



**DAN JOHNSON**  
DIRECTOR

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

July 25, 2024

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Sitting/Acting as Development Agency Board  
Clackamas County

Approving a District Funding Agreement between the  
Clackamas County Development Agency and Clackamas Fire District No. 1  
Total Value is \$1,200,000. No County General Funds are involved.

<b>Previous Board Action/Review</b>	Study Session: April 26, 2023. Request for Consent: July 23, 2024		
<b>Performance Clackamas</b>	Build public trust through good government		
<b>Counsel Review</b>	Yes (HH 2-14-24)	<b>Procurement Review</b>	No
<b>Contact Person</b>	David Queener, Development Agency Program Coordinator	<b>Contact Phone</b>	503.742.4322

**EXECUTIVE SUMMARY:**

Clackamas Fire District No. 1 is proceeding with plans to make improvements to their training facilities located within Clackamas Industrial Area Urban Renewal District. The Fire District approached the Agency about a potential partnership where the Agency would provide funds toward the needed improvements. The Plan for this District has a project that authorizes funds to be used for this purpose.

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Following Board direction, the Agency has prepared an agreement that provides funding of up to \$1,200,000 to the Fire District to be used toward improvements to their training facilities. The District agrees to construct the improvements within 5 years.

The attached District Funding Agreement outlines the terms and commitments of both parties. This Agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve the District Funding Agreement.

Respectfully submitted,

*Dan Johnson*

Dan Johnson, Director  
Department of Transportation and Development

## DISTRICT FUNDING AGREEMENT

This Agreement is entered into and is effective as of this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County, Oregon (the "Agency"), and Clackamas County Rural Fire Protection District #1 (the "District"). The Agency and the District hereby agree as follows:

### RECITALS:

A. The Agency administers the Clackamas Industrial Area Development Plan (the "Plan") pursuant to ORS Chapter 457. The Plan was duly adopted and approved by the Board of County Commissioners on July 26, 1984, and most recently amended on September 21, 2023.

B. The District is an entity organized for the purpose of providing fire protection and suppression services within Clackamas County.

C. A goal of the plan is to provide adequate facilities to improve fire safety and protection capabilities to the area.

D. On April 26, 2023 the Board approved the allocation of up to \$1,200,000 to the District to use for certain projects, including the development of District training facilities located in the Plan area (the "Project").

E. In exchange for such funding, the District is willing to develop, construct, maintain and operate the Project in accordance with the terms and conditions of this Agreement and to use the Project in conformity with the Plan and applicable law.

F. The Agency is willing to allocate funds to the District for the purpose of assisting in the development and construction of the project. The funding for such purposes by the Agency to District is subject to the conditions provided in this Agreement.

### AGREEMENT:

#### **Section 1: District Property Improvements**

A. Within three (3) years of the effective date of this agreement, the District agrees to select and contract with a consultant to prepare design and construction related documents consistent with the Project Description, **Exhibit "A"**. The plans, drawings and other documents as may be required for the Project shall be submitted to the appropriate governmental bodies for the purpose of compliance with all codes, regulations, and other requirements for the construction of the project.

B. Within five (5) years of the effective date of this Agreement, the District agrees to develop and construct the Project substantially as provided in the Project Description, **Exhibit "A"**. The Project shall be in full compliance with requirements of the Plan, the Land Development Code of Clackamas County and all other applicable laws.

C. During the term of this Agreement, the Agency will cooperate with the District in its efforts to develop the Project, including the review, approval, execution and/or delivery of documents in a timely manner to allow the District to submit documents to governmental bodies in accordance with this Section 1.

**Section 2: Operation of Completed Facilities; Use of Proceeds**

A. Upon completion of the Project, the District or its successors agrees to maintain and operate the Project or cause it to be operated to provide or support year-round fire protection services for the District. The District shall maintain and operate the completed Project for the purpose stated herein for at least fifteen (15) years from the date of substantial completion of the Project.

B. At all times the District or its successors shall own, and have all ownership responsibility and duties regarding the Project. Such ownership is subject to the terms of this agreement.

**Section 3: Funding**

A. In consideration of the obligations undertaken by the District pursuant to this Agreement, the Agency agrees to allocate up to \$1,200,000 (the "Agency Funds") for the purposes discussed above and subject to the terms and conditions provided herein.

B. In the event the Agency Funds are not used for the purpose expressly provided in Section 1 and 2 of this Agreement, or where the District has defaulted under this Agreement, the Agency may require the District to reimburse all or part of such, as provided below in Section 4C.

