



DAN JOHNSON
DIRECTOR

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

January 25, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of a Cooperative Agreement with the Oregon Department of Consumer and Business Service for provision of as-needed building plan review and inspection services. Agreement value not to exceed \$50,000 over five years. Funding through permitting revenues. No County General Funds are involved.

Previous Board Action/Review	Request for Consent: 1/23/2024		
Performance Clackamas	1. Ensure Safe, Healthy and Secure Communities 2. Build a Strong Infrastructure		
Counsel Review	Yes; 12/19/23; Hong Huynh	Procurement Review	N/A
Contact Person	Cheryl Bell	Contact Phone	503-260-7124

EXECUTIVE SUMMARY:

Through authority delegated by the State of Oregon, the Department of Transportation and Development's (DTD) Building Codes Program provides fire/life safety, structural, mechanical, electrical and plumbing permitting, plan review, and inspection services. During times of high work volumes, or when staff are out due to vacation or illness, the Building Codes Program occasionally needs additional staffing assistance to perform required permitting, plan review and inspection work.

Cooperative Agreement PO-44000-00023443 with the State of Oregon, acting by and through the Department of Consumer and Business Services, Building Codes Division (DCBS), allows DTD's Building Codes Program to request plan review and inspection assistance from DCBS when work volumes or staffing levels necessitate the need. This cooperative agreement is effective for five years from the date of signing. This is also a one-way cooperative agreement, as it does not allow DCBS to request plan review and inspection assistance from Clackamas County. Having this cooperative agreement with DCBS for on-call assistance allows the Building Codes Program to meet service demands when there is an identified business need. It also meets the business goal of providing high quality services in a timely manner, and ensures that properly certified staff are available to perform plan reviews and inspections.

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RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners approve Cooperative Agreement PO-44000-00023443 between the State of Oregon, acting by and through the Department of Consumer and Business Service, Building Codes Division (DCBS), and the Department of Transportation and Development's Building Codes Program for provision of plan review and inspection services

Respectfully submitted,

Dan Johnson

Dan Johnson, Director
Department of Transportation & Development

COOPERATIVE AGREEMENT (5 YEAR)

PO-44000-00023443

This agreement is between the Clackamas County (Municipality) and the State of Oregon acting by and through its Department of Consumer and Business Services, Building Codes Division (DCBS), in accordance with ORS 190.110 and 455.185. The Contract Administrators of this agreement are:

DCBS	Clackamas County
Contract Administrator: Warren Jackson	Contract Administrator: Cheryl Bell
Title: Field Services Section Manager & Building Official	Title: Assistant Director, Development
State of Oregon, Department of Consumer and Business Services, DCBS Building Codes Division	Clackamas County
1535 Edgewater St. NW P.O. Box 14470 Salem, OR 97309-0404	150 Beaver Creek Rd, Oregon City, OR 97045
Phone: (503) 373-7755 Fax: (503) 378-2322	Phone: 503-260-7124
Email: warren.d.jackson@dcbs.oregon.gov	Email: cbell@clackamas.us

I. PURPOSE: By this Agreement, the State of Oregon, acting by and through its Department of Consumer and Business Services, Building Codes Division (DCBS), agrees to provide Plan Review and Inspection services to the Municipality when requested.

II. TERM OF AGREEMENT:

This Agreement shall become effective when signed by all parties. This Agreement shall expire five years after its effective date, unless terminated early in accordance with Section IX.

III. STATEMENT OF WORK

A. Municipality shall:

1. Contact the Building Official of DCBS, when services are needed.
2. Email inspection requests to the Building Official of DCBS, after confirmation from DCBS inspection assistance is available.
3. Email all requests for plan review to the Building Official of DCBS. After confirmation from DCBS that plan review assistance is available, the

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Municipality and the Building Official will coordinate receipt of plan review documents.

4. If paper documents are used, send all construction plans for which plan review is requested to:

ATTN: Warren Jackson
BCD Salem Office,
1535 Edgewater St. NW
Salem OR 97309

5. Remit payment to DCBS within 60 days of receiving the invoice in accordance with Section IV(C).

B. DCBS shall:

1. Perform plan review and inspection services, by plan or inspection as requested, consistent with construction codes and standards adopted by the State of Oregon. "DCBS warrants that its services are performed by qualified staff in a good and workmanlike manner."
2. Perform services using qualified DCBS staff possessing appropriate certification or designation recognized by the State of Oregon.
3. Complete residential plan reviews within 10 calendar days. Complete commercial Plan reviews within 15 calendar days of receipt.
4. Submit inspection reports to Municipality within forty-eight (48) hours of the inspection.
5. Provide an invoice via email to DTDFinancial@clackamas.us, the Municipality's authorized departmental financial representative, on a monthly basis.

The only services that will be provided under this Agreement are those requested by Municipality and as DCBS has available staff to complete the requested work. If DCBS does not have available staff, that will be stated on the day of request for services.

