

SPECIAL PUBLIC WORKS FUND DEVELOPMENT PROJECT
FINANCING CONTRACT

Project Name: Multnomah County Levee Accreditation Evaluation for “Levee Ready Columbia” (Multnomah County Drainage District No. 1 and Sandy Drainage Improvement Company)

Project Number: X16001

This financing contract (“Contract”), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority (“IFA”), and Multnomah County (“Recipient”) for financing of the project referred to above and described in Exhibit D (“Project”). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

Exhibit A	General Definitions
Exhibit B	Security
Exhibit C-1	Form of Promissory Note MCDD-A
Exhibit C-2	Form of Promissory Note MCDD-B
Exhibit C-3	Form of Promissory Note SDIC-A
Exhibit C-4	Form of Promissory Note SDIC-B
Exhibit D	Project Description; Project Special Condition
Exhibit E	Project Budget

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

“Estimated Project Cost” means \$3,567,712.

“MCDD Grant Amount” means \$50,000.

“MCDD-A Loan Amount” means \$1,000,000.

“MCDD-B Loan Amount” means \$1,517,952.

“Maturity Date” means the 6th anniversary of the Repayment Commencement Date.

“Note Interest Rate” means, individually without distinction, the interest rate accruing on a Loan.

“Note MCDD-A Interest Rate” means 0%.

“Note MCDD-B Interest Rate” means 1.84% per annum, computed on the basis of a 360-day year, consisting of twelve 30-day months.

“Note SDIC-A Interest Rate” means 0%.

“Note SDIC-B Interest Rate” means 1.84% per annum, computed on the basis of a 360-day year, consisting of twelve 30-day months.

“Payment Date” means 1 December.

“Project Closeout Deadline” means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

“Project Completion Deadline” means 24 months after the date of this Contract.

“Repayment Commencement Date” means the first Payment Date to occur after the Project Closeout Deadline.

“SDIC Grant Amount” means \$50,000.

“SDIC-A Loan Amount” means \$499,880.

“SDIC-B Loan Amount” means \$449,880.

SECTION 2 - FINANCIAL ASSISTANCE

The IFA shall provide Recipient, and Recipient shall accept from IFA, financing for the Project specified below:

- A. A grant in an aggregate amount not to exceed the MCDD Grant Amount (“MCDD Grant”).
- B. A grant in an aggregate amount not to exceed the SDIC Grant Amount (“SDIC Grant”).
- C. A non-revolving loan in an aggregate principal amount not to exceed the MCDD-A Loan Amount (“MCDD-A Loan”).
- D. A non-revolving loan in an aggregate principal amount not to exceed the MCDD-B Loan Amount (“MCDD-B Loan”).
- E. A non-revolving loan in an aggregate principal amount not to exceed the SDIC-A Loan Amount (“SDIC-A Loan”).
- F. A non-revolving loan in an aggregate principal amount not to exceed the SDIC-B Loan Amount (“SDIC-B Loan”).

“Loan” means collectively and individually without distinction, as the context requires, the MCDD-A Loan, the MCDD-B Loan, the SDIC-A Loan, and the SDIC-B Loan. “Grant” means collectively and individually without distinction, as the context requires, the MCDD Grant and the SDIC Grant.

Notwithstanding the above, the aggregate total of Financing Proceeds disbursed under this Contract cannot exceed the Costs of the Project.

SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds will be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an IFA-provided or IFA-approved disbursement request form (“Disbursement Request”).
- B. Financing Availability. The IFA’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminates on the Project Closeout Deadline.
- C. Payment to Contractors. The IFA, in its sole discretion, may make direct payment to suppliers, contractors and subcontractors and others for sums due them in connection with construction of the Project, instead of reimbursing Recipient for those sums.
- D. Order of Disbursement. The Recipient authorizes IFA to determine whether disbursements will be drawn from the Loan or the Grant, and record the date and amount of each such disbursement. Absent manifest error, such notations will be conclusive evidence for determining accrual of interest on the principal balance of the Loan and the remaining Loan or Grant amount available for disbursement.

