

INTERGOVERNMENTAL AGREEMENT To Support Infrastructure Improvements

This Intergovernmental Agreement (this “Agreement”) is authorized by ORS 190.010 and is made and entered into as of _____ (the “Effective Date”) by and between Multnomah County (the “County”), a home rule county of the State of Oregon and the Sandy Drainage Improvement Company (“SDIC”) a nonprofit drainage improvement corporation organized under ORS Chapter 554 (collectively, the “Parties,” and each individually a “Party”).

RECITALS

- A. SDIC operates and maintains levees and drainage facilities along and in the vicinity of the Columbia River.
- B. A new Sundial Channel is being completed to accommodate existing SDIC stormwater flows and new stormwater flows from the Troutdale Reynolds Industrial Park (“TRIP”).
- C. As a result of the new Sundial Channel, SDIC has determined that it is necessary to upgrade and replace two 36-inch culverts with a new flow control structure. The new structure is located between Sundial Channel and the SDIC Sandy Pump Station forebay, north of NE Marine Drive and east of NE 223 Avenue (the “Project”). SDIC intends the new structure to control water levels in the wetland constructed for TRIP and enhance flood risk management for this area of the County.
- D. The Project will increase the marketability and development potential of TRIP, which if developed, will provide significant sale or lease revenue to the Port of Portland as the owner of TRIP, increased job opportunities for Multnomah County residents and increased property tax revenues for local governments and schools.
- E. SDIC lacks available funds to complete the Project in a timely manner and has requested that County lend a portion of the funding needed to complete the Project.
- F. SDIC seeks to induce the County to lend the funding needed to complete the Project on favorable terms by agreeing to take steps necessary to plan for repayment and to ensure that SDIC has sufficient funds available to repay the County as and when required without impairing the financial stability of SDIC.

TERMS

- 1. County’s Obligations. Within fifteen (15) business days following the County’s receipt of all of the following, County shall disburse Three Hundred Seventy Five Thousand Dollars (\$375,000) (the “Project Funding”) to SDIC:
 - a. A duly executed promissory note from SDIC, of even date herewith, in form and substance satisfactory to the County (the “Note”),
 - b. This Agreement, duly executed by SDIC, and
 - c. An invoice from SDIC for the amount of the Project funding, which invoice shall indicate SDIC’s Local Government Investment Pool (“LGIP”) account number.

Disbursement by the County of the Project funding shall be made by transfer to SDIC's LGIP account.

2. SDIC's Obligations.

- a. Use of Project Funding. SDIC agrees to use the Project Funding solely to pay for the costs of constructing and completing the Project, including engineering support and construction management services.
- b. Repayment of Project Funding. The Project Funding shall be evidenced by, and repaid in accordance with, the Note and this Agreement.

3. Representations, Warranties, and Covenants. SDIC represents, warrants and covenants to the County the following as of the date of this Agreement, the date of the County's disbursement of the Project Funding to SDIC, and continually until SDIC has paid the principal amount of the Note, together with any accrued interest, in full:

- a. Authority. The Executive Director of Multnomah County Drainage District No. 1 has full legal right, power, and authority to execute and deliver the Note and this Agreement on behalf of SDIC.
- b. Licenses and Permits. SDIC has obtained and will maintain all necessary licenses and permits required to complete the Project.
- c. Adequate Funding. SDIC has or will have adequate funds available to pay for the Project, including sufficient funding for contingencies.
- d. Performance. SDIC will cause the construction and completion of the Project.
- e. Ability to Repay. Each fiscal year SDIC will:
 - i. Include the amount of the Note payment in its annual budget,
 - ii. Appropriate sufficient funds for the Note payment that is due in such fiscal year, and
 - iii. Include in its annual budget designated funds for capital reserves and operating reserves with a combined balance equal to no less than the amount shown below for each fiscal year.

Fiscal Year	Combined Balance, Beginning	Combined Balance, Ending
2017 - 2018	\$80,000	\$100,000
2018 - 2019	\$100,000	\$150,000
2019 - 2020	\$150,000	\$200,000
2020 - 2021	\$200,000	\$250,000
2021 - 2022	\$250,000	Unpaid principal on 6/30/22
FY 2023 - FY 2032	Unpaid principal as of the beginning of each FY	Unpaid principal as of the end of each FY

SDIC agrees to levy additional or increased assessments, secure funds from other sources, and make any reductions in its annual budget in order to fund this commitment.

