District 4

SUBMITTED BY:

Carol M. Ford, Director, Dept. of County Management)



# MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

### Board Clerk Use Only

Meeting Date: 09/04/08  
 Agenda Item #: R-3  
 Est. Start Time: 9:45 AM  
 Date Submitted: 08/18/08

**PUBLIC HEARING and Board Decision on Request for Reconsideration of  
 Agenda Board Order No. 07-158 Denying Ric and Lee Ball's Appeal of ITAX  
 Title: Administrator's Final Determination**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

Date Requested: September 4, 2008 Time Requested: 10 mins  
 Department: Non-Departmental Division: County Attorney  
 Contact(s): Jacqueline A. Weber, Assistant County Attorney  
 Phone: (503) 988-3138 Ext. 83138 I/O Address: 503/500  
 Presenter(s): Jacqueline A. Weber

## General Information

### 1. What action are you requesting from the Board?

Taxpayers Ric and Lee Ball request reconsideration of Order 07-158 denying their appeal of the ITAX Administrator's final determination.

### 2. Please provide sufficient background information for the Board and the public to understand this issue.

Ric and Lee Ball (taxpayers) challenged the Administrator's final determination regarding their 2003, 2004 and 2005 ITAX obligations, and timely notified the Administrator of their wish to appeal to the Board of County Commissioners pursuant to ITAX Administrative Rule 11-614 Appeal Rights.

On September 27, 2007, the Board entered Order No. 07-158 denying the appeal and finding imposition of the ITAX lawful because taxpayers did not establish a domicile outside of the County during any of the tax years. On July 15, 2008, the Board received taxpayers' request for reconsideration of Order No. 07-158 and scheduled this hearing.

### 3. Explain the fiscal impact (current year and ongoing).

The Board determined by Order 07-158 that taxpayers were full year residents in Multnomah

County for tax years 2003, 2004 and 2005, and the outstanding balance owed for all three years is \$8,104.67

**4. Explain any legal and/or policy issues involved.**

The Board will reconsider its prior determination and decide whether taxpayers' income tax liability should be reduced.

**5. Explain any citizen and/or other government participation that has or will take place.**

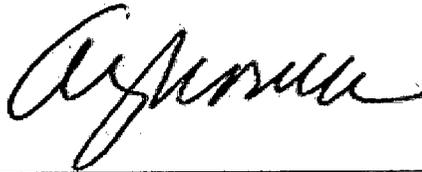
N/A

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**Required Signature**

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**Department/  
Agency Director:**

A handwritten signature in black ink, appearing to read "A. J. ...", written over a horizontal line.

**Date: 8/27/08**



Deborah Bogstad, Board Clerk

**MULTNOMAH COUNTY OREGON**

Multnomah County Board of Commissioners  
501 SE Hawthorne Boulevard, Suite 600  
Portland, Oregon 97214  
(503) 988-3277 phone  
(503) 988-3013 fax

August 18, 2008

Mr. Ric Ball  
10241 NW Langworthy Terrace  
Portland, OR 97229-8168

RE: NOTICE OF HEARING ON MULTNOMAH COUNTY INCOME TAX  
APPEAL [Account Numbers 26481774368 and 26483955064,  
Tax Years 2003, 2004 and 2005]

Greetings Mr. Ball:

At hearing has been scheduled regarding your request for  
Reconsideration of Board Order No. 07-158 Denying Appeal of Ric and  
Lee Ball of ITAX Administrator's Final Determination before the  
Multnomah County Board of Commissioners on **Thursday,**  
**September 4, 2008, at 9:45 a.m.** in the first floor Commissioners  
Boardroom at 501 SE Hawthorne Boulevard, Portland.

Sincerely,

Deborah L. Bogstad, Board Clerk

cc: Board of Commissioners  
Mindy Harris  
Jacquie Weber

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**ORDER NO. 07-158**

Order Denying Appeal of Rick and Lee Ball of ITAX Administrator's Final Determination

**The Multnomah County Board of Commissioners Finds:**

- a. Rick and Lee Ball timely filed a Notice of Appeal from the Administrator's Final Letter of Determination of their 2003, 2004, 2005 Multnomah County Income Tax.
- b. Appellants challenge the County's imposition of the Multnomah County Income Tax (ITAX) as unlawfully applied to them as they maintained two homes during the tax years, living for a greater fraction of each year outside Multnomah County. The ITAX was approved by the voters as an income tax on taxable income under Oregon law. The evidence submitted to the Board established that the taxpayers were registered to vote in Multnomah County during each tax year, and did vote as Multnomah County residents. Their vehicles were registered in Multnomah County and they received their mail at their Multnomah County residence. In addition, the taxpayers did not sell or otherwise abandon their Multnomah County residence and testified that they intended to return to that residence. Oregon law states that once a domicile is established, it is not lost until all of the following happen: the resident intends to abandon the old domicile, the resident intends to acquire a new specific domicile and the resident is physically present in the new domicile.
- c. The County's decision to apply the tax to the taxpayers as full year residents for each tax year was appropriate, because taxpayers did not establish a domicile as defined by Oregon law outside of Multnomah County during any of the three tax years.
- d. The imposition of the ITAX on Appellants is lawful.

**The Multnomah County Board of Commissioners Orders:**

1. Rick and Lee Ball's Appeal of the Administrator's Determination of their 2003, 2004, 2005 Multnomah County Income Tax liability is denied.

ADOPTED this 27th day of September, 2007.

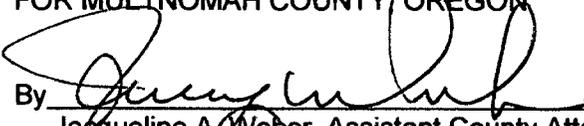


BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By 

Jacqueline A. Weber, Assistant County Attorney

SUBMITTED BY:

Agnes Sowle, Multnomah County Attorney

Ball

2a481774368

07/11/08

**RECEIVED** JUL 15 2008

To Commissioners  
Cogen  
Roberts  
Natio  
Rojo de steffey  
Wheeler  
RE: Ball ITax.

I have now paid the majority of what is claimed I owe of the ITax. Do to Your decision to allow another person to get a break on his Itax for the same reason I should have been allowed a break, See part-time resident gets tax brake.  
I should be allowed to receive a break on the remaining owed on my ITax.

Thank you

A handwritten signature in cursive script that reads "Ric Ball". The signature is written in black ink and is positioned below the "Thank you" text.

Ric Ball  
10241 NW Langworthy ter  
Portland Or 97229

# Part-time resident gets tax break

**Rare case** | After rejecting all other appeals, Multnomah County leaders cut a lawyer's emergency-tax bill in half

**By ARTHUR GREGG SULZBERGER**  
THE OREGONIAN

Thousands grumbled, hundreds launched formal challenges and a handful of people took their fight against Multnomah County's emergency income tax bills all the way to the Board of Commissioners. No one won — until Thursday.

Against the advice of their legal and financial staffs, county commissioners gave a break to a lawyer who argued he shouldn't have to pay the \$3,800 he owed because he wasn't primarily a county resident.

The voter-approved tax ran from 2003 to 2005 to help the cash-strapped school system. The county collected

\$371 million but is still trying to get about \$10 million from people who haven't paid.

Among those: Raymond Rask, who owns a condo in Portland and uses its address for his mail, driver's license and voter registration.

But since retiring in 2002 and going on part-time status with his law firm, Rask said his main residence has been a house in Manzanita. (He owns a third house in Rancho Mirage, Calif.)

Last month, he told commissioners

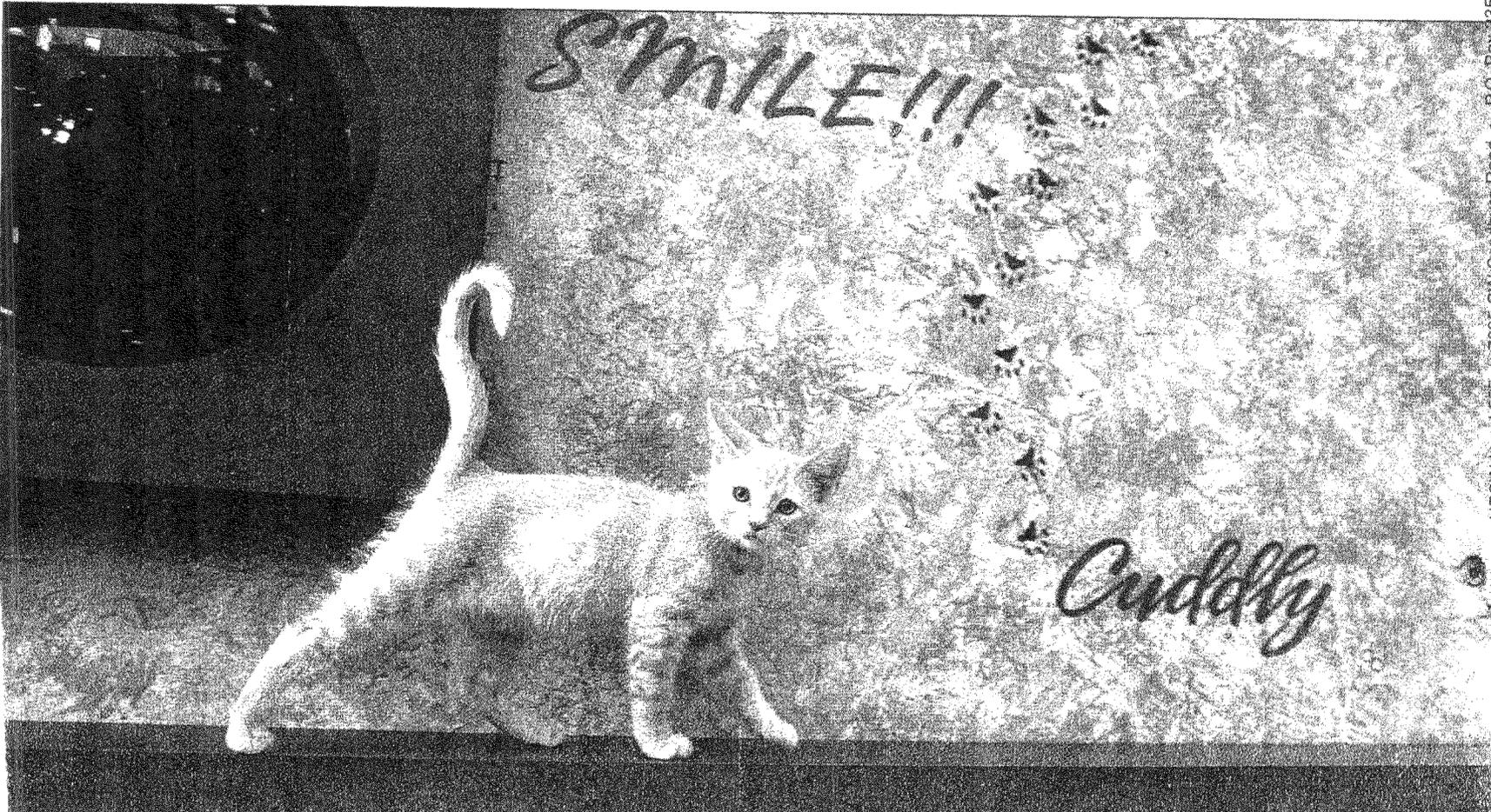
he spends only two to three days a week in his Multnomah County condo, though he recently has stayed there more often as his wife battles cancer.

Hundreds of other people have made similar arguments, saying their Multnomah County property isn't their primary residence. In those situations, the county staff always relied on voter registration to settle the issue.

That's because it's a felony to vote

Please see **TAX BREAK**, Page B6

## Looking for heart, home | Cats crowding animal shelter



GENE PROBY, Union President  
 JEFF MCDONALD, President  
 JEFF MCDONALD, Secretary

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 fax: (503) 620-3816

# Tax break: Only 3 of 5 leaders were at meeting

Continued from Page B1

a county that isn't your primary residence (voters must sign a declaration on their ballot confirming they're residents of Multnomah County).

So when Rask challenged his tax bill, county staff members turned him down. The tax administrator, the assistant county attorney overseeing tax collections and the county's chief financial officer all recommended that commissioners reject his appeal. They noted he has voted in every local election since 2002, including the one on the tax.

County commissioners rejected all six earlier tax appeals but changed course this time and approved an agreement allowing Rask to pay \$1,902 — half of what he owed.

The decision came with only three commissioners out of the five in attendance.

Commissioners Lisa Naito and Jeff Cogen, both lawyers, said they believed that regardless of the voter registration, Rask intended to live in Manzanita, not Multnomah County.

"Our role is to look at the totality of the circumstances to see what their intent was," Cogen said.

County Chairman Ted Wheeler voted against the settlement, warning that the decision conflicts with previous standards and could open the door to other claims.

Commissioners Lonnie Roberts and Maria Rojo de Steffey weren't present.

Assistant County Attorney Jacqueline Weber expects the case to have limited impact. The county can't reopen closed tax cases, and only a fraction of the outstanding cases are eligible for appeal.

That's little comfort to Ric Ball, who made a similar argu-

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Ball lived at his home at Welches for more than two years while the tax was in effect as he recovered from an illness but didn't change his voter registration. With all five commissioners present, Cogen and Roberts voted for Ball, while Naito, Rojo de Steffey and Wheeler voted against him.

"Their argument was that they pretty much sided with me but they didn't want to open a can of worms," Ball said Thursday. "Now that they're coming back and granting this one, it doesn't seem fair."

Arthur Sulzberger: 503-221-8330;  
arthursulzberger@  
news.oregonian.com

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# Read Why Experts Predict Gold May Hit \$2 Long Before the Next President Leaves

Gold is bought and sold constantly, 24/7, all across the globe, and prices go down as well as go up. But when it comes to these century-old U.S. Gold Half Eagles, virtually every analyst agrees: Gold has already broken \$1,000.00 on its relentless drive upwards — and a price of \$2,000.00, even \$3,000.00 per ounce makes sense in the not-too-distant future.

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Today may be your best and last chance to buy Gold at current levels. Indeed, we are so convinced that it makes sense to invest in Gold now that we're willing to invest in acquiring you as a client. We firmly believe that once you start enjoying the benefits of owning Gold in your portfolio, you'll become a loyal customer who buys

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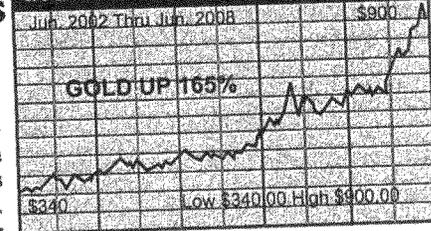
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Dealer cost based on daily spot Gold prices as of 07/02/08  
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Deborah Bogstad, Board Clerk

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**MULTNOMAH COUNTY OREGON**

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Multnomah County Board of Commissioners  
501 SE Hawthorne Boulevard, Suite 600  
Portland, Oregon 97214  
(503) 988-3277 phone  
(503) 988-3013 fax

August 18, 2008

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10241 NW Langworthy Terrace  
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cc: Board of Commissioners  
Mindy Harris  
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Ball

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07/11/08

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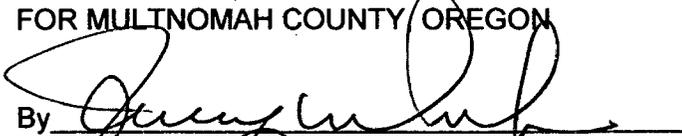


BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By 

Jacqueline A. Weber, Assistant County Attorney

SUBMITTED BY:

Agnes Sowle, Multnomah County Attorney

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# Tax break: Only 3 of 5 leaders were at meeting

Continued from Page B1

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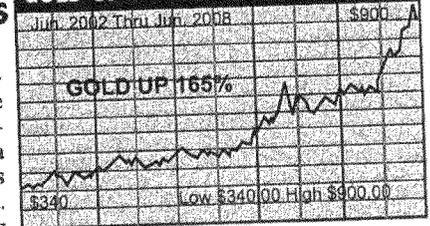
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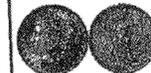


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- 10 Gold Half Eagles .....

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**MULTNOMAH COUNTY**  
**AGENDA PLACEMENT REQUEST** (Budget Modification)

APPROVED : MULTNOMAH COUNTY  
 BOARD OF COMMISSIONERS  
 AGENDA # R-4 DATE 9-4-08  
 ANA KARNES, ASST BOARD CLERK

**Board Clerk Use Only**

Meeting Date: 09/04/08  
 Agenda Item #: R-4  
 Est. Start Time: 9:55 AM  
 Date Submitted: 08/19/08

**BUDGET MODIFICATION: HD - 03**

**Budget Modification HD-03 Transferring \$178,377 in Fiscal Year 2009 County  
 Agenda General Fund Budget Authority from the Department of County Management  
 Title: to the Health Department**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

<b>Requested Meeting Date:</b>	<u>September 4, 2008</u>	<b>Amount of Time Needed:</b>	<u>5 minutes</u>
<b>Department:</b>	<u>Health</u>	<b>Division:</b>	<u>Integrated Clinical Services</u>
<b>Contact(s):</b>	<u>Lester A. Walker, Finance and Budget Manager</u>		
<b>Phone:</b>	<u>(503) 988-3674</u>	<b>Ext.</b>	<u>26457</u>
		<b>I/O Address:</b>	<u>167/2/210</u>
<b>Presenter(s):</b>	<u>Joy Allen, Program Manager</u>		

**General Information**

**1. What action are you requesting from the Board?**

The Department of County Management and the Health Department request the approval of Budget Modification HD- 03. This budget modification transfers \$178,377 in County General Fund budget authority from the Department of County Management – Information Technology’s Fiscal Year 2009 budget to the Health Department – Integrated Clinical Services – Electronic Medical Records’ Fiscal Year 2009 budget.

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

The Department of County Management and the Health Department have agreed that the budget for 2.0 FTE (1.0 FTE Data Analyst and 1.0 Data Analyst Senior) should be moved from the Department of County Management – Information Technology to the Health Department – Integrated Clinical Services – Electronic Medical Records. The Data Analyst Senior position should be housed under the Health Department in order to improve efficiencies and customer service. The Data Analyst, a new position in the FY09 Adopted Budget, will provide implementation and ongoing support for

Correction's Health Electronic Medical Records.

Data Analyst Senior The Health Department Integrated Clinical Services Clinical Systems received a grant from Kaiser Northwest Health Foundation to have a software consultant review and make recommendations for enhancement of Epic Healthcare Software for optimization and sustainability. Consequently, ECG Management Consultants recommended that support functions be consolidated to a minimum number of departments and managers. Currently, support is divided between the Department of County Management – Information Technology and the Health Department. This complicates communication, reduces efficiency, and creates confusion among Health Department staff needing support. ECG recommended consolidating end-user support to the Health Department - Integrated Clinical Services - Clinical Systems Management section that provides the Epic Electronic Health Records Support.

The Health Department Clinical Systems and County Management Information Technology Health Applications have agreed to move the support and funding for the FTE supporting Epic Practice Management from the County Management IT Health Application section to the Health Department Clinical Systems section. The position in Information Technology Applications was a Development Analyst position. The position does not require systems development. The new classification has been submitted to Class Compensation as a Data Analyst Senior position. This reclassification was approved by Class/Comp on July 30, 2008.

Data Analyst This position will be part of the Health Department's Corrections Health Electronic Health Record project and will be added to the existing Health Department Clinical Systems section that supports the Electronic Health Records in the Health Department's Primary centers. The Data Analyst will provide implementation and ongoing support for the new Corrections Health Electronic Health Record. Examples of ongoing support include maintenance of user accounts, problem identification and resolution, workflow analysis, testing, and training. This position was approved by Class/Comp on July 10, 2008.

This action affects the Department of County Management's Program Offer 72091 – DCM-IT Health & Human Services Application Services and the Health Department's Program Offer 40032 – Lab, X-Ray, Medical Records, and Electronic Medical Records.

**3. Explain the fiscal impact (current year and ongoing).**

Approval of this budget modification will reduce the FY09 County General Fund budget in the Department of County Management by \$178,377. The \$178,377 will be transferred to the Health Department's FY09 budget.

**4. Explain any legal and/or policy issues involved.**

N/A

**5. Explain any citizen and/or other government participation that has or will take place.**

N/A

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# ATTACHMENT A

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## Budget Modification

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If the request is a Budget Modification, please answer all of the following in detail:

• **What revenue is being changed and why?**

The Department of County Management's Information Technology FY09 Internal Services Reimbursement revenue budget will be reduced by \$178,377 because the corresponding personnel expenditure budget is being transferred to the Health Department.

• **What budgets are increased/decreased?**

The Health Department's Integrated Clinical Services' FY09 Internal Services Reimbursement Data Processing expenditure budget will be reduced by \$178,377 and Personnel will be increased by \$178,377. The Department of County Management's FY09 Internal Services Reimbursement Data Processing revenue budget will be reduced by \$178,377 and Personnel will be reduced by \$178,377.

• **What do the changes accomplish?**

The changes will move 2.0 FTE from the Department of County Management to the Health Department.

• **Do any personnel actions result from this budget modification? Explain.**

This budget modification transfers 2.0 FTE from the Department of County Management to the Health Department: 1.0 FTE Data Analyst and 1.0 FTE Data Analyst Senior (re-classed from Development Analyst.)

• **How will the county indirect, central finance and human resources and departmental overhead costs be covered?**

N/A

• **Is the revenue one-time-only in nature? Will the function be ongoing? What plans are in place to identify a sufficient ongoing funding stream?**

Services are considered to be ongoing.

• **If a grant, what period does the grant cover?**

N/A

• **If a grant, when the grant expires, what are funding plans?**

N/A

*NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense & Revenues Worksheet and/or a Budget Modification Personnel Worksheet.*

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## ATTACHMENT B

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**BUDGET MODIFICATION: HD - 03**

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### Required Signatures

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**Elected Official or  
Department/  
Agency Director:**

*Lillian Shirley*

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**Date: 08/19/08**

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**Budget Analyst:**

*Angela Burdine*

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**Date: 08/27/08**

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**Department HR:**

*Patricia Fuller Poe*

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**Date: 08/13/08**

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Budget Modification ID: **HD-09-03**

### EXPENDITURES & REVENUES

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with SAP.

Budget/Fiscal Year: 2009

Line No.	Fund Center	Fund Code	Program #	Func. Area	Accounting Unit		Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
					Internal Order	Cost Center						
30	72-60	1000	72091	20		709604	50310	(854,729)	(676,352)	178,377		Internal Service Reimb
31	72-60	1000	72091	20		709604	60000	548,980	434,317	(114,663)		Data Analyst, Dvlpt. Analyst,
32	72-60	1000	72091	20		709604	60130	165,647	131,282	(34,365)		Salary Related Expense
33	72-60	1000	72091	20		709604	60140	123,268	93,919	(29,349)		Salary Related Insurance
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										0	0	GRAND TOTAL





**MULTNOMAH COUNTY**  
**AGENDA PLACEMENT REQUEST (short form)**

**Board Clerk Use Only**

Meeting Date: 09/04/08  
 Agenda Item #: R-5  
 Est. Start Time: 10:00 AM  
 Date Submitted: 08/06/08

**Agenda Title: Second Reading of a proposed ORDINANCE Amending Multnomah County Code Chapter 29, Relating to County Flood Hazard Regulations**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

**Requested Meeting Date:** September 4, 2008      **Amount of Time Needed:** 5-Minutes  
**Department:** Community Services      **Division:** Land Use & Transportation Planning  
**Contact(s):** Adam Barber, Senior Planner  
**Phone:** 503.988.3043      **Ext.** 22599      **I/O Address:** 455/1/116  
**Presenter(s):** Adam Barber, Senior Planner

**General Information**

**1. What action are you requesting from the Board?**

The Planning Commission is recommending proposed amendments to the county's Flood Hazard regulations. This ordinance is used to review proposed development either within the 100-year floodplain or within a watercourse. These amendments are proposed in response to a floodplain management program Community Assistance Visit (CAV) "audit" performed by the Department of Land Conservation Department (DLCD) in 2006. The purpose of the CAV was for DLCD to provide technical assistance while simultaneously ensuring the community remains in compliance with the minimum participation requirements of the National Flood Insurance Program (NFIP).

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

The CAV found that not only was the county in compliance with the NFIP in most circumstances, but was found to exceed the minimum requirements in many instances. There were, however, a few minor required ordinance changes identified. During the CAV, DLCD staff also helped identify other ordinance revisions that may benefit the county in joining the NFIP Community Rating System (CRS) in the near future. The CRS is a voluntary incentive program that recognizes and encourages community floodplain management activities exceeding the minimum NFIP requirements. As a result of enrollment, flood insurance premium rates are often discounted for

citizens up to 45% to reflect the reduced flood risk. We see value in applying for CRS participation, although we must first complete the CAV process which requires amendments to the Flood Hazard regulations. Both the ordinance revisions required by the CAV process and those recommended for CRS participation are proposed at this time.

The Land Use and Transportation Program has adopted two sets of Flood Hazard regulations. Chapter 29.620 *et. seq.* applies within the West of the Sandy River Plan Area. Chapter 29.600 *et. seq.* applies everywhere else. The main difference being the West of the Sandy River Plan Area contains a General Development Standard section primarily addressing excavation and fill activities. These general standards were added in 2002 in order to comply with Title 3 of the Metro Urban Growth Management Functional Plan and were only required to apply to the West of Sandy River Plan Area. These regulations are intended to reduce the risk of flooding and protect water quality. We are proposing to combine these two sets of nearly identical regulations into one to bring the rest of the lands within Metro boundaries into compliance with the Metro Title 3 flood management provisions and to simplify implementation. This combination may also help us achieve a more favorable CRS rating upon enrollment.

**3. Explain the fiscal impact (current year and ongoing).**

There are no anticipated fiscal impacts to the county as a result of these ordinance amendments. The proposed revisions will clarify approval criteria, provide better flood protection for the citizens of the unincorporated county and will allow the county to enroll in the CRS process.

**4. Explain any legal and/or policy issues involved.**

Multnomah County is responsible for administration of a local floodplain management ordinance that must contain, at a minimum, Federal regulation requirements of the National Flood Insurance Program that provide performance standards for activities in the floodplains. Deficiencies in the county's local floodplain management ordinance have been identified by the Federal Emergency Management Agency which must be corrected in order to allow the citizens of unincorporated Multnomah County to continue to be eligible for flood insurance. These deficiencies relate to standards regulating unfinished garage construction, foundation anchoring requirements, provisions to ensure adequate drainage around and away from a building, development standards within an un-mapped floodway and below grade crawlspace construction. This proposed ordinance corrects these deficiencies.

**5. Explain any citizen and/or other government participation that has or will take place.**

Notice of the April 8<sup>th</sup>, 2008 Planning Commission Hearing was mailed to all owners of property within the 100-year floodplain and notice of this Board of County Commissioners hearing was published in the Oregonian newspaper. The April hearing was continued until June 2<sup>nd</sup>, 2008 at which time the Planning Commission voted and approved the proposed revisions. The Federal Emergency Management Agency and the Department of Land Conservation and Development have both been notified of this project and have worked closely with staff in the preparation of the draft ordinance. In addition, the City of Portland and City of Gresham Building Bureaus have been notified and participated in this ordinance revision project as well. These cities provide building permit services for development within the unincorporated portions of the county.

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**Required Signature**

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Elected Official  
or Department/  
Agency Director:



Date: 08/06/08

## BOGSTAD Deborah L

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**From:** BARBER Adam T  
**Sent:** Thursday, August 21, 2008 4:25 PM  
**To:** KINOSHITA Carol; BOGSTAD Deborah L; KARNES Ana  
**Cc:** DUFFY Sandra N  
**Subject:** RE: Flood Hazard Ordinance Development Standard Problem

Thanks Carol,

I will be available for the second reading to explain the change but will be out of town for the third reading and am trying to find someone to sit in the audience in case something comes up.

Sincerely,

adam

-----Original Message-----

**From:** KINOSHITA Carol  
**Sent:** Thursday, August 21, 2008 4:23 PM  
**To:** BOGSTAD Deborah L; KARNES Ana  
**Cc:** BARBER Adam T; DUFFY Sandra N  
**Subject:** FW: Flood Hazard Ordinance Development Standard Problem

Oops – I forgot to send to Deb & Ana – Here's the revised flood hazard ordinance that requires amendment on second reading (see highlighted phrase that was inadvertently omitted) and a third reading. Thanx!

*Carol*

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**From:** KINOSHITA Carol  
**Sent:** Thursday, August 21, 2008 4:15 PM  
**To:** BARBER Adam T  
**Cc:** DUFFY Sandra N  
**Subject:** RE: Flood Hazard Ordinance Development Standard Problem

Hi Adam!

I checked with Sandy and revised the ordinance, highlighting the change. The change needs to be made on second reading and Sandy recommends a third reading as the change is material and Section 10E of the Board Rules states: "If the Board approves a change that materially affected a proposed ordinance, an additional reading of the proposed ordinance may be held."

<< File: Final-ORD\_FloodHazard-rev8-21.doc >>

*Carol*

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**From:** BARBER Adam T  
**Sent:** Thursday, August 21, 2008 2:37 PM  
**To:** KINOSHITA Carol  
**Cc:** DUFFY Sandra N  
**Subject:** Flood Hazard Ordinance Development Standard Problem

Carol,

The Board approved the flood hazard revisions at today's first reading. I did, however discover after the presentation that one particular non-residential development standard may have

changed slightly while you, Sandy and I worked together on the ordinance which will end up being problematic (29.606(D)(2)).

Our Planning Commission approved the language in the first paragraph below which is drafted appropriately. The second paragraph below approved by the Board today is problematic in that we lost our reference to the floodproofing certificate and because it indicates the elevation certificate can be completed by an engineer or architect which is not accurate. This form must be completed by a surveyor. I don't recall either of us discussing this section so don't know why the change was made. With so many drafts being circulated, it was likely another inadvertent mistake.

This particular development standard did not come up during today's discussion with the Board and I'm wondering if procedurally we could replace this section with the language approved by the Planning Commission for the Board's second reading? I also have attached the ordinance approved by the Board today for orientation. This language simply clarifies our current practices implementing current code.

LANGUAGE APPROVED BY PC...

~~(2) The applicant shall provide either an as-built a finished construction elevation survey certificate prepared by a State of Oregon Land Surveyor for an elevated non-residential structure or a floodproofing certificate prepared by a State of Oregon Registered Professional Engineer or Architect for a non-elevated, non-residential structure. of the lowest floor shall be completed by a State of Oregon Registered Professional Engineer or Land Surveyor certifying that the structure's lowest floor was elevated to at least one foot above the base flood level; or submit a stamped documentation by a State of Oregon Registered Professional Engineer certifying the structure has been built in compliance with MCC 29.606(C)(1)(a) though (c).~~

LANGUAGE APPROVED BY BOARD...

~~(2) The applicant shall provide either an as-built finished construction elevation survey certificate prepared of the lowest floor completed by a State of Oregon Registered professional engineer or land surveyor architect for a non-elevated, non-residential structure certifying that the structure's lowest floor was elevated to at least one foot above the base flood level; or submit a stamped documentation by a State of Oregon Registered Professional Engineer certifying the structure has been built in compliance with MCC 29.606(C)(1)(a) though (c).~~

Sincerely,

**Adam Barber, CPESC**  
Senior Planner

Multnomah County Land Use Planning  
1600 SE 190th Avenue, Suite 116  
Portland, Oregon 97233  
ph: 503-988-3043 x 22599  
fax: 503-988-3389  
[adam.t.barber@co.multnomah.or.us](mailto:adam.t.barber@co.multnomah.or.us)

<< File: Final-ORD\_FloodHazard-Final.doc >>

BEFORE THE PLANNING COMMISSION  
for MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. PC-08-003**

In the matter of recommending that the Board of Commissioners adopt revisions to the County Building Codes pertaining to Flood Hazards (Multnomah County Code 29.600 – 29.611 & 29.620 – 29.630).

**The Planning Commission of Multnomah County Finds:**

- a. The Planning Commission is authorized by Multnomah County Code Chapter 37 to recommend to the Board of County Commissioners the adoption, revision, or repeal of regulations intended to carry out all or part of a plan adopted by the Board.
- b. Flood Hazard regulations implement Policy 14 of the County Comprehensive Framework Plan, for Development Limitations, and related provisions of the County's Rural Area Plans. The regulations apply to certain rural unincorporated lands that are generally within the 100 year flood boundary as identified by the Federal Emergency Management Agency (FEMA).
- c. Flood Hazard standards are necessary to promote the public health, safety and general welfare, to minimize public and private losses due to flood conditions, and to allow property owners to participate in the National Flood Insurance Program (NFIP).
- d. The Flood Hazard regulations applicable in the West of the Sandy River Rural Plan Area were last amended in 2003 by Ordinance 996. The Flood Hazard regulations applicable in all other areas were last updated in 1999 by Ordinance 931.
- e. In 2007, Multnomah County was informed by the Department of Land Conservation and Development (DLCD) through a Community Assistance Visit that the Flood Hazard regulations must be amended for the county to remain in compliance with the minimum participation requirements of the National Flood Insurance Program.
- f. Additional changes recommended by DLCD will assist the county in enrolling in the FEMA sponsored Community Rating System, a voluntary program that encourages community floodplain management activities that exceed minimum NFIP requirements. Enrollment can result in reduced flood insurance premiums for citizens.
- g. Updating the Flood Hazard standards is an opportunity to bring remaining lands into compliance with Metro Title 3 and to combine the two Flood Hazard ordinances to achieve administrative efficiencies.

- h. Proposed changes are necessary to ensure that the building codes limit risk of flood related hazards as envisioned in Policy 14, to fully implement Title 3, and to ensure property owners maintain eligibility for insurance through the NFIP.
- i. Optional changes are also appropriate as they further protect public and private development from flood loss and may help to reduce flood insurance rates.

**The Planning Commission of Multnomah County Resolves:**

- 1. The proposed ordinance revisions in Exhibit A to the Staff Report, including the combining of the two sets of Flood Hazard regulations, are hereby recommended for adoption by the Board of County Commissioners.

ADOPTED this 2<sup>nd</sup> day of June, 2008.

PLANNING COMMISSION  
FOR MULTNOMAH COUNTY, OREGON

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John Ingle, Chair

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. \_\_\_\_\_

Amending MCC Chapter 29, Relating to County Flood Hazard Regulations

(Language stricken is deleted; double underlined language is new.)

**The Multnomah County Board of Commissioners Finds:**

- a. The Planning Commission is authorized by Multnomah County Code Chapter 37 to recommend to the Board of County Commissioners the adoption, revision, or repeal of regulations intended to carry out all or part of a plan adopted by the Board. The Planning Commission recommended adoption of the proposed amendments June 2<sup>nd</sup>, 2008.
- b. Flood Hazard regulations implement Policy 14 of the County Comprehensive Framework Plan, for Development Limitations, and related provisions of the County's Rural Area Plans. The regulations apply to certain rural unincorporated lands that are generally within the 100 year flood boundary as identified by the Federal Emergency Management Agency (FEMA).
- c. Flood Hazard standards are necessary to promote the public health, safety and general welfare, to minimize public and private losses due to flood conditions, and to allow property owners to participate in the National Flood Insurance Program (NFIP).
- d. The Flood Hazard regulations applicable in the West of the Sandy River Rural Plan Area were last amended in 2003 by Ordinance 996. The Flood Hazard regulations applicable in all other areas were last updated in 1999 by Ordinance 931.
- e. In 2007, Multnomah County was informed by the Department of Land Conservation and Development (DLCD) through a Community Assistance Visit that the Flood Hazard regulations must be amended for the county to remain in compliance with the minimum participation requirements of the National Flood Insurance Program.
- f. Additional changes recommended by DLCD will assist the county in enrolling in the FEMA sponsored Community Rating System, a voluntary program that encourages community floodplain management activities that exceed minimum NFIP requirements. Enrollment can result in reduced flood insurance premiums for citizens.
- g. Updating the Flood Hazard standards is an opportunity to bring remaining lands into compliance with Metro Title 3 and to combine the two Flood Hazard ordinances to achieve administrative efficiencies.
- h. Proposed changes are necessary to ensure that the building codes limit risk of flood related hazards as envisioned in Policy 14, to fully implement Title 3, and to ensure property owners maintain eligibility for insurance through the NFIP.
- i. Optional changes are also appropriate as they further protect public and private development from flood loss and may help to reduce flood insurance rates.

**Multnomah County Ordains as follows:**

**Section 1.** MCC § 29.600- is amended as follows:

**FLOOD HAZARD REGULATIONS (~~Excluding West of Sandy River Plan Area~~)**

**29.600- Purposes.**

The purposes of the Flood Hazard Standards are to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas and to allow property owners within unincorporated Multnomah County to participate in the National Flood Insurance Program and to comply with Metro Title 3 Requirements.

**Section 2.** MCC § 29.601 is amended as follows:

**29.601 Definitions.**

For the purpose of this subchapter, the following definitions shall apply:

***ALTERATION.*** To modify, change or make different.

**AREAS OF SPECIAL FLOOD HAZARD.** All lands contained within the 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps (FIRM) as published by the Federal Emergency Management Agency (FEMA), and the area of inundation for the February, 1996 flood when located outside of the flood areas identified on the Flood Insurance Rate Maps.

The Areas of Special Flood Hazard identified by the Federal Insurance Administration in the most recent scientific and engineering report entitled "The Flood Insurance Study, Multnomah County Oregon Unincorporated Areas", with accompanying Flood Insurance Rate Maps (FIRM), are hereby adopted by reference. Maps produced by the Metro Data Regional Center that identify the area of inundation for the February 1996 flood are also adopted by reference. The Flood Insurance Study is on file at the Multnomah County Planning Office. The best available information for flood hazard area identification as outlined in MCC 29.608 shall be the basis for regulation until a new FIRM is issued.

These maps may be periodically revised or modified by FEMA in accordance with prescribed procedures pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (P.L. 92-234). In order to employ the best available information and maintain compliance with Federal Flood Insurance Program regulations, Multnomah County shall utilize any such revisions or modifications upon their effective date.

**BASE FLOOD.** The flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on the FIRM maps always includes the letter A to identify a zone of specified risk. (Zone A is the flood insurance rate zone that corresponds to the 1-percent annual chance floodplains that are determined in the Flood Insurance Study by approximate methods of analysis).

**BASEMENT.** Any area of the building having its floor sub grade (below ground level) on all sides.

**CRITICAL FACILITY.** A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals police, fire and emergency response installations, and installations which produce, use or store hazardous materials or hazardous waste.

**DESIGN FLOOD ELEVATION.** The elevation of the base flood elevation, or in areas without maps, the elevation of the 25-year storm, or the edge of mapped flood prone soils or similar methodologies.

**DEVELOPMENT.** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the areas shown within 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps as published by the Federal Emergency Management Agency (FEMA) and or within any watercourse.

**ELEVATED BUILDING.** For insurance purposes, a non basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

**ELEVATION CERTIFICATE.** The document used to certify the FIRM Zone and base flood elevation of the development area of a property, and to determine the required elevation or floodproofing requirements of new and substantially improved structures.

**ENCROACHMENT.** To fill, construct, improve, or develop beyond the original bank line of the watercourse. Bank stabilization or restoration of a watercourse which does not protrude beyond the original banks line and does not protrude above the topography at the time the Flood Insurance Rate Map was developed is not considered an encroachment ~~by this subdistrict.~~

**FLOOD OR FLOODING.** A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters, and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

**FLOOD INSURANCE RATE MAP (FIRM).** The official map on which the Federal Insurance Administration has delineated both the areas of the special flood hazards and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY.** The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

**FLOODPROOFING CERTIFICATE.** Documentation of certification by an Oregon registered professional engineer or architect that the design and methods of construction of a non-residential building are in accordance with accepted practices for meeting the floodproofing requirements of this subchapter.

**FLOODWAY.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**LOWEST FLOOR.** The lowest floor of the lowest enclosed area (including basement).

**MANUFACTURED HOME.** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

**NEW CONSTRUCTION.** Structures for which the "start of construction" commenced on or after the effective date of this ordinance.

**RECREATIONAL VEHICLE.** A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, self-propelled or permanently towable by a light duty truck and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**START OF CONSTRUCTION.** Includes substantial improvement to existing structures, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include the land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement to an existing structure, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE.** A walled and/or roofed building including a gas or liquid storage tank that is principally above ground. A building with only one wall and no roof or a building with no walls and a roof, for example, is considered a structure.

**SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT.** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(1) Before the improvement or repair is started; or

(2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The costs to repair must be calculated for full repair to "before-damage" condition, even if the owner elects to do less. The total costs to repair include both structural and finish materials and labor including donated labor and materials.

(3) The value of these alterations to an existing structure is measured cumulatively to avoid exempting a substantial improvement implemented in phases over time..

(34) Substantial Improvement does not, however, include either:

(a) The portion of any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by local building officials and which are the minimum necessary to assure safe living conditions or

(b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**WATERCOURSE.** A channel in which a flow of water occurs, either continuously or intermittently with some degree of regularity. Watercourses may be either natural or artificial. Natural and artificial features which transport surface water. Watercourse includes a river, stream, creek, slough, ditch, canal, or drainage way.

**Section 3.** MCC § 29.602 is amended as follows:

**29.602 Areas Affected.**

~~————(A) The provisions of MCC 29.600 - 29.611 shall apply to all areas of special flood hazard, within the 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps as published by the Federal Emergency Management Agency (FEMA) and any watercourse as defined by MCC 29.601. The provisions of 29.609 shall also apply to any relocation, encroachment or alteration of a watercourse.~~

~~————(1) These maps may be periodically revised or modified by FEMA in accordance with prescribed procedures pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (P.L. 92-234). In order to employ the best available information and maintain compliance with Federal Flood Insurance Program regulations, Multnomah County shall utilize any such revisions or modifications upon their effective date.~~

~~(2) On the Multnomah County Zoning Map, all areas depicted as being Flood Fringe (FF), Floodway (FW) or Flood Hazard (FH) with this ordinance are repealed from requiring a Flood Hazard Permit.~~

**Section 4.** MCC § 29.603 is amended as follows:

**29.603 Permits.**

(A) No structure, dwelling or manufactured home shall be erected, located, altered, improved, repaired or enlarged and no other new development including but not limited to grading, mining, excavation and filling (see “Development” under MCC 29.601) shall occur in areas of special flood hazard lands within the 100-year flood boundary unless a Floodplain Development Permit specifically

authorizing the proposal has been obtained from Multnomah County. Variances to the Flood Hazard regulations are not allowed.

(1) Improvements to a structure, dwelling or mobile home or other development, which does not meet the definition of "Development" under MCC 29.601 require a land use permit, grading permit or building permit, are exempted from obtaining a Floodplain Development Hazard Permit.

(B) Alterations, modifications or relocations to any watercourse as defined in MCC 29.601 are subject to a Floodplain Development Hazard permit and the Watercourse Relocation and Alteration standards requirements of MCC 29.609.

