



DAN JOHNSON
DIRECTOR

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

March 23, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
Acting as the Development Agency Board
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the City of Milwaukie relating to the Linwood Avenue Improvement project. Agreement value is \$69,540. Funding is through the City of Milwaukie. No County General Funds are involved.

Previous Board Action/Review	10/31/19- Approval of a design contract for Linwood 07/29/21- Approval of first amendment to the design contract. 07/28/22- IGA with Clackamas River Water for Linwood improvements 08/04/22- IGA with Water Environment Services for sewer main installation. 08/18/22- Approval of construction management services contract. 09/08/22- Approval of second amendment to the design contract Briefed at Issues – March 21, 2023		
Performance Clackamas	This project aligns with “Ensure safe, healthy and secure communities” and “Build a strong infrastructure” by adding bicycle and pedestrian facilities, upgrading curb ramps, adding landscaping strips and stormwater system improvements and repairing the road base, thereby ensuring safer vehicle and pedestrian travel.		
Counsel Review	Yes- 3/13/23 NB	Procurement Review	No- NA
Contact Person	Ken Itel, Development Agency Senior Project Planner	Contact Phone	503-742-4324

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EXECUTIVE SUMMARY:

Bids were received and a contractor has been selected for construction of the Linwood Avenue Improvement Project. The design consultant coordinated with affected utilities in order to minimize conflicts with their facilities. With a project of this scale, there are instances where conflicts cannot be avoided and utilities need to be relocated.

The City of Milwaukie (City) has water lines and related structures requiring relocation. In the interest of efficiency, the City and Development Agency agree it would be beneficial to have the Agency's contractor relocate the City facilities during construction. The bid prices received for construction of the City facilities are incorporated as an exhibit in the IGA. The Intergovernmental Agreement (IGA) commits the City to reimburse the Agency for construction costs. Any construction costs for City facilities will be reimbursed in full to the Agency. Total reimbursement is not to exceed \$68,540 for construction of improvements and \$1,000 for administrative expenses.

RECOMMENDATION:

Staff respectfully recommends the Board approve the Intergovernmental Agreement with the City of Milwaukie relating to the Linwood Avenue Improvement Project.

Respectfully submitted,

Dan Johnson

Dan Johnson, Director
Department of Transportation & Development

Attachments:

Intergovernmental Agreement

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF MILWAUKIE AND THE CLACKAMAS COUNTY DEVELOPMENT AGENCY
RELATING TO THE SE LINWOOD AVENUE IMPROVEMENT PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into between the City of Milwaukie, an Oregon municipality ("City"), and Clackamas County Development Agency, a corporate body politic ("Agency"), collectively referred to as the "Parties" and each a "Party."

RECITALS

- A. This Agreement is entered into pursuant to ORS 190.010, which confers authority on local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreements, its officers or agencies have authority to perform.
- B. The Agency is planning to construct the SE Linwood Avenue Improvement Project, which is an extension of improvements completed by the City of Milwaukie on SE Linwood Avenue and will redesign the SE Linwood Avenue corridor from SE Monroe Road to SE Johnson Creek Boulevard. The SE Linwood Avenue Improvement Project will complete missing sidewalk sections and bike lane connections by installing a multi-use path on either side of the street improving safety and connectivity for pedestrians, cyclists, and motorists. The Project also includes updates to existing stormwater facilities to improve stormwater management.
- C. As part of the Agency's SE Linwood Avenue Improvement Project, the Agency will undertake the City of Milwaukie Water System Appurtenance Relocation Project (the "Project") that will include the work identified in **Exhibit A** to this Agreement, and which lies within the SE Linwood Avenue roadway in an area identified in **Exhibit B** to this Agreement (the "Project Area"). The City of Milwaukie is planning to replace existing water services, fire hydrants and appurtenances within the Project Area as part of the Project.
- D. The Parties desire to provide the basis for a cooperative working relationship for the purpose of providing design and construction services as part of the Project.
- E. City and Agency have determined it is in the public interest to cooperate in the planning and execution of the Project.

