



DAN JOHNSON
DIRECTOR

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

April 4, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement with Oak Lodge Water Services relating to the Boardman Ave/Arista Flood Attenuation Options Study. Agreement value is \$100,000 for 21 months. Funding is through Oak Lodge Water Services and County Road Funds. No County General Funds are involved.

Previous Board Action/Review	04/02/2024: Request for consent		
Performance Clackamas	1. Build trust with good government		
Counsel Review	Yes	Procurement Review	No
Contact Person	Mike Bezner	Contact Phone	503-742-4651

EXECUTIVE SUMMARY: Boardman Creek frequently floods the area between Naef Road and Boardman Avenue, resulting in high water at the Boardman Avenue and Arista Drive intersection and in nearby neighborhoods. Clackamas County maintains these roads, and OLWS provides drinking water, wastewater, and water shed protection services in the area. The attached proposed Intergovernmental Agreement (IGA) formalizes a partnership between the County and OLWS to hire a consultant to develop a concept level design for a preferred alternative to mitigate flooding impacts in the vicinity. The cost of the conceptual design will be shared 50/50 up to a maximum contract of \$100,000.00 and this effort would be the first step in funding a future solution. The OLWS Board of Directors has already approved it.

RECOMMENDATION: Staff respectfully recommends the Board of County Commissioners to approve the IGA with Oak Lodge Water Services relating to the Boardman Ave / Arista Flood Attenuation Options Study.

Respectfully submitted,

Dan Johnson

Dan Johnson - Director of Transportation & Development

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**INTERGOVERNMENTAL AGREEMENT BETWEEN
OAK LODGE WATER SERVICES AND CLACKAMAS COUNTY
RELATING TO THE BOARDMAN AVENUE / ARISTA FLOOD ATTENUATION OPTIONS
STUDY**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is entered into between the Oak Lodge Water Services Authority, an Oregon Joint Water and Sanitary Authority, organized under ORS Chapter 450 (the "Authority"), and Clackamas County, a political subdivision of the State of Oregon (the "County"), 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. Boardman Creek, near Gladstone, Oregon, frequently floods the area between Naef Road and Boardman Avenue, resulting in high water at the Boardman Avenue and Arista Drive intersection and in nearby neighborhoods, as shown on Exhibit A (hereafter the "Subject Area").
- C. The County maintains Naef Road, Boardman Avenue, and Arista Drive in the Subject Area, and the Authority provides drinking water, wastewater, and watershed protection services in the Subject Area.
- D. The Parties plan to contract with a consultant to perform a site investigation, mapping, and hydrologic and hydraulic analysis to develop a concept level design of a preferred alternative to mitigate impacts from flooding in the Subject Area (the "Project").
- E. The Parties desire to enter into this Agreement to clarify the roles and responsibilities of each Party in managing the consultant contract, and to provide the basis for a cooperative working relationship for the resultant mitigation work that is anticipated for the Project.
- F. The Parties 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 signature date of the final Party to sign. Unless terminated earlier pursuant to Section 4 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 December 31, 2025, whichever is sooner.
- 2. **AUTHORITY Obligations.**
 - a. **Contracting and Selection of Consultant.** The Authority PM (defined below), shall participate in the solicitation by the County for consultant services, including in the evaluation of potential consultants. The Authority PM and the County PM (defined below), shall agree on the

consultant who is selected for award of the Project. The Authority PM and the County PM shall agree on the scope of work for the Project (and any amendments thereto), which shall be incorporated into the County's contract with the consultant. The Authority PM and the County PM shall agree on the consultant fees and costs that shall be set forth in the consultant contract with the County.

- b. Project Documents. The Authority PM will timely review any documents, plans, and studies associated with the Project. The Authority PM and the County PM shall both approve the final work product(s) produced under the Project consultant contract prior to acceptance of the work.
- c. Project Schedule. Except as otherwise provided in this Agreement, neither Party may be held liable for failure to adhere to the schedule where that Party proceeds with reasonable diligence and in good faith to advance the Project.
- d. Management of the Project; Coordination with the County. The Authority will name an Authority project manager (the "Authority PM") to coordinate reviews and be the primary contact person for the Authority for all communications with the County on the Project. The Authority PM will work to resolve any dispute with the County PM. The Authority PM shall coordinate with the County PM throughout the Project, and assist the County when necessary to provide timely responses to requests for information. The Authority PM and the County PM will regularly meet throughout the Project.
- e. Project Cost and Payment Obligations. The Authority will be responsible for all Authority staff time costs associated with the Project. The Authority agrees to reimburse the County for 50% of the consultant contract value, on a reimbursement basis upon completion of the work being invoiced, up to the amount of \$50,000 (the "Authority Contribution"). The Authority will pay the County the Authority Contribution within 30 days of the receipt of the County's invoice(s) to the Authority.

