



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

June 27, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement (IGA) with Hoodland Fire District #74 for use and possible future conveyance of county-owned properties known as the Hoodland Park Property. Total value of property is estimated to be \$800,000-\$1,000,000. Cost is \$0.00, subject to the provision of a number of community commitments. No County General Funds are involved.

Previous Board Action/Review	Multiple executive sessions. Request for Consent: June 25, 2024		
Performance Clackamas	Build a Strong Infrastructure. This IGA supports a strong infrastructure by allowing the possible conveyance of an asset to the Hoodland community that would be transformed into a fire station, community space while maintaining a park and ride center and community garden.		
Counsel Review	Yes, ARN	Procurement Review	No
Contact Person	Sarah Eckman	Contact Phone	503-742-4303

EXECUTIVE SUMMARY: In 2022, Hoodland Fire District #74 (HFD) requested Clackamas County consider conveying the fire district two properties commonly known as the Hoodland Park Property (37E04AA03600 and 37E04AA03300), the site of the former Dorman Center. If HFD were to receive the property, they would use it as the location for a future new fire station and community center.

HFD is still in the preliminary phases of the fire station and community center design project, and needs to complete its due diligence, ensure availability of funding, perform community outreach and engagement, and take other steps reasonably necessary to begin work.

The County agrees that if the project appears feasible, and HFD is able to secure requisite funding to complete the project and otherwise satisfies the terms and conditions of the IGA, the County is willing to convey the Hoodland Park properties to HFD.

The County estimates the value of the properties to total approximately \$800,000 to \$1,000,000. Upon satisfaction of the conditions of the IGA, the County will convey the properties to HFD for \$0.00, provided HFD agrees to the following community commitments:

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- Community Garden: Retention of the IWAKT Community Garden, in perpetuity, for community garden use, estimated to total \$100,000 over a 40-year period;
- Community Room: Construction and retention of a community room as part of the Project, which will be available for local community groups' use, estimated to total \$249,600 over a 40-year period; and
- Park and Ride Parking Space(s): Reservation of twelve (12) parking spaces for use by County for its Mt. Hood Express Park and Ride program, estimated to total \$576,000 over a 40-year period.

HFD's agreement to reserve the aforementioned uses, in perpetuity, constitutes fair and value consideration such that County will be willing to convey the Property for \$0.00 upon completion of the requirements set forth in the IGA.

RECOMMENDATION: Staff respectfully recommends the BCC approve the IGA with Hoodland Fire District #74 to provide use and potential future conveyance of the Hoodland Park Properties 37E04AA03600 and 37E04AA03300.

Respectfully submitted,

Dan Johnson

Dan Johnson, Director
Department of Transportation and Development

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND HOODLAND FIRE DISTRICT #74**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Hoodland Fire District #74 ("Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

County owns certain real properties located in the Mt. Hood region of Clackamas County, described with greater particularity in Exhibit A, attached hereto and incorporated by reference herein. The properties are hereinafter collectively referred to as the "Property."

Agency desires to build a new fire station and community center on the Property (the "Project"). Agency is still in the preliminary phases of the Project, and needs to complete its due diligence, ensure availability of funding, perform community outreach and engagement, and take other steps reasonably necessary to begin work on the Project. The Project may require that County convey ownership of the Property to Agency.

County desires to cooperate with Agency in the initial due diligence phases of the Project. If the Project appears feasible, and Agency is able to secure requisite funding to complete the Project and otherwise satisfies the terms and conditions of this Agreement, County is willing to convey the Property to Agency.

County estimates the value of the Property to total approximately \$800,000 to \$1,000,000. Upon satisfaction of the conditions of this Agreement, County will convey the Property to Agency for \$0.00, provided Agency agrees to the following restrictions:

- Retention of the IWAKT Community Garden, in perpetuity, for community garden use, estimated to total \$100,000 over a 40-year period;
- Construction and retention of a community room as part of the Project, which will be available for local community groups' use, estimated to total \$249,600 over a 40-year period; and
- Reservation of twelve (12) parking spaces for use by County for its Mt. Hood Express Park and Ride program, estimated to total \$576,000 over a 40-year period.

Agency's agreement to reserve the aforementioned uses, in perpetuity, constitutes fair and value consideration such that County will be willing to convey the Property for \$0.00 upon completion of the requirements set forth in this Agreement.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution and shall expire on July 1, 2026, unless otherwise extended by amendment to this Agreement.
2. **License to use Property.** County hereby grants Agency the right to enter upon, occupy, and use the Property for the following purposes: perform due diligence necessary to begin performance of the Project including, but not limited to, environmental inspections, assessments, property inspections, surveys, and other such actions reasonably related to the same. The right granted herein is limited to due diligence activities reasonably necessary to evaluating the viability of the Project. No improvements may be placed on the Property.

The Property is currently used for public purposes including, but not limited to, public parking and a community garden. As such, the right to use the Property under this Agreement is non-exclusive, meaning others, including the public and County employees, may also use the Property. Agency's use may not interfere with any preexisting use of the Property without the County's prior written permission.

