



Tim Heider,
Interim Director
Public & Government Affairs

Public Services Building
2051 Kaen Road, Oregon City, OR 97045

August 15, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between Clackamas County and the City of Milwaukie
Regarding Payment for Services Related to Willamette Falls Locks State Commission

Purpose/Outcome	Approval of an Intergovernmental Agreement between Clackamas County and the City of Milwaukie regarding payment for services related to Willamette Falls Locks State Commission
Dollar Amount and Fiscal Impact	\$5,000 to Clackamas County, Public & Government Affairs.
Funding Source	Milwaukie to contribute \$5,000 to Clackamas County (PGA)
Safety Impact	N/A
Duration	N/A
Previous Board Action/Review	Board approved Willamette Falls Locks Project Management Contract on March 29, 2018
Strategic Plan Alignment	Supports growing a vibrant economy and building a strong infrastructure
Counsel Review	Yes
Contact Person	Trent Wilson, Clackamas County Public and Government Affairs Specialist, 503-655-8206
Contract No.	#2017-89 Willamette Falls Locks Project Management

BACKGROUND:

Senate Bill 256 (Oregon State Legislature 2017) established a Willamette Falls Locks State Commission. The mission of the State Commission as assigned by SB 256 calls for work that would lead towards the transfer of the Willamette Falls Locks to a non-federal owner. Anticipated work to reach that conclusion includes: engineering studies, finance and governance modeling, and state and federal advocacy. Contracted work totals \$865,000.

Participating members of the Willamette Falls Locks stakeholders agreed to share the cost of funding the project contractor. Clackamas County, along with Metro and the participating river cities (jointly) agreed to each pay \$120,000 over the first two years of the State Commission. Clackamas County is using state lottery funds from Business and Community Services to fund its commitment. Tourism and Cultural Affairs has also collected funds from local tourism stakeholders, and various river users also contribute towards the total amount.

As the contract manager, Clackamas County will receive funds from participating cities fulfilling the \$120,000 commitment. The city of West Linn is coordinating city payments, but funds come directly to the county from the various cities accompanied by an Intergovernmental Agreement (IGA) that acts a receipt. In exchange Clackamas County will act as the project manager to supervise the work of the due diligence and project management firm as required by the State Commission.

This Intergovernmental Agreement is between the City of Milwaukie and Clackamas County. Milwaukie will fund \$2,500 a year for two years for the Willamette Falls Locks project coordinator. Milwaukie is making a lump sum payment of \$5,000 for both years.

Clackamas County released a RFP in November 2017 seeking a project management firm to perform the due diligence work required by the State Commission. The selected bidder is Summit Strategies, LLC.

Clackamas County has an existing contract with Summit Strategies, LLC for federal representation services. This contract is separate from that contract.

RECOMMENDATION:

Staff recommends Board approval of the Intergovernmental Agreement between Clackamas County and the City of Milwaukie.

Respectfully submitted,

Tim Heider
Interim Director, Public and Government Affairs

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND MILWAUKIE**

This Intergovernmental Agreement (“Agreement”) is entered into by and between **Clackamas County** (“County”), a political subdivision of the State of Oregon, and the **City of Milwaukie** (“City”), an Oregon municipal corporation, for the provision of project management and due diligence services provided to the **Oregon State Commission for Willamette Falls Locks**, (“Commission”), formed under 2017 SB 256, 2017 Oregon Session Laws Ch. 734, ORS 358.640 (Temporary provisions relating to Willamette Falls Locks Commission). This Agreement is authorized pursuant to ORS 190.010, and ORS 190.110.

1. **Effective Date and Duration.** This Agreement shall become effective upon signature by City representative. Unless earlier terminated or extended, this Agreement shall expire on November 30, 2019 (“Expiration Date”). This Agreement may be otherwise extended by mutual written agreement of the parties at any time prior to its Expiration Date.
2. **Statement of Work.** County agrees to perform the project management and due diligence work in accordance with the terms and conditions of this Agreement as reflected in Attachment 1. County agrees that it shall use the contributions from the funding partners in support of consulting services pertaining to and in support of the Commission and the goals of the Project as defined in 2017 Oregon Session Laws Ch. 743, Section 2. The County agrees to solicit through a competitive process the required project management and due diligence consulting services. The County further agrees to convene the staff from the contributing partners to provide guidance and support to the Commission and consultants.
3. **Consideration.** City agrees that it shall contribute Five Thousand and no/100 Dollars (\$5,000.00) to the County to support the project management and due diligence facilitation upon execution of this agreement.
4. **Schedule of Performance.** The delivery schedule for the provision of these services is intended to be completed by November 30, 2019.
5. **Project Managers; Notice.** Each party has designated a project manager to be the formal representative for this Agreement. All reports, notices, and other communications required under or relating to this Agreement shall be directed to the appropriate individual. To be effective, any notice required to be given under this Agreement may be given by personal delivery to the address below or may be sent by certified mail, return receipt requested and if sent via certified mail return receipt requested such notice will be deemed delivered three (3) business days after postmark. Notice may also be given by overnight delivery service, effective upon receipt of such delivery.

