

## INTERGOVERNMENTAL GRANT AGREEMENT No. RS1603

### Title: Columbia River Levee Improvements

As authorized by ORS 190.110, this Grant Agreement (“Agreement”) is between the State of Oregon acting by and through its Oregon Business Development Department (“OBDD”) and Multnomah County (“County”). OBDD and County (each a “party” and together the “parties”) may be contacted at the address(es) or number(s) below:

OBDD Contact	County Contact
Project Contact: Lynn Schoessler	Project Contact: Mark Campbell
Title: Assistant Director	Title: Chief Financial Officer
Address: Business Oregon 775 Summer Street NE, Suite 200 Salem, OR 97301-1280	Address: Multnomah County 501 SE Hawthorne Blvd Suite 531 Portland, OR 97214
Phone: 503-986-0158	Phone: 503-988-6229
Email: <a href="mailto:lynn.schoessler@oregon.gov">lynn.schoessler@oregon.gov</a>	Email: <a href="mailto:mark.campbell@multco.us">mark.campbell@multco.us</a>

- 1. Effective Date and Duration.** This Agreement becomes effective on the date every party has signed it, and in the case of OBDD, OBDD has obtained the approval of the Oregon Department of Justice (“Effective Date”). Unless amended, terminated or extended, this Agreement expires when County’s completed performance has been accepted by OBDD or 30 Jun 2017, whichever occurs first.
- 2. Statement of Obligations.** OBDD and County agree to perform their respective obligations in accordance with the terms and conditions of this Agreement, and as more fully described in Exhibit A.
- 3. Consideration, Payment Terms.** OBDD will pay County \$300,000, to be disbursed to County following execution of this Agreement and in accord with the schedule and requirements in Exhibit A.
- 4. Subcontracts, Assignments.** County shall not assign or transfer any of its interest in this Agreement, without OBDD’s prior written consent. In addition to any other provisions OBDD may require, County will include in any subcontract or assignment a requirement that the subcontractor or assignee be bound by Sections 13 and 14. The existence of any subcontracts does not relieve County of any of its duties or obligations under this Agreement.
- 5. Amendments.** Unless otherwise expressly provided in this Agreement, the terms of this Agreement may only be extended or amended by written instrument signed by both parties.
- 6. Representations, Warranties.** County represents and warrants to OBDD that:
  - (a) County is an county, duly organized and validly existing under Oregon law. County has the power and authority to enter into and perform this Agreement.
  - (b) The making and performance by County of this Agreement (1) has been duly authorized by all necessary action of County, (2) does not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County’s charter or other organizational document and (3) does not and will not result in the breach of, or constitute a default of, or require any consent under, any other agreement or instrument to which County is party or by which

County may be bound or affected. No further authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.

- (c) This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County enforceable in accordance with its terms.

- 7. **Records Maintenance; Access.** County will maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County will maintain any other records pertinent to this Agreement in such a manner as to clearly document County's performance. County acknowledges and agrees that OBDD and the Oregon Secretary of State's Office and their duly authorized representatives have access to such fiscal records and other books, documents, papers, plans and writings of County that are pertinent to this Agreement to perform examinations and audits and make excerpts, transcripts or copies. County will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- 8. **Termination.** This Agreement may be terminated immediately upon mutual written consent of both parties, or by OBDD 60 days after County receives written notice. All duties and obligations of both parties under this Agreement cease at that time except outstanding accounting and reporting obligations. Under any event of termination, County shall return, or cause the return of, any funds disbursed by OBDD which are not spent or obligated for the purpose of this Agreement, within 30 days of termination.
- 9. **County Defaults and OBDD Remedies.** County will be in default upon the occurrence of any of the following events:
  - (a) County fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement other than as provided in subsections (b) and (c) below, and that failure continues for a period of 30 calendar days (or such longer period as OBDD may determine in writing if it determines County instituted and has diligently pursued corrective action) after written notice specifying such failure is given to County by OBDD.
  - (b) Any representation, warranty or statement made by County in this Agreement or in any documents or reports relied upon by OBDD to measure the delivery of services, the expenditure of funds or the performance by County is untrue in any material respect when made.
  - (c) County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) is adjudicated bankrupt or insolvent, or liquidated or dissolved.

In the event County is in breach, OBDD may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) immediate termination of this Agreement, notwithstanding Section 8, (b) requiring repayment of the grant and all interest earned by County on those grant funds, (c) reducing or withholding payment for obligations or duties that County failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under this Agreement or setoff, or both. These remedies are cumulative

to the extent the remedies are not inconsistent, and OBDD may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