~~(1) Regular maintenance of ditches and dikes within the Sauvie Island Drainage District is exempted from obtaining a Flood Hazard Permit.~~

(C) Transportation maintenance activities may be evaluated in an annual Flood Hazard permit. This permit will confirm that the typical Best Management Practices used to accomplish routine transportation maintenance projects meet applicable Flood Hazard regulations. Eligible activities include routine cleaning and maintenance of ditches and culverts, replacement culverts, unanticipated emergency response activities and the permitting of new driveway culverts crossing a county maintained ditch. After the fact notification of the location and scope of all transportation maintenance activities is required.

**Section 5.** MCC § 29.604 is amended as follows:

**29.604 Exemption from Development Standards.**

The following are exempt:

(A) Land may be exempted from the requirements of MCC 29.606 upon review and approval by the Director of an acceptable elevation certificate or survey, certified by a State of Oregon registered Professional Engineer or land surveyor, which demonstrates that the entire subject parcel is at least one foot above the base flood levelevation. This exemption is only possible when flood elevation data is available. If a critical facility is proposed, the entire parcel must be at least three feet above the base flood elevation (or above the 500-year flood elevation, which ever is higher) in order to be considered exempt from the requirements of MCC 29.606.

(B) The reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Historic Sites Inventory may be permitted without regard to the requirements of MCC 29.606 (B) through (D).

(C) Forest practices ~~conducted~~ approved under the Forest Practices Act are not regulated by this subchapter.

(D) The following drainage district maintenance activities are not regulated by this subchapter when regulated by an Army Corps of Engineers Nationwide 31 permit - Routine operations, repair, maintenance, alteration, rehabilitation, or replacement of existing drainage, flood control, and related facilities, including any structures, pump stations, water control structures, culverts, irrigation systems, roadways, utilities, accessory uses (such as off-load facilities that facilitate water-based maintenance), erosion control projects, levees, soil and bank stabilization projects, dredging and ditch

clearing within the hydraulic cross-section in existing storm water conveyance drainageways, habitat restoration and enhancement projects, or other water quality and flood storage projects required to be undertaken pursuant to ORS chapters 547 or 554 or Titles 33 or 44 of the Code of Federal Regulations, provided that:

(1) The project is consistent with Division of State Lands, five-year renewable general authorization permit, five-year renewable Army Corps of Engineers Nationwide 31 permit and all other applicable local, regional, county and state laws and regulations. The preconstruction notification and annual reporting required by the Army Corp's Nationwide 31 permit must also be submitted to Multnomah County planning by the drainage districts for review and comment.

(2) The project does not encroach closer to a water feature than existing operations and development; and

(3) Vegetation native to the metro area is maintained, enhanced and restored, if disturbed; other vegetation is replaced, if disturbed, with non-invasive vegetation; and the planting of native vegetation and the removal of invasive non- native vegetation is encouraged.

**Section 6. MCC § 29.605 is amended as follows:**

**29.605 Application Information Required.**

An application for development subject to a Floodplain Development Permit shall include the following:

(A) A map showing the property line locations, the surveyed boundaries of the 100 year floodplain on the parcel, roads, and driveways, existing structures, watercourses and the location of the proposed development(s), topographic elevations for the proposed development and areas of grading or filling required for the project. The FIRM map and panel number shall also be provided on the map.

(B) Detailed construction drawings showing compliance with the development standards specified in MCC 29.606. A State of Oregon registered professional~~icensed~~ engineer or architect shall stamp the plans and include a statement that the plans meet the applicable requirements of MCC 29.606.

(C) An elevation certificate based on construction drawings which have been signed by a State of Oregon registered professional land surveyor, or a floodproofing certificate signed by a State of Oregon registered professional engineer or architect, depending on the type of development proposed. The certificate shall be accompanied by a plan of the property which shows the location and elevation of a benchmark on the property.

(D) A written narrative specifying building materials and methods that will be utilized to comply with the requirements of the floodplain development permit and this subchapter.

(E) Evidence that the applicant has obtained, when necessary, prior approval from those Federal, State and/or local governmental agencies with jurisdiction over the proposed development.

**Section 7.** MCC § 29.606 is amended as follows:

**29.606 Development Standards.**

Unless otherwise stated below, the following development standards shall apply within all portions of unincorporated Multnomah County to all new construction, substantial improvement or other development in areas of special flood hazard, as defined in 29.601 within the 100-year flood boundary. (The General Development Standards of 29.606(A) are only applicable in the West of Sandy River Rural Plan area and/or within the Metro Jurisdictional Boundary)

(A) General Development Standards - Applicable only in the West of Sandy River Rural Plan Area and/or within the Metro Jurisdictional Boundary.

(1) Development, excavation and fill shall be performed in a manner that maintains or increases flood storage and conveyance capacity and does not increase the design flood elevation.

(2) All fill placed at or below the design flood elevation in areas of special flood hazard shall be balanced with at least an equal amount of soil material removal.

(3) Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.

(4) Temporary fills permitted during construction shall be removed and not be allowed in the floodway during the wet weather season.

(5) Uncontained areas of hazardous materials as defined by the Oregon Department of Environmental Quality shall be prohibited in areas of special flood hazard.

(AB) All Structures Except as provided in subsection (A) above, this subsection applies to all structures within areas of special flood hazard in unincorporated Multnomah County as defined in 29.601.

(1) All new construction and substantial improvement shall:

(a) Comply with Oregon State Building Codes.

(b) Have the electrical, heating, ventilation, duct systems, plumbing, and air conditioning equipment and other service facilities shall be designed and/or located a minimum of one foot above the base flood elevation so as to prevent water from entering or accumulating within the components during conditions of flooding.

(c) Use materials and utility equipment resistant to flood damage.

(d) Using methods and practices that minimize flood damage.

(e) For areas that are fully enclosed below the lowest floor and that are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. (Note: this requirement is not applicable for floodproofed nonresidential structures).

1. Designs for meeting this requirement must ~~either~~ be certified by a State of Oregon registered professional engineer or architect and must meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above the lowest adjacent exterior grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters and the covering device does not reduce the minimum required total net area of the opening.

(2) Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures. Positive drainage away from a structure's foundation shall also be provided to avoid ponding of water adjacent to the foundation after floodwaters recede.

(3) Below-grade crawlspace construction (see figure 2 below).

In addition to meeting the previous development standards for all structures, all below-grade crawlspaces shall meet the following standards. Below-grade crawlspace construction in accordance with the requirements listed below will not be considered a basement.

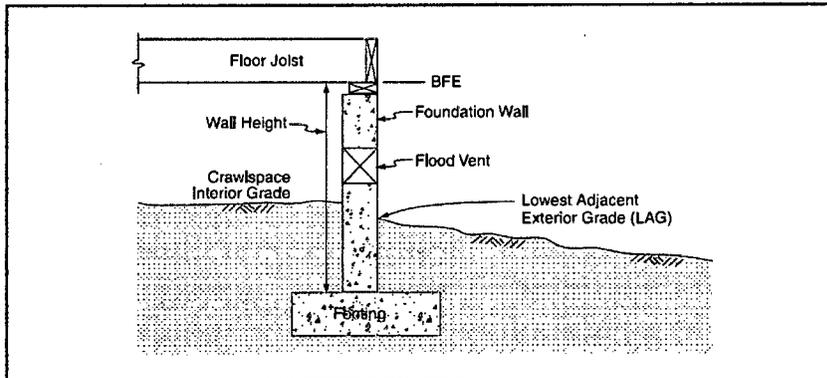


Figure 1 Preferred crawlspace construction.

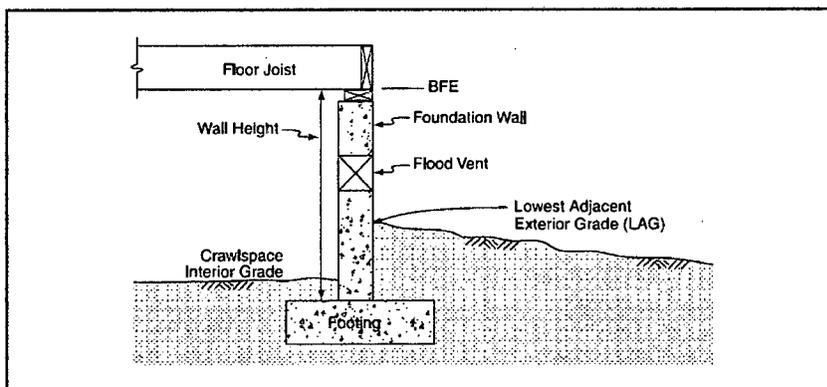


Figure 2 Below-grade crawlspace construction.

(a) The interior grade of a crawlspace below the base flood elevation shall not be more than two-feet below the lowest adjacent exterior grade.

(b) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four feet at any point.

(c) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. Drainage examples include natural drainage through porous well drained soils, perforated pipes, drainage tiles, or gravel/crushed stone drainage by gravity or mechanical means.

(d) The velocity of floodwaters shall not exceed five-feet per second for any proposed below grade crawlspace location. The Multnomah County Flood Insurance Study contains Floodway Data Tables presenting information on mean floodway velocities at each cross section along the river or stream. Other types of foundations, such as open pile or column foundations, that allow floodwaters to flow freely beneath the building, are recommended for areas exceeding five-feet per second flood velocities.

(e) The below-grade crawlspace area should be designed so that it is easily accessible for physical post-flood clean-up and ventilation. The land owner must record a notice acknowledging below-grade crawlspace construction is not recommended by the Federal Emergency Management Agency and that this type of construction can increase flood insurance premiums for homeowners.

(4) When applicable, the horizontal line of the base flood elevation shall be surveyed and clearly marked and labeled, by a State of Oregon registered professional land surveyor, on an inside wall of any structure or inside foundation wall when a crawlspace is proposed to provide a visual reference for the building inspector. This reference line is not intended to be permanent and can be removed, covered or painted over at the conclusion of all building inspections. This marking is not applicable when the entire structure, including above grade foundation walls, will be elevated above the base flood elevation.

**(BC) Residential Structures.**

New construction and substantial improvement of any residential structure, including manufactured homes not considered a Critical Facility, shall:

(1) Have the lowest floor, including basement, elevated to at least one foot above the base elevation flood level as indicated on the Elevation Certificate. Floating dwellings do not need to be elevated but must be able to rise with flood waters to the design flood elevation required by this section. This will require consideration of the piling heights. The lowest floor, including basement, shall be elevated to at least two feet above the base flood elevation where flood elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative federal, state or other source. Where flood elevation data is not available, a State of Oregon registered professional engineer or architect shall also verify that the proposed construction will be reasonably safe from flooding.

A garage attached to a residential structure can be constructed with the garage floor slab below the base flood elevation but must be designed to allow for the automatic entry of flood waters. Openings must meet the requirements of 29.606(B) and are required in two different exterior

~~walls of the garage (two different walls or one wall and one garage door). For purposes of this section, an unfinished garage (either attached or detached) may be considered a non-residential structure.~~

In addition to allowing the automatic entry of flood waters, the areas of the garage below the base flood elevation must be constructed with flood resistant materials. Garage doors without openings specifically designed to allow for the free flow of floodwaters do not meet these opening requirements. Gaps that may be present between the door segments and between the garage door and the garage door jam do not guarantee the automatic entry and exist of floodwaters. The human intervention necessary to open garage doors is not an acceptable means of meeting the opening requirements.

(2) Be placed on a permanent foundation and shall be anchored to ~~resist prevent~~ flotation, collapse and lateral movement by providing tie downs (anchor bolts, seismic tie-downs) and anchoring as specified in OAR 814-23-005 through 080 and State of Oregon 1 and 2 Family Dwelling Specialty Code, as appropriate to the construction type.

(3) Have structural components capable of withstanding hydrostatic and hydrodynamic loads, effects of buoyancy, flood depths, pressures, velocities and other factors associated with the base flood.

(34) ~~Conduct a finished construction as-built~~ elevation survey of the lowest floor. This survey shall be completed by a State of Oregon registered ~~professional engineer or land surveyor~~ and must certify that the structure's lowest floor was elevated to at least one foot above the base flood ~~leve~~elevation. The lowest floor, including basement, shall be elevated to at least two feet above the base flood elevation where flood elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative federal, state or other source. Where flood elevation data is not available, a State of Oregon registered professional engineer or architect shall also verify that the proposed construction will be reasonably safe from flooding.

(a) ~~The as-built finished construction elevation survey certificate and stamped documentation certifying that the structure has been built in compliance with the applicable provisions of 29.606 shall be submitted to Multnomah County Land Use Planning prior to occupancy of the structure.~~

(b) Prior to issuance of a building permit or start of development, a performance bond or cash deposit of \$1000.00 shall be required to assure that the ~~as-built finished construction elevation survey certificate~~ is submitted. The deposit/bond may be used to obtain the elevation ~~survey certificate~~, without notice, if it is not completed and submitted prior to occupancy of the dwelling. The performance bond or cash deposit shall be released upon submittal of the ~~as-built finished construction elevation survey certificate~~, unless utilized to obtain compliance.

(CD) Nonresidential Structures.

New construction and substantial improvement of any commercial, industrial or other non-residential structure, including a detached garage, shall:

(1) Have the lowest floor including basement, elevated at least one foot above the base flood elevation and be anchored to prevent flotation, collapse, or lateral movement of the structure. level Floating nonresidential structures do not need to be elevated but must be able to rise with flood waters to the design flood elevation required by this section. This will require consideration of the piling heights. The lowest floor, including basement, shall be elevated to at least two feet above the base flood

elevation where flood elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative federal, state or other source. Where flood elevation data is not available, a State of Oregon registered professional engineer or architect shall also verify that the proposed construction will be reasonably safe from flooding; or, together with attendant utility and sanitary facilities, shall:

(a) Be floodproofed such that the structure, including the attendant utility and sanitary facilities, shall be substantially impermeable to the passage of water to an elevation at least one foot above the base flood ~~level~~elevation; and

(b) Have structural components capable of withstanding hydrostatic and hydrodynamic loads, effects of buoyancy, flood depths, pressures, velocities and other factors associated with the base flood; and

(c) Be certified by a State of Oregon registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans~~standards of this subsection are satisfied.~~

(2) ~~The applicant shall provide either an as-built finished construction elevation survey certificate prepared of the lowest floor completed by a State of Oregon Registered professional engineer or land surveyor/architect for a non-elevated, non-residential structure certifying that the structure's lowest floor was elevated to at least one foot above the base flood level; or submit a stamped documentation by a State of Oregon Registered Professional Engineer certifying the structure has been built in compliance with MCC 29.606(C)(1)(a) through (e).~~

(a) ~~The as-built finished construction elevation certificate/floodproofing certificates survey or and stamped documentation certifying the structure has been built in compliance with the applicable provisions of MCC 29.606 shall be submitted to Multnomah County Land Use Planning prior to occupancy of the structure.~~

(b) Prior to issuance of a building permit or start of development, a performance bond or cash deposit of \$1000.00 shall be required to assure that the as-built finished construction elevation survey certificate or and stamped documentation is submitted. The bond/deposit may be used to obtain the elevation survey certificate or documentation, without notice, if it is not completed and submitted prior to occupancy or use of the structure or development. The performance bond or cash deposit shall be released upon submittal of the as-built finished construction elevation survey certificate or stamped documentation, unless utilized to obtain compliance.

(DE) On Site Waste Disposal Systems, Wells, Water Systems and Sewer Systems.

All new and replacement water and sewer systems, including on-site waste disposal systems, shall be designed to:

- (1) Minimize infiltration of floodwaters into the system;
- (2) Minimize discharge from systems into floodwaters;
- (3) Avoid impairment or contamination during flooding.

**(EF) ~~Recreational Vehicles in Campground or Recreational Development~~**

Recreational vehicles utilized on sites within Zones A1-A30, AH and AE on the community's FIRM shall either:

- (1) Be on the site for fewer than 180 consecutive days, or
- (2) Be fully licensed and ready for highway uses, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (3) Meet the requirements of section 29.606(~~AB~~) and (~~BC~~).

**(G) Critical Facilities**

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the areas of special flood hazard. Construction of new critical facilities shall be permissible within the special flood hazard area if:

- (1) No feasible alternative is available.
- (2) The lowest floor is elevated three feet above the base flood elevation, or to the elevation of the 500-year flood, whichever is higher.
- (3) At least one access route to the critical facility shall be either located or elevated at or above the flood elevation referenced above to assure the route will remain passable during flood events.
- (4) Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced or released into floodwaters.
- (5) The construction meets the requirements of MCC 29.606(D) except the lowest floor elevation shall meet (G)(2) above.

**(H) Land Division Proposals**

County review of proposed land divisions are subject to separate criteria in the county zoning code titled "Land Divisions" which are designed to minimize flood damage.

**Section 8. MCC § 29.607 is amended as follows:**

**29.607 Floodway Requirements.**

In areas identified as a floodway in MCC 29.602~~on the Flood Boundary and Floodway Maps~~, the following restrictions, in addition to the requirements of MCC 29.606, shall apply:

- (A) No development shall be permitted that would result in any measurable increase in base flood levels.

(1) Encroachment into the floodway, including fill, new construction, substantial improvements and other development, is prohibited, unless a detailed step backwater analysis and conveyance compensation calculations, certified by a State of Oregon registered professional engineer, are provided which demonstrates that the proposed encroachment will cause no measurable increase in flood levels (water surface elevations) during a base flood discharge.

(2) If Section (A) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of MCC 29.606.

(B) In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the communities FIRM, unless:

(1) It is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community, and

(2) The applicable requirements of 29.606 are met.

**Section 9. MCC § 29.609 is amended as follows:**

**29.609 Watercourse Relocation and Alteration.**

Prior to approving any relocation, encroachment or alteration of a watercourse, the Land Use Planning Division shall provide mailed notice of the proposal to adjoining communities and to the Department of Land Conservation and Development Floodplain Coordinator. Copies of such notice shall also be provided to the Federal Insurance Administration.

(A) No relocation, encroachment or alteration of a watercourse shall be permitted unless a detailed hydraulic analysis, certified by a State of Oregon registered professional engineer, is provided which demonstrates that:

- (1) The flood carrying capacity for the altered or relocated portion of the watercourse will be maintained;
- (2) The area subject to inundation by the base flood discharge will not be increased;
- (3) The alteration or relocation will cause no measurable increase in base flood levels.

**Section 10. MCC § 29.610 is amended as follows:**

**29.610 County Records.**

Multnomah County or its designee shall obtain and maintain on file the ~~actual~~ final construction elevation (in relation to the National Geodetic Vertical Datum (NGVD) 1929 or NAVD 1988) of the

lowest floor, including basement, of all new or substantially improved structures in areas subject to the provisions of this Section.

(A) For all new or substantially improved floodproofed structures in areas subject to the provisions of this Section, Multnomah County shall obtain and maintain on file the actual elevation (in relation to NGVD 1929 or NAVD 1988) of to which the structure was floodproofed and shall also maintain the floodproofing certifications required pursuant to MCC 29.606(C)(1)(b)-(d).

**Section 11.** MCC §§ 29.620- through 29.630 are repealed as follows:

**~~29.620\* WEST OF SANDY RIVER FLOOD HAZARD REGULATIONS~~**

**~~29.620- Purposes.~~**

~~———— The purposes of the Flood Hazard Standards are to promote the public health, safety and general welfare, to reduce the risk of flooding and maintain the functions and values of floodplains such as allowing for the storage and conveyance of stream flows through existing and natural flood conveyance systems, and to minimize public and private losses due to flood conditions in specific areas and to allow property owners within the West of Sandy River Plan Area of unincorporated Multnomah County to participate in the National Flood Insurance Program. (Title 3)~~

**~~29.621 Definitions.~~**

~~———— For the purpose of this subchapter, the following definitions shall apply:~~

~~———— **ALTERATION.** To modify, change or make different.~~

~~———— **DEVELOPMENT.** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the areas shown within 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps as published by the Federal Emergency Management Agency (FEMA), the area of inundation for the February 1996 flood, and any watercourse.~~

~~———— **DESIGN FLOOD ELEVATION.** The elevation of the 100-year flood as defined by FEMA Flood Insurance Rate Maps, or in areas without maps, the elevation of the 25-year storm, or the edge of mapped flood-prone soils or similar methodologies.~~

~~———— **ELEVATION CERTIFICATE.** The document used to certify the FIRM Zone and base flood elevation of the development area of a property, and to determine the required elevation or floodproofing requirements of new and substantially improved structures.~~

~~———— **ENCROACHMENT.** To fill, construct, improve, or develop beyond the original bank line of the watercourse. Bank stabilization or restoration of a watercourse which does not protrude beyond the original banks line is not considered an encroachment by this subdistrict.~~

~~———— **FLOOD MANAGEMENT AREA.** All lands contained within the 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps as published~~

by the Federal Emergency Management Agency (FEMA), and the area of inundation for the February 1996 flood.(Title 3)

—————**FLOODWAY.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

—————**RECREATIONAL VEHICLE.** A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, self-propelled or permanently towable by a light-duty truck and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

—————**SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

—————**SUBSTANTIAL IMPROVEMENT.** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

—————(1) Before the improvement or repair is started; or

—————(2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The costs to repair must be calculated for full repair to "before damage" condition, even if the owner elects to do less. The total costs to repair include both structural and finish materials and labor.

—————(3) Substantial Improvement does not, however, include either:

—————(a) The portion of any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by local building officials and which are the minimum necessary to assure safe living conditions or

—————(b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

—————**WATERCOURSE.** Natural and artificial features which transport surface water. Watercourse includes a river, stream, creek, slough, ditch, canal, or drainageway.

#### **29.622 Areas Affected.**

—————(A) The provisions of MCC 29.620–29.630 shall apply within the West of Sandy River Plan Area to all areas within the 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps as published by the Federal Emergency Management Agency (FEMA), the area of inundation for the February 1996 flood, and any watercourse as defined by MCC 29.621.(Title 3)

—————(1) These maps may be periodically revised or modified by FEMA in accordance with prescribed procedures pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (P.L. 92-

234). In order to employ the best available information and maintain compliance with Federal Flood Insurance Program regulations, Multnomah County shall utilize any such revisions or modifications upon their effective date.

~~(2) On the Multnomah County Zoning Map, all areas depicted as being Flood Fringe (FF), Floodway (FW) or Flood Hazard (FH) with this ordinance are repealed from requiring a Flood Hazard Permit.~~

#### **29.623 Permits.**

~~(A) No structure, dwelling or manufactured home shall be erected, located, altered, improved, repaired or enlarged and no other new development including but not limited to grading, mining, excavation and filling shall occur on lands within Flood Management Areas unless a Floodplain Development Permit specifically authorizing the proposal has been obtained from Multnomah County.~~

~~(1) Improvements to a structure, dwelling or mobile home, which does not require a land use permit, grading permit or building permit, are exempted from obtaining a Flood Hazard Permit.~~

~~(B) Alterations, modifications or relocations to any watercourse as defined in MCC 29.621 are subject to a Flood Hazard permit and the Watercourse Relocation requirements of MCC 29.629.~~

~~(1) Regular maintenance of ditches and dikes within the Sauvie Island Drainage District is exempted from obtaining a Flood Hazard Permit.~~

#### **29.624 Exemption from Development Standards.**

~~The following are exempt:~~

~~(A) Land may be exempted from the requirements of MCC 29.626 upon review and approval by the Director of an acceptable elevation survey, certified by a State of Oregon Registered Professional Engineer or Land Surveyor, which demonstrates that the entire subject parcel is at least one foot above the base flood level.~~

~~(B) The reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Historic Sites Inventory may be permitted without regard to the requirements of MCC 29.626.~~

~~(C) Forest practices conducted under the Forest Practices Act.~~

#### **29.625 Application Information Required.**

~~An application for development subject to a Floodplain Development Permit shall include the following:~~

~~(A) A map showing the property line locations, the boundaries of the 100 year floodplain on the parcel, roads, and driveways, existing structures, watercourses and the location of the proposed development(s), topographic elevations for the proposed development and areas of grading or filling required for the project.~~

~~(B) Detailed construction drawings showing compliance with the development standards specified in MCC 29.626. A licensed engineer or architect shall stamp the plans and include a statement that the plans meet the requirements of MCC 29.626.~~

~~(C) An elevation certificate signed by a Registered Professional Land Surveyor, Engineer or Architect. The certificate shall be accompanied by a plan of the property which shows the location and elevation of a benchmark on the property.~~

~~(D) A written narrative specifying building materials and methods that will be utilized to comply with the requirements of the Floodplain Permit.~~

~~(E) Evidence that the applicant has obtained, when necessary, prior approval from those Federal, State and/or local governmental agencies with jurisdiction over the proposed development.~~

### **29.626 Development Standards.**

~~The following standards shall apply to all new construction, substantial improvement or other development in Flood Management Areas:~~

#### ~~(A) General Development Standards~~

~~(1) Development, excavation and fill shall be performed in a manner to maintain or increase flood storage and conveyance capacity and not increase design flood elevations.~~

~~(2) All fill placed at or below the design flood elevation in Flood Management Areas shall be balanced with at least an equal amount of soil material removal.~~

~~(3) Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.~~

~~(4) Temporary fills permitted during construction shall be removed.~~

~~(5) Uncontained areas of hazardous materials as defined by DEQ shall be prohibited in Flood Management Areas.(Title 3)~~

#### ~~(B) All Structures.~~

~~(1) All new construction and substantial improvement shall:~~

~~(a) Comply with Oregon State Building Codes.~~

~~(b) Have the electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.~~

~~(c) Use materials resistant to flood damage.~~

~~(d) Using methods and practices that minimize flood damage.~~

~~\_\_\_\_\_ (e) For areas that are fully enclosed below the lowest floor and that are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.~~

~~\_\_\_\_\_ 1. Designs for meeting this requirement must either be certified by a registered professional engineer or architect and must meet or exceed the following minimum criteria:~~

~~\_\_\_\_\_ a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.~~

~~\_\_\_\_\_ b. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.~~

~~\_\_\_\_\_ (C) Residential Structures:~~

~~\_\_\_\_\_ New construction and substantial improvement of any residential structure, including manufactured homes, shall:~~

~~\_\_\_\_\_ (1) Have the lowest floor, including basement, elevated to at least one foot above the base flood level as indicated on the Elevation Certificate. For purposes of this section, an unfinished garage (either attached or detached) may be considered a non-residential structure.~~

~~\_\_\_\_\_ (2) Be placed on a permanent foundation and shall be anchored to resist flotation, collapse and lateral movement by providing tie downs (anchor bolts, seismic tie downs) and anchoring as specified in OAR 814-23-005 through 080 and State of Oregon 1 and 2 Family Dwelling Specialty Code, as appropriate to the construction type.~~

~~\_\_\_\_\_ (3) Conduct an as-built elevation survey of the lowest floor. This survey shall be completed by a State of Oregon Registered Professional Engineer or Land Surveyor and must certify that the structure's lowest floor was elevated to at least one foot above the base flood level.~~

~~\_\_\_\_\_ (a) The as-built elevation survey shall be submitted to Multnomah County Land Use Planning prior to occupancy of the structure.~~

~~\_\_\_\_\_ (b) Prior to issuance of a building permit or start of development, a performance bond or cash deposit of \$1000.00 shall be required to assure that the as-built elevation survey is submitted. The deposit/bond may be used to obtain the elevation survey, without notice, if it is not completed and submitted prior to occupancy of the dwelling. The performance bond or cash deposit shall be released upon submittal of the as-built elevation survey, unless utilized to obtain compliance.~~

~~\_\_\_\_\_ (D) Nonresidential Structures:~~

~~\_\_\_\_\_ New construction and substantial improvement of any commercial, industrial or other non-residential structure shall:~~

~~\_\_\_\_\_ (1) Have the lowest floor including basement, elevated at least one foot above the base flood level; or, together with attendant utility and sanitary facilities, shall:~~

~~\_\_\_\_\_ (a) Be floodproofed such that the structure, including the attendant utility and sanitary facilities, shall be substantially impermeable to the passage of water to an elevation at least one foot above the base flood level; and~~

~~\_\_\_\_\_ (b) Have structural components capable of withstanding hydrostatic and hydrodynamic loads, effects of buoyancy, flood depths, pressures, velocities and other factors associated with the base flood; and~~

~~\_\_\_\_\_ (c) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied.~~

~~\_\_\_\_\_ (2) Provide an as-built elevation survey of the lowest floor completed by a State of Oregon Registered Professional Engineer or Land Surveyor certifying that the structure's lowest floor was elevated to at least one foot above the base flood level; or submit a stamped documentation by a State of Oregon Registered Professional Engineer certifying the structure has been built in compliance with MCC 29.626(D)(1)(a) through (c).~~

~~\_\_\_\_\_ (a) The as-built elevation survey or stamped documentation shall be submitted to Multnomah County Land Use Planning prior to occupancy of the structure.~~

~~\_\_\_\_\_ (b) Prior to issuance of a building permit or start of development, a performance bond or cash deposit of \$1000.00 shall be required to assure that the as-built elevation survey or stamped documentation is submitted. The bond/deposit may be used to obtain the elevation survey or documentation, without notice, if it is not completed and submitted prior to occupancy or use of the structure or development. The performance bond or cash deposit shall be released upon submittal of the as-built elevation survey or stamped documentation, unless utilized to obtain compliance.~~

~~\_\_\_\_\_ (E) On Site Waste Disposal Systems, Wells, Water Systems and Sewer Systems:~~

~~\_\_\_\_\_ All new and replacement water and sewer systems, including on-site waste disposal systems, shall be designed to:~~

~~\_\_\_\_\_ (1) Minimize infiltration of floodwaters into the system;~~

~~\_\_\_\_\_ (2) Minimize discharge from systems into floodwaters;~~

~~\_\_\_\_\_ (3) Avoid impairment or contamination during flooding.~~

~~\_\_\_\_\_ (F) Recreational Vehicles in Campground or Recreational Development~~

~~\_\_\_\_\_ Recreational vehicles utilized on sites within Zones A1 A30, AH and AE on the community's FIRM shall either:~~

~~\_\_\_\_\_ (1) Be on the site for fewer than 180 consecutive days, or~~

~~\_\_\_\_\_ (2) Be fully licensed and ready for highway uses, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or~~

~~\_\_\_\_\_ (3) Meet the requirements of MCC 29.626(B) and (C).~~

### **29.627 Floodway Requirements.**

~~\_\_\_\_\_ In areas identified as floodway on the Flood Boundary and Floodway Maps, the following restrictions, in addition to the requirements of MCC 29.626, shall apply:~~

~~\_\_\_\_\_ (A) No development shall be permitted that would result in any measurable increase in base flood levels.~~

~~\_\_\_\_\_ (1) Encroachment into the floodway is prohibited, unless a detailed step backwater analysis and conveyance compensation calculations, certified by a Registered Professional Engineer, are provided which demonstrates that the proposed encroachment will cause no measurable increase in flood levels (water surface elevations) during a base flood discharge.~~

### **29.628 Procedure When Base Flood Elevation Data is Not Available.**

~~\_\_\_\_\_ (A) For the purposes of administering MCC 29.626 in areas where detailed base flood elevation data has not been provided by FEMA, the Land Use Planning Division shall obtain, review and utilize any base flood elevation and floodway data available from federal, state or local sources to assure that the proposed construction will be reasonably safe from flooding and may exercise local judgment based on historical data.~~

~~\_\_\_\_\_ (B) In areas where detailed base flood elevation data has not been provided by FEMA, all proposals for subdivisions or other new developments greater than 50 lots or five acres, whichever is less, shall provide detailed base flood elevation data and floodway data.~~

### **29.629 Watercourse Relocation and Alteration.**

~~\_\_\_\_\_ Prior to approving any relocation, encroachment or alteration of a watercourse, the Land Use Planning Division shall provide mailed notice of the proposal to adjoining communities and to the Department of Land Conservation and Development Floodplain Coordinator. Copies of such notice shall also be provided to the Federal Insurance Administration.~~

~~\_\_\_\_\_ (A) No relocation, encroachment or alteration of a watercourse shall be permitted unless a detailed hydraulic analysis, certified by a Registered Professional Engineer, is provided which demonstrates that:~~

~~\_\_\_\_\_ (1) The flood carrying capacity for the altered or relocated portion of the watercourse will be maintained;~~

~~\_\_\_\_\_ (2) The area subject to inundation by the base flood discharge will not be increased;~~

~~\_\_\_\_\_ (3) The alteration or relocation will cause no measurable increase in base flood levels.~~

### **29.630 County Records.**

~~\_\_\_\_\_ Multnomah County or its designee shall obtain and maintain on file the actual elevation (in relation to NGVD) of the lowest floor, including basement, of all new or substantially improved structures in areas subject to the provisions of this Section.~~

~~(A) For all new or substantially improved floodproofed structures in areas subject to the provisions of this Section, Multnomah County shall obtain and maintain on file the actual elevation (in relation to NGVD) of the floodproofing and shall also maintain the floodproofing certifications required pursuant to MCC 29.626(D)(1)(b) and (e).~~

**Section 12. MCC § 36.6183 is amended as follows**

**36.6183 Approval Criteria for lands not zoned Exclusive Farm Use.**

To be approved all applications for Planning Director Review, Community Service Review or Building Permit Review of a wireless communications facility (WCF) shall demonstrate compliance with the following:

(A) General and Operating Requirements

\* \* \*

(4) Environmental Resource Protection. All wireless communication facilities shall be sited so as to minimize the effect on environmental resources. To that end, the following measures shall be implemented for all WCFs:

(a) The facility shall comply with Significant Environmental Concern regulations when applicable, including the conditions of an SEC permit for any excavation or removal of materials of archaeological, historical, prehistorical or anthropological nature;

(b) The facility shall comply with Grading and Erosion Control regulations of MCC 29.350 through 29.365 when applicable;

(c) The facility shall comply with Flood Hazard regulations of MCC 29.620-600 through 29.630-611 when applicable; and

(d) Alteration or disturbance of native vegetation and topography shall be minimized.

\* \* \*

**Section 13. MCC § 37.0915 is hereby amended to read as follows**

**37.0915 Violations**

Any use of land, land division, adjustment to property boundaries, work within a County right-of-way, or other activity by a person in violation of any provision of:

(A) MCC Chapters 33, 34, 35, 36 and 38; §§ 29.001 through 29.365 and 29.500 through 29.630611; Multnomah County Road Rules or the terms and conditions of any permit issued under those code provisions; or

(B) Any statute adopted by the Oregon Legislature and those land use planning goals and rules of the Land Conservation and Development Commission (LCDC) that apply directly to the County through ORS 197.646

may be subject to enforcement and fines as provided in this subchapter.

FIRST READING:

August 21 2008

SECOND READING AND ADOPTION:

September 4, 2008

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_  
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:

M. Cecilia Johnson, Director, Department of Community Services

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. \_\_\_\_\_

Amending MCC Chapter 29, Relating to County Flood Hazard Regulations

(Language stricken is deleted; double underlined language is new.)

**The Multnomah County Board of Commissioners Finds:**

- a. The Planning Commission is authorized by Multnomah County Code Chapter 37 to recommend to the Board of County Commissioners the adoption, revision, or repeal of regulations intended to carry out all or part of a plan adopted by the Board. The Planning Commission recommended adoption of the proposed amendments June 2<sup>nd</sup>, 2008.
- b. Flood Hazard regulations implement Policy 14 of the County Comprehensive Framework Plan, for Development Limitations, and related provisions of the County's Rural Area Plans. The regulations apply to certain rural unincorporated lands that are generally within the 100 year flood boundary as identified by the Federal Emergency Management Agency (FEMA).
- c. Flood Hazard standards are necessary to promote the public health, safety and general welfare, to minimize public and private losses due to flood conditions, and to allow property owners to participate in the National Flood Insurance Program (NFIP).
- d. The Flood Hazard regulations applicable in the West of the Sandy River Rural Plan Area were last amended in 2003 by Ordinance 996. The Flood Hazard regulations applicable in all other areas were last updated in 1999 by Ordinance 931.
- e. In 2007, Multnomah County was informed by the Department of Land Conservation and Development (DLCD) through a Community Assistance Visit that the Flood Hazard regulations must be amended for the county to remain in compliance with the minimum participation requirements of the National Flood Insurance Program.
- f. Additional changes recommended by DLCD will assist the county in enrolling in the FEMA sponsored Community Rating System, a voluntary program that encourages community floodplain management activities that exceed minimum NFIP requirements. Enrollment can result in reduced flood insurance premiums for citizens.
- g. Updating the Flood Hazard standards is an opportunity to bring remaining lands into compliance with Metro Title 3 and to combine the two Flood Hazard ordinances to achieve administrative efficiencies.
- h. Proposed changes are necessary to ensure that the building codes limit risk of flood related hazards as envisioned in Policy 14, to fully implement Title 3, and to ensure property owners maintain eligibility for insurance through the NFIP.
- i. Optional changes are also appropriate as they further protect public and private development from flood loss and may help to reduce flood insurance rates.

**Multnomah County Ordains as follows:**

**Section 1.** MCC § 29.600- is amended as follows:

**FLOOD HAZARD REGULATIONS (~~Excluding West of Sandy River Plan Area~~)**

**29.600- Purposes.**

The purposes of the Flood Hazard Standards are to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas and to allow property owners within unincorporated Multnomah County to participate in the National Flood Insurance Program and to comply with Metro Title 3 Requirements.

**Section 2.** MCC § 29.601 is amended as follows:

**29.601 Definitions.**

For the purpose of this subchapter, the following definitions shall apply:

***ALTERATION.*** To modify, change or make different.

**AREAS OF SPECIAL FLOOD HAZARD.** All lands contained within the 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps (FIRM) as published by the Federal Emergency Management Agency (FEMA), and the area of inundation for the February, 1996 flood when located outside of the flood areas identified on the Flood Insurance Rate Maps.

The Areas of Special Flood Hazard identified by the Federal Insurance Administration in the most recent scientific and engineering report entitled “The Flood Insurance Study, Multnomah County Oregon Unincorporated Areas”, with accompanying Flood Insurance Rate Maps (FIRM), are hereby adopted by reference. Maps produced by the Metro Data Regional Center that identify the area of inundation for the February 1996 flood are also adopted by reference. The Flood Insurance Study is on file at the Multnomah County Planning Office. The best available information for flood hazard area identification as outlined in MCC 29.608 shall be the basis for regulation until a new FIRM is issued.

These maps may be periodically revised or modified by FEMA in accordance with prescribed procedures pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (P.L. 92-234). In order to employ the best available information and maintain compliance with Federal Flood Insurance Program regulations, Multnomah County shall utilize any such revisions or modifications upon their effective date.

**BASE FLOOD.** The flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the “100-year flood.” Designation on the FIRM maps always includes the letter A to identify a zone of specified risk. (Zone A is the flood insurance rate zone that corresponds to the 1-percent annual chance floodplains that are determined in the Flood Insurance Study by approximate methods of analysis).

**BASEMENT.** Any area of the building having its floor sub grade (below ground level) on all sides.

**CRITICAL FACILITY.** A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals police, fire and emergency response installations, and installations which produce, use or store hazardous materials or hazardous waste.

**DESIGN FLOOD ELEVATION.** The elevation of the base flood elevation, or in areas without maps, the elevation of the 25-year storm, or the edge of mapped flood prone soils or similar methodologies.

**DEVELOPMENT.** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the areas shown within 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps as published by the Federal Emergency Management Agency (FEMA) and or within any watercourse.

**ELEVATED BUILDING.** For insurance purposes, a non basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

**ELEVATION CERTIFICATE.** The document used to certify the FIRM Zone and base flood elevation of the development area of a property, and to determine the required elevation or floodproofing requirements of new and substantially improved structures.

**ENCROACHMENT.** To fill, construct, improve, or develop beyond the original bank line of the watercourse. Bank stabilization or restoration of a watercourse which does not protrude beyond the original banks line and does not protrude above the topography at the time the Flood Insurance Rate Map was developed is not considered an encroachment ~~by this subdistrict.~~

**FLOOD OR FLOODING.** A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters, and/or

(2) The unusual and rapid accumulation of runoff of surface waters from any source.

**FLOOD INSURANCE RATE MAP (FIRM).** The official map on which the Federal Insurance Administration has delineated both the areas of the special flood hazards and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY.** The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

**FLOODPROOFING CERTIFICATE.** Documentation of certification by an Oregon registered professional engineer or architect that the design and methods of construction of a non-residential building are in accordance with accepted practices for meeting the floodproofing requirements of this subchapter.

**FLOODWAY.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**LOWEST FLOOR.** The lowest floor of the lowest enclosed area (including basement).

**MANUFACTURED HOME.** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

**NEW CONSTRUCTION.** Structures for which the "start of construction" commenced on or after the effective date of this ordinance.

**RECREATIONAL VEHICLE.** A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, self-propelled or permanently towable by a light duty truck and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**START OF CONSTRUCTION.** Includes substantial improvement to existing structures, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include the land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement to an existing structure, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE.** A walled and/or roofed building including a gas or liquid storage tank that is principally above ground. A building with only one wall and no roof or a building with no walls and a roof, for example, is considered a structure.

**SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT.** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(1) Before the improvement or repair is started; or

(2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The costs to repair must be calculated for full repair to "before-damage" condition, even if the owner elects to do less. The total costs to repair include both structural and finish materials and labor including donated labor and materials.

(3) The value of these alterations to an existing structure is measured cumulatively to avoid exempting a substantial improvement implemented in phases over time.

(34) Substantial Improvement does not, however, include either:

(a) The portion of any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by local building officials and which are the minimum necessary to assure safe living conditions or

(b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**WATERCOURSE.** A channel in which a flow of water occurs, either continuously or intermittently with some degree of regularity. Watercourses may be either natural or artificial. Natural and artificial features which transport surface water. Watercourse includes a river, stream, creek, slough, ditch, canal, or drainageway.

**Section 3.** MCC § 29.602 is amended as follows:

**29.602 Areas Affected.**

~~————(A) The provisions of MCC 29.600 - 29.611 shall apply to all areas of special flood hazard, within the 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps as published by the Federal Emergency Management Agency (FEMA) and any watercourse as defined by MCC 29.601. The provisions of 29.609 shall also apply to any relocation, encroachment or alteration of a watercourse.~~

~~————(1) These maps may be periodically revised or modified by FEMA in accordance with prescribed procedures pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (P.L. 92-234). In order to employ the best available information and maintain compliance with Federal Flood Insurance Program regulations, Multnomah County shall utilize any such revisions or modifications upon their effective date.~~

~~(2) On the Multnomah County Zoning Map, all areas depicted as being Flood Fringe (FF), Floodway (FW) or Flood Hazard (FH) with this ordinance are repealed from requiring a Flood Hazard Permit.~~

**Section 4.** MCC § 29.603 is amended as follows:

**29.603 Permits.**

(A) No structure, dwelling or manufactured home shall be erected, located, altered, improved, repaired or enlarged and no other new development including but not limited to grading, mining, excavation and filling (see “Development” under MCC 29.601) shall occur in areas of special flood hazard on lands within the 100-year flood boundary unless a Floodplain Development Permit specifically

authorizing the proposal has been obtained from Multnomah County. Variances to the Flood Hazard regulations are not allowed.

