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CLACKAMAS COUNTY

DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

July 30, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement between the Clackamas County Development Agency and North Clackamas School District #12 for design consultation, and construction funding of four improvement projects at the Wichita Center for Family and Community**

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| **Purpose/Outcomes** | This IGA outlines roles and responsibilities for design, permitting and construction funding of four projects planned by NCSD#12 at the Wichita Center for Family and Community. The Agency currently has a Memorandum of Understanding (MOU) with NCSD#12 for Agency participation and funding of the Wichita Center projects. It was originally assumed the Agency would contract directly with consultants for design and engineering services at the Wichita Center. Subsequently it was determined to be more efficient for NCSD#12 to utilize existing consultant contracts and have the Agency reimburse NCSD#12. This IGA incorporates all previous elements of the MOU and provides a legal mechanism for the Agency to reimburse NCSD#12 for expenses incurred on the Wichita Center projects. |
| **Dollar Amount and Fiscal Impact** | The Agency will reimburse NCSD#12 for design, permitting and construction costs for the four projects. The maximum contribution by the Agency is capped at $500,000. NCSD#12 has received a $120,000 Community Development Block Grant to leverage funding provided by the Agency. |
| **Funding Source** | Clackamas County Development Agency |
| **Safety Impact** | The installation of a wheelchair ramp at the main entrance of the Wichita Center, a crosswalk with a pedestrian-activated warning signs on SE King Road and construction of a new parking lot will increase public access to the facility and enhance the safety of pedestrians, particularly those with mobility challenges. Connecting the facility to public sewer will eliminate the chance of the large on-site septic system failing and adversely impacting neighboring properties or contaminating ground water. |
| **Duration** | The IGA will be in effect until December 31, 2016. |
| **Previous Board Action** | In June 2014, the Board of County Commissioners approved the Agency budget for 2014/15, which directed $500,000 to projects at the Wichita Center. On April 16, 2015 the Board approved a Memorandum of Understanding with NCSD#12 for the Wichita Center improvements. |
| **Contact Person** | Ken Itel, Senior Project Planner, Clackamas County Development Agency – (503) 742-4324 |

## BACKGROUND

The Wichita Center is located in the North Clackamas Revitalization Area (NCRA) urban renewal district. It is operated by NCSD#12 and provides much needed social and educational services for low and moderate income families, and is particularly convenient for residents of the NCRA. The facility also provides community-based services to the general public. Supporting the Wichita Center meets the goals outlined in the NCRA plan, which include developing a community center.

The Development Agency and NCSD#12 have engaged in ongoing discussions regarding improvements at the Wichita Center and increasing access to public services. The Agency recently assisted NCSD#12 in obtaining a Community Development Block Grant (CDBG) award of $120,000 for the proposed projects. The ability to leverage CDBG funds enables the Agency to direct funds to other much needed projects in the NCRA.

This Agreement incorporates an existing MOU outlining the roles and responsibilities of the Agency and NCSD#12 for the purpose of providing design and construction services for projects at the Wichita Center. The projects include a wheelchair ramp at the facility's main entrance, a new parking lot, connecting the facility to public sanitary sewer and decommissioning the on-site septic system, and constructing a crosswalk with pedestrian-activated warning signals on SE King Road. The projects meet the intent of the North Clackamas Revitalization Area Plan.

The Agency will assist with the design process and coordinate permitting with NCSD#12 and its consultants. The Agency will also provide bidding and construction management assistance to NCSD#12 and its consultants. The Agency will reimburse NCSD#12 for design and construction costs, which includes matching funds for the Community Development Block Grant, up to a total of $500,000.

Construction of the wheelchair ramp may occur in fall 2015. Exact timing of the other projects is dependent on the design and permitting process, as well as coordination with the operational needs at the Wichita Center. All projects are expected to be completed no later than September 2016.

## RECOMMENDATION

Staff recommends the Board:

1. Approve the attached agreement between the Clackamas County Development Agency and North Clackamas School District #12 for consultation and funding of design and construction of four improvement projects at the Wichita Center for Family and Community.

