

Exhibit A to Ordinance
INTERGOVERNMENTAL AGREEMENT
for
Levee Analysis Cost-Sharing

This Intergovernmental Agreement ("this Agreement") is authorized by ORS 190.010 and is made and entered into as of June 1, 2014 ("the Effective Date") by and among the City of Portland ("the City"), an Oregon municipal corporation; Metro, an Oregon municipal corporation; the Port of Portland ("the Port"), a port district of the state of Oregon; Multnomah County Drainage District No. 1 ("MCDD"), a special purpose local government organized under ORS Chapter 547; Peninsula Drainage District No. 1 ("PEN 1"), a special purpose local government organized under ORS Chapter 547; and Peninsula Drainage District No. 2 ("PEN 2"), a special purpose local government organized under ORS Chapter 547 (collectively, "the Parties," and each individually "a Party").

RECITALS

- A. MCDD, PEN 1, and PEN 2 (collectively, "the Districts") operate and maintain levees and drainage facilities along and in the vicinity of the Columbia River that lie within their respective jurisdictional boundaries, among other duties. The levees were originally constructed around 1916 and have been periodically upgraded by the U.S. Army Corps of Engineers ("the Corps") since then. Through intergovernmental agreements, MCDD has general management authority of PEN 1 and PEN 2 (see "the District IGAs," attached hereto as Exhibit A). All references to MCDD in this Agreement will mean MCDD acting on behalf of PEN 1 and PEN 2 pursuant to the District IGAs.
- 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 (including the Corps), and then "accredited" by FEMA.
- C. The Corps evaluated and certified the levees in PEN 1 and PEN 2 in 2007, which led to their accreditation by FEMA. In 2010, the Corps changed its certification standards and as a result invalidated the certification of the levees in both districts. This action could lead to de-accreditation by FEMA.
- D. There are severe economic consequences if FEMA accreditation of a levee system is not maintained. Properties located within a flood zone that is protected by a non-accredited levee system lose access to the lower insurance rates made possible by FEMA. Without adequate flood insurance, those properties cannot access loans issued by federal agencies (e.g., Federal Housing Administration and Small Business Administration) and loans backed by the federal government (e.g., Veterans Administration, Fannie Mae, and Freddie Mac). In addition, local ordinances could severely restrict development in such areas.

- E. To avoid the economic consequences of losing the federal assistance offered by the NFIP, the PEN 1 and PEN 2 levees must be certified and accredited. Before the levees can be re-certified, an engineering analysis must be performed to ascertain the levees' flood-control capacity. PEN 1 and PEN 2 have entered into contracts (attached hereto as Exhibit B) with Cornforth Consultants, Inc. ("Cornforth") to complete a portion of this analysis ("the Analysis," described more fully in Exhibit C).
- F. MCDD, with the assistance of Oregon Solutions, has obtained assurances from Business Oregon's Infrastructure Finance Authority ("the IFA") that a loan in the amount of up to \$1.4 million will be provided to finance much of the cost of the Analysis ("the Loan").
- G. The City has offered to receive and manage the Loan and its repayment on MCDD's behalf. Metro, PEN 1, and PEN 2 have offered to reimburse the City for some portion of the Loan principal and interest. The Port has offered to contribute \$300,000 to defray a portion of the cost of the Analysis. The Parties wish to enter into this Agreement to effectuate these financial arrangements.

TERMS

The Parties agree as follows:

1. The City will apply for and negotiate the Loan terms substantially similar to those in Exhibit D for a maximum of \$1.4 million. The Parties acknowledge and understand that the City 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 no Party except the City and MCDD has any rights or obligations under the Loan or to the IFA.
2. Notwithstanding the definition of "Recipient" as a reference to the City in the Loan terms, MCDD will fulfill all of the following obligations, as they may appear in the Loan terms and as interpreted by the City:
 - a. Apply the Loan proceeds only to the costs of the Analysis; comply with deadlines relevant to the Analysis; complete the Analysis with funds other than the Loan proceeds once those proceeds are exhausted; and undergo required audits.
 - b. MCDD represents and warrants to the City that a reasonable estimate of the cost of the Analysis is \$1,561,450 and that MCDD will have adequate funds available to pay for the Analysis to the extent the cost thereof exceeds the Loan amount.
 - c. To the best of its knowledge, MCDD has disclosed in writing to the City all facts that materially adversely affect the Analysis, MCDD's ability to perform all obligations required by this Agreement, or the ability of the City to make all payments and perform all obligations required by its Financing Contract with the IFA. MCDD shall promptly notify the City of any adverse change in the activities, prospects, or

condition (financial or otherwise) of MCDD or the Analysis related to the ability of MCDD to perform all obligations required by this Agreement. Obligations to disclose all facts material to the Analysis, the Loan, or the Districts' ability to pay their proportional shares of the Loan repayment.

- d. MCDD will comply with all applicable law, including but not limited to obtaining all applicable permits and approvals that may be necessary for performing the Analysis.
 - e. MCDD will ensure all service providers performing the 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. MCDD 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. MCDD 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. MCDD will prominently place the following statement on all plans, reports, and contract solicitations relating to the 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. MCDD will permit the Parties and IFA and any party designated by them to inspect the property that is the subject of the 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. MCDD shall supply any related reports and information as the City or the IFA may reasonably require.
 - j. MCDD will retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement or the Analysis for a minimum of three years following the completion of the Analysis. If there are unresolved issues at the end of such period, MCDD will retain the books, documents, papers and records until the issues are resolved.
3. Beginning on or soon after the date the City executes the Loan, MCDD will forward to the City copies of invoices MCDD receives from Cornforth for work performed as part of the

Analysis up to a maximum of \$1.4 million, excluding general administration, community outreach, and legal costs. The City will submit the invoices to the IFA for loan disbursements. Upon receipt of loan disbursements, the City will arrange to send the loan disbursements to MCDD as soon thereafter as reasonably possible. MCDD will use the City's payments solely for payment of invoices for work performed as part of the Analysis.

4. The Port will pay to the City the sum of \$300,000 on or before November 1, 2016.
5. With regard to Metro, PEN 1, and PEN 2 only:
 - a. The following Parties will each reimburse the City a portion of the principal that the City owes under the Loan, after accounting for the Port's obligations under Section 4 above, and a portion of the interest accrued thereto, in the following proportions:

Metro:	27.2727%
PEN 1:	9.0909%
PEN 2:	9.0909%
 - b. At least 30 days prior to any payment date on the Loan (or any prepayment date if a Party elects to pay its share by a prepayment date, as set forth in Section 5.c below), the City will notify the above Parties of their proportional shares of the Loan repayment due, based on the proportions set forth in Section 5.a above. Those Parties will pay the City within thirty days of such notification. The City's first payment date on the Loan is expected to be December 1, 2016 and the final payment date is expected to be no later than December 1, 2023.
 - c. A Party may pre-pay its obligation under this Agreement at any time without penalty. The Party will pay the amount of its total obligation under this Agreement to the City and the City will promptly apply the contribution amount to prepayment of the Loan. Once a Party pays the City such Party's proportion of the total principal amount of the Loan plus any accrued interest as of such payment date, such Party will be responsible for no additional interest that accrues on the remaining outstanding principal amount of the Loan.
6. If the Port fails to fulfill its obligations under Section 4 above or if any Party fails to pay the City within sixty days of the mailing date of a notification under Section 5.b above, the City may declare the Party or Parties to be in default of this Agreement and will so notify MCDD 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 City'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 non-defaulting Parties are responsible for under this Agreement.
7. PEN 1 and PEN 2 pledge to include repayment of their obligations under this Agreement in their annual budgets. Each year, PEN 1 and PEN 2 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. PEN 1 and PEN 2 agree to levy assessments and/or make other reductions in their annual budgets in order to fund this commitment.

8. 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 re-certification.
9. This Agreement may be terminated only by the City, and only after (a) the Port has paid its contribution as required by Section 4 above; (b) Metro, PEN 1, and PEN 2 have paid the City their proportional shares of the principal and interest; and (c) the Loan has been fully repaid.
10. The Parties acknowledge and agree that, notwithstanding the fact that the City will be using the Parties' contribution amounts to repay the Loan, the City is the sole guarantor of the Loan. In addition, except to the extent that a Party has agreed herein to provide funds to the City so that the City can make payments on the Loan, and except for MCDD's obligations in Section 2 above, no Party is responsible for the City'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.
11. 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.
12. 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.
13. This Agreement may be amended at any time with the written consent of all Parties.
14. 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 City.

The remainder of this page is intentionally blank.

15. All notices, communications, invoices, and payments required or permitted under this Agreement must be addressed as follows:

To the City: City Debt Manager
Office of Management and Finance
1120 SW Fifth Avenue, Room 1250
Portland, OR 97204-1988
Tel. (503) 823-4222

To the Port for notices and communications: The Port of Portland
P.O. Box 3529
Portland, OR 97208
Attention: Phil Ralston
Tel. (503) 415-6331

To the Port for invoices and payments: The Port of Portland
P.O. Box 5095
Portland, OR 97208-5095
Tel. (503) 415-6000

To Metro: Metro Debt Manager
Finance & Regulatory Services
600 NE Grand Ave.
Portland, OR 97214
Tel. (503) 797-1913

To the Districts: Natural Resources Project Manager
Multnomah County Drainage District No. 1
1880 N.E. Elrod Drive
Portland, Oregon 97211
Tel. (503) 281-5675

16. 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.
17. 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.
18. 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.

19. 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.

CITY OF PORTLAND

Approved as to form:

By: _____

Title: _____

Date: _____

Deputy City Attorney

METRO

Approved as to form:

By: _____

Title: _____

Date: _____

Assistant Metro Attorney

PORT OF PORTLAND

Approved as to Legal Sufficiency:

By: _____

Title: _____

Date: _____

Assistant General Counsel

MULTNOMAH COUNTY DRAINAGE
DISTRICT NO. 1

By: _____

Title: _____

Date: _____

PENINSULA DRAINAGE DISTRICT NO. 1

By: _____

Title: _____

Date: _____

PENINSULA DRAINAGE DISTRICT NO. 2

By: _____

Title: _____

Date: _____

- | | |
|-----------|---|
| Exhibit A | Intergovernmental Agreements among MCDD, PEN 1, and PEN 2 |
| Exhibit B | Districts' contracts with Cornforth Consultants, Inc. |
| Exhibit C | Detailed Project Description |
| Exhibit D | Draft Special Public Works Fund Planning Project Financing Contract |

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (IGA) is made and entered into between **Peninsula Drainage District #1**, hereinafter called **PEN 1**, and **Multnomah County Drainage District #1**, hereinafter called **MCDD**.

WHEREAS, PEN 1 desires to delegate the management of the District operations under its authority to MCDD, and;

WHEREAS, MCDD desires to perform, and is capable of performing, said services;

NOW THEREFORE, PURSUANT TO THE AUTHORITY OF ORS 190.010, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

SERVICES

MCDD agrees to perform the services listed in the attached Appendix A – Service Provided, all billed on a time and materials basis. MCDD agrees that the materials, analysis, data, programs and services provided hereunder will be of the kind and quality designated and will be performed by qualified MCDD employees, or other qualified agents or contractors. All work performed under this contract will be in full compliance with the standards found in all applicable codes, ordinances, statutes, regulations and laws.

CONTRACT PERFORMANCE/FORCE MAJORE

Neither party will be in breach of this Agreement for its failure to perform on time when such failure is due to causes beyond the party's reasonable control such as acts of god, fire, theft, war, riot, embargoes, or acts of civil or military authorities. If MCDD's services are delayed by these or other contingencies, MCDD will immediately notify the PEN 1 Board of Supervisors of such delay.

EQUIPMENT, MATERIALS, SUPPLIES AND FACILITIES

MCDD shall furnish the staff labor, facilities, office equipment and routine office supplies necessary to perform the services in Appendix A. All materials and supplies necessary to perform the services in Appendix A will be invoiced directly to PEN 1 by the vendor or supplier. If MCDD purchases the supplies and/or materials, MCDD will invoice PEN 1 for its portion of the invoice as invoiced by the vendor or supplier.

PAYMENT FOR WORK PERFORMED

In consideration for the performance of this IGA, PEN 1 agrees to pay MCDD fees as outlined in Appendix B - Fee Schedule and Appendix B-1 – Distribution Schedule. The services completed pursuant to this IGA, including materials and labor, will be billed on a time and material basis in accordance with the PEN 1 Fiscal Year approved budget. Billings done at intervals determined to be the most efficient will reflect actual, documented personnel time and material cost, which may differ slightly from the averaged estimates found in the Schedule B rates.

All costs will be invoiced to PEN 1 by MCDD. Invoices will be due and payable within 30 days of the date of invoice. Any past due bill owed MCDD by PEN 1 shall have applied to it interest based on the prime interest rate in force on the day the bill becomes past due, and shall be applied to the balance until the bill is paid in full. All services outlined in Appendix A, and the materials, professional services and sub-contracts necessary to fulfill them, will be billed subject to the approved PEN 1 budget as follows:

Materials - Any materials purchased through MCDD for PEN 1 use will be billed at vendor or supplier invoice costs. Materials will be secured using accepted public purchasing procedures and processes.

Construction or professional services contracts – These contracted services will be invoiced directly to PEN 1 by the contractor or consultant. Services will be secured in accordance with accepted public bidding and contracting procedures and processes.

MCDD Labor – All labor provided by MCDD field staff shall be billed based on the rate schedule attached as Appendix B. The labor rates in Appendix B will have a 2.5% multiplier applied January of each year until Appendix B is revised.

MCDD Equipment – Equipment use shall be billed based on the rate schedule attached as Appendix B.

Rental Equipment – Rentals required to perform the project will be invoiced directly to PEN 1 by the vendor or contractor.

CONTRACT PERIOD

The delivery of services described herein will begin on July 1, 2009 and continue until the IGA is terminated. Either party may terminate this IGA only at the end of a fiscal year by providing a minimum of six (6) months advance written notice. The need for periodic adjustments to IGA provisions are anticipated and shall be addressed, using the amendment process prescribed herein, at the same board meeting where the annual budget is adopted.

REPRESENTATION OF AUTHORITY

PEN 1 delegates all administrative and executive duties and authorities to MCDD and its Executive Director. While it is acknowledged that the Executive Director of MCDD is not an employee of PEN 1, he/she is hereby authorized to represent him/her self as the Executive Director of PEN 1. Similarly, while not an employee of PEN 1, the MCDD District Engineer is authorized to represent him/her self as District Engineer for PEN 1.