AGREEMENT

Now, therefore, based on the foregoing, the Parties agree as follows:

1. **Term.** This Agreement becomes effective as of the last date of signature by a Party indicated below. Unless terminated earlier pursuant to Section 5 of this Agreement, this Agreement will expire upon the completion of each and every obligation of the Parties set forth in this Agreement, or by March 31, 2024 whichever is sooner.

2. **Milwaukie's Obligations.**
 - a. **Scope of Work.** The City agrees to the scope of work set out in Exhibit A. The City has reviewed the plans produced by Agency's consultant in connection with the Project and the procurement materials, and agrees and acknowledges that the plans are satisfactory in all respects to meet the City's needs for the Project.

 - b. **Project Coordination.** The City's liaison, identified below in Section 7 of this Agreement, shall coordinate design and construction requirements, and assist the Agency when necessary to provide responses to requests for information from contractors. The City will provide engineering review, comments, information or approval, as required to the Agency or to the Agency's consultant, currently Harper Houf Peterson Righellis, Inc. ("HHPR"), and the Agency's contractor, currently Moore Excavation, Inc., for purposes of fulfilling the purpose of this Agreement.

 - c. **Project Inspections and Testing.** In addition to the construction costs set out in Exhibit A, the City is responsible for costs associated with design review, field inspection and material testing related to work performed on City water lines, fire hydrants and appurtenances within the Project Area.

 - d. **Payment Obligations.** The City will be responsible for all costs associated with the work identified in Exhibit A to this Agreement, not to exceed the amount specified in **Exhibit C**. The City further agrees:
 - i. To reimburse the Agency for administrative costs the Agency incurs in the administration of the Project, not to exceed One Thousand Dollars (\$1,000.00).

 - ii. To pay Agency within 60 days of the receipt of the Agency's invoice to the City.

3. Agency's Obligations.

- a. Scope of Work. The Agency shall deliver the scope of work set out in Exhibit A.
- b. Management of the Project. The Agency will manage the Project, as set forth in Exhibit A of this Agreement, and administer the associated engineering, design and construction contracts.
- c. Project Professional and Project Cost. Agency has contracted with HHPR to design the Project, and with Moore Excavation, Inc., to construct the Project. The City shall be responsible for those Project costs as set forth in **Exhibit C** to this Agreement.
- d. Invoice Obligations. Agency will invoice the City within the first week following the last working day of each calendar month in which work is performed on the City's behalf. With the exception of the administrative costs described in Section 2(d)(i), Agency shall not invoice the City, and the City shall not be liable for, amounts in excess of that which is listed in Exhibit C, unless the Parties amend this Agreement by modifying the scope of work set out in Exhibit A.

4. Attachments. The Parties understand and agree that Exhibit A, Exhibit B, and Exhibit C are attached and incorporated into this Agreement as if fully set forth herein.

5. Termination.

- a. The City and Agency, by mutual written agreement, may terminate this Agreement at any time.
- b. Either the City or 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 thirty (30) 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 thirty (30) day period, this provision shall be complied

with if the breaching Party begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

- c. The City or 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.
- d. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project.
- e. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. Indemnification.

- a. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the City, its officers, elected officials, 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 person or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents or its subcontractors or anyone over which the Agency has a right to control.
- b. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, 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 City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

7. Party Contacts.

- a. Steve Adams or their designee will act as liaison for the City for the Project.

Contact Information:

Steve Adams
City of Milwaukie
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206
O: (503)-786-7605, M: (503)786-7600
adamss@milwaukieoregon.gov

- b. Ken Itel or his designee will act as liaison for Agency for the Project.

Contact Information:

Ken Itel
Clackamas County Development Agency
150 Beaver Creek Road
Oregon City OR 97045
(503) 742-4324
kennethite@clackamas.us

- c. 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.

8. General Provisions.

- a. **Oregon Law and Forum.** This agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- b. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- c. **Non-Exclusive Rights and Remedies.** Except as otherwise 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. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- e. **Access to Records.** The Parties acknowledge and agree that each Party shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- f. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law 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.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the Agency or CRW.
- l. **No Assignment.** No party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- m. **Nonwaiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, Clackamas County, or any other governmental entity with respect to any discretionary governmental action relating to the Project or any associated development, operation and use of the improvements to be constructed on the Project Area, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental County approvals that are or may be required.
- n. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile, or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the

same counterpart. Each copy of this Agreement so executed shall constitute and original.