SECTION 4 - LOAN PAYMENT; PREPAYMENT

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract and the Note in accordance with their terms. Payments required under this Contract are, without limitation, payable from the sources of repayment described in the Act and this Contract, including but not limited to Exhibit B, and the obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot 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 purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of IFA to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against IFA or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest. Interest accrues at the Note Interest Rate on each disbursement from the date of disbursement until the Loan is fully paid. All unpaid interest accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date.
- C. Loan Payments. Starting on the Repayment Commencement Date and then on each succeeding Payment Date, Recipient shall make level installment payments of principal, and interest as applicable, each payment sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, on which date the entire outstanding balance of the Loan is due and payable in full.
- D. Loan Prepayments.
- (1) Mandatory Prepayment. The Recipient shall prepay all or part of the outstanding balance of the Loan as required by this Contract or the Note.
 - (2) Optional Prepayment. The Recipient may prepay all or part of the outstanding balance of the Loan on any day except a Saturday, Sunday, legal holiday or day that banking institutions in Salem, Oregon are closed.
- E. Application of Payments. Regardless of any designation by Recipient, payments and prepayments by Recipient under this Contract or any of the Financing Documents will be applied first to any expenses of IFA, including but not limited to attorneys' fees, then to unpaid accrued interest (in the case of prepayment, on the amount prepaid), then to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, IFA will determine, in its sole discretion, the method for how the Loan prepayment will be applied to the outstanding principal payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received.

SECTION 5 - CONDITIONS PRECEDENT

A. Conditions Precedent to IFA's Obligations. The IFA's obligations are subject to the receipt of the following items, in form and substance satisfactory to IFA and its Counsel:

- (1) This Contract duly signed by an authorized officer of Recipient.
- (2) The Note duly signed by an authorized officer of Recipient.
- (3) A copy of the ordinance, order or resolution of the governing body of Recipient authorizing the borrowing and the contemplated transactions and the execution and delivery of this Contract, the Note and the other Financing Documents.
- (4) A copy of a duly executed agreement (and any amendments thereto) among Recipient, Multnomah County Drainage District No.1 ("MCDD") and the Sandy Drainage Improvement Company ("SDIC"); SDIC and MCDD referred to collectively and individually without distinction as "District," that contains provisions substantially in the following form:

"For the purposes of the covenants below, "levee" means the levee of ("District") which benefited from the proceeds of the loan ("Loan") made by the State of Oregon acting by and through the Infrastructure Finance Authority ("IFA") to Multnomah County pursuant to Contract X16001 (defined below):

Compliance with Laws. District shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this intergovernmental agreement, and the operation of District's levee system, as it may be modified or expanded from time to time.

Property Interests in Levees. During the term of financing contract X16001 between IFA and Multnomah County ("Contract X16001"), the District shall take all actions necessary to maintain its easements or other legal rights and interests in the real property constituting the District's levee system, unless Multnomah County and IFA have received 90 days' prior written notice and agree otherwise in writing.

Insurance, Damage. District shall maintain, or cause to be maintained, insurance policies with responsible insurers or self insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of its owned assets, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes District from exerting a defense against any party other than IFA or Multnomah County, including a defense of immunity. If the District's assets or any portion is destroyed, any insurance proceeds will be paid to Multnomah County and applied to prepay the outstanding balance on the Loan, unless IFA agrees otherwise in writing.

Sales, Leases and Encumbrances. District shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in its owned assets unless worn out, obsolete, or, in the reasonable business judgment of District, no longer useful to the operation of the levees, nor agree to any transfer, diminution, or abrogation of rights and powers related to its ability to generate revenues for payment for the Loan. Nevertheless, Multnomah County and IFA may consent to such disposition if they have received 90 days' prior written notice. Such consent may require assumption by transferee of all of District's obligations under this agreement. In the case of sale, exchange, transfer or other similar disposition, District shall, within 30 days of receipt of any proceeds from such disposition, transfer such proceeds to Multnomah County to be applied by Multnomah County as a

mandatory prepayment on the Loan in accordance with section 4.D.(1) of Contract X16001, unless IFA agrees otherwise in writing.

Procurement Standards. When procuring goods or services (including professional consulting services) paid with Loan proceeds, District shall follow state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.”

(5) Such other certificates, documents, opinions and information as IFA may reasonably require.

