



RESOLUTION No. 2019-3544

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
WITH CLACKAMAS COUNTY FOR THE PROVISION OF MANAGEMENT
AND DUE DILIGENCE SERVICES PROVIDED TO THE OREGON STATE
COMMISSION FOR WILLAMETTE FALLS LOCKS**

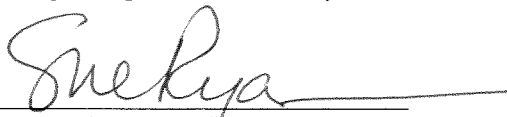
RECITALS:

1. Pursuant to Senate Bill 256 (2017), Oregon Solutions is facilitating the Willamette Falls Locks Commission (WFLC). Senate Bill 256 established the commission to advise state, local, and regional government agencies on development and implementation of a plan for repair, reopening, operation, and maintenance of the Willamette Falls navigation canal and locks. The commission may recommend formation of an intergovernmental agreement. The commission is also directed to keep the Oregon congressional delegation informed. The work follows on the work of the 2016 Willamette Falls Locks Task Force.
2. In 2018, Governor Brown appointed the 23-member Commission to oversee the potential recommissioning of the Willamette Falls Locks. Commission members include elected officials, county and city representatives, tribal leaders, community members, business owners, representatives from environmental groups, and tourism industry leaders, among others.
3. Governor Brown included \$7.5 million in Oregon State Lottery bonds in her proposed 2019 budget to help fund the repair and reopening of the Willamette Falls Locks.
4. According to a report by ECONorthwest, reopening the Locks could create nearly \$100 million in combined transportation and recreation benefits for Oregonians, return navigational access to the upper—and lower—Willamette River, reduce freight traffic from Portland roadways, and increase our region's resiliency to address future disasters such as a Cascadia earthquake. Creating a public access point for the Willamette Falls also holds tremendous historical and cultural value to Native Americans and Oregonians.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

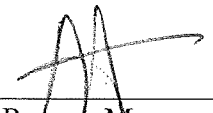
1. The city manager is authorized to execute the Intergovernmental Agreement (IGA) with Clackamas County, Oregon for the provision of management and due diligence services provided to the Oregon State Commission for Willamette Falls Locks. The IGA is attached as Exhibit A, and by the reference incorporated into this resolution. The City manager is further authorized to execute any further documents necessary to accomplish the purposes of the IGA.
2. The city manager is authorized to expend \$2,500.00 as required by the IGA
3. The city attorney will review and approved all documents as to form and content.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: March 19th, 2019.
ADOPTED by the City Council of the City of Newberg, Oregon, this 18th day of March, 2019.



Sue Ryan, City Recorder

ATTEST by the Mayor this 21st day of March, 2019.



Rick Rogers, Mayor

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CITY OF NEWBERG**

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

1. **Effective Date and Duration.** This Agreement shall become effective upon signature by City representative. Unless earlier terminated or extended, this Agreement shall expire on June 30, 2019 ("Expiration Date"). This Agreement may be otherwise extended by mutual written agreement of the parties at any time prior to its Expiration Date.
2. **Statement of Work.** County agrees to perform the project management and due diligence work in accordance with the terms and conditions of this Agreement as reflected in Attachment 1. County agrees that it shall use the contributions from the funding partners in support of consulting services pertaining to and in support of the Commission and the goals of the Project as defined in 2017 Oregon Session Laws Ch. 743, Section 2. The County agrees to solicit through a competitive process the required project management and due diligence consulting services. The County further agrees to convene the staff from the contributing partners to provide guidance and support to the Commission and consultants.
3. **Consideration.** City agrees that it shall contribute Two Thousand and five hundred Dollars (\$2,500.00) to the County to support the project management and due diligence facilitation upon execution of this agreement.
4. **Schedule of Performance.** The delivery schedule for the provision of these services is intended to be completed by June 30, 2019.
5. **Project Managers; Notice.** Each party has designated a project manager to be the formal representative for this Agreement. All reports, notices, and other communications required under or relating to this Agreement shall be directed to the appropriate individual. To be effective, any notice required to be given under this Agreement may be given by personal delivery to the address below or may be sent by certified mail, return receipt requested and if sent via certified mail return receipt requested such notice will be deemed delivered three (3) business days after postmark. Notice may also be given by overnight delivery service, effective upon receipt of such delivery.

City of Newberg
Joe Hannan
City Manager,
City of Newberg
PO Box 970
Newberg, OR 97132
(503) 537-1207

Clackamas County
Gary Schmidt
Director, Clackamas County
Public and Government Affairs
2051 Kaen Rd., Suite 450
Oregon City, OR 97045
(503) 742-5908

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

11. **Compliance with Applicable Law.** Both parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement. Both party's performance under this Agreement is conditioned upon either parties compliance with the provisions of the Oregon Revised Statutes, including but not limited to ORS 279A, B, and C, which are incorporated by relevant reference herein. Notwithstanding the foregoing, the County is solely responsible for any and all contracts and subcontracts associated with the project management and due diligence work to be funded by this Agreement, including but not limited to procurement under applicable public contracting laws, contract management, and payments to contractors and subcontractors. County acknowledges that other than City's payment of funds to the County, City has no other obligation or responsibility for this the project management and due diligence work.
12. **No Third Party Beneficiary.** The County and City are the only parties to this Agreement and as such, are the only parties entitled to enforce its terms. Nothing contained in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.
13. **Indemnification.** Within the limits of the Oregon Tort Claims Act, each party agrees to indemnify and defend the other and its elected officials, officers, employees, agents and representatives from and against all claims, demands, penalties and causes of action of any kind or character relating to or arising from this Agreement, excluding the cost of defense and attorney fees, arising in favor of any person on account of personal injury, death or damage to property and arising out of or resulting from the negligent or other legally culpable acts or omissions of the indemnitor, its elected officials, employees, agents, subcontractors or representatives.
14. **Merger Clause.** This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.
15. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
16. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable

shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.

[Signature Page Follows]

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

City of Newberg

Clackamas County Board of County Commissioners by:

Joe Hannan, City Manager
By Authority of Resolution 2019-3544

Chair

Date

Date

Recording Secretary

Approved as to Form:

Approved as to Form:

City Attorney

County Counsel

Attachment 1

Project Management and Due Diligence Work Program

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

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