2. Authorize the Board Chair to execute the agreement on behalf of the Agency.

Respectfully submitted,

Dan Johnson
Development Agency Manager

**INTERGOVERNMENTAL AGREEMENT**
**BETWEEN CLACKAMAS COUNTY DEVELOPMENT AGENCY AND**
**NORTH CLACKAMAS SCHOOL DISTRICT NO. 12**
**FOR**
**WICHITA CENTER FOR FAMILY AND COMMUNITY IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is entered into and between Clackamas County Development AGENCY (hereafter called "AGENCY"), the urban renewal AGENCY of Clackamas County, and North Clackamas School District No. 12 (hereafter called "DISTRICT").

**RECITALS**

WHEREAS, authority is conferred upon local governments under ORS 190.010 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;

WHEREAS, DISTRICT desires to make improvements to the Wichita Center for Family and Community ("Wichita Center"), which includes construction of a wheelchair ramp at the main entrance, expansion of the parking lot and parking lot improvements, installation of a crosswalk on SE King Road and connection of the facility to the public sanitary sewer system (hereafter called "Wichita Center Improvements" or the "Project");

WHEREAS, AGENCY desires to carry out the North Clackamas Revitalization Area urban renewal district plan (the "Plan") pursuant to ORS Chapter 457, by making the aforementioned improvements to the Wichita Center. The Plan was duly adopted and approved by the Board of County Commissioners on May 25, 2006, and most recently amended on July 3, 2008;

WHEREAS, The AGENCY has obtained Community Development Block Grant ("CDBG") awards on behalf of DISTRICT for funds for the construction of the wheelchair ramp at the main entrance and the installation of a crosswalk on SE King Road;

WHEREAS, AGENCY has agreed to provide funding of up to $500,000 for the Wichita Center Improvements.

NOW, THEREFORE, IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. **Term.** This Agreement shall be effective upon execution, and shall continue until the Wichita Center Improvements, described in this Agreement, are substantially complete, or December 31, 2016, whichever is sooner.

2. **Obligation of the DISTRICT.**

   A. DISTRICT will provide necessary assistance to the AGENCY in order to complete the four (4) projects, collectively known as Wichita Center Improvements. DISTRICT will provide assistance in the following ways;

      1. DISTRICT will coordinate with the AGENCY in the design, bidding and construction of the projects. The DISTRICT will also coordinate with Clackamas County Community Development ("Community Development") on those aspects of the PROJECT where CDBG funding is involved.

      2. DISTRICT will contract with consultants for design and construction management services for the Wichita Center Improvements.

3. When requested, DISTRICT will provide timely feedback regarding design, RFQ and construction bid advertisements, permitting and construction issues. Timely feedback is defined as any reasonable deadline specified by the AGENCY in carrying out the above mentioned tasks.

4. DISTRICT will respond in a timely manner to AGENCY's requests to execute applications or documents and to provide information or approval to the AGENCY or consultants for purposes of fulfilling the purpose of this Agreement.

5. DISTRICT will comply with CDBG funding requirements and will respond in a timely manner to requests by the AGENCY or Community Development to provide information or approvals for purposes of fulfilling CDBG requirements.

6. In addition to the liaison listed below in Section 6, as necessary, DISTRICT will designate an individual or individuals to coordinate with the AGENCY in carrying out individual projects.

B. DISTRICT shall submit invoices to the AGENCY for reimbursement of design and construction costs billed to the PROJECT and paid by the DISTRICT. DISTRICT shall submit invoices to the AGENCY within three (3) months from the date that costs are incurred. At the Agency's discretion, final invoices submitted after the three (3) months may not be eligible for reimbursement. Administrative or staff costs incurred by the DISTRICT are not reimbursable. Notwithstanding any provision herein which may be construed to the contrary, the total compensation provided to the DISTRICT by the AGENCY under this Agreement shall not exceed $500,000.00 without prior written amendment of this Agreement executed by DISTRICT and AGENCY.

C. DISTRICT shall submit invoices to the Agency at the following address:

Clackamas County Development Agency
Attention: Ken Itel or Lori Phillips
150 Beavercreek Road
Oregon City, OR 97045

A copy of DISTRICT invoices may be emailed to: kennethite@clackamas.us

3. **Obligation of the AGENCY.**

A. The AGENCY agrees to administer four (4) construction projects, collectively known as the Wichita Center Improvements, on behalf of DISTRICT. The AGENCY will perform the following tasks;

1. Construction of a new parking lot (+/- 36 stalls). Pervious concrete is a design preference which will be evaluated.

a. The AGENCY will provide a scope of work to the DISTRICT consultant.

b. The AGENCY will work with the DISTRICT consultant on design, and verify permit and land use entitlement requirements.

c. The AGENCY will facilitate and coordinate design work, permitting and land use entitlements with DISTRICT and the consultant.

d. The AGENCY, along with DISTRICT and the consultant, will develop bid specifications and advertise the bid for construction.

e. The AGENCY or the DISTRICT will enter into a contract for construction and the AGENCY will provide construction management services in conjunction with the DISTRICT, consultant and County staff.

f. Subject to Section 2(B), the construction of a new parking lot will be eligible for reimbursement by the AGENCY up to the full amount for design and construction of the parking lot.