(1) Improvements to a structure, dwelling or mobile home or other development, which does not meet the definition of "Development" under MCC 29.601 require a land use permit, grading permit or building permit, are exempted from obtaining a Floodplain Development Hazard Permit.

(B) Alterations, modifications or relocations to any watercourse as defined in MCC 29.601 are subject to a Floodplain Development Hazard permit and the Watercourse Relocation and Alteration standards requirements of MCC 29.609.

~~(1) Regular maintenance of ditches and dikes within the Sauvie Island Drainage District is exempted from obtaining a Flood Hazard Permit.~~

(C) Transportation maintenance activities may be evaluated in an annual Flood Hazard permit. This permit will confirm that the typical Best Management Practices used to accomplish routine transportation maintenance projects meet applicable Flood Hazard regulations. Eligible activities include routine cleaning and maintenance of ditches and culverts, replacement culverts, unanticipated emergency response activities and the permitting of new driveway culverts crossing a county maintained ditch. After the fact notification of the location and scope of all transportation maintenance activities is required.

**Section 5. MCC § 29.604 is amended as follows:**

**29.604 Exemption from Development Standards.**

The following are exempt:

(A) Land may be exempted from the requirements of MCC 29.606 upon review and approval by the Director of an acceptable elevation certificate or survey, certified by a State of Oregon registered Professional Engineer or land surveyor, which demonstrates that the entire subject parcel is at least one foot above the base flood level elevation. This exemption is only possible when flood elevation data is available. If a critical facility is proposed, the entire parcel must be at least three feet above the base flood elevation (or above the 500-year flood elevation, which ever is higher) in order to be considered exempt from the requirements of MCC 29.606.

(B) The reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Historic Sites Inventory may be permitted without regard to the requirements of MCC 29.606 (B) through (D).

(C) Forest practices ~~conducted~~ approved under the Forest Practices Act are not regulated by this subchapter.

(D) The following drainage district maintenance activities are not regulated by this subchapter when regulated by an Army Corps of Engineers Nationwide 31 permit - Routine operations, repair, maintenance, alteration, rehabilitation, or replacement of existing drainage, flood control, and related facilities, including any structures, pump stations, water control structures, culverts, irrigation systems, roadways, utilities, accessory uses (such as off-load facilities that facilitate water-based maintenance), erosion control projects, levees, soil and bank stabilization projects, dredging and ditch

clearing within the hydraulic cross-section in existing storm water conveyance drainageways, habitat restoration and enhancement projects, or other water quality and flood storage projects required to be undertaken pursuant to ORS chapters 547 or 554 or Titles 33 or 44 of the Code of Federal Regulations, provided that:

(1) The project is consistent with Division of State Lands, five-year renewable general authorization permit, five-year renewable Army Corps of Engineers Nationwide 31 permit and all other applicable local, regional, county and state laws and regulations. The preconstruction notification and annual reporting required by the Army Corp's Nationwide 31 permit must also be submitted to Multnomah County planning by the drainage districts for review and comment.

(2) The project does not encroach closer to a water feature than existing operations and development; and

(3) Vegetation native to the metro area is maintained, enhanced and restored, if disturbed; other vegetation is replaced, if disturbed, with non-invasive vegetation; and the planting of native vegetation and the removal of invasive non- native vegetation is encouraged.

**Section 6. MCC § 29.605 is amended as follows:**

**29.605 Application Information Required.**

An application for development subject to a Floodplain Development Permit shall include the following:

(A) A map showing the property line locations, the surveyed boundaries of the 100 year floodplain on the parcel, roads, and driveways, existing structures, watercourses and the location of the proposed development(s), topographic elevations for the proposed development and areas of grading or filling required for the project. The FIRM map and panel number shall also be provided on the map.

(B) Detailed construction drawings showing compliance with the development standards specified in MCC 29.606. A State of Oregon registered professional licensed engineer or architect shall stamp the plans and include a statement that the plans meet the applicable requirements of MCC 29.606.

(C) An elevation certificate based on construction drawings which have been signed by a State of Oregon registered professional land surveyor, or a floodproofing certificate signed by a State of Oregon registered professional engineer or architect, depending on the type of development proposed. The certificate shall be accompanied by a plan of the property which shows the location and elevation of a benchmark on the property.

(D) A written narrative specifying building materials and methods that will be utilized to comply with the requirements of the floodplain development permit and this subchapter.

(E) Evidence that the applicant has obtained, when necessary, prior approval from those Federal, State and/or local governmental agencies with jurisdiction over the proposed development.

**Section 7.** MCC § 29.606 is amended as follows:

**29.606 Development Standards.**

Unless otherwise stated below, the following development standards shall apply within all portions of unincorporated Multnomah County to all new construction, substantial improvement or other development in areas of special flood hazard, as defined in 29.601 within the 100-year flood boundary: (The General Development Standards of 29.606(A) are only applicable in the West of Sandy River Rural Plan area and/or within the Metro Jurisdictional Boundary)

(A) General Development Standards - Applicable only in the West of Sandy River Rural Plan Area and/or within the Metro Jurisdictional Boundary.

(1) Development, excavation and fill shall be performed in a manner that maintains or increases flood storage and conveyance capacity and does not increase the design flood elevation.

(2) All fill placed at or below the design flood elevation in areas of special flood hazard shall be balanced with at least an equal amount of soil material removal.

(3) Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.

(4) Temporary fills permitted during construction shall be removed and not be allowed in the floodway during the wet weather season.

(5) Uncontained areas of hazardous materials as defined by the Oregon Department of Environmental Quality shall be prohibited in areas of special flood hazard.

(AB) All Structures Except as provided in subsection (A) above, this subsection applies to all structures within areas of special flood hazard in unincorporated Multnomah County as defined in 29.601.

(1) All new construction and substantial improvement shall:

(a) Comply with Oregon State Building Codes.

(b) Have the electrical, heating, ventilation, duct systems, plumbing, and air conditioning equipment and other service facilities shall be designed and/or located a minimum of one foot above the base flood elevation so as to prevent water from entering or accumulating within the components during conditions of flooding.

(c) Use materials and utility equipment resistant to flood damage.

(d) Using methods and practices that minimize flood damage.

(e) For areas that are fully enclosed below the lowest floor and that are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. (Note: this requirement is not applicable for floodproofed nonresidential structures).

1. Designs for meeting this requirement must ~~either~~ be certified by a State of Oregon registered professional engineer or architect and must meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above the lowest adjacent exterior grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters and the covering device does not reduce the minimum required total net area of the opening.

(2) Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures. Positive drainage away from a structure's foundation shall also be provided to avoid ponding of water adjacent to the foundation after floodwaters recede.

(3) Below-grade crawlspace construction (see figure 2 below).

In addition to meeting the previous development standards for all structures, all below-grade crawlspaces shall meet the following standards. Below-grade crawlspace construction in accordance with the requirements listed below will not be considered a basement.

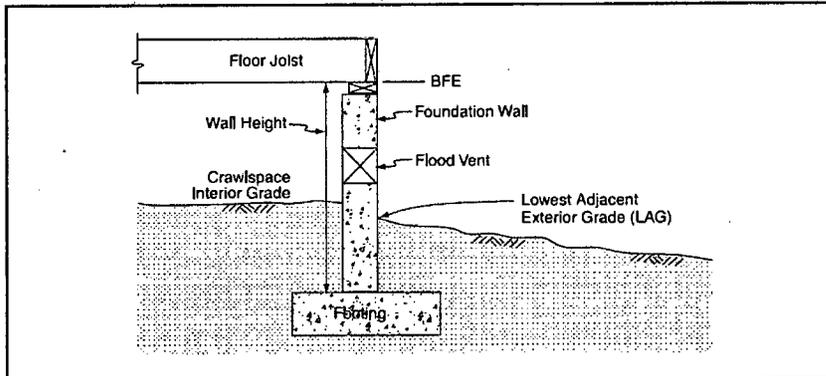


Figure 1 Preferred crawlspace construction.

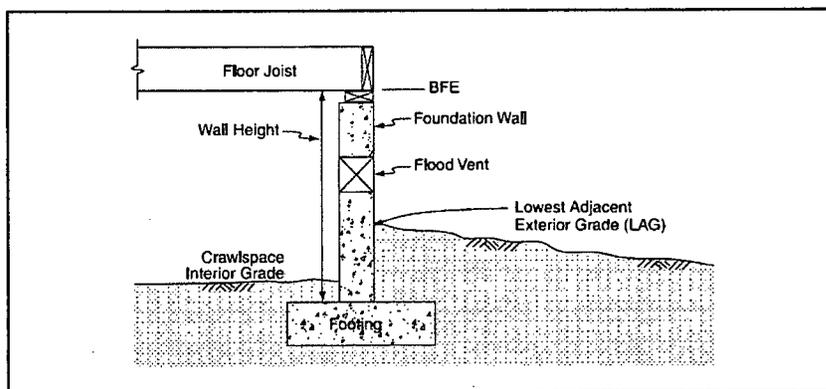


Figure 2 Below-grade crawlspace construction.

(a) The interior grade of a crawlspace below the base flood elevation shall not be more than two-feet below the lowest adjacent exterior grade.

(b) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four feet at any point.

(c) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. Drainage examples include natural drainage through porous well drained soils, perforated pipes, drainage tiles, or gravel/crushed stone drainage by gravity or mechanical means.

(d) The velocity of floodwaters shall not exceed five-feet per second for any proposed below grade crawlspace location. The Multnomah County Flood Insurance Study contains Floodway Data Tables presenting information on mean floodway velocities at each cross section along the river or stream. Other types of foundations, such as open pile or column foundations, that allow floodwaters to flow freely beneath the building, are recommended for areas exceeding five-feet per second flood velocities.

(e) The below-grade crawlspace area should be designed so that it is easily accessible for physical post-flood clean-up and ventilation. The land owner must record a notice acknowledging below-grade crawlspace construction is not recommended by the Federal Emergency Management Agency and that this type of construction can increase flood insurance premiums for homeowners.

(4) When applicable, the horizontal line of the base flood elevation shall be surveyed and clearly marked and labeled, by a State of Oregon registered professional land surveyor, on an inside wall of any structure or inside foundation wall when a crawlspace is proposed to provide a visual reference for the building inspector. This reference line is not intended to be permanent and can be removed, covered or painted over at the conclusion of all building inspections. This marking is not applicable when the entire structure, including above grade foundation walls, will be elevated above the base flood elevation.

(BC) Residential Structures.

New construction and substantial improvement of any residential structure, including manufactured homes not considered a Critical Facility, shall:

(1) Have the lowest floor, including basement, elevated to at least one foot above the base elevation flood level as indicated on the Elevation Certificate. Floating dwellings do not need to be elevated but must be able to rise with flood waters to the design flood elevation required by this section. This will require consideration of the piling heights. The lowest floor, including basement, shall be elevated to at least two feet above the base flood elevation where flood elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative federal, state or other source. Where flood elevation data is not available, a State of Oregon registered professional engineer or architect shall also verify that the proposed construction will be reasonably safe from flooding.

A garage attached to a residential structure can be constructed with the garage floor slab below the base flood elevation but must be designed to allow for the automatic entry of flood waters. Openings must meet the requirements of 29.606(B) and are required in two different exterior

walls of the garage (two different walls or one wall and one garage door). For purposes of this section, an unfinished garage (either attached or detached) may be considered a non-residential structure.

In addition to allowing the automatic entry of flood waters, the areas of the garage below the base flood elevation must be constructed with flood resistant materials. Garage doors without openings specifically designed to allow for the free flow of floodwaters do not meet these opening requirements. Gaps that may be present between the door segments and between the garage door and the garage door jam do not guarantee the automatic entry and exist of floodwaters. The human intervention necessary to open garage doors is not an acceptable means of meeting the opening requirements.

(2) Be placed on a permanent foundation and shall be anchored to ~~resist prevent~~ flotation, collapse and lateral movement by providing tie downs (anchor bolts, seismic tie-downs) and anchoring as specified in OAR 814-23-005 through 080 and State of Oregon 1 and 2 Family Dwelling Specialty Code, as appropriate to the construction type.

(3) Have structural components capable of withstanding hydrostatic and hydrodynamic loads, effects of buoyancy, flood depths, pressures, velocities and other factors associated with the base flood.

(34) Conduct a ~~finished construction~~ as-built elevation survey of the lowest floor. This survey shall be completed by a State of Oregon registered ~~professional engineer or land surveyor~~ and must certify that the structure's lowest floor was elevated to at least one foot above the base flood ~~level~~ elevation. The lowest floor, including basement, shall be elevated to at least two feet above the base flood elevation where flood elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative federal, state or other source. Where flood elevation data is not available, a State of Oregon registered professional engineer or architect shall also verify that the proposed construction will be reasonably safe from flooding.

(a) ~~The as-built~~ finished construction elevation survey certificate and stamped documentation certifying that the structure has been built in compliance with the applicable provisions of 29.606 shall be submitted to Multnomah County Land Use Planning prior to occupancy of the structure.

(b) Prior to issuance of a building permit or start of development, a performance bond or cash deposit of \$1000.00 shall be required to assure that the ~~as-built~~ finished construction elevation survey certificate is submitted. The deposit/bond may be used to obtain the elevation ~~survey~~ certificate, without notice, if it is not completed and submitted prior to occupancy of the dwelling. The performance bond or cash deposit shall be released upon submittal of the ~~as-built~~ finished construction elevation ~~survey~~ certificate, unless utilized to obtain compliance.

(ED) Nonresidential Structures.

New construction and substantial improvement of any commercial, industrial or other non-residential structure, including a detached garage, shall:

(1) Have the lowest floor including basement, elevated at least one foot above the base flood elevation and be anchored to prevent flotation, collapse, or lateral movement of the structure. ~~level~~ Floating nonresidential structures do not need to be elevated but must be able to rise with flood waters to the design flood elevation required by this section. This will require consideration of the piling heights. The lowest floor, including basement, shall be elevated to at least two feet above the base flood

elevation where flood elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative federal, state or other source. Where flood elevation data is not available, a State of Oregon registered professional engineer or architect shall also verify that the proposed construction will be reasonably safe from flooding; or, together with attendant utility and sanitary facilities, shall:

(a) Be floodproofed such that the structure, including the attendant utility and sanitary facilities, shall be substantially impermeable to the passage of water to an elevation at least one foot above the base flood ~~level~~elevation; and

(b) Have structural components capable of withstanding hydrostatic and hydrodynamic loads, effects of buoyancy, flood depths, pressures, velocities and other factors associated with the base flood; and

(c) Be certified by a State of Oregon registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans~~standards of this subsection are satisfied.~~

(2) ~~The applicant shall provide either an as-built finished construction elevation survey certificate prepared by a State of Oregon land surveyor for an elevated non-residential structure, or a floodproofing certificate prepared~~ of the lowest floor completed by a State of Oregon Registered professional engineer or ~~land surveyor~~ architect for a non-elevated, non-residential structure ~~certifying that the structure's lowest floor was elevated to at least one foot above the base flood level; or submit a stamped documentation by a State of Oregon Registered Professional Engineer certifying the structure has been built in compliance with MCC 29.606(C)(1)(a) through (e).~~

(a) ~~The as-built finished construction elevation certificate/floodproofing certificate survey or~~ and stamped documentation certifying the structure has been built in compliance with the applicable provisions of MCC 29.606 shall be submitted to Multnomah County Land Use Planning prior to occupancy of the structure.

(b) Prior to issuance of a building permit or start of development, a performance bond or cash deposit of \$1000.00 shall be required to assure that the as-built finished construction elevation survey certificate or and stamped documentation is submitted. The bond/deposit may be used to obtain the elevation survey certificate or documentation, without notice, if it is not completed and submitted prior to occupancy or use of the structure or development. The performance bond or cash deposit shall be released upon submittal of the as-built finished construction elevation survey certificate or stamped documentation, unless utilized to obtain compliance.

~~(D)~~ On Site Waste Disposal Systems, Wells, Water Systems and Sewer Systems.

All new and replacement water and sewer systems, including on-site waste disposal systems, shall be designed to:

- (1) Minimize infiltration of floodwaters into the system;
- (2) Minimize discharge from systems into floodwaters;
- (3) Avoid impairment or contamination during flooding.

~~(EF)~~ Recreational Vehicles in Campground or Recreational Development

Recreational vehicles utilized on sites within Zones A1-A30, AH and AE on the community's FIRM shall either:

- (1) Be on the site for fewer than 180 consecutive days, or
- (2) Be fully licensed and ready for highway uses, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (3) Meet the requirements of section 29.606(~~AB~~) and (~~BC~~).

(G) Critical Facilities

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the areas of special flood hazard. Construction of new critical facilities shall be permissible within the special flood hazard area if:

- (1) No feasible alternative is available.
- (2) The lowest floor is elevated three feet above the base flood elevation, or to the elevation of the 500-year flood, whichever is higher.
- (3) At least one access route to the critical facility shall be either located or elevated at or above the flood elevation referenced above to assure the route will remain passable during flood events.
- (4) Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced or released into floodwaters.
- (5) The construction meets the requirements of MCC 29.606(D) except the lowest floor elevation shall meet (G)(2) above.

(H) Land Division Proposals

County review of proposed land divisions are subject to separate criteria in the county zoning code titled "Land Divisions" which are designed to minimize flood damage.

**Section 8. MCC § 29.607 is amended as follows:**

**29.607 Floodway Requirements.**

In areas identified as a floodway in MCC 29.602~~on the Flood Boundary and Floodway Maps~~, the following restrictions, in addition to the requirements of MCC 29.606, shall apply:

- (A) No development shall be permitted that would result in any measurable increase in base flood levels.

(1) Encroachment into the floodway, including fill, new construction, substantial improvements and other development, is prohibited, unless a detailed step backwater analysis and conveyance compensation calculations, certified by a State of Oregon registered professional engineer, are provided which demonstrates that the proposed encroachment will cause no measurable increase in flood levels (water surface elevations) during a base flood discharge.

(2) If Section (A) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of MCC 29.606.

(B) In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the communities FIRM, unless:

(1) It is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community, and

(2) The applicable requirements of 29.606 are met.

**Section 9.** MCC § 29.609 is amended as follows:

**29.609 Watercourse Relocation and Alteration.**

Prior to approving any relocation, encroachment or alteration of a watercourse, the Land Use Planning Division shall provide mailed notice of the proposal to adjoining communities and to the Department of Land Conservation and Development Floodplain Coordinator. Copies of such notice shall also be provided to the Federal Insurance Administration.

(A) No relocation, encroachment or alteration of a watercourse shall be permitted unless a detailed hydraulic analysis, certified by a State of Oregon registered professional engineer, is provided which demonstrates that:

- (1) The flood carrying capacity for the altered or relocated portion of the watercourse will be maintained;
- (2) The area subject to inundation by the base flood discharge will not be increased;
- (3) The alteration or relocation will cause no measurable increase in base flood levels.

**Section 10.** MCC § 29.610 is amended as follows:

**29.610 County Records.**

Multnomah County or its designee shall obtain and maintain on file the ~~actual~~ final construction elevation (in relation to the National Geodetic Vertical Datum (NGVD) 1929 or NAVD 1988) of the

lowest floor, including basement, of all new or substantially improved structures in areas subject to the provisions of this Section.

(A) For all new or substantially improved floodproofed structures in areas subject to the provisions of this Section, Multnomah County shall obtain and maintain on file the actual elevation (in relation to NGVD 1929 or NAVD 1988) of to which the structure was floodproofed and shall also maintain the floodproofing certifications required pursuant to MCC 29.606(C)(1)(b)-(d).

**Section 11.** MCC §§ 29.620- through 29.630 are repealed as follows:

**~~29.620\* WEST OF SANDY RIVER FLOOD HAZARD REGULATIONS~~**

**~~29.620 Purposes.~~**

~~———— The purposes of the Flood Hazard Standards are to promote the public health, safety and general welfare, to reduce the risk of flooding and maintain the functions and values of floodplains such as allowing for the storage and conveyance of stream flows through existing and natural flood conveyance systems, and to minimize public and private losses due to flood conditions in specific areas and to allow property owners within the West of Sandy River Plan Area of unincorporated Multnomah County to participate in the National Flood Insurance Program.(Title 3)~~

**~~29.621 Definitions.~~**

~~———— For the purpose of this subchapter, the following definitions shall apply:~~

~~———— **ALTERATION.** To modify, change or make different.~~

~~———— **DEVELOPMENT.** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the areas shown within 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps as published by the Federal Emergency Management Agency (FEMA), the area of inundation for the February 1996 flood, and any watercourse.~~

~~———— **DESIGN FLOOD ELEVATION.** The elevation of the 100-year flood as defined by FEMA Flood Insurance Rate Maps, or in areas without maps, the elevation of the 25-year storm, or the edge of mapped flood-prone soils or similar methodologies.~~

~~———— **ELEVATION CERTIFICATE.** The document used to certify the FIRM Zone and base flood elevation of the development area of a property, and to determine the required elevation or floodproofing requirements of new and substantially improved structures.~~

~~———— **ENCROACHMENT.** To fill, construct, improve, or develop beyond the original bank line of the watercourse. Bank stabilization or restoration of a watercourse which does not protrude beyond the original banks line is not considered an encroachment by this subdistrict.~~

~~———— **FLOOD MANAGEMENT AREA.** All lands contained within the 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps as published~~

by the Federal Emergency Management Agency (FEMA), and the area of inundation for the February 1996 flood.(Title 3)

~~————~~ **FLOODWAY.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

~~————~~ **RECREATIONAL VEHICLE.** A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, self-propelled or permanently towable by a light-duty truck and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

~~————~~ **SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

~~————~~ **SUBSTANTIAL IMPROVEMENT.** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

~~————~~ (1) Before the improvement or repair is started; or

~~————~~ (2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The costs to repair must be calculated for full repair to "before damage" condition, even if the owner elects to do less. The total costs to repair include both structural and finish materials and labor.

~~————~~ (3) Substantial Improvement does not, however, include either:

~~————~~ (a) The portion of any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by local building officials and which are the minimum necessary to assure safe living conditions or

~~————~~ (b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

~~————~~ **WATERCOURSE.** Natural and artificial features which transport surface water. Watercourse includes a river, stream, creek, slough, ditch, canal, or drainageway.

#### **29.622 Areas Affected.**

~~————~~ (A) The provisions of MCC 29.620–29.630 shall apply within the West of Sandy River Plan Area to all areas within the 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps as published by the Federal Emergency Management Agency (FEMA), the area of inundation for the February 1996 flood, and any watercourse as defined by MCC 29.621.(Title 3)

~~————~~ (1) These maps may be periodically revised or modified by FEMA in accordance with prescribed procedures pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (P.L. 92-

~~234). In order to employ the best available information and maintain compliance with Federal Flood Insurance Program regulations, Multnomah County shall utilize any such revisions or modifications upon their effective date.~~

~~(2) On the Multnomah County Zoning Map, all areas depicted as being Flood Fringe (FF), Floodway (FW) or Flood Hazard (FH) with this ordinance are repealed from requiring a Flood Hazard Permit.~~

#### **29.623 Permits.**

~~(A) No structure, dwelling or manufactured home shall be erected, located, altered, improved, repaired or enlarged and no other new development including but not limited to grading, mining, excavation and filling shall occur on lands within Flood Management Areas unless a Floodplain Development Permit specifically authorizing the proposal has been obtained from Multnomah County.~~

~~(1) Improvements to a structure, dwelling or mobile home, which does not require a land use permit, grading permit or building permit, are exempted from obtaining a Flood Hazard Permit.~~

~~(B) Alterations, modifications or relocations to any watercourse as defined in MCC 29.621 are subject to a Flood Hazard permit and the Watercourse Relocation requirements of MCC 29.629.~~

~~(1) Regular maintenance of ditches and dikes within the Sauvie Island Drainage District is exempted from obtaining a Flood Hazard Permit.~~

#### **29.624 Exemption from Development Standards.**

~~The following are exempt:~~

~~(A) Land may be exempted from the requirements of MCC 29.626 upon review and approval by the Director of an acceptable elevation survey, certified by a State of Oregon Registered Professional Engineer or Land Surveyor, which demonstrates that the entire subject parcel is at least one foot above the base flood level.~~

~~(B) The reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Historic Sites Inventory may be permitted without regard to the requirements of MCC 29.626.~~

~~(C) Forest practices conducted under the Forest Practices Act.~~

#### **29.625 Application Information Required.**

~~An application for development subject to a Floodplain Development Permit shall include the following:~~

~~(A) A map showing the property line locations, the boundaries of the 100 year floodplain on the parcel, roads, and driveways, existing structures, watercourses and the location of the proposed development(s), topographic elevations for the proposed development and areas of grading or filling required for the project.~~

~~\_\_\_\_\_ (B) Detailed construction drawings showing compliance with the development standards specified in MCC 29.626. A licensed engineer or architect shall stamp the plans and include a statement that the plans meet the requirements of MCC 29.626.~~

~~\_\_\_\_\_ (C) An elevation certificate signed by a Registered Professional Land Surveyor, Engineer or Architect. The certificate shall be accompanied by a plan of the property which shows the location and elevation of a benchmark on the property.~~

~~\_\_\_\_\_ (D) A written narrative specifying building materials and methods that will be utilized to comply with the requirements of the Floodplain Permit.~~

~~\_\_\_\_\_ (E) Evidence that the applicant has obtained, when necessary, prior approval from those Federal, State and/or local governmental agencies with jurisdiction over the proposed development.~~

### **29.626 Development Standards.**

~~\_\_\_\_\_ The following standards shall apply to all new construction, substantial improvement or other development in Flood Management Areas:-~~

#### ~~\_\_\_\_\_ (A) General Development Standards~~

~~\_\_\_\_\_ (1) Development, excavation and fill shall be performed in a manner to maintain or increase flood storage and conveyance capacity and not increase design flood elevations.~~

~~\_\_\_\_\_ (2) All fill placed at or below the design flood elevation in Flood Management Areas shall be balanced with at least an equal amount of soil material removal.~~

~~\_\_\_\_\_ (3) Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.~~

~~\_\_\_\_\_ (4) Temporary fills permitted during construction shall be removed.~~

~~\_\_\_\_\_ (5) Uncontained areas of hazardous materials as defined by DEQ shall be prohibited in Flood Management Areas.(Title 3)~~

#### ~~\_\_\_\_\_ (B) All Structures.~~

~~\_\_\_\_\_ (1) All new construction and substantial improvement shall:~~

~~\_\_\_\_\_ (a) Comply with Oregon State Building Codes.~~

~~\_\_\_\_\_ (b) Have the electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.~~

~~\_\_\_\_\_ (c) Use materials resistant to flood damage.~~

~~\_\_\_\_\_ (d) Using methods and practices that minimize flood damage.~~

~~\_\_\_\_\_ (e) For areas that are fully enclosed below the lowest floor and that are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.~~

~~\_\_\_\_\_ 1. Designs for meeting this requirement must either be certified by a registered professional engineer or architect and must meet or exceed the following minimum criteria:~~

~~\_\_\_\_\_ a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.~~

~~\_\_\_\_\_ b. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.~~

~~\_\_\_\_\_ (C) Residential Structures:~~

~~\_\_\_\_\_ New construction and substantial improvement of any residential structure, including manufactured homes, shall:~~

~~\_\_\_\_\_ (1) Have the lowest floor, including basement, elevated to at least one foot above the base flood level as indicated on the Elevation Certificate. For purposes of this section, an unfinished garage (either attached or detached) may be considered a non-residential structure.~~

~~\_\_\_\_\_ (2) Be placed on a permanent foundation and shall be anchored to resist flotation, collapse and lateral movement by providing tie downs (anchor bolts, seismic tie downs) and anchoring as specified in OAR 814-23-005 through 080 and State of Oregon 1 and 2 Family Dwelling Specialty Code, as appropriate to the construction type.~~

~~\_\_\_\_\_ (3) Conduct an as-built elevation survey of the lowest floor. This survey shall be completed by a State of Oregon Registered Professional Engineer or Land Surveyor and must certify that the structure's lowest floor was elevated to at least one foot above the base flood level.~~

~~\_\_\_\_\_ (a) The as-built elevation survey shall be submitted to Multnomah County Land Use Planning prior to occupancy of the structure.~~

~~\_\_\_\_\_ (b) Prior to issuance of a building permit or start of development, a performance bond or cash deposit of \$1000.00 shall be required to assure that the as-built elevation survey is submitted. The deposit/bond may be used to obtain the elevation survey, without notice, if it is not completed and submitted prior to occupancy of the dwelling. The performance bond or cash deposit shall be released upon submittal of the as-built elevation survey, unless utilized to obtain compliance.~~

~~\_\_\_\_\_ (D) Nonresidential Structures:~~

~~\_\_\_\_\_ New construction and substantial improvement of any commercial, industrial or other non-residential structure shall:~~

~~\_\_\_\_\_ (1) Have the lowest floor including basement, elevated at least one foot above the base flood level; or, together with attendant utility and sanitary facilities, shall:~~

~~\_\_\_\_\_ (a) Be floodproofed such that the structure, including the attendant utility and sanitary facilities, shall be substantially impermeable to the passage of water to an elevation at least one foot above the base flood level; and~~

~~\_\_\_\_\_ (b) Have structural components capable of withstanding hydrostatic and hydrodynamic loads, effects of buoyancy, flood depths, pressures, velocities and other factors associated with the base flood; and~~

~~\_\_\_\_\_ (c) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied.~~

~~\_\_\_\_\_ (2) Provide an as-built elevation survey of the lowest floor completed by a State of Oregon Registered Professional Engineer or Land Surveyor certifying that the structure's lowest floor was elevated to at least one foot above the base flood level; or submit a stamped documentation by a State of Oregon Registered Professional Engineer certifying the structure has been built in compliance with MCC 29.626(D)(1)(a) through (c).~~

~~\_\_\_\_\_ (a) The as-built elevation survey or stamped documentation shall be submitted to Multnomah County Land Use Planning prior to occupancy of the structure.~~

~~\_\_\_\_\_ (b) Prior to issuance of a building permit or start of development, a performance bond or cash deposit of \$1000.00 shall be required to assure that the as-built elevation survey or stamped documentation is submitted. The bond/deposit may be used to obtain the elevation survey or documentation, without notice, if it is not completed and submitted prior to occupancy or use of the structure or development. The performance bond or cash deposit shall be released upon submittal of the as-built elevation survey or stamped documentation, unless utilized to obtain compliance.~~

~~\_\_\_\_\_ (E) On Site Waste Disposal Systems, Wells, Water Systems and Sewer Systems.~~

~~\_\_\_\_\_ All new and replacement water and sewer systems, including on-site waste disposal systems, shall be designed to:~~

~~\_\_\_\_\_ (1) Minimize infiltration of floodwaters into the system;~~

~~\_\_\_\_\_ (2) Minimize discharge from systems into floodwaters;~~

~~\_\_\_\_\_ (3) Avoid impairment or contamination during flooding.~~

~~\_\_\_\_\_ (F) Recreational Vehicles in Campground or Recreational Development~~

~~\_\_\_\_\_ Recreational vehicles utilized on sites within Zones A1 A30, AH and AE on the community's FIRM shall either:~~

~~\_\_\_\_\_ (1) Be on the site for fewer than 180 consecutive days, or~~

~~\_\_\_\_\_ (2) Be fully licensed and ready for highway uses, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or~~

~~\_\_\_\_\_ (3) Meet the requirements of MCC 29.626(B) and (C).~~

**29.627 Floodway Requirements.**

~~\_\_\_\_\_ In areas identified as floodway on the Flood Boundary and Floodway Maps, the following restrictions, in addition to the requirements of MCC 29.626, shall apply:~~

~~\_\_\_\_\_ (A) No development shall be permitted that would result in any measurable increase in base flood levels.~~

~~\_\_\_\_\_ (1) Encroachment into the floodway is prohibited, unless a detailed step backwater analysis and conveyance compensation calculations, certified by a Registered Professional Engineer, are provided which demonstrates that the proposed encroachment will cause no measurable increase in flood levels (water surface elevations) during a base flood discharge.~~

**29.628 Procedure When Base Flood Elevation Data is Not Available.**

~~\_\_\_\_\_ (A) For the purposes of administering MCC 29.626 in areas where detailed base flood elevation data has not been provided by FEMA, the Land Use Planning Division shall obtain, review and utilize any base flood elevation and floodway data available from federal, state or local sources to assure that the proposed construction will be reasonably safe from flooding and may exercise local judgment based on historical data.~~

~~\_\_\_\_\_ (B) In areas where detailed base flood elevation data has not been provided by FEMA, all proposals for subdivisions or other new developments greater than 50 lots or five acres, whichever is less, shall provide detailed base flood elevation data and floodway data.~~

**29.629 Watercourse Relocation and Alteration.**

~~\_\_\_\_\_ Prior to approving any relocation, encroachment or alteration of a watercourse, the Land Use Planning Division shall provide mailed notice of the proposal to adjoining communities and to the Department of Land Conservation and Development Floodplain Coordinator. Copies of such notice shall also be provided to the Federal Insurance Administration.~~

~~\_\_\_\_\_ (A) No relocation, encroachment or alteration of a watercourse shall be permitted unless a detailed hydraulic analysis, certified by a Registered Professional Engineer, is provided which demonstrates that:~~

~~\_\_\_\_\_ (1) The flood carrying capacity for the altered or relocated portion of the watercourse will be maintained;~~

~~\_\_\_\_\_ (2) The area subject to inundation by the base flood discharge will not be increased;~~

~~\_\_\_\_\_ (3) The alteration or relocation will cause no measurable increase in base flood levels.~~

**29.630 County Records.**

~~\_\_\_\_\_ Multnomah County or its designee shall obtain and maintain on file the actual elevation (in relation to NGVD) of the lowest floor, including basement, of all new or substantially improved structures in areas subject to the provisions of this Section.~~

~~(A) For all new or substantially improved floodproofed structures in areas subject to the provisions of this Section, Multnomah County shall obtain and maintain on file the actual elevation (in relation to NGVD) of the floodproofing and shall also maintain the floodproofing certifications required pursuant to MCC 29.626(D)(1)(b) and (c).~~

**Section 12. MCC § 36.6183 is amended as follows**

**36.6183 Approval Criteria for lands not zoned Exclusive Farm Use.**

To be approved all applications for Planning Director Review, Community Service Review or Building Permit Review of a wireless communications facility (WCF) shall demonstrate compliance with the following:

(A) General and Operating Requirements

\* \* \*

(4) Environmental Resource Protection. All wireless communication facilities shall be sited so as to minimize the effect on environmental resources. To that end, the following measures shall be implemented for all WCFs:

(a) The facility shall comply with Significant Environmental Concern regulations when applicable, including the conditions of an SEC permit for any excavation or removal of materials of archaeological, historical, prehistorical or anthropological nature;

(b) The facility shall comply with Grading and Erosion Control regulations of MCC 29.350 through 29.365 when applicable;

(c) The facility shall comply with Flood Hazard regulations of MCC ~~29.620-600~~ through 29.630-611 when applicable; and

(d) Alteration or disturbance of native vegetation and topography shall be minimized.

\* \* \*

**Section 13. MCC § 37.0915 is hereby amended to read as follows**

**37.0915 Violations**

Any use of land, land division, adjustment to property boundaries, work within a County right-of-way, or other activity by a person in violation of any provision of:

(A) MCC Chapters 33, 34, 35, 36 and 38; §§ 29.001 through 29.365 and 29.500 through ~~29.630~~611; Multnomah County Road Rules or the terms and conditions of any permit issued under those code provisions; or

(B) Any statute adopted by the Oregon Legislature and those land use planning goals and rules of the Land Conservation and Development Commission (LCDC) that apply directly to the County through ORS 197.646

may be subject to enforcement and fines as provided in this subchapter.

FIRST READING: August 21 2008

SECOND READING: September 4, 2008

THIRD READING AND ADOPTION: September 11, 2008

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:  
M. Cecilia Johnson, Director, Department of Community Services



**MULTNOMAH COUNTY**  
**AGENDA PLACEMENT REQUEST (short form)**

**Board Clerk Use Only**

**Meeting Date:** 09/04/08  
**Agenda Item #:** R-06  
**Est. Start Time:** 10:05 AM  
**Date Submitted:** 08/26/08

**Agenda Title:** **RESOLUTION Authorizing a Loan from the Oregon Transportation Infrastructure Fund for the 223rd Avenue Railroad Under-crossing Reconstruction Project**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

**Requested Meeting Date:** September 4, 2008      **Amount of Time Needed:** 5 minutes  
**Department:** Community Services      **Division:** LUT  
**Contact(s):** Kim Peoples  
**Phone:** 988-5050      **Ext.** 26797      **I/O Address:** 425/2  
**Presenter(s):** Brian Vincent & Jon Henrichsen

**General Information**

**1. What action are you requesting from the Board?**

Approve resolution for a loan from the Oregon Transportation Infrastructure Fund for the 223<sup>rd</sup> Avenue Railroad Under-crossing Reconstruction in the City of Fairview.

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

The project had been originally targeted at \$3.7M in the Transportation Capital Improvement Plan for a FY 2005 construction time frame but due to design and railroad issues the project has doubled in costs. The project has been engineered to reduce cost, however inflation and the cost of materials has continued to escalate beyond anyone's expectations. The current cost estimate is \$7.8 million. To proceed with this project, the \$4.6 million loan is needed. On March 30, 2006, the BCC voted to apply for this loan. The approval of the loan resolution is necessary to finalize the loan documents.

**3. Explain the fiscal impact (current year and ongoing).**

The County's Road fund will repay the Oregon Transportation Infrastructure Fund with interest only payments until fiscal year 2012. After that time, repayment of principal and interest will be approximately \$413K per year for a term of 15 years for a total of \$6.2 million. The final loan

interest rate will be determined at closing but an estimate of 3.98 percent was assigned in the preparation of the loan documents. The loan repayment will impact the County's ability to provide matching funds on other projects and will further reduce the County's ability to fund transportation capital improvement projects into the unforeseeable future.

**4. Explain any legal and/or policy issues involved.**

This is a standard loan that ODOT uses for infrastructure fund projects with local jurisdictions.

**5. Explain any citizen and/or other government participation that has or will take place.**

Loan negotiations have taken place between ODOT, the Chief Financial Officer and the County Attorney's Office.

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**Required Signature**

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**Elected Official or  
Department/  
Agency Director:**



**Date: 08/26/08**

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. \_\_\_\_\_

Authorizing a Loan From The Oregon Transportation Infrastructure Fund for the 223<sup>rd</sup> Avenue Railroad Under-crossing Reconstruction Project

**The Multnomah County Board of Commissioners Finds:**

- a. ORS 367.010 to 367.060 (the "Act") authorizes any municipality to file an application with the Oregon Department of Transportation (the "Department") to obtain financial assistance from the Oregon Transportation Infrastructure Fund.
- b. Multnomah County (County) is a "municipality" within the meaning of the Act.
- c. As authorized by Resolution 06-035, the County filed an application with the Department to obtain financial assistance for the 223<sup>rd</sup> Avenue Railroad Under-crossing Reconstruction Project, a "transportation project" within the meaning of the Act.
- d. The Oregon Transportation Commission approved the County's application for financial assistance from the Oregon Transportation Infrastructure Fund pursuant to Oregon Administrative Rules, Chapter 731, Division 30.
- e. The County is required, as a prerequisite to the receipt of financial assistance from the Department, to enter into a Loan Agreement with the Department in substantially the form attached hereto as Exhibit "A."
- f. The 223<sup>rd</sup> Avenue Railroad Under-crossing Reconstruction Project described in Exhibit "A" to the Loan Agreement (the "Project") is a "transportation project" within the meaning of the Act.
- g. This Resolution is adopted in accordance with the County's public notice and meeting requirements.

**The Multnomah County Board of Commissioners Resolves:**

1. Loan Authorized. The Chief Financial Officer is authorized to execute the Loan Agreement and the Promissory Note, the form of which attached as Exhibit "D" to the Loan Agreement (the "Financing Documents"), and such other agreements, instruments, documents and certificates as may be required to obtain a loan from the Department on the condition that the principal amount of the loan from the Department to the County is not in excess of \$4,600,000 and the interest rate on

such loan is not in excess of 3.98 percent. The proceeds of the loan from the Department shall be applied solely to the "Costs of the Project" as such term is defined in the Loan Agreement.

2. Security. Repayment of the County's obligations under the Financing Documents is secured by the Pledged Revenues as defined in the Loan Agreement.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

---

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_  
Matthew O. Ryan, Assistant County Attorney

SUBMITTED BY:

M. Cecilia Johnson, Director, Dept. of Community Services

**TRANSCRIPT CERTIFICATION**

**State of Oregon  
Oregon Transportation Infrastructure Fund  
Loan Number 0031**

On behalf of Multnomah County, Oregon (the "Municipality"), I hereby certify that the attached documents are originals or true copies of the documents which were assembled for the closing of the Municipality's loan in the principal amount of \$4,600,000.00 from the State of Oregon, acting by and through its Department of Transportation (the "State") pursuant to a Loan Agreement by and between the Municipality and the State.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2008.

By: \_\_\_\_\_  
Authorized Officer

Title: \_\_\_\_\_

CERTIFICATE OF INCUMBENCY OF THE COUNTY COMMISSION  
OF MULTNOMAH COUNTY, OREGON

\$4,600,000

Oregon Transportation Infrastructure Loan Number OTIF -0031  
To Multnomah County  
(223<sup>rd</sup> Undercrossing Sandy Blvd. Bridge Street)

I, \_\_\_\_\_, a duly authorized representative of Multnomah County, Oregon  
(the "Borrower"), hereby certify in connection with the above captioned loan as follows:

The names of the Members of the County Commission, their respective positions, and the  
dates of expiration of the respective terms of office of said Members of the Multnomah  
County, County Commission are as follows:

<u>Name of Member and Position</u>	<u>Date of Expiration of Current Term</u>
------------------------------------	---

DATED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Multnomah County, Oregon

By: \_\_\_\_\_

LOAN AGREEMENT  
between  
STATE OF OREGON  
acting by and through its  
DEPARTMENT OF TRANSPORTATION  
and  
Multnomah County

THIS LOAN AGREEMENT, is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2008, by and between the State of Oregon, acting by and through its Department of Transportation (the "State"), and the Borrower (as defined below). The reference number for this Loan Agreement is OTIF-0031. Terms not otherwise defined herein shall have the meanings assigned to them by Section 1.01 of this Loan Agreement.

