



DAN JOHNSON  
DIRECTOR

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

July 13, 2023

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

Board of County Commissioners  
Clackamas County

**Approval of a Funding Agreement with Clackamas County and Willamette Falls Lock Authority. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	On or about October 19, 2021: Clackamas County Board of Commissioners approved funding to support the WFLA.		
<b>Performance Clackamas</b>	1. Grow a Vibrant Economy		
<b>Counsel Review</b>	Yes, ARN	<b>Procurement Review</b>	No
<b>Contact Person</b>	Laura Edmonds	<b>Contact Phone</b>	503-742-4366

**EXECUTIVE SUMMARY:** In June, 2021 the Oregon legislature passed HB 2564. The legislation established the Willamette Falls Lock Authority (WFLA) to establish ownership, oversight, and management of the Willamette Falls Locks Project. The mission of the Willamette Falls Locks project is to (1) enhance the economic vitality of Oregon through facilitating the resiliency and navigability of the Willamette River and (2) repair, maintain, upgrade, and operate the Willamette Falls Locks project and associated properties and facilities for commercial, transportation, recreational, cultural, historic, heritage, and tourism purposes.

On or about October 19, 2021, the Clackamas County Board of Commissioners appropriated funding to support the WFLA. The funding approved was \$40,000 per year for a total of three years. The total amount of funds approved was \$120,000. Funding is from Oregon State Lottery Funds. No County General Funds are involved.

**RECOMMENDATION:** Staff respectfully recommends approval of the Funding Agreement between Clackamas County and the Willamette Falls Lock Authority.

For Filing Use Only

Respectfully submitted,

*Dan Johnson*

Dan Johnson, Director  
Department of Transportation & Development

**FUNDING AGREEMENT  
BETWEEN CLACKAMAS COUNTY  
AND WILLAMETTE FALLS LOCKS AUTHORITY**

THIS AGREEMENT (this "Agreement") is entered into and between **Clackamas County** ("County"), a political subdivision of the State of Oregon, and **Willamette Falls Lock Authority** ("WFLA"), a unit of local government, 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.

On or about June 11, 2021, the Oregon legislature passed HB 2564. The legislation established the WFLA to establish ownership, oversight, and management of the Willamette Falls Locks Project. The mission of the Willamette Falls Locks project is to (1) enhance the economic vitality of Oregon through facilitating the resiliency and navigability of the Willamette River and (2) repair, maintain, upgrade, and operate the Willamette Falls Locks project and associated properties and facilities for commercial, transportation, recreational, cultural, historic, heritage and tourism purposes.

HB 2564 requires the WFLA, among other tasks, to appoint an executive director to perform the day-to-day operations of the WFLA.

The Oregon legislature did not provide any initial funding to the WFLA to carry out the mission of the Willamette Falls Locks project.

On or about October 19, 2021, the Clackamas County Board of Commissioners appropriated funding to support the WFLA. The funding approved was \$40,000 per year for a total of three years. The total amount of funds approved was \$120,000.00.

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 by both parties and shall expire on June 1, 2026.
2. **Funding.** County agrees to grant WFLA a sum not to exceed one hundred and twenty thousand dollars (\$120,000.00) (the "Funds"). The Funds are proceeds from the Oregon State lottery and as such, are subject to the limitations of use set forth in the Oregon Constitution, Article XV, Section 4, and ORS 461.540. WFLA may use the Funds for any purpose enumerated under HB 2564, a copy of which is attached hereto as **Exhibit A** and incorporated by this reference herein, provided such uses are also consistent with the restrictions on use of Oregon State lottery proceeds under the Oregon Constitution, Article XV, Section 4, and ORS 461.540.
3. **Monitoring.** WFLA agrees to allow access to conduct financial and performance audits for the purpose of monitoring use of the Funds in accordance with Generally Accepted Auditing Standards ("GAAS"). County, and its duly authorized representatives, shall have access to such records and other books, documents, papers, plans, records of shipments



and payments and writings of WFLA that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, copies and transcripts.

4. **Reporting.** WFLA shall provide annual reports to County regarding use of the Funds. The reports shall include a narrative summary that details how the Funds provided under this Agreement were used, program outcomes, and other information reasonably requested by County including, but not limited to, information necessary to fulfill County's obligations under ORS Chapter 461.
5. **Financial Management.** WFLA shall comply with Generally Accepted Accounting Principles (GAAP) or another equally accepted basis of accounting, use adequate internal controls, and maintain necessary sources documentation for all uses of the Funds.
6. **Payment.** County will grant funds on an annual basis in the amount of \$40,000 per year for the three-year term of this Agreement. The first payment will be made within thirty (30) days of the effective date of this Agreement, and annually thereafter.

