



Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with Moore Iacofano Goltsman Inc. dba MIG to provide a City of
Milwaukie North Milwaukie Industrial Area Plan**

Purpose/Outcomes	Develop a framework strategy for future redevelopment of the North Milwaukie Industrial Area to create jobs, GDP and AV for the City and County.
Dollar Amount and Fiscal Impact	\$249,930
Funding Source	CPDG Grant from Metro \$250,000
Duration	Contract execution through August 15, 2017
Previous Board Action/Review	The BCC entered into an IGA with the City of Milwaukie on 11/3/2015 The BCC entered into an IGA with Metro in March 2016
Strategic Plan Alignment	This aligns with Performance Clackamas Goals to Grow a Vibrant Economy
Contact Person	Catherine Grubowski-Johnson
Contract No.	N/A

BACKGROUND: The North Milwaukie Industrial Area Redevelopment Strategy project is to develop and implement creative redevelopment-based strategies to enhance economic opportunities; increase job creation and investment; build a stronger, more competitive region; and ensure a dynamic framework for quality growth and development.

Clackamas County and the City of Milwaukie partnered to apply for and received a Metro Community Development and Planning Grant in the amount of \$250,000. The County entered into an IGA with Metro and the City of Milwaukie naming the County as the grant manager.

A Request for Proposals was advertised on April 6, 2016. Six (6) responsive and responsible proposals were received at the time of closing on April 28, 2016: E.D. Hovee & Company, LLC, Angelo Planning Group, Mackenzie, Spinnaker Strategies, MIG, and DPZ Partners LLC.

An evaluation committee comprised of Clackamas County Business and Economic Development staff and the City of Milwaukie staff evaluated each response based on the criteria listed in the Request for Proposals. The evaluation was a two phase process: Phase One was an evaluation of the written response to the RFP, Phase Two was an interview with the evaluation committee. The four highest scoring proposers from Phase One, MIG, Mackenzie, DZP Partners LLC. and Angelo Planning Group, participated in Phase Two of the Evaluation. Based upon the criteria listed in the Request for Proposal, the proposal from MIG was the one best meeting the needs of the County for this project.

The total not to exceed amount of the contract is \$249,930

This contract has been reviewed as to form by County Counsel.

RECOMMENDATION: County staff respectfully recommends that the Board approve the contract with MIG to provide a City of Milwaukie North Milwaukie Industrial Area Plan.

Respectfully submitted,

Gary Barth, Director
Business and Community Services

Placed on the Agenda of Aug. 11, 2016 by the Procurement Division



GEORGE MARLTON, JD
PROCUREMENT DIVISION DIRECTOR

PROCUREMENT DIVISION
PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

August 11, 2016

MEMORANDUM TO THE BOARD OF COUNTY
COMMISSIONERS

Please place on the Board Agenda of August 11, 2016 approval of a contract with Moore Iacofano Goltsman Inc. to provide a City of Milwaukie North Milwaukie Industrial Area Plan. This contract was requested by Gary Barth, Director, Business and Community Services.

A Request for Proposals was advertised on April 6, 2016. Six (6) responsive and responsible proposals were received at the time of closing on April 28, 2016: E.D. Hovee & Company LLC, Angelo Planning, Mackenzie, Spinnaker Strategies, Moore Iacofano Goltsman Inc., DPZPartners, LLC.

An evaluation committee reviewed each proposal response based upon the criteria detailed in the Request for Proposals. After a Phase Two process (oral interviews), was held, the proposal from Moore Iacofano Goltsman Inc. was the one best meeting the County's needs for this project.

The total not to exceed amount of the contract is \$249,930.

County Counsel has reviewed this contract.

RECOMMENDATION:

Staff respectfully requests approval of this contract with Moore Iacof Goltsman Inc. to provide a City of Milwaukie North Milwaukie Industrial Area Plan.

Respectfully submitted,

Tom Averett, CPPB
Buyer

**PERSONAL SERVICES CONTRACT TO PROVIDE A
CITY OF MILWAUKIE
NORTH MILWAUKIE INDUSTRIAL AREA (NMIA) PLAN**

This contract is entered into by and between Clackamas County, hereinafter referred to as the COUNTY, and **Moore Iacofano Goltsman Inc. (MIG)**, hereinafter called the CONTRACTOR, to provide the services described in Section II below. The following provisions shall comprise this contract:

I. COMPENSATION:

A. The COUNTY agrees to compensate the CONTRACTOR on a fee-for-service basis at the rates outlined in the Proposal Response. This agreement covers the period **from Contract Execution through August 15, 2017**. Note that deliverables identified in Exhibit A are due 5 days before the date stated in the Exhibit. Total maximum contract compensation not to exceed **\$249,930**. Invoices presented in connection with this Agreement are due and payable upon presentation. All charges will be billed monthly where appropriate.