LEGAL PROTECTION

Each party agrees to defend, indemnify and hold the other harmless from and against any and all liability, claims, demands, penalties, suits and the associated costs and expenses (including reasonable attorneys' fees) which it may hereafter incur, become responsible for, or pay out as a result of the death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment and any clean-up costs in connection therewith, or any violation of law, governmental regulation or orders, caused in whole or in part by

the indemnitor's breach of any term or provision of this IGA, or by any negligent acts, errors, or omissions by the indemnitor's, its employees, officers, agents, representatives, or subcontractors in the performance of this IGA. This indemnity obligation will survive termination of this IGA.

INSURANCE

MCDD will maintain throughout the period of this Agreement, the following minimum levels of insurance:

- (a) Workers' compensation coverage as required by law.
- (b) Employer's liability with limits of not less than \$1 million per occurrence.
- (c) Comprehensive general liability for damages as a result of death or bodily injury to any persons or destruction or damage to any property with limits of not less than \$1 million per occurrence.
- (d) Comprehensive automobile liability insurance for at least \$1 million per occurrence.

MCDD's insurance will be primary and any insurance carried by PEN 1 will be excess and non-contributing. The general liability coverage will name PEN 1 as additional insured and will contain a severability of interest clause. PEN 1 will maintain in full force all other insurances including, but not limited to, general liability, directors and officers, boiler and fire.

WAIVER OF SUBROGATION

MCDD and PEN 1 each waive all rights of recovery against the other, or against the employees, agents and representatives of the other, for loss or damage to the waiving party or its property or the property of others under its control to the extent that the loss or damage is insured under any insurance policy in force at the time of the loss or damage.

APPLICABLE LAW, JURISDICTION AND VENUE

This IGA shall be interpreted and administered under the laws of the State of Oregon. Jurisdiction and venue of any dispute hereunder shall be in Multnomah County, State of Oregon.

ATTORNEY FEES

In the event of suit or action commenced to enforce the terms of this IGA, the prevailing party shall be entitled to recover from the losing party reasonable attorney fees and costs, including any appeal therefrom.

LIMITATION OF LIABILITY

With respect to all obligations assumed by either party pursuant to this IGA (whether by contractual provision or imposed otherwise by law), the parties agree that in all cases redress for satisfaction of any such obligation shall be limited to the parties and to its assets. No party named herein shall seek satisfaction of any such obligation from any trustee, director, officer, employee, beneficiary, stockholder or agent of either party.

SEVERABILITY

If any term, condition or provision of this IGA or the application thereof to any circumstance is determined to be invalid or unenforceable to any extent, the remaining provisions of this IGA will not be affected but will instead remain valid and fully enforceable.

DISPUTE RESOLUTION

Should any dispute arise between the parties of this IGA, it is agreed that, prior to commencement of litigation, the dispute shall be submitted to a neutral mediator mutually agreed to and paid equally by both parties.

AMENDMENTS

This IGA may be amended by mutual agreement of both parties. Any amendments shall be in writing and signed by representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal this 28 day of

MAY, 2009.

PENINSULA DRAINAGE DISTRICT #1

By: _____

Chris Bailey, President

MULTNOMAH COUNTY DRAINAGE

DISTRICT #1

By: _____

Tim Warren, President

APPENDIX A – SERVICES PROVIDED

Services provided through an Intergovernmental Agreement between the Peninsula Drainage District #1 (PEN 1) and Multnomah County Drainage District #1 (MCDD).

In relation to the service provided, MCDD agrees to provide PEN 1 copies of the inspection reports and logs as requested by the Supervisors.

MCDD agrees to call to the immediate attention of the Board of Supervisors any malfunction or condition likely to cause damage to the pumps, equipment or flood control facilities, or which might jeopardize the protection of the properties and facilities within PEN 1.

ADMINISTRATIVE AND SUPPORT SERVICES PROVIDED

- 1) Plan the Annual Meeting and Supervisors' meetings including agendas, public notices, stakeholder contacts, reports and minutes.
- 2) Prepare and submit the annual assessment role to Multnomah County Assessors office.
- 3) Prepare the annual budget, maintain all financial records and systems collect funds and pay bills, issue reports as necessary and oversee an annual audit or accountant review.
- 4) Maintain all records including hard copy and electronic. Plan and organize their storage and archiving consistent with public statutes.
- 5) Prepare operational work plans for maintenance to be performed including ditch cleaning, obstruction removal, herbicide applications, mowing, pump and pump station maintenance, etc.
- 6) Develop and maintain a 3 to 5 year capital improvement project planning program.
- 7) Plan and manage capital improvement projects consistent with the approved budget.
- 8) Review all development proposals and plans that may impact the functional integrity and/or operations.
- 9) Attend agency, business and community meeting as may be required on behalf of the district. Meeting may include but not be limited to: land use and building permit application proposals, neighborhood meeting, regulatory coordination and special interest groups.
- 10) Maintain the Emergency Flood Control Plan as a unified district plan.

Appendix A**ADMINISTRATIVE AND SUPPORT SERVICES PROVIDED – continued**

- 11) Assist the Corps of Engineers on their annual inspection and evaluation of the flood control facilities, operations and maintenance.

FIELD INSPECTIONS**Stormwater Pumping and Conveyance Facilities**

- 1) Inspect and provide general lubrication and cleaning service to the pumps, pump motors, electrical equipment and pump station buildings twice weekly and more frequently during and/or following a rainfall event if required.
- 2) Inspect and clear debris from the stormwater culvert grating system twice a week and more frequently during and/or following a rainfall event if required
- 3) Inspect and document any deficiencies identified to the overall stormwater conveyance system once a month and more frequently during and/or following a rainfall event if required.
- 4) Service telemetry system to District's design standards.
- 5) Load and dispose of debris accumulated at pump station, culvert grating and stormwater conveyance system locations as required.
- 6) Remove and dispose of trees blocking the stormwater conveyance systems.
- 7) Perform any required maintenance and repairs to the pumps, pump motors, electrical equipment and pump station buildings in excess of the general lubricating and cleaning service.
- 8) Repair and/or replacement of stormwater culvert grating.
- 9) Stabilize and/or repair conveyance system slopes.
- 10) Remove and dispose of aquatic weed and/or garbage in or around critical sections of the stormwater conveyance system.
- 11) Remove tall grasses, invasive plant and sediment accumulation to maintain a minimum hydraulic cross section and to minimize hydraulic head loss through mechanical and chemical applications.
- 12) Perform any required emergency repairs on stormwater and flood control facilities.

Appendix A**ADMINISTRATIVE AND SUPPORT SERVICES PROVIDED – continued****Levees and Control Structures**

- 1) Inspect and document levee slope and roadway surface conditions twice a year.
- 2) Inspect levee in high water condition as defined in the District's Emergency Flood Control Plan.
- 3) Inspect document and service levee slide and flap gates twice a year.
- 4) Maintain the critical levee section to USACOE standards as outlined in the 33 Code of Federal Regulations (CFR).
- 5) Manage the levee slope vegetation to promote a heavy growth of grasses through mowing and chemical applications.
- 6) Replace riprap and soils eroding away from the levee slopes.
- 7) Maintain the access roadway on top of the levee.
- 8) Repair levee access gates and fencing.
- 9) Clean out levee slide gate wet wells and repair slide mechanism.

APPENDIX B – RATE SCHEDULE

Services provided through an Intergovernmental Agreement between the Peninsula Drainage District #1 (PEN 1) and Multnomah County Drainage District #1 (MCDD)

MULTNOMAH COUNTY DRAINAGE DISTRICT # 1 EQUIPMENT AND EMPLOYEE RATES

APPENDIX B - RATE SCHEDULE

Peninsula Drainage District # 1

Revised April 2009

Description	2008 - 2009	2009 - 2010
	Total	Total
	Hourly Rate	Hourly Rate
Executive Director	76.54	76.67
Deputy Director	76.54	78.65
Engineer	51.91	54.87
Accounting	38.31	40.46
Crew Leader	41.96	45.38
Mechanic III	45.37	45.51
Mechanic II	31.78	36.94
Equipment Operators III	38.81 - 40.10	40.43 - 41.46
Tractor Operators	36.95 - 37.34	38.32 - 38.73
Administrative	30.22	22.43 - 31.87
Summer Laborer	12.00 - 15.50	12.00 - 15.50

(Note: rates do not include operator)		
	2008 - 2009	2009 - 2010
	Hourly Rate	Hourly Rate
320 Case Excavator	62.50	64.00
JD 650 Dozer	47.00	48.00
HS 41 Spyder	195.00	200.00
TS 100 Tractor/Mower	46.00	47.00
TS 110 Tractor/Mower	51.00	52.25
Transport & Trailer	46.00	47.00
Dump Trucks	49.00	50.25
JD 310 Backhoe	31.00	32.00
Pickups	12.00	13.00

Spray Truck	36.00		37.00
Spyder on Barge	262.00		268.50
Material Barges (ea.)	11.00		12.00
Chipper	16.00		17.00
Hydro Seeder	16.00		17.00
Boats	11.00		12.00
Herbicide Sprayer	11.00		12.00
Misc. Tools	6.00		7.00

APPENDIX B-1 DISTRIBUTION SCHEDULE

Services provided through an Intergovernmental Agreement between the Peninsula Drainage District #1 (PEN 1) and Multnomah County Drainage District No. 1 (MCDD)

OPTIONS FOR DISTRIBUTING SHARED COSTS

Some work done by MCDD staff benefits more than one district. For instance, working with the City of Portland on a code revision may benefit PEN 1, PEN 2 and MCDD. Likewise, tracking proposed land use issues through METRO could benefit the three aforementioned Districts and SDIC. In answer to this, a series of options for sharing costs among the Districts has been approved by each Board and included here as another rate schedule option.

Table 1 - Environmental All Cities
Levee and Ditch Lengths (miles)
Including the Upper Columbia Slough

	Levees	%	Ditches	%	Average %
MCDD	12.2	45	26.1	60	52.5
Pen 1	4.9	18	3.3	8	13.0
Pen 2	5.9	22	6.2	14	18.0
SDIC	4.2	15	7.6	17	16.5
Total	27.2 miles		43.2 miles		100

Table 2 – Environmental All Cities
Levee and Ditch Lengths (miles)
Excluding the Upper Columbia Slough

	Levees	%	Ditches	%	Average %
MCDD	12.2	45	10.5	38	41.5
Pen 1	4.9	18	3.3	12	14.5
Pen 2	5.9	22	6.2	22	22.5
SDIC	4.2	15	7.6	28	21.5

Total	27.2 miles	27.6 miles			100
Table 3 – Environmental Within COP Levee and Ditch lengths (miles) <u>Including the Upper Columbia Slough</u>					
	Levees	%	Ditches	%	Average %
MCDD	10.3	49	25.8	73	61.0
Pen 1	4.9	23	3.3	9	16.0
Pen 2	5.9	28	6.2	18	23.0
Total	21.1 miles	35.3 miles			100

Table 4 – Environmental Within COP Levee and Ditch lengths (miles) <u>Excluding the Upper Columbia Slough</u>					
	Levees	%	Ditches	%	Average %
MCDD	10.3	49	9.7	51	50.0
Pen 1	4.9	23	3.1	16	19.5
Pen 2	5.9	28	6.2	33	30.5
Total	21.1 miles	19 miles			100

Table 5 - All Cities <u>Acreage and Impervious Area (acres)</u>					
	Acreage	%	Impervious	%	Average %
MCDD	8,832	69	3,433	80	74.5
Pen 1	901	7	202	5	6.0
Pen 2	1,475	11	528	12	11.5
SDIC	1,556	13	140	3	8.0

Total	12,764	4,303	100
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Table 6 - Within COP
Acreage and Impervious Area (acres)

	Acreage	%	Impervious	%	Average %
MCDD	5,912	71	2,934	80	75.5
Pen 1	901	11	202	6	8.5
Pen 2	1,475	18	528	14	16.0
Total	8,288		3,664		100

Table 7 - MCDD & SDIC
Stormwater Issues Based on Acreage

	Acreage	%
MCDD	2,920	65
SDIC	1,556	35

**RESOLUTION # 1241
PENINSULA DRAINAGE DISTRICT #1**

A RESOLUTION ADOPTING AN IGA ADMENDMENT

RECITALS

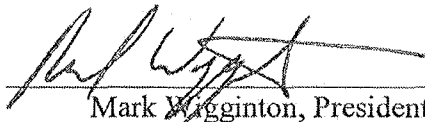
The Intergovernmental Agreement between the Multnomah County Drainage District #1 and Peninsula Drainage District #1 is in need of revision to update the personnel and equipment rates in Appendix B of the Agreement.

NOW THEREFORE BE IT RESOLVED


1. Amendment No. 3 to the above referenced Agreement, revising Appendix B of the Agreement, is approved. The approved Amendment No. 3 is attached.
2. The President of the Board of Directors is authorized to sign the Amendment.

Adopted by the Peninsula Drainage District # 1 Board of Supervisors on April 18, 2012.

Signed: _____


Mark Wigginton, President

Attest: _____


Dave Hendricks, Executive Director

AMENDMENT NO. 3**Intergovernmental Agreement**

Parties: Peninsula Drainage District #1 ("PEN 1")

Multnomah County Drainage District No. 1 ("MCDD")

RECITALS

- A. The parties entered into an intergovernmental agreement for services listed in an Appendix A and payment for services in Appendix B ("Agreement"), effective as of 1 July 2009.
- B. The parties hereby amend Appendix B of the Agreement as follows to update actual cost of services being provided.

APPENDIX B AMENDMENT – RATE SCHEDULE

Revised April 5, 2012

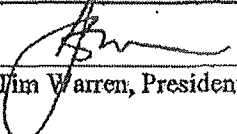
Description	2011 - 2012	2012-2013
	Hourly Labor Rate	Hourly Labor Rate
Executive Director	96.04	105.00
Deputy Director	0.00	83.00 - 100.00
District Engineer	63.14	70.00
District Accountant	48.24	55.00
Crew Leader	49.24	55.00
Mechanics	51.59	55.00
Engineer	31.50 - 35.00	30.00 - 33.00
Equipment Operators	43.58 - 44.66	23.00 - 26.00
Tractor Operators	15.00 - 43.58	23.00 - 26.00
Administrative	24.19 - 36.18	24.00 - 39.00
Summer Laborer	12.00 - 15.50	12.00 - 16.00
Note: equipment rates do not include operator	2011-2012	2012-2013
	Hourly Equipment Rate	Hourly Equipment Rate
320 Case Excavator	88.88	160.00
320 Case Excavator	98.88	170.00
JD 650 Dozer	59.94	66.00
HS 41 Spyder	237.50	276.00
Spyder on Barge	257.50	306.00
JD 310 Backhoe	38.00	40.00
1-Ton Dump Truck	41.97	42.00

Note: equipment rates do not include operator	2011-2012	2012-2013
	Hourly Equipment Rate	Hourly Equipment Rate
TS 100 Tractor	75.25	77.00
TS 110 Tractor	83.60	85.00
Transport Trailer	72.37	29.00
Dump Trucks	96.99	98.00
Pickups	26.70	28.00
Chipper	22.10	33.00
Hydro Seeder	15.15	18.00
Herbicide Sprayer	13.85	14.00
Material Barge	13.75	14.00
Spray Truck	48.80	50.00
Boat	15.00	15.00
Rodinator	59.00	60.00
Beaver Traps	15.00	18.00
Survey Equipment	15.00	22.00
Misc. Tools	10.00	12.00

Authority of Signers

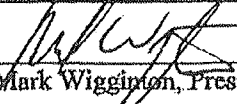
The individuals signing below represent that they are authorized by the party for which they sign to contractually bind that party to the provisions of this Amendment No. 1.

