

RESOLUTION NO. 2226

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON DEPARTMENT OF ENERGY TO PROVIDE COST REIMBURSEMENT AND COORDINATION ASSOCIATED WITH AN ENERGY FACILITY SITING APPLICATION.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The State's Energy Facility Siting Council (EFSC) has been, and is continuing to, conduct an evaluation of an energy site certificate application within the City boundaries.
2. City will incur costs associated with the continuing EFSC site evaluation process.
3. The City and the Oregon Department of Energy (ODOE) had previously entered into an Intergovernmental Agreement (IGA) which in part, would provide some cost reimbursement for the City.
4. The IGA with ODOE was adopted by the City Council on March 12, 2012 by Resolution No. 2143, and the IGA expired June 30, 2013.
5. ODOE has proposed a subsequent IGA for the new state biennium beginning July 1, 2013, which in part, would provide some cost reimbursement for the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. The City Manager is authorized to sign the IGA with the Oregon Department of Energy for cost reimbursement and coordination of the processing of an energy facility siting application, which is in substantial conformity with Exhibit A of the Staff Report.

Section 2. The City Manager is authorized to sign any addendums, supporting and implementing documents associated with the IGA while the IGA is in effect.

Section 3. Upon adoption, this Resolution shall be effective as of July 1, 2013.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Doug Daoust, Mayor

Date 8/28/13



Sarah Skroch, Deputy City Recorder
Adopted: August 27, 2013

**INTERGOVERNMENTAL AGREEMENT
Energy Facility Siting Council – Special Advisory Group (City)**

THIS AGREEMENT is made and entered into by and between the State of Oregon, acting by and through its Department of Energy, hereafter called "ODOE," and the City of Troutdale, hereafter called "City," individually, a "Party," collectively, the "Parties."

Administrators of this Agreement are:

City	ODOE
Administrator: Craig Ward	Administrator: Todd Cornett
Title: City Manager	Title: Siting Division Administrator
Address: 219 E Historic Columbia River Hwy. Troutdale, OR 97060-2078	Address: 625 Marion St. NE Salem, OR 97301
Phone: (503) 674-7233	Phone: (503) 378-8328
Fax:	Fax: (503) 373-7806
Email: craig.ward@troutdaleoregon.gov	Email: todd.cornett@state.or.us
Federal ID #: 93-6002268	

RECITALS

- A. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform. Additionally, ORS 469.030 allows ODOE to contract with public and private agencies for energy activities consistent with ORS 469.010.
- B. ORS 469.360 – Evaluation of site applications; costs; payment, states:
 - (1) The Energy Facility Siting Council (EFSC) shall evaluate each site certificate application. As part of its evaluation, the council may commission an independent study by an independent contractor, state agency, local government or any other person, of any aspect of the proposed facility within its statutory authority to review. The council may compensate a state agency or local government for expenses related to:
 - (a) Review of the notice of intent, the application or a request for an expedited review;
 - (b) The state agency's or local government's participation in a council proceeding; and
 - (c) The performance of specific studies necessary to complete the council's statutory evaluation of the application.
 - (2) The council may enter into a contract under subsection (1) of this section only after the council makes a determination that the council is unable to fully evaluate the application without assistance and identifies specific issues to be addressed and only pursuant to a written contract or agreement with the independent contractor, state agency, local government or other person. The council shall compensate the independent contractor, state agency, local government or other person only to the extent the costs are directly related to issues identified by the council.
 - (3) The council shall provide funding to state agencies, cities or counties required to contract with another entity to complete comments and recommendations pursuant to ORS 469.350.
 - (4) In addition to compensating state agencies and local governments pursuant to subsection (1) of this section, the council may provide funding to the Department of Environmental Quality for the department to conduct modeling and provide technical assistance to expedite preparation, submission and review of applications for permits under ORS 468A.040 required for energy facilities.

- C. The purpose of this Agreement is to establish collaboration between ODOE and City to perform services related to the review of EFSC project-related documents and to identify the procedures related to authorizing work, invoicing and payment.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between ODOE and City hereto as follows:

1. **Effective Date and Duration.** This Agreement shall become effective on July 1, 2013. Unless earlier terminated, amended or extended, this Agreement shall expire on June 30, 2015. Amendments to this Agreement shall comply with applicable statutes and administrative rules. No changes to or waivers of provisions of this Agreement will be valid until they have been reduced to writing and signed by both Parties.
2. **Statement of Work.** ODOE Siting Analysts will request work in writing. ODOE will not have contracted for, and will have no obligation to pay for any work or services other than those requested by ODOE, in writing.