B. The CONTRACTOR is engaged hereby as an independent contractor and will be so deemed for purposes of the following:

- 1.** The CONTRACTOR will be solely responsible for payment of any Federal or State taxes required as a result of this agreement.
- 2.** This contract is not intended to entitle the CONTRACTOR to any benefits generally granted to COUNTY employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this contract to the CONTRACTOR are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the CONTRACTOR is presently a member of the Public Employees Retirement System).
- 3.** The CONTRACTOR shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which are incorporated herein by this reference.

All subject employers working under this contract are either employers that comply with ORS656.017 or employers that are exempt under ORS 656.126.

C. The CONTRACTOR certifies that, at present, he is not a program, County or Federal employee.

D. The CONTRACTOR certifies that he is not a member of the Public Employees Retirement System.

II. SERVICES TO BE PROVIDED:

The contractor shall do, perform, and carry out in a satisfactory manner, the work as described in the Request for Proposals issued **April 6, 2016**, Exhibit A dated **4/21/16**, Addendum # 1 issued **April 26, 2016** the Proposal Response received at the time of closing on **April 28 2016**, the **City Of Milwaukie North Milwaukie Industrial Area (NMIA) Plan** for the rates established therein. The CONTRACTOR shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services.

III. CONSTRAINTS

The CONTRACTOR agrees:

A. If the services to be provided pursuant to Section I Scope are professional and/or consultative, the CONTRACTOR shall not delegate the responsibility for providing those services to any other individual or agency.

B. Pursuant to the requirements of state law, the following terms and conditions are made a part of this Contract:

1. CONTRACTOR shall:

a. Make payments promptly, as due, to all persons supplying to the CONTRACTOR labor or materials for the prosecution of the work provided for in this Contract.

b. Pay all contributions or amounts due the Industrial Accident Fund from such CONTRACTOR or subcontractor incurred in the performance of this Contract.

c. Not permit any lien or claim to be filed or prosecuted against the COUNTY on account of any labor or material furnished.

2. If the CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the CONTRACTOR by reason of this Contract.

3. The CONTRACTOR shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which are incorporated herein by this reference.
All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

4. The CONTRACTOR shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the CONTRACTOR, of all sums which the CONTRACTOR agrees to pay for such services and all moneys and sums which the CONTRACTOR collected or deducted from the wages of the CONTRACTOR'S employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5. 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.

6. The CONTRACTOR shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work as described under this Contract. CONTRACTOR must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this

section shall constitute a material breach of this Contract. Further, any violation of CONTRACTOR'S warranty also shall constitute a material breach of this Contract. Any violation shall entitle COUNTY to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- a. Termination of this Contract, in whole or in part;
- b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to CONTRACTOR, in an amount equal to COUNTY'S setoff right, without penalty; and
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. COUNTY shall be entitled to recover any and all damages suffered as the result of CONTRACTOR'S breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and COUNTY may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

7. INDEMNITY, RESPONSIBILITY FOR DAMAGES. CONTRACTOR shall be solely responsible for all damage to property, death, illness, bodily injury, loss, expense (including reasonable attorney's fees and costs), arising or resulting from or in any way related to (a) CONTRACTOR'S breach of its obligations under this Contract or (b) any act or omission of CONTRACTOR, or any of its subcontractors, members, managers, directors, officers, trustees, agents, contractors, or employees. CONTRACTOR shall save, defend, indemnify, and hold harmless DISTRICTS and its board members, directors, officers, agents, contractors, employees, and members (collectively, the "Indemnified Parties") from and against any and all Damage (defined below) or Proceeding (defined below), arising or resulting from or in any way related to a Claim (defined below). The term "Damage" means any and all damage to property, death, illness, bodily injury, demands, losses, damages, liabilities, or expenses, including, without limitations, attorney's fees and costs, however incurred, including at trial, mediation, arbitration, in any bankruptcy proceeding, on appeal, and any petition for review. The term "Proceeding" means any and all third-party claims, suits, actions, and proceedings, of any kind or nature, including, without limitation, any lawsuit, mediation, arbitration, bankruptcy proceeding, appeal, or any petition for review. The term "Claim" means (a) CONTRACTOR'S breach of its obligations under this Contract, (b) any act or omission of CONTRACTOR, its subcontractors, members, managers, directors, officers, trustees, agents, contractors, or employees, or (c) any material breach of a representation or warranty of CONTRACTOR contained in this Contract or related to this Contract or the work to be provided or actually provided by CONTRACTOR under this Contract. CONTRACTOR'S obligations under this Paragraph shall survive the expiration or termination of this Contract for any reason.