Multnomah County Drainage District # 1


Tim Warren, President

4/18/2012
Date

Peninsula Drainage District # 1


Mark Wigginton, President

6/29/2012
Date

PENINSULA DRAINAGE DISTRICT NO.1

1880 NE ELROD DRIVE, PORTLAND, OREGON 97211-1810
PHONE (503) 281-5675 FAX (503) 281-0392

Board of Supervisors:

Chris Bailey, President
Bill Briggs
Dave Ernst
Kurt Redd
Mark Wigginton

ADDENDUM NO.: P10905006IGA01

MULTNOMAH COUNTY DRAINAGE DISTRICT NO. 1

At
1880 NE Elrod Dr.
Portland OR 97211

June 14, 2010

This ADDENDUM NO. **01** is hereby made a part of the IGA contract dated May 28th, 2009, Contract No.: P10905006IGA with Peninsula Drainage District No. 1 and is assigned as though it were a part of those documents,

The attached Addendum B, Equipment Hourly Rate Schedule, and B-1, Employee Rate Schedule, were approved by the Board of Supervisors at their May 27th, 2010 Board of Directors Meeting for the FY: 2010-2011.

Receipt of acknowledged and conditions agreed on this 14th day of June, 2010.



Bob Eaton, Board Secretary

**2010 District to District IGA
Addendum "B"
Equipment Hourly Rate Comparison Table**

Description	2009 Hourly Rate	Daily Hourly Rate High - Low	Weekly Hourly Rate - 30% High - Low	Weekly Average Hourly Rate	Hourly Fuel Cost \$3.00/gal	2010 Hourly Rate
320 Case Excavator	62.50	96.25 - 78.75	67.38 - 55.13	55.13	20.25	75.38
JD 650 Dozer	47.00	73.75 - 60.63	51.63 - 42.44	42.44	10.50	52.94
HS 41 Spyder	195.00	235.00 - 205.00	No Discount	220.00	10.50	230.50
JD 310 Backhoe	31.00	46.25 - 30.00	32.38 - 21.00	26.50	6.90	33.40
1-Ton Dump Truck	27.00	36.88 - 34.00	25.82 - 23.80	23.80	10.90	34.70
TS 100 Tractor	46.00	91.00 - 70.00	63.70 - 49.00	49.00	15.75	64.75
TS 110 Tractor	51.00	98.00 - 79.00	68.60 - 55.30	55.30	16.98	72.28
Transport & Trailer	46.00	69.00 - 56.00	48.30 - 39.20	39.20	19.90	59.10
Dump Trucks	49.00	82.25 - 72.95	57.58 - 50.99	50.99	27.60	78.59
Pickups	12.00	18.00 - 15.00	12.60 - 10.50	10.50	9.72	20.24
Chipper	16.00	21.00 - 18.00	14.70 - 12.60	12.60	5.70	18.30
Hydro Seeder	16.00	20.00 - 18.00	14.70 - 13.60	13.60	0.93	14.53
Herbicide Sprayer	11.00	20.00 - 18.00	14.70 - 12.60	12.60	0.75	13.35
Material Barge	11.00	13.75 - 10.50	N/A	12.20	N/A	12.20
Misc. Tools	6.00	No Quote	N/A	N/A	N/A	10.00
Spray Truck	36.00	No Quote	N/A	23.50	15.00	38.50
Spyder on Barge	262.00	No Quote	N/A	240.00	10.50	255.50
Boat – Work Skiff	11.00	No Quote	N/A	N/A	1.20	13.00

Note: Equipment dealers used in rate comparison:

- o Halton Tractor
- o John Deere
- o Hertz Equipment Rental
- o United Rental
- o Tractors and Spyder
 - Metro Ford
 - Rich Monte Rough Terrain
 - Ron's Service
 - Brock Equipment

Revised April 2010

ADDENDUM B-1 – EMPLOYEE RATE SCHEDULE

Services provided through an Intergovernmental Agreement between the
Peninsula Drainage District #1 and Multnomah County Drainage District #1
(MCDD)

MULTNOMAH COUNTY DRAINAGE DISTRICT # 1 EMPLOYEE RATES Revised April 2010

Description	2009 - 2010 Hourly Rate	2010 - 2011 Hourly Rate
Executive Director	76.54	77.92
Deputy Director	76.54	77.62
District Engineer	51.91	55.44
District Accountant	38.31	43.24
Crew Leader	41.96	46.04
Mechanics	31.78 - 45.37	38.06 - 45.41
Equipment Operators	38.81 - 40.10	38.06 - 41.98
Tractor Operators	36.95 - 37.34	38.06 - 39.99
Administrative	22.34 - 30.22	22.34 - 32.80
Summer Laborer	10.00 - 15.50	10.00 - 15.50

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (IGA) is made and entered into between **Peninsula Drainage District #2**, hereinafter called PEN 2, and **Multnomah County Drainage District #1**, hereinafter called MCDD.

WHEREAS, PEN 2 desires to delegate the management of the District operations under its authority to MCDD, and;

WHEREAS, MCDD desires to perform, and is capable of performing, said services;

NOW THEREFORE, PURSUANT TO THE AUTHORITY OF ORS 190.010, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

SERVICES

MCDD agrees to perform the services listed in the attached Appendix A – Service Provided, all billed on a time and materials basis. MCDD agrees that the materials, analysis, data, programs and services provided hereunder will be of the kind and quality designated and will be performed by qualified MCDD employees, or other qualified agents or contractors. All work performed under this contract will be in full compliance with the standards found in all applicable codes, ordinances, statutes, regulations and laws.

CONTRACT PERFORMANCE/FORCE MAJORE

Neither party will be in breach of this Agreement for its failure to perform on time when such failure is due to causes beyond the party's reasonable control such as acts of god, fire, theft, war, riot, embargoes, or acts of civil or military authorities. If MCDD's services are delayed by these or other contingencies, MCDD will immediately notify the PEN 2 Board of Supervisors of such delay.

EQUIPMENT, MATERIALS, SUPPLIES AND FACILITIES

MCDD shall furnish the staff labor, facilities, office equipment and routine office

supplies necessary to perform the services in Appendix A. All materials and supplies necessary to perform the services in Appendix A will be invoiced directly to PEN 2 by the vendor or supplier. If MCDD purchases the supplies and/or materials, MCDD will invoice PEN 2 for its portion of the invoice as invoiced by the vendor or supplier.

PAYMENT FOR WORK PERFORMED

In consideration for the performance of this IGA, PEN 2 agrees to pay MCDD fees as outlined in Appendix B - Fee Schedule and Appendix B-1 – Distribution Schedule. The services completed pursuant to this IGA, including materials and labor, will be billed on a time and material basis in accordance with the PEN 2 Fiscal Year approved budget. Billings done at intervals determined to be the most efficient will reflect actual, documented personnel time and material cost, which may differ slightly from the averaged estimates found in the Schedule B rates.

All costs will be invoiced to PEN 2 by MCDD. Invoices will be due and payable within 30 days of the date of invoice. Any past due bill owed MCDD by PEN 2 shall have applied to it interest based on the prime interest rate in force on the day the bill becomes past due, and shall be applied to the balance until the bill is paid in full. All services outlined in Appendix A, and the materials, professional services and sub-contracts necessary to fulfill them, will be billed subject to the approved PEN 2 budget as follows:

Materials - Any materials purchased through MCDD for PEN 2 use will be billed at vendor or supplier invoice costs. Materials will be secured using accepted public purchasing procedures and processes.

Construction or professional services contracts – These contracted services will be invoiced directly to PEN 2 by the contractor or consultant. Services will be secured in accordance with accepted public bidding and contracting procedures and processes.

MCDD Labor – All labor provided by MCDD field staff shall be billed based on the rate schedule attached as Appendix B. The labor rates in Appendix B will have a 2.5% multiplier applied January of each year until Appendix B is revised.

MCDD Equipment – Equipment use shall be billed based on the rate schedule attached as Appendix B.

Rental Equipment – Rentals required to perform the project will be invoiced directly to PEN 2 by the vendor or contractor.

CONTRACT PERIOD

The delivery of services described herein will begin on July 1, 2009 and continue until the IGA is terminated. Either party may terminate this IGA only at the end of a fiscal year by providing a minimum of six (6) months advance written notice. The need for periodic adjustments to IGA provisions are anticipated and shall be addressed, using the amendment process prescribed herein, at the same board meeting where the annual budget is adopted.

REPRESENTATION OF AUTHORITY

PEN 2 delegates all administrative and executive duties and authorities to MCDD and its Executive Director. While it is acknowledged that the Executive Director of MCDD is not an employee of PEN 2, he/she is hereby authorized to represent him/her self as the Executive Director of PEN 2. Similarly, while not an employee of PEN 2, the MCDD District Engineer is authorized to represent him/her self as District Engineer for PEN 2.

LEGAL PROTECTION

Each party agrees to defend, indemnify and hold the other harmless from and against any and all liability, claims, demands, penalties, suits and the associated costs and expenses (including reasonable attorneys' fees) which it may hereafter incur, become responsible for, or pay out as a result of the death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment and any clean-up costs in connection therewith, or any violation of law, governmental regulation or orders, caused in whole or in part by the indemnitor's breach of any term or provision of this IGA, or by any negligent acts, errors, or omissions by the indemnitor's, its employees, officers, agents, representatives, or subcontractors in the performance of this IGA. This indemnity obligation will survive termination of this IGA.

INSURANCE

MCDD will maintain throughout the period of this Agreement, the following minimum levels of insurance:

- (a) Workers' compensation coverage as required by law.
- (b) Employer's liability with limits of not less than \$1 million per occurrence.
- (c) Comprehensive general liability for damages as a result of death or bodily injury to any persons or destruction or damage to any property with limits of not less than \$1 million per occurrence.
- (d) Comprehensive automobile liability insurance for at least \$1 million per occurrence.

MCDD's insurance will be primary and any insurance carried by PEN 2 will be excess and non-contributing. The general liability coverage will name PEN 2 as additional insured and will contain a severability of interest clause. PEN 2 will maintain in full force all other insurances including, but not limited to, general liability, directors and officers, boiler and fire.

WAIVER OF SUBROGATION

MCDD and PEN 2 each waive all rights of recovery against the other, or against the employees, agents and representatives of the other, for loss or damage to the waiving party or its property or the property of others under its control to the extent that the loss or damage is insured under any insurance policy in force at the time of the loss or damage.

APPLICABLE LAW, JURISDICTION AND VENUE

This IGA shall be interpreted and administered under the laws of the State of Oregon. Jurisdiction and venue of any dispute hereunder shall be in Multnomah County, State of Oregon.

ATTORNEY FEES

In the event of suit or action commenced to enforce the terms of this IGA, the prevailing party shall be entitled to recover from the losing party reasonable attorney fees and costs, including any appeal therefrom.

LIMITATION OF LIABILITY

With respect to all obligations assumed by either party pursuant to this IGA (whether by contractual provision or imposed otherwise by law), the parties agree that in all cases redress for satisfaction of any such obligation shall be limited to the parties and to its assets. No party named herein shall seek satisfaction of any such obligation from any trustee, director, officer, employee, beneficiary, stockholder or agent of either party.

SEVERABILITY

If any term, condition or provision of this IGA or the application thereof to any circumstance is determined to be invalid or unenforceable to any extent, the remaining provisions of this IGA will not be affected but will instead remain valid and fully enforceable.

DISPUTE RESOLUTION

Should any dispute arise between the parties of this IGA, it is agreed that, prior to commencement of litigation, the dispute shall be submitted to a neutral mediator mutually agreed to and paid equally by both parties.

AMENDMENTS

This IGA may be amended by mutual agreement of both parties. Any amendments shall be in writing and signed by representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal this 17 day of

May, 2009.

PENINSULA DRAINAGE DISTRICT #2

By:

Dick Shafer
Dick Shafer, President

**MULTNOMAH COUNTY DRAINAGE
DISTRICT #1**

By:

Tim Warren
Tim Warren, President

APPENDIX A – SERVICES PROVIDED

Services provided through an Intergovernmental Agreement between the Peninsula Drainage District #2 (PEN 2) and Multnomah County Drainage District #1 (MCDD).

In relation to the service provided, MCDD agrees to provide PEN 2 copies of the inspection reports and logs as requested by the Supervisors.

MCDD agrees to call to the immediate attention of the Board of Supervisors any malfunction or condition likely to cause damage to the pumps, equipment or flood control facilities, or which might jeopardize the protection of the properties and facilities within PEN 2.

ADMINISTRATIVE AND SUPPORT SERVICES PROVIDED

- 1) Plan the Annual Meeting and Supervisors' meetings including agendas, public notices, stakeholder contacts, reports and minutes.
- 2) Prepare and submit the annual assessment role to Multnomah County Assessors office.
- 3) Prepare the annual budget, maintain all financial records and systems collect funds and pay bills, issue reports as necessary and oversee an annual audit or accountant review.
- 4) Maintain all records including hard copy and electronic. Plan and organize their storage and archiving consistent with public statutes.
- 5) Prepare operational work plans for maintenance to be performed including ditch cleaning, obstruction removal, herbicide applications, mowing, pump and pump station maintenance, etc.
- 6) Develop and maintain a 3 to 5 year capital improvement project planning program.
- 7) Plan and manage capital improvement projects consistent with the approved budget.
- 8) Review all development proposals and plans that may impact the functional integrity and/or operations.
- 9) Attend agency, business and community meeting as may be required on behalf of the district. Meeting may include but not be limited to: land use and building permit application proposals, neighborhood meeting, regulatory coordination and special interest groups.
- 10) Maintain the Emergency Flood Control Plan as a unified district plan.

Appendix A**ADMINISTRATIVE AND SUPPORT SERVICES PROVIDED – continued**

- 11) Assist the Corps of Engineers on their annual inspection and evaluation of the flood control facilities, operations and maintenance.