- f. No Violations or Default. SDIC is not in default under, or otherwise in any violation of, any agreement to which it is a party or by which it is bound, nor any order, regulation, ruling or requirement of a court or other public body or authority.
- 4. Events of Default. Any of the following shall be an event of default under this Agreement (“Event of Default”):
 - a. Failure to Perform.
 - i. SDIC fails to complete the Project by September 1, 2019.
 - ii. Any representation or warranty of SDIC set forth in this Agreement is or becomes untrue at any time.
 - iii. Excluding SDIC’s obligation to make payments under the Note, SDIC fails to perform any of its obligations or covenants set forth in this Agreement and does not cure or is unable to cure such failure within thirty (30) days following notice from the County.
 - b. Failure to Make Note Payments. SDIC fails to pay any sum due under the Note within ten (10) business days after the date it is due. Notwithstanding the preceding sentence, the first time that SDIC fails to pay any sum due under the Note within ten (10) business days after the date it is due, the interest under the Note shall increase as set forth in the Note, but such failure shall not constitute an Event of Default if SDIC cures such failure on its own or within ten (10) days following receipt of notice from the County of such failure.
 - c. Failure to Disclose. SDIC fails to disclose any fact material to the County’s decision to provide the Project Funding on the terms set forth in the Note and this IGA, or the County discovers any material misrepresentation by or on behalf of SDIC. Without limiting the generality of the foregoing, any representation or warranty of SDIC that is expressly stated in this Agreement is material.
- 5. Rights and Remedies. Upon the occurrence of an Event of Default under this Agreement or the Note, and at any time thereafter, the County may, at its option, exercise any one or more of the following rights or remedies:
 - a. Acceleration. By a notice in writing to SDIC, the County may accelerate the entire unpaid principal and accrued interest on the Note and declare such amounts to be immediately due and payable in full, without presentment, demand, protest, notice of protest or further notice of any kind, all of which are expressly hereby waived by SDIC.
 - b. Other Remedies. The County may protect and enforce its rights by appropriate judicial proceedings, including, in appropriate cases, an award of specific performance or other equitable remedy in aid of the exercise of any power granted in or pursuant to this Agreement or the Note.
 - c. Rights and Remedies Cumulative. All rights and remedies are cumulative to any other remedy the County may have by agreement, at law, or in equity. Partial exercise of any right or remedy shall not limit or restrict the County’s subsequent exercise of such right or remedy, nor shall it limit or restrict the County’s contemporaneous or subsequent exercise of any other right or remedy.

- d. No Waiver. No failure or delay of the County in exercising any right arising out of this Agreement shall operate as a waiver of that right or any other right. No modification or waiver of any provision of this Agreement or the Note shall be effective unless in writing.
6. Indemnification. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, each Party shall indemnify, defend and hold harmless the other Party, together with their commissioners, officers, employees and agents, from and against all liability, claims, losses, damages or expenses (including reasonable attorney fees) that any of them may suffer or incur as a result of the indemnifying Party's actions or inactions in connection with the Project. Nothing contained herein shall require a Party to indemnify the other Party for the sole negligence or intentional misconduct of such other Party.
7. Insurance. Each Party shall be responsible for providing worker's compensation insurance as required by law. No Party shall be required to provide or show proof of any other insurance coverage.
8. Adherence to Law. Each party shall comply with all federal, state and local laws and ordinances applicable to this Agreement.
9. Non-Discrimination. Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
10. Access to Records. SDIC will retain and keep accessible all books, documents, papers, and records that are directly related to the Project, this Agreement or the Note for a minimum of three years following full repayment of the Note. If there are unresolved issues at the end of such period, SDIC will retain the books, documents, papers, and records until the issues are resolved. The County shall have access to SDIC's books, documents and other records which are related to this Agreement, the Note and the Project for the purpose of examination, copying and audit, unless otherwise limited by law.
11. Subcontracts and Assignment. Although SDIC may contract for the construction and completion of the Project, SDIC will not subcontract or assign any other part of this Agreement without the written consent of the County.
12. Entire Agreement. This Agreement, taken with the Note, reflects and sets forth the entire agreement between the Parties with respect to the Project Funding and supersedes all prior understandings and agreements related to such subject matter. This Agreement may be modified or amended only by the written agreement of all Parties.
13. Counterparts. This Agreement may be executed in any number of counterparts. Any single counterpart or set of counterparts signed by all Parties hereto shall constitute a full and original instrument, and all taken together constitute one and the same instrument.
14. Governing Law. This Agreement and the Note shall be governed by and construed in accordance with Oregon law.
15. Notices. All notices, communications, invoices, and payments required or permitted under this Agreement must be addressed as follows:

To the County: Multnomah County
Chief Financial Officer
501 SE Hawthorne Blvd, Suite 531
Portland, OR 97214

To SDIC: Sandy Drainage Improvement Company
Attn: Flood Control Director
1880 N.E. Elrod Drive
Portland, Oregon 97211

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

MULTNOMAH COUNTY

Approved as to form:

By: _____
Deborah Kafoury, Chair

Assistant County Attorney

Date: _____

SANDY DRAINAGE IMPROVEMENT COMPANY

By: _____
Reed Wagner, Executive Director,
Multnomah County Drainage District No. 1

Date: _____