B. Conditions to Disbursements. As to any disbursement, IFA has no obligation to disburse funds unless all following conditions are met:

- (1) There is no Default or Event of Default.
- (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
- (3) The IFA, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
- (4) The IFA (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as IFA may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
- (5) The Recipient has delivered documentation satisfactory to IFA that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
- (6) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

SECTION 6 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit D and according to the budget in Exhibit E. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of IFA.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit D.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

In reviewing and executing this Contract, the Recipient has been represented and advised by its general counsel, the Multnomah County Attorney, and, on the advice of such counsel as well as the Recipient's own knowledge and expertise, the Recipient hereby represents and warrants to IFA:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded. The Recipient will have adequate funds available to repay the Loan, and the Maturity Date does not exceed the usable life of the Project.
- B. Organization and Authority.
 - (1) The Recipient is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon.
 - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract and the other Financing Documents, (b) incur and perform its obligations under this Contract and the other Financing Documents, and (c) borrow and receive financing for the Project.
 - (3) This Contract, the Note and the other Financing Documents executed and delivered by Recipient have been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
 - (4) This Contract and the other Financing Documents have been duly executed by Recipient, and when executed by IFA, are legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The Recipient has disclosed in writing to IFA all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract, the Note and the other Financing Documents. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to IFA all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract, the Note and the other Financing Documents.
- E. No Defaults.
 - (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract or any of the Financing Documents.
 - (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract, the Note and the other Financing Documents.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract and the other Financing Documents will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to

which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) cause the creation or imposition of any third party lien, charge or encumbrance upon any property or asset of Recipient; (iii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

- G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract, the Note and the other Financing Documents, for the financing or refinancing and undertaking and completion of the Project.

SECTION 8 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify IFA of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to make all payments and perform all obligations required by this Contract, the Note or the other Financing Documents.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the other Financing Documents, and the Project, and the operation of the levee systems to which the Project is related, as it may be modified or expanded from time to time. In particular, but without limitation, Recipient shall comply with the following, as applicable:

- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
- (2) State labor standards and wage rates found in ORS chapter 279C.
- (3) OAR 123-042-0165 (5) requirements for signs and notifications.

These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

- C. Project Completion Obligations. The Recipient shall:

- (1) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (2) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the IFA in writing.
- (3) No later than the Project Closeout Deadline, provide IFA with a final project completion report on a form provided by IFA, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, IFA will be the final judge of the Project's completion.

- D. Financial Records. The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.

- E. Inspections; Information. The Recipient shall permit IFA and any party designated by IFA: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as IFA may reasonably require. In addition, Recipient shall, upon request, provide IFA with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.
- F. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- G. Economic Benefit Data. The IFA may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion Date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by IFA.
- H. Minority, Women & Emerging Small Business. ORS 200.090 requires all public agencies to “aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses...” The IFA encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045. Additional resources are provided by the Director of Economic & Business Equity in the Office of the Governor. Also, the Office of Minority, Women, and Emerging Small Business at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.
- I. Professional Responsibility. All service providers on the Project retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.
- J. Notice of Default. The Recipient shall give IFA prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- K. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless IFA and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys’ fees incurred related to any actual or alleged act or omission by Recipient, or its 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.
- L. Further Assurances. The Recipient shall, at the request of IFA, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.

SECTION 9 - DEFAULTS

Any of the following constitutes an “Event of Default”:

- A. The Recipient fails to make any Loan payment when due.
- B. The Recipient fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bonds, notes or other material obligations, for any other loan made by the State of Oregon.
- C. Any false or misleading representation is made by or on behalf of Recipient, in this Contract, in any other Financing Document or in any document provided by Recipient related to this Loan or the Project.
- D. (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
(2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
(3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
(4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
(5) The Recipient takes any action for the purpose of effecting any of the above.
- E. The Recipient defaults under any other Financing Document and fails to cure such default within the applicable grace period.
- F. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through E of this section 9, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by IFA. The IFA may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 10 - REMEDIES

- A. Remedies. Upon any Event of Default, IFA may pursue any or all remedies in this Contract, the Note or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
 - (1) Terminating IFA’s commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
 - (2) Declaring all payments under the Note and all other amounts due under any of the Financing Documents immediately due and payable, and upon notice to Recipient the same become due and payable without further notice or demand.
 - (3) Barring Recipient from applying for future awards.

- (4) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, including as provided in ORS 285B.449; however, this provision is not to be construed in a way that Recipient's obligations would constitute debt that violates Section 10, Article XI of the Oregon Constitution.
 - (5) Foreclosing liens or security interests pursuant to this Contract or any other Financing Document.
 - (6) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
- B. Application of Moneys. Any moneys collected by IFA pursuant to section 10.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by IFA; then, to repay any Grant proceeds owed; then, to pay interest due on the Loan; then, to pay principal due on the Loan; and last, to pay any other amounts due and payable under this Contract or any of the Financing Documents.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to IFA is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract or any of the Financing Documents will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The IFA is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 9 of this Contract.
- D. Default by IFA. In the event IFA defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of IFA's obligations.