In the event any Proceeding is brought against any of the Indemnified Parties by reason of any Claim, upon the request of DISTRICTS, CONTRACTOR shall resist or defend such Proceeding with counsel satisfactory to DISTRICTS, and DISTRICTS agrees to thereafter reasonably assist, at CONTRACTOR'S expense, in such defense. Thereafter, CONTRACTOR shall have control of the defense and settlement thereof, but neither CONTRACTOR nor any attorney engaged by CONTRACTOR shall defend the Proceeding in the name of DISTRICTS, settle any portion of the Proceeding, nor purport to act as legal representative of DISTRICTS, without the prior written consent of DISTRICTS. At any time DISTRICTS may,

at CONTRACTOR'S expense, provide its own defense or assume its own defense from CONTRACTOR if DISTRICTS reasonably determines that (a) CONTRACTOR is prohibited from defending DISTRICTS, (b) CONTRACTOR is not adequately defending DISTRICTS's interests, or (c) an important governmental principle is at issue. If CONTRACTOR has assumed and is diligently proceeding with DISTRICTS's defense, DISTRICTS may settle any Claim (a) at CONTRACTOR'S cost, only if CONTRACTOR consents to or approves such settlement, or (b) at DISTRICTS's cost, without CONTRACTOR'S consent or approval. CONTRACTOR'S obligations under this Paragraph shall survive the expiration or termination of this Contract for any reason.

8. The CONTRACTOR'S failure to perform the scope of work identified or failure to meet established performance standards shall be subject to consequences that include but are not limited to any or all of:
 - a. Reducing or withholding payment;
 - b. Requiring the CONTRACTOR to perform, at the CONTRACTOR'S expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or
 - c. Declaring a default, terminating the Contract and seeking damages and other relief under the terms of the Contract or other applicable law.

9. The CONTRACTOR represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:
 - a. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
 - b. Any tax provisions imposed by a political subdivision of this state that applied to CONTRACTOR, to CONTRACTOR'S property, operations, receipts, or income, or to CONTRACTOR'S performance of or compensation for any work performed by CONTRACTOR;
 - c. Any tax provisions imposed by a political subdivision of this state that applied to CONTRACTOR, or to goods, services, or property, whether tangible or intangible, provided by CONTRACTOR; and
 - d. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

IV. INSURANCE REQUIREMENTS

A. Commercial General Liability

Required by COUNTY Not required by COUNTY

The CONTRACTOR agrees to furnish the COUNTY evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence / \$2,000,000

general annual aggregate for personal injury and property damage for the protection of the COUNTY, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The COUNTY, at its option, may require a complete copy of the above policy.

B. Automobile Liability

Required by COUNTY Not required by COUNTY

The CONTRACTOR agrees to furnish the COUNTY evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the COUNTY, its officers, commissioners, agents and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The COUNTY, at its option, may require a complete copy of the above policy.

C. Professional Liability

Required by COUNTY Not required by COUNTY

CONTRACTOR agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Contract. COUNTY, at its option, may require a complete copy of the above policy.

D. If the CONTRACTOR has the assistance of other persons in the performance of this Contract, and the CONTRACTOR is a subject employer, the CONTRACTOR agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The CONTRACTOR shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

E. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided the coverage's retroactive date is on or before the effective date of this Contract.

F. The insurance, other than the professional liability and workers compensation insurance, shall include the COUNTY as an expressly scheduled additional insured. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured. Such insurance shall provide sixty (60) days written notice to the COUNTY in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under this insurance. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by the COUNTY shall be excess and shall not contribute to it.

G. Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County in writing.

V. SUBCONTRACTS:

The CONTRACTOR shall be responsible to the COUNTY for the actions of persons and firms performing subcontract work. The CONTRACTOR certifies that the CONTRACTOR has not discriminated and will not discriminate against any minority, women or emerging small business enterprise that is owned or controlled by or that employs a disabled veteran, in obtaining any subcontract.

Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the CONTRACTOR under this Contract, unless this requirement is expressly modified or waived by the COUNTY in writing.

VI. TERMINATION-AMENDMENT:

A. This Contract may be terminated by either party upon at least ten (10) days written notice to the other.

B. This Contract and any amendments to this contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County.

C. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

The undersigned, by its signature, agrees to perform the scope of work as described in the Contract documents and meet the performance standards set forth therein. By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

MOORE IACOFANO GOLTSMAN INC.
dba MIG
815 SW Avenue, Suite 200
Portland, OR 97204

CLACKAMAS COUNTY BOARD OF
COUNTY COMMISSIONERS by:

Entity Type/State of Formation*

Authorized Signature

Chair

Name / Title Printed

Recording Secretary

Date

Date

Telephone / Fax Number

Approved as to form

Oregon Business Registry #

County Counsel

City of Milwaukie Business License #

* Please do not provide assumed business names or trade names. Please provide only the correct legal name of the entity or individual entering into the Contract.