

**INTERGOVERNMENTAL AGREEMENT
for
Levee Analysis Cost-Sharing
Phase II (Sauvie Island)**

This Intergovernmental Agreement (this “Agreement”) is authorized by ORS 190.010 and is made and entered into as of December 3, 2015 (the “Effective Date”) by and among Multnomah County (the “County”), a home rule county of the State of Oregon, the Port of Portland (the “Port”), a port district of the state of Oregon, and Sauvie Island Drainage Improvement Company (“SIDIC”), a nonprofit drainage improvement corporation organized under ORS Chapter 554 (collectively, the “Parties,” and each individually a “Party”).

RECITALS

- A. SIDIC operates and maintains levees and drainage facilities on Sauvie Island (the “System”).
- B. The Federal Emergency Management Agency (“FEMA”) provides federal assistance in the form of flood insurance to property owners located within areas at risk of flooding, provided the communities in which those properties are located participate in the National Flood Insurance Program (the “NFIP”). FEMA recognizes levees as providing flood protection to a particular area only if they are “certified” by a qualified private engineer or an eligible federal agency such as the US Army Corps of Engineers (the “Corps”), and then “accredited” by FEMA.
- C. The Corps evaluated and certified the System in 2007, which led to its accreditation by FEMA. The certification is valid until 2017. Expiration of the certification in 2017 could lead to de-accreditation by FEMA, and the certification must be renewed to remain accredited by FEMA.
- D. The land protected by the System is within the County’s jurisdictional boundaries, and such land is important to the local economy. As a result, each Party would therefore be negatively affected by the economic consequences of losing the federal assistance offered by the NFIP and the potential impact of local floodplain development standards if the System is de-accredited.
- E. In order to renew the System’s certification, engineering analysis must be performed to ascertain the System’s flood-control capacity (the “SIDIC Analysis”). SIDIC has or will enter into contracts with one or more consultants, which may include the Corps, to complete the SIDIC Analysis.
- F. Business Oregon’s Infrastructure Finance Authority (the “IFA”) has approved a grant of \$50,000 for a portion of the SIDIC Analysis, a 0%-interest loan in the amount of \$166,400 (the “0% Portion”), and a 1.89% loan in the amount of \$166,400 (the “2% Portion”, and with the 0% Portion, the “Loan Portion”), all to be awarded to the County to finance much of the cost of the SIDIC Analysis (collectively, such award to the County, the “Loan”). The Parties

anticipate that Loan disbursements will be made first from the Grant Portion, then from the 0% Portion, and last from the 2% Portion.

- G. The County has offered to contract for, receive, and manage the Loan and its repayment on SIDIC's behalf. A copy of the draft Special Public Works Fund Planning Project Financing Contract is attached as Exhibit A. The Port and SIDIC have offered to reimburse the County for some portion of the Loan Portion principal and interest. The Parties wish to enter into this Agreement to effectuate these financial arrangements.
- H. Other engineering analysis similar to the SIDIC Analysis has already been performed on the levee systems in Peninsula Drainage District No. 1 and Peninsula Drainage District No. 2. Additionally, Multnomah County Drainage District No. 1 and the Sandy Drainage Improvement Company (collectively, the "East Districts") will be contracting for similar analysis to be performed on the levee systems maintained by the East Districts at or around the same time as the SIDIC Analysis (such analysis by the East Districts, together with the SIDIC Analysis, "Phase II").
- I. Pursuant to a separate agreement with the State of Oregon's Business Oregon, the County will receive \$300,000 to be used to support Phase II (the "Regional Solutions Support"). The Parties understand that \$33,915 of the Regional Solutions Support will be used to reduce the amount of the SIDIC Analysis that will be financed with the Loan; \$166,085 will be used to reduce the amount the work to be done in the East Districts that will be financed with debt, and the remaining \$100,000 will be used to pay for certain expenses related to Phase II that are not eligible to be financed with the Loan.

TERMS

The Parties agree as follows:

- 1. The County will apply for the Loan for a maximum amount of \$382,800. The Parties acknowledge and understand that the County and the IFA will be the sole parties to the Loan, that no other Party or entity will participate in the negotiations thereof, and that only the County and SIDIC will have any rights or obligations under the Loan or to the IFA.
- 2. Notwithstanding the definition of "Recipient" as a reference to the County in the Loan terms, SIDIC will fulfill all of the following obligations, as they may appear in the Loan terms and as interpreted by the County:
 - a. Apply the Loan proceeds and any funds received from the County pursuant to this Agreement (collectively, the "Project Proceeds") only to the costs of the SIDIC Analysis; comply with deadlines relevant to the SIDIC Analysis; complete the SIDIC Analysis with funds other than the Project Proceeds once SIDIC has received \$382,800 of Project Proceeds; and undergo required audits.