2. Construction of a crosswalk with pedestrian-activated warning signals on SE King Road.

a. The AGENCY has obtained a CDBG award on behalf of DISTRICT for construction funds for the pedestrian crossing.

b. The AGENCY will provide a scope of work to the DISTRICT consultant for design of the pedestrian crossing.

c. The AGENCY will work with the DISTRICT consultant on design, and verify permit and land use entitlement requirements.

d. The AGENCY will facilitate and coordinate design work, permitting and land use entitlements with DISTRICT and the consultant.

e. Community Development will act as the construction project manager. The AGENCY will work with Community Development, DISTRICT, and the consultant to develop bid specifications and advertise the bid for construction.

f. The AGENCY will provide construction management assistance to Community Development.

g. Subject to Section 2(B), the pedestrian crossing will be eligible for reimbursement by the AGENCY up to the full amount for design work.

h. Subject to Section 2(B), the AGENCY will provide the required matching funds for the CDBG award, and any additional funds required to complete construction.

3. Construction of a wheelchair ramp at the main entrance.

a. The AGENCY has obtained a CDBG award on behalf of DISTRICT for construction funding for the wheelchair ramp.

b. The AGENCY will provide permitting and land use entitlement assistance as necessary, and assist DISTRICT and DISTRICT's architectural consultant, BBL Architects, with design refinements.

c. The AGENCY will reimburse DISTRICT for fees paid to BBL Architects for permitting, bidding and construction management to date. Subject to Section 2(B), the amount reimbursable by the AGENCY for additional architectural service work performed by BBL Architects on the wheelchair ramp shall not exceed $15,000 without written approval by the AGENCY.

d. Community Development will be the construction project manager. The AGENCY will work with Community Development, DISTRICT, and the consultant to develop bid specifications and advertise the bid for construction.

e. The AGENCY will provide construction management assistance to Community Development.

f. Subject to Section 2(B), the AGENCY will provide the required matching funds for the CDBG award, and any additional funds required to complete construction.

4. Connection of the Wichita Center to public sewer and on-site system decommissioning.

   a. The AGENCY will provide a scope of work to the DISTRICT consultant.

   b. The AGENCY will work with the DISTRICT consultant on design, and verify permit requirements.

   c. The AGENCY will coordinate with DISTRICT and the City of Milwaukie regarding project permitting and annexation of the property to the City of Milwaukie.

   d. The AGENCY, along with DISTRICT and the consultant, will develop bid specifications and advertise the bid for construction.

   e. The AGENCY or the DISTRICT will contract with the winning bidder for sewer connection and on-site system decommissioning work.

   f. The AGENCY will provide construction management services in conjunction with the DISTRICT, consultant and County staff.

   g. Subject to Section 2(B), the connection of the Wichita Center to public sewer and the on-site system decommissioning work will be eligible for reimbursement by the AGENCY up to the full amount for design and construction.

   h. The AGENCY will assist DISTRICT with preparation of an annexation application and will reimburse DISTRICT for application and annexation fees associated with annexation of the property to the City of Milwaukee.

   i. It is the understanding of the AGENCY that DISTRICT desires the connection of the Wichita Center to public sewer and on-site system decommissioning to be the final project of the Wichita Center Improvements described herein so that the other on-site projects may be completed under Clackamas County zoning regulations.

B. AGENCY shall reimburse DISTRICT for invoices submitted by DISTRICT for design and construction costs billed to the PROJECT and paid by the DISTRICT. AGENCY shall issue payment to the DISTRICT for approved costs within 30 days of receipt of invoices. Administrative or staff costs incurred by the DISTRICT are not reimbursable. Notwithstanding any provision herein which may be construed to the contrary, the total compensation provided to the DISTRICT by the AGENCY under this Agreement shall not exceed $500,000.00 without prior written amendment of this Agreement executed by DISTRICT and AGENCY. All contracts related to the Wichita Center Improvements are subject to approval by the Development Agency Board.