**WITNESSETH:**

WHEREAS, the State, in accordance with the Act, will provide funds in the Oregon Transportation Infrastructure Fund for the purpose of making loans to Municipalities, including the Borrower, to finance a portion of the cost of transportation projects;

WHEREAS, the Borrower has made timely application to the State for a loan to finance all or a portion of the cost of a transportation project, and the Oregon Transportation Commission and the State have approved the Borrower's application for a loan to finance a portion of the cost of such project; and

WHEREAS, the Borrower has agreed to make payments sufficient to pay when due the principal of, premium, if any, and interest on the Loan from the State pursuant to the terms of the Note and this Loan Agreement;

NOW, THEREFORE, for and in consideration of the Loan by the State, the Borrower agrees to perform its obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein:

**ARTICLE 1**

**DEFINITIONS**

**Section 1.01. Definitions.** The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings assigned to them below:

"Act" means ORS 367.010 to 367.060 and related provisions, as the same may be from time to time amended and supplemented.

"Authorized Officer" means, in the case of the Borrower, the person or persons authorized pursuant to a resolution or ordinance of the governing body of the Borrower to act as an authorized officer of the Borrower to perform any act or execute any document relating to the Loan or this Loan Agreement and whose name is furnished in writing to the State.

"Borrower" means Multnomah County, and its successors and permitted assigns.

"Business Day" means any day other than

- (i) a Saturday, Sunday or legal holiday,

- (ii) a day on which banking institutions in Salem, Oregon are closed; or
- (iii) a day on which the New York Stock Exchange is closed.

"Costs of the Project" shall mean only those specified costs listed in Exhibit B attached hereto and by this reference made a part hereof. The term "Costs of the Project" does not include

- (i) costs in excess of one-hundred percent (100%) of the total cost of the Project,
- (ii) the purchase of equipment and other property not directly related to the Project,
- (iii) construction or repair of facilities owned or operated by private parties,
- (iv) costs incurred prior to the date of the Loan, except as provided in Section 5.01,  
and
- (v) administrative expenses of the Borrower.

"Counsel" means an attorney at law or firm of attorneys at law (who may be, without limitation, of counsel to, or an employee of, the State or the Borrower) duly admitted to practice law before the highest court of any state.

"Event of Default" means any occurrence or event specified in Section 7.01 hereof.

"Loan" means the loan evidenced by the Note and made by the State to the Borrower to finance or refinance a portion of the Costs of the Project pursuant to this Loan Agreement. The Loan may be funded by the State from any amounts held in the OTIF.

"Loan Agreement" or "Agreement" means this loan agreement, including the Exhibits attached hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

"Loan Closing Date" means \_\_\_\_\_, 2008.

"Loan Prepayment" means, as to any payment, the amount paid by the Borrower that is in excess of the amount required to be paid as a Loan Repayment.

"Loan Repayment(s)" means the scheduled payment(s) of principal and interest required to be made by the Borrower pursuant to the provisions of the Note and this Loan Agreement.

"Maturity Date" means the date on which the Loan is payable in full, which date shall be September 1<sup>st</sup> 2025.

"Municipality" means a city, county, road district, school district, special district, metropolitan service district, the Port of Portland or an intergovernmental entity organized under ORS 190.010.

"Note" means the promissory note of the Borrower substantially in the form of Exhibit D attached hereto and by this reference made a part hereof.

"Oregon Transportation Infrastructure Bank" or "OTIB" means the program authorized by Section 350 of the National Highway System Designation Act of 1995, 23 U.S.C. 101 note, Public Law 104-59, and a cooperative agreement between the Federal Highway Administration, Federal Transit Administration, of the United States Department of Transportation and the Oregon Department of Transportation dated August 20, 1996.

"Oregon Transportation Infrastructure Fund" or "OTIF" means the fund created by the Act. Loans from the OTIF may include OTIB loans or loans to finance transportation projects from any accounts established within the OTIF.

"Pledged Revenues" means the County's Road Fund's share of State allocated fuel tax and vehicle registration fees.

"Project" means the transportation project of the Borrower described in Exhibit A attached hereto and made a part hereof, a portion of the Costs of the Project of which is financed or refinanced by the State through the making of the Loan under this Loan Agreement.

"Project Completion Date" means the earlier of

- (i) February 1, 2010,
- (ii) the date on which all of the proceeds of the Loan have been spent, or
- (iii) the date on which the Borrower completes construction of the Project.

"Rule" or "Rules" means Oregon Administrative Rules, chapter 731, division 30, as they may be supplemented, modified or amended from time to time.

"Senior Lien(s)" means a lien(s) securing repayment of an obligation(s) of the Borrower, which lien(s) is, by express, written mutual agreement between the State and the Borrower, senior to the lien on the Pledged Revenues that secure repayment of the Loan.

"State" means the State of Oregon, acting by and through its Department of Transportation, or its successors or assigns.

"State Treasurer" means the State Treasurer of the State of Oregon.

"Transportation project" has the meaning assigned to that term by the Rule.

**Section 1.02. General Rules.** Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

## ARTICLE II

### LOAN

**Section 2.01. Loan Amount.** On the Loan Closing Date the State hereby agrees to loan to the Borrower, and the Borrower agrees to borrow and accept from the State, a Loan in the maximum aggregate principal amount of Four Million Six Hundred Thousand and No/100 Dollars (\$4,600,000.00); provided however that disbursements hereunder shall not exceed in the aggregate forty-eight percent (48%) ("Participation Rate") of the Costs of the Project.

**Section 2.02. Use of Loan Proceeds.** The Borrower shall use the proceeds of the Loan strictly in accordance with Section 5.01 hereof.

**Section 2.03. Loan Term.** The term of the Loan is set forth in the Note.

**Section 2.04. Interest.** The Note shall bear interest at the rate of Three and 98/100 percent (3.98%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months. Interest shall be due and payable in arrears and shall accrue on the outstanding principal balance from the date hereof until the principal amount of the Note, together with accrued unpaid interest thereon, is paid in full.

**Section 2.05. Payments.** The Loan shall be due and payable in scheduled payments of principal and interest as set forth in the Note. The Loan Repayments, when taken together, shall be in an amount sufficient to amortize the original principal amount of the Note by the Maturity Date, and each Loan Repayment shall pay all unpaid interest accrued to the date of payment.

**Section 2.06. Prepayments.**

(a) *Mandatory Prepayment.* The Borrower shall prepay the outstanding balance of the Loan upon the destruction of all or a substantial portion of the Project.

(b) *Optional Prepayment.* The Borrower may make Loan Prepayments upon prior written approval of the State. The Borrower shall provide prior written notice of not less than one hundred twenty (120) days to the State.

(c) *General.* Loan Prepayments shall be applied first to any expenses of the State and accrued interest on the portion of the Loan prepaid, and then to principal payments (including premium, if any) on the Loan. In the case of a Loan Prepayment that does not prepay all of the

principal of the Loan, the State shall determine, in its sole discretion, the method by which such Loan Prepayment shall be applied to the outstanding principal payments.

**Section 2.07. Unconditional Obligation.** Except as provided in Section 2.10, the obligation of the Borrower to make the Loan Repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein is payable solely from the sources of repayment described in Section 2.10 hereto and shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments under this Loan Agreement remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the State to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project, this Loan Agreement or any intergovernmental agreement related to the Project or any rights of set off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the State or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

**Section 2.08. Disclaimer of Warranties and Indemnification.** The Borrower acknowledges and agrees that:

(a) The State makes no warranty or representation, either expressed or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto;

(b) In no event shall the State or its commissioners, officers, agents or employees be liable or responsible for any direct, incidental, indirect, special, consequential, punitive or other damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Project; and

(c) To the extent authorized by law, the Borrower shall indemnify, save, hold harmless and defend the State and its commissioners, officers, agents and employees, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Borrower, or its employees, agents or subcontractors pursuant to the terms of this Loan Agreement; provided, however, that the provisions of this clause (c) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to Chapter 30 of the Oregon Revised Statutes or the laws of the United States of America or other laws of the State of Oregon.

**Section 2.09. Termination of Availability Hereunder.** Ninety days after the Project Completion Date, the State's obligation to make any further disbursements of the Loan hereunder shall terminate.

**Section 2.10. Sources of Repayment of Borrower's Obligations.**

(a) The State and the Borrower agree that the amounts payable by the Borrower under this Loan Agreement, including, without limitation, the amounts payable by the Borrower pursuant to Section 2.05, Section 2.06, Section 2.08 and Section 7.04 of this Loan Agreement, are payable from the sources of repayment described in subsections (b) and (c) of this Section 2.10. Nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement from any other legally available source.

(b) The amounts payable by the Borrower under this Loan Agreement are payable from:

(i) Pledged Revenues; and

(ii) Subject to appropriation, other funds which may be available for such purpose, and the Borrower's authority to incur debts and liabilities and levy taxes within the restrictions of the Constitution of the State of Oregon.

(c) The Borrower, by entering into this Loan Agreement, acknowledges its current intention to make all Loan Repayments on or before the dates on which such payments are due hereunder and, to the extent that funds are appropriated to make payments hereunder, the full faith and credit of the Borrower are pledged to such payments. In the event that the Borrower's governing body fails to appropriate sufficient funds to fully fund all of the Borrower's legal obligations to make Loan Repayments hereunder for any future fiscal period, then the Borrower will immediately notify the State of such occurrence, and the State may exercise such remedies as presented by Article VII of this Loan Agreement.

(d) The Borrower agrees that:

(i) The Borrower's staff will, for each fiscal year in which Loan Payments are scheduled to be made, present to the Borrower's governing body a request that such governing body budget for and approve the expenditure of an amount sufficient to allow the Borrower to make all Loan Repayments due in that fiscal period; and

(ii) To the extent funds are legally available therefor, it will make all Loan Repayments.

(e) The Borrower acknowledges that the State of Oregon is entitled to withhold all or a portion of the Pledged Revenues, including but not limited to any amounts due to the Borrower from the State of Oregon pursuant to ORS 366.762 to 366.774, and to apply said amounts to payments due under this Loan Agreement to the fullest extent permitted by law if the Borrower defaults on payments due under this Loan Agreement; provided however that the provisions of

the Loan Agreement and the Note are not to be construed in a way that would cause the obligations of the Borrower thereunder to constitute debt which violates Section 10, Article XI of the Oregon Constitution.

(f) Borrower hereby grants a security interest in and irrevocably pledges its Pledged Revenues to pay Borrower's obligations hereunder. The lien on and pledge of the Pledged Revenues are subordinate to the lien and pledge of the Senior Lien(s); provided however that Borrower represents and warrants that on the date hereof there are no Senior Liens on the Pledged Revenues. The Pledged Revenues so pledged and hereafter received by Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, except for the Senior Lien(s), to the fullest extent permitted by ORS 288.594. Borrower hereby represents and warrants that the pledge of Pledged Revenues hereby made by Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 288.594.

**Section 2.11. Loan Fee.** The Borrower shall pay to the State a one-time loan fee equal to one percent (1%) of the Loan. This fee shall be in addition to any interest charged on the Loan. The Borrower may elect to:

(a) Pay the entire amount of this loan fee on the Loan Closing Date; or

(b) Authorize the State to deduct the loan fee from Loan disbursements; provided however that if the Loan is not fully disbursed, the State shall refund to the Borrower the portion of the Loan fee allocated to the undisbursed portion of the Loan.

**Section 2.12. Late Fee.** If the payment of any Loan Repayment required under the Note is delinquent more than fifteen (15) days, the Borrower shall pay to the State a late charge of five percent (5%) of the delinquent Loan Repayment in addition to the Loan Repayment due under the Note.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF BORROWER

The Borrower represents and warrants to the State as follows:

**Section 3.01. Organization and Authority.**

(a) The Borrower is a Municipality.

(b) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Project, other than licenses and permits relating to the Project which the Borrower expects to receive in the ordinary course of business, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to

undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement.

(c) The Project is a project which the Borrower may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

(d) The proceedings of the Borrower's governing members and voters, if necessary, approving this Loan Agreement and authorizing the execution, issuance and delivery of this Loan Agreement on behalf of the Borrower and authorizing the Borrower to undertake and complete the Project have been duly and lawfully adopted in accordance with the laws of Oregon, and such proceedings were duly approved and published, if necessary, in accordance with applicable Oregon law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Oregon law and at which quorums were present and acting throughout.

(e) This Loan Agreement has been duly authorized, executed and delivered by an Authorized Officer of the Borrower, and, assuming that the State has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement, this Loan Agreement constitutes the legal, valid and binding obligation of the Borrower in accordance with its terms.

(f) This Loan Agreement is duly authorized by a resolution of the Borrower which was adopted in accordance with ORS 367.035(4) and applicable law and the Borrower's requirements for filing public notices and holding public meetings.

**Section 3.02. Full Disclosure.** There is no fact that the Borrower has not disclosed to the State in writing, on the Borrower's application for the Loan or otherwise, that materially adversely affects the properties, activities, prospects or the condition (financial or otherwise) of the Borrower or the Project or the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement. Neither the Borrower's application for the Loan nor the Borrower's representations and warranties in this Loan Agreement contain any untrue statement of a material fact or omits any statement or information which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and the information contained in Exhibits A and B is true and accurate in all respects.

**Section 3.03. Pending Litigation.** There are no proceedings pending, or, to the knowledge of the Borrower threatened, against or affecting the Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect

(a) The ability of the Borrower to complete the Project substantially as it is described in Exhibit A;

(b) The Pledged Revenues:

(c) Properties, activities, prospects or the condition (financial or otherwise) of the Borrower; or

(d) The ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

**Section 3.04. Compliance with Existing Laws and Agreements.** The authorization, execution and delivery of this Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder and the consummation of the transactions provided for in this Loan Agreement, and the undertaking and completion of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to, any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than any lien and charge arising under this Loan Agreement or any of the documents related hereto or to the Bond Indenture) to which the Borrower is a party or by which the Borrower or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, resolutions, rules, regulations or court orders to which the Borrower or its properties or operations is subject.

**Section 3.05. No Defaults.** No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it or its properties may be bound, which violation would materially adversely affect

(a) The Project;

(b) The Pledged Revenues;

(c) Properties, activities, prospects or the condition (financial or otherwise) of the Borrower; or

(d) The ability of the Borrower to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

**Section 3.06. Governmental Consent.** The Borrower has obtained or will obtain all permits and approvals required by any governmental body or officer for the making, observance or performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or for the undertaking or completion of the Project and the financing or refinancing thereof; and the Borrower has complied or will comply with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body

or officer in connection with the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or with the undertaking or completion of the Project and the financing or refinancing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer that has not been obtained is required on the part of the Borrower as a condition to the authorization, execution and delivery of this Loan Agreement.

**Section 3.07. Compliance with Law.** The Borrower:

(a) Is in compliance with all laws, ordinances, rules and regulations to which it is subject, non-compliance with which would materially adversely affect the condition (financial or otherwise) of the Borrower or the ability of the Borrower to conduct its activities or undertake or complete the Project; and

(b) Has obtained or will obtain all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower.

**Section 3.08. The Project.**

(a) The Project is feasible, and there will be adequate funds available to repay the Loan.

(b) The Borrower has been provided with a copy of the Rules, and the Project is in compliance with such Rules.

**Section 3.09. Costs of the Project.**

(a) The Costs of the Project is a reasonable and accurate estimation and based upon an engineer's feasibility report and engineer's estimate stamped by a registered professional engineer.

(b) The principal amount of the Loan is not in excess of the reasonable Costs of the Project.

**Section 3.10. Term of the Loan.** The term of the Loan is not in excess of the useful life of the Project.

**Section 3.11. Matching Funds.** Matching funds of Borrower in the amount of Five Million Ten Thousand Five Hundred Sixty-six and No/100 Dollars (\$5,010,566.00) are available and committed to the Project.

## ARTICLE IV

### CONDITIONS TO LOAN AND DISBURSEMENTS

**Section 4.01. Conditions Precedent to Loan.** The State shall be under no obligation to make disbursement of Loan proceeds unless the Borrower delivers to the State, on or prior to the Loan Closing Date, the following documents in form and substance satisfactory to the State and its Counsel:

- (a) An opinion of Borrower's Counsel to the effect that
  - (i) the Borrower is duly formed and operating under applicable State of Oregon law,
  - (ii) the Borrower has full legal right and authority to execute and deliver the Loan Agreement and to observe and perform its duties, covenants, obligations and agreements hereunder and to undertake and complete the Project,
  - (iii) the Loan Agreement has been authorized pursuant to official action of the Borrower that has been adopted and authorized in accordance with applicable Oregon law,
  - (iv) the Loan Agreement has been duly authorized and executed and delivered by Authorized Officers of the Borrower and constitutes the legal, valid and binding obligations of the Borrower enforceable in accordance with its terms,
  - (v) the authorization, execution and delivery of the Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, the consummation of the transactions contemplated herein and the undertaking and completion of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over the Borrower or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing agreement to which the Borrower is a party or by which the Borrower or its property or assets is bound,
  - (vi) all approvals, consents or authorizations of, or registrations or filings with, any governmental or public agency, authority or person required on the part of the Borrower in connection with the authorization, execution, delivery and performance of the Loan Agreement and the undertaking and completion of the Project have been obtained or made to the extent it is possible to obtain or make them on or prior to the Loan Closing Date, and
  - (vii) there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State of Oregon or Federal) questioning the creation, organization or existence of the Borrower, the validity, legality or enforceability of the Loan Agreement or the undertaking or completion of the Project (such opinion or portions of such opinion may be given by one or more counsel); provided, however, that the State and the State's Counsel may permit, in its sole discretion, variances in the form of such opinion;

(b) Counterparts of this Loan Agreement duly executed and delivered by an Authorized Officer of the Borrower;

(c) The Note duly executed and delivered by an Authorized Officer of the Borrower;

(d) Copies of the official action of the governing body of the Borrower authorizing the execution and delivery of this Loan Agreement and the documents, instruments and agreements required by this Loan Agreement, certified by an Authorized Officer of the Borrower;

(e) An intergovernmental agreement duly executed by all parties thereto and delivered by Borrower, substantially in the form of Exhibit E attached hereto and by this reference incorporated herein; and

(f) Such other certificates, documents, opinions and information as the State may require; provided, however, the State shall be under no obligation to make the Loan pursuant hereto if there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

**Section 4.02. Conditions to Disbursement.** The obligation of the State to make any disbursement (including the initial disbursement) to the Borrower is subject to the following conditions:

(a) All the conditions set forth in Section 4.01 of this Loan Agreement have been satisfied;

(b) There shall exist no Event of Default as defined in this Loan Agreement, or event, omission or failure of a condition which would constitute an Event of Default as defined in this Loan Agreement after notice or lapse of time or both;

(c) The State has received documentation satisfactory to the State evidencing that the Borrower has obtained any matching funds that are needed to pay for the Costs of the Project;

(d) There is availability of moneys in the OTIF for use in the Project; and

(e) The State receives

(i) a requisition executed by the Borrower in substantially the form of Exhibit F attached hereto and by this reference made a part hereof and

(ii) any other written evidence of materials and labor furnished to or performed upon the Project, itemized receipts or invoices for the payment of the same, and releases, satisfactions and other signed statements and forms as the State may require as a condition for making disbursements of the Loan.

The State may, at its option, from time to time, either reimburse the Borrower for construction costs paid or may make direct payment for construction costs to suppliers, subcontractors and others for sums due them in connection with construction of the Project. Nothing herein contained shall require the State to pay any amounts for labor or materials unless satisfied that such claims are reasonable and that such labor and materials were actually expended and used in the construction of the Project. The State, at its option, from time to time, may also require that the Borrower have a contractor or subcontractor execute and/or deliver a surety bond or indemnification form acceptable to the State for the faithful performance of the construction contract or subcontract and payment of all liens and lienable expenses in connection therewith in a sum equal to the contract or subcontract price. Disbursements for the Costs of the Project shall be subject to a retainage at the rate of five percent (5%) which will be released upon satisfactory completion of the Project.

Further, the State shall have no obligation to make any disbursement to the Borrower if (1) on or before the time for disbursement, there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement, or (2) the Department of Transportation ("ODOT") or OTIF does not receive sufficient funding, appropriations, limitations, allotments or other expenditure authorizations to allow ODOT, in the exercise of its reasonable administrative discretion, to provide such funding.

## **ARTICLE V**

### **COVENANTS OF BORROWER**

**Section 5.01.** Use of Proceeds. The Borrower will apply the proceeds of the Loan:

(a) To finance all or a portion of the Costs of the Project; and

(b) With the advance written approval of the State, to reimburse the Borrower for a portion of the Costs of the Project, which portion was paid or incurred in anticipation of reimbursement by the State.

None of the proceeds of the Loan shall be used for administrative purposes by the Borrower.

**Section 5.02.** Source of Repayment. The Loan shall be paid from the sources of repayment described in Section 2.10 of this Loan Agreement. Such sources shall be applied to the punctual payment of the principal of and the interest on the Loan, and all other amounts due under this Loan Agreement according to the terms hereof.

**Section 5.03.** Performance Under Loan Agreement. The Borrower covenants and agrees to cooperate with the State in the observance and performance of the respective duties, covenants, obligations and agreements of the Borrower and the State under this Loan Agreement.

**Section 5.04.** Completion of Project and Provision of Moneys Therefor. Borrower covenants and agrees to provide State, upon request, with copies of all permits, plans and

specifications, as-built drawings and certification of completion per as-built drawings from the Project engineer relating to the Project. The Borrower further covenants and agrees:

- (a) To exercise its best efforts in accordance with prudent practice to complete the Project and to so accomplish such completion on or before the estimated Project Completion Date;
- (b) To proceed expeditiously with, and complete, the Project; and
- (c) To provide from its own fiscal resources all moneys in excess of the total amount of Loan proceeds it receives pursuant to this Loan Agreement required to complete the Project.

Borrower shall, at its sole expense, have a program, documented to the satisfaction of the State, for the on-going maintenance, operation and replacement of the Project. The program shall include a plan for generating revenues sufficient to assure the operation, maintenance and replacement of the Project during the useful life of the Project.

**Section 5.05. Disposition of Project.** Unless it is worn out, obsolete or, in the reasonable opinion of the Borrower, no longer useful in the operation of the Project, the Borrower shall not sell, lease, abandon, exchange or otherwise dispose of (collectively for the purposes of this Section "transfer") all or substantially all or any substantial portion of the Project or any other properties or assets which provide revenues for the payment of the amounts due under this Loan Agreement except on ninety (90) days' prior written notice to the State and, in any event, shall not so transfer the same unless the State consents to such transfer.

The State shall not consent to any such transfer unless the State shall have received an opinion of the State's Counsel to the effect that such transfer complies with the Act. Proceeds of any such transfer not used to replace property that is part of the Project shall be applied to payment of the outstanding principal and interest of the Loan as a Prepayment as provided in Section 2.06 of this Agreement.

**Section 5.06. Operation and Maintenance of Project.** The Borrower covenants and agrees that it shall, in accordance with prudent practice, maintain the Project in good repair, working order and operating condition.

**Section 5.07. Records; Accounts.** The Borrower shall keep accurate records and accounts for the revenues and funds that are the sources of repayment of the Loan, including but not limited to those Pledged Revenues (the "Repayment Revenues Records"), separate and distinct from its other records and accounts (the "General Records"). Such Repayment Revenues Records shall be maintained in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time and shall be audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of the Borrower. Such Repayment Revenues Records and General Records shall be made available for inspection by the State and the federal government (including but not limited to Federal Highway Administration, Federal Transit Administration) at any reasonable time, and a copy of such annual audit(s) therefor, including all written comments

and recommendations of such accountant, shall be furnished to the State within two hundred ten (210) calendar days of the close of the fiscal year being so audited.

**Section 5.08. Inspections; Information.** The Borrower shall permit the State and the federal government (including but not limited to Federal Highway Administration, Federal Transit Administration) and any party designated by any of such parties to examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the State may reasonably require in connection herewith. In addition, the Borrower shall provide the State with copies of loan documents or other financing documents and any official statements or other forms of offering documents relating to any other bonds, notes or other indebtedness of the Borrower that are issued after the Loan Closing Date and are secured by the Pledged Revenues.

**Section 5.09. Insurance.** The Borrower shall maintain or cause to be maintained insurance policies with responsible insurers or self-insurance programs providing against risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is usually carried, or self-insurance is usually provided for, by governmental units constructing, operating and maintaining facilities of the nature of Borrower's Project, including liability coverage, all to the extent available at reasonable cost. Unless otherwise prohibited by law, the Borrower shall cause the State to be listed on such insurance policies as a loss payee on such policy. Nothing herein shall be deemed to preclude the Borrower from asserting against any party, other than the State, a defense which may be available to the Borrower, including, without limitation, a defense of immunity. In the event the Project or any portion thereof is destroyed, any insurance proceeds shall be paid to the State, and such proceeds will be available to Borrower to rebuild all or a portion of the Project. If, within ninety (90) days receipt of insurance proceeds, the Borrower elects not to rebuild the Project, the proceeds shall be applied to the principal and interest on the Loan.

**Section 5.10. Condemnation.** In the event the Project or any portion thereof is condemned, any condemnation proceeds shall be available to Borrower to rebuild all or a portion of the Project. If the Borrower elects not to rebuild the Project, the proceeds of any condemnation will, within ninety (90) days of the Borrower's receipt of condemnation proceeds, be applied to prepay the Loan.

**Section 5.11. Engineer's Report.** Upon request by the State, the Borrower shall promptly provide the stamped engineer's feasibility report and estimate described in Section 3.09(a) to the State.

**Section 5.12. Notice of Material Adverse Change.** The Borrower shall promptly notify the State of any material adverse change in the properties, activities, prospects or the condition (financial or otherwise) of the Borrower or the Project or in the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

**Section 5.13. Financial Statements; Reports.** The Borrower shall deliver to the State in form and detail satisfactory to the State:

(a) As soon as reasonably possible after the close of each fiscal year of the Borrower, audited financial statements prepared in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time, and certified by the chief financial officer of the Borrower; and

(b) Such other statement or statements or reports as to the Borrower as the State may reasonably request.

**Section 5.14. Compliance with Applicable Laws.** The Borrower will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority that relate to the construction and operation of the Project. In particular, but without limitation, the Borrower shall comply with the following, as applicable:

(a) The National Environmental Policy Act (NEPA), and other environmental laws and requirements;

(b) The Uniform Relocation Assistance Act (Right of Way);

(c) The Civil Rights Act of 1964 and other civil rights laws and requirements including the DBE program;

(d) The Davis Bacon Act and other labor laws and requirements;

(e) The Common Rule (49 C.F.R.19) with respect to procurement;

(f) The Brooks Act;

(g) Competitive Bidding Requirements and state labor standards and wage rates found in the Oregon Public Contracting Code, ORS 279A, 279B and 279C;

(h) Buy America;

(i) Manual of Uniform Traffic Control Devices;

(j) The Americans with Disabilities Act (ADA) and other federal and state laws prohibiting discrimination against person with disabilities; and

(k) OAR, Chapter 731, Division 30, as amended from time to time at the discretion of the State.

**Section 5.15. Compliance with State Handbook.** The Borrower agrees that it will at all times comply with the provisions of any project management handbook of the State for OTIF loans.

**Section 5.16. Continuing Representations.** The representations of the Borrower contained herein shall be true at the time of the execution of this Loan Agreement and at all times during the term of this Loan Agreement.

**Section 5.18. Additional Indebtedness.** Except as provided in this Agreement, the Borrower shall not create or allow any lien on all or a portion of the Pledged Revenues that is superior to or on a parity with the lien created under this Loan Agreement in favor of the State without the State's written consent, which the State will not unreasonably withhold. Borrower reserves the right to grant liens subordinate to the lien in favor of the State created pursuant to this Loan Agreement without limitation.

**Section 5.19. Binding Agreements.** Borrower covenants that it will enter into binding agreements with all major private parties necessary to complete all or a substantial portion of the Project prior to seeking any disbursements under the Loan.

## ARTICLE VI

### ASSIGNMENT

This Loan Agreement may not be assigned by the Borrower without the prior written consent of the State. The State may grant or withhold such consent in its sole discretion. In the event of an assignment of this Loan Agreement by Borrower and assumption of the obligations hereunder, Borrower shall pay, or cause to be paid, to the State any fees or costs incurred by the State as the result of such assignment, including but not limited to, attorney fees or costs of State's Counsel.

## ARTICLE VII

### DEFAULTS AND REMEDIES

**Section 7.01. Event of Default.** If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) Failure by the Borrower to pay, or cause to be paid, any Loan Repayment required to be paid hereunder on the due date thereof except if Borrower is a county and such failure is the result of nonappropriation of funds as described in Section 2.10(b)(ii); or

(b) Failure by the Borrower to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Borrower for borrowed money (other than the Loan), after giving effect to the applicable grace period; or

(c) Any representation made by or on behalf of the Borrower contained in this Loan Agreement, or in any agreement, instrument, certificate or document furnished in compliance with, or with reference to, this Loan Agreement or the Loan is false or misleading in any material respect; or

(d) A petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within twenty (20) calendar days after such filing, and such dismissal shall be final and not subject to appeal; or the Borrower shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including without limitation, a trustee, receiver, custodian, liquidator, or the like of Borrower or any of its property) shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) calendar days; or

(e) Failure of Borrower's governing body to appropriate sufficient funds to fully fund all of the Borrower's obligations to make Loan Repayments hereunder for any future fiscal period, except if Borrower is a county and such failure is the result of nonappropriation of funds as described in Section 2.10(b)(ii); or

(f) The Borrower has not entered into binding agreements with all private parties necessary to complete the Project within three hundred sixty-five (365) days of the date of this Agreement; or

(g) Failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in subsections (a) through (f) of this Section, which failure shall continue for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the State, unless the State shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the State may not unreasonably withhold its consent to an extension of such time up to one hundred twenty (120) calendar days of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected; provided however that if Borrower is a county, such failure resulting from nonappropriation of funds as described in Section 2.10(b)(ii) shall not be deemed a default hereunder

**Section 7.02. Notice of Default.** The Borrower shall give the State prompt telephonic notice of the occurrence of any Event of Default referred to in Section 7.01(d) hereof and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof. Any telephonic notice pursuant to this Section 7.02 shall be confirmed in writing as soon as is practicable by the Borrower.

**Section 7.03. Remedies on Default.** Whenever an Event of Default referred to in Section 7.01 hereof shall have occurred and be continuing, the State shall have the right to take any action permitted or required pursuant to the Loan Agreement and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Borrower hereunder, including, without limitation,

(a) Declaring all Loan Repayments and all other amounts due hereunder to be immediately due and payable, and upon notice to Borrower the same shall become due and payable without further notice or demand;

(b) Appointment of a receiver;

(c) Refusal to disburse any Loan proceeds;

(d) Barring the Borrower from applying for future OTIF assistance; or

(e) Withholding other State of Oregon funds, including but not limited to, the Borrower's apportionment of State Highway Fund revenues due under ORS 366.762 to 366.768 and ORS 366.785 to 366.820, to the extent permitted by Section 2.10.

In addition, if an Event of Default referred to in Section 7.01(a) hereof shall have occurred and be continuing, all Loan Repayments and all other amounts due hereunder to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand.

**Section 7.04. Attorney's Fees and Other Expenses.** In compliance with ORCP 68, a party shall, on demand, to the extent permitted by law, pay to the prevailing party(ies) the reasonable fees and expenses of attorneys, whether at trial or on appeal, in bankruptcy proceedings or otherwise, and other reasonable expenses (including without limitation expert witness fees and the reasonable allocated costs of in-house Counsel and legal staff) incurred by said prevailing party(ies) in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the party.

**Section 7.05. Application of Moneys.** Any moneys collected by the State pursuant to Section 7.03 hereof shall be applied in the following order:

- (a) To pay any attorney's fees or other fees and expenses owed by the Borrower hereunder;
- (b) To pay interest due and payable on the Loan; and
- (c) To pay principal due and payable on the Loan.

**Section 7.06. No Remedy Exclusive; Waiver; Notice.** No remedy herein conferred upon or reserved to the State is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. To entitle the State to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article VII.

**Section 7.07. Retention of State's Rights.** Notwithstanding anything to the contrary contained herein, the State shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Borrower at law or in equity, as the State may, in its discretion, deem necessary to enforce the obligations of the Borrower to the State pursuant to Sections 2.05, 2.09 and 7.04 hereof.

**Section 7.08. Default by the State.** In the event of any default by the State under any covenant, agreement or obligation of this Loan Agreement, the Borrower's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the State hereunder as may be necessary or appropriate.

## **ARTICLE VIII**

### **MISCELLANEOUS**

**Section 8.01. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Borrower and the State at the addresses set forth below or at such other address of which such party shall have notified in writing the other parties hereto:

If to the State: Oregon Department of Transportation  
355 Capitol Street NE, Room 434  
Salem, Oregon 97301-3872  
Attn: Chief Financial Officer

If to the Borrower: Multnomah County  
Department of Community Services  
Land Use & Transportation  
1620 SE 190<sup>th</sup> Ave.  
Portland, OR 97233  
Attn: Kim Peoples

**Section 8.02. Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding upon the State and the Borrower and their respective successors and assigns.

**Section 8.03. Severability.** In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

**Section 8.04. Amendments, Supplements and Modifications.** This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the State and the Borrower. This Loan Agreement may not be amended, supplemented or modified in a manner that is not in compliance with the Act and the Rules.

**Section 8.05. Execution in Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 8.06. Headings.** The Section headings in this Loan Agreement are intended to be for reference purposes only and shall in no way modify or restrict any of the terms or provisions hereof.

**Section 8.07. No Construction against Drafter.** Both parties acknowledge that they are each represented by and have sought the advice of counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

**Section 8.08. Applicable Law.** This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, suit or proceeding (collectively, "Claim") between the State (and/or any agency or department of the State of Oregon) and the Borrower that arises from or relates to this Loan Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be

brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

**Section 8.09.** Loan not an Obligation of the United States of America. The covenants, agreements and obligations of the State contained in this Loan Agreement shall not be construed to be covenants, agreements or obligations of the United States of America.

**Section 8.10.** Consents and Approvals. Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the State unless otherwise provided by law or by rules, regulations or resolutions of the State.

**Section 8.11.** Further Assurances. The Borrower shall, at the request of the State, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

**Section 8.12.** Merger; No Waiver. This Loan Agreement and attached exhibits (which are by this reference incorporated herein) 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 Loan Agreement. No waiver of any provision of this Loan Agreement or consent shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of this Loan Agreement shall not constitute a waiver by the State of that or any other provision.

IN WITNESS WHEREOF, the State and the Borrower have caused this Loan Agreement to be executed and delivered as of the date first above written.

STATE OF OREGON, acting by and  
through its Department of Transportation

MULTNOMAH COUNTY  
Borrower

By: \_\_\_\_\_  
Leslie Stuart Brodie  
Chief Financial Officer

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved for legal sufficiency

\_\_\_\_\_  
Lynn T. Nagasako, Sr. AAG

Date: \_\_\_\_\_

## **Exhibit A to Loan Agreement**

### **Project Description**

Borrower: Multnomah County

The Borrower will upgrade and reconstruct the 223<sup>rd</sup> Sandy Boulevard–Bridge Street Railroad Undercrossing.

Borrower will

- 1) Widen 223<sup>rd</sup> Avenue between Sandy Blvd. and Main Street. The new roadway section will consist of two 11' lanes and a 12' turn lane. It will also contain two 6' combined bicycle lane/shoulders and two 6.5' wide sidewalks. A 2.5' distance will be provided behind the sidewalk at the undercrossing location. Face-of-abutment to face-of-abutment distance shall be 64' upon completion.
- 2) Construct a new railroad bridge 15.5' wide and 69.375' long.

Project Location: 223<sup>rd</sup> Sandy Boulevard–Bridge Street, Multnomah County, Oregon.

**Exhibit B to Loan Agreement**

**Approved Project Budget**

Borrower: Multnomah County

Costs of Project: \$9,610,566

<b>Sources</b>	
Oregon Transportation Infrastructure Bank	\$4,600,000
Urban STP and Highway Safety	4,401,000
County	609,566
<b>Subtotal</b>	<b>\$9,610,566</b>
<b>Uses</b>	
Preliminary Engineering	\$1,119,377
Right of Way	359,118
Construction	8,086,071
Loan Fee	\$46,000
<b>Subtotal</b>	<b>\$9,610,566</b>

**Exhibit C to Loan Agreement**

**Prepayment Premium**

**There is no Prepayment Premium.**

**Exhibit D**

**PROMISSORY NOTE**

\$4,600,000.00

\_\_\_\_\_, 2008  
\_\_\_\_\_, Oregon

For value received, Multnomah County (hereinafter "Borrower"), unconditionally promises to pay to the State of Oregon, acting by and through its Department of Transportation (hereinafter "State"), or order, at Room 434, Transportation Building, Salem, Oregon 97310, or such other place as the State may designate in writing, the principal sum of Four Million Six Hundred Thousand AND NO/100 DOLLARS (\$4,600,000.00), plus interest from the date hereof on the unpaid principal balance until paid. Any capitalized terms not defined in this Note shall have the meanings assigned to such terms in that certain loan agreement of even date herewith between the State and Borrower (as amended from time to time the "Loan Agreement").

The interest rate shall be three and 98/100 percent (3.98%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months.

Principal and interest shall be payable at the times and in the amounts specified on the repayment schedule on Exhibit A attached hereto and by this reference made a part hereof, and the outstanding principal balance of the Note, together with accrued unpaid interest, shall be due and payable on the Maturity Date. Each payment made by the Borrower hereunder shall be applied first to interest then due and payable on the Loan, then to the principal of the Loan unless the Loan Agreement provides otherwise.

This Note is not payable prior to its maturity except as provided for in Sections 2.06 and 2.09 of the Loan Agreement.

If an Event of Default occurs, the outstanding balance hereunder, including principal, interest and other charges, if any, shall, at the option of the State, become immediately due and payable. Presentment, demand, protest, and notice of dishonor, protest and nonpayment are waived by the Borrower.

The Borrower shall, on demand, pay to the State, the reasonable fees and expenses of attorneys, whether at trial, on appeal in bankruptcy proceedings or otherwise, and other reasonable expenses (including without limitation expert witness fees and the reasonable allocated costs of in-house Counsel and legal staff) incurred by the State, in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the Borrower.

The terms, provisions and covenants contained in this Note shall apply to, inure to the benefit of, and bind the parties hereto and their respective successors and assigns.

This Note shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, suit or proceeding (collectively, "Claim") between the State (and/or any agency or department of the State of Oregon) and the Borrower that arises from or relates to this Note shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

This Note is subject to the terms and conditions of the Loan Agreement. The indebtedness evidenced by this Note is secured by the collateral described in the Loan Agreement.

MULTNOMAH COUNTY

By: \_\_\_\_\_

Title: \_\_\_\_\_

**NOTICE TO BORROWER**

**DO NOT SIGN THIS NOTE BEFORE YOU READ IT. FULL OR PARTIAL REPAYMENT BEFORE THE DATE PROVIDED FOR REPAYMENT IN THIS NOTE AND IN THE LOAN AGREEMENT IS NOT PERMITTED, AND A PREMIUM FOR ANY SUCH PREPAYMENT MAY BE CHARGED AND COLLECTED.**

**Exhibit A to Promissory Note**

**Repayment Schedule**

Borrower: Multnomah County

<b>Payment Due Date:</b>	<b>Amount Due:</b>
March 1 <sup>st</sup> , 2009	Accrued interest from the Loan Closing Date to March 1st, 2009, shall be due and payable.
September 1 <sup>st</sup> , 2009	Accrued interest from (and including) March 1 <sup>st</sup> , 2009, to September 1 <sup>st</sup> , 2009, shall be due and payable.
March 1 <sup>st</sup> , 2010	Accrued interest from (and including) September 1 <sup>st</sup> , 2009, to March 1 <sup>st</sup> , 2010, shall be due and payable.
September 1 <sup>st</sup> , 2010	Accrued interest from (and including) March 1 <sup>st</sup> , 2010, to September 1 <sup>st</sup> , 2010, shall be due and payable.
March 1 <sup>st</sup> , 2011	Accrued interest from (and including) September 1 <sup>st</sup> , 2010, to March 1 <sup>st</sup> , 2011, shall be due and payable.
September 1 <sup>st</sup> , 2011	A payment of \$414,188 principal and interest from (and including) March 1 <sup>st</sup> , 2011 shall be due and payable.
September 1 <sup>st</sup> , 2012 and the 1 <sup>st</sup> of each September thereafter up to and including September 1 <sup>st</sup> , 2025	Fourteen annual payments in the amount of \$414,188 with all remaining principal and accrued unpaid interest due at maturity on September 1 <sup>st</sup> 2025

EXHIBIT E

MULTNOMAH COUNTY NO. 0310531

Misc. Contracts & Agreements  
No. 20,934

LOCAL AGENCY AGREEMENT  
SURFACE TRANSPORTATION PROJECT – METRO  
Sandy Blvd. – Bridge St. (UPRR Under Xing)

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and MULTNOMAH COUNTY, acting by and through its Elected Officials, hereinafter referred to as "Agency".

RECITALS

1. 223<sup>rd</sup> Avenue from Sandy Boulevard to Bridge Street (UPRR Under Xing) is a part of the County Road system under the jurisdiction and control of Multnomah County.
2. By the authority granted in ORS 190.110, 366.770 and 366.775, State may enter into cooperative agreements with the counties, cities and units of local government for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. State and Agency entered into an agreement on this Project, No. 18287, which was effective July 12, 2001. Said agreement expired July 12, 2003 before the Project was completed and an amendment could be completed. It has now been determined by ODOT and Agency to enter into a new agreement for this Project to complete the preliminary engineering phase of work; to add the right of way (RW) acquisition phase of work; to provide additional funding; and to extend the termination date for the completion of the Project.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency plan and propose to design a wider replacement railroad underpass where the Union Pacific Railroad crosses 223<sup>rd</sup> Avenue from Sandy Boulevard to Bridge Street, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program, Title 23, United States Code. The total estimated cost for the PE and RW

Key #11429

is estimated at \$800,000. The STP funds available for the PE and R/W are limited to \$401,595, including any STP funds expended during the duration of and paid under Agreement #18287. The Project shall be financed with Urbanized Surface Transportation Program funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs. The estimate for the total Project cost is subject to change. This agreement is for PE and R/W acquisition only. An amendment to this agreement is required prior to any other phase of work if federal funds are to be applied.

3. The term of this Agreement shall begin upon execution of the Agreement by all parties and shall terminate upon completion of the work or eight calendar years following the date of final execution of this Agreement by both parties, whichever is sooner.
4. This Agreement may be terminated by mutual written consent of both parties. Such written consent shall not be unreasonably withheld.

State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
- b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.
- c. If Agency fails to provide payment of its share of the cost of the Project.
- d. If State fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.
- e. If Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

5. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
6. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
7. Agency shall enter into and execute this Agreement during a duly authorized session of its Board of County Commissioners.
8. 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 shall 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, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

This Project is in the 2002-2005 Statewide Transportation Improvement Program that was approved by the OTC on February 13, 2002, page 56, Key No. 11429.