Any continuation or extension of this Agreement after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Agreement, as determined by the County in its sole administrative discretion

7. **Representations and Warranties.**

- A. *WFLA Representations and Warranties:* WFLA represents and warrants to County that WFLA 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 WFLA enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to WFLA 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.

8. **Termination.**

- A. **Termination for Convenience.** Either the County or WFLA may terminate this Agreement at any time prior to County distributing funds to WFLA. After County has distributed funds to WFLA, either Party may terminate this Agreement upon 120 days written notice to the other Party. In the event a party terminates this agreement under this Section 8 A, WFLA shall immediately return all unspent funds to the County.
- B. **Termination for Breach.** Either the County or WFLA may terminate this Agreement in the event of a breach of the Agreement by the other Party. 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. Upon termination for WFLA's breach, County shall have all remedies available to it at law, in equity, or under this Agreement including, but not limited to, requiring WFLA to return all unspent funds and to repay County for any funds used by WFLA in violation of this Agreement.

- C. **Termination for Non-appropriation/Change in Law.** Either Party may terminate this Agreement in the event either Party fails to receive expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to perform under this Agreement. Additionally, either Party may terminate this Agreement if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited. In the event of termination under this Subsection C, WFLA shall immediately return all unspent funds to the County.
  - D. **Waiver.** The County or WFLA 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.
  - E. **Reservation of Remedies.** The termination of this Agreement, regardless of cause, shall not prejudice any rights or obligations accrued to the Parties prior to termination. Each party shall have all rights and remedies available to it at law, in equity, or under this Agreement.
9. **Indemnification.** Subject to the Oregon Tort Claims Act and the Oregon Constitution, WFLA agrees to indemnify, hold harmless, and defend County and its officers, elected officials, agents and employees, from and against all claims, actions, losses, liabilities, including reasonable attorney and accounting fees, and all expenses incidental to the investigation and defense thereof, arising out of or based upon WFLA's acts or omissions in performing under this Agreement including, but not limited to, any claim that WFLA used the Funds for ineligible purposes under HB 2564, the Oregon Constitution, Article XV, Section 4, or ORS 461.540.

WFLA shall not be required to indemnify County for any such liability arising out of negligent acts or omissions of the County. However, neither WFLA nor any attorney engaged by WFLA shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall WFLA settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

10. **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.
11. **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. Clackamas County.**

Laura Edmonds  
Economic Development Manager, Office of Economic Development  
Clackamas County  
150 Beaver Creek Road  
Oregon City, OR 97045  
[ledmonds@clackamas.us](mailto:ledmonds@clackamas.us) | (503) 742-4366

and

Emily Klepper  
Senior Policy Advisor, County Administration  
Clackamas County  
2051 Kaen Road  
Oregon City, OR 97045  
[emilykle@clackamas.us](mailto:emilykle@clackamas.us) 503-742-5933

#### **B. WFLA.**

Christine Lewis  
Metro Councilor District 2  
Willamette Falls Locks Authority Chair  
1980 Willamette Falls Drive #120, PMB 195  
West Linn, OR 97068

### **12. 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 County and Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and WFLA 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 County Court for the County 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. WFLA, by



execution of this Agreement, hereby consents to the in 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 including, but not limited to, the requirement that use of the Funds under this Agreement be used for purposes consistent with ORS Chapter 461 and other applicable law. 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.** WFLA 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. WFLA 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, WFLA shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. Reserved.**
- F. 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.
- G. 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.
- H. Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. 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.

- I. **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.
- J. **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
- K. **No Third-Party Beneficiary.** WFLA 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.
- L. **Subcontract and Assignment.** WFLA shall not enter into any subcontracts for any of the work required by this Agreement, or 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 sole discretion. County's consent to any subcontract shall not relieve WFLA of any of its duties or obligations under this Agreement.
- M. **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.
- N. **Survival.** All provisions in Sections 7, 9, and 12 (A), (C), (D), (F), (G), (H), (I), (J), (K), (N), (Q), and (T) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- O. **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.
- P. **Reserved.**
- Q. **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.
- R. **Force Majeure.** Neither WFLA nor County shall be held responsible for delay or default caused by events outside of the WFLA or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, WFLA 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.

**S. Reserved.**

**T. 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

Approved as to Form:

  
\_\_\_\_\_  
County Counsel

06/28/2023

\_\_\_\_\_  
Date

**Willamette Falls Locks Authority**

  
\_\_\_\_\_

By:  
Its: *Chair, Willamette Falls Locks Authority*

*June 26, 2023*  
\_\_\_\_\_  
Date