FIELD INSPECTIONS**Stormwater Pumping and Conveyance Facilities**

- 1) Inspect and provide general lubrication and cleaning service to the pumps, pump motors, electrical equipment and pump station buildings twice weekly and more frequently during and/or following a rainfall event if required.
- 2) Inspect and clear debris from the stormwater culvert grating system twice a week and more frequently during and/or following a rainfall event if required
- 3) Inspect and document any deficiencies identified to the overall stormwater conveyance system once a month and more frequently during and/or following a rainfall event if required.
- 4) Service telemetry system to District's design standards.
- 5) Load and dispose of debris accumulated at pump station, culvert grating and stormwater conveyance system locations as required.
- 6) Remove and dispose of trees blocking the stormwater conveyance systems.
- 7) Perform any required maintenance and repairs to the pumps, pump motors, electrical equipment and pump station buildings in excess of the general lubricating and cleaning service.
- 8) Repair and/or replacement of stormwater culvert grating.
- 9) Stabilize and/or repair conveyance system slopes.
- 10) Remove and dispose of aquatic weed and/or garbage in or around critical sections of the stormwater conveyance system.
- 11) Remove tall grasses, invasive plant and sediment accumulation to maintain a minimum hydraulic cross section and to minimize hydraulic head loss through mechanical and chemical applications.
- 12) Perform any required emergency repairs on stormwater and flood control facilities.

Appendix A**ADMINISTRATIVE AND SUPPORT SERVICES PROVIDED – continued****Levees and Control Structures**

- 1) Inspect and document levee slope and roadway surface conditions twice a year.
- 2) Inspect levee in high water condition as defined in the District's Emergency Flood Control Plan.
- 3) Inspect document and service levee slide and flap gates twice a year.
- 4) Maintain the critical levee section to USACOE standards as outlined in the 33 Code of Federal Regulations (CFR).
- 5) Manage the levee slope vegetation to promote a heavy growth of grasses through mowing and chemical applications.
- 6) Replace riprap and soils eroding away from the levee slopes.
- 7) Maintain the access roadway on top of the levee.
- 8) Repair levee access gates and fencing.
- 9) Clean out levee slide gate wet wells and repair slide mechanism.

APPENDIX B – RATE SCHEDULE

Services provided through an Intergovernmental Agreement between the Peninsula Drainage District #2 (PEN 2) and Multnomah County Drainage District #1 (MCDD)

MULTNOMAH COUNTY DRAINAGE DISTRICT # 1 EQUIPMENT AND EMPLOYEE RATES

Revised April 2009	2008 - 2009	2009 - 2010
Description	Total	Total
	Hourly Rate	Hourly Rate
Executive Director	76.54	76.67
Deputy Director	76.54	78.65
Engineer	51.91	54.87
Accounting	38.31	40.46
Crew Leader	41.96	45.38
Mechanic III	45.37	45.51
Mechanic II	31.78	36.94
Equipment Operators III	38.81 - 40.10	40.43 - 41.46
Tractor Operators	36.95 - 37.34	38.32 - 38.73
Administrative	30.22	22.43 - 31.87
Summer Laborer	12.00 - 15.50	12.00 - 15.50
(Note: Equipment rates do not include operator)		
320 Case Excavator	62.50	64.00
JD 650 Dozer	47.00	48.00
HS 41 Spyder	195.00	200.00
TS 100 Tractor/Mower	46.00	47.00
TS 110 Tractor/Mower	51.00	52.25
Transport & Trailer	46.00	47.00
Dump Trucks	49.00	50.25
JD 310 Backhoe	31.00	32.00
Pickups	12.00	13.00
Spray Truck	36.00	37.00
Spyder on Barge	262.00	268.50
Material Barges (ea.)	11.00	12.00
Chipper	16.00	17.00
Hydro Seeder	16.00	17.00
Boats	11.00	12.00
Herbicide Sprayer	11.00	12.00
Misc. Tools	6.00	7.00

APPENDIX B-1 DISTRIBUTION SCHEDULE

Services provided through an Intergovernmental Agreement between the Peninsula Drainage District #1 (PEN 1) and Multnomah County Drainage District No. 1 (MCDD)

OPTIONS FOR DISTRIBUTING SHARED COSTS

Some work done by MCDD staff benefits more than one district. For instance, working with the City of Portland on a code revision may benefit PEN 1, PEN 2 and MCDD. Likewise, tracking proposed land use issues through METRO could benefit the three aforementioned Districts and SDIC. In answer to this, a series of options for sharing costs among the Districts has been approved by each Board and included here as another rate schedule option.

Table 1 - Environmental All Cities
Levee and Ditch Lengths (miles)
Including the Upper Columbia Slough

	Levees	%	Ditches	%	Average %
MCDD	12.2	45	26.1	60	52.5
Pen 1	4.9	18	3.3	8	13.0

Pen 2	5.9	22	6.2	14	18.0
SDIC	4.2	15	7.6	17	16.5
Total	27.2 miles		43.2 miles		100

Table 2 – Environmental All Cities
Levee and Ditch Lengths (miles)
Excluding the Upper Columbia Slough

	Levees	%	Ditches	%	Average %
MCDD	12.2	45	10.5	38	41.5
Pen 1	4.9	18	3.3	12	14.5
Pen 2	5.9	22	6.2	22	22.5
SDIC	4.2	15	7.6	28	21.5
Total	27.2 miles		27.6 miles		100

Table 3 – Environmental Within COP
Levee and Ditch lengths (miles)
Including the Upper Columbia Slough

	Levees	%	Ditches	%	Average %
MCDD	10.3	49	25.8	73	61.0
Pen 1	4.9	23	3.3	9	16.0
Pen 2	5.9	28	6.2	18	23.0
Total	21.1 miles		35.3 miles		100

Table 4 – Environmental Within COP
Levee and Ditch lengths (miles)
Excluding the Upper Columbia Slough

	Levees	%	Ditches	%	Average %
MCDD	10.3	49	9.7	51	50.0

Pen 1	4.9	23	3.1	16	19.5
Pen 2	5.9	28	6.2	33	30.5
Total	21.1 miles		19 miles		100

Table 5 - All Cities
Acreage and Impervious Area (acres)

	Acreage	%	Impervious	%	Average %
MCDD	8,832	69	3,433	80	74.5
Pen 1	901	7	202	5	6.0
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Acreage and Impervious Area (acres)

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Total	8,288		3,664		100

Table 7 – MCDD & SDIC
Stormwater Issues Based on Acreage

	Acreage	%
MCDD	2,920	65

SDIC

1,556

35

Exhibit B

PROFESSIONAL SERVICES AGREEMENT
between
PENINSULA DRAINAGE DISTRICT NO. 1
and
CORNFORTH CONSULTANTS

Contract No. P1-1402-019-PSA

This Professional Services Agreement ("Agreement") is made by and between Peninsula Drainage District No. 1 ("District") and Cornforth Consultants ("Consultant") for Engineering Evaluation of Levee System ("Services") on the Levee Accreditation Project ("Project"). The parties agree as follows:

CONSULTANT DATA

Consultant attests that it is an independent contractor solely responsible for the work performed under this Agreement. Consultant, its subconsultants, employees, and agents shall not be deemed employees of District. Consultant shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for Services under this Agreement.

Full Business Name: Cornforth Consultants
Address: 10250 SW Greenburg Rd Suite 111 Portland, OR 97223
City, State, ZIP: Portland, OR 97223
Business Telephone: 503-452-1100
Facsimile: 503-452-1528
Email: mmeyer@cornforthconsultants.com
Federal Tax Identification Number ("TIN") or Social Security Number ("SSN"): 93-0837288


Consultant must submit a completed "Request for Taxpayer Identification Number and Certification" (Form W-9) with this signed Agreement. Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Consultant.

Consultant certifies under penalty of perjury that Consultant is a

☐ Sole Proprietor ☒ Corporation ☐ Limited Liability Company
☐ Partnership ☐ Other [describe: _____]

TERMS AND CONDITIONS

1. Initial Project Information.

- a. Description of Services: Phase 2 Engineering Services for FEMA Levee Certification, as more fully described in Exhibit A. MRM 
- b. Fee: Not to exceed seven hundred thirty-five thousand dollars (\$730,000). The fee is calculated pursuant to the work estimates and fee schedule contain in Exhibit A.
- c. Scheduled Completion of Services: Approximately 32 weeks from date of Notice to Proceed
- d. Consultant's Project Team: Mike Meyer P.E., Randy Hill P.E., and Gerry Heslin P.E.
- e. Contract Documents: The contract consists of this Agreement and the following Exhibits:
 - Exhibit A: Scope of Work
 - Exhibit B: Insurance Requirements
- f. Precedence: Conflicts between Contract Documents shall be resolved in favor of this Agreement and any subsequent amendments to this agreement.

2. Consultant's Duties.

- a. Consultant Services. Consultant shall provide the services more fully described in Exhibit A ("Services") in accordance with the terms and conditions of this Agreement.
- b. Consultant Representative. Consultant shall identify a representative authorized to act for Consultant on the Project. District has the right to review and approve any representative proposed by Consultant, which approval shall not be unreasonably withheld. Consultant shall not appoint a representative to whom District has reasonably and timely objected. Consultant shall not substitute representatives without District's review and approval. Consultant acknowledges that this Agreement was awarded in part on the basis of the unique background and abilities of the key personnel and subconsultants identified by Consultant. Consultant shall not remove, re-assign, or replace key personnel without District's prior written consent.
- c. Subconsultants. Consultant shall identify by firm, name, and title, the primary subconsultants who will perform Services under this Agreement. Consultant shall not engage or assign any person or entity to whom District has made a reasonable and timely objection. District has the right to review and approve any subconsultant substitutions proposed by Consultant. District shall not unreasonably withhold its review and approval of these substitutions. Upon District request, Consultant shall promptly provide copies of Consultant's agreements with subconsultants.
- d. Conflicts. Consultant represents that Consultant has no existing interest and shall not acquire any interest, direct or indirect, that would reasonably appear to interfere in any manner or degree with the performance of Services under this Agreement and that Consultant shall employ no person having such interest.
- e. Insurance. Before beginning Services, Consultant shall obtain and maintain for the duration of this Agreement all insurance coverages listed in Exhibit C (Insurance Requirements). Maintenance of insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach.

- f. Security. Consultant shall comply with all virus-protection, access control, back-up, password and other security and information technology policies of District when using, having access to, or creating systems for any of the District computers, data, systems, personnel, or other information resources.

3. Scope of Consultant's Services.

- a. Legal and Policy Compliance. Consultant shall provide the Services described in detail in Exhibit A in accordance with the terms of this Agreement, federal, state, or local law or ordinance, and applicable District rules, policies, and administrative directives. Consultant shall provide the Services so that the Project will be completed as expeditiously and economically as possible within the total budgeted cost to District and in District's best interests.
- b. Standard of Care. Consultant represents and warrants that the Services performed by the Consultant or any approved subconsultant shall satisfy the standards of care, skill and diligence ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions for similar services as of the time Consultant or any approved subconsultant performs the Services. Consultant represents and warrants that it has reviewed and is familiar with all federal, state and local laws applicable to its performance of the Services and will comply with all such laws. Consultant represents and warrants that it, its employees, and any subconsultant and its employees are trained in the proper safety procedures for the performance of the Services and are duly licensed as may be required under Oregon law. The warranties under this Section are in lieu of and exclude all other warranties, whether express or implied, by operation of law or otherwise.
- c. Time is of the Essence. Time is of the essence in the performance of this Agreement. Upon receipt of District's written notice to proceed, Consultant shall begin providing Services and shall complete its performance in accordance with the project schedule set forth in Exhibit A. Consultant shall not be responsible for delay in performance to the extent those delays are caused by circumstances beyond Consultant's reasonable control.
- d. Errors. Consultant will be responsible for correcting any inconsistencies, errors, or omissions in the drawings, specifications, deliverables, or other documents provided under this Agreement.
- e. Additional Services. Consultant shall perform only the Services authorized by this Agreement. Additional Services will be compensated only as authorized in writing by District. District will not pay for Additional Services made necessary by Consultant or any subconsultant mistakes.
- f. Approvals; Permits. Consultant represents that it and its subconsultants have expertise and working knowledge of the applicable approval and permit application requirements of any governmental jurisdiction and shall be responsible to provide the Services in the form and at the time required to obtain such approvals or permits. To the extent required by Exhibit A, Consultant shall assist District in preparing and submitting any such applications and will execute such applications on District's behalf. Consultant shall not execute such documents for District.
- g. Independent Contractor. Consultant shall perform all Services as an independent contractor. Although District reserves the right to set the delivery schedule for the Services and to evaluate quality of completed Services, District cannot and will not control the means and manner of Consultant's performance. Consultant is responsible to determine the appropriate means and manner of performing the Services. Consultant, Consultant's employees, and any subconsultants are not "officers, employees, or agents" of the State of Oregon or District (as those terms are used in ORS 30.265) and shall have no authority to bind District for the payment of any cost or expense without District's express written approval.

- h. Other Service Providers. District reserves the right to enter into other agreements for work additional or related to the Project, and Consultant agrees to cooperate fully with these other contractors and with District personnel. When requested by District, Consultant shall coordinate its performance under this Agreement with such additional or related work. Consultant shall not interfere with the work performance of any other contractor or District employees.

4. District's Obligations.

- a. Administration of Agreement. Through a prior intergovernmental agreement signed by the Board of Supervisors of the DISTRICT, the Multnomah County Drainage District No. 1 (MCDD) is designated to administer this agreement on behalf of DISTRICT. All invoices should be addressed directly to DISTRICT, and DISTRICT will make all payments in accordance with this agreement. In the event that specified MCDD personnel are no longer able to administer this agreement, the Executive Director of MCDD shall designate new MCDD staff to administer the agreement. All parties will be notified in writing if such change occurs.
- b. Written Information. Unless otherwise provided for under this Agreement, District shall provide written information in a timely manner on requirements and limitations on the Project. This information shall include District's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.
- c. District Representative. District shall identify a representative authorized to act on its behalf on all Project matters. The District Representative will have the sole authority to make decisions for the District under this Agreement.
- d. Other Consultants. District shall coordinate the services of its own consultants with Consultant's Services. Upon Consultant's request, District shall furnish copies of the scope of services in the contracts between District and District's consultants.
- e. Site Access. District shall provide Consultant access to the Project site before Services begin and shall cause District contractors to provide Consultant access to their work wherever it is in preparation or progress.