The Oregon Transportation Commission on February 13, 2002, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-

to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

On September 6, 2002, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates authority to the Executive Deputy Director for Highways to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

**APPROVAL RECOMMENDED**

By [Signature]  
Region 1 Manager

Date 9/25/03

By [Signature]  
Tech Serv Mgr/Chief Engineer

Date 10-8-03

**APPROVED AS TO  
LEGAL SUFFICIENCY**

By [Signature]  
Assistant Attorney General

Date 10/1/03

STATE OF OREGON, by and through  
its Department of Transportation

By [Signature]  
Executive Deputy Director for Highways

Date 10-9-03

MULTNOMAH COUNTY, by and  
through its Elected Officials

By [Signature]  
Chair

Date 9.18.03

**REVIEWED FOR LEGAL SUFFICIENCY**

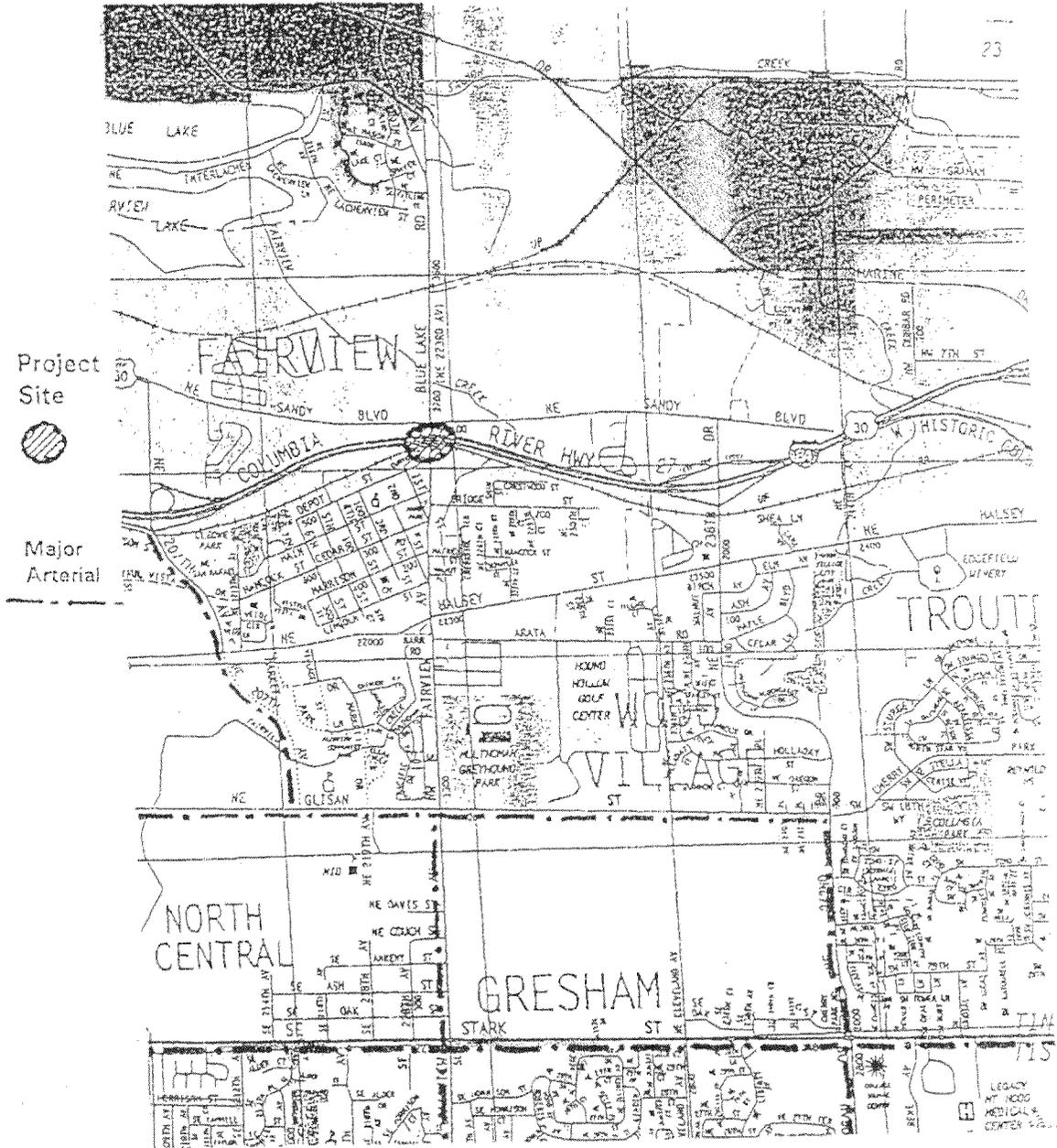
By [Signature]  
Assistant County Attorney

Date 9/8/03

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # C-5 DATE 09-18-03  
DEB BOGSTAD, BOARD CLERK

VICINITY MAP  
Sandy Blvd – Bridge St (UPRR Under Crossing)

EXHIBIT "A"



ATTACHMENT NO. 1  
M C & A No. 20,934

SPECIAL PROVISIONS

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. Agency, or its designee, shall also obtain all right-of-way required for Project in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) and its subsequent amendments; ORS 281.060; ORS 35.346, and the State of Oregon Right of Way Manual.
3. Agency shall design the Project to meet the American Association of State Highway and Transportation Officials Standards and Specifications for Highway Bridges, as modified by State's Bridge Section Office Practice Manual.
4. State may make available Region 1's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services they agree to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
5. Subject to the limitations and conditions of, and to the extent permitted by, the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 et seq.), the Agency and State each shall be solely responsible for any loss or injury caused to third parties arising from Agency's or State's own acts or omissions under the agreement; and Agency or State shall defend, hold harmless, and indemnify the other party to this Agreement with respect to any claim, litigation, or liability arising from Agency's or State's own acts or omissions under this Agreement.
6. As the Project is on the County Road system, Agency's existing maintenance responsibilities shall survive termination of this Agreement.

**STANDARD PROVISIONS** are included  
in this agreement but not scanned. If  
you need a copy of them, please  
contact Program and Funding Services,  
731-8277

**Continue to Next Document**

Misc. Contracts & Agreements  
No. 20,934

AMENDMENT NO. 1  
LOCAL AGENCY AGREEMENT  
SURFACE TRANSPORTATION PROGRAM - METRO  
Sandy Blvd. – Bridge Street (UPRR Under Xing)

The State of Oregon, acting by and through its Department of Transportation (State), and MULTNOMAH COUNTY, acting by and through its Elected Officials (Agency), entered into Local Agency Agreement No.20,934 on October 9, 2003. Said agreement covers the design of a wider replacement railroad underpass where the Union Pacific Railroad crosses 223<sup>rd</sup> Ave from Sandy Blvd to Bridge Street, hereinafter referred to as "Project."

It has now been determined by State and Agency that the agreement referenced above, although remaining in full force and effect, shall be amended by this Agreement to increase the funding available to the Project, to eliminate the preliminary engineering (PE) only restriction and to update legal citations modified since the execution of the original agreement. Therefore the above mentioned agreements shall be amended as follows:

**Paragraph 2 of Recitals, Page 1, which reads:**

"2. By the authority granted in ORS 190.110, 366.770 and 366.775, State may enter into cooperative agreements with the counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties."

**Shall be amended to read:**

"2. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with the counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties."

Key #11429

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**Paragraph 1 of Terms of Agreement, Page 1, which reads:**

"1. Under such authority, State and Agency plan and propose to design a wider replacement railroad underpass where the Union Pacific Railroad crosses 223<sup>rd</sup> Avenue from Sandy Boulevard to Bridge Street, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof."

**Shall be amended to read:**

"1. Under such authority, State and Agency plan and propose to design and construct a wider replacement railroad underpass where the Union Pacific Railroad crosses 223<sup>rd</sup> Avenue from Sandy Boulevard to Bridge Street, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof."

**Paragraph 2 of Terms of Agreement, Page 1, which reads:**

"2. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program, Title 23, United States Code. The total estimated cost for the PE and RW is estimated at \$800,000. The STP funds available for the PE and RW are limited to \$401,595, including any STP funds expended during the duration of and paid under Agreement #18287. The Project shall be financed with Urbanized Surface Transportation Program funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs. The estimate for the total Project cost is subject to change. This agreement is for PE and RW acquisition only. An amendment to this agreement is required prior to any other phase of work if federal funds are to be applied."

**Shall be amended to read:**

"2. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program, Title 23, United States Code. The total estimated cost for the Project is estimated at \$5,848,000. The Urban STP funds available for the Project are limited to \$1,401,000. The Highway Safety Construction funds available for the Project are limited to \$2,000,000. The Project shall be financed with Urbanized Surface Transportation Program funds and Highway Safety Construction funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs. The estimate for the total Project cost is subject to change."

Page 2, Paragraph 4-d, which reads:

"d. If State fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement."

Shall be amended to read:

"d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement."

**IN WITNESS WHEREOF**, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

This Project is in the 2004-2007 Statewide Transportation Improvement Program (Page 70, key #11429) that was approved by the Oregon Transportation Commission on November 17, 2003.

The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at Agency expense.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program.

M C & A No. 20,934  
MULTNOMAH COUNTY

On September 16, 2002, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates authority to the Deputy Director, Highway Division to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

MULTNOMAH COUNTY, by and through  
its elected officials

By *Chari-My*  
Chair

By Diane M. Linn, County Chair

Date 10-28-04

APPROVED AS TO LEGAL  
SUFFICIENCY

By *Matthew O. Ryan*  
Agency Counsel

Date 10/5/04

APPROVED : MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # C-4 DATE 10-28-04  
DEBORAH L. BOGSTAD, BOARD CLERK

Billing Address:  
Multnomah County  
1160 SE 190th Ave  
Portland, OR 97214

STATE OF OREGON, by and through  
its Department of Transportation

By *Ch. M. N.*  
Deputy Director, Highway Division

Date 11-22-04

APPROVAL RECOMMENDED

By *Ch. M. N.*  
Technical Services Manager/Chief  
Engineer

Date 11-22-04

By *Blaine J.*  
Region 1 Manager

Date 9/11/04

APPROVED AS TO LEGAL  
SUFFICIENCY

By *W. M. K.*  
Assistant Attorney General

Date 11/15/04

**Exhibit F to Loan Agreement**

**Payment Requisition**

TO: Oregon Transportation Infrastructure Bank  
Oregon Department of Transportation  
Financial Services Branch  
355 Capitol Street NE, Room 434  
Salem, Oregon 97301

RE: Oregon Transportation Infrastructure Fund, Loan Number OTIF-0031

On behalf of Multnomah County, I hereby request that the Oregon Transportation Infrastructure Fund (OTIF) disburse to the following payees the following amounts in accordance with the Loan Agreement (as defined below):

[Insert Payee]

[Insert Amount]

The foregoing disbursements are all for Costs of the Project as such term is defined in, and which are permitted under, the loan Agreement (the "Loan Agreement") between Multnomah County and the State for the above captioned loan ("Loan"), as amended. I have attached all necessary documentation as required by Section 4.02(e)(ii) of the Loan Agreement.

On behalf of Multnomah County I hereby certify that (1) no Event of Default (as defined in the Loan Agreement), or event, omission or failure of a condition which would constitute an Event of Default after notice or lapse of time or both, has occurred or is continuing under the Loan Agreement and (2) all representations and warranties of Multnomah County made in the Loan Agreement are true and correct on the date hereof with the same effect as if made on this date.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

MULTNOMAH COUNTY

By: \_\_\_\_\_  
Authorized Officer

Attachment

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 08-121**

Authorizing a Loan From The Oregon Transportation Infrastructure Fund for the 223<sup>rd</sup> Avenue Railroad Under-crossing Reconstruction Project

**The Multnomah County Board of Commissioners Finds:**

- a. ORS 367.010 to 367.060 (the "Act") authorizes any municipality to file an application with the Oregon Department of Transportation (the "Department") to obtain financial assistance from the Oregon Transportation Infrastructure Fund.
- b. Multnomah County (County) is a "municipality" within the meaning of the Act.
- c. As authorized by Resolution 06-035, the County filed an application with the Department to obtain financial assistance for the 223<sup>rd</sup> Avenue Railroad Under-crossing Reconstruction Project, a "transportation project" within the meaning of the Act.
- d. The Oregon Transportation Commission approved the County's application for financial assistance from the Oregon Transportation Infrastructure Fund pursuant to Oregon Administrative Rules, Chapter 731, Division 30.
- e. The County is required, as a prerequisite to the receipt of financial assistance from the Department, to enter into a Loan Agreement with the Department in substantially the form attached hereto as Exhibit "A."
- f. The 223<sup>rd</sup> Avenue Railroad Under-crossing Reconstruction Project described in Exhibit "A" to the Loan Agreement (the "Project") is a "transportation project" within the meaning of the Act.
- g. This Resolution is adopted in accordance with the County's public notice and meeting requirements.

**The Multnomah County Board of Commissioners Resolves:**

1. Loan Authorized. The Chief Financial Officer is authorized to execute the Loan Agreement and the Promissory Note, the form of which attached as Exhibit "D" to the Loan Agreement (the "Financing Documents"), and such other agreements, instruments, documents and certificates as may be required to obtain a loan from the Department on the condition that the principal amount of the loan from the Department to the County is not in excess of \$4,600,000 and the interest rate on

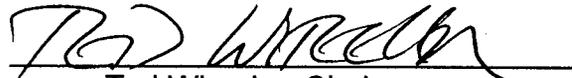
such loan is not in excess of 3.98 percent. The proceeds of the loan from the Department shall be applied solely to the "Costs of the Project" as such term is defined in the Loan Agreement.

2. Security. Repayment of the County's obligations under the Financing Documents is secured by the Pledged Revenues as defined in the Loan Agreement.

ADOPTED this 4th day of September, 2008.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
Matthew O. Ryan, Assistant County Attorney

SUBMITTED BY:

M. Cecilia Johnson, Director, Dept. of Community Services

LOAN AGREEMENT

between

STATE OF OREGON

acting by and through its

DEPARTMENT OF TRANSPORTATION

and

Multnomah County

THIS LOAN AGREEMENT, is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the State of Oregon, acting by and through its Department of Transportation (the "State"), and the Borrower (as defined below). The reference number for this Loan Agreement is OTIF-0031. Terms not otherwise defined herein shall have the meanings assigned to them by Section 1.01 of this Loan Agreement.

**WITNESSETH:**

WHEREAS, the State, in accordance with the Act, will provide funds in the Oregon Transportation Infrastructure Fund for the purpose of making loans to Municipalities, including the Borrower, to finance a portion of the cost of transportation projects;

WHEREAS, the Borrower has made timely application to the State for a loan to finance all or a portion of the cost of a transportation project, and the Oregon Transportation Commission and the State have approved the Borrower's application for a loan to finance a portion of the cost of such project; and

WHEREAS, the Borrower has agreed to make payments sufficient to pay when due the principal of, premium, if any, and interest on the Loan from the State pursuant to the terms of the Note and this Loan Agreement;

NOW, THEREFORE, for and in consideration of the Loan by the State, the Borrower agrees to perform its obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein:

**ARTICLE 1**

**DEFINITIONS**

**Section 1.01. Definitions.** The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings assigned to them below:

"Act" means ORS 367.010 to 367.060 and related provisions, as the same may be from time to time amended and supplemented.

"Authorized Officer" means, in the case of the Borrower, the person or persons authorized pursuant to a resolution or ordinance of the governing body of the Borrower to act as an authorized officer of the Borrower to perform any act or execute any document relating to the Loan or this Loan Agreement and whose name is furnished in writing to the State.

"Borrower" means Multnomah County, and its successors and permitted assigns.

"Business Day" means any day other than

- (i) a Saturday, Sunday or legal holiday,
- (ii) a day on which banking institutions in Salem, Oregon are closed; or
- (iii) a day on which the New York Stock Exchange is closed.

"Costs of the Project" shall mean only those specified costs listed in Exhibit B attached hereto and by this reference made a part hereof. The term "Costs of the Project" does not include

- (i) costs in excess of one-hundred percent (100%) of the total cost of the Project,
- (ii) the purchase of equipment and other property not directly related to the Project,
- (iii) construction or repair of facilities owned or operated by private parties,
- (iv) costs incurred prior to the date of the Loan, except as provided in Section 5.01, and
- (v) administrative expenses of the Borrower.

"Counsel" means an attorney at law or firm of attorneys at law (who may be, without limitation, of counsel to, or an employee of, the State or the Borrower) duly admitted to practice law before the highest court of any state.

"Event of Default" means any occurrence or event specified in Section 7.01 hereof.

"Loan" means the loan evidenced by the Note and made by the State to the Borrower to finance or refinance a portion of the Costs of the Project pursuant to this Loan Agreement. The Loan may be funded by the State from any amounts held in the OTIF.

"Loan Agreement" or "Agreement" means this loan agreement, including the Exhibits attached hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

"Loan Closing Date" means \_\_\_\_\_, 2008.

"Loan Prepayment" means, as to any payment, the amount paid by the Borrower that is in excess of the amount required to be paid as a Loan Repayment.

"Loan Repayment(s)" means the scheduled payment(s) of principal and interest required to be made by the Borrower pursuant to the provisions of the Note and this Loan Agreement.

"Maturity Date" means the date on which the Loan is payable in full, which date shall be September 1<sup>st</sup> 2025.

"Municipality" means a city, county, road district, school district, special district, metropolitan service district, the Port of Portland or an intergovernmental entity organized under ORS 190.010.

"Note" means the promissory note of the Borrower substantially in the form of Exhibit D attached hereto and by this reference made a part hereof.

"Oregon Transportation Infrastructure Bank" or "OTIB" means the program authorized by Section 350 of the National Highway System Designation Act of 1995, 23 U.S.C. 101 note, Public Law 104-59, and a cooperative agreement between the Federal Highway Administration, Federal Transit Administration, of the United States Department of Transportation and the Oregon Department of Transportation dated August 20, 1996.

"Oregon Transportation Infrastructure Fund" or "OTIF" means the fund created by the Act. Loans from the OTIF may include OTIB loans or loans to finance transportation projects from any accounts established within the OTIF.

"Pledged Revenues" means the County's Road Fund's share of State allocated fuel tax and vehicle registration fees.

"Project" means the transportation project of the Borrower described in Exhibit A attached hereto and made a part hereof, a portion of the Costs of the Project of which is financed or refinanced by the State through the making of the Loan under this Loan Agreement.

"Project Completion Date" means the earlier of

- (i) February 1, 2010,
- (ii) the date on which all of the proceeds of the Loan have been spent, or
- (iii) the date on which the Borrower completes construction of the Project.

"Rule" or "Rules" means Oregon Administrative Rules, chapter 731, division 30, as they may be supplemented, modified or amended from time to time.

"Senior Lien(s)" means a lien(s) securing repayment of an obligation(s) of the Borrower, which lien(s) is, by express, written mutual agreement between the State and the Borrower, senior to the lien on the Pledged Revenues that secure repayment of the Loan.

"State" means the State of Oregon, acting by and through its Department of Transportation, or its successors or assigns.

"State Treasurer" means the State Treasurer of the State of Oregon.

"Transportation project" has the meaning assigned to that term by the Rule.

**Section 1.02. General Rules.** Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

## ARTICLE II

### LOAN

**Section 2.01. Loan Amount.** On the Loan Closing Date the State hereby agrees to loan to the Borrower, and the Borrower agrees to borrow and accept from the State, a Loan in the maximum aggregate principal amount of Four Million Six Hundred Thousand and No/100 Dollars (\$4,600,000.00); provided however that disbursements hereunder shall not exceed in the aggregate forty-eight percent (48%) ("Participation Rate") of the Costs of the Project.

**Section 2.02. Use of Loan Proceeds.** The Borrower shall use the proceeds of the Loan strictly in accordance with Section 5.01 hereof.

**Section 2.03. Loan Term.** The term of the Loan is set forth in the Note.

**Section 2.04. Interest.** The Note shall bear interest at the rate of Three and 98/100 percent (3.98%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months. Interest shall be due and payable in arrears and shall accrue on the outstanding principal balance from the date hereof until the principal amount of the Note, together with accrued unpaid interest thereon, is paid in full.

**Section 2.05. Payments.** The Loan shall be due and payable in scheduled payments of principal and interest as set forth in the Note. The Loan Repayments, when taken together, shall be in an amount sufficient to amortize the original principal amount of the Note by the Maturity Date, and each Loan Repayment shall pay all unpaid interest accrued to the date of payment.

**Section 2.06. Prepayments.**

(a) *Mandatory Prepayment.* The Borrower shall prepay the outstanding balance of the Loan upon the destruction of all or a substantial portion of the Project.

(b) *Optional Prepayment.* The Borrower may make Loan Prepayments upon prior written approval of the State. The Borrower shall provide prior written notice of not less than one hundred twenty (120) days to the State.

(c) *General.* Loan Prepayments shall be applied first to any expenses of the State and accrued interest on the portion of the Loan prepaid, and then to principal payments (including premium, if any) on the Loan. In the case of a Loan Prepayment that does not prepay all of the principal of the Loan, the State shall determine, in its sole discretion, the method by which such Loan Prepayment shall be applied to the outstanding principal payments.

**Section 2.07. Unconditional Obligation.** Except as provided in Section 2.10, the obligation of the Borrower to make the Loan Repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein is payable solely from the sources of repayment described in Section 2.10 hereto and shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments under this Loan Agreement remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the State to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project, this Loan Agreement or any intergovernmental agreement related to the Project or any rights of set off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the State or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

**Section 2.08. Disclaimer of Warranties and Indemnification.** The Borrower acknowledges and agrees that:

(a) The State makes no warranty or representation, either expressed or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto;

(b) In no event shall the State or its commissioners, officers, agents or employees be liable or responsible for any direct, incidental, indirect, special, consequential, punitive or other damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Project; and

(c) To the extent authorized by law, the Borrower shall indemnify, save, hold harmless and defend the State and its commissioners, officers, agents and employees, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Borrower, or its employees, agents or subcontractors pursuant to the terms of this Loan Agreement; provided, however, that the provisions of this clause (c) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to Chapter 30 of the Oregon Revised Statutes or the laws of the United States of America or other laws of the State of Oregon.

**Section 2.09. Termination of Availability Hereunder.** Ninety days after the Project Completion Date, the State's obligation to make any further disbursements of the Loan hereunder shall terminate.

**Section 2.10. Sources of Repayment of Borrower's Obligations.**

(a) The State and the Borrower agree that the amounts payable by the Borrower under this Loan Agreement, including, without limitation, the amounts payable by the Borrower pursuant to Section 2.05, Section 2.06, Section 2.08 and Section 7.04 of this Loan Agreement, are payable from the sources of repayment described in subsections (b) and (c) of this Section 2.10. Nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement from any other legally available source.

(b) The amounts payable by the Borrower under this Loan Agreement are payable from:

(i) Pledged Revenues; and

(ii) Subject to appropriation, other funds which may be available for such purpose, and the Borrower's authority to incur debts and liabilities and levy taxes within the restrictions of the Constitution of the State of Oregon.

(c) The Borrower, by entering into this Loan Agreement, acknowledges its current intention to make all Loan Repayments on or before the dates on which such payments are due hereunder and, to the extent that funds are appropriated to make payments hereunder, the full faith and credit of the Borrower are pledged to such payments. In the event that the Borrower's governing body fails to appropriate sufficient funds to fully fund all of the Borrower's legal obligations to make Loan Repayments hereunder for any future fiscal period, then the Borrower will immediately notify the State of such occurrence, and the State may exercise such remedies as presented by Article VII of this Loan Agreement.

(d) The Borrower agrees that:

(i) The Borrower's staff will, for each fiscal year in which Loan Payments are scheduled to be made, present to the Borrower's governing body a request that such governing body budget for and approve the expenditure of an amount sufficient to allow the Borrower to make all Loan Repayments due in that fiscal period; and

(ii) To the extent funds are legally available therefor, it will make all Loan Repayments.

(e) The Borrower acknowledges that the State of Oregon is entitled to withhold all or a portion of the Pledged Revenues, including but not limited to any amounts due to the Borrower from the State of Oregon pursuant to ORS 366.762 to 366.774, and to apply said amounts to payments due under this Loan Agreement to the fullest extent permitted by law if the Borrower defaults on payments due under this Loan Agreement; provided however that the provisions of the Loan Agreement and the Note are not to be construed in a way that would cause the obligations of the Borrower thereunder to constitute debt which violates Section 10, Article XI of the Oregon Constitution.

(f) Borrower hereby grants a security interest in and irrevocably pledges its Pledged Revenues to pay Borrower's obligations hereunder. The lien on and pledge of the Pledged Revenues are subordinate to the lien and pledge of the Senior Lien(s); provided however that Borrower represents and warrants that on the date hereof there are no Senior Liens on the Pledged Revenues. The Pledged Revenues so pledged and hereafter received by Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, except for the Senior Lien(s), to the fullest extent permitted by ORS 288.594. Borrower hereby represents and warrants that the pledge of Pledged Revenues hereby made by Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 288.594.

**Section 2.11. Loan Fee.** The Borrower shall pay to the State a one-time loan fee equal to one percent (1%) of the Loan. This fee shall be in addition to any interest charged on the Loan. The Borrower may elect to:

(a) Pay the entire amount of this loan fee on the Loan Closing Date; or

(b) Authorize the State to deduct the loan fee from Loan disbursements; provided however that if the Loan is not fully disbursed, the State shall refund to the Borrower the portion of the Loan fee allocated to the undisbursed portion of the Loan.

**Section 2.12. Late Fee.** If the payment of any Loan Repayment required under the Note is delinquent more than fifteen (15) days, the Borrower shall pay to the State a late charge of five percent (5%) of the delinquent Loan Repayment in addition to the Loan Repayment due under the Note.

## ARTICLE III

### REPRESENTATIONS AND WARRANTIES OF BORROWER

The Borrower represents and warrants to the State as follows:

**Section 3.01. Organization and Authority.**

(a) The Borrower is a Municipality.

(b) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Project, other than licenses and permits relating to the Project which the Borrower expects to receive in the ordinary course of business, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement.

(c) The Project is a project which the Borrower may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

(d) The proceedings of the Borrower's governing members and voters, if necessary, approving this Loan Agreement and authorizing the execution, issuance and delivery of this Loan Agreement on behalf of the Borrower and authorizing the Borrower to undertake and complete the Project have been duly and lawfully adopted in accordance with the laws of Oregon, and such proceedings were duly approved and published, if necessary, in accordance with applicable Oregon law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Oregon law and at which quorums were present and acting throughout.

(e) This Loan Agreement has been duly authorized, executed and delivered by an Authorized Officer of the Borrower, and, assuming that the State has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement, this Loan Agreement constitutes the legal, valid and binding obligation of the Borrower in accordance with its terms.

(f) This Loan Agreement is duly authorized by a resolution of the Borrower which was adopted in accordance with ORS 367.035(4) and applicable law and the Borrower's requirements for filing public notices and holding public meetings.

**Section 3.02. Full Disclosure.** There is no fact that the Borrower has not disclosed to the State in writing, on the Borrower's application for the Loan or otherwise, that materially adversely affects the properties, activities, prospects or the condition (financial or otherwise) of the Borrower or the Project or the ability of the Borrower to make all Loan Repayments and

otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement. Neither the Borrower's application for the Loan nor the Borrower's representations and warranties in this Loan Agreement contain any untrue statement of a material fact or omits any statement or information which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and the information contained in Exhibits A and B is true and accurate in all respects.

**Section 3.03. Pending Litigation.** There are no proceedings pending, or, to the knowledge of the Borrower threatened, against or affecting the Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect

(a) The ability of the Borrower to complete the Project substantially as it is described in Exhibit A;

(b) The Pledged Revenues;

(c) Properties, activities, prospects or the condition (financial or otherwise) of the Borrower; or

(d) The ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

**Section 3.04. Compliance with Existing Laws and Agreements.** The authorization, execution and delivery of this Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder and the consummation of the transactions provided for in this Loan Agreement, and the undertaking and completion of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to, any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than any lien and charge arising under this Loan Agreement or any of the documents related hereto or to the Bond Indenture) to which the Borrower is a party or by which the Borrower or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, resolutions, rules, regulations or court orders to which the Borrower or its properties or operations is subject.

**Section 3.05. No Defaults.** No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it or its properties may be bound, which violation would materially adversely affect

- (a) The Project;
- (b) The Pledged Revenues;
- (c) Properties, activities, prospects or the condition (financial or otherwise) of the Borrower; or
- (d) The ability of the Borrower to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

**Section 3.06. Governmental Consent.** The Borrower has obtained or will obtain all permits and approvals required by any governmental body or officer for the making, observance or performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or for the undertaking or completion of the Project and the financing or refinancing thereof; and the Borrower has complied or will comply with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or with the undertaking or completion of the Project and the financing or refinancing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer that has not been obtained is required on the part of the Borrower as a condition to the authorization, execution and delivery of this Loan Agreement.

**Section 3.07. Compliance with Law.** The Borrower:

- (a) Is in compliance with all laws, ordinances, rules and regulations to which it is subject, non-compliance with which would materially adversely affect the condition (financial or otherwise) of the Borrower or the ability of the Borrower to conduct its activities or undertake or complete the Project; and
- (b) Has obtained or will obtain all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower.

**Section 3.08. The Project.**

- (a) The Project is feasible, and there will be adequate funds available to repay the Loan.
- (b) The Borrower has been provided with a copy of the Rules, and the Project is in compliance with such Rules.

**Section 3.09.** Costs of the Project.

(a) The Costs of the Project is a reasonable and accurate estimation and based upon an engineer's feasibility report and engineer's estimate stamped by a registered professional engineer.

(b) The principal amount of the Loan is not in excess of the reasonable Costs of the Project.

**Section 3.10.** Term of the Loan. The term of the Loan is not in excess of the useful life of the Project.

**Section 3.11.** Matching Funds. Matching funds of Borrower in the amount of Five Million Ten Thousand Five Hundred Sixty-six and No/100 Dollars (\$5,010,566.00) are available and committed to the Project.

**ARTICLE IV**

**CONDITIONS TO LOAN AND DISBURSEMENTS**

**Section 4.01.** Conditions Precedent to Loan. The State shall be under no obligation to make disbursement of Loan proceeds unless the Borrower delivers to the State, on or prior to the Loan Closing Date, the following documents in form and substance satisfactory to the State and its Counsel:

(a) An opinion of Borrower's Counsel to the effect that

(i) the Borrower is duly formed and operating under applicable State of Oregon law,

(ii) the Borrower has full legal right and authority to execute and deliver the Loan Agreement and to observe and perform its duties, covenants, obligations and agreements hereunder and to undertake and complete the Project,

(iii) the Loan Agreement has been authorized pursuant to official action of the Borrower that has been adopted and authorized in accordance with applicable Oregon law,

(iv) the Loan Agreement has been duly authorized and executed and delivered by Authorized Officers of the Borrower and constitutes the legal, valid and binding obligations of the Borrower enforceable in accordance with its terms,

(v) the authorization, execution and delivery of the Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, the consummation of the transactions contemplated herein and the undertaking and completion of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over the Borrower or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing agreement to which the Borrower is a party or by which the Borrower or its property or assets is bound,

(vi) all approvals, consents or authorizations of, or registrations or filings with, any governmental or public agency, authority or person required on the part of the Borrower in connection with the authorization, execution, delivery and performance of the Loan Agreement and the undertaking and completion of the Project have been obtained or made to the extent it is possible to obtain or make them on or prior to the Loan Closing Date, and

(vii) there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State of Oregon or Federal) questioning the creation, organization or existence of the Borrower, the validity, legality or enforceability of the Loan Agreement or the undertaking or completion of the Project (such opinion or portions of such opinion may be given by one or more counsel); provided, however, that the State and the State's Counsel may permit, in its sole discretion, variances in the form of such opinion;

(b) Counterparts of this Loan Agreement duly executed and delivered by an Authorized Officer of the Borrower;

(c) The Note duly executed and delivered by an Authorized Officer of the Borrower;

(d) Copies of the official action of the governing body of the Borrower authorizing the execution and delivery of this Loan Agreement and the documents, instruments and agreements required by this Loan Agreement, certified by an Authorized Officer of the Borrower;

(e) An intergovernmental agreement duly executed by all parties thereto and delivered by Borrower, substantially in the form of Exhibit E attached hereto and by this reference incorporated herein; and

(f) Such other certificates, documents, opinions and information as the State may require; provided, however, the State shall be under no obligation to make the Loan pursuant hereto if there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

**Section 4.02. Conditions to Disbursement.** The obligation of the State to make any disbursement (including the initial disbursement) to the Borrower is subject to the following conditions:

(a) All the conditions set forth in Section 4.01 of this Loan Agreement have been satisfied;

(b) There shall exist no Event of Default as defined in this Loan Agreement, or event, omission or failure of a condition which would constitute an Event of Default as defined in this Loan Agreement after notice or lapse of time or both;

(c) The State has received documentation satisfactory to the State evidencing that the Borrower has obtained any matching funds that are needed to pay for the Costs of the Project;

(d) There is availability of moneys in the OTIF for use in the Project; and

(e) The State receives

(i) a requisition executed by the Borrower in substantially the form of Exhibit F attached hereto and by this reference made a part hereof and

(ii) any other written evidence of materials and labor furnished to or performed upon the Project, itemized receipts or invoices for the payment of the same, and releases, satisfactions and other signed statements and forms as the State may require as a condition for making disbursements of the Loan.

The State may, at its option, from time to time, either reimburse the Borrower for construction costs paid or may make direct payment for construction costs to suppliers, subcontractors and others for sums due them in connection with construction of the Project. Nothing herein contained shall require the State to pay any amounts for labor or materials unless satisfied that such claims are reasonable and that such labor and materials were actually expended and used in the construction of the Project. The State, at its option, from time to time, may also require that the Borrower have a contractor or subcontractor execute and/or deliver a surety bond or indemnification form acceptable to the State for the faithful performance of the construction contract or subcontract and payment of all liens and lienable expenses in connection therewith in a sum equal to the contract or subcontract price. Disbursements for the Costs of the Project shall be subject to a retainage at the rate of five percent (5%) which will be released upon satisfactory completion of the Project.

Further, the State shall have no obligation to make any disbursement to the Borrower if (1) on or before the time for disbursement, there has been a change in the Act so that the Project is

no longer eligible for financial assistance authorized by this Loan Agreement, or (2) the Department of Transportation ("ODOT") or OTIF does not receive sufficient funding, appropriations, limitations, allotments or other expenditure authorizations to allow ODOT, in the exercise of its reasonable administrative discretion, to provide such funding.

## ARTICLE V

### COVENANTS OF BORROWER

**Section 5.01.** Use of Proceeds. The Borrower will apply the proceeds of the Loan:

- (a) To finance all or a portion of the Costs of the Project; and
- (b) With the advance written approval of the State, to reimburse the Borrower for a portion of the Costs of the Project, which portion was paid or incurred in anticipation of reimbursement by the State.

None of the proceeds of the Loan shall be used for administrative purposes by the Borrower.

**Section 5.02.** Source of Repayment. The Loan shall be paid from the sources of repayment described in Section 2.10 of this Loan Agreement. Such sources shall be applied to the punctual payment of the principal of and the interest on the Loan, and all other amounts due under this Loan Agreement according to the terms hereof.

**Section 5.03.** Performance Under Loan Agreement. The Borrower covenants and agrees to cooperate with the State in the observance and performance of the respective duties, covenants, obligations and agreements of the Borrower and the State under this Loan Agreement.

**Section 5.04.** Completion of Project and Provision of Moneys Therefor. Borrower covenants and agrees to provide State, upon request, with copies of all permits, plans and specifications, as-built drawings and certification of completion per as-built drawings from the Project engineer relating to the Project. The Borrower further covenants and agrees:

- (a) To exercise its best efforts in accordance with prudent practice to complete the Project and to so accomplish such completion on or before the estimated Project Completion Date;
- (b) To proceed expeditiously with, and complete, the Project; and
- (c) To provide from its own fiscal resources all moneys in excess of the total amount of Loan proceeds it receives pursuant to this Loan Agreement required to complete the Project.

Borrower shall, at its sole expense, have a program, documented to the satisfaction of the State, for the on-going maintenance, operation and replacement of the Project. The program shall include a plan for generating revenues sufficient to assure the operation, maintenance and replacement of the Project during the useful life of the Project.

**Section 5.05. Disposition of Project.** Unless it is worn out, obsolete or, in the reasonable opinion of the Borrower, no longer useful in the operation of the Project, the Borrower shall not sell, lease, abandon, exchange or otherwise dispose of (collectively for the purposes of this Section "transfer") all or substantially all or any substantial portion of the Project or any other properties or assets which provide revenues for the payment of the amounts due under this Loan Agreement except on ninety (90) days' prior written notice to the State and, in any event, shall not so transfer the same unless the State consents to such transfer.

The State shall not consent to any such transfer unless the State shall have received an opinion of the State's Counsel to the effect that such transfer complies with the Act. Proceeds of any such transfer not used to replace property that is part of the Project shall be applied to payment of the outstanding principal and interest of the Loan as a Prepayment as provided in Section 2.06 of this Agreement.

**Section 5.06. Operation and Maintenance of Project.** The Borrower covenants and agrees that it shall, in accordance with prudent practice, maintain the Project in good repair, working order and operating condition.

**Section 5.07. Records; Accounts.** The Borrower shall keep accurate records and accounts for the revenues and funds that are the sources of repayment of the Loan, including but not limited to those Pledged Revenues (the "Repayment Revenues Records"), separate and distinct from its other records and accounts (the "General Records"). Such Repayment Revenues Records shall be maintained in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time and shall be audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of the Borrower. Such Repayment Revenues Records and General Records shall be made available for inspection by the State and the federal government (including but not limited to Federal Highway Administration, Federal Transit Administration) at any reasonable time, and a copy of such annual audit(s) therefor, including all written comments and recommendations of such accountant, shall be furnished to the State within two hundred ten (210) calendar days of the close of the fiscal year being so audited.

**Section 5.08. Inspections; Information.** The Borrower shall permit the State and the federal government (including but not limited to Federal Highway Administration, Federal Transit Administration) and any party designated by any of such parties to examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other matters

relating thereto and to its financial standing, and shall supply such reports and information as the State may reasonably require in connection herewith. In addition, the Borrower shall provide the State with copies of loan documents or other financing documents and any official statements or other forms of offering documents relating to any other bonds, notes or other indebtedness of the Borrower that are issued after the Loan Closing Date and are secured by the Pledged Revenues.

**Section 5.09. Insurance.** The Borrower shall maintain or cause to be maintained insurance policies with responsible insurers or self-insurance programs providing against risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is usually carried, or self-insurance is usually provided for, by governmental units constructing, operating and maintaining facilities of the nature of Borrower's Project, including liability coverage, all to the extent available at reasonable cost. Unless otherwise prohibited by law, the Borrower shall cause the State to be listed on such insurance policies as a loss payee on such policy. Nothing herein shall be deemed to preclude the Borrower from asserting against any party, other than the State, a defense which may be available to the Borrower, including, without limitation, a defense of immunity. In the event the Project or any portion thereof is destroyed, any insurance proceeds shall be paid to the State, and such proceeds will be available to Borrower to rebuild all or a portion of the Project. If, within ninety (90) days receipt of insurance proceeds, the Borrower elects not to rebuild the Project, the proceeds shall be applied to the principal and interest on the Loan.

**Section 5.10. Condemnation.** In the event the Project or any portion thereof is condemned, any condemnation proceeds shall be available to Borrower to rebuild all or a portion of the Project. If the Borrower elects not to rebuild the Project, the proceeds of any condemnation will, within ninety (90) days of the Borrower's receipt of condemnation proceeds, be applied to prepay the Loan.

**Section 5.11. Engineer's Report.** Upon request by the State, the Borrower shall promptly provide the stamped engineer's feasibility report and estimate described in Section 3.09(a) to the State.

**Section 5.12. Notice of Material Adverse Change.** The Borrower shall promptly notify the State of any material adverse change in the properties, activities, prospects or the condition (financial or otherwise) of the Borrower or the Project or in the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

**Section 5.13. Financial Statements; Reports.** The Borrower shall deliver to the State in form and detail satisfactory to the State:

(a) As soon as reasonably possible after the close of each fiscal year of the Borrower, audited financial statements prepared in accordance with generally accepted accounting

principles as established by the Government Accounting Standards Board as in effect from time to time, and certified by the chief financial officer of the Borrower; and

(b) Such other statement or statements or reports as to the Borrower as the State may reasonably request.

**Section 5.14. Compliance with Applicable Laws.** The Borrower will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority that relate to the construction and operation of the Project. In particular, but without limitation, the Borrower shall comply with the following, as applicable:

(a) The National Environmental Policy Act (NEPA), and other environmental laws and requirements;

(b) The Uniform Relocation Assistance Act (Right of Way);

(c) The Civil Rights Act of 1964 and other civil rights laws and requirements including the DBE program;

(d) The Davis Bacon Act and other labor laws and requirements;

(e) The Common Rule (49 C.F.R. 19) with respect to procurement;

(f) The Brooks Act;

(g) Competitive Bidding Requirements and state labor standards and wage rates found in the Oregon Public Contracting Code, ORS 279A, 279B and 279C;

(h) Buy America;

(i) Manual of Uniform Traffic Control Devices;

(j) The Americans with Disabilities Act (ADA) and other federal and state laws prohibiting discrimination against person with disabilities; and

(k) OAR, Chapter 731, Division 30, as amended from time to time at the discretion of the State.

**Section 5.15. Compliance with State Handbook.** The Borrower agrees that it will at all times comply with the provisions of any project management handbook of the State for OTIF loans.

**Section 5.16. Continuing Representations.** The representations of the Borrower contained herein shall be true at the time of the execution of this Loan Agreement and at all times during the term of this Loan Agreement.

**Section 5.18. Additional Indebtedness.** Except as provided in this Agreement, the Borrower shall not create or allow any lien on all or a portion of the Pledged Revenues that is superior to or on a parity with the lien created under this Loan Agreement in favor of the State without the State's written consent, which the State will not unreasonably withhold. Borrower reserves the right to grant liens subordinate to the lien in favor of the State created pursuant to this Loan Agreement without limitation.

**Section 5.19. Binding Agreements.** Borrower covenants that it will enter into binding agreements with all major private parties necessary to complete all or a substantial portion of the Project prior to seeking any disbursements under the Loan.

## ARTICLE VI

### ASSIGNMENT

This Loan Agreement may not be assigned by the Borrower without the prior written consent of the State. The State may grant or withhold such consent in its sole discretion. In the event of an assignment of this Loan Agreement by Borrower and assumption of the obligations hereunder, Borrower shall pay, or cause to be paid, to the State any fees or costs incurred by the State as the result of such assignment, including but not limited to, attorney fees or costs of State's Counsel.