3. **Compliance with Applicable Law.** Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to Agency's use of the Property.
4. **Prior Approvals.** Agency shall obtain all necessary permits and approvals from all federal, state, and local governments prior to or concurrent with applying to the County. The County may, in its sole discretion, require Agency to demonstrate such approvals as a condition precedent to Agency's use of the Property.
5. **Condition of Property:** County makes no representations or warranties, express or implied, as to the condition of the Property or its fitness for any particular use by Agency including, but not limited to, its fitness for the Project.
6. **Cleaning and Repair Costs:** Agency agrees to leave the Property in its current condition. Agency will remove all equipment and personal property brought onto the Property. Agency will use reasonable care to prevent damage to the Property. Agency shall be responsible for any cleaning, repair, or remediation costs arising from or related to User's use of the Property.
7. **Release, Assumption of Risk, and Indemnity:** Agency agrees to waive, release, and discharge Clackamas County, its officers, employees, officials, and agents, from any and all claims, causes of action, demands, damages, costs, of any nature whatsoever, whether known or unknown, arising out of or in any way connected with use of the Property.

Agency understands and appreciates the risks involved in its use of the Property and hereby expressly assumes any and all risks arising out of or relating to use of the Property, whether or not specified herein, and understand Clackamas County is not a guarantor of Agency's safety.

Agency agrees to hold harmless, defend, and indemnify Clackamas County, its elected officials, officers, employees, officials, and agents against from and against any and all

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claims, causes of action, demands, damages, costs, of any nature whatsoever, whether known or unknown, arising out of or in any way connected with use of the Property.

The release of claims, assumption of risk, and indemnification provided herein is intended to be as broad and inclusive as permitted by Oregon law, and that if any portion thereof is held invalid, it is agreed that the balance, notwithstanding, shall continue in full force and effect. This provision shall expressly survive revocation of this Agreement.

8. **Transfer of Property.** During the term of this Agreement, County hereby agrees that it will not voluntarily dispose of the Property. County further agrees that, subject to satisfaction of the following conditions, it will convey the Property, as-is, to Agency for the sum of \$0.00:
 - a. Agency has determined, through use of a licensed architectural or design firm, that the Project is feasible, can be completed within Agency's projected budget, and is fully permitted for completion on the Property; and
 - b. Agency has obtained necessary funding by July 1, 2026 to fully complete the Project.

9. **Limitations on Future Use of the Property.** Upon satisfaction of the conditions described in Section 8, above, the Parties will enter into a purchase and sale agreement, or other agreement documenting the conveyance of the Property from County to Agency, that will contain, at a minimum, the following conditions and restrictions:
 - A. Agency is solely responsible for performing all necessary due diligence, including environmental inspections or assessments, and title review with respect to the Property;
 - B. The Property will be conveyed as-is, with no representations or warranties, express or implied, made by County regarding the condition of the Property or its fitness for any particular use;
 - C. The conveyance will be via a quitclaim deed;
 - D. Agency will be responsible for any future claims for surplus funds, should one be made;
 - E. The conveyance will be subject to compliance with ORS 271.330 including, but not limited to, successful completion of a hearing on the transfer and inclusion of a reversionary clause;
 - a. The IWAKT Community Garden current located on the Property will be maintained by Agency for its current use as a community garden;
 - b. Agency will reserve and maintain 12 parking spaces, in perpetuity, for use by County for purposes of the County's Mt. Hood Express Park and Ride;
 - c. Agency will include a community room as part of the Project that will be reserved, in perpetuity, for use by local community groups.

All the aforementioned uses will be reserved in perpetuity and will be included as a deed restriction or other restrictive covenant running with the land as part of the real property conveyance documents. Agency will further be solely responsible for ensuring all the aforementioned reserved uses are maintained in good condition and repair.

10. **Consideration.** There is no monetary consideration for this Agreement. The consideration for this Agreement is the Parties' agreement to comply with the terms and conditions herein.

11. **Representations and Warranties.**

- A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

12. **Termination.**

- A. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period. In the event of termination for default, each Party shall have all rights and remedies available to it at law, in equity, or under the terms of this Agreement.
- B. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- C. The County may terminate this Agreement in the event the County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or the County is prohibited from paying for such work from the planned funding source.
- D. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

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13. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

14. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Sarah Eckman or their designee will act as liaison for the County.

Contact Information:

Sarah Eckman, Assistant Director
Clackamas County Department of Transportation and Development
150 Beaver Creek Road, Suite 325
Oregon City, OR 97045
sarahste@clackamas.us
Office: 503-742-4303
Mobile: 503-894-3135

Scott Kline or their designee will act as liaison for the Agency.

Contact Information:

Scott C. Kline, EFO
Division Chief/Fire Marshal
Hoodland Fire District #74
69634 E. Highway 26
Welches, Oregon 97067
scottkline@hoodlandfire.org
Office: 503-622-3256
Mobile: 503-459-1528

15. **General Provisions.**

A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court

for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the County. The County shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the County's project manager.
- F. **Hazard Communication.** Agency shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon

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County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.

- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** Agency shall not assign or transfer any of its interest in this Agreement, by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's

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sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.

- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 6, 7, 10, 11, and 15 (A), (C), (D), (F), (G), (H), (I), (J), (L), (O), (R), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.
- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.


IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Chair, Board of County Commissioners

Date

Hoodland Fire District #74



Leandra Gambia
President, Hoodland Fire District Board of Directors

6-11-2024

Date

Exhibit A - Property

The Dorman Center site (also known as the Hoodland Park Property) is located in Welches on Salmon River Road, to the east of the Welches Elementary and Middle School properties. The property is mostly unimproved. The two parcels below are those referenced in this agreement.

1. 37E04AA03600 (2.71 acres)
2. 37E04AA03300 (1.24 acres)

37E04AA03600



37E04AA03300