- b. SIDIC represents and warrants to the County that a reasonable estimate of the cost of the SIDIC Analysis is \$399,000; that SIDIC has secured funding for the additional \$16,200; and that SIDIC will have adequate funds available to pay for the SIDIC Analysis to the extent the cost thereof exceeds \$399,000.
- c. To the best of its knowledge, SIDIC has disclosed in writing to the County all facts that materially adversely affect the SIDIC Analysis, SIDIC's ability to perform all obligations required by this Agreement, or the ability of the County to make all payments and perform all obligations required by its Financing Contract with the IFA. SIDIC shall promptly notify the County of any adverse change in the activities, prospects, or condition (financial or otherwise) of SIDIC or the SIDIC Analysis related to the ability of SIDIC to perform all obligations required by this Agreement.
- d. SIDIC will comply with all applicable law, including but not limited to obtaining all applicable permits and approvals that may be necessary for performing the SIDIC Analysis.
- e. SIDIC will ensure all service providers performing the SIDIC Analysis who are retained for their professional expertise are certified, licensed, or registered, as appropriate, in the State of Oregon for their professional specialties.
- f. SIDIC will comply with all obligations to comply with the policies of the IFA, including but not limited to contracting requirements, and with state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C; and, if applicable, with state labor standards and wage rates found in ORS chapter 279C.
- g. SIDIC is encouraged to make good faith efforts as described in ORS 200.045 (available at <http://www.leg.state.or.us/ors/200.html>) in any contracting activity. Additional resources are provided by the Director of Economic & Business Equity at <http://www.oregon.gov/gov/MWESB/Pages/index.aspx>. 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: <http://imd10.cbs.state.or.us/ex/dir/omwesb/>.
- h. SIDIC will prominently place the following statement on all plans, reports, and contract solicitations relating to the SIDIC Analysis: "This project was funded in part with a financial award from the Special Public Works Fund, funded by the Oregon State Lottery and administered by the Oregon Infrastructure Finance Authority."
- i. SIDIC will permit the Parties and IFA and any party designated by them to inspect the property that is the subject of the SIDIC Analysis and to make copies, at any reasonable time, of any accounts, books and records, including, without limitation, its

records regarding receipts, disbursements, and contracts. SIDIC shall supply any related reports and information as the County or the IFA may reasonably require.

- j. SIDIC will retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement or the SIDIC Analysis for a minimum of three years following the completion of the SIDIC Analysis. If there are unresolved issues at the end of such period, SIDIC will retain the books, documents, papers, and records until the issues are resolved.
3. Beginning on or soon after the date the County executes the Loan, SIDIC will forward to the County copies of invoices SIDIC receives from consultants retained by SIDIC for work performed as part of the SIDIC Analysis (up to a maximum of \$382,800), excluding general administration, community outreach, and legal costs. The County will submit the invoices to the IFA for loan disbursements, provided, however, to the extent the County has sufficient funds immediately available from the Regional Solutions Portion or any Prepayment, as defined below in Section 4.b, the County may elect not to submit all or a portion of such invoices to the IFA (the "Unsubmitted Amounts"). Upon receipt of loan disbursements, the County will arrange to send the loan disbursements, together with funds equal to any Unsubmitted Amounts, to SIDIC as soon thereafter as reasonably possible. If the County elects not to submit any invoices received from SIDIC to IFA in order to treat such amounts as Unsubmitted Amounts, the County will arrange to send funds equal to the Unsubmitted Amounts to SIDIC as soon as reasonably possible. SIDIC will use the County's payments solely for payment of invoices for work performed as part of the SIDIC Analysis.

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4. Loan Portion Repayment:

- a. At least 30 days prior to any payment date on the Loan Portion (or upon request if a Party elects to prepay its share as set forth in Section 4.b below), the County will notify the Parties of their proportional shares of the Loan Portion repayment due and the total prepayment amount, based upon each Party's Reimbursement Percentage. As used in this Agreement, a Party's "Reimbursement Percentage" is the percentage calculated by dividing the amount of such Party's Principal Responsibility by the Current Outstanding amount, both as set forth in the below table (the "Allocation Schedule"). Within sixty days following each annual scheduled Loan Portion payment, the County will send to the Parties an updated Allocation Schedule, revised to reflect any reductions in principal attributable to such payments. The notice shall include the County's Local Government Investment Pool (LGIP) transfer account information to facilitate payment by LGIP transfer. Those Parties will pay the County no less than their proportional shares of the Loan repayment due within thirty days of such notification. The County's first payment date on the Loan Portion is expected to be December 1, 2017, and the final payment date is expected to be no later than December 1, 2024.