- 5. **Limitation on Role of District**. Neither this Agreement nor the providing of services will operate to make DISTRICT or MCDD an owner, operator, generator, transporter, treater, storer, or arranger within the meaning of the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation Recovery Act, and equivalent state and local laws, nor a discharger of any pollutant under the Clean Water Act and equivalent state and local laws; and except as restricted by the Oregon Tort Claims Act, the Consultant shall indemnify, defend, and hold DISTRICT and MCDD harmless from any claims, suits, losses, costs, and expenses arising from such basis, including, but not limited to court costs and reasonable attorney's fees, at trial and on appeal, incurred as a result of any claims, demands, suits, charges, or allegations of responsibility by any and all third parties including, but not limited to contractors, subcontractors, agents, employees, assignees, transferees, successors, invitees, neighbors, and the public relating, except to the extent that a claim is the result of the negligence or willful acts or omissions of DISTRICT or MCDD.

6. Drawings, Specifications, and Other Documents.

- a. Ownership of Documents. Documents and other materials provided by District under this Agreement will remain property of District. All reports, field notes, calculations, estimates, and other documents which are prepared by Consultant under this Agreement ("Instruments of Service") shall be and remain the exclusive property of District. Consultant agrees to deliver such documents to District promptly

upon request by District. Consultant and any approved subconsultant shall be entitled to retain a copy of any such materials, provided they are maintained as confidential and are not used for any purpose other than performance or enforcement of this Agreement.

- b. Intellectual Property. To the degree that any of the Instruments of Service described subsection 5(a) of this Section qualify as intellectual property of Consultant, consultant grants to District a nonexclusive, irrevocable, and perpetual license to use and reproduce Consultant's Instruments of Service for purposes under this Agreement. Consultant will obtain similar nonexclusive, irrevocable, and perpetual licenses from Consultant's subconsultants consistent with this Agreement. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project does not constitute a publication in derogation of Consultant's reserved rights. If and upon the date Consultant is in default of this Agreement, the foregoing license shall be supplemented by a second, nonexclusive license permitting District to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections, or additions to the Instruments of Service solely for purposes of completing, using, and maintaining the Project. Notwithstanding any other provision of this Section 5, Instruments of Service may be continuously used for construction of the Project until the Project is complete, regardless of any dispute between the parties, including without limitation any dispute for payment.
- c. Changes; Unauthorized Use. Consultant is not responsible for changes to Instruments of Service made by others without Consultant's knowledge and authorization. Any unauthorized use of the Instruments of Service will be at the user's sole risk and without liability to Consultant. District's use or distribution of the Instruments of Service for any purpose other than a purpose authorized under this Agreement will be at District's risk, and to the fullest extent permitted by law, District agrees to indemnify and hold harmless Consultant, its principals, employees, and subconsultants from and against claims, damages, losses, and expenses (including attorney fees) for personal injury or death or damages to property arising out of or resulting from District's unauthorized use of the Instruments of Service.
- d. Records Maintenance. Consultant shall maintain complete and accurate records of all Services performed and all documents produced under this Agreement for six years after completion or abandonment of the Services. Consultant shall make these records available to District upon reasonable notice.
- e. Delivery of Project Records. Upon District's written request or following the termination of this Agreement for any reason and at no cost to District, Consultant shall promptly deliver to District all Project records, including all administrative documents produced, compiled, or maintained by Consultant as a part of the Services provided for the Project.

7. Term and Termination.

- a. Start and End Dates. This Agreement becomes effective on the date of the last authorized signature below. Unless earlier terminated as provided below, this Agreement shall continue through project completion..
- b. Unilateral. District may terminate the Agreement at any time for its convenience upon written notice to Consultant. If District terminates for convenience, Consultant may invoice District and District shall pay all undisputed invoice(s) for Services performed until District's notice of termination.
- c. Mutual. Either party may terminate this Agreement in the event of a material breach by the other. To be effective, the party seeking termination must give to the other party written notice of the breach and its intent to terminate. If the breaching party fails to cure the breach within 15 days of the date of the

notice, the non-breaching party may terminate this Agreement at any time thereafter by giving a written notice of termination.

- d. Other. Except as indicated in this section, termination will have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring before the effective date of such termination
- e. Payment on Early Termination. Upon termination pursuant to Section 8, payment shall be made as follows:
 - 1. If terminated under sections 7(a) or 7(b) for the convenience of the DISTRICT, the DISTRICT shall pay Consultant for work performed prior to the termination date if such work was performed in accordance with the Agreement. The DISTRICT shall not be liable for direct, indirect or consequential damages. Termination shall not result in a waiver of any other claim the DISTRICT may have against Consultant.
 - 2. If terminated under section 7(c) by the Consultant due to a breach by the DISTRICT, then the DISTRICT shall pay the Consultant for work performed prior to the termination date if such work was performed in accordance with the Agreement.
 - 3. If terminated under sections 7(c) by the DISTRICT due to a breach by the Consultant, then the DISTRICT shall pay the Consultant for work performed prior to the termination date provided such work was performed in accordance with the Agreement less any setoff to which the DISTRICT is entitled.

8. Payments.

- a. Monthly Invoices. Consultant shall provide District with monthly invoices detailing Services rendered and reimbursable expenses incurred in the preceding month. Invoices shall include itemization of all approved Agreement amendments whether or not they are currently being billed. Consultant expressly waives any right to additional payment for any Services in the absence of District's written authorization or request.
- b. Payment Method. Upon work completion and acceptance, invoice approval, and according to this Agreement's Terms and Conditions, District shall pay Consultant for Services rendered and for reimbursable expenses authorized under this Agreement net 30 days. District shall make no deductions from Consultant's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors or on account of the cost of construction changes other than those for which Consultant is liable.
- c. Reimbursables. Upon District request, Consultant shall provide to District all records of reimbursable expenses, expenses pertaining to a change in Services, and any Services performed on the basis of hourly rates or expense shall be available to District or District's authorized representative at mutually convenient times. Consultant shall save these records for at least three years after final payment.
- d. Errors and Omissions; Fee Adjustments. District will not pay for any change order fee increases due to Consultant's errors or omissions. Regardless of the structure of Consultant's fee, the fee may be adjusted downward if, in accordance with this Agreement, District reduces the Services to be provided under this Agreement.
- e. Record Maintenance. Consultant shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Consultant shall make available to District for

review and audit all Project-related accounting records and documents, and any other financial data. Upon District's request, Consultant shall submit exact duplicates of originals of all requested records to District.

- f. Non-Appropriation; Adequate Funding. District is prohibited from contracting for Services for which it has not received appropriated funds. If payment for Services under this Agreement extends into District's next fiscal year, District's obligation to pay for such work shall be subject to approval of future Board appropriations to fund this Agreement. Moreover, continuation of this Agreement at specified levels is specifically conditioned on adequate funding under District's budget adopted in June of each year. District reserves the right to adjust the level of Services provided for in this Agreement in accordance with funding levels adopted by District's Board of Directors.

9. Indemnification.

- a. Claims For Other Than Professional Liability. Consultant shall indemnify, defend, save, and hold harmless District and its officers, agents, and employees, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from or arising out of the acts or omissions of Consultant or its sub-consultants, subcontractors, agents, or employees under this Agreement.
- b. Claims For Professional Liability. Consultant shall indemnify, defend, save, and hold harmless District, and its officers, agents, and employees, from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of whatsoever nature arising out of the professionally negligent acts, errors, or omissions, or recklessness or willful misconduct of Consultant or its sub-consultants, subcontractors, agents, or employees in the performance of professional services under this Agreement.
- c. Exception. Nothing in Sections 8(a) or 8(b) requires Consultant or Consultant's surety or insurers to indemnify District, its officers, agents, and employees against liability for damages for death or bodily injury to persons or damage to property caused in whole or in part by the negligence of District, its officers, agents, and employees. Nothing in the foregoing limits or otherwise affects any requirement in Sections 8(b) or 8(c) that requires Consultant to indemnify District, its officers, agents, and employees against liability for damages for death or bodily injury to persons or damage to property arising from the fault of the Consultant or Consultant's agents, representatives, employees, or subconsultants.

10. Compliance with State of Oregon Public Contracting Code.

- a. Payment of Labor. As required by ORS 279B.220 and 279C.505, Consultant shall:
 1. Make payment promptly, as due, to all persons supplying labor or material to Consultant for the performance of the Services provided for in this Agreement;
 2. Pay all contributions or amounts due the Industrial Accident Fund from Consultant or sub-consultant incurred in the performance of this Agreement;
 3. Not permit any lien or claim to be filed or prosecuted against Metro on account of any labor or material furnished; and
 4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- b. Payment for Medical Care and Workers' Compensation. As required by 279B.230 and 279C.530:

1. Consultant shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums that the Consultant agrees to pay for the services and all moneys and sums that the Consultant collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services.
 2. All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- c. Hours of Labor. As required by ORS 279B.020(5), 279B.235(3), and 279C.540(6), for Consultant's employees subject to Oregon employment laws:
1. Maximum Hours. Employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on Saturdays, Sundays, New Year's Day (Jan. 1), Memorial Day (last Monday in May), Independence Day (July 4), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25).
 2. Exemption. These requirements do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
 3. Notice to Employees. Consultant shall give notice in writing to its employees who perform work under this Agreement, either at the time of hire or before commencement of work on this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- d. Limitation on Claims. For Consultant's employees subject to Oregon employment laws and as required by ORS 279C.545, any worker employed by Consultant shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with Consultant within 90 days from the completion of this Agreement, providing Consultant has:
1. Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this Section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work, and
 2. Maintained such circular continuously posted from the inception to the completion of this Agreement on which workers are or have been employed.

11. Other Provisions.

- a. Controlling Law; Venue. Any dispute under this Agreement or related to this Agreement will be governed by Oregon law, and any litigation arising out of the Agreement will be conducted in courts located in Multnomah County, Oregon.
- b. Claims/Mediation. Any claim or dispute arising under this Agreement will be delivered in writing to the other party within a reasonable time after the claim, dispute, or other matters in question have arisen. Consultant and District will meet within ten days of the date of delivery of the claim to attempt to resolve the claim. Consultant and District agree that both parties shall try to resolve the dispute amicably and at a Project level. If the dispute is not settled, both parties shall consider mediation as a

next alternative for dispute resolution prior to the commencement of litigation or arbitration. Such mediation will occur in Portland, Oregon, and the mediator's fees and expenses will be shared equally by the parties who agree to exercise their best efforts in good faith to resolve all disputes in the mediation.

- c. Waiver; Severability. Waiver of any default or breach under this Agreement by District will be effective only in the specific instance and for the specific purpose given. Any such waiver does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. 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 shall be construed and enforced as if this Agreement did not contain the particular term or provision held invalid.
- d. Amendments. Any amendments, consents to, or waivers of the terms of this Agreement shall be in writing and signed by the authorized representatives of both parties.
- e. Media/Publications. Consultant shall issue no news release, press release, or other statement to members of the news media or any other publication regarding this Agreement or the Project within one year of Project completion without District's prior written authorization. Consultant shall not post or publish any textual or visual representations of the Project without approval of District.
- f. Non-discrimination. Consultant shall comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, color, gender, age, religion, national origin, U.S. military veteran status, marital status, sexual orientation, disability, source of income, or political affiliation in programs, activities, services, benefits, or employment in connection with this Agreement.
- g. Successors in Interest. This Agreement will bind and inure to the benefit of, the parties, their successors, and approved assigns, if any. Except as previously disclosed and approved, Consultant shall not enter into any subconsultant agreements for any of the Services or assign or transfer any of its interest in this Agreement without District's prior written consent.
- h. No Third-Party Beneficiaries. District and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides any benefit or right, directly or indirectly, to third persons unless they are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.
- i. Entire Agreement. When signed by the authorized representatives of both parties, this Agreement (and the attached exhibits) is their final and entire agreement. As their final and entire expression, this Agreement supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.

- j. Notices and Communications. Notices and communications between the parties to this Agreement must be sent to the following addresses:

District

Kayla Mullis
Project Management
Multnomah County Drainage District
1880 NE Elrod Drive
Portland, OR 97211
503.281.5675
503.281.0392 (fax)

Consultant

Mike Meyer
Cornforth Consultants
10250 SW Greenburg Rd Suite 111
Portland, OR 97223
503-452-1100
503-452-1528

The party giving notice will provide notice in writing, dated and signed by a duly authorized representative of that party. Notice is not effective for any purpose whatsoever unless served in one of the following manners:

1. If notice is given by personal delivery, it is deemed delivered on the day of delivery.
2. If notice is given by overnight delivery service, it is deemed delivered one day after the date deposited, as indicated by the delivery service.
3. If notice is given by United States mail, it is deemed delivered three days after the date deposited as indicated by the postmarked date.
4. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it is deemed delivered on the day the notice is signed for.

I HAVE READ THIS AGREEMENT, INCLUDING ALL EXHIBITS. I CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS AGREEMENT, AND TO BE BOUND BY ITS TERMS ON BEHALF OF THE PARTY I REPRESENT.

CONSULTANT

Cornforth Consultants

Michael R. Meyer
Signature

Michael R. Meyer, Vice President
Consultant Printed Name and Title

2/5/14
Date of Signature

DISTRICT

Multnomah County Drainage District

[Signature]
Signature

Executive Director, Reed Wagner
District Official Printed Name & Title

2/5/14
Date of Signature

EXHIBIT B
INSURANCE REQUIREMENTS

- A. MINIMUM INSURANCE LIMITS.** Consultant shall procure, prior to commencement of the Services of this Agreement, and shall maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by Consultant, its agents, representatives, employees, and subconsultant(s). Consultant's liabilities, including but not limited to Consultant's indemnity obligations under this Agreement, will not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement, and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach of contract by District. Coverage shall be at least as broad as the following scopes and limits:
1. **Commercial General Liability.** \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury, and property damage.
 2. **Commercial Automobile Liability.** \$1,000,000 per accident for bodily injury and property damage.
 3. **Workers' Compensation Liability.** Workers' Compensation and Employers' Liability Insurance as prescribed by applicable law. Consultant shall require and ensure that each of its subconsultants or subcontractors comply with this requirement.
 4. **Employers' Liability.** \$1,000,000 per occurrence.
 5. **Professional Liability.** \$2,000,000 per claim and \$2,000,000 aggregate limits subject to no more than \$10,000 per claim deductible. Consultant shall maintain professional liability coverage through completion of construction and two years thereafter.