IV. CONSIDERATION

A. Municipality agrees to pay DCBS at the rate of:

- (1) Ninety percent (90%) of the plan review fee collected by Municipality for plan reviews completed under this agreement.
- (2) Eighty-five dollars (\$85.00) per hour for inspections performed on behalf of Municipality.

B. Both parties certify that, at the time this agreement is written, sufficient funds are available and authorized for expenditure to finance costs of this agreement.

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C. Municipality shall remit payment to DCBS on a monthly basis for all services performed. DCBS will invoice Municipality on a monthly basis for all services performed on behalf of Municipality. Municipality will submit payment for all services completed by DCBS within 60 days of receipt of the invoice. All payments shall be made via check. Payment to be sent to the following address:

Building Codes Division
BCD FACS
PO Box 14470
Salem OR 97309-0404

D. With every payment, for the work done under this Agreement during the month for which payment is being remitted, Municipality shall provide DCBS with:

(1) Documentation of each plan review performed by DCBS and the associated fees collected by Municipality;

E. Municipality agrees that it shall provide or make available, if and as requested by DCBS, any and all records and information related to this agreement of which Municipality is custodian, within 30 days of such request by DCBS. Municipality further agrees that it shall retain and not destroy any and all documents and records related to this Agreement for a minimum of one year after such document or record is created.

F. The maximum not to exceed compensation to payable to DCBS under this Agreement is \$50,000.00

V. TRAVEL AND OTHER EXPENSES

Municipality shall not be responsible to DCBS for travel or other expenses.

VI. BREACH

Neither party shall be in breach of this Agreement until written notice of the unperformed obligation has been given and that obligation remains unperformed after notice for 7 days in the case of Municipality's obligations; or 14 days in the case of DCBS's obligations. In the case of a default, the nonbreaching party may terminate this agreement with (10) days prior written notice to the breaching party and shall be entitled to seek damages or any other remedy provided by applicable law. If DCBS is the nonbreaching party, it may elect to perform any of the breaching party's obligations and recover from the breaching party the costs of such performance plus interest at the rate of 10% of such costs. If DCBS is the nonbreaching party, it may also elect to commence an investigation of Municipality under ORS 455.770(1) and (2)(b).

VII. CONTRIBUTION

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If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the Municipality (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Municipality in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Municipality on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the Municipality on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the Municipality is jointly liable with the State (or would be if joined in the Third Party Claim), the County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the Municipality on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Municipality on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Municipality's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

VIII. AMENDMENTS

The terms of this agreement shall not be waived, altered, modified, supplemented or amended except by written instrument signed by both parties. This agreement may be extended upon written amendment.

IX. TERMINATION

This agreement may be terminated by mutual consent by both parties or by either party upon thirty (30) days' notice, in writing.

X. FORCE MAJEURE

Neither party shall be held responsible for delay or failure to perform when such delay or failure is due to fire, flood, epidemic, strikes, acts of God or the public enemy, unusually severe weather, legal acts of public authorities, or delays or defaults caused by public carriers, which cannot be reasonably foreseen or provided against. In such event, the period for the performance shall be extended for the period of such delay. Upon the cessation of the cause of delay or nonperformance, the affected Party shall resume performance of its obligations under this Agreement. Either party may terminate the agreement, effective with the giving of written notice, after determining such delays or failure will reasonably prevent successful performance in accordance with the terms of this agreement.

XI. ALTERNATIVE DISPUTE RESOLUTION

The parties shall attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

XII. NONDISCRIMINATION

The parties agree to comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations in the performance of this agreement.

XIII. COMPLIANCE WITH APPLICABLE LAWS

The parties agree that both shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this agreement. The parties agree that this agreement shall be administered and construed under the laws of the State of Oregon.

XIV. PARTNERSHIP

Neither party is, by virtue of this agreement, a partner nor a joint venturer in connection with activities carried out under this agreement, and shall have no obligation with respect to the other party's debts or any other liability or obligation of the other party of whatever kind or nature.

XV. AUDIT

DCBS reserves the right to audit, at Municipality's expense, all records pertinent to this agreement.

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XVI. NO WAIVER OF CLAIMS

The failure by either party to enforce any provision of this agreement shall not constitute a waiver by that party of that provision or of any other provision or provisions of this agreement.

XVII. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties concerning the subject matter of this agreement and supersedes any and all prior or contemporaneous negotiations or agreements between the parties, whether written or oral, concerning the subject matter of this agreement which is not fully expressed herein. This agreement may not be modified or amended except in writing and signed by all parties.

XVIII. SIGNATURES

State of Oregon, through Department of
Consumer and Business Services,
Building Codes Division

Clackamas County

Dawn Bass
Deputy Administrator

Tootie Smith
Chair, Board of County Commissioners

Date _____

Date _____

Miriha Aglietti
Designated Procurement Officer

Date_____