

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 223rd 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 223rd 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 223rd 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

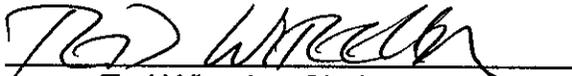
such loan is not in excess of 3.98 percent. The proceeds of the loan from the Department shall be applied solely to the "Costs of the Project" as such term is defined in the Loan Agreement.

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.

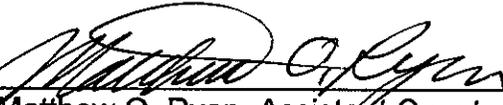


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


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 1st 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 190th 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: RD WIRELL
Title: CHAIR

Date: _____

Date: 9/4/08

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 223rd Sandy Boulevard–Bridge Street Railroad Undercrossing.

Borrower will

- 1) Widen 223rd 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: 223rd Sandy Boulevard–Bridge Street, Multnomah County, Oregon.

Exhibit B to Loan Agreement

Approved Project Budget

Borrower: Multnomah County

Costs of Project: \$9,610,566

Sources	
Oregon Transportation Infrastructure Bank	\$4,600,000
Urban STP and Highway Safety	4,401,000
County	609,566
Subtotal	\$9,610,566
Uses	
Preliminary Engineering	\$1,119,377
Right of Way	359,118
Construction	8,086,071
Loan Fee	\$46,000
Subtotal	\$9,610,566

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. 223rd 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 223rd 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

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 223rd 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

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 223rd 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 223rd 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 R/W 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."

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 *Cherie Wynn*
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

STATE OF OREGON, by and through
its Department of Transportation

By *Cherie Wynn*
Deputy Director, Highway Division

Date 11-22-04

APPROVAL RECOMMENDED

By *Cherie Wynn*
Technical Services Manager/Chief
Engineer

Date 11-22-04

By *Matthew O'Ryan*
Region 1 Manager

Date 9/11/04

APPROVED AS TO LEGAL
SUFFICIENCY

By *W. H. K.*
Assistant Attorney General

Date 11/15/04

Billing Address:
Multnomah County
1160 SE 190th Ave
Portland, OR 97214

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
(223rd 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
Gornie 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:

ROBERTA

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

Payment Due Date:	Amount Due:
March 1 st , 2009	Accrued interest from the Loan Closing Date to March 1 st , 2009,, shall be due and payable.
September 1 st , 2009	Accrued interest from (and including) March 1 st , 2009, to September 1 st , 2009, shall be due and payable.
March 1 st , 2009	Accrued interest from (and including) September 1 st , 2009, to March 1 st , 2010, shall be due and payable.
September 1 st , 2010	Accrued interest from (and including) March 1 st , 2010, to September 1 st , 2010, shall be due and payable.
March 1 st , 2011	Accrued interest from (and including) September 1 st , 2010, to March 1 st , 2011, shall be due and payable.
September 1 st , 2011	A payment of \$413,151 principal and interest from (and including) March 1 st , 2011 shall be due and payable.
September 1 st , 2012 and the 1 st of each September thereafter up to and including September 1 st , 2025	Fourteen annual payments in the amount of \$413,151, with all remaining principal and accrued unpaid interest due at maturity on September 1 st , 2025