District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

- B. DEDUCTIBLES AND SELF-INSURANCE RETENTION.** Consultant shall inform District in writing if any deductibles or self-insured retention exceeds \$10,000. At its sole discretion, District may (1) accept the higher deductible, (2) require Consultant to insure such deductibles or self-insured retention as respects District, its officers, officials, employees, and volunteers, or (3) require Consultant to provide a surety bond guaranteeing Consultant's payment of deductible or self-insured losses and related investigations, claim administration, and defense expenses.
- C. OTHER INSURANCE PROVISIONS.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
1. District, District's Program Manager, or both, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as Additional Insureds with respect to liability arising out of activities performed by or on behalf of Consultant; Instruments of Service and completed operations of Consultant; premises owned, occupied, or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage will contain no special limitations on the scope of protection afforded to the Additional Insureds.
 2. For any claims related to the Project, Consultant's insurance coverage shall be primary insurance with respect to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Consultant's insurance and not contributory.
 3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, will not affect coverage provided to the Additional Insureds.
 4. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage will not be suspended, voided, or canceled by either party, or reduced in coverage or in limits, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to District.
- D. **ACCEPTABILITY OF INSURERS.** Insurance shall be placed with insurers admitted in Oregon with a current A.M. Best's rating and FSC no lower than A-VII. Consultant shall inform District in writing if any of its insurers have a rating and FSC lower than A-VII. At its sole discretion, District may (1) accept the lower rating or (2) require Consultant to procure insurance from another insurer.
- E. **VERIFICATION OF COVERAGE.** Consultant shall furnish District with:
 1. Certificates of insurance showing maintenance of the required insurance coverage; and
 2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements shall be received and approved by District before Services commence.

PROFESSIONAL SERVICES AGREEMENT
between
PENINSULA DRAINAGE DISTRICT NO. 2
and
CORNFORTH CONSULTANTS

Contract No. P2-1402-024-PSA

This Professional Services Agreement ("Agreement") is made by and between **Peninsula Drainage District No. 2** ("District") and **Cornforth Consultants** ("Consultant") for **Engineering Evaluation of Levee System** ("Services") on the **Levee Accreditation Project** ("Project"). The parties agree as follows:

CONSULTANT DATA

Consultant attests that it is an independent contractor solely responsible for the work performed under this Agreement. Consultant, its subconsultants, employees, and agents shall not be deemed employees of District. Consultant shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for Services under this Agreement.

Full Business Name: Cornforth Consultants

Address: 10250 SW Greenburg Rd Suite 111 Portland, OR 97223

City, State, ZIP: Portland, OR 97223

Business Telephone: 503-452-1100

Facsimile: 503-452-1528

Email: mmeyer@cornforthconsultants.com

Federal Tax Identification Number ("TIN") or Social Security Number ("SSN"): 93-0837288

Consultant must submit a completed "Request for Taxpayer Identification Number and Certification" (Form W-9) with this signed Agreement. Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Consultant.

Consultant certifies under penalty of perjury that Consultant is a

☐ Sole Proprietor ☒ Corporation ☐ Limited Liability Company
☐ Partnership ☐ Other [describe: _____]

TERMS AND CONDITIONS

1. Initial Project Information.

- a. Description of Services: Phase 2 Engineering Services for FEMA Levee Certification, as more fully described in Exhibit A.
- b. Fee: Not to exceed seven hundred thirty ^{seven} ~~five~~ thousand dollars (\$737,000). The fee is calculated pursuant to the work estimates and fee schedule contain in Exhibit A. JAS MRM
- c. Scheduled Completion of Services: Approximately 32 weeks from date of Notice to Proceed
- d. Consultant's Project Team: Mike Meyer P.E., Randy Hill P.E., and Gerry Heslin P.E.
- e. Contract Documents: The contract consists of this Agreement and the following Exhibits:
 - Exhibit A: Scope of Work
 - Exhibit B: Insurance Requirements
- f. Precedence: Conflicts between Contract Documents shall be resolved in favor of this Agreement and any subsequent amendments to this agreement.

2. Consultant's Duties.

- a. Consultant Services. Consultant shall provide the services more fully described in Exhibit A ("Services") in accordance with the terms and conditions of this Agreement.
- b. Consultant Representative. Consultant shall identify a representative authorized to act for Consultant on the Project. District has the right to review and approve any representative proposed by Consultant, which approval shall not be unreasonably withheld. Consultant shall not appoint a representative to whom District has reasonably and timely objected. Consultant shall not substitute representatives without District's review and approval. Consultant acknowledges that this Agreement was awarded in part on the basis of the unique background and abilities of the key personnel and subconsultants identified by Consultant. Consultant shall not remove, re-assign, or replace key personnel without District's prior written consent.
- c. Subconsultants. Consultant shall identify by firm, name, and title, the primary subconsultants who will perform Services under this Agreement. Consultant shall not engage or assign any person or entity to whom District has made a reasonable and timely objection. District has the right to review and approve any subconsultant substitutions proposed by Consultant. District shall not unreasonably withhold its review and approval of these substitutions. Upon District request, Consultant shall promptly provide copies of Consultant's agreements with subconsultants.
- d. Conflicts. Consultant represents that Consultant has no existing interest and shall not acquire any interest, direct or indirect, that would reasonably appear to interfere in any manner or degree with the performance of Services under this Agreement and that Consultant shall employ no person having such interest.
- e. Insurance. Before beginning Services, Consultant shall obtain and maintain for the duration of this Agreement all insurance coverages listed in Exhibit C (Insurance Requirements). Maintenance of insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach.

- f. Security. Consultant shall comply with all virus-protection, access control, back-up, password and other security and information technology policies of District when using, having access to, or creating systems for any of the District computers, data, systems, personnel, or other information resources.

3. Scope of Consultant's Services.

- a. Legal and Policy Compliance. Consultant shall provide the Services described in detail in Exhibit A in accordance with the terms of this Agreement, federal, state, or local law or ordinance, and applicable District rules, policies, and administrative directives. Consultant shall provide the Services so that the Project will be completed as expeditiously and economically as possible within the total budgeted cost to District and in District's best interests.
- b. Standard of Care. Consultant represents and warrants that the Services performed by the Consultant or any approved subconsultant shall satisfy the standards of care, skill and diligence ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions for similar services as of the time Consultant or any approved subconsultant performs the Services. Consultant represents and warrants that it has reviewed and is familiar with all federal, state and local laws applicable to its performance of the Services and will comply with all such laws. Consultant represents and warrants that it, its employees, and any subconsultant and its employees are trained in the proper safety procedures for the performance of the Services and are duly licensed as may be required under Oregon law. The warranties under this Section are in lieu of and exclude all other warranties, whether express or implied, by operation of law or otherwise.
- c. Time is of the Essence. Time is of the essence in the performance of this Agreement. Upon receipt of District's written notice to proceed, Consultant shall begin providing Services and shall complete its performance in accordance with the project schedule set forth in Exhibit A. Consultant shall not be responsible for delay in performance to the extent those delays are caused by circumstances beyond Consultant's reasonable control.
- d. Errors. Consultant will be responsible for correcting any inconsistencies, errors, or omissions in the drawings, specifications, deliverables, or other documents provided under this Agreement.
- e. Additional Services. Consultant shall perform only the Services authorized by this Agreement. Additional Services will be compensated only as authorized in writing by District. District will not pay for Additional Services made necessary by Consultant or any subconsultant mistakes.
- f. Approvals; Permits. Consultant represents that it and its subconsultants have expertise and working knowledge of the applicable approval and permit application requirements of any governmental jurisdiction and shall be responsible to provide the Services in the form and at the time required to obtain such approvals or permits. To the extent required by Exhibit A, Consultant shall assist District in preparing and submitting any such applications and will execute such applications on District's behalf. Consultant shall not execute such documents for District.
- g. Independent Contractor. Consultant shall perform all Services as an independent contractor. Although District reserves the right to set the delivery schedule for the Services and to evaluate quality of completed Services, District cannot and will not control the means and manner of Consultant's performance. Consultant is responsible to determine the appropriate means and manner of performing the Services. Consultant, Consultant's employees, and any subconsultants are not "officers, employees, or agents" of the State of Oregon or District (as those terms are used in ORS 30.265) and shall have no authority to bind District for the payment of any cost or expense without District's express written approval.

- h. Other Service Providers. District reserves the right to enter into other agreements for work additional or related to the Project, and Consultant agrees to cooperate fully with these other contractors and with District personnel. When requested by District, Consultant shall coordinate its performance under this Agreement with such additional or related work. Consultant shall not interfere with the work performance of any other contractor or District employees.

4. District's Obligations.

- a. Administration of Agreement. Through a prior intergovernmental agreement signed by the Board of Supervisors of the DISTRICT, the Multnomah County Drainage District No. 1 (MCDD) is designated to administer this agreement on behalf of DISTRICT. All invoices should be addressed directly to DISTRICT, and DISTRICT will make all payments in accordance with this agreement. In the event that specified MCDD personnel are no longer able to administer this agreement, the Executive Director of MCDD shall designate new MCDD staff to administer the agreement. All parties will be notified in writing if such change occurs.
- b. Written Information. Unless otherwise provided for under this Agreement, District shall provide written information in a timely manner on requirements and limitations on the Project. This information shall include District's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.
- c. District Representative. District shall identify a representative authorized to act on its behalf on all Project matters. The District Representative will have the sole authority to make decisions for the District under this Agreement.
- d. Other Consultants. District shall coordinate the services of its own consultants with Consultant's Services. Upon Consultant's request, District shall furnish copies of the scope of services in the contracts between District and District's consultants.
- e. Site Access. District shall provide Consultant access to the Project site before Services begin and shall cause District contractors to provide Consultant access to their work wherever it is in preparation or progress.

- 5. **Limitation on Role of District.** Neither this Agreement nor the providing of services will operate to make DISTRICT or MCDD an owner, operator, generator, transporter, treater, storer, or arranger within the meaning of the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation Recovery Act, and equivalent state and local laws, nor a discharger of any pollutant under the Clean Water Act and equivalent state and local laws; and except as restricted by the Oregon Tort Claims Act, the Consultant shall indemnify, defend, and hold DISTRICT and MCDD harmless from any claims, suits, losses, costs, and expenses arising from such basis, including, but not limited to court costs and reasonable attorney's fees, at trial and on appeal, incurred as a result of any claims, demands, suits, charges, or allegations of responsibility by any and all third parties including, but not limited to contractors, subcontractors, agents, employees, assignees, transferees, successors, invitees, neighbors, and the public relating, except to the extent that a claim is the result of the negligence or willful acts or omissions of DISTRICT or MCDD.

6. Drawings, Specifications, and Other Documents.

- a. Ownership of Documents. Documents and other materials provided by District under this Agreement will remain property of District. All reports, field notes, calculations, estimates, and other documents which are prepared by Consultant under this Agreement ("Instruments of Service") shall be and remain the exclusive property of District. Consultant agrees to deliver such documents to District promptly

upon request by District. Consultant and any approved subconsultant shall be entitled to retain a copy of any such materials, provided they are maintained as confidential and are not used for any purpose other than performance or enforcement of this Agreement.

- b. Intellectual Property. To the degree that any of the Instruments of Service described subsection 5(a) of this Section qualify as intellectual property of Consultant, consultant grants to District a nonexclusive, irrevocable, and perpetual license to use and reproduce Consultant's Instruments of Service for purposes under this Agreement. Consultant will obtain similar nonexclusive, irrevocable, and perpetual licenses from Consultant's subconsultants consistent with this Agreement. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project does not constitute a publication in derogation of Consultant's reserved rights. If and upon the date Consultant is in default of this Agreement, the foregoing license shall be supplemented by a second, nonexclusive license permitting District to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections, or additions to the Instruments of Service solely for purposes of completing, using, and maintaining the Project. Notwithstanding any other provision of this Section 5, Instruments of Service may be continuously used for construction of the Project until the Project is complete, regardless of any dispute between the parties, including without limitation any dispute for payment.
- c. Changes; Unauthorized Use. Consultant is not responsible for changes to Instruments of Service made by others without Consultant's knowledge and authorization. Any unauthorized use of the Instruments of Service will be at the user's sole risk and without liability to Consultant. District's use or distribution of the Instruments of Service for any purpose other than a purpose authorized under this Agreement will be at District's risk, and to the fullest extent permitted by law, District agrees to indemnify and hold harmless Consultant, its principals, employees, and subconsultants from and against claims, damages, losses, and expenses (including attorney fees) for personal injury or death or damages to property arising out of or resulting from District's unauthorized use of the Instruments of Service.
- d. Records Maintenance. Consultant shall maintain complete and accurate records of all Services performed and all documents produced under this Agreement for six years after completion or abandonment of the Services. Consultant shall make these records available to District upon reasonable notice.
- e. Delivery of Project Records. Upon District's written request or following the termination of this Agreement for any reason and at no cost to District, Consultant shall promptly deliver to District all Project records, including all administrative documents produced, compiled, or maintained by Consultant as a part of the Services provided for the Project.

7. Term and Termination.

- a. Start and End Dates. This Agreement becomes effective on the date of the last authorized signature below. Unless earlier terminated as provided below, this Agreement shall continue through project completion..
- b. Unilateral. District may terminate the Agreement at any time for its convenience upon written notice to Consultant. If District terminates for convenience, Consultant may invoice District and District shall pay all undisputed invoice(s) for Services performed until District's notice of termination.
- c. Mutual. Either party may terminate this Agreement in the event of a material breach by the other. To be effective, the party seeking termination must give to the other party written notice of the breach and its intent to terminate. If the breaching party fails to cure the breach within 15 days of the date of the

notice, the non-breaching party may terminate this Agreement at any time thereafter by giving a written notice of termination.

- d. Other. Except as indicated in this section, termination will have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring before the effective date of such termination
- e. Payment on Early Termination. Upon termination pursuant to Section 8, payment shall be made as follows:
 - 1. If terminated under sections 7(a) or 7(b) for the convenience of the DISTRICT, the DISTRICT shall pay Consultant for work performed prior to the termination date if such work was performed in accordance with the Agreement. The DISTRICT shall not be liable for direct, indirect or consequential damages. Termination shall not result in a waiver of any other claim the DISTRICT may have against Consultant.
 - 2. If terminated under section 7(c) by the Consultant due to a breach by the DISTRICT, then the DISTRICT shall pay the Consultant for work performed prior to the termination date if such work was performed in accordance with the Agreement.
 - 3. If terminated under sections 7(c) by the DISTRICT due to a breach by the Consultant, then the DISTRICT shall pay the Consultant for work performed prior to the termination date provided such work was performed in accordance with the Agreement less any setoff to which the DISTRICT is entitled.