City shall review and provide comments on notices of intent, applications and amendments for site certificates and other EFSC project-related documents. In the case of notices of intent and applications for new or amended site certificates, the memorandum to reviewing agencies sent by EFSC per the requirements of OAR 345-015-0120 and OAR 345-015-0180 will serve as the required written request for work, as well as a description of the scope of work to be performed by City under this Agreement.

The work to be performed by City is limited to City's area of expertise as described in the memorandum to reviewing agencies, including, as applicable, evaluation of compliance with City permitting and regulatory requirements, and recommendations regarding EFSC findings and site certificate conditions. If specifically requested by ODOE, City will also conduct site visits, travel to public hearings, perform field studies and provide consultation or expert testimony during site certificate contested case hearings.

3. **Subcontractors and Assigns.** City shall not assign, transfer its interest in, or subcontract for any of the work required under this Agreement without obtaining prior written approval from ODOE. ODOE's consent to any assignment, transfer or subcontract shall not relieve City of any of its duties or obligations under this Agreement. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.
4. **Delivery Schedule.** City agrees to cooperate with ODOE's Siting Analysts or designees to deliver work products in a manner which will allow ODOE to meet the statutory timelines for documents under review. Information regarding these timelines is found in ORS 469.370 and 469.373. City agrees to meet the comment deadlines provided in the memorandums to reviewing agencies or other delivery schedules mutually agreed upon by ODOE and City, in writing. General information regarding ODOE and City's work in the review of energy facility site applications and related documents is found in ORS 469.300 through 469.507.

5. **Consideration.** ODOE agrees to reimburse City for the actual costs incurred accomplishing the work required by this Agreement. The maximum, not-to-exceed amount payable under this Agreement is \$5,000 and includes any allowable expenses.
- a. Work must be assigned and authorized in writing by an ODOE Siting Analyst prior to City beginning the work, and as described in Section 2. City may be asked to provide a cost estimate for the work requested.
 - b. City shall invoice ODOE monthly for services. At a minimum, invoices must include the following information:
 - i. City name,
 - ii. ODOE agreement number,
 - iii. Agency federal EIN, and
 - iv. Time period for which the invoice covers, including beginning and end dates.
 - c. Under separate cover (included with the invoice), City shall submit directly to ODOE, a progress report detailing each invoice, including the following:
 - i. Names of staff members working on the project,
 - ii. Dates of service,
 - iii. Number of hours worked, per staff member,
 - iv. Specific deliverables,
 - v. Total hourly personal services costs (including OPE),
 - vi. A description of any incurred expenses (parking fees, supplies, etc.),
 - vii. Subtotals of personal and supplies/ services costs,
 - viii. Subtotal of indirect/ administrative overhead costs, and
 - ix. Total cost of project for this billing period.

City shall only bill for hours worked. ODOE will not pay for vacation, holiday, sick or any other leave. **All invoices are due to ODOE within 30 calendar days after the month end billing period.** Due to ODOE's requirement to provide cost details and to seek reimbursement from project applicants, timely and accurate invoicing is critical. ODOE may not pay invoices received more than 30 calendar days after the month end billing period.

Each invoice shall state the following: *"By signing this invoice, the undersigned individual certifies that the individual understands that all statements and representations contained in or attached to this document are subject to the Oregon False Claims Act, ORS 180.750 to 180.785."* and be followed by a signature of a person employed by City with the authority to certify the above statement.

All requests for payment must be submitted to:

Oregon Department of Energy
Attn: Holley Oglesby, Contracts Officer
625 Marion Street NE
Salem OR 97301

6. **Funds Available and Authorized.** ODOE certifies at the time the Agreement is signed that sufficient funds are available and authorized for expenditure to finance the costs of this Agreement, within ODOE's current appropriation and limitation.

In the event ODOE issues a Stop Work Order to a project applicant for nonpayment, ODOE will also issue a Stop Work Order to City, at which time City shall cease all work on the named project.