	Principal Responsibility	Reimbursement Percentage
Port	\$33,915	11.34%
SIDIC	\$132,485	44.33%
County	\$132,485	44.33%
Current Outstanding	\$298,885¹	100.00%

- b. A Party may prepay all or any portion of its obligation under this Agreement at any time without penalty. Upon receipt of such amount (the "Prepayment"), the County will reduce such Party's Principal Responsibility and the Current Outstanding amount in the most recent Allocation Schedule by the Prepayment, less the amount of accrued interest attributable to such Prepayment. If the Prepayment is received after the County has submitted any invoice to the IFA for disbursement from the 2% Portion of the Loan, the County will promptly forward such amount to be applied as a prepayment of the Loan Portion and instruct the IFA to reamortize the loan over the remaining term of the loan. Within sixty days following the County's receipt of a Prepayment, the County will send to the Parties an updated Allocation Schedule, revised to reflect the reduction in principal and each Party's new Reimbursement Percentage.

¹ This amount reflects a reduction of \$33,915 to the \$332,800 Loan Portion to account for the Regional Solutions Support.

5. If any Party fails to pay the County within sixty days of the mailing date of a notification under Section 4.a above, the County may declare the Party or Parties to be in default of this Agreement and will so notify SIDIC and the defaulting Party or Parties. The defaulting Party or Parties will have thirty days to cure the default following the mailing date of the County's notification of default. If a defaulting Party's nonpayment results in any penalties or increases in the amounts due under the Loan, then such default shall not affect the amounts that the nondefaulting Parties are responsible for under this Agreement.
6. SIDIC pledges to include repayment of its obligations under this Agreement in its annual budget. Each year, SIDIC shall appropriate sufficient funds to (a) make the loan repayment due the following fiscal year; and (b) maintain a reserve fund equal to one annual repayment. SIDIC agrees to levy assessments and/or make other reductions in its annual budget in order to fund this commitment.
7. By mutual agreement, the Parties may agree to pay the entirety of the Loan from any lawfully-available funding source subsequently obtained to complete the requirements for renewed certification.
8. This Agreement may be terminated only by the County, only after (a) the Parties have paid the County their proportional shares of the principal and interest; and (b) the Loan Portion has been fully repaid.
9. The Parties acknowledge and agree that, notwithstanding the fact that the County will be using the Parties' contribution amounts to repay the Loan Portion, the County is the sole guarantor of the Loan Portion. In addition, except to the extent that a Party has agreed herein to provide funds to the County so that the County can make payments on the Loan Portion, and except for SIDIC's obligations in Section 2 above, no Party is responsible for the County's performance of its obligations under the Loan. No Party is a guarantor of the performance of any other Party's obligations under this Agreement.
10. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, each Party will defend, indemnify, and hold harmless the other Parties and their officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the Party's performance of its responsibilities under this Agreement.
11. The laws of the State of Oregon will govern this Agreement and the Parties will submit to the jurisdiction of the courts of the State of Oregon.
12. This Agreement may be amended at any time with the written consent of all Parties.

13. Except as otherwise provided herein, the Parties may not assign any of their rights or responsibilities under this Agreement without prior written consent from the County.
14. 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 the Port for The Port of Portland
notices and Director, Environmental Operations and Policy
communications: P.O. Box 3529
 Portland, Oregon 97208

To the Port for The Port of Portland
invoices and P.O. Box 5095
payments: Portland, Oregon 97208-5095

To SIDIC: Sauvie Island Drainage Improvement Company
 Executive Director
 29264 NW Sauvie Island Rd
 Portland, OR 97231

15. If any covenant or provision of this Agreement is adjudged void, such adjudication will not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
16. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to the matters discussed herein. No waiver, consent, modification, or change of terms of this Agreement will bind the Parties unless in writing and signed by each Party.
17. This Agreement is not intended, and may not be construed as intending, to establish a precedent for any future cost-sharing agreements among any of the Parties pertaining to the Districts' levees. A Party's contribution under this Agreement creates no expectation that the Party is responsible for the maintenance or repair of the Districts' levees.

18. This Agreement may be executed in counterparts. Delivery of this executed Agreement by facsimile or e-mail will be sufficient to form a binding agreement.

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

MULTNOMAH COUNTY

By: _____

Title: _____

Date: _____

Approved as to form:

County Attorney

PORT OF PORTLAND

By: _____

Title: _____

Date: _____

Approved as to form:

Assistant General Counsel

SAUVIE ISLAND DRAINAGE
IMPROVEMENT COMPANY

By: _____

Title: _____

Date: _____

Exhibit A Draft Special Public Works Fund Planning Project Financing Contract