8. Payments.

- a. Monthly Invoices. Consultant shall provide District with monthly invoices detailing Services rendered and reimbursable expenses incurred in the preceding month. Invoices shall include itemization of all approved Agreement amendments whether or not they are currently being billed. Consultant expressly waives any right to additional payment for any Services in the absence of District's written authorization or request.
- b. Payment Method. Upon work completion and acceptance, invoice approval, and according to this Agreement's Terms and Conditions, District shall pay Consultant for Services rendered and for reimbursable expenses authorized under this Agreement net 30 days. District shall make no deductions from Consultant's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors or on account of the cost of construction changes other than those for which Consultant is liable.
- c. Reimbursables. Upon District request, Consultant shall provide to District all records of reimbursable expenses, expenses pertaining to a change in Services, and any Services performed on the basis of hourly rates or expense shall be available to District or District's authorized representative at mutually convenient times. Consultant shall save these records for at least three years after final payment.
- d. Errors and Omissions; Fee Adjustments. District will not pay for any change order fee increases due to Consultant's errors or omissions. Regardless of the structure of Consultant's fee, the fee may be adjusted downward if, in accordance with this Agreement, District reduces the Services to be provided under this Agreement.
- e. Record Maintenance. Consultant shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Consultant shall make available to District for

review and audit all Project-related accounting records and documents, and any other financial data. Upon District's request, Consultant shall submit exact duplicates of originals of all requested records to District.

- f. Non-Appropriation; Adequate Funding. District is prohibited from contracting for Services for which it has not received appropriated funds. If payment for Services under this Agreement extends into District's next fiscal year, District's obligation to pay for such work shall be subject to approval of future Board appropriations to fund this Agreement. Moreover, continuation of this Agreement at specified levels is specifically conditioned on adequate funding under District's budget adopted in June of each year. District reserves the right to adjust the level of Services provided for in this Agreement in accordance with funding levels adopted by District's Board of Directors.

9. Indemnification.

- a. Claims For Other Than Professional Liability. Consultant shall indemnify, defend, save, and hold harmless District and its officers, agents, and employees, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from or arising out of the acts or omissions of Consultant or its sub-consultants, subcontractors, agents, or employees under this Agreement.
- b. Claims For Professional Liability. Consultant shall indemnify, defend, save, and hold harmless District, and its officers, agents, and employees, from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of whatsoever nature arising out of the professionally negligent acts, errors, or omissions, or recklessness or willful misconduct of Consultant or its sub-consultants, subcontractors, agents, or employees in the performance of professional services under this Agreement.
- c. Exception. Nothing in Sections 8(a) or 8(b) requires Consultant or Consultant's surety or insurers to indemnify District, its officers, agents, and employees against liability for damages for death or bodily injury to persons or damage to property caused in whole or in part by the negligence of District, its officers, agents, and employees. Nothing in the foregoing limits or otherwise affects any requirement in Sections 8(b) or 8(c) that requires Consultant to indemnify District, its officers, agents, and employees against liability for damages for death or bodily injury to persons or damage to property arising from the fault of the Consultant or Consultant's agents, representatives, employees, or subconsultants.

10. Compliance with State of Oregon Public Contracting Code.

- a. Payment of Labor. As required by ORS 279B.220 and 279C.505, Consultant shall:
1. Make payment promptly, as due, to all persons supplying labor or material to Consultant for the performance of the Services provided for in this Agreement;
 2. Pay all contributions or amounts due the Industrial Accident Fund from Consultant or sub-consultant incurred in the performance of this Agreement;
 3. Not permit any lien or claim to be filed or prosecuted against Metro on account of any labor or material furnished; and
 4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- b. Payment for Medical Care and Workers' Compensation. As required by 279B.230 and 279C.530:

1. Consultant shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums that the Consultant agrees to pay for the services and all moneys and sums that the Consultant collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services.
 2. All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- c. Hours of Labor. As required by ORS 279B.020(5), 279B.235(3), and 279C.540(6), for Consultant's employees subject to Oregon employment laws:
1. Maximum Hours. Employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on Saturdays, Sundays, New Year's Day (Jan. 1), Memorial Day (last Monday in May), Independence Day (July 4), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25).
 2. Exemption. These requirements do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
 3. Notice to Employees. Consultant shall give notice in writing to its employees who perform work under this Agreement, either at the time of hire or before commencement of work on this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- d. Limitation on Claims. For Consultant's employees subject to Oregon employment laws and as required by ORS 279C.545, any worker employed by Consultant shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with Consultant within 90 days from the completion of this Agreement, providing Consultant has:
1. Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this Section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work, and
 2. Maintained such circular continuously posted from the inception to the completion of this Agreement on which workers are or have been employed.

11. Other Provisions.

- a. Controlling Law; Venue. Any dispute under this Agreement or related to this Agreement will be governed by Oregon law, and any litigation arising out of the Agreement will be conducted in courts located in Multnomah County, Oregon.
- b. Claims/Mediation. Any claim or dispute arising under this Agreement will be delivered in writing to the other party within a reasonable time after the claim, dispute, or other matters in question have arisen. Consultant and District will meet within ten days of the date of delivery of the claim to attempt to resolve the claim. Consultant and District agree that both parties shall try to resolve the dispute amicably and at a Project level. If the dispute is not settled, both parties shall consider mediation as a

next alternative for dispute resolution prior to the commencement of litigation or arbitration. Such mediation will occur in Portland, Oregon, and the mediator's fees and expenses will be shared equally by the parties who agree to exercise their best efforts in good faith to resolve all disputes in the mediation.

- c. Waiver; Severability. Waiver of any default or breach under this Agreement by District will be effective only in the specific instance and for the specific purpose given. Any such waiver does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. 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 shall be construed and enforced as if this Agreement did not contain the particular term or provision held invalid.
- d. Amendments. Any amendments, consents to, or waivers of the terms of this Agreement shall be in writing and signed by the authorized representatives of both parties.
- e. Media/Publications. Consultant shall issue no news release, press release, or other statement to members of the news media or any other publication regarding this Agreement or the Project within one year of Project completion without District's prior written authorization. Consultant shall not post or publish any textual or visual representations of the Project without approval of District.
- f. Non-discrimination. Consultant shall comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, color, gender, age, religion, national origin, U.S. military veteran status, marital status, sexual orientation, disability, source of income, or political affiliation in programs, activities, services, benefits, or employment in connection with this Agreement.
- g. Successors in Interest. This Agreement will bind and inure to the benefit of, the parties, their successors, and approved assigns, if any. Except as previously disclosed and approved, Consultant shall not enter into any subconsultant agreements for any of the Services or assign or transfer any of its interest in this Agreement without District's prior written consent.
- h. No Third-Party Beneficiaries. District and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides any benefit or right, directly or indirectly, to third persons unless they are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.
- i. Entire Agreement. When signed by the authorized representatives of both parties, this Agreement (and the attached exhibits) is their final and entire agreement. As their final and entire expression, this Agreement supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.

- j. Notices and Communications. Notices and communications between the parties to this Agreement must be sent to the following addresses:

District

Kayla Mullis
Project Management
Multnomah County Drainage District
1880 NE Elrod Drive
Portland, OR 97211
503.281.5675
503.281.0392 (fax)

Consultant

Mike Meyer
Cornforth Consultants
10250 SW Greenburg Rd Suite 111
Portland, OR 97223
503-452-1100
503-452-1528

The party giving notice will provide notice in writing, dated and signed by a duly authorized representative of that party. Notice is not effective for any purpose whatsoever unless served in one of the following manners:

1. If notice is given by personal delivery, it is deemed delivered on the day of delivery.
2. If notice is given by overnight delivery service, it is deemed delivered one day after the date deposited, as indicated by the delivery service.
3. If notice is given by United States mail, it is deemed delivered three days after the date deposited as indicated by the postmarked date.
4. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it is deemed delivered on the day the notice is signed for.

I HAVE READ THIS AGREEMENT, INCLUDING ALL EXHIBITS. I CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS AGREEMENT, AND TO BE BOUND BY ITS TERMS ON BEHALF OF THE PARTY I REPRESENT.

CONSULTANT

Cornforth Consultants

Michael R. Meyer
Signature

Michael R. Meyer, Vice President
Consultant Printed Name and Title

2/5/14
Date of Signature

DISTRICT

Multnomah County Drainage District

[Signature]
Signature

Reed Wagner Executive Director
District Official Printed Name & Title

2/5/14
Date of Signature

EXHIBIT B
INSURANCE REQUIREMENTS

- A. MINIMUM INSURANCE LIMITS.** Consultant shall procure, prior to commencement of the Services of this Agreement, and shall maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by Consultant, its agents, representatives, employees, and subconsultant(s). Consultant's liabilities, including but not limited to Consultant's indemnity obligations under this Agreement, will not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement, and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach of contract by District. Coverage shall be at least as broad as the following scopes and limits:
1. **Commercial General Liability.** \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury, and property damage.
 2. **Commercial Automobile Liability.** \$1,000,000 per accident for bodily injury and property damage.
 3. **Workers' Compensation Liability.** Workers' Compensation and Employers' Liability Insurance as prescribed by applicable law. Consultant shall require and ensure that each of its subconsultants or subcontractors comply with this requirement.
 4. **Employers' Liability.** \$1,000,000 per occurrence.
 5. **Professional Liability.** \$2,000,000 per claim and \$2,000,000 aggregate limits subject to no more than \$10,000 per claim deductible. Consultant shall maintain professional liability coverage through completion of construction and two years thereafter.

District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

- B. DEDUCTIBLES AND SELF-INSURANCE RETENTION.** Consultant shall inform District in writing if any deductibles or self-insured retention exceeds \$10,000. At its sole discretion, District may (1) accept the higher deductible, (2) require Consultant to insure such deductibles or self-insured retention as respects District, its officers, officials, employees, and volunteers, or (3) require Consultant to provide a surety bond guaranteeing Consultant's payment of deductible or self-insured losses and related investigations, claim administration, and defense expenses.
- C. OTHER INSURANCE PROVISIONS.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
1. District, District's Program Manager, or both, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as Additional Insureds with respect to liability arising out of activities performed by or on behalf of Consultant; Instruments of Service and completed operations of Consultant; premises owned, occupied, or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage will contain no special limitations on the scope of protection afforded to the Additional Insureds.
 2. For any claims related to the Project, Consultant's insurance coverage shall be primary insurance with respect to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Consultant's insurance and not contributory.
 3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, will not affect coverage provided to the Additional Insureds.
 4. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage will not be suspended, voided, or canceled by either party, or reduced in coverage or in limits, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to District.
- D. ACCEPTABILITY OF INSURERS.** Insurance shall be placed with insurers admitted in Oregon with a current A.M. Best's rating and FSC no lower than A-VII. Consultant shall inform District in writing if any of its insurers have a rating and FSC lower than A-VII. At its sole discretion, District may (1) accept the lower rating or (2) require Consultant to procure insurance from another insurer.
- E. VERIFICATION OF COVERAGE.** Consultant shall furnish District with:
 1. Certificates of insurance showing maintenance of the required insurance coverage; and
 2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements shall be received and approved by District before Services commence.

Peninsula Drainage Districts #1 & #2 Levee Accreditation Levee Evaluation and Alternatives Design

Project Description

The purpose of this project is to evaluate the condition of the levee system in Peninsula Drainage Districts #1 & #2 (the Drainage Districts) against levee accreditation standards under the National Flood Insurance Program (NFIP), identify levee system components that do not meet accreditation standards, and, where applicable, develop preliminary engineering designs to remediate deficiencies. The general steps in the project include:

- Gather detailed information on subsurface conditions and engineering parameters for the levee and foundation soils;
- Develop engineering models that allow for evaluation of the system during different scale storm events; and
- If deficiencies are identified during the engineering evaluation, develop design alternatives for meeting accreditation standards.

The product of this work will be an engineering opinion on the condition of the levee system relative to accreditation standards, and preferred repair alternatives (including pre-design cost estimates) for any identified deficiencies. These products are critical in understanding and planning for the full scope of the accreditation process for the Drainage Districts.

Project work falls into the categories described below.

Category 1: Engineering Evaluation of the Levee System Relative to NFIP Levee Standards and Preliminary Design for Repair Alternatives

The first step in the accreditation process is an engineering evaluation to determine whether the levee system as it exists today meets NFIP standards (which are documented in 44 CFR 65.10). Levee system evaluations require detailed information on the subsurface conditions and engineering parameters for both the levee and foundation soils. The subsurface information is generally collected by performing exploratory borings and collecting soil samples for laboratory testing. This information is then analyzed and used to build a model of the current levee embankment, which is subsequently used to model performance during the 1% annual chance flood event per Federal Emergency Management Agency (FEMA) requirements. In addition, FEMA requires evaluation of other components of the flood control system, including the interior drainage system and maintenance plans. FEMA also requires other documentation that demonstrates the current condition, including a topographic survey of the current levee area that includes all above and underground structures, and vegetation.

If deficiencies are found during the Engineering Evaluation, they must be completely remediated before a professional engineer can *certify* the levee system meets the standards of accreditation (a key requirement for the accreditation application). Given the importance of understanding the scope and cost of repairs as early as possible, this work also allows for preliminary design for repair alternatives for deficiencies discovered during the evaluation, including developing pre-design cost estimates.

The Engineering Evaluation has begun for both Drainage Districts. Below is a list of the tasks associated with this phase of the project, including the cost and timeline for each:

Task 1: Subsurface Explorations and Laboratory Testing

Note: This task will be completed before IFA financing begins, but is included to set context for other tasks referenced in this scope of work.

Project consultants have developed subsurface exploration and laboratory testing programs to obtain the data needed to perform the required engineering analyses. These programs are described generally below.

- **Subsurface Explorations:** The exploration plan includes 134 borings overall, with 98 performed on land and 36 performed overwater from a barge. The total drilling footage is 4,670 feet. A field engineer or geologist will be present throughout the drilling operations to coordinate the drilling activities, and collect and log samples of the subsurface materials encountered. All soil samples will be reviewed and tested in a laboratory setting.
- **Test Pit Excavations:** The site exploration program includes test pit excavations to serve as a substitute for the crest borings at three locations along the railroad/levee embankment on the western perimeter of Peninsula Drainage District #1. This step will be taken to avoid conflicts with train traffic that would occur with a drill rig operating from the top of the embankment. The test pit work will be coordinated and logged by a field engineer or geologist.
- **Laboratory Testing:** A laboratory testing program will be performed on samples obtained from the subsurface explorations to develop soil parameters to be used in the engineering analyses. Laboratory testing will consist of:
 - Natural moisture contents on all samples;
 - Grain size distribution tests on approximately 18 samples;
 - Atterberg Limit tests on approximately 18 samples;
 - Three consolidation tests (settlement parameters) on select samples;
 - Two consolidated-undrained triaxial shear strength test envelopes (six test samples) on select samples; and
 - One direct shear strength test on a select sample.