## ARTICLE VII

### DEFAULTS AND REMEDIES

**Section 7.01. Event of Default.** If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) Failure by the Borrower to pay, or cause to be paid, any Loan Repayment required to be paid hereunder on the due date thereof except if Borrower is a county and such failure is the result of nonappropriation of funds as described in Section 2.10(b)(ii); or

(b) Failure by the Borrower to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Borrower for borrowed money (other than the Loan), after giving effect to the applicable grace period; or

(c) Any representation made by or on behalf of the Borrower contained in this Loan Agreement, or in any agreement, instrument, certificate or document furnished in compliance

with, or with reference to, this Loan Agreement or the Loan is false or misleading in any material respect; or

(d) A petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within twenty (20) calendar days after such filing, and such dismissal shall be final and not subject to appeal; or the Borrower shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including without limitation, a trustee, receiver, custodian, liquidator, or the like of Borrower or any of its property) shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) calendar days; or

(e) Failure of Borrower's governing body to appropriate sufficient funds to fully fund all of the Borrower's obligations to make Loan Repayments hereunder for any future fiscal period, except if Borrower is a county and such failure is the result of nonappropriation of funds as described in Section 2.10(b)(ii); or

(f) The Borrower has not entered into binding agreements with all private parties necessary to complete the Project within three hundred sixty-five (365) days of the date of this Agreement; or

(g) Failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in subsections (a) through (f) of this Section, which failure shall continue for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the State, unless the State shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the State may not unreasonably withhold its consent to an extension of such time up to one hundred twenty (120) calendar days of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected; provided however that if Borrower is a county, such failure resulting from nonappropriation of funds as described in Section 2.10(b)(ii) shall not be deemed a default hereunder

**Section 7.02. Notice of Default.** The Borrower shall give the State prompt telephonic notice of the occurrence of any Event of Default referred to in Section 7.01(d) hereof and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof. Any telephonic notice pursuant to this Section 7.02 shall be confirmed in writing as soon as is practicable by the Borrower.

**Section 7.03. Remedies on Default.** Whenever an Event of Default referred to in Section 7.01 hereof shall have occurred and be continuing, the State shall have the right to take any action permitted or required pursuant to the Loan Agreement and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Borrower hereunder, including, without limitation,

(a) Declaring all Loan Repayments and all other amounts due hereunder to be immediately due and payable, and upon notice to Borrower the same shall become due and payable without further notice or demand;

(b) Appointment of a receiver;

(c) Refusal to disburse any Loan proceeds;

(d) Barring the Borrower from applying for future OTIF assistance; or

(e) Withholding other State of Oregon funds, including but not limited to, the Borrower's apportionment of State Highway Fund revenues due under ORS 366.762 to 366.768 and ORS 366.785 to 366.820, to the extent permitted by Section 2, 10.

In addition, if an Event of Default referred to in Section 7.01(a) hereof shall have occurred and be continuing, all Loan Repayments and all other amounts due hereunder to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand.

**Section 7.04. Attorney's Fees and Other Expenses.** In compliance with ORCP 68, a party shall, on demand, to the extent permitted by law, pay to the prevailing party(ies) the reasonable fees and expenses of attorneys, whether at trial or on appeal, in bankruptcy proceedings or otherwise, and other reasonable expenses (including without limitation expert witness fees and the reasonable allocated costs of in-house Counsel and legal staff) incurred by said prevailing party(ies) in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the party.

**Section 7.05. Application of Moneys.** Any moneys collected by the State pursuant to Section 7.03 hereof shall be applied in the following order:

- (a) To pay any attorney's fees or other fees and expenses owed by the Borrower hereunder;
- (b) To pay interest due and payable on the Loan; and
- (c) To pay principal due and payable on the Loan.

**Section 7.06. No Remedy Exclusive; Waiver; Notice.** No remedy herein conferred upon or reserved to the State is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. To entitle the State to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article VII.

**Section 7.07. Retention of State's Rights.** Notwithstanding anything to the contrary contained herein, the State shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Borrower at law or in equity, as the State may, in its discretion, deem necessary to enforce the obligations of the Borrower to the State pursuant to Sections 2.05, 2.09 and 7.04 hereof.

**Section 7.08. Default by the State.** In the event of any default by the State under any covenant, agreement or obligation of this Loan Agreement, the Borrower's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the State hereunder as may be necessary or appropriate.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.01. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Borrower and the State at the addresses set forth below or at such other address of which such party shall have notified in writing the other parties hereto:

If to the State: Oregon Department of Transportation  
355 Capitol Street NE, Room 434  
Salem, Oregon 97301-3872  
Attn: Chief Financial Officer

If to the Borrower: Multnomah County  
Department of Community Services  
Land Use & Transportation  
1620 SE 190<sup>th</sup> Ave.  
Portland, OR 97233  
Attn: Kim Peoples

**Section 8.02. Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding upon the State and the Borrower and their respective successors and assigns.

**Section 8.03. Severability.** In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

**Section 8.04. Amendments, Supplements and Modifications.** This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the State and the Borrower. This Loan Agreement may not be amended, supplemented or modified in a manner that is not in compliance with the Act and the Rules.

**Section 8.05. Execution in Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 8.06. Headings.** The Section headings in this Loan Agreement are intended to be for reference purposes only and shall in no way modify or restrict any of the terms or provisions hereof.

**Section 8.07. No Construction against Drafter.** Both parties acknowledge that they are each represented by and have sought the advice of counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

**Section 8.08. Applicable Law.** This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, suit or proceeding (collectively, "Claim") between the State (and/or any agency or department of the State of Oregon) and the Borrower that arises from or relates to this Loan Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for

the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

**Section 8.09.** Loan not an Obligation of the United States of America. The covenants, agreements and obligations of the State contained in this Loan Agreement shall not be construed to be covenants, agreements or obligations of the United States of America.

**Section 8.10.** Consents and Approvals. Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the State unless otherwise provided by law or by rules, regulations or resolutions of the State.

**Section 8.11.** Further Assurances. The Borrower shall, at the request of the State, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

**Section 8.12.** Merger; No Waiver. This Loan Agreement and attached exhibits (which are by this reference incorporated herein) 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 Loan Agreement. No waiver of any provision of this Loan Agreement or consent shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of this Loan Agreement shall not constitute a waiver by the State of that or any other provision.

IN WITNESS WHEREOF, the State and the Borrower have caused this Loan Agreement to be executed and delivered as of the date first above written.

STATE OF OREGON, acting by and through its Department of Transportation

MULTNOMAH COUNTY  
Borrower

By: \_\_\_\_\_  
Leslie Stuart Brodie  
Chief Financial Officer

By: RED WIRELL  
Title: CHAIR

Date: \_\_\_\_\_

Date: 9/4/08

Approved for legal sufficiency

Date: \_\_\_\_\_

\_\_\_\_\_  
Lynn T. Nagasako, Sr. AAG

## Exhibit A to Loan Agreement

### Project Description

Borrower: Multnomah County

The Borrower will upgrade and reconstruct the 223<sup>rd</sup> Sandy Boulevard–Bridge Street Railroad Undercrossing.

Borrower will

- 1) Widen 223<sup>rd</sup> Avenue between Sandy Blvd. and Main Street. The new roadway section will consist of two 11' lanes and a 12' turn lane. It will also contain two 6' combined bicycle lane/shoulders and two 6.5' wide sidewalks. A 2.5' distance will be provided behind the sidewalk at the undercrossing location. Face-of-abutment to face-of-abutment distance shall be 64' upon completion.
- 2) Construct a new railroad bridge 15.5' wide and 69.375' long.

Project Location: 223<sup>rd</sup> Sandy Boulevard–Bridge Street, Multnomah County, Oregon.

**Exhibit B to Loan Agreement**

**Approved Project Budget**

Borrower: Multnomah County

Costs of Project: \$9,610,566

<b>Sources</b>	
Oregon Transportation Infrastructure Bank	\$4,600,000
Urban STP and Highway Safety	4,401,000
County	609,566
<b>Subtotal</b>	<b>\$9,610,566</b>
<b>Uses</b>	
Preliminary Engineering	\$1,119,377
Right of Way	359,118
Construction	8,086,071
Loan Fee	\$46,000
<b>Subtotal</b>	<b>\$9,610,566</b>

**Exhibit C to Loan Agreement**

**Prepayment Premium**

**There is no Prepayment Premium.**

EXHIBIT E

MULTNOMAH COUNTY NO. 0310531

Misc. Contracts & Agreements  
No. 20,934

LOCAL AGENCY AGREEMENT  
SURFACE TRANSPORTATION PROJECT - METRO  
Sandy Blvd. - Bridge St. (UPRR Under Xing)

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and MULTNOMAH COUNTY, acting by and through its Elected Officials, hereinafter referred to as "Agency".

RECITALS

1. 223<sup>rd</sup> Avenue from Sandy Boulevard to Bridge Street (UPRR Under Xing) is a part of the County Road system under the jurisdiction and control of Multnomah County.
2. By the authority granted in ORS 190.110, 366.770 and 366.775, State may enter into cooperative agreements with the counties, cities and units of local government for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. State and Agency entered into an agreement on this Project, No. 18287, which was effective July 12, 2001. Said agreement expired July 12, 2003 before the Project was completed and an amendment could be completed. It has now been determined by ODOT and Agency to enter into a new agreement for this Project to complete the preliminary engineering phase of work; to add the right of way (R/W) acquisition phase of work; to provide additional funding; and to extend the termination date for the completion of the Project.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency plan and propose to design a wider replacement railroad underpass where the Union Pacific Railroad crosses 223<sup>rd</sup> Avenue from Sandy Boulevard to Bridge Street, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program, Title 23, United States Code. The total estimated cost for the PE and R/W

Key #11429

is estimated at \$800,000. The STP funds available for the PE and RW are limited to \$401,595, including any STP funds expended during the duration of and paid under Agreement #18287. The Project shall be financed with Urbanized Surface Transportation Program funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs. The estimate for the total Project cost is subject to change. This agreement is for PE and RW acquisition only. An amendment to this agreement is required prior to any other phase of work if federal funds are to be applied.

3. The term of this Agreement shall begin upon execution of the Agreement by all parties and shall terminate upon completion of the work or eight calendar years following the date of final execution of this Agreement by both parties, whichever is sooner.
4. This Agreement may be terminated by mutual written consent of both parties. Such written consent shall not be unreasonably withheld.

State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
- b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.
- c. If Agency fails to provide payment of its share of the cost of the Project.
- d. If State fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.
- e. If Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

5. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
6. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
7. Agency shall enter into and execute this Agreement during a duly authorized session of its Board of County Commissioners.
8. 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 shall 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, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

This Project is in the 2002-2005 Statewide Transportation Improvement Program that was approved by the OTC on February 13, 2002, page 56, Key No. 11429.

The Oregon Transportation Commission on February 13, 2002, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-

M C & A No. 20,934  
MULTNOMAH COUNTY

to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

On September 6, 2002, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates authority to the Executive Deputy Director for Highways to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

APPROVAL RECOMMENDED

By [Signature]  
Region 1 Manager

Date 9/25/03

By [Signature]  
Tech Serv Mgr/Chief Engineer

Date 10-8-03

APPROVED AS TO  
LEGAL SUFFICIENCY

By [Signature]  
Assistant Attorney General

Date 10/1/03

STATE OF OREGON, by and through  
its Department of Transportation

By [Signature]  
Executive Deputy Director for Highways

Date 10-9-03

MULTNOMAH COUNTY, by and  
through its Elected Officials

By [Signature]  
Chair

Date 9.18.03

REVIEWED FOR LEGAL SUFFICIENCY

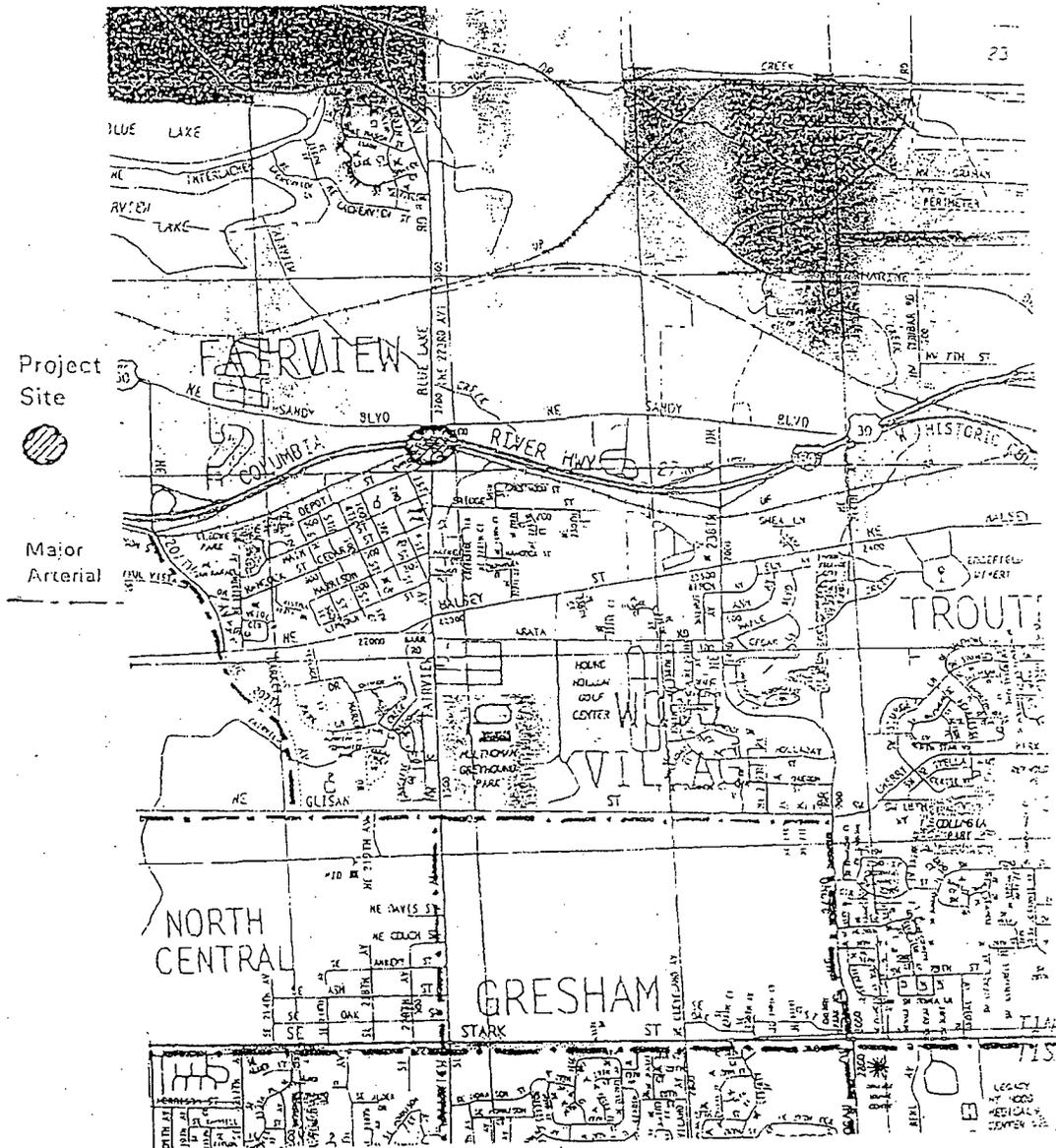
By [Signature]  
Assistant County Attorney

Date 9/8/03

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # C-5 DATE 09-18-03  
DEB BOGSTAD BOARD CLERK

VICINITY MAP  
Sandy Blvd - Bridge St (UPRR Under Crossing)

EXHIBIT "A"



ATTACHMENT NO. 1  
M C & A No. 20,934

SPECIAL PROVISIONS

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. Agency, or its designee, shall also obtain all right-of-way required for Project in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) and its subsequent amendments; ORS 281.060; ORS 35.346, and the State of Oregon Right of Way Manual.
3. Agency shall design the Project to meet the American Association of State Highway and Transportation Officials Standards and Specifications for Highway Bridges, as modified by State's Bridge Section Office Practice Manual.
4. State may make available Region 1's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services they agree to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
5. Subject to the limitations and conditions of, and to the extent permitted by, the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 et seq.), the Agency and State each shall be solely responsible for any loss or injury caused to third parties arising from Agency's or State's own acts or omissions under the agreement; and Agency or State shall defend, hold harmless, and indemnify the other party to this Agreement with respect to any claim, litigation, or liability arising from Agency's or State's own acts or omissions under this Agreement.
6. As the Project is on the County Road system, Agency's existing maintenance responsibilities shall survive termination of this Agreement.

**STANDARD PROVISIONS** are included  
in this agreement but not scanned. If  
you need a copy of them, please  
contact Program and Funding Services,  
731-8277

**Continue to Next Document**

Misc. Contracts & Agreements  
No. 20,934

AMENDMENT NO. 1  
LOCAL AGENCY AGREEMENT  
SURFACE TRANSPORTATION PROGRAM - METRO  
Sandy Blvd. - Bridge Street (UPRR Under Xing)

The State of Oregon, acting by and through its Department of Transportation (State), and MULTNOMAH COUNTY, acting by and through its Elected Officials (Agency), entered into Local Agency Agreement No.20,934 on October 9, 2003. Said agreement covers the design of a wider replacement railroad underpass where the Union Pacific Railroad crosses 223<sup>rd</sup> Ave from Sandy Blvd to Bridge Street, hereinafter referred to as "Project."

It has now been determined by State and Agency that the agreement referenced above, although remaining in full force and effect, shall be amended by this Agreement to increase the funding available to the Project, to eliminate the preliminary engineering (PE) only restriction and to update legal citations modified since the execution of the original agreement. Therefore the above mentioned agreements shall be amended as follows:

Paragraph 2 of Recitals, Page 1, which reads:

"2. By the authority granted in ORS 190.110, 366.770 and 366.775, State may enter into cooperative agreements with the counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties."

Shall be amended to read:

"2. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with the counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties."

Key #11429

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**Paragraph 1 of Terms of Agreement, Page 1, which reads:**

"1. Under such authority, State and Agency plan and propose to design a wider replacement railroad underpass where the Union Pacific Railroad crosses 223<sup>rd</sup> Avenue from Sandy Boulevard to Bridge Street, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof."

**Shall be amended to read:**

"1. Under such authority, State and Agency plan and propose to design and construct a wider replacement railroad underpass where the Union Pacific Railroad crosses 223<sup>rd</sup> Avenue from Sandy Boulevard to Bridge Street, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof."

**Paragraph 2 of Terms of Agreement, Page 1, which reads:**

"2. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program, Title 23, United States Code. The total estimated cost for the PE and RW is estimated at \$800,000. The STP funds available for the PE and RW are limited to \$401,595, including any STP funds expended during the duration of and paid under Agreement #18287. The Project shall be financed with Urbanized Surface Transportation Program funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs. The estimate for the total Project cost is subject to change. This agreement is for PE and RW acquisition only. An amendment to this agreement is required prior to any other phase of work if federal funds are to be applied."

**Shall be amended to read:**

"2. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program, Title 23, United States Code. The total estimated cost for the Project is estimated at \$5,848,000. The Urban STP funds available for the Project are limited to \$1,401,000. The Highway Safety Construction funds available for the Project are limited to \$2,000,000. The Project shall be financed with Urbanized Surface Transportation Program funds and Highway Safety Construction funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs. The estimate for the total Project cost is subject to change."

Page 2, Paragraph 4-d, which reads:

"d. If State fails to receive funding; appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement."

Shall be amended to read:

"d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement."

**IN WITNESS WHEREOF**, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

This Project is in the 2004-2007 Statewide Transportation Improvement Program (Page 70, key #11429) that was approved by the Oregon Transportation Commission on November 17, 2003.

The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at Agency expense.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program.

M.C & A No. 20,934  
MULTNOMAH COUNTY

On September 16, 2002, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates authority to the Deputy Director, Highway Division to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

MULTNOMAH COUNTY, by and through  
its elected officials

By *Chester May*  
Chair

By Diane M. Linn, County Chair

Date 10-28-04

APPROVED AS TO LEGAL  
SUFFICIENCY

By *Matthew O. Ryan*  
Agency Counsel

Date 10/5/04

APPROVED : MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # C-4 DATE 10-28-04  
DEBORAH L. BOGSTAD, BOARD CLERK

Billing Address:  
Multnomah County  
1160 SE 190th Ave  
Portland, OR 97214

STATE OF OREGON, by and through  
its Department of Transportation

By *A. M. N.*  
Deputy Director, Highway Division

Date 11-22-04

APPROVAL RECOMMENDED

By *A. M. N.*  
Technical Services Manager/Chief  
Engineer

Date 11-22-04

By *Blaine J. ...*  
Region 1 Manager

Date 9/11/04

APPROVED AS TO LEGAL  
SUFFICIENCY

By *W. H. ...*  
Assistant Attorney General

Date 11/15/04

**Exhibit F to Loan Agreement**

**Payment Requisition**

TO: Oregon Transportation Infrastructure Bank  
Oregon Department of Transportation  
Financial Services Branch  
355 Capitol Street NE, Room 434  
Salem, Oregon 97301

RE: Oregon Transportation Infrastructure Fund, Loan Number OTIF-0031

On behalf of Multnomah County, I hereby request that the Oregon Transportation Infrastructure Fund (OTIF) disburse to the following payees the following amounts in accordance with the Loan Agreement (as defined below):

[Insert Payee]

[Insert Amount]

The foregoing disbursements are all for Costs of the Project as such term is defined in, and which are permitted under, the loan Agreement (the "Loan Agreement") between Multnomah County and the State for the above captioned loan ("Loan"), as amended. I have attached all necessary documentation as required by Section 4.02(e)(ii) of the Loan Agreement.

On behalf of Multnomah County I hereby certify that (1) no Event of Default (as defined in the Loan Agreement), or event, omission or failure of a condition which would constitute an Event of Default after notice or lapse of time or both, has occurred or is continuing under the Loan Agreement and (2) all representations and warranties of Multnomah County made in the Loan Agreement are true and correct on the date hereof with the same effect as if made on this date.

DATED this 4 day of 9, 2008

MULTNOMAH COUNTY

By:   
Authorized Officer

Attachment

CERTIFICATE OF INCUMBENCY OF THE COUNTY COMMISSION  
OF MULTNOMAH COUNTY, OREGON

\$4,600,000  
Oregon Transportation Infrastructure Loan Number OTIF -0031  
To Multnomah County  
(223<sup>rd</sup> Undercrossing Sandy Blvd. Bridge Street)

I, TED WHEELER, a duly authorized representative of Multnomah County, Oregon  
(the "Borrower"), hereby certify in connection with the above captioned loan as follows:

The names of the Members of the County Commission, their respective positions, and the  
dates of expiration of the respective terms of office of said Members of the Multnomah  
County, County Commission are as follows:

<u>Name of Member and Position</u>	<u>Date of Expiration of Current Term</u>
Ted Wheeler, Chair	December 31, 2010
Maria Rojo de Steffey, Commission District 1	December 31, 2008
Jeff Cogen, Commission District 2	December 31, 2010
Lisa Keito, Commission District 3	December 31, 2008
Gernie Roberts, Commission District 4	December 31, 2008

DATED as of the 4 day of 9, 2008.

Multnomah County, Oregon

By: TED WHEELER

**TRANSCRIPT CERTIFICATION**

**State of Oregon  
Oregon Transportation Infrastructure Fund  
Loan Number 0031**

On behalf of Multnomah County, Oregon (the "Municipality"), I hereby certify that the attached documents are originals or true copies of the documents which were assembled for the closing of the Municipality's loan in the principal amount of \$4,600,000.00 from the State of Oregon, acting by and through its Department of Transportation (the "State") pursuant to a Loan Agreement by and between the Municipality and the State.

DATED this 4 day of 9, 2008.

By:

  
Authorized Officer

Title:

CHAIR

Exhibit D

**PROMISSORY NOTE**

\$4,600,000.00

\_\_\_\_\_, 2008  
\_\_\_\_\_, Oregon

For value received, Multnomah County (hereinafter "Borrower"), unconditionally promises to pay to the State of Oregon, acting by and through its Department of Transportation (hereinafter "State"), or order, at Room 434, Transportation Building, Salem, Oregon 97310, or such other place as the State may designate in writing, the principal sum of Four Million Six Hundred Thousand AND NO/100 DOLLARS (\$4,600,000.00), plus interest from the date hereof on the unpaid principal balance until paid. Any capitalized terms not defined in this Note shall have the meanings assigned to such terms in that certain loan agreement of even date herewith between the State and Borrower (as amended from time to time the "Loan Agreement").

The interest rate shall be three and 98/100 percent (3.98%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months.

Principal and interest shall be payable at the times and in the amounts specified on the repayment schedule on Exhibit A attached hereto and by this reference made a part hereof, and the outstanding principal balance of the Note, together with accrued unpaid interest, shall be due and payable on the Maturity Date. Each payment made by the Borrower hereunder shall be applied first to interest then due and payable on the Loan, then to the principal of the Loan unless the Loan Agreement provides otherwise.

This Note is not payable prior to its maturity except as provided for in Sections 2.06 and 2.09 of the Loan Agreement.

If an Event of Default occurs, the outstanding balance hereunder, including principal, interest and other charges, if any, shall, at the option of the State, become immediately due and payable. Presentment, demand, protest, and notice of dishonor, protest and nonpayment are waived by the Borrower.

The Borrower shall, on demand, pay to the State, the reasonable fees and expenses of attorneys, whether at trial, on appeal in bankruptcy proceedings or otherwise, and other reasonable expenses (including without limitation expert witness fees and the reasonable allocated costs of in-house Counsel and legal staff) incurred by the State, in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the Borrower.

The terms, provisions and covenants contained in this Note shall apply to, inure to the benefit of, and bind the parties hereto and their respective successors and assigns.

This Note shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, suit or proceeding (collectively, "Claim") between the State (and/or any agency or department of the State of Oregon) and the Borrower that arises from or relates to this Note shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

This Note is subject to the terms and conditions of the Loan Agreement. The indebtedness evidenced by this Note is secured by the collateral described in the Loan Agreement.

MULTNOMAH COUNTY

By:



Title:

CHAIR

#### NOTICE TO BORROWER

DO NOT SIGN THIS NOTE BEFORE YOU READ IT. FULL OR PARTIAL REPAYMENT BEFORE THE DATE PROVIDED FOR REPAYMENT IN THIS NOTE AND IN THE LOAN AGREEMENT IS NOT PERMITTED, AND A PREMIUM FOR ANY SUCH PREPAYMENT MAY BE CHARGED AND COLLECTED.

Exhibit A to Promissory Note

**Repayment Schedule**

Borrower: Multnomah County

<b>Payment Due Date:</b>	<b>Amount Due:</b>
March 1 <sup>st</sup> , 2009	Accrued interest from the Loan Closing Date to March 1 <sup>st</sup> , 2009,, shall be due and payable.
September 1 <sup>st</sup> , 2009	Accrued interest from (and including) March 1 <sup>st</sup> , 2009, to September 1 <sup>st</sup> , 2009, shall be due and payable.
March 1 <sup>st</sup> , 2009	Accrued interest from (and including) September 1 <sup>st</sup> , 2009, to March 1 <sup>st</sup> , 2010, shall be due and payable.
September 1 <sup>st</sup> , 2010	Accrued interest from (and including) March 1 <sup>st</sup> , 2010, to September 1 <sup>st</sup> , 2010, shall be due and payable.
March 1 <sup>st</sup> , 2011	Accrued interest from (and including) September 1 <sup>st</sup> , 2010, to March 1 <sup>st</sup> , 2011, shall be due and payable.
September 1 <sup>st</sup> , 2011	A payment of \$413,151 principal and interest from (and including) March 1 <sup>st</sup> , 2011 shall be due and payable.
September 1 <sup>st</sup> , 2012 and the 1 <sup>st</sup> of each September thereafter up to and including September 1 <sup>st</sup> , 2025	Fourteen annual payments in the amount of \$413,151, with all remaining principal and accrued unpaid interest due at maturity on September 1 <sup>st</sup> , 2025



**MULTNOMAH COUNTY  
AGENDA PLACEMENT REQUEST (long form)**

SUBSTITUTE

APPROVED : MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-7 DATE 9-04-08  
ANA KARNES, ASST BOARD CLERK

**Board Clerk Use Only**

Meeting Date: 09/04/08  
Agenda Item #: R-7  
Est. Start Time: 10:10 am  
Date Submitted: 09/02/08

**Agenda Title: MCSO NOTICE OF INTENT to Apply on the Edward Byrne Memorial Justice Grant Program: Disrupting the Manufacture, Distribution and Use of Illegal Drugs**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

Requested Meeting Date: 9/4/2008 Amount of Time Needed: 2 minutes  
Department: Sheriff's Office Division: Law Enforcement  
Contact(s): Captain Monte Reiser  
Phone: 503-251-2515 Ext. \_\_\_\_\_ I/O Address: 313/1  
Presenter(s): Wanda Yantis, Program Manager and Captain Reiser (if available)

**General Information**

**1. What action are you requesting from the Board?**

The Sheriff's Office is requesting approval to apply for the Edward Byrne Memorial Justice Grant which would provide funds to support the disruption of the illegal drug trade in Multnomah County.

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

The State of Oregon has issued a request for applications to assist in funding units of local government to perform law enforcement duties related to the disrupting the manufacture, distribution, and trafficking of illicit drugs. Activities proposed for funding in this grant include training, equipment, confidential funds, overtime and administrative costs.

MCSO's Special Investigations Unit (SIU) has experience in locating the sources of various illegal drugs. Reports have indicated that drugs are being trafficked to the County from outside the state. The result of this program would be an increased understanding of out-of-state drug traffickers and their operations, the development of methods for combating these organizations, the successful removal of these entities, and the prosecution of those involved.

This would affect program officer 60067A: MCSO Special Investigations Unit by increasing the resources available for this unit to investigate drug cases.

**3. Explain the fiscal impact (current year and ongoing).**

The first year proposed budget for this program is \$132,295. The grant would provide 90% of the funds while 10% would be match funds from the County. The estimated 2<sup>nd</sup> year budget is \$127,453 and will be subject to a requalification process with the State.

**4. Explain any legal and/or policy issues involved.**

None anticipated.

**5. Explain any citizen and/or other government participation that has or will take place.**

SIU has a pre-existing interagency agreement with Gresham Police whereby one officer works in the SIU.

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# ATTACHMENT A

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## Grant Application/Notice of Intent

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If the request is a Grant Application or Notice of Intent, please answer all of the following in detail:

- **Who is the granting agency?**

State of Oregon, Oregon State Police

- **Specify grant (matching, reporting and other) requirements and goals.**

This grant requires a 10% match in funding, does not allow supplanting of local funds and has both progress and financial reporting requirements.

The performance measure goals for this program are:

- Reduce the number of drug trafficking organizations
- Reduce the domestic production of illicit drugs
- Protect children from the affects of exposure to drug-endangering environments.

This grant also requires certification on managing Confidential Funds.

- **Explain grant funding detail – is this a one time only or long term commitment?**

The anticipated funding level is for two years, with a requalification process for funding after the first year. Qualification for continued funding is based on program performance, expenditure, reporting, and compliance with award terms.

- **What are the estimated filing timelines?**

The grant application is due Friday, September 5, 2008 by 5:00 pm.

- **If a grant, what period does the grant cover?**

The period begins October 1, 2008 and ends September 30, 2010.

- **When the grant expires, what are funding plans?**

If the performance measures for this grant are successful, the Sheriff's Office would submit a program offer in the appropriate budget cycle to continue funding with general funds.

- **How will the county indirect, central finance and human resources and departmental overhead costs be covered?**

Administrative costs are included in the grant and include the Captain who manages the SIU and the Finance Specialist I who supports grant administration. Indirect costs are not included in the grant funds, but are part of the Sheriff's Office participation.

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## ATTACHMENT B

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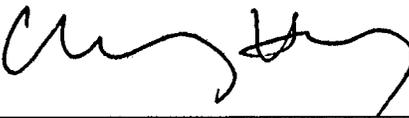
### Required Signatures

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**Elected Official or  
Department/  
Agency Director:** \_\_\_\_\_ /s/ Bob Skipper

**Date:** 9/2/08

**Budget Analyst:** \_\_\_\_\_



**Date:** 09/02/08

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# Edward Byrne Memorial Justice Assistance Grant Program Request for Applications

## Law Enforcement Programs *Disrupting the Manufacture, Distribution, and Use of Illicit Drugs*

### SECTION I – Grant Application Overview include

#### A. INTRODUCTION

Oregon State Police (OSP) and Criminal Justice Commission (CJC) are issuing a cooperative solicitation through the Edward Byrne Memorial Justice Assistance Grant (JAG) Program to assist units of local government perform law enforcement duties related to disrupting the manufacture, distribution, and trafficking of illicit drugs, particularly addressing the problem of methamphetamine.

On June 27, 2008, Governor Theodore R. Kulongoski directed the Oregon State Police and the Oregon Criminal Justice Commission to transfer the program management of the federal Edward Byrne Memorial Justice Assistance Grant (JAG) from OSP to CJC effective immediately. The Governor determined that shifting the oversight of JAG, the primary federal program to fight crime and to improve the criminal justice system, to CJC, the office for statewide criminal policy and research, represents a better fit. This reorganization will allow the state to be more strategic and efficient in pursuing and administering the increasingly limited federal grant support received for criminal justice purposes.

While CJC will manage the JAG program, OSP will remain the federal grant recipient until that role is changed in the next legislative session. OSP will execute grant awards and continue to provide administrative support during the transition period. The Commissioners of the CJC will serve as the advisory board for JAG.

#### B. PURPOSE

The JAG Program (42 U.S.C. 3751) is the primary provider of Federal criminal justice funding to States and local jurisdictions. The purpose of the JAG Program is to assist units of local government to prevent and control crime and to improve the criminal justice system. JAG funds support all components of the criminal justice system, from multijurisdictional drug and gang task forces to crime prevention and domestic violence programs, courts, corrections, treatment, and justice information sharing initiatives. The State Administering Agency (SAA) designated by the Governor to administer the JAG Program in Oregon applies for the JAG Program on behalf of Oregon, prepares the *JAG Strategy for Oregon*, and collaborates with the Governor's Office in determining funding priority areas and authorizing distributions.

The JAG Program allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system. There are six purpose areas authorized for funding: law enforcement programs, prosecution and court programs, prevention and education programs, corrections and community corrections programs, drug treatment and enforcement programs, planning, evaluation, and technology improvement programs, and crime victim and witness programs (other than compensation).

This solicitation will focus on one of the JAG purpose areas, *Law Enforcement Programs*, and one of the *JAG Strategy for Oregon* priority areas, "Law Enforcement Aimed at Disrupting the Manufacture, Distribution, and Use of Illicit Drugs". This Oregon priority area seeks to disrupt the manufacture, distribution, and use of illicit drugs through the following efforts (in order of priority):

- 1) Identifying, targeting, and removing controlled substances wherever illegally manufactured or grown;
- 2) Arresting, prosecuting, and convicting traffickers;
- 3) Protecting children from the safety and health risks associated with contact with traffickers both at home and at school; and
- 4) Educating law enforcement, community groups, businesses, landlords / property managers, schools, and youth groups about the availability and risks of illegally manufactured or grown controlled substances in their communities.

To this end, this solicitation focuses on supporting local law enforcement agencies and drug task forces that involve both law enforcement agencies and prosecutors to enhance interagency coordination, intelligence sharing, investigation, and interdiction.

The specific priorities for this solicitation are to:

- *Enhance* efforts to reduce the manufacturing and distribution of, and trafficking in illicit drugs, particularly methamphetamine, cocaine, heroin, and diverted pharmaceuticals.
- *Target* efforts to investigate and dismantle Drug Trafficking Organizations (DTO) defined as an organization that consists of five or more persons, has a clearly defined hierarchy, and operates primarily to generate income or acquire assets through a continuing series of illegal drug trafficking activities. Drug trafficking activities refer to manufacturing, transportation, or distribution.
- *Target* efforts to investigate and disrupt mid-level drug traffickers. Drug trafficking activities refer to manufacturing, transportation, or distribution.
- *Focus* efforts in rural counties, cities, or towns defined as follows: a) counties with cities or towns of population sizes smaller than 50,000 are classified as rural; and b) cities or towns with population sizes smaller than 30,000 and *not* within a 10 mile radius of a population center of 30,000 or greater are classified as rural.

## C. DEFINITIONS

1. "Addendum" or "Addenda" means an addition or deletion to, a material change in, or clarification of, the RFA. Addendum or Addenda shall be labeled as such and shall be made available to all interested Applicants.
2. "Administering Contracting Agency" means a contracting agency that solicits and establishes the award for goods or services in a cooperative solicitation.
3. "Agency" for the purposes of this RFA shall refer to the Oregon State Police, the Administering Contracting Agency.
4. "Applicant" means the person or organization that submits an Application in response to the RFA.
5. "Closing Date" means the date and time set in the RFA for the RFA submission, after which RFAs may not be submitted, modified, or withdrawn by Applicants.
6. "CJC" means the State of Oregon acting by and through its Criminal Justice Commission.
7. "Cooperative Solicitation" means a solicitation conducted by or on behalf of one or more contracting agencies.
8. "OSP" means the State of Oregon acting by and through its Department of Oregon State Police.
9. "SPC" means Single Point of Contact for this RFA.
10. "State" means the State of Oregon and its boards, commissions, departments, institutions, branches, and agencies.

## **D. FUNDING AND COMPENSATION**

The anticipated funding level at the time of the solicitation is approximately \$2,500,000 *over a two-year period* beginning October 1, 2008 and ending September 30, 2010. To foster positive change in how Oregon's JAG funds are spent and to include programs that have previously not had access to these funds, awards will be made through a competitive Request for Application (RFA) process. Selection of competitive Applicants is based on the merit of the program as revealed in the response to the RFA.

Applicants selected for funding receive awards for a two-year period, however, they must requalify for funding each year. Qualification for continued funding will be based on current program performance, current expenditure levels, timely and accurate submission of program and fiscal reports, compliance with award terms and conditions, and the continued availability of JAG Program funds in Oregon. After two years of funding, and if additional grant funds are available, previous Grantees have the option to reapply, but they must then compete on equal standing with the total pool of Applicants.

Applicants must be able to document the availability of a 10% non-Federal cash or in-kind match. Applicants should not include match exceeding the 10% requirement in the Budget and Match Summary. The method for calculating the match requirement is described in Section II.E., Budget Instructions.

Since an important objective of the JAG Program in Oregon is to initiate potentially sustainable programs, preference may be given to Applicants that can provide an assurance of continuation funding for the program after JAG Program funding expires.

Funding activities, described in further detail in Section II. C., Program Narrative Instructions, will be limited to specialized training for narcotics law enforcement personnel, purchase of specialized surveillance equipment, investigative confidential funds, overtime costs, and administrative costs.

The anticipated level of funding is estimated to be in the range of \$25,000 to \$100,000 per year in grant funds for a maximum of two years. Applicants are encouraged to prepare funding requests based on the specific funding priorities and funding activities described above and the Problem / Need Statement described in the Program Narrative. The actual services performed under resulting Agreements and the actual funding level is subject to negotiation. The Agreement payment method will be cost reimbursement up to a maximum Not-To-Exceed (NTE) amount.

## **E. ELIGIBLE APPLICANTS**

Applicants eligible under this solicitation include units of local government and units of tribal government. A local unit of government is described as a city, county, town, township, or other general purpose political subdivision of a state and includes Indian tribes which perform law enforcement functions. A city or county must be a legal applicant and recipient on behalf of city and county departments (such as police departments, sheriffs' offices, and district attorneys' offices).

In order to receive funding under this solicitation, city or county departments or tribal law enforcement units must demonstrate an affiliation with an interagency narcotics team, drug task force, or similar multi-agency collaboration to address community-wide drug enforcement issues.

Units of government that have previously not received funding under the Byrne Formula Grant Program or the JAG Program are particularly encouraged to apply. This solicitation provides priority for funding units of local government that represent rural jurisdictions in Oregon recognizing that drug use, and the resulting crime, is no longer just a big city problem and that resources for combating drug-related crimes in rural communities are limited. Entities representing jurisdictions that receive a direct JAG Program award from DOJ / BJA remain eligible applicants under the portion of the JAG Program administered by the State.

## F. MINIMUM APPLICATION REQUIREMENTS

Applicants must meet the minimum requirements listed below. Applicants must be able to comply with OSP Agreement requirements and all other federal, state, and local laws and regulations governing services purchased through this solicitation. A sample copy of an OSP Agreement boilerplate is included as *Appendix A* of this RFA. Failure to provide any of the required documents or meet any of the below requirements may result in rejection of the Application at the sole discretion of the Agency.

1. Application response must be postmarked or received by 5:00 PM on Friday, September 5, 2008 in the format described in Section II. A.
2. A completed and signed Application Cover Sheet placed at the beginning of the Application, included as *Attachment A*.
3. An Application which includes all the components described in Section II.A., Application Format and General Instructions.
4. A copy of a Memorandum of Understanding (MOU) as described in Section II.C.3.b., Evidence of Collaboration.
5. Applicants whose budgets include confidential funds must submit a Confidential Funds Certification, included as *Attachment B*.

## G. SOLICITATION AND SUBMISSION PROCESS

The JAG Program Competitive Request for Applications is available in the following formats:

- Download PDF and Microsoft Word formats at <http://www.oregon.gov/OSP/CJS/index.shtml> under *Current Funding Opportunities*; or
- Electronic Mail

### 1. Solicitation Schedule:

Friday, August 8, 2008	Request for Applications (RFA) Opens
Monday, August 18, 2008	Clarification Inquiries Due no later than <b>5:00 PM</b>
Friday, August 22, 2008	Responses to Clarifications Inquiries Provided
Friday, September 5, 2008	RFA Closes. Proposals Due no later than <b>3:00 PM</b> LATE PROPOSALS WILL NOT BE CONSIDERED
Monday, September 15, 2008	Evaluation Process (approximate date)
Thursday, September 18, 2008	Selection (Criminal Justice Commission meeting)
Friday, September 19, 2008	Award Notification Letters Sent to Applicants (approximate date)
Monday, September 22, 2008	Award Negotiation Period Begins (approximate date)
Wednesday, October 1, 2008	Award Start Date

### 2. Single Point of Contact:

For all questions, whether about the technical requirements of the RFA, contractual requirements, the solicitation process, to request an electronic version of the Application and forms by e-mail, or any other aspect of the program or needed services, please contact the Single Point of Contact (SPO), Jeanette Ewald, Grants Coordinator at:

Address: Criminal Justice Commission  
885 Summer Street NE  
Salem, Oregon 97301  
Phone: 503-378-4078  
Fax: 503-378-4861  
E-mail: [jeanette.ewald@state.or.us](mailto:jeanette.ewald@state.or.us)

This JAG Program Competitive Request for Applications may be revised by posting one or more Addenda on the web site listed above. Applicants are encouraged to review the web site regularly until the application due date to view and download any Addenda. Requests for clarification of a provision of this RFA may be submitted by fax, e-mail, or telephone to the Single Point of Contact listed above. To be considered, requests must be received by the Clarification Inquiries Due date listed above. Requests for clarification received after the due date may or may not receive a response based on the sole discretion of the Agency. The SPC will promptly respond to each properly-submitted request for clarification. Where appropriate, revisions and clarifications of the RFA provisions will be posted via Addenda posted on the aforementioned web site. Applicants may receive informal verbal responses to questions. However, informal responses do not affect the provisions of the JAG Program Competitive Request for Applications which is only changed via formal Addenda issued by the Agency and posted on the OSP web site.