SECTION 11 - MISCELLANEOUS

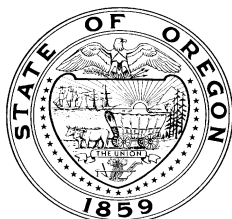
- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract and the other Financing Documents.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Contract will be binding upon and inure to the benefit of IFA, Recipient, and their respective successors and permitted assigns.
 - (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract or any other Financing Document without the prior written consent of IFA. The IFA may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to IFA, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of IFA's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of IFA beyond those in this Contract or other Financing Documents, nor does assignment relieve Recipient of any of its duties or obligations under this Contract or any other Financing Documents.

Each party hereby 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 prior paragraph, 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 also 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.

- J. Integration. This Contract (including all exhibits, schedules or attachments) and the other Financing Documents constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through the
Oregon Infrastructure Finance Authority



MULTNOMAH COUNTY

By: _____
Paulina Layton, Manager
Program Services Division

By: _____
Deborah Kafoury, Chair
County Commission

Date: _____

Date: _____

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

Reviewed By:
Jenny M. Madkour, County Attorney

By: /s/ Keith L. Kutler as per email
Keith Kutler, Assistant Attorney General

Jed Tomkins, Assistant County Attorney

Date: 28 August 2015

Date: _____

EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means ORS 285B.410 through 285B.482, as amended.

“Award” means the award of financial assistance to Recipient by IFA dated 14 Aug 2015.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, IFA or Recipient.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Financing Documents” means this Contract and all agreements, instruments, documents and certificates (including but not limited to all promissory notes) executed pursuant to or in connection with IFA’s financing of the Project.

“Financing Proceeds” means the proceeds of the Loan and Grant collectively or Loan or Grant individually without distinction.

“Municipality” means any entity described in ORS 285B.410(8).

“MCDD-A Note” means that certain promissory note evidencing MCDD-A Loan, substantially in the form of Exhibit C-1, as amended, extended or renewed from time to time.

“MCDD-B Note” means that certain promissory note evidencing MCDD-B Loan, substantially in the form of Exhibit C-2, as amended, extended or renewed from time to time.

“Note” means collectively and individually without distinction, the MCDD-A Note, MCDD-B Note, SDIC-A Note and SDIC-B Note.

“SDIC-A Note” means that certain promissory note evidencing SDIC-A Loan, substantially in the form of Exhibit C-3, as amended, extended or renewed from time to time.

“SDIC-B Note” means that certain promissory note evidencing SDIC-B Loan, substantially in the form of Exhibit C-4, as amended, extended or renewed from time to time.

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

EXHIBIT B - SECURITY

General Fund Pledge. The Recipient pledges its full faith and credit and taxing power within the limitations of Article XI, sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under this Contract and the Note. This Contract and the Note are payable from all legally available funds of Recipient.

EXHIBIT C-1 - FORM OF PROMISSORY NOTE MCDD-A

Multnomah County

MCDD-A PROMISSORY NOTE

Dated XXXXXXXXXXXXXXXXXX, XXXX
XXXXXXXXXXXXXXXXXX, Oregon

FOR VALUE RECEIVED, Multnomah County, 501 SE Hawthorne, Suite 531, Portland, OR 97214 (“Recipient”), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY (“IFA”), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of One Million Dollars (\$1,000,000) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of Zero percent (0%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number X16001, between IFA and Recipient (as amended from time to time, the “Contract”). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

The Recipient shall make level installment payments of principal, commencing on the Repayment Commencement Date and thereafter on each Payment Date. Each such installment will be in an amount as will fully amortize the Loan by the Maturity Date. On the Maturity Date, the entire outstanding principal balance will be due and payable in full.

This Note is subject to mandatory prepayment and is payable prior to its maturity, and each payment made by Recipient will be applied as provided in section 4 (Loan Payment; Prepayment) of the Contract.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by IFA to Recipient in accordance with section 3 (Disbursements) of the Contract. The Recipient authorizes IFA to record the date and amount of each such disbursement and the date and amount of each payment and prepayment by Recipient. Absent manifest error, such notations will be conclusive evidence of borrowing and payments under this Note; provided, however, that failure to make any such notations will not affect the obligations of Recipient under this Note or the Contract.