Estimated Cost: Fully funded by Drainage Districts in FY 2013-14

Estimated Timeline: December 2013 – June 2014

Primary Contractor: Cornforth Consultants and Western States Drilling, Inc. (subcontractor)

Task 2: Embankment Erosion and Scour Protection Analyses

Project consultants will perform a site reconnaissance to observe existing levee conditions, document levee closures, and existing interior drainage facilities. Their analyses will include an evaluation of existing bank erosion protection, estimation of toe scour potential, impacts due to wind and wave action, and the potential impacts from ice, debris and debris flows. They will provide documentation of all data and information required for FEMA review.

Estimated Cost: \$20,000

Estimated Timeline: May – September 2014

Primary Contractor: West Consultants (subcontractor)

Task 3: Embankment and Foundation Stability and Potential Seepage Analysis:

Project consultants will use information developed from Task 1 to characterize existing subsurface conditions. FEMA requires analyses that demonstrate levee stability during the base flood loading conditions. These analyses must include potential shear failure surfaces within both the embankment and foundation soils, and also an assessment of the potential seepage through and underneath the levee. Current USACE design manuals and technical memorandums that describe levee analysis,

design and construction guidelines and procedures will be used to provide guidance in the assessment of the levee embankments and foundation soils. The two most relevant USACE design guides include EM-1110-2-1913, Design and Construction of Levees (April 2000), and ETL 1110-2-569, Design Guidance for Levee Underseepage (May 2005).

- A key step in the certification process involves separating the levees into segments with similar features and conditions, called “reaches.” This method, also employed by the USACE, allows several miles of levee alignment to be analyzed in manageable segments. For each reach, it is necessary to document subsurface conditions and provide evidence of the required USACE engineering evaluations listed above to demonstrate compliance with accreditation standards.
- A structural engineer on the project consultant team will check the stability/capacity of the existing concrete flood wall under base flood loading conditions. This step will require coordination with Peninsula Drainage District #1 and the City of Portland on the design details of the wall and closure components, and also on the City’s closure procedures during flood conditions.

Estimated Cost: \$131,000

Estimated Timeline: May – September 2014

Primary Contractor: Cornforth Consultants

Task 4: Analysis of Potential Settlement and Loss of Levee Freeboard

Accreditation standards require engineering analyses to assess the potential and magnitude of future losses of freeboard as a result of levee settlement. The analyses must address embankment loads, compressibility of embankment and foundation soils, age of the levee, and construction compaction methods. The standard specifies that settlement analyses shall be performed using procedures such as those described in the USACE manual EM 1100-2-1904, Soil Mechanics Design – Settlement Analysis. Project consultants will perform this task using information obtained from the subsurface explorations and laboratory testing program (Task 1).

Estimated Cost: \$32,000

Estimated Timeline: May – September 2014

Primary Contractor: Cornforth Consultants

Task 5: Interior Drainage Modeling Review

Drainage District contract staff has performed the interior drainage studies required for accreditation. Project consultants perform a review of these models and analyses to check for conformance with the accreditation requirements. They will also provide guidance on developing base flood inundation zone maps for inclusion in the FEMA certification submittal.

Estimated Cost: \$16,000

Estimated Timeline: May – September 2014

Primary Contractor: West Consultants (subcontractor)

Task 6: Review and Assessment of Operation Plan

Drainage District contract staff will prepare an operation plan for the levee systems in accordance with accreditation requirements. Project consultants will provide review, comments and assessments of a draft version of the plan. This review will be based on understanding of FEMA criteria and

recent experience with other levee certification projects. The final version of the operation plan will be incorporated into the FEMA certification submittal.

Estimated Cost: \$11,000

Estimated Timeline: July – August 2014

Primary Contractor: Cornforth Consultants

Task 7: Review and Assessment of Maintenance Plan

Drainage District contract staff will prepare a maintenance plan for the levee systems in accordance with accreditation requirements. Project consultants will provide review, comments and assessments of a draft version of the plan. This review will be based on understanding of FEMA criteria and recent experience with other levee certification projects. The final version of the maintenance plan will be incorporated into the FEMA certification submittal.

Estimated Cost: \$11,000

Estimated Timeline: July – August 2014

Primary Contractor: Cornforth Consultants

Task 8: Review As-Built

The Drainage Districts have retained a project consultant to provide the as-built drawings necessary for certification. The lead project consultant will coordinate with the survey team to customize the drawings to meet accreditation standards.

Estimated Cost: \$11,000

Estimated Timeline: July – August 2014

Primary Contractor: Cornforth Consultants

Task 9: Summary Report

The results of all field investigations, laboratory testing and engineering analyses will be summarized in a report that the Drainage Districts could submit to FEMA as part of the levee certification submittal. The report will include:

- Summary logs of all exploratory borings;
- Plots and tabulations of laboratory test results;
- Summaries and key results of engineering analyses;
- Conclusions on the interior drainage analyses and Operations & Maintenance plans prepared by the Drainage Districts; and
- Conclusions on the overall compliance of the levee system with the requirements for FEMA accreditation under the NFIP.

Estimated Cost: \$127,000

Estimated Timeline: August – October 2014

Primary Contractor: Cornforth Consultants

Task 10: Structural and Vegetation Encroachment Evaluation

Encroachments are defined as any structure or feature that is within the levee boundary. The USACE defines that boundary as 15-20 feet from either levee toe, and generally speaking discourages the placement of any encroachments within that area. FEMA's accreditation criteria, however, is silent on encroachments specifically. Given this, the certifying engineer in a levee accreditation effort must consider whether any given encroachment is specifically impeding the performance of the levee

system. Generally, this requires evaluation of where the lowest point of the structure or vegetation falls relative to the section of the levee embankment that is critical to protecting against the 1% annual chance flood event. In the case of structures, evaluation of the construction of the facility is also required. For vegetation, evaluation of species, root growth, and life span may also be required.

The exact scope of work for this task will depend upon encroachments identified as within or close to the section of the levee identified as critical to protecting against the 1% annual chance flood.

Estimated Cost: \$207,000

Estimated Timeline: July – October 2014

Primary Contractor: TBD (solicitation required)

Task 11: Preliminary Design for Repair Alternatives (where required) and Pre-Design Cost Estimates

The specific work under this task will be developed based on the outcome of Task 9. If deficiencies are identified during the Engineering Evaluation, preliminary design for repair alternatives will be developed. This work will include preferred repair alternatives, an engineer's pre-design cost estimate, a project schedule, a summary of anticipated mitigation and environmental compliance and regulatory permitting requirements, a summary of acreages and potential real estate needs for each repair alternative, and potential utility and encroachment impacts.

Depending on the scope and location of the deficiencies, multiple design alternatives may be developed to adequately address public safety, economic, and community priorities in the given area.

NOTE: If no or only minor deficiencies are found during the engineering evaluation, Task 11 resources may be re-allocated towards submittal of the final certification package to FEMA.

Estimated Cost: \$500,000

Estimated Timeline: November 2014 - April 2015

Primary Contractor: TBD (solicitation required)

Category 2: Drainage District Engineering

Summary of Work:

Peninsula Drainage Districts #1 & #2 are local sponsors for federally constructed levee systems within their district boundaries. Local sponsors are required to maintain levee systems to standards established by USACE, which includes requesting from USACE pre-authorization of all new activity within the levee boundary, from digging a trench to constructing a new building. At multiple phases of this project, USACE authorization or coordination is required to complete project tasks (Task 1 and 10). In these cases, Drainage District engineering will work with project consultants to prepare USACE authorization request packages, and will coordinate preliminary review from USACE on any proposed levee system changes.

In addition, the certified accreditation package provided by project consultants will include professional engineering stamps from multiple specialists, including geotechnical engineers, hydrologists, and civil engineers. The Drainage District Engineer for Peninsula Drainage Districts #1 & #2 will provide a final review and certification of the overall application for accreditation to FEMA.

This work will be completed by engineering staff hired by the Multnomah County Drainage District (MCDD). MCDD serves as the administrative manager of Peninsula Drainage Districts #1 & #2 (PEN 1 & 2) via separate intergovernmental agreements, and therefore is a contractor of both PEN 1 and PEN 2. Per the terms of those agreements, IFA financing will pay for actual time spent on this task based on hourly billing.

Estimated Cost: \$35,000

Estimated Timeline: August 2014 – May 2015

Primary Contractor: Multnomah County Drainage District

Category 3: Project Management

Summary of Work:

Note: This section refers to management of the full project scope.

Effective project management is required to ensure the project proceeds on schedule, within scope, and within budget. In addition, the cross-jurisdictional nature of the work requires elevated communication and coordination with public partners and key stakeholders.

The project management budget will be used to fund the work required to ensure effective management of the project scope, including but not limited to:

- Developing project plan, budgets, and timeline and ensuring on-time implementation;
- Soliciting contractors and overseeing contract work, including contracted engineers and field explorations;
- Assuring compliance with federal, state and local laws and regulations, zoning codes, area plans, and district policies and procedures;
- Implementing all non-technical components of the project scope (including permit applications, negotiating maintenance agreements with levee embankment owners, conducting a cost-benefit analysis, etc.);
- Identifying best practices in other levee accreditation efforts and incorporating into project strategy;
- Coordinating stakeholder participation with partner agencies, community organizations, and property owners directly impacted by the work; and
- Facilitating decision-making at key project milestones.

This work will be completed by limited-duration staff hired by the Multnomah County Drainage District (MCDD). MCDD serves as the administrative manager of Peninsula Drainage Districts #1 & #2 (PEN 1 & 2) via separate intergovernmental agreements, and therefore is a contractor of both PEN 1 and PEN 2. Per the terms of those agreements, IFA financing will pay for actual time spent on this task based on hourly billing. Additional project costs associated with general management, communications, legal, and project administration will be paid by PEN 1 and PEN 2 assessments.

Estimated Cost: \$155,000

Estimated Timeline: July 2014 – June 2015

Primary Contractor: Multnomah County Drainage District

Category 4: Project Contingency

This project description represents an estimate of the tasks required to achieve project goals, and the costs associated with that work. Where a contract is already in place to complete a task, the actual contract value was used for the cost estimates in this project description. For tasks where contracts have not yet been executed, estimates have been made based on the best available information gathered from similar projects completed in the western United States and opinions of experts in appropriate fields. However, the nature of this work is largely contingent upon local conditions which can vary dramatically from levee to levee, and even within a single levee system. The initial summary report on the current condition of the levee systems in the Drainage Districts will guide the scope and scale of remaining tasks.

Given this situation, a project contingency has been created to cover uncertainties or unforeseeable elements of time and cost within the normal execution of this project. The contingency represents approximately 11.5% of total project costs.

Estimated Cost: \$144,000

Estimated Timeline: N/A

Primary Contractor: N/A

SPECIAL PUBLIC WORKS FUND PLANNING PROJECT
FINANCING CONTRACT

Project Name: Portland Levee Accreditation Evaluation & Design (Peninsula Drainage Districts 1 & 2)

Project Number: A14004

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 «the»«Recipient» ("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 D.

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	Form of Promissory Note
Exhibit D	Project Description; Project Special Conditions
Exhibit E	Project Budget

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

"Estimated Project Cost" means \$1,400,000.

"Loan Amount" means \$1,400,000.

"Maturity Date" means the 6th anniversary of the Repayment Commencement Date.

"Note Interest Rate" means 3.35% per annum, computed on the basis of a 360-day year, consisting of twelve 30-day months.

"Payment Date" means December 1.

"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 Completion Deadline.

SECTION 2 - FINANCIAL ASSISTANCE

The IFA shall provide Recipient, and Recipient shall accept from IFA, financing for the Project in the form of a non-revolving loan (the "Loan") in an aggregate principal amount not to exceed the Loan Amount.

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.

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, 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) An opinion of Recipient's Counsel.
 - (5) A copy of the intergovernmental agreement between Recipient and the other partners to the Project, including the Multnomah County Drainage District No.1.
 - (6) 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

The Recipient 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 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 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. 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) Ensure the Project is completed 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. Inspections; Information. The Recipient shall ensure that IFA and any party designated by IFA, can:
 - (i) inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, inspect and make copies of its 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.

- E. 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, available at <http://www.leg.state.or.us/ors/200.html>. 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/>.
- I. Professional Responsibility. All service providers 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, including Article XI, section 9 of the Oregon Constitution, 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.
- 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 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.
 - (5) The Recipient hereby approves and consents to any assignment, sale or transfer of this Contract and the Financing Documents that IFA deems to be necessary.

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



CITY OF PORTLAND

By: _____
Paulina Layton, Manager
Program Services Division

By: _____
«PersonTitle»

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ _____ as per email dated _____
_____, Assistant Attorney General

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 _____.

“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.

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

“Note” means that certain promissory note evidencing the Loan, substantially in the form of Exhibit C, signed by Recipient in favor of IFA, 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

- A. 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 - FORM OF PROMISSORY NOTE

City of Portland
PROMISSORY NOTE

Dated XXXXXXXXXXXXXXXXXX, XXXX

Portland, Oregon

FOR VALUE RECEIVED, the City of Portland, «RecipAddress», «RecipCityStateZip» («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, Four Hundred Thousand Dollars (\$1,400,000) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of Three and 35/100 percent (3.35%) 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 A14004, 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. Notwithstanding the above, the first such installment payment will be adjusted to include actual unpaid interest that accrued to 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.

CITY OF PORTLAND

By: XXXXXXXXXXXXXXXXXXXXXXX

Title: XXXXXXXXXXXXXXXXXXXXXXX

Sample

EXHIBIT D - PROJECT DESCRIPTION; PROJECT SPECIAL CONDITION**I. PROJECT DESCRIPTION**

The Recipient will ensure that an engineering evaluation is completed of the current condition of the Peninsula Drainage District #1 and the Peninsula Drainage District #2 levee systems and 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). If deficiencies are found, the analysis will include preliminary engineering design for any remediation required in order to re-establish compliance with levee accreditation standards. If no or only minor deficiencies are found, the project scope will include preparation of the final certification package to be submitted to FEMA. The Project will also include review engineering and project management activities conducted through the Multnomah County Drainage District #1.

Specific engineering evaluation tasks include:

- Embankment Erosion and Scour Protection Analyses
- Embankment and Foundation Stability and Potential Seepage Analysis
- Analysis of Potential Settlement and Loss of Levee Freeboard
- Interior Drainage Modeling Review
- Review and Assessment of Operation Plan
- Review and Assessment of Maintenance Plan
- Review As-Builts
- Summary Report
- Structural and Vegetation Encroachment Evaluation
- Preliminary Design for Repair Alternatives (where required) and Pre-Design Cost Estimates

II. PROJECT SPECIAL CONDITION

Engineering expenses incurred between May 1, 2014 and the date of award are eligible for reimbursement.