C. The District acknowledges that Agency funds are only a portion of what is needed to complete the improvements. The District anticipates that the additional funds will be available from other sources other than the Agency. The District represents and warrants that it will diligently pursue, and will continue to pursue the funding sources required to be made available for the timely development of the Project.

**Section 4: Disbursement of Funds; Security for Performance**

A. The Plan specifically authorizes the Agency to make funds available to fund the development and construction of the Project, described herein. Pursuant to specific direction from the Board, the Agency shall make the Agency Funds available to the District for development and construction of the Project from the allocated funds as more specifically described in Section 3A of this Agreement, and as authorized by ORS Chapter 457.

B. Within 60 days of the Effective Date of this Agreement, the Agency shall transfer the Agency Funds to the District.

D. In the event the District is determined by a court of competent jurisdiction or other mutually-agreed upon mediator to be in default of its obligations under either Section 1 or Section 2 of this Agreement, then the Agency shall be entitled to recover from the District or its successors or assigns up to the full amount of the funds directed to the District in connection with the Project. Amounts recoverable under this subsection shall be determined by evaluating the scope of the default and the default's effect on the Plan's goal. If the Agency intends to recover funds under this subsection, the Agency shall provide the District with reasonable written notice of the default as well as a reasonable opportunity for the District to cure and/or explain such default.

E.

**Section 5: Termination**

So long as there is no outstanding event of default, this Agreement shall terminate twenty (20) years from the date of the execution of this Agreement, or fifteen (15) years from the date of substantial completion of the Project, whichever is sooner.

**Section 6: Indemnification**

- A. Subject to the tort limitations in the Oregon Tort Claims Act and Oregon Constitution, Agency agrees to indemnify, save harmless and defend the District, its officers, Board of Directors, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, of Agency or Agency's officers, owners, employees, agents, or its subcontractors or anyone over which Agency has a right to control related to this Agreement
- B. Subject to the tort limitations in the Oregon Tort Claims Act and the Oregon Constitution, District agrees to indemnify, save harmless and defend Agency, its officers, commissioners, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, of the District or the District's officers, owners, employees, agents, or its subcontractors or anyone over which the District has a right to control, related to this Agreement.

**Section 7: Nonliability of Officials and Employees**

No official or employee of the Agency shall be personally liable to the District for any obligation under the terms of this Agreement. No official or employee of the District shall be personally liable to the Agency for any obligation under the terms of this Agreement.

**Section 8: Nonwaiver of Government Rights**

This Agreement is no way intended to limit, restrict or modify the rights of Clackamas County or any other governmental agency to exercise ordinary police powers over the Project.

**Section 9: General Provisions**

A. **Prior Agreements.** This instrument is the entire, final and complete Agreement of the parties pertaining to the rights and obligations of the parties with respect to the Project and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives in connection therewith. Neither party shall be bound by any promises, representations or agreements except as are herein expressly set forth.

B. **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be given and actually delivered in person or deemed delivered 48 hours after having been deposited in the United States Mail as certified mail addressed to the addresses set forth below:

to: Clackamas County Fire District #1  
Attn: Fire Chief  
11300 SE Fuller Road  
Milwaukie, Oregon 97222

to: Clackamas County Development Agency  
Attn: Agency Manager  
150 Beaver Creek Road  
Oregon City, Oregon 97045

or as addressed in such other way in respect to either party, as that party may from time to time designate in writing dispatched as provided in this Section.

C: **Amendments.** This Agreement may be amended, modified or extended only by written instrument executed by both parties.

D: **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.

E: **Binding Effect.** Covenants, conditions and terms of this Agreement shall extend to and be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

F: **Execution and Counterparts.** This Agreement may be executed in any number of counterparts each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

H: **Non-Assignment.** This Agreement may not be assigned in whole or in part without the prior written consent of Agency, which may withhold its consent in its sole discretion.

I: **Subleasing.** The Project may not be subleased without prior written consent of Agency, which may withhold its consent in its sole discretion. The Agency shall consent to a sublease of a portion of the Project where the proposes use subject to the sublease is accessory to, or otherwise customarily provided in connection with, similar fire district facilities, and a sublease of a portion of the Project would not otherwise violate the Plan

I: **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.

J: **Waiver.** The Agency and District 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 be of the same nature as that waived.

IN WITNESS WHEREOF, the Agency and the District have executed this Agreement as of the date first above written.

**“AGENCY”**

BOARD OF COUNTY COMMISSIONERS acting as  
the governing body of the Clackamas County  
Development Agency

By: \_\_\_\_\_

Chair

By: \_\_\_\_\_

Recording Secretary

**“DISTRICT”**

Clackamas County Fire District #1

By:  \_\_\_\_\_

Chief Financial Officer