4. **Work Plan and Scheduling of Work.**

A. It is the desire of both parties to complete the four Wichita Center Improvements as soon as practicable, if possible prior to September 30, 2016. The Agency will endeavor to complete the projects as described in the tasks under Section 3, prior to September 30, 2016. NCSD acknowledges that it may not be possible to complete any or all of the Wichita Center Improvements within the desired time frame due to circumstances beyond the control of the Agency.

1. These circumstances include, but are not limited to, the length of time necessary to contract for project design and obtain construction ready plan documents, the amount of time required to obtain necessary permits or land use approvals, the timing and availability of CDBG funds, the time required to bid and contract for construction, and the construction window available as a result of Wichita Center usage and programming.

2. Design and construction timing is also highly dependent on the receipt of necessary information and approvals requested by the Agency and/or Community Development from the DISTRICT. All parties will in good faith attempt to meet project deadlines but recognize timelines may need to be adjusted because of unforeseen circumstances. AGENCY will provide prompt notice to DISTRICT of any anticipated delays in the schedule. DISTRICT agrees to not unreasonably withhold consent to extension in the schedule.

B. In the event any or all of the Wichita Center projects are unable to be completed by September 30, 2016, the parties may mutually agree in writing to adjust project timelines, or modify or terminate projects as necessary. In the event of project alterations, other terms of this Agreement shall remain in effect except for mutually agreed upon changes. In no event shall the DISTRICT claim any damages, monetary or otherwise, resulting from the Agency's failure to complete the Wichita Center Improvements by September 30, 2016.

5. **Termination of Agreement**

A. The DISTRICT and AGENCY, by mutual written agreement, may terminate this Agreement at any time.

B. Either the DISTRICT 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 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.

C. Nothing herein shall prevent the parties from meeting to mutually discuss the PROJECT. Each party shall use best efforts to coordinate with the other to minimize conflicts.

D. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. **Liaison Responsibility**

A. Joe Krumm,or his designee will act as liaison for DISTRICT for this project.
Contact Information:
North Clackamas School District #12
4444 SE Lake Road
Milwaukie, OR 97222
503-353-6017 or krumm@nclack.k12.or.us

B. Ken Itel, or his designee will act as liaison for AGENCY for this project.
Contact Information:
Clackamas County Development Agency
150 Beavercreek Road
Oregon City, OR 97045
503-742-4324 or kennethite@clackamas.us

7. **Indemnification.** Subject to the limits of the Oregon Tort Claims Act and Article 11 Section 10 of the Oregon Constitution, AGENCY agrees to indemnify, save harmless and defend the DISTRICT, its officers, commissioners, 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, errors, omissions or faults of AGENCY or AGENCY's officers, owners, employees, agents, or its subcontractors or anyone over which the AGENCY has a right to control.

Subject to the limits of the Oregon Tort Claims Act and Article 11 Section 10 of the Oregon Constitution, the DISTRICT agrees to indemnify, save harmless and defend the AGENCY, its officers, commissioners, 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, errors, omissions or faults of the DISTRICT or the DISTRICT'S officers, owners, employees, agents, or its subcontractors or anyone over which the DISTRICT has a right to control.

8. **General Provisions**

A. 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. The AGENCY and DISTRICT agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.

C. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this contract 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.

D. Access to Records. The AGENCY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of DISTRICT which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.

E. 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.

F. 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.

G. This Agreement contains the entire agreement between the DISTRICT and AGENCY and supersedes all prior written or oral discussions or agreements.

H. The DISTRICT and AGENCY may amend this Agreement at any time only by written amendment executed by the DISTRICT and AGENCY.

I. The DISTRICT and 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.

J. Each Party intends that this Agreement does not benefit, or create any right or cause of action in or on behalf of, any person or entity other than AGENCY or DISTRICT.

K. 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.

L. This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, anyone of which shall constitute an agreement among the parties.

**IN WITNESS HEREOF**, the parties have executed this Agreement by the date set forth below.

| **Clackamas County Development Agency** | **North Clackamas School District No. 12** |
|---|---|
| | Ron Stewart |
| John Ludlow, Chair | Ron Stewart, ~~Assistant Superintendent~~ |
| | 7-16-15 |
| Date | Date |