### **3. Submission of Applications:**

Submission in response to the JAG Program RFA shall contain one electronic version of the Application, one signed original hard copy, and five copies of the Application, including all required supporting information and documentation. Applications submitted by mail must be *postmarked* on or before the RFA Close date listed above. Hand-delivered applications must be *received* no later than 3:00 PM on the RFA Close date listed above. ***The electronic version of the Application must be received by 3:00 PM on September 5, 2008 regardless of the delivery method selected.***

Electronic Address: [jeanette.ewald@state.or.us](mailto:jeanette.ewald@state.or.us)  
Mail / Physical Address: Criminal Justice Commission  
885 Summer Street NE  
Salem, Oregon 97301

Late Applications or additions to an original Application to the meet the grant program guidelines will not be accepted. Electronic submissions without accompanying hard copy submissions will not be accepted. Facsimile submissions will not be accepted.

All costs incurred in preparing and submitting an Application in response to this RFA are the responsibility of the Applicant and shall not be reimbursed by the Agency.

The successful Applicant(s) shall be asked to sign an Agreement substantially in the format that is attached as *Appendix A*. The Terms and Conditions included in the Agreement are not negotiable.

The Agency is not obligated as a result of the submission of an Application to enter into an Agreement with any Applicant, and has no financial obligation to any Applicant arising from this RFA.

## **SECTION II - Grant Application Contents**

### **A. APPLICATION FORMAT AND GENERAL INSTRUCTIONS**

The following instructions are for completing an Application in response to the JAG Program Request for Applications:

1. Applications must be submitted using the forms provided in this RFA. Limit responses to the maximum page limits specified for each section of the RFA. The Agency requests that the original application be printed on only one side of a page, but in the interest of conservation of paper resources, that the additional required copies be printed on both sides of a page.

2. Applications must be stapled in the left upper corner. Do not use spiral bindings, glue, place applications in notebooks or use other methods of binding the Application. If the Application is too thick to be held with a single staple, secure the Application with a metal clip which can be easily removed for storage and copying purposes.
3. Applications may include up to two pages of supplemental material to further support the Application. Narrative and supplemental material in excess of the page limitations will not be forwarded to the Evaluation Committee. Supporting materials submitted with the Application will not be returned.
4. Complete Sections II. B, C, D, and E.
5. Each proposed subaward and/or subcontractor must complete *Attachment C*, Subaward / Subcontractor Information and Budget Summary.
6. Complete Memorandum of Understanding.

## **B. APPLICATION COVER SHEET**

Use the following instructions to complete the Application Cover Sheet included as *Attachment A*.

1. To move through the form fields click on the gray shaded areas or use the Tab Key.
2. For Grant Program check the Law Enforcement Program/Illicit Drugs in response to this RFA.
3. For Program Title choose a title that describes your proposed program.
4. For Program Contact include the name and contact information for the individual that will be the Applicant's point person with Agency staff for issues related to the implementation and reporting for the proposed program.
5. For Fiscal Contact include the name and contact information for the individual that will be responsible for reporting on the financial activities related to the proposed program.
6. For Program Budget include the total JAG funds, total match funds, and total program funds (grant + match) based on the Budget Summary in the application for year one and estimated for year two.
7. For Program Abstract include a brief summary, using only the space provided, that describes the purpose, goals, and objectives of the program, and the activities that will be implemented to achieve the program's goals and objectives.
8. The Authorized Official signing the document is the authorized representative of the Applicant and is the individual who is legally responsible for the grant. This individual agrees to receive federal funds and to meet the terms of the federal JAG Program as included in this RFA and to comply with the Terms and Conditions in the OSP Grant Award Agreement (*Appendix A*).

## **C. PROGRAM NARRATIVE INSTRUCTIONS**

Use the following instructions to complete the Program Narrative.

Click on the gray shaded area in each section to type your narrative response. The narrative fields will automatically expand to accommodate the length of each response. Do not exceed the page limit designated for each section.

Funded activities must have a direct and lasting impact on efforts to disrupt the illegal manufacture and distribution of illicit drugs. Funding activities will be limited to:

- Specialized training for narcotics law enforcement personnel (regular and/or overtime payroll costs to attend training, registration fees, training materials, lodging and per diem costs, transportation costs);
- Specialized equipment, supplies, and surveillance costs to support investigation and undercover operations;
- Investigative confidential funds;
- Overtime costs, to a) identify, target, and remove illicit drugs wherever illegally manufactured or grown; b) identify, target, arrest, and refer for prosecution individual drug offenders and drug trafficking organizations; c) protect children from the safety and health risks caused by exposure to drug-endangering environments; and d) educate law enforcement, community groups, businesses, landlords / property managers, schools, and youth groups about the availability and risks of illegally manufactured or grown substances and the trafficking of illicit drugs or diverted pharmaceuticals in their communities; and
- Administrative costs such as accounting, program supervision and management, payroll preparation, etc. Administrative costs may not exceed 10% of the total proposed budget (federal funds + 10% match).

### 1. Problem/Need Statement – *Limit response to 4 pages*

The problem statement should include a brief description of the program target area (law enforcement jurisdiction or governmental boundary) and a detailed description of the nature and extent of the illicit drug problem (manufacture and/or distribution of methamphetamine, cannabis cultivation, distribution of cocaine, heroin, MDMA, diverted pharmaceuticals, drug trafficking organizations, etc.), the drug-related crime affecting the target area, and the related public safety impact. The problem statement and public safety impact should be substantiated with factual and illustrative local data. State the needs in the target area as they relate to the problem statement and justify the need for the proposed program. The need statement must make a convincing case that the proposed program will address a gap in existing resources and does not duplicate existing resources.

The target area for this program is all of Multnomah County (Oregon), with an emphasis on East Multnomah County rural locations.

Data released by the Oregon State Medical Examiner indicated that the 231 drug-related deaths in 2007 were the highest number of these deaths since 1999. Methamphetamine-related deaths in Oregon totaled 71 in 2007. Multnomah County represented almost half (48%) of the state-wide drug-related deaths.

The possession and distribution of methamphetamine, and the associated crime, presents a significant problem for Multnomah County law enforcement agencies. In fiscal year 2007-08, the Multnomah County Sheriff's Office Special Investigations Unit (SIU) discovered 2 clandestine drug labs and disrupted 24 drug trafficking organizations (DTOs). The unit seized 2268 grams of methamphetamine, over \$57,000 in cash, and 12 weapons in their efforts to combat drug use and distribution. In the course of their efforts, SIU identified 22 drug-endangered children; 16 children were referred to the State Office for Services to Children and Families.

Although the number of home drug labs has declined over the past few years (due to laws that restrict the sale of key ingredients), reports have indicated that methamphetamine, and other dangerous drugs, are trafficked into the County from outside the state. Reports indicate that some of these DTOs may have origins in Mexico.

SIU is charged with investigating illegal narcotics cases with the purpose of arresting drug manufacturers and distributors. The unit focuses mostly on mid-level (wholesale) distributors and places an emphasis on methamphetamine. The dynamics around methamphetamine investigations go beyond simply developing information and executing search warrants. Typically, a methamphetamine investigation leads to multiple

suspects, locations, drug-endangered children, theft (including the escalating crime of metal theft), and fraud. A large amount of tracking and investigation is necessary to build a case with sufficient data to be accepted for prosecution. In the last fiscal year, SIU completed 34 methamphetamine investigations. Of those, 31 went forward to prosecution.

Funds from this grant will be used to greatly enhance SIU's ability to disrupt and dismantle drug trafficking organizations, focusing on organizations with origins outside of the local area. SIU is seeking specific training in techniques used to combat DTOs responsible for the emergence of illicit narcotics from non-local sources. The unit requires a substantial confidential fund pool, used to meet investigative expenses, such as drug buy money (the purchase of evidence) and payments made to confidential informants (purchase of specific information). Following identified leads with undercover activity and round the clock surveillance will build drug cases at the whole sale level that lead to arrest and conviction. SIU's goal is the removal of 3000 grams of methamphetamine from entering the community at the street level. SIU will follow information anywhere throughout Multnomah County, but a main focus will be on unincorporated, predominantly rural, areas of the County.

The result of the program is an increased understanding of out-of-state drug traffickers and their operations, the development of methods for combating these organizations, the successful execution of these methods leading to the removal of these entities and their influences from the community, and the prosecution and conviction of those involved. Training, overtime hours, specialized equipment, and confidential funds are necessary in the efforts to achieve these results.

## 2. Description of Activities – *Limit responses to individual questions to 1 page each*

*Write a brief and clear description of the activities proposed for funding.*

a) If specialized training is one of the proposed activities, describe the specific type(s) and source(s) of training(s), indicate who will attend the training(s), and how the training will have a direct and lasting impact on the described problem:

The Oregon Narcotics Enforcement Association (ONEA) sponsors a conference to advance techniques of supervision and investigation in the field of narcotics enforcement. The six members of the SIU have requested attendance at this conference, to be held in July 2009 in Redmond, Oregon. This conference will provide the Unit with information on the latest procedures in drug investigations and will promote an exchange of information with other Oregon agencies as to best practices, policies, and related-investigations.

The training course, "Investigating Drug Trafficking Organizations" is offered by the Law Enforcement Training Associates, Inc. This five-day training program is designed for law enforcement officers participating in narcotics investigations. The course covers techniques used to combat the major DTOs that are currently responsible for importing narcotics into the United States and details the various Mexican cartels responsible for the distribution of various illegal drugs. The six members of SIU have requested attendance at this training, to be held in November 2008 in Las Vegas, NV. Information from this course will be used to strategically address aspects of DTOs such as transportation and stash methods, stops and searches, and informant management. The course covers topics that will build successful investigations.

Regional Information Sharing Systems (RISS) provides services to support the investigative and prosecution efforts of law enforcement by addressing the need to address regional crime problems through cooperation and information sharing. RISS is federally funded, administered by the US Department of Justice, Bureau of Justice Assistance. The mission of RISS is to support law enforcement efforts nationwide to combat illegal drug trafficking, violent crime, identity theft, human trafficking, terrorist activity, and to promote officer safety. The Western States Information Network (WSIN), the RISS Center serving Alaska, California, Hawaii, Oregon, Washington, Canada and Guam, has its annual information sharing conference in April 2009 in Sacramento, CA. The six members of SIU have requested attendance at this three-day event. The conference will not only build upon the knowledge base for operating effective investigations, but also provides the

opportunity to share information on region-specific issues among law enforcement entities.

Narcotic canine training, through the *2008 Working Dog Seminar*, is sponsored by the Oregon Police Canine Association. This training will provide the SIU narcotic dog and handler with field experience in procedures for drug searches. One detective in SIU has requested attendance in this 3 day seminar. This training will enhance SIU work in drug detection.

b) If specialized equipment is one of the proposed activities, describe all proposed equipment purchases and how the equipment will be used to directly impact the described problem:

Surveillance vehicle with cameras, mobile internet video system and day and night camera. Vehicle platform, window tinting and alarm: This wireless surveillance platform will be used for long-term and immediate surveillance of drug dealer residences, stash houses, and open air drug markets. This is a vehicle mounted platform that can be manned or unmanned and monitored at a remote location or at the office. This system can be recorded so that monitored activity can be used as evidence in trial. This equipment will save man-hours and can be parked at a location of interest at any time.

Undercover vehicle with lights, siren and window tinting: The use of undercover vehicles is a necessity in drug enforcement. The longer an undercover vehicle is used, the more likely it will be identified as a law enforcement vehicle, thus, compromising officer safety.

Nikon night vision with pocket scope adapter: This night vision camera lens is used for night time photos of active drug dealers to aid in their identification during the course of an investigation.

Pan tilt zoom wireless surveillance pole camera: A wireless pole mounted camera looks like an electrical box, and is used for long term static surveillance of drug dealers' and manufacturers' residences and stash houses. This surveillance tool will save man hours, allowing long-term surveillance to be conducted remotely, thus, reducing the risk of vehicles being identified and allowing the ability to work multiple cases simultaneously. This system can be recorded so that monitored activity can be used as evidence in trial.

c) If a confidential fund pool is one of the proposed activities, describe the specific use for these funds and how these funds will effectively impact the described problem:

SIU will utilize grant funds the purchase of evidence and for the purchase of specific information. The purchase of evidence includes contraband, such as narcotics and dangerous drugs, as required to determine the existence of a crime or to establish the identity of a participant in a crime. The purchase of specific information includes payment of monies to a confidential informant (CI) to further information of drug distributors. Specifically, CI money will be utilized to attract and subsidize reliable CIs in the pursuit of establishing a rapport with meth distributors. Once rapport is established with three controlled purchases of dangerous drugs, affidavits will be prepared in request for search and arrest warrants, in the effort towards disrupting and dismantling DTOs. CI monies will be maintained through a secure, dedicated account, with a separate, documented, file established for each CI.

All confidential funds will be maintained per the conditions described by the Financial Guide (Chapter Eight) published by the Department of Justice, Office of Justice Programs, Office of the Comptroller and are subject to approval by the awarding grant agency, the Criminal Justice Commission/Department of Oregon State Police.

d) If overtime is one of the activities, describe the specific overtime activities to be performed, the type and number of positions to perform overtime activities, and how overtime activities will effectively impact the described problem:

SIU detectives will utilize overtime to provide focused investigative efforts in identified locations. Overtime in surveillance work and round the clock interactions with CIs will be used for developing cases. Overtime will also be used in the course of arrests and in assisting drug-endangered family members.

e) If administrative costs are proposed, describe the specific costs included, indicate the job title(s) and FTE of any personnel, and describe the method used to determine the appropriate level of administrative costs:

Administrative costs are included for the MCSO Captain that manages the SIU and the performance measures of the grant and for the Finance Specialist 1 that supports the grant financial administration. It is estimated that approximately .06 FTE from each of these individuals would be required for the grant. This estimate is based on the assumption that grant administration is about 5 hours per month for 12 months, totally 60 hours per year

per person.

### 3. Evidence of Collaboration – *Limit response to 3(a) to 2 pages*

a) Describe and list the nature and extent of the collaboration with other agencies to address community-wide illicit drug enforcement issues (for example, other law enforcement agencies, state or federal agencies, etc.). Describe how the proposed activities enhance ongoing narcotics enforcement activities or further the local drug control strategy:

The Multnomah County Sheriff's Office has an interagency agreement with the City of Gresham (Oregon) where they have established a joint cooperative investigative unit, responsible for the investigation of drug houses, street and mid-level narcotics trafficking, vice and other activities needing specialized personnel and equipment. This combined unit is the Special Investigations Unit (SIU) which is housed at MCSO and is comprised of an MCSO sergeant, four MCSO deputies, and one Gresham police officer. This successful collaboration was established 10 years ago.

The activities proposed in this grant will enhance ongoing narcotics enforcement activities by providing the interagency unit additional tools, through training and equipment, to develop effective strategies for disrupting and dismantling various local and out-of-state DTOs.

b) Applicants are expected to implement their proposed program in a collaborative context, and use written agreements that bind agencies. Applicants must include a Memorandum of Understanding specific to this RFA that clearly states the goals of the program, lists each of the entities involved, and describes the roles and responsibilities of each. An authorized official from each participating agency must sign the Memorandum of Understanding.

### 4. Evidence of Sustainability – *Limit response to 1 page*

a) Describe other resources that have been identified that will support the sustainability of this program once JAG funds end:

As Multnomah County funds are determined during each budget cycle, no new resources have been identified to support the sustainability of this program. The need for the continuation of this program would be emphasized by the Sheriff's Office during the appropriate budget cycle. If the performance measures for this program are successful, and it is determined that the program is worth sustaining through County general funds, funding would be sustained. The County Board of Commissioners, with input from the Citizen Involvement Committee, the Citizen Budget Advisory Committees, and the public, determine whether a program adds sufficient value to the county to be included in the budget.

## D. GOALS, OUTPUTS, PERFORMANCE MEASURES INSTRUCTIONS

Use the following instructions to complete the Goals, Outputs, and Performance Measures table.

- Select one or more of the six (6) Goals.
- Select one or more of the Program Outputs in each Goal. *An Applicant may add additional Program Outputs specific to local needs and program design.*
- For each Program Output indicate the **annual** Goal by entering a number (second year program output goals will be completed as part of the requalification process). For drug seizures, indicate amounts in kilograms or the appropriate dosage unit. The value of drug seizures will be calculated by Agency based on the U.S. Department of Justice *National Illicit Drug Prices* report.
- Select one or more Performance Measures in each Goal. *An Applicant may add additional Performance Measures specific to local needs and program design.*
- For each Performance Measure indicate the **annual** Goal by entering a number or percent (second year performance measures goals will be completed as part of the requalification process).

**GOAL 1:**

Reduce the number of drug trafficking organizations (DTO)

<b>1. PROGRAM OUTPUTS</b>	<b>GOALS</b>
a. Number of DTO investigations opened	28
d. Amount of meth seized	3000 grams
l. Number of weapons seized	20
m. Amount of cash seized	80,000
<b>2. ADDITIONAL LOCAL PROGRAM OUTPUTS</b>	<b>GOALS</b>
a. Number of computers seized	10
<b>3. PERFORMANCE MEASURES</b>	<b>GOALS</b>
a. Percent of DTOs disrupted or dismantled	50%
c. Number of investigations result in arrests	28
f. Value of assets forfeited	\$40,000

**GOAL 3:**

Reduce the domestic production of illicit drugs

<b>9. PROGRAM OUTPUTS</b>	<b>GOALS</b>
b. Number of clandestine drug labs identified	5
<b>11. PERFORMANCE MEASURES</b>	<b>GOALS</b>
c. Number of clandestine labs disrupted or dismantled	5

**GOAL 4:**

Protect children from the affects of exposure to drug-endangering environments

<b>13. PROGRAM OUTPUTS</b>	<b>GOALS</b>
a. Number of drug-endangered children (DEC) identified	10
b. Number of DEC cases referred to child services	10
<b>15. PERFORMANCE MEASURES</b>	<b>GOALS</b>
a. Number of DEC taken into protective custody	5

## E. BUDGET INSTRUCTIONS

Use the following instructions to complete the Budget section.

- To move through the fields on the budget pages click on the gray shaded areas or use the Tab Key. The narrative fields will automatically expand to accommodate the length of each response.
- The required amount of match funds should be calculated by dividing the requested grant amount by nine. For example, a grant request of \$75,000 would require match funds of \$8,333. The resulting total proposed budget of \$83,333 would represent 90% in grant funds and 10% in match funds. ***Applicants should not include match exceeding the 10% requirement in the Budget and Match Summary.***
- Budget and Match Summary: For the proposed 1<sup>st</sup> year budget, the grant funds and match funds for each expense category should be Grant Total and Match Total from the corresponding expense category in the Budget and Match Detail and Narrative section. For the Personnel expense category, add together the Grant Totals and Match Totals for Personnel (Line 1.a.) and Taxes and Benefits (Line 1.b.). For the estimated 2<sup>nd</sup> year budget, the grant funds and match funds for each expense category should be an estimation of the anticipated 2<sup>nd</sup> year expenses and match; it is *not* necessary to complete a Budget and Match Detail and Narrative for the 2<sup>nd</sup> year expenses and match (a Budget and Match Detail and Narrative for a 2<sup>nd</sup> year budget will be completed as part of the requalification process).
- Budget and Match Detail and Narrative: Read the instructions for each expense category carefully. Use the Narrative sections to explain how each expenditure is directly related to the activities described in the Program Narrative. Mark the “Supplemental budget included” box if Attachment D, Supplemental Budget, is used.
- Supplemental budget detail expense category pages are included as *Attachment D* if additional space is required for any of the budget detail expense categories (personnel, taxes and benefits, etc.). Check the “supplemental budget included” box to the far right of each budget detail expense category header if using the Supplemental Budget. The expense category budget totals in Parts Four and Five should include any additional expenses entered on a Supplemental Budget.
- Submit a Budget Summary for any proposed subaward or subcontractor, included as *Attachment C*.

## I. STATEMENT OF FINANCIAL VIABILITY

a) Briefly describe experience with, and current strategies for, ensuring that the Applicant conducts business in a fiscally responsible manner and will remain financially solvent through the proposed Agreement term:

The Multnomah County Sheriff's Office is governed by Local Budget Law, Chapter 294 of the Oregon Revised Statutes and follows Governmental accounting, governed by State statute and Generally Accepted Accounting Principles (GAAP). Furthermore, the modified accrual basis of accounting is used to record revenues and other financial resource increments, such as bon proceeds, and expenditures are recognized when they become susceptible to accrual, that is, when they become both measurable and available (collectible) to finance expenditures for the current period.



### 3. BUDGET AND MATCH DETAIL AND NARRATIVE

#### Line 1.a. Personnel.

 Supplemental budget included

Enter compensation paid to agency employees (indicate if rate of pay is hourly or monthly or an annual salary). Indicate in the C and N columns if the position is Current or New. If including pay for agency employees to attend training check box in Training column. Overtime must be specifically listed in order to be reimbursed (mark OT column). **List an employee twice if proposing both OT hours and regular hours (allowed only to attend training).** Compensation paid for agency employees engaged in grant activities must be consistent with that paid for similar work within the organization. If using volunteer time as match, include in this section. The value placed on volunteer services must be consistent with the rate of compensation paid for similar work in the organization or the labor market. Do not include subcontract or subaward costs in this section; these costs should be included in Line 5, Contractual Services. Do not include costs for administrative staff in this section; these costs should be included in Line 7, Administration.

Title of Position	Name of Employee (if available)	C	N	T	Rate of Pay	OT	Total Pay	Program FTE (%)	Total Program Amount
Sergeant	Ned Walls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$40.86/hr	<input type="checkbox"/>	\$84,989/yr	3.1%	\$2615
Sergeant	Ned Walls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$61.29/hr	<input checked="" type="checkbox"/>	OT	100 hrs	\$6129
Officer (Gresham PD)	Matt Galbreath	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$40.04/hr	<input checked="" type="checkbox"/>	OT	75 hrs	\$3003
Deputy	Kevin Jones	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$32.19/hr	<input type="checkbox"/>	\$66,955/yr	3.1%	\$2060
Deputy	Kevin Jones	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$48.29/hr	<input checked="" type="checkbox"/>	OT	75 hrs	\$3622
Deputy	Adam Swail	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$32.99/hr	<input type="checkbox"/>	\$68,619/yr	4.2%	\$2903
Deputy	Adam Swail	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$49.49/hr	<input checked="" type="checkbox"/>	OT	75 hrs	\$3712
Deputy	Tim Wonacott	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$32.99/hr	<input type="checkbox"/>	\$68,619/yr	3.1%	\$2111
Deputy	Tim Wonacott	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$49.49/hr	<input checked="" type="checkbox"/>	OT	75 hrs	\$3712
Deputy	Joshua Zwick	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$29.55/hr	<input type="checkbox"/>	\$61,464/yr	3.1%	\$1891
Deputy	Joshua Zwick	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$44.33/hr	<input checked="" type="checkbox"/>	OT	75 hrs	\$3325
TOTAL									\$35,083
GRANT TOTAL									\$25,948
MATCH TOTAL									\$9135

#### Line 1.b. Taxes and Benefits.

 Supplemental budget included

Include payroll taxes and fringe benefits for all personnel listed above and only for the percentage of time devoted to the program. Payroll taxes and fringe benefits for volunteers may be included. Fringe benefits on overtime hours are limited to benefits that increase incrementally when personnel work overtime (excludes fixed monthly benefits).

Title of Position	Total Payroll Cost (from previous table)	Tax % (FICA, FICA-Med, W/C, UI)	Benefits % (insurance, retirement, etc.)	Program Tax Cost	Program Benefit Cost	Total Cost (Taxes + Benefits)
Sergeant: Ned Walls	\$8744	10%	35%	\$866	\$3053	\$3919
Officer: Matt Galbreath (Gresham PD)	\$3003	10%	35%	\$297	\$1049	\$1346
Deputy: Kevin Jones	\$5682	10%	35%	\$563	\$1984	\$2547
Deputy: Adam Swail	\$6615	10%	35%	\$655	\$2310	\$2965
Deputy: Tim Wonacott	\$5823	10%	35%	\$576	\$2033	\$2610
Deputy: Joshua Zwick	\$5216	10%	35%	\$516	\$1821	\$2338

TOTAL	\$15,724
GRANT TOTAL	\$11,630
MATCH TOTAL	\$4094

**Personnel/Taxes and Benefits Narrative (explain the direct use to the program of the personnel listed):**

The personnel listed are the 6 members of SIU. They will all be involved in the investigations involved in the course of disrupting and dismantling DTO's. All members will be working overtime on this project throughout the course of the grant period. Members have also requested attendance at training courses to enhance their knowledge of how to best conduct their work.

**Line 2. Equipment.**

Supplemental budget included

Include tangible personal property costing over \$1,000 or having a useful life of more than one year.

Item Description	Quantity	Unit Price	Program Cost
Undercover vehicle with lights, siren and window tinting (year 1)	1	\$25,000	\$25,000
Nikon night vision photography system with pocket scope adaptor (year 1)	1	\$6645	\$6645
Pan Tilt Zoom wireless surveillance pole camera (year 1)	1	\$4000	\$4000
Surveillance vehicle with cameras, video system, platform, window tinting, alarm (year 2)	(1)	(\$50,280)	
TOTAL			\$35,645
GRANT TOTAL			\$32,081
MATCH TOTAL			\$3565

**Equipment Narrative (explain how these purchases will benefit the program exclusively):**

The surveillance equipment (pole camera, night vision camera, and surveillance vehicle) requested provides SIU the unique ability to monitor locations around-the-clock and remotely. This allows for increased coverage with reduced man hours and results in obtaining recorded evidence to be used to build cases for trial. A new undercover vehicle would increase officer safety in the course of undercover work during investigations.

**Line 3. Travel/Conferences/Training.**

Supplemental budget included

Include travel expenses for agency program personnel only, including local travel and travel expenses for meetings, conferences, and training. Include costs for mileage, lodging, per diem, motor pool fees, commercial transportation, parking fees, registration and material fees. Travel costs may not exceed the rates and conditions established in the State/Federal guidelines. All out-of-state travel must have prior Agency approval. Any subcontract or subaward travel costs should be included in Line 5, Contractual Services.

A. Local Travel (indicate purpose of travel; include meetings, conference, training, etc.)	# of miles	Mileage rate	Program Cost			
B. Conferences (indicate conference title)	# of people	# of nights	Lodging costs	Meals/ Per diem	Other costs	Program Cost
6 attendees for the Investigating Drug Trafficking Organizations (includes flight) (year 1)	6	5	\$105	\$64	\$857	\$10,593
1 attendee for the Working Dog Seminar (year 1)	1	3	\$70	\$39	\$285	\$651
6 attendees for the WSIN Information Sharing Conference (includes flight) (year 1)	6	3	\$114	\$59	\$681	\$7554
6 attendees for the Summer ONEA Conference (year 2)	(6)	(3)	(\$124)	(\$44)	(\$175)	
TOTAL						\$18,798
GRANT TOTAL						\$18,798

**Travel/Conferences/Training Narrative** (*explain how these expenses will benefit the program exclusively and describe other costs*):  
 Members of SIU would like to attend four training events over the two year grant period. All six members are requesting to attend the Drug Trafficking Organizations (2008) training, the WSIN Information Sharing conference (2009), and the ONEA summer conference (2009). These events would enhance the knowledge base of the investigators and provide them information to develop strategies for managing their work. One member, the canine handler, has requested attendance at the Working Dog Seminar to develop advanced techniques in narcotics field exercises (2008).

**Line 4. Supplies.**  Supplemental budget included

Include any supplies directly related to investigation or undercover operations items; supplies generally have a useful life of less than one year.

Item Description	Quantity	Unit Price	Program Cost

TOTAL	
GRANT TOTAL	
MATCH TOTAL	

**Supplies Narrative** (*explain how these purchases will benefit the program exclusively*):

**Line 5. Contractual Services.**  Supplemental budget included

Include all costs which are to be incurred as a result of a subaward or subcontract. Grantee must include a Budget Summary for all subcontractors. Prior to execution, Agency must approve all agreements entered into pursuant to this award that exceed \$100,000. Subaward made known at the time of Application may be considered approved if the activities are funded as proposed. All procurements must be made according to agency established procedures, provided they minimally adhere to applicable Federal and State guidelines. Solicitations of quotes from at least 3 sources are required for procurements between \$5,000 and \$100,000. Competitive bids must be used for procurement of contractual services over \$100,000. Sole source contracts require additional information and prior Agency approval. Contractor rates in excess of \$450 per 8-hour day require additional documentation and prior Agency approval. Check the appropriate column indicating type of award and use "# of hrs/days" and "Cost per hr/day" as appropriate.

Sub-Award	Three Quotes	Competitive Bid	Sole Source	Consultant Name/Organization Name	# of hrs/days	Cost per hr/day	Program Cost
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

TOTAL	
GRANT TOTAL	

MATCH TOTAL

Contractual Services Narrative (*explain how the specific services to be provided relate to the program exclusively*):

<b>Line 6. Rent and Utilities.</b>		<input type="checkbox"/> Supplemental budget included
Include any communication-related surveillance costs. <i>Expenses for use of office space and other facilities including rent, telephone, cellular phones/pagers, and other utilities are only allowed as match.</i>		
Item Description	Computation	Program Cost
TOTAL		
GRANT TOTAL		
MATCH TOTAL		

Rent and Utilities Narrative (*explain how these facilities and expenses will benefit the program exclusively*):

<b>Line 7. Administration.</b>		<input type="checkbox"/> Supplemental budget included
Include program-related costs such as accounting, program management, human resources, legal services, and payroll preparation. Administrative costs may not exceed 10% of the total proposed budget (Federal funds + 10% match).		
Item Description	Computation	Program Cost
SIU oversight and overall grant management - .05 FTE (120 hours/2 years) of a Captain	60*\$81.28/hr	\$4877
Grant fiscal management - .05 FTE (120 hours/2 years) of a Financial Specialist I	60*\$36.13/hr	\$2168
TOTAL		\$7045
GRANT TOTAL		\$7045
MATCH TOTAL		0

Administration Narrative (*explain how the administrative expenses will benefit the program directly*):  
 The SIU reports to a Captain. This Captain, Monte Reiser, also will ensure grant requirements are being met. The Finance Specialist I, Sharon Lowell, will be managing the fiscal side of the grant.



the Applicant responded to each of the requirements in Section II., B, C, D, and E. Evaluation Committee members will first assign Standard Points. Standard Points assigned by each Evaluation Committee member shall be added together and divided by the total number of Evaluation Committee members to compute an average score for the evaluation questions. ***The Application must receive a minimum average score of 70 percent (70%) of the possible summed total Standard Points to be considered for funding.*** The Evaluation Committee members will score Priority Points separately *after* determining that the Applicant has scored a minimum average 70% of the possible Standard Points.

The Evaluation Committee may request additional clarification from an Applicant for any portion of the Application. If an Application is unclear, Applicant may be asked to provide clarification. No new information or documentation may be submitted, however, and clarifications may not be used to rehabilitate a non-responsive Application. Applicants shall remain available during the evaluation period to respond to requests for additional clarification. Failure to provide clarification may result in a lower score.

**3. Ranking of Applications.** The Evaluation Committee will add together the total Standard Points and the total Priority Points awarded to each Application, calculate the total average score, and then rank each Application accordingly. After scoring, the geographical distribution of Applicants with the highest average scores may also be considered in the selection process.

**4. Recommendation.** The Evaluation Committee will forward scores and award recommendations to the Commissioners of the CJC, who will make final award decisions.

**5. Selection.** Agency shall notify every Applicant of its selection status by postal mail by the Award Notification date listed in Section I.G., Solicitation and Submission Process.

## **B. EVALUATION OF APPLICATION**

***The application must receive a minimum average score of 70 percent (70%) of the possible summed total Standard Points to be considered for funding.*** Priority Points will be awarded separately and added to Standard Points. The Evaluation Committee shall assign points to its evaluation of each Application as follows:

<u>Standard Points</u>	<u>Point Basis</u>
10	<i>Program Abstract:</i> In the space provided, Applicant provides a succinct summary of the purpose, goals; activities, and implementation plans of the program.
50	<i>Problem/Need Statement:</i> The Applicant describes the target area. The nature and extent of the problem. Relevant local facts, statistics, and illustrative data to substantiate the need. The Applicant demonstrates that funding will address the identified need.
40	<i>Description of Activities:</i> Proposed activities consistent with Problem/Need Statement. Activities demonstrate direct and lasting impact. As appropriate, specific training described, specific equipment purchases described, specific use of confidential funds described, specific purpose of overtime hours described, specific purpose of administrative costs described.
30	<i>Evidence of Collaboration:</i> Inclusion of Memorandum of Understanding (MOU). Collaboration includes local, state, and federal agencies. Comprehensive description of the roles and responsibilities of the entities signing the MOU.
40	<i>Goals, Outputs, and Performance Measures:</i> Selection of goals and outputs consistent with Problem / Need Statement. Performance Measures related to stated goals and outputs.
30	<i>Budget:</i> The Applicant demonstrates fiscal stability. Financial Statements are included. The accuracy and completeness of the budget. The inclusion of appropriate match.

Narrative explanation of how budgeted expenses will benefit the proposed program exclusively. Costs appear reasonable and allowable.

Priority Points  
(refer to Section I.B.)

Point Basis

- |   |  |
|---|--|
| 5 | Enhance current efforts.               |
| 5 | Target drug trafficking organizations. |
| 5 | Target mid-level traffickers.          |
| 5 | Rural jurisdiction.                    |

### C. AWARD NOTIFICATION

**1. Notification.** Following the identification of successful Applicant(s), Agency will notify Applicant(s) by postal mail on or before and request a signed Agreement in accordance with the form set forth as *Appendix A*.

**2. Negotiation.** Agency may negotiate the program performance measures and other components of the Application. In the event that mutually agreeable terms cannot be reached within a reasonable time period, as judged by Agency, then Agency reserves the right to cancel the award with the Applicant.

**3. Certifications.** The successful Applicant(s) must provide all required proofs of insurance within fourteen (14) calendar days of the award notification. Failure to provide the required documents within the fourteen (14) calendar-day period may result in Application rejection. Applicants are encouraged to consult their insurance agent(s) about the insurance requirements contained in the Agreement, included as *Appendix A*, prior to submission of the Application.

The successful Applicant(s) must submit a Certification of EEO Compliance within sixty (60) days of receipt of an award, included as *Appendix B*.

The successful Applicant(s) must submit an Audit Certification within sixty (60) days after the end of the Applicant's fiscal year, included as *Appendix C*.

## SECTION IV – Attachments and Appendices

Attachment A	Application Cover Sheet
Attachment B	Confidential Funds Certification
Attachment C	Subaward / Subcontractor Information and Budget Summary
Attachment D	Supplemental Budget
Appendix A	Grant Award Agreement
Appendix B	Certification of EEO Compliance
Appendix C	Audit Certification

## EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM APPLICATION COVER SHEET

<b>Criminal Justice Commission</b> 885 Summer Street NE Salem, Oregon 97301 (503) 378-4078 Fax: (503) 378-4861 <a href="mailto:jeanette.ewald@state.or.us">jeanette.ewald@state.or.us</a>			<b>Grant Program:</b>		<input checked="" type="checkbox"/> Law Enforcement Programs/Illicit Drugs			
			<b>Program Title:</b>		<input type="checkbox"/> Law Enforcement Programs/Gangs Disrupting the Manufacture, Distribution and Use of Illegal Drugs			
<b>Applicant:</b>		Multnomah County Sheriff's Office						
<b>Address:</b>		12240 NE Glisan						
<b>City:</b>		Portland	<b>Zip:</b>	97230	<b>Phone #:</b>	503-251-2304	<b>Fax #:</b>	503-251-2442
<b>Program Contact:</b>		Captain Monte Reiser			<b>Phone #:</b>	503-251-2515	<b>Fax #:</b>	503-251-2442
<b>Program Contact Email Address:</b>		monte.reiser@mcsso.us						
<b>Fiscal Contact:</b>		Sharon Lowell			<b>Phone #:</b>	503-988-4433	<b>Fax #:</b>	503-988-4317
<b>Fiscal Contact Email Address:</b>		sharon.lowell@mcsso.us						
<b>PROGRAM BUDGET</b>				<b>Proposed 1<sup>st</sup> Year</b>		<b>Estimated 2<sup>nd</sup> Year</b>		
<b>Total JAG Funds Requested:</b>				\$		\$		
<b>Total Match Funds:</b>				\$		\$		
<b>Total Program Funds (grant + match):</b>				\$		\$		
<p><b>Program Abstract (use only space provided):</b> Although the MCSO's Special Investigations Unit (SIU) has experienced declining methamphetamine labs over the past few years, the unit has uncovered methamphetamine, as well as other dangerous drugs, being trafficked to the County from outside the state. Reports indicate that some of these drug trafficking organizations (DTOs) may have origins in Mexico. These DTOs need to be disrupted and dismantled. MCSO's SIU has experience in locating the sources of various illegal drugs and intends to apply the successful investigative techniques to disrupt all types of DTOs.</p> <p>Funds from this grant will be used in the complete investigation of illegal drug cases. This includes utilizing buy money, personnel costs, equipment, and specialized training in order to build cases that result in the arrest and conviction of drug traffickers.</p> <p>The result of this program is an increased understanding of out-of-state drug traffickers and their operations, the development of methods for combating these organizations, the successful removal of these entities and their influences from the community, and prosecution of those involved.</p>								
<p><b>Certification:</b> The signatory of this Application Cover Sheet is a duly authorized representative of the Applicant, has been authorized by Applicant to make all representations, attestations, and certification contained in this RFA and all Addenda, if any issued, and to execute this Application document on behalf of Applicant. By signature below, the undersigned Authorized Official hereby certifies on behalf of Applicant that all contents of this Application Cover Sheet and the submitted Application are truthful, complete, and accurate. Failure to provide information required by the RFA may ultimately result in rejection of the Application.</p>								
<b>Administering Agency:</b>		Multnomah County Sheriff's Office			<b>Federal Tax ID #:</b>	93-6002309		
<b>Administering Agency Authorized Official:</b>		Chief Deputy Tim Moore						
<b>Signature of Administering Agency Authorized Official:</b>						<b>Date:</b>		

## CONFIDENTIAL FUNDS CERTIFICATION

Reimbursement for confidential funds incurred by programs funded by Edward Byrne Memorial Justice Assistance Grant Program (JAG) must meet the conditions for the use of confidential funds described in the most current edition of the *Financial Guide* (Chapter Eight) published by the Department of Justice, Office of Justice Programs, Office of the Comptroller. The *Financial Guide* may be obtained at [www.ojp.usdoj.gov/financialguide/index.htm](http://www.ojp.usdoj.gov/financialguide/index.htm).

The authorized official for the administering agency must sign and date this form as follows:

**This is to certify that I have read, understand, and agree to abide by all of the conditions for confidential funds set forth in the most current edition of the *Financial Guide*.**

**Program title:**

**Disrupting the Manufacture, Distribution and Use of Illegal Drugs**

**Authorized official for administering agency:**

**Chief Deputy Tim Moore**

**Signature of authorized official:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

<b>SUBAWARD/SUBCONTRACTOR INFORMATION</b>							
<b>Criminal Justice Commission</b> 885 Summer Street NE Salem, Oregon 97301 (503) 378-4078 Fax: (503) 378-4861 jeanette.ewald@state.or.us			Grant Program:		<input type="checkbox"/> Law Enforcement Programs/Illicit Drugs <input type="checkbox"/> Law Enforcement Programs/Gangs		
			Program Title:				
Subawardee/ Subcontractor:							
Address:							
City/State:		Zip:		Phone #:		Fax #:	
Authorized official for subaward:							
Signature of authorized official:						Date:	

<b>BUDGET SUMMARY</b>						
Expense Category	Proposed 1 <sup>st</sup> Year Budget			Estimated 2 <sup>nd</sup> Year Budget		
	Grant Funds	Match Funds	Total (Grant + Match)	Grant Funds	Match Funds	Total (Grant + Match)
1. Personnel/ Taxes/ Benefits						
2. Equipment						
3. Travel/ Conferences/ Training						
4. Supplies						
5. Contractual Services						
6. Rent/Utilities						
7. Administrative Costs						
8. Other						
<b>TOTAL</b>						
<i>*Round all figures to the nearest whole dollar</i>				%	%	%

**Identify sources and amount of match** (for cash match indicate if the source of match is earned Program Income by checking the box in the PI column)

Source of Match	Proposed 1 <sup>st</sup> Year Match			
	Cash	PI	In-kind	Total
		<input type="checkbox"/>		
<b>*Grand Total must equal Total Match funds in Budget Summary</b>				<b>GRAND TOTAL</b>



<b>Line 3. Travel/Conferences/Training.</b>								
A. Local Travel ( <i>indicate purpose of travel; include meetings, conference, training, etc.</i> )				# of miles	Mileage rate	Program Cost		
B. Conferences ( <i>indicate conference title</i> )			# of people	# of nights	Lodging costs	Meals/Per diem	Other costs	Program Cost
C. Grantee-sponsored training ( <i>indicate training topics</i> )			# of people	# of nights	Lodging costs	Meals/Per diem	Other costs	Program Cost

<b>Line 4. Supplies.</b>			
Item Description	Quantity	Unit Price	Program Cost

<b>Line 5. Contractual Services.</b>							
Sub-Award	Three Quotes	Competitive Bid	Sole Source	Consultant Name/Organization Name	# of hrs/days	Cost per hr/day	Program Cost
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

<b>Line 6. Rent/Utilities</b>		
Item Description	Computation	Program Cost



**OREGON STATE POLICE  
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM  
INTERGOVERNMENTAL GRANT AWARD AGREEMENT**

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PROGRAM NAME:

GRANT NO:

ADMINISTERING  
AGENCY:

GRANTEE:

FY 200X AWARD:

ADDRESS:

AWARD PERIOD:

PROGRAM CONTACT:

TELEPHONE:

FAX:

FISCAL CONTACT:

TELEPHONE:

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**BUDGET**

**REVENUE**

Federal Grant Funds  
Match Funds

**TOTAL REVENUE:**

**EXPENDITURES**

Personnel  
Equipment  
Travel/Conferences/Training  
Supplies  
Contractual Services  
Rent and Utilities  
Administrative Costs  
Other

**TOTAL EXPENDITURES:**

## GRANT AWARD PROVISIONS

## I. Provisions of Award

- A. Agreement Parties. This Intergovernmental Agreement, hereafter referred to as Agreement, is between the State of Oregon, acting by and through its Department of Oregon State Police, hereafter called OSP, and the forenamed Grantee.
- B. Effective Date and Duration. This Agreement shall become effective on the date this Agreement has been fully executed by every party. Unless extended or terminated earlier in accordance with its terms, this Agreement shall terminate when OSP accepts Grantee's completed performance or on <DATE>, whichever date occurs last. Agreement termination shall not extinguish or prejudice OSP's right to enforce this Agreement with respect to any default by Grantee that has not been cured.
- C. Grant Award and Performance Measures. In accordance with the terms and conditions of this Agreement, Grantee shall implement the Edward Byrne Memorial Justice Assistance Grant Program ("JAG") as described in the Program Narrative and the Goals, Outputs, and Performance Measures of Grantee's JAG Grant Application (the "Program") and accomplish Program activities and performance measures as stipulated in the agreed upon progress report.
- D. Agreement Documents. This Agreement consists of the following documents, and any other document referenced, which are listed in descending order of precedence: this Agreement, grant application, *Grant Management Handbook*, progress report, Monitoring Policy and Procedures, Audit Certification, Certification of EEO Compliance, and Confidential Funds Certification (as required).
- E. Source of Funds. Payment for the Program will be from the Federal Edward Byrne Memorial Justice Assistance Grant (JAG) funds, CFDA #16.738.
- F. Merger Clause; Waiver. This Agreement and referenced documents 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 shall bind all parties unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall 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 shall not constitute a waiver by either party of that or any other provision.