City of Milwaukie
Ann Ober
City Manager,
City of Milwaukie
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Clackamas County
Gary Schmidt
Director, Clackamas County
Public and Government Affairs
2051 Kaen Rd., Suite 450
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(503) 742-5908

6. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.
7. **Termination.**
 - A. The parties may agree to an immediate termination of this Agreement or at a time certain upon mutual written consent.
 - B. Either party may terminate this Agreement effective not less than 30 days from delivery of written notice for any reason. City shall be responsible for any costs of Work done on its behalf prior to the effective date of the termination.
 - C. Either party may terminate this Agreement in the event of a breach by the other party. However, prior to such termination, the party seeking termination shall give the other party written notice of the party's intent to terminate. If the breaching party has not cured the breach within 10 days or a longer period as granted in the cure notice, the party seeking compliance may terminate this Agreement.
8. **Funds Available and Authorized.** Both parties certify that at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within each party's current appropriation and limitation through fiscal year 2018-2019. Both parties understand and agree that payment of amounts under this Agreement attributable to Work performed after the end of the current fiscal year is contingent on either party receiving appropriations, limitations, or other expenditure authority. This Contract 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.
9. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.
10. **Access to Records.** Both parties and their duly authorized representatives shall have access to the documents, papers, and records which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcript.

11. **Compliance with Applicable Law.** Both parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement. Both party's performance under this Agreement is conditioned upon either parties compliance with the provisions of the Oregon Revised Statutes, including but not limited to ORS 279A, B, and C, which are incorporated by relevant reference herein. Notwithstanding the foregoing, the County is solely responsible for any and all contracts and subcontracts associated with the project management and due diligence work to be funded by this Agreement, including but not limited to procurement under applicable public contracting laws, contract management, and payments to contractors and subcontractors. County acknowledges that other than City's payment of funds to the County, City has no other obligation or responsibility for this the project management and due diligence work.
12. **No Third Party Beneficiary.** The County and City are the only parties to this Agreement and as such, are the only parties entitled to enforce its terms. Nothing contained in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.
13. **Indemnification.** Within the limits of the Oregon Tort Claims Act, each party agrees to indemnify and defend the other and its elected officials, officers, employees, agents and representatives from and against all claims, demands, penalties and causes of action of any kind or character relating to or arising from this Agreement, excluding the cost of defense and attorney fees, arising in favor of any person on account of personal injury, death or damage to property and arising out of or resulting from the negligent or other legally culpable acts or omissions of the indemnitor, its elected officials, employees, agents, subcontractors or representatives.
14. **Merger Clause.** This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.
15. **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.
16. **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.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

City of Milwaukie

Clackamas County Board of County Commissioners by:



Ann Ober, City Manager

Chair

7-30-19

Date

Date

Recording Secretary

Approved as to Form:

County Counsel

Attachment 1

Project Management and Due Diligence Work Program

- Overall Project Management – A single overall project manager should be identified with responsibility to manage the full work program, including work elements being carried out by other consultants and agency staffs.
- Governance – A key conclusion of this effort will be to identify a transferee and the governance structure through which to implement the transfer of the Locks from the Corps to a new owner.
- Funding – The companion conclusion to the governance question will be to determine the appropriate funding strategy to implement needed capital repairs and support ongoing operations, maintenance, and periodic capital improvements.
- Engineering – The Consultant team should include a civil engineer with experience with locks. This person will be responsible for consulting with the Corps to fully understand their engineering assessment, verify the scope of work for each repair item, confirm costs and assist the Locks Commission in finalizing an agreed upon short- and long-term capital repair plan.
- Public Outreach – The Consultant, working with the assistance of the full partners group will design and implement an appropriate public outreach work program with an eye toward building a base of support for ultimate implementation.
- Advocacy – The Consultant will develop and manage the best approach for any state or federal legislative and administrative advocacy stemming from recommendations by the Commission or full partners group.
- Agency Organization Structure and Capabilities – With the assistance of the full partners group and accessing the experience of the Corps, the Consultant will be responsible for defining the staffing and resources required for the transferee to be successful.
- Other studies and issues as required – As the project manager, the Consultant will be required to identify issues to be addressed and ensure that resources from the Consultant and/or the full partners group are assigned to analyze or otherwise address the issue.

Commission Proposal – The Consultant will be responsible for drafting the final Commission proposal