If any Event of Default occurs, the outstanding balance of the Note (including principal and other charges, if any), at the option of IFA, becomes immediately due and payable in accordance with section 10 (Remedies) of the Contract. Failure or delay of the holder of this Note to exercise any option available under the terms of this Note, the Contract or any of the Financing Documents will not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default of the same or of any other provision. Presentment, dishonor, notice of dishonor, and protest are hereby waived.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note is entitled to recover its reasonable attorneys’ fees and costs at trial and on appeal. Reasonable attorneys’ fees cannot exceed the rate charged to IFA by its attorneys. The Recipient shall, on demand, pay to IFA reasonable expenses incurred by IFA in the collection of Loan payments.

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 Note, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Notice to Recipient: Do not sign this Note before you read it.

MULTNOMAH COUNTY

By: _____XXXXXXXXXXXXXXXXXXXX

Title: _____XXXXXXXXXXXXXXXXXXXX

Sample

EXHIBIT C-2 - FORM OF PROMISSORY NOTE MCDD-B

Multnomah County

MCDD-B PROMISSORY NOTE

Dated XXXXXXXXXXXXXXXXXX, XXXX
XXXXXXXXXXXXXXXXXX, Oregon

FOR VALUE RECEIVED, Multnomah County, 501 SE Hawthorne, Suite 531, Portland, OR 97214 (“Recipient”), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY (“IFA”), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of One Million, Five Hundred and Seventeen Thousand, Nine Hundred and Fifty-Two Dollars (\$1,517,952) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of One and 84/100 percent (1.84%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number X16001, between IFA and Recipient (as amended from time to time, the “Contract”). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

The Recipient shall make level installment payments of principal and interest, commencing on the Repayment Commencement Date and thereafter on each Payment Date. Each such installment will be in an amount sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date. All unpaid interest that accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date. On the Maturity Date, the entire outstanding principal balance and all accrued unpaid interest will be due and payable in full.

This Note is subject to mandatory prepayment and is payable prior to its maturity, and each payment made by Recipient will be applied as provided in section 4 (Loan Payment; Prepayment) of the Contract.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by IFA to Recipient in accordance with section 3 (Disbursements) of the Contract. The Recipient authorizes IFA to record the date and amount of each such disbursement, the date and amount of each payment and prepayment by Recipient, and the amount of interest accrued and paid. Absent manifest error, such notations will be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations will not affect the obligations of Recipient under this Note or the Contract.

If any Event of Default occurs, the outstanding balance of the Note (including principal, interest and other charges, if any), at the option of IFA, becomes immediately due and payable in accordance with section 10 (Remedies) of the Contract. Failure or delay of the holder of this Note to exercise any option available under the terms of this Note, the Contract or any of the Financing Documents will not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default of the same or of any other provision. Presentment, dishonor, notice of dishonor, and protest are hereby waived.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to IFA by its attorneys. The Recipient shall, on demand, pay to IFA reasonable expenses incurred by IFA in the collection of Loan payments.

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 Note, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Notice to Recipient: Do not sign this Note before you read it.

MULTNOMAH COUNTY

By: _____XXXXXXXXXXXXXXXXXXXX

Title: _____XXXXXXXXXXXXXXXXXXXX

Sample

EXHIBIT C-3 - FORM OF PROMISSORY NOTE SDIC-A

Multnomah County

SDIC-A PROMISSORY NOTE

Dated XXXXXXXXXXXXXXXXXX, XXXX
XXXXXXXXXXXXXXXXXX, Oregon

FOR VALUE RECEIVED, Multnomah County, 501 SE Hawthorne, Suite 531, Portland, OR 97214 (“Recipient”), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY (“IFA”), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of Four Hundred and Ninety-Nine Thousand, Eight Hundred and Eighty Dollars (\$499,880) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of Zero percent (0%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number X16001, between IFA and Recipient (as amended from time to time, the “Contract”). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

The Recipient shall make level installment payments of principal, commencing on the Repayment Commencement Date and thereafter on each Payment Date. Each such installment will be in an amount as will fully amortize the Loan by the Maturity Date. On the Maturity Date, the entire outstanding principal balance will be due and payable in full.