- 10. OBDD Default and County Remedy.** County may terminate this Agreement upon 30 days' notice to OBDD if OBDD fails to pay County pursuant to the terms of this Agreement and OBDD fails to cure within 30 business days after receipt of County's notice, or such longer period of cure as County may specify in such notice. County's exclusive remedy for OBDD's default under this Agreement is limited to payment of any amount that remains unpaid and is due and owing under Section 3.
- 11. Funds Available and Authorized.** OBDD has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within OBDD's biennial appropriation or limitation. Payment of funds by OBDD is contingent on OBDD receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow OBDD, in the exercise of its reasonable administrative discretion, to continue to make payments in accordance with the terms of this Agreement, and notwithstanding anything in the Agreement, occurrence of such contingency does not constitute an event of default. Upon occurrence of such contingency, County must stop work immediately upon notice from OBDD.
- 12. Notices.** Except where otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, mail (postage prepaid), or email at the address set forth on page 1 of this Agreement, or to such other addresses either party may hereafter indicate. Any notice so addressed and mailed will be deemed to be given five (5) days after mailing. Any notice by personal delivery shall be deemed to be given when actually delivered. Any such notice delivered by email will be effective on the day the transmitting machine generates a receipt of successful transmission, if transmission was during the normal business hours of the recipient, or on the next business day, if transmission was outside the normal business hours of the recipient. To be effective against a party, any such notice transmitted by email must be confirmed by telephone notice to that party.
- 13. Indemnification of OBDD.** To the extent authorized by law, County shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OBDD and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability, expenses of any nature whatsoever and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by County, or its officers, employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- 14. Disclaimer of Warranties; Limitation of Liability.** County agrees that:
  - (1) OBDD makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any authorized use of these grant funds, or any other warranty or representation.
  - (2) In no event are OBDD or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Agreement or the existence, furnishing, functioning or County's use of these grant funds.
- 15. Successors in Interest.** The provisions of this Agreement are binding upon and inure to the benefit of the parties, and their authorized successors and assigns.
- 16. Third-party Beneficiaries.** OBDD and County are the only parties to this Agreement and entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or may be construed to

give any direct or indirect benefit or right to third persons unless such third persons are individually identified by name and expressly described as intended beneficiaries of this Agreement.

- 17. Choice of Law; Designation of Forum; Federal Forum.** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the paragraph above, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- 18. Merger Clause.** This Agreement (including Exhibits that are by this reference incorporated herein) constitutes the entire agreement between the parties on the subject matter hereof. No waiver or consent regarding any of the terms of this Agreement will bind either party unless in writing and signed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. All parties, by the signature below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it and agree to be bound by its terms and conditions.
- 19. Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 20. Survival.** All rights and obligations cease upon termination or expiration of this Agreement, except for such Sections that by their terms are meant to survive. Termination will not prejudice any rights or obligations accrued to the parties prior to termination.
- 21. Time of the Essence; Force Majeure.** Time is of the essence in the performance of each and every obligation and duty under this Agreement. Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond that Party's reasonable control.
- 22. Neutral Construction.** This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and will be construed without regard to which party drafted all or part of this Agreement.

23. **Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.



**STATE OF OREGON**  
acting by and through its Business  
Development Department



**MULTNOMAH COUNTY**

By: \_\_\_\_\_  
Lynn Schoessler, Assistant Director

By: \_\_\_\_\_  
Deborah Kafoury, Chair, County Commission

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

\_\_\_\_\_  
/s/ Lynn Nagasako as per email dated 18 September 2015  
Lynn T. Nagasako, Sr. Assistant Attorney General

## **EXHIBIT A**

### **Background, Purpose**

The Oregon 2015 – 2017 Legislatively-Adopted Budget includes authorizations for Regional Solutions projects, including \$300,000 to be granted to County for activities necessary to address Federal Emergency Management Agency (FEMA) levee accreditation, the U.S. Army Corps of Engineers (USACE) Rehabilitation and Inspection Program (RIP), and the continuing safety of the levee systems along the Columbia Corridor, which encompasses 12,000 acres on the south shore of the Columbia River in the Portland, Oregon metropolitan area, and Sauvie Island. This project is needed to ensure the safety of the Portland region's employment, commercial and housing base and transportation infrastructure of statewide significance. In light of the magnitude and breadth of the impact of the levee systems and the multitude of land ownership involved, engagement with a large representation of diverse community members is crucial to the success of the collaborative, cross-sector regional team that is addressing FEMA accreditation and USACE RIP.

### **Obligations, Reporting**

Specific tasks include, but are not limited to:

- Engineering assessments (Phase I – III) to evaluate the condition of the levees, develop conceptual designs for potential repair alternatives, and prepare accreditation documentation
- Survey, cross-sections, and encroachment evaluations
- Interior drainage modeling reports
- Investigations to ensure RIP compliance
- Environmental, economic, and community asset inventories and a climate change study
- Risk assessment evaluations
- Stakeholder outreach and engagement to help increase community involvement, ensure jurisdictional stakeholders remain engaged in the process, and maximize the effectiveness of highly technical advisory committees
- Utilization of respected conveners, facilitators, and necessary staff support to ensure continued participation by the Districts, impacted jurisdictions, regional partners and other stakeholders

This work will be completed by a combination of consultants and staff through the Columbia Corridor Drainage Districts Joint Contracting Authority and Sauvie Island Drainage Improvement Company via separate intergovernmental agreements.

Estimated Total Project Cost: \$4,407,763

Estimated Timeline: July 2015 – December 2016

No later than 30 Jun 2017, County shall provide OBDD with a final project completion report on a form provided by OBDD. County shall provide additional details regarding the project when and as reasonably requested by OBDD.

### **Disbursement of Funds**

OBDD shall periodically disburse funds to County for reimbursement of costs paid or for disbursement for approved costs incurred. The Recipient must submit each disbursement request on an OBDD-provided or OBDD-approved disbursement request form ("Disbursement Request"), must support each request with all relevant receipts or invoices, and may not submit such requests more often than monthly.