7. **ORPIN Reporting.** Upon execution of this Agreement, ODOE will enter the required data into the Oregon Procurement Information Network (ORPIN) per ORS 190.115.
8. **Termination.** This Agreement may be terminated by mutual written consent signed by both Parties, or by either Party upon 30 days notice, in writing and delivered by certified mail or in person. ODOE may terminate this Agreement effective upon delivery of written notice to City, or at such other date as may be established by ODOE under any of the following conditions:
 - a. If ODOE fails to receive funding, appropriations, limitation or other expenditure authority sufficient to allow ODOE, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement. When possible and agreed to by the Parties, the Agreement may be modified to accommodate a reduction in funds.
 - b. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOE is prohibited from paying for such work from the planned funding source.
 - c. If City fails to perform the work specified herein, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOE, fails to correct such failures within ten (10) days or such longer period as ODOE may authorize.

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

9. **Record Maintenance; Access to Records.** City acknowledges and agrees that ODOE, the Secretary of State's Office of the State of Oregon, and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings otherwise privileged under law of City which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts and transcripts for a period of six (6) years after the final payment has been made.

10. **Liability/ Insurance.**

Contribution

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the City (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the City in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the City on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the City on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the City is jointly liable with the State (or would be if joined in the Third Party Claim), the City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the City on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the City on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

Alternative Dispute Resolution

The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

Indemnification by Subcontractors

City shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of City's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

Subcontractor Insurance Requirements

GENERAL

City shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR

CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between City and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. City shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, City shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. City shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall City permit a contractor to work under a Subcontract when the City is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the City directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

TYPES AND AMOUNTS

- i. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers Liability insurance with coverage limits of not less than \$500,000 must be included.

- ii. **PROFESSIONAL LIABILITY**
 Required by City Not required by City

- iii. **COMMERCIAL GENERAL LIABILITY**
 Required by City Not required by City

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the City. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by the City:

Bodily Injury, Death and Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence)

- iv. **AUTOMOBILE LIABILITY**
 Required by City Not required by City

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by the City:

Bodily Injury, Death and Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence)

ADDITIONAL INSURED. The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of: (i) the contractor's completion and City's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and City may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If City approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to City before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. City shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

11. **Force Majeure.** Neither Party shall be held responsible for delay or failure to perform when such delay or failure is due to circumstances beyond the control of the Parties, which cannot reasonably be foreseen or provided against. Either Party may terminate the Agreement, effective with a written notice, after determining such delay or failure will reasonably prevent successful performance in accordance with the terms of the Agreement.
12. **Compliance with Applicable Law.** City will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement. Without limiting the generality of the foregoing, City expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

13. **Sensitive Information.** Except for information that is already a matter of public record, City shall not publish or otherwise disclose, except to ODOE or as otherwise required by law, any information or data obtained hereunder from private individuals, organizations, or public agencies in a publication wherein the information or data furnished by or about any particular person or establishment can be identified, except with the written consent of such person or establishment. Information concerning the business of ODOE, its financial affairs, and its relations with its clients and employees, as well as any other information that may be specifically classified as confidential by ODOE, shall be kept confidential. City shall instruct its employees and subcontractors to keep such information confidential by using the same care and discretion that they use with similar information that City designates as confidential unless disclosure is required by law.

14. **False Claims Act.**

- a. City acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action or conduct by City pertaining to this Agreement that constitutes a "claim" (as defined by the Oregon False Claims Act, ORS 180.750 (1)). By its execution of this Agreement, City certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to this Agreement or the project for which the Agreement work is being performed. In addition to other penalties that may be applicable, City further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against City. Nothing in this Section or this Agreement may be construed as limiting or derogating from any authority granted the Oregon Attorney General under 180.750 to 180.785.
- b. City shall immediately report in writing, to ODOE, any credible evidence that a principal, employee, agent, or subcontractor of City, or any sub-grantee or other person, has made a false claim or committed a prohibited act under the Oregon False Claims Act, or has committed a criminal or civil violation of laws pertaining to fraud, bribery, gratuity, conflict of interest, or similar misconduct in connection with this Agreement or moneys paid by ODOE under this Agreement.
- c. City must include subsections (a) through (b) of this section in each subcontract or sub grant City may award in connection with the performance of this Agreement. In doing so, City may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

15. **Merger Clause.** This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. 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. 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 ODOE to enforce any provision of this Agreement shall not constitute a waiver by ODOE of that or any other provision.

BOTH PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGE THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

APPROVALS:

CITY

ODOE

Signature

Lisa Schwartz, Director

Date

Print Name and Title

Jan Lemke, Designated Procurement Officer

Date

Date

Todd Cornett, Siting Division Administrator

Date