This Note is subject to mandatory prepayment and is payable prior to its maturity, and each payment made by Recipient will be applied as provided in section 4 (Loan Payment; Prepayment) of the Contract.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by IFA to Recipient in accordance with section 3 (Disbursements) of the Contract. The Recipient authorizes IFA to record the date and amount of each such disbursement and the date and amount of each payment and prepayment by Recipient. Absent manifest error, such notations will be conclusive evidence of borrowing and payments under this Note; provided, however, that failure to make any such notations will not affect the obligations of Recipient under this Note or the Contract.

If any Event of Default occurs, the outstanding balance of the Note (including principal, interest and other charges, if any), at the option of IFA, becomes immediately due and payable in accordance with section 10 (Remedies) of the Contract. Failure or delay of the holder of this Note to exercise any option available under the terms of this Note, the Contract or any of the Financing Documents will not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default of the same or of any other provision. Presentment, dishonor, notice of dishonor, and protest are hereby waived.

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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 Note, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Notice to Recipient: Do not sign this Note before you read it.

MULTNOMAH COUNTY

By: _____XXXXXXXXXXXXXXXXXXXXXX

Title: _____XXXXXXXXXXXXXXXXXXXXXX

Sample

EXHIBIT C-4 - FORM OF PROMISSORY NOTE SDIC-B

Multnomah County

SDIC-B PROMISSORY NOTE

Dated XXXXXXXXXXXXXXXXXX, XXXX
XXXXXXXXXXXXXXXXXX, Oregon

FOR VALUE RECEIVED, Multnomah County, 501 SE Hawthorne, Suite 531, Portland, OR 97214 (“Recipient”), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY (“IFA”), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of Four Hundred and Forty-Nine Thousand, Eight Hundred and Eighty Dollars (\$449,880) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of One and 84/100 percent (1.84%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number X16001, between IFA and Recipient (as amended from time to time, the “Contract”). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

The Recipient shall make level installment payments of principal and interest, commencing on the Repayment Commencement Date and thereafter on each Payment Date. Each such installment will be in an amount sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date. All unpaid interest that accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date. On the Maturity Date, the entire outstanding principal balance and all accrued unpaid interest will be due and payable in full.

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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 Note, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Notice to Recipient: Do not sign this Note before you read it.

MULTNOMAH COUNTY

By: _____XXXXXXXXXXXXXXXXXXXX

Title: _____XXXXXXXXXXXXXXXXXXXX

Sample

I. PROJECT DESCRIPTION

The Recipient shall complete, or shall cause to be completed, engineering assessments of the current condition of the Multnomah County Drainage District No. 1 (MCDD) and Sandy Drainage Improvement Company (SDIC) levee systems as well as the interior drainage systems operating behind them, in compliance with National Flood Insurance Program levee accreditation standards documented in 44 CFR 65.10, through the Federal Emergency Management Agency (FEMA). In addition, Recipient will conduct mandatory inspections on levee infrastructure as a necessary step for MCDD and SDIC to remain active in the U.S. Army Corps of Engineers' Rehabilitation and Inspection Program (RIP) by receiving a rating of Minimally Acceptable or better.

Inventories and studies must be sufficient to allow the community to assess the resources protected and areas that could be improved for the desired level of protection, which will inform the development of alternatives to repair deficiencies identified by the levee engineering assessments. The Project will also include engineering review and project management activities delivered by MCDD.

Specific project tasks include, but are not limited to:

- Engineering Assessments (Phases 1-3)
 - Phase 1 - Background Research and Gap Analysis
 - Phase 2 - Work Plan, Data Collection, and Analysis
 - Embankment Erosion and Scour Protection Analyses
 - Embankment and Foundation Stability and Potential Seepage Analyses
 - Analyses of Potential Settlement and Loss of Levee Freeboard
 - Review of operation and maintenance plans and emergency operations plans
 - Compilation of final certification package to submit to FEMA for accreditation
 - Phase 3 - Additional Water Elevation Analyses
- Survey, Cross-Sections, and Encroachment Evaluations
- Interior Drainage Modeling Reports
- Rehabilitation and Inspection Program Compliance
- Environmental, Economic and Community Asset Inventories and Climate Change Study

II. PROJECT SPECIAL CONDITION

Engineering expenses incurred between 1 July 2015 and the date of award are eligible for reimbursement.

Exhibit E: Project Budget

	IFA Funds	Other / Matching Funds
Activity	Approved Budget	Approved Budget
Engineering Pre-Award Expenses	\$140,000	
Engineering	2,794,927	
Inventories & Studies	164,370	
Project Management	144,078	
Contingency	324,337	
Total	\$3,567,712	