## TERMS AND CONDITIONS

## II. Conditions of Award

- A. The Grantee agrees to operate the Program as described in Grantee's application and to expend funds only in accordance with the approved budget unless the Grantee receives prior written approval by OSP to modify the Program or budget. **Grantee agrees to cooperate with OSP to negotiate, if necessary, progress report activity goals and performance measures for the Grantee and any contractual services.** OSP may withhold funds for any expenditure not within the approved budget or in excess of amounts approved by OSP. Failure of the Grantee to operate the Program in accordance with the written agreed upon objectives contained in the grant application, progress report, and budget will be grounds for immediate suspension or termination, or both, of the grant Agreement pursuant to Section IV of this Agreement.
- B. Funds Available and Authorized; Payments. Grantee shall not be compensated for work performed under this Agreement by any other agency or department of the State of Oregon. OSP certifies that it has sufficient funds currently authorized for expenditure to finance costs of this Agreement within OSP's current biennial appropriation or limitation. Grantee understands and agrees that OSP's payment of amounts under this Agreement is contingent on OSP receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow OSP, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
- C. The Grantee agrees that all public statements referring to the Program must state that funds for this Program come from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, and must state the percent or dollar amount of federal funds used in the Program.
- D. Maintenance, Retention and Access to Records; Audits.
1. Maintenance and Retention of Records. The Grantee agrees to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and the standards of the Office of the Chief Financial Officer set forth in the most recent version of the Office of Justice Programs (OJP) Financial Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A-87, A-102, A-110, A-122, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this grant or agreements under this grant shall be retained by the Grantee for a minimum of five years following termination or expiration of this Agreement for purposes of State of Oregon or Federal examination and audit provided, however, that if there is any audit issue, dispute, claim or litigation relating to this Agreement or the Award, Grantee shall retain and keep accessible the books of account and records until the audit issue, dispute, claim or litigation has been finally concluded or resolved. It is the responsibility of the Grantee to obtain a copy of the OJP Financial Guide from the Office of the Chief Financial Officer available at: <http://www.ojp.usdoj.gov/financialguide/index.htm>; and apprise itself of all rules and regulations set forth.
  2. Access to Records. OSP, Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office (GAO) or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Grantee and any contractors or subcontractors of Grantee, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts. The right of access is not limited to the required retention period but shall last as long as the records are retained.
  3. Audits. If Grantee *expends* \$500,000 or more in Federal funds (from all sources) in its fiscal year, Grantee shall have a single organization-wide audit conducted in accordance with the provisions of OMB Circular A-133. Copies of all audits must be submitted to OSP within 30 days of completion. If Grantee *expends* less than \$500,000 in its fiscal year in Federal funds, Grantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section II.D.2. (Access to Records) herein.
  4. Audit Costs. Audit costs for audits not required in accordance with OMB Circular A-133 are unallowable. If Grantee did not *expend* \$500,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to this grant.

E. Funding.

3. Matching Funds. **The Grantee acknowledges by accepting grant funds that all reported match is in the form of a cash match or in-kind and not other Federal funds.** The Grantee acknowledges that all rules that apply to grant funds apply to match funds. Grant and match funds must be used only for the Program funded by the source referenced in I.E. (Source of Funds) during the grant period to support the goals, objectives and activities as identified in the grant application and reporting document. Match funds cannot be used to support activities that are not concurrently supported by these grant funds. The Grantee certifies that match funds required to pay the non-Federal portion of the Program shall be in addition to funds that would otherwise be made available to fund programs within the previously referenced grant guidelines.
4. Supplanting. The Grantee certifies that Federal funds will not be used to supplant State or local funds, but will be used to increase the amount of funds that, in the absence of Federal aid, would be made available to the Grantee to fund programs consistent with grant guidelines referenced in I.E. (Source of Funds).

F. Reports. **Failure of the Grantee to submit the required financial, program or audit reports, or to resolve financial, program, or audit issues may result in the suspension of grant payments or termination of the grant Agreement.**

1. Progress Reports. The Grantee agrees to submit a report each quarter on its progress in meeting each of its agreed upon goals and objectives and comprehensive evaluation plan. Progress reports must include data on performance measures as required by the Bureau of Justice Assistance. Reports must be received no later than <DATES>. **Any progress report that is outstanding for more than one month past the due date may cause the suspension or termination of the grant.** Grantee must receive prior approval from OSP to extend a progress report requirement past its due date.
2. Financial Reimbursement Reports.
  - a. In order to receive reimbursement, the Grantee agrees to submit to OSP(c/o CJC), 885 Summer Street NE, Salem, Oregon 97301, the original signed Request for Reimbursement (RFR) which includes **supporting documentation for all grant and match expenditures.** RFRs must be received no later than <DATES>. Reimbursements for expenses will be withheld if progress reports are not submitted by the specified dates or are incomplete. **Any RFR that is outstanding for more than one month past the due date may cause the suspension or termination of the grant.** Grantee must receive prior approval from OSP to extend an RFR requirement past its due date.
  - b. Reimbursement rates for travel expenses shall not exceed those allowed by the Federal travel policy. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the times, dates, and places of travel, and the actual expenses or authorized rates incurred.
  - c. When requesting reimbursement for equipment costing over \$5,000, the Grantee agrees to provide a description of the equipment, purchase price, date of purchase, and identifying numbers if any.
  - d. Reimbursements will only be made for actual expenses incurred during the grant period. The Grantee agrees that no grant funds may be used for expenses incurred before <DATES>.
3. Procurement Standards
  - a. Grantee shall follow the same policies and procedures it uses for procurement from its non-Federal funds. Grantees shall use their own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law and standards.
  - b. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. Justification must be provided to OSP for any non-competitive or sole-source procurement. Justification should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other

pertinent information. All sole source procurements in excess of \$100,000 must receive prior written approval from OSP in addition to any other approvals required by law applicable to Grantee. Interagency agreements between units of government are excluded from this requirement to obtain OSP approval of sole source procurements.

- c. The Grantee shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OSP.

4. Audit Reports. Grantee shall provide OSP copies of all audit reports pertaining to this Agreement obtained by Grantee, whether or not the audit is required by OMB Circular A-133.

G. Monitoring.

1. OSP is responsible for monitoring and reviewing the activities of Grantee to ensure that all services provided by Grantee under this Agreement conform to State and Federal standards and other performance requirements specified in the Agreement. After reasonable notice and as often as OSP may deem necessary during the grant award period, OSP may perform program and fiscal monitoring.
2. Grantee shall provide for program and fiscal reviews, including meetings with consumers, subcontractors, and evaluators, review of service and fiscal records, policies, and procedures, staffing patterns, job descriptions, and meetings with any staff and stakeholders directly or indirectly involved in the performance of this Agreements, when requested to do so by OSP for purpose of monitoring pursuant to the Monitoring Policy and Procedures.

H. Ownership of Work Product.

1. Definitions. As used in this Section, and elsewhere in this Agreement, the following terms have the meanings set forth below:
  - a. "Grantee Intellectual Property" means any intellectual property owned by Grantee and developed independently from the Program.
  - b. "Third Party Intellectual Property" means any intellectual property owned by parties other than OSP or Grantee.
  - c. "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Grantee is required to deliver to OSP pursuant to the Program.
2. Original Works. All Work Product created by Grantee pursuant to the Program performed under this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of OSP. OSP and Grantee agree that such original works of authorship are "work made for hire" of which OSP is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Program is not "work made for hire," Grantee hereby irrevocably assigns to OSP any and all of its rights, title, and interest in all original Work Product created pursuant to the Program, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon OSP's reasonable request, Grantee shall execute such further documents and instruments necessary to fully vest such rights in OSP. Grantee forever waives any and all rights relating to original Work Product created pursuant to the Program, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

In the event that Work Product created by Grantee under this Agreement is a derivative work based on Grantee Intellectual Property, or is a compilation that includes Grantee Intellectual Property, Grantee hereby grants to OSP an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements

of the Grantee Intellectual Property employed in the Work Product, and to authorize others to do the same on OSP's behalf.

In the event that Work Product created by Grantee under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Grantee shall secure on the OSP's behalf and in the name of OSP an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on OSP's behalf.

3. Grantee Intellectual Property. In the event that Work Product is Grantee Intellectual Property Grantee hereby grants to OSP an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Grantee Intellectual Property, and to authorize others to do the same on OSP's behalf.
4. Third Party Works. In the event that Work Product is Third Party Intellectual Property, Grantee shall secure on the OSP's behalf and in the name of OSP, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on OSP's behalf.

#### I. Indemnity.

1. General Indemnity. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort claims Act, ORS 30.260 through 30.300, to the extent the Act is applicable, Grantee shall defend, save, hold harmless, and indemnify within the limits and subject to the restrictions of the Oregon Tort Claims Act, if applicable, the State of Oregon and OSP and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subgrantees, or agents under this Agreement, except for liability arising solely out of the wrongful acts of employees or agents of the State of Oregon or OSP.
2. To the extent permitted by Article XI, Section 7, or the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, to the extent the Act is applicable, State and OSP shall defend, save, hold harmless, and indemnify within the limits and subject to the restrictions of the Oregon Tort Claims Act, if applicable, Grantee and its officers, employees and agents against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney fees, resulting from, arising out of, or relating to the activities of the State of Oregon and OSP or its officers, employees, or agents under this contract, except for liability arising solely out of the wrongful acts of employees or agents of Grantee.
3. Indemnity for Infringement Claims. Without limiting the generality of the previous section, Grantee expressly agrees to defend, indemnify, and hold OSP, the State of Oregon and their agencies, subdivisions, officers, directors, agents, and employees harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys fees, and damages arising out of or related to any claims that the work, the work product or any other tangible or intangible items delivered to OSP by Grantee that may be the subject of protection under any state or Federal intellectual property law or doctrine, or the OSP's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that State of Oregon shall provide Grantee with prompt written notice of any infringement claim.
4. Control of Defense and Settlement. The Indemnitor shall have control of the defense and settlement of any claim that is subject to the previous sections; however, neither Grantee nor any attorney engaged by Grantee shall defend a claim in the name of the State of Oregon or any OSP of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon, nor shall Grantee settle any claim on behalf of the State of Oregon without the approval of the Attorney General. An indemnitee under this Section II.I. may, at its election and expense, assume its own defense and settlement in the event that the indemnitee determines that the indemnitor is prohibited

from defending the indemnitee, or is not adequately defending the indemnitee's interests, or that an important governmental principle is at issue and the indemnitee desires to assume its own defense.

J. Insurance.

1. Workers' Compensation. All employers, including Grantee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Grantee shall require and ensure that each of its subcontractors complies with these requirements.
2. Professional Liability Insurance. Grantee shall obtain and maintain in effect with respect to all occurrences taking place during the period from the effective date of this Agreement through the termination of this Agreement, professional liability insurance covering professional liability arising from the conduct and implementation of the Program, from an insurance company authorized to do business in the State of Oregon. Coverage limits shall not be less than \$500,000 combined single limit per occurrence.
3. Comprehensive or Commercial General Liability Insurance. Grantee shall obtain and maintain in effect with respect to all occurrences taking place during the period from the effective date of this Agreement through the termination of this Agreement, comprehensive or commercial general liability insurance covering personal injury and property damage arising from the conduct and implementation of the Program (including contractual liability coverage for the indemnity provided in this Agreement) from an insurance company authorized to do business in the State of Oregon. Coverage limits shall not be less than \$500,000 combined single limit per occurrence.
4. Automobile Liability Insurance. If in the conduct and implementation of the Program, Grantee provides transportation for and/or transports individuals in automobiles, Grantee shall obtain and maintain in effect with respect to all occurrences taking place during the period from the effective date of this Agreement through the termination of this Agreement, automobile liability insurance with a combined single limit, or the equivalent, of not less than \$500,000 each accident for bodily injury and property damage, including coverage for owned, hired or non-owned vehicles, as applicable.
5. Notice of Cancellation or Change. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Grantee or its insurer(s) to Oregon State Police, Criminal Justice Services.
6. Certificates of Insurance. As evidence of the insurance coverages required by this Agreement, and prior to the execution of this Agreement, Grantee shall furnish certificate(s) of insurance to Oregon State Police, Criminal Justice Services. Automobile Liability and Commercial General Liability insurance coverage required by this section must name the State of Oregon, Oregon State Police, Criminal Justice Services, including its officers and employees as Additional Insureds but only with respect to acts or omissions of the Grantee, its officers, employees or agents under this Agreement or in the conduct or implementation of the Program to be provided under this Agreement. The Grantee shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

K. No Implied Waiver, Cumulative Remedies. The failure of either party to exercise, and any delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

L. Governing Law, Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a Circuit Court for the State of Oregon of proper jurisdiction; provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. **The parties By Execution Of This Agreement, Hereby Consent To The In Personam Jurisdiction Of Said Courts.** Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment

- to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any other court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
- M. Time is of the Essence. Grantee agrees that time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
- N. Notices. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same by registered or certified mail, postage prepaid to Grantee or OSP at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipients' email system. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- O. Subcontracts, Successors and Assignments.
1. Grantee shall not enter into any subcontracts for any of the Program activities required by this Agreement without OSP's prior written consent. Grantee shall require any subcontractors to comply in writing with the terms and conditions of this Agreement and provide the same assurances as the Grantee must in its use of Federal funds. OSP's consent to any subcontract shall not relieve Grantee of any of its duties or obligations under this Agreement.
  2. This Agreement shall be binding upon and inure to the benefit of OSP, Grantee, and their respective successors and assigns, if any.
  3. Grantee may not assign, delegate, or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of OSP.
  4. The parties acknowledge and agree that if the Oregon Legislative Assembly transfers the functions of OSP to another agency, this agreement shall be assigned to that successor agency.
- P. No Third Party Beneficiaries. OSP and Grantee are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- Q. Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section II.D. (Maintenance, Retention and Access to Records; Audits); Section II.F. (Reports); and Section III.I. (Indemnity).
- R. Severability. 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 this Agreement did not contain the particular term or provision held to be invalid.
- S. Relationship of Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Agreement.

T. Recovery of Funds.

1. **Recovery of Overpayments.** Grantee shall be accountable for and shall repay any overpayment or any amounts resulting from any breach of this Agreement that results in a debt owed to the Federal Government. OSP may apply interest, penalties, and administrative costs to a delinquent debt owed by a debtor pursuant to the Federal Claims Collection Standards and OMB Circular A-129. The parties agree to go through the process provided in Section IV.B. before Grantee is required to make any payment under this paragraph.
2. **Recovery of Unexpended Funds.** Any grant funds disbursed to Grantee that remain unexpended on the termination of this Agreement ("Unexpended Funds") must be returned to OSP. Grantee may, at its option, satisfy its obligation to return Unexpended Funds under this Section by paying to OSP the amount of Unexpended Funds or permitting OSP to recover the amount of the Unexpended Funds from future payments to Grantee from OSP. If Grantee fails to return the amount of the Unexpended Funds within fifteen (15) days after the date this Agreement is terminated, Grantee shall be deemed to have elected the deduction option and OSP may deduct the amount demanded from any future payment from OSP to Grantee, including but not limited to, any payment to Grantee from OSP under this Agreement and any payment to Grantee from OSP under any contract or agreement, present or future, between OSP and Grantee. If no such contracts or agreements are in effect and no future contracts or agreements between Grantee and OSP are contemplated by OSP 15 days after the date this Agreement is terminated, Grantee shall return the Unexpended Funds to OSP.
3. **Recovery of Misexpended Funds.** If OSP alleges that Grantee expended funds in violation or contravention of this Agreement, OSP and Grantee shall enter into nonbinding discussions under Section IV.B. within 15 days of OSP's notice to Grantee of the allegation, with such discussions to be concluded within 45 days of OSP's notice to Grantee. If the parties determine that funds were in fact expended in violation or contravention of this Agreement ("Misexpended Funds") then the Misexpended Funds shall be replaced by Grantee within 15 days of that determination, unless OSP agrees to another time or method of repayment. If the parties do not agree on the amount of Misexpended Funds, OSP may recover the amount determined by OSP to be Misexpended Funds from any future payment from OSP to Grantee, including, but not limited to, any payment to Grantee from OSP under this agreement and any payment to Grantee from OSP under any contract or agreement, present or future, between OSP and Grantee. If no such contracts or agreements are in effect and no future contracts or agreements between Grantee and OSP are contemplated by OSP 15 days after the date of the determination of Misexpended Funds, Grantee shall return the Misexpended Funds to OSP.

- U. Amendments. OSP may agree to amend this to the extent permitted by applicable statutes and administrative rules. No amendment to this Agreement shall be effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained before becoming effective.

### III. **Grantee Compliance and Certifications**

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Grantee certifies by accepting grant funds that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency. (This certification is required by regulations published May 26, 1988, implementing Executive Order 12549, Debarment and Suspension, 28 CFR Part 69 and 28 CFR Part 67.)
- B. Compliance with Applicable Law. The Grantee agrees to comply with all applicable laws, regulations, and guidelines as written or as amended, of the State of Oregon, the Federal Government and OSP in the performance of this Agreement. Without limiting the generality of the foregoing, Grantee agrees to comply with all laws, rules and guidelines set forth in the most recent version of the *Grant Management Handbook* published by OSP, including but not limited to:
  1. The provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Non-Discrimination/Equal Employment Opportunity Policies and Procedures; Part 46, Protection of Human Subjects; Part 61, Procedures for Implementing the National Environmental

Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures, and Federal laws or regulations applicable to Federal assistance programs.

2. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646).
3. Section 102(a) of the Flood Disaster Protection Act of 1973, P.L. 93-234, 87 Stat.97, approved December 31, 1976.
4. Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569a-1 et seq.)
5. National Environmental Policy Act of 1969, 42 USC 4321 et seq.
6. Flood Disaster Protection Act of 1973, 42 USC 4001 et seq.
7. Clean Air Act, 42 USC 7401 et seq.
8. Clean Water Act, 33 USC 1368 et seq.
9. Federal Water Pollution Control Act of 1948, as amended, 33 USC 1251 et seq.
10. Safe Drinking Water Act of 1974, 42 USC 300f et seq.
11. Endangered Species Act of 1973, 16 USC 1531 et seq.
12. Wild and Scenic Rivers Act of 1968, as amended, 16 USC 1271 et seq.
13. Historical and Archeological Data Preservation Act of 1960, as amended, 16 USC 469 et seq.
14. Coastal Zone Management Act of 1972, 16 USC 1451 et seq.
15. Coastal Barrier Resources Act of 1982, 16 USC 3501 et seq.
16. Indian Self-Determination Act, 25 USC 450f.
17. Hatch Political Activity Act of 1940, as amended, 5 USC 1501 et seq.
18. Animal Welfare Act of 1970, 7 USC 2131 et seq.
19. Demonstration Cities and Metropolitan Development Act of 1966, 42 USC 3301 et seq.
20. Federal Fair Labor Standards Act of 1938 (as appropriate), as amended, 29 USC 201 et seq.

C. Standard Assurances and Certifications Regarding Lobbying.

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or any employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Grantee agrees to complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans, and cooperative agreements) and that all subgrantees will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

D. Certification of Non-discrimination.

1. The Grantee, and all its contractors and subcontractors, certifies that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under this Agreement on the basis of race, color, age, religion, national origin, handicap, or gender. The Grantee, and all its contractors and subcontractors, assures compliance with the following laws:
  - a. Non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended;
  - b. Title IV of the Civil Rights Act of 1964, as amended;
  - c. Section 504 of the Rehabilitation Act of 1973, as amended;
  - d. Title II of the Americans with Disabilities Act (ADA) of 1990;
  - e. Title IX of the Education Amendments of 1972;
  - f. The Age Discrimination Act of 1975;
  - g. The Department of Justice Nondiscrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G; and
  - h. The Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.
2. In the event that a Federal or State court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, age, religion, national origin, handicap or gender against the Grantee or any of its contractors or subcontractors, the Grantee or any of its contractors or subcontractors will forward a copy of the finding to OSP. OSP will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

E. Civil Rights Compliance.

1. All recipients of federal grant funds are required, and Grantee agrees, to comply with nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq. (prohibiting discrimination in programs or activities on the basis of race, color, and national origin); Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §3789d(c)(1) (prohibiting discrimination in employment practices or in programs and activities on the basis of race, color, religion, national origin, and gender); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination in employment practices or in programs and activities on the basis of disability); Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 (prohibiting discrimination in services, programs, and activities on the basis of disability); The Age Discrimination Act of 1975, 42 U.S.C. § 6101-07 (prohibiting discrimination in programs and activities on the basis of age); and Title IX of the Education Amendments of 1972, 20 U.S.C § 1681 et seq. (prohibiting discrimination in educational programs or activities on the basis of gender).
2. Services to Limited-English-Proficient (LEP) Persons.  
National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including interpretation and translation services, where necessary. Grantees are encouraged to consider the need for language services for LEP persons served or encountered both in developing their proposals and budgets and in conducting their programs and activities. Reasonable costs associated with providing meaningful access for LEP individuals are considered allowable program costs. The U.S. Department of Justice has issued guidance for grantees to assist them in complying with Title VI requirements. The guidance document can be accessed on the Internet at [www.lep.gov](http://www.lep.gov).

- F. Equal Employment Opportunity Plan (EEOEOP). If the Grantee, or any of its contractors or subcontractors, has 50 or more employees, is receiving more than \$25,000 pursuant to this Agreement, and has a service population with a minority representation of three percent or more, the Grantee, or any of its contractors or

subcontractors, agrees to formulate, implement and maintain an EEOP relating to employment practices affecting minority persons and women. If the Grantee, or any of its contractors or subcontractors, has 50 or more employees, is receiving more than \$25,000 pursuant to this Agreement, and has a service population with a minority representation of less than three percent, the Grantee or any of its contractors or subcontractors, agrees to formulate, implement and maintain an EEOP relating to its practices affecting women. The Grantee, and any of its contractors and subcontractors, certifies that an EEOP as required by this section will be in effect on or before the effective date of this Agreement. Any Grantee, and any of its contractors or subcontractors, receiving more than \$500,000, either through this Agreement or in aggregate Federal grant funds in any fiscal year, shall in addition submit a copy of its EEOP at the same time as the application submission, with the understanding that the application for funds may not be awarded prior to approval of the Grantee's, or any of its contractors or subcontractors, EEOP by the Office for Civil Rights, Office of Justice Programs, Bureau of Justice Assistance.

If required to formulate an EEOP, the Grantee must maintain a current copy on file which meets the applicable requirements.

G. National Environmental Policy Act (NEPA); Special Condition for U.S. Department of Justice Grant Programs.

1. Prior to obligating grant funds, Grantee agrees to first determine if any of the following activities will be related to the use of the grant funds. Grantee understands that this special condition applies to its following new activities whether or not they are being specifically funded with these grant funds. That is, as long as the activity is being conducted by the Grantee, a contractor, subcontractor or any third party and the activity needs to be undertaken in order to use these grant funds, this special condition must first be met. The activities covered by this special condition are:
  - a. new construction;
  - b. minor renovation or remodeling of a property either (a) listed on or eligible for listing on the National Register of Historic Places or (b) located within a 100-year floodplain;
  - c. a renovation, lease, or any other proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size; and
  - d. implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or educational environments.
2. Application of This Special Condition to Grantee's Existing Programs or Activities: For any of the Grantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, the Grantee, upon specific request from the Bureau of Justice Assistance, agrees to cooperate with the Bureau of Justice Assistance in any preparation by the Bureau of Justice Assistance of a national or program environmental assessment of that funded program or activity.

H. Certification Regarding Drug Free Workplace Requirements. Grantee certifies that it will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing a drug-free awareness program to inform employees about:
  - a. The dangers of drug abuse in the workplace;
  - b. The Grantee's policy of maintaining a drug-free workplace;
  - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
  - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

3. Requiring that each employee engaged in the performance of the grant be given a copy of the employer's statement required by paragraph (1).
4. Notifying the employee that, as a condition of employment under the award, the employee will:
  - a. Abide by the terms of the statement; and
  - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction.
5. Notifying the Grantee within ten days after receiving notice from an employee or otherwise receiving actual notice of such conviction.
6. Taking one of the following actions, within 30 days of receiving notice, with respect to any employee who is so convicted:
  - a. Taking appropriate personnel action against such an employee, up to and including termination; or
  - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace.

#### IV. Default, Remedies, Termination

##### A. Default by Grantee. Grantee shall be in default of this Agreement if:

1. Grantee fails to comply substantially with the requirements or statutory objectives of the grant guidelines referenced in I.E. (Source of Funds) or other provisions of Federal law.
2. Grantee fails to have Program operational within 90 days of the award period start date.
3. Grantee fails to make satisfactory progress toward the goals and objectives and comprehensive evaluation plan set forth in the application or the progress report.
4. Grantee fails to adhere to the requirements and the terms and conditions of the grant award.
5. Grantee proposes or implements substantial plan changes to the extent that, if originally submitted, the application would not have been selected.
6. Grantee fails to submit the required financial, program or audit reports, or to respond to monitoring reports, or to resolve financial, program, or audit issues.
7. Grantee institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis.
8. Grantee fails to comply substantially with any other applicable Federal or State statute, regulation, or guideline.

##### B. Default by OSP. OSP shall be in default of this Agreement if:

1. OSP fails to pay Grantee any amount pursuant to the terms of this Agreement, and OSP fails to cure such failure within 30 days after Grantee's notice or such longer period as Grantee may specify in such notice; or
2. OSP commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within 30 days after Grantee's notice or such longer period as Grantee may specify in such notice.

C. Remedies upon Default. Notwithstanding any other term or provision in this Agreement, OSP will provide reasonable notice to the Grantee if OSP believes Grantee is or may be in default and will attempt to resolve the problem informally. The parties shall engage in nonbinding discussions to give Grantee an opportunity to present reasons why it believes it is not in default or that the default is not material and give OSP an opportunity to withdraw its notice. The parties may also negotiate an appropriate resolution of the default, including without limitation the amount of any Misexpended Funds. If Grantee does not cure any default within 30 days of written notice thereof to Grantee from OSP or such longer period as OSP may authorize in its sole discretion, OSP may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to withholding of reimbursement, termination or suspension of this Agreement, return of all or a portion of the grant funds, payment of interest earned on the grant funds, declaration of ineligibility for the receipt of future grant awards from OSP, and damages to OSP. If, as a result of Grantee's default, OSP demands return of all or a portion of the grant funds or payment of interest earned on the grant funds, Grantee shall pay the amount upon OSP's demand after the process described in this Section.

D. Termination.

1. OSP Termination. OSP may terminate this Agreement:

- a. Immediately upon written notice to Grantee, if OSP does not obtain sufficient funding, appropriation, limitations, allotments or other expenditure authority to allow OSP to meet its payment obligations under this Agreement.
- b. Immediately upon written notice to Grantee if state or Federal laws, regulations or guidelines are modified, changed or interpreted in such a way that the OSP does not have the authority to provide grant funds for the Program or no longer has the authority to provide the grant funds from the planned funding source.
- c. Upon 30 days advance written notice to Grantee, if Grantee is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as OSP may specify in the notice.
- d. Immediately upon written notice to Grantee, if any license or certificate required by law or regulation to be held by Grantee to implement the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that Grantee no longer meets requirements to operate the Program.
- e. Immediately upon written notice to Grantee, if OSP determines that there is a threat to the health, safety or welfare of any individual receiving Services as part of the Program.

2. Grantee Termination. Grantee may terminate this Agreement:

- a. Upon 30 days advance written notice to OSP, if Grantee is unable to continue implementation of the Project as a result of circumstances not reasonably anticipated by Grantee at the time it executed this Agreement and that are beyond Grantee's reasonable control. If Grantee terminates this Agreement under this Section, OSP may end all further disbursements of grant funds upon receipt of Grantee's termination notice but Grantee shall not be required to repay to OSP any grant funds previously disbursed to and expended by Grantee in accordance with the terms and conditions of this Agreement.
- b. OSP fails to pay Grantee any amount pursuant to the terms of this Agreement, and OSP fails to cure such failure within 30 days after Grantee's notice or such longer period as Grantee may specify in such notice.
- c. OSP commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and OSP fails to cure such failure within 30 days after Grantee's notice or such longer period as Grantee may specify in such notice.

3. Effect of Termination. Upon termination of this Agreement, OSP shall have no further obligation to disburse grant moneys to Grantee, whether or not the entire grant has been disbursed to Grantee, and Grantee's authority to expend previously disbursed grant funds shall end. Termination of this Agreement shall not affect Grantee's obligations under this Agreement or OSP's right to enforce this Agreement against Grantee in accordance with its terms, with respect to grant funds actually received by Grantee under this Agreement, or with respect to portions of the Work actually implemented. Specifically, but without limiting the generality of the preceding sentence, termination of this Agreement shall not affect Grantee's representations and warranties, reporting obligations, record-keeping and access obligations, obligation to comply with applicable law, the restrictions and limitations on Grantee's expenditure of grant funds actually received by Grantee hereunder, Grantee's indemnification obligations, Grantee's obligations related to Work Product, Grantee's obligation to repay any overpayment of grant funds or OSP's right to recover any grant funds from Grantee in accordance with the terms of this Agreement.
4. Return of Property. Upon termination of this Agreement for any reason whatsoever, Grantee shall immediately deliver to OSP all OSP property (including without limitation any Work or Work Products for which OSP has made payment in whole or in part) that is in the possession or under the control of Grantee in whatever stage of development and form of recordation such OSP property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Grantee shall immediately cease all activities under this Agreement, unless OSP expressly directs otherwise in such notice of termination. Upon OSP request, Grantee shall surrender to anyone OSP designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

#### V. Representations and Warranties

Grantee represents and warrants to OSP as follows:

- A. Existence and Power. Grantee is a political subdivision of the State of Oregon. Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
- B. Authority, No Contravention. The making and performance by Grantee of this Agreement (a) have been duly authorized by all necessary action of Grantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Grantee's articles of incorporation or bylaws and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties are bound or affected.
- C. Binding Obligation. This Agreement has been duly authorized, executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.
- D. Approvals. No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

The Administering Agency, by signature of its authorized official, hereby acknowledges that he/she has read this Agreement, understands it, agrees to be bound by its terms and conditions (including all references to other documents) and is authorized by Grantee to execute this Agreement on Grantee's behalf. Failure to comply with this Agreement and with applicable State and Federal rules and guidelines may result in the withholding of reimbursement, the termination or suspension of the Agreement, denial of future grants, and damages to OSP.

**Approved by Administering Agency**

\_\_\_\_\_  
Signature of Authorized Administering Agency Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Federal Tax ID Number

\_\_\_\_\_  
State Tax ID Number

**Approved by Oregon State Police**

\_\_\_\_\_  
Ramona Rodamaker, Administrative Services Director  
Oregon State Police  
255 Capitol Street NE  
Salem, OR 97310  
(503) 378-2020 ext. 545

\_\_\_\_\_  
Date

**Approved for Legal Sufficiency**

(Required for Agreements in excess of \$100,000)

\_\_\_\_\_  
Assistant Attorney General

\_\_\_\_\_  
Date

CERTIFICATION of EEO COMPLIANCE

<b>Grant Award #:</b>	<b>Grant Title (e.g. Byrne, JAG, RSAT):</b>	
<b>Grantee Name (Funded Entity):</b>		
<b>Address:</b>		
<b>Program Period: Beginning Date:</b>	<b>Ending date:</b>	<b>Award Amount: \$</b>
<b>Contact Name, Phone # and Email address:</b>		

The purpose of an Equal Employment Opportunity Plan (EEOP) is to insure full and equal participation of men and women in the workforce regardless of race or national origin. Federal regulations require recipients of financial assistance from the Office of Justice Programs (OJP) to prepare, maintain on file, submit for review, and implement an EEOP in accordance with 28 CFR 42.301-308. The regulations exempt some recipients from all of the EEOP requirements. Other recipients, according to regulations, must prepare, maintain on file and implement an EEOP, but they do not need to submit the EEOP for review. Grantees must certify that they comply with, or are not covered by, EEOP regulations. It is the responsibility of Oregon State Police (OSP) to monitor grantee compliance with these requirements.

Grantees must prepare, implement, and maintain an EEOP related to employment practices affecting minority persons and women if all of the following are true:

- 1) have 50 or more employees; **and**
- 2) received \$25,000 or more in Federal grant funds, **and**
- 3) have a service population with a minority representation of 3 percent or more (if less than 3 percent minority representation in service population, an EEOP must still be prepared, but related to employment practices affecting women only).

If a grantee meets criteria 1 and 3, and has received a single award of \$500,000 (or \$1 million within an 18-month period) an EEOP must be filed with the Office for Civil Rights, Office of Justice Programs for review.

Check the box before **ONLY THE ONE APPROPRIATE CERTIFICATION** (A, B, C1 or C2 below) that applies to this grantee agency over the period of time that includes the program period referenced above.

**CERTIFICATION A: NO EEOP IS REQUIRED if (1), (2) or (3), below, apply.** Check (1), (2) and/or (3) as they apply to your entity. (More than one may apply.)

This funded entity has not been awarded more than \$1 million cumulatively from *all* programs administered by the U.S. Department of Justice, including this grant from Criminal Justice Services of the Oregon State Police, over the period of time that includes the above program period and

- is an educational, medical or non-profit organization institution or an Indian tribe; and/or
- has less than 50 employees; and/or
- was awarded less than \$25,000 in Federal U.S. Department of Justice funds through the grant referenced above.

Therefore, I hereby certify that this funded entity is not required to maintain an EEOP, pursuant to 28 CFR 42.301, et seq.

**CERTIFICATION B: EEOP MUST BE ON FILE**

This funded entity, a for-profit entity or a state or local government having 50 or more employees, was awarded more than \$25,000, but less than \$500,000 in Federal U.S. Department of Justice funds through the grant referenced above. Also, it has not been awarded more than \$1 million cumulatively from all programs administered by the U.S. Department of Justice, including the grant referenced above, over the period of time that includes the above program period.

Therefore, I hereby certify that the funded entity has formulated an Equal Employment Opportunity Plan in accordance with 28 CFR 42.301, et seq., subpart E, that it has been signed into effect by the proper authority and disseminated to all employees, and that it is on file for review or audit by officials of the Oregon State Police or the Office for Civil Rights, Office of Justice Programs as required by relevant laws and regulations.

**CERTIFICATION C1: EEOP MUST BE SUBMITTED**

This funded entity, a for-profit entity or a state or local government having 50 or more employees, was awarded more than \$500,000 in Federal U.S. Department of Justice funds through the grant referenced above, but it has not been awarded more than \$1 million cumulatively from *all* programs administered by the U.S. Department of Justice, including this grant from the Oregon State Police, over the period of time that includes the above program period.

Therefore, I hereby certify that the funded entity will submit, within 60 days of receipt of award, an EEOP or an EEOP Short Form that will include a section specifically analyzing the grantee agency.

**CERTIFICATION C2: EEOP MUST BE SUBMITTED**

This funded entity, having 50 or more employees, has been awarded more than \$1 million cumulatively from *all* programs administered by the U.S. Department of Justice, including this grant from the Oregon State Police, over the period that includes the above grant duration period.

Therefore, I hereby certify that the funded entity will submit, within 60 days of receipt of award, an EEOP or an EEOP Short Form that will include a section specifically analyzing the grantee agency. (If you have already submitted an EEOP applicable to this time period, send a copy of the letter received from the Office for Civil Rights showing that your EEOP is acceptable.)

**AUTHORIZED OFFICIAL'S CERTIFICATION:**

As the Authorized Official for the above grantee, I certify by my signature below that:

I have read and am fully cognizant of our duties and responsibilities under this Certification.

This agency will maintain and submit when required, data to ensure our services are delivered in an equitable manner to all segments of the service population and our employment practices comply with Equal Opportunity requirements, 28 CFR 42.207 and 42.301 et seq.

That the person in this agency or unit of government who is responsible for reporting civil rights findings of discrimination will submit a finding to the Oregon State Police, Criminal Justice Services, within 45 days of the finding, and/or if the finding occurred prior to the grant award beginning date, within 60 days of receipt of award. A copy of this Certification will be provided to the person responsible for reporting civil rights findings of discrimination.

\_\_\_\_\_  
**Authorized Official's Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Typed Name**

\_\_\_\_\_  
**Title**

\* \* \* \* \*

*This original signed form must be returned to the Oregon State Police, c/o CJC, 885 Summer Street NE, Salem, OR 97301, within 60 days of receipt of award. . OSP will forward a copy to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice. Please retain a copy for your records.*

*For more information regarding EEOP requirements, please access the Office for Justice Programs, Office for Civil Rights web page at: [www.ojp.usdoj.gov/ocr/eeop.htm](http://www.ojp.usdoj.gov/ocr/eeop.htm).*

# AUDIT CERTIFICATION

Grantee Name:				
Grantee Address:				
Contact Name and Title:		Phone #:		
Grant # (s):		Tax ID #:		Fiscal Period End Date:

Non-Federal entities that expend \$500,000 or more in a year in Federal awards shall have a single audit conducted in accordance with OMB Circular A133, *Audits of States, Local Governments, and Non-Profit Organizations*.

Non-Federal entities that expend less than \$500,000 in a year in Federal awards are exempt from Federal audit requirements for that year. Records must be available for review or audit by officials of the Federal agency, OSP, and General Accounting Office (GAO).

Please complete the appropriate section below and submit the completed and signed form and required documentation **within 60 days after the end of your fiscal year to:**

Oregon State Police c/o CJC  
855 Summer Street NE, Salem, Oregon 97301  
Fax # (503) 378-4861

**Section A: Organization subject to the requirements of OMB Circular A-133**

Please check one of the following and provide all appropriate documents:

- I hereby certify that for the fiscal year ended \_\_\_\_ (date):
  1. The auditor's report on financial data states that the audited information is fairly stated in all material respects; and
  2. The administration of our Federal projects has been audited in accordance with OMB Circular A-133 and there were no material instances of noncompliance with Federal laws and regulations or reportable conditions; and
  3. There were no findings of noncompliance in the audit report that are specifically related to the subrecipient award(s); and
  4. Management has addressed the resolution of previous-year findings from prior audit reports if related to the subrecipient award(s).

Auditor's report filed on \_\_\_\_ (date). **Enclosed is a copy of the audit report.**

- We have completed our OMB Circular A-133 audit for the fiscal year ended \_\_\_\_ (date), and material noncompliance issues and/or reportable conditions were noted. **Enclosed is a copy of the audit report and our response.**
- We have not completed our OMB Circular A-133 audit for the fiscal year ended \_\_\_\_ (date). We expect the audit to be completed by \_\_\_\_ (date). Within thirty (30) days of completion of the A-133 audit we will provide a new Audit Certification along with the audit report and response (if applicable).

**Section B: Organization NOT subject to the requirements of OMB Circular A-133**

Our organization is not subject to the requirements of OMB Circular A-133 because we (please check one of the following):

- Did not expend \$500,000 or more of Federal funds during the fiscal year (complete Federal funds expenditure chart below).
- Are a for-profit organization.
- Are exempt for other reasons (explain):

Federal Grantor	Pass-through Grantor	Program Name	CFDA Number	Expenditures
<b>Total Federal Expenditures for this Fiscal Year</b>				

Failure to submit this or a similar statement, or failure to submit a completed single audit package as required by the required due date may result in suspension of funding and may affect eligibility for future funding.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Oregon State Police



**MULTNOMAH COUNTY**  
**AGENDA PLACEMENT REQUEST (short form)**

**Board Clerk Use Only**

Meeting Date: 09/04/08  
 Agenda Item #: R-7  
 Est. Start Time: 10:10 AM  
 Date Submitted: 08/27/08

**Agenda Title:** MCSO Intent to apply on the Edward Byrne Memorial Justice Grant Program

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

**Requested Meeting Date:** 9/4/2008      **Amount of Time Needed:** 2 min.  
**Department:** Sheriff's Office      **Division:** Enforcement  
**Contact(s):** Captain Monte Reiser  
**Phone:** 503-251-2515      **Ext.** \_\_\_\_\_      **I/O Address:** 313/1  
**Presenter(s):** Captain Reiser, Program Manager Wanda Yantis

**General Information**

**1. What action are you requesting from the Board?**

Approval for the Sheriff's Office to apply for the Edward Byrne Memorial Justice Grant, funds for disrupting the manufacture, distribution, and use of illicit drugs.

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

The State of Oregon has issued a request for applications to assist in funding units of local government to perform law enforcement duties related to the disrupting the manufacture, distribution, and trafficking of illicit drugs. Activities proposed for funding in this grant include training, equipment, confidential funds, overtime and administrative costs.

MCSO's Special Investigations Unit (SIU) has experience in locating the sources of various illegal drugs. Reports have indicated that drugs are being trafficked to the County from outside the state. The result of this program would be an increased understanding of out-of-state drug traffickers and their operations, the development of methods for combating these organizations, the successful removal of these entities, and the prosecution of those involved.

This would affect program officer 60067A: MCSO Special Investigations Unit by increasing the resources available for this unit to investigate drug cases.

**3. Explain the fiscal impact (current year and ongoing).**

This grant requires a 10% match. This match will be in overtime accrued by the unit.

**4. Explain any legal and/or policy issues involved.**

None anticipated.

**5. Explain any citizen and/or other government participation that has or will take place.**

SIU has a pre-existing interagency agreement with Gresham Police.

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**Required Signature**

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**Elected Official or  
Department/  
Agency Director:**



**Date: 08/27/08**