- o. **Authority.** Each Party represents that is has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- 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.

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

Clackamas County Development Agency

City of Milwaukie

Chair: Tootie Smith

Name:
Title:

Date

Date

EXHIBIT A

SCOPE OF WORK

Clackamas County Development Agency has contracted with HHPR to design street, pedestrian, and cycling improvements in the SE Linwood Avenue Improvement Project. During the design process it was recognized that City of Milwaukie (City) infrastructure would be impacted by the design and would need to be adjusted, relocated, and/or replaced. Specific elements of construction work affecting City utilities to be incorporated are detailed in Exhibit 1 (attached). The Scope of Services is as follows:

Task 1: Design Drawings

Prepare design drawing modifications incorporating the water service and fire hydrant replacement locations, notes and details for review and approval by the City of Milwaukie. Project plan and profile sheets will be utilized to note and identify the water improvements.

Task 2: Inspection Services

HHPR will provide general inspection services during installation of the water components, concurrent with other inspection tasks. Track quantities for payment. Provide daily inspection notes (provide copies to the City on a weekly basis). It is assumed that the water improvements will require 4 weeks to complete, and that the inspector will be present 10% of this time. County staff and/or their hired contractor shall provide minimum 48-hr notice to the City whenever work is scheduled to occur on City infrastructure. The City will provide primary inspection of City work and will participate in final walkthrough and generation of punch list items. The City will provide review of submittals and RFI's.

Task 3: Construction of Improvements

The Agency will include the City of Milwaukie water service improvements identified in Exhibit 1 and Exhibit C in the construction contract for Linwood Avenue. The Agency's selected contractor will construct the improvements per the approved construction plans and bid documents.

Task 4: As-Built Drawings

Complete as-built drawings of the project to reflect changes made during construction. The as-built drawings will be generated from contractor and inspector notes (new survey will not be completed). Provide digital Autocad and PDF files to the City.

SE Linwood Avenue Improvement Project

City of Milwaukie Water Project Work

Exhibit 1

11/15/2022

Sheet	Description
5.0	3 each – Relocate Water Meter 1 each – Relocate Hydrant 0 each – Adjust Blow Off
5.1	7 each – Relocate Water Meter 0 each – Relocate Hydrant 0 each – Adjust Blow Off 1 each – Adjust Hydrant
5.2	1 each – Relocate Water Meter 1 each – Relocate Hydrant 0 each – Adjust Blow Off
5.3	6 each – Relocate Water Meter 0 each – Relocate Hydrant 1 each – Adjust Blow Off
5.4	0 each – Relocate Water Meter 0 each – Relocate Hydrant 0 each – Adjust Blow Off
5.5	0 each – Relocate Water Meter 0 each – Relocate Hydrant 0 each – Adjust Blow Off
5.6	0 each – Relocate Water Meter 0 each – Relocate Hydrant 0 each – Adjust Blow Off 1 each – Adjust manhole/vault
5.7	0 each – Relocate Water Meter 0 each – Relocate Hydrant 0 each – Adjust Blow Off
5.8	0 each – Relocate Water Meter 0 each – Relocate Hydrant 0 each – Adjust Blow Off

**EXHIBIT B
PROJECT AREA**



EXHIBIT C

CONSTRUCTION BID COSTS

Linwood Improvements							
Clackamas County-City of Milwaukie							
CONSTRUCTION BID COSTS							
ITEM	SPEC	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL	
Part 1100 - Water Supply Systems							
	01140	Relocate Water Assembly	EACH	17	\$ 2,300.00	\$	39,100.00
	01140	Remove, Replace and Relocate Fire Hydrant	EACH	3	\$ 5,800.00	\$	17,400.00
	01140	Adjust Blowoff	EACH	1	\$ 2,000.00	\$	2,000.00
	01140	Minor Adjustment of Manhole	EACH	1	\$ 1,100.00	\$	1,100.00
		Contingency			\$ 8,940.00	\$	8,940.00
		Milwaukie Water Supply Systems Subtotal				\$	68,540.00