3. County Obligations.

- a. Contracting and Selection of Consultant. The County will contract for consultant services for the Project, using the County's Local Contract Review Board Rules. The County shall invite the Authority PM to be a part of the evaluation of all potential consultants for contract award. The County PM and the Authority PM shall agree on the consultant who is selected for award of the Project. The County PM and the Authority PM shall agree on the scope of work for the Project (and any amendments thereto), which shall be incorporated into the County's contract with the consultant. The Authority PM and the County PM shall agree on the consultant fees and costs that shall be set forth in the consultant contract with the County. The County will incorporate the following material terms into the consultant contract for the Project:

- i. Statement, to be provided by the Authority, that the Authority is a third-party beneficiary of the contract and has a right to enforce the contract terms.
 - ii. Requirement that all work products provided to the County by the consultant (including drafts, designs, comments, and studies), shall also be provided to the Authority PM.
 - iii. Date by when the consultant's work under the Scope of Work of the contract must be completed, which shall be within 12 months from the date of contract execution.
- b. Project Documents. The County will timely share with the Authority PM any and all drafts and final documents, plans, and studies associated with the Project that it receives. The County will make all reasonable efforts to incorporate the Authority's timely comments and/or proposed revisions into the final study documents. The County PM and the Authority PM shall both approve the final work product(s) produced under the Project consultant contract prior to acceptance of the work.
- c. Project Schedule. Except as otherwise provided in this Agreement, neither Party may be held liable for failure to adhere to the schedule where that Party proceeds with reasonable diligence and in good faith to advance the Project.
- d. Management of the Project; Coordination with the Authority. The County will name a County project manager (the "County PM") to manage the Project; manage the consultant contract; and to be the primary representative from the County for all communications with the Authority on the Project. The County PM will timely administer the consultant contract. The County PM shall coordinate with the Authority PM throughout the Project and will regularly meet throughout the Project.
- e. Project Cost and Payment Obligations. The County shall be responsible for all Project costs except those outlined under Section 2.e above. The County will invoice the Authority monthly during the Project for 50% of each consultant bill received and paid by the County, up to the maximum Authority Contribution amount.

4. Dispute Resolution and Termination.

- a. In the event of a dispute arising under the terms of this Agreement that is not resolved by the Authority PM and the County PM, the Authority Engineer and the County Department of Transportation Assistant Director shall attempt to resolve the dispute. In the event this does not resolve the dispute, the Authority General Manager and the County Department of Transportation Director shall attempt to resolve the dispute. In the event the dispute cannot be resolved, either Party may pursue any legal or equitable claims to which that Party may be entitled.

- b. The Parties may terminate this Agreement at any time by mutual written agreement.
- c. The failure to adhere to any of the following obligations, by either Party, shall be considered a material breach of this Agreement: (i) Agreement on consultant selection, fees and cost, or scope of work under Sections 2.a and 3.a; (ii) Approval by both Parties of all final work products produced under Sections 2.b and 3.b; and (iii) Coordination of the Authority PM and the County PM under Sections 2.d and 3.d.
- d. Either the Authority or the County 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 desire to mutually terminate. If the breaching Party has not entirely cured the breach within ten (10) days of deemed or actual receipt of the notice, then the non-breaching Party may terminate the Agreement at any time thereafter by giving written notice of termination to the other Party stating the effective date of the termination; provided however, if the default is of such a nature that it cannot be completely remedied within such 10-day period, this provision shall be complied with if the breaching Party begins correction of the default within the 10-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
- e. The Authority or the County 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.
- f. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project.
- g. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

5. Indemnification.

- a. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Authority, 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 County or its officers, elected officials, owners, employees, agents or its subcontractors or anyone over which the County has a right to control.

- b. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Authority agrees to indemnify, save harmless and defend the County, 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 Authority or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Authority has a right to control.

6. Party Contacts.

- a. Brad Albert or their designee will act as project manager for the Authority for the Project.

Contact Information:

Brad Albert
Oak Lodge Water Services
14611 SE River Road
Oak Grove, OR 97267
(503) 353-4202
brada@olwsd.org

- b. Joel Howie or his designee will act as project manager for County for the Project.

Contact Information:

Joel Howie
Clackamas County
150 Beavercreek Road
Oregon City, OR 97045
(503) 742-4658
JHowie@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 e-mail notice address of the Party Contacts under Section 6.

7. 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. The Parties shall coordinate on any response to public records requests for records associated with the Project.
- 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 by the governing bodies for both the Authority and the County. 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. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefits, or creates any right or cause of action in, or on behalf of, any person or entity other than the County or the Authority.
- k. **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.
- l. **Nonwaiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement, the County is specifically not obligating itself, 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 approvals that are or may be required.
- m. **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 an original.
- n. **Authority.** Each Party represents that it 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.
- 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.

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

Clackamas County

Oak Lodge Water Services

Tootie Smith
Chair, Board of County Commissioners

Susan D. Keil

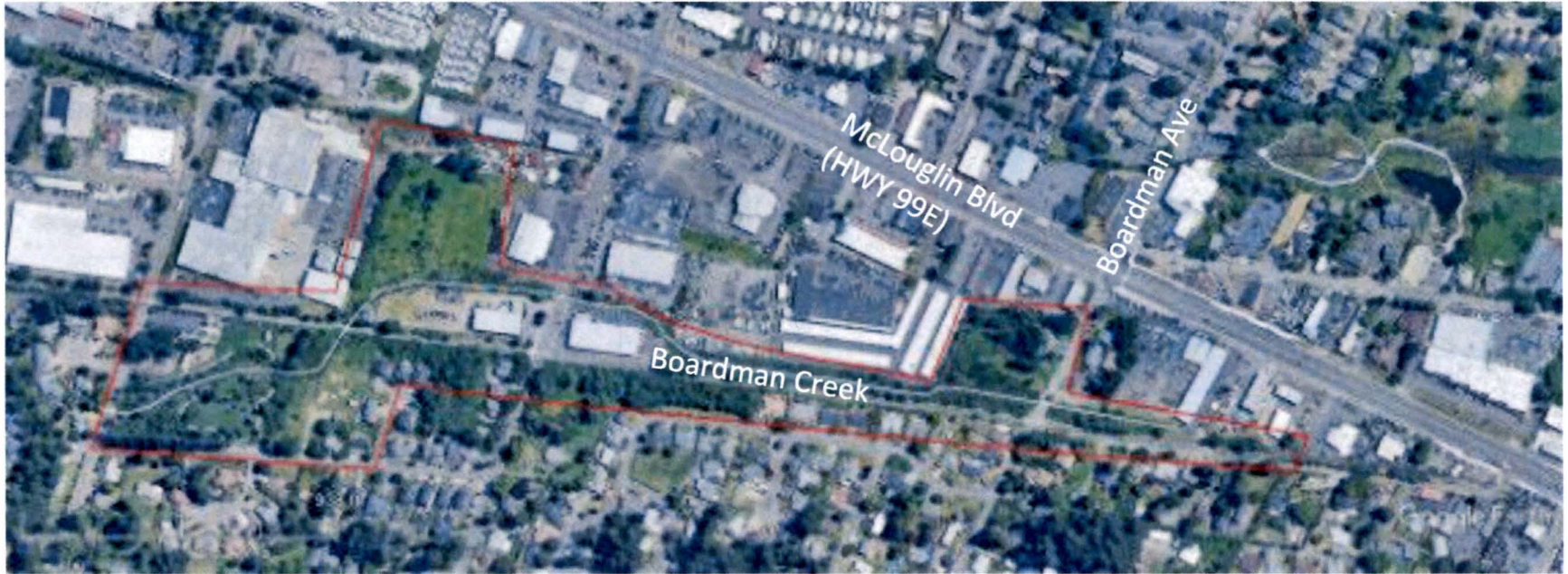
Susan Keil
Chair, OLWS Board of Directors

Date

3-19-24

Date

Exhibit A



Boardman and Arista Flood Attenuation Study Area