

RESOLUTION NO. 1818

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AMENDMENT NO. 1 TO A COOPERATIVE AGREEMENT FOR THE PROVISION OF PUBLIC SERVICES NECESSARY TO THE CONSTRUCTION AND OPERATION OF THE WOMEN'S PRISON AND INTAKE CENTER, DAY ROAD PROPERTY AT WILSONVILLE, OREGON BETWEEN THE CITY OF WILSONVILLE (CITY) AND THE OREGON STATE DEPARTMENT OF CORRECTIONS (DOC).

WHEREAS, on December 6, 1999, Council approved Resolution No. 1595 authorizing the City Manager to sign a Cooperative Agreement for the Provision of Public Services Necessary for the Construction and Operation of the Women's Prison and Intake Center, Day Road Property at Wilsonville, Oregon between the City and the DOC; and

WHEREAS, the City agreed to provide sanitary sewer service, water service, storm sewer service and streets to serve the Women's Prison and Intake Center at a capped cost to the DOC of \$24,116,043; and

WHEREAS, construction of the improvements has been completed except for minor punch list items on Day Road; and

WHEREAS, the City and the DOC agreed to share equally any cost savings in project costs below the capped costs; and

WHEREAS, the capped costs need to be adjusted for the following reasons:

The Washington County conditions of approval for construction on Clay Street and Cahalin Street required an increase of \$81,793 in additional construction that was added to the capped costs.

Right-of-way costs estimated at \$119,000 were included in DOC costs but not in the capped costs and the funds need to be transferred to the City for future right-of-way acquisition.

DOC has installed landscaping which requires much less irrigation water than anticipated so the irrigation water that was reserved for DOC will be reduced from 330,000 gallons of water per peak day of consumption to 100,000 gallons per day with a net reduction in the capped cost of \$744,017; and

WHEREAS, the minor changes are described in the amendment; and

WHEREAS, the construction bid climate for the off-site construction has been very favorable and the net savings in capped cost is \$5,068,432; and

WHEREAS, the City's share of the savings at 50% of the capped cost savings is \$2,534,216; and

WHEREAS, the City Council has reviewed Amendment No. 1 to the Cooperative Agreement for the Provision of Public Services Necessary for the Construction and Operation for the Women's Prison and Intake Center, Day Road Property at Wilsonville, Oregon, a copy of which has been marked Exhibit A, attached hereto and incorporated by reference herein; and

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Manager is authorized to sign Amendment No. 1 to the Cooperative Agreement for the Provision of Public Services Necessary for the Construction and Operation for the Women's Prison and Intake Center, Day Road Property at Wilsonville, Oregon between the City of Wilsonville and (the City) and the Oregon State Department of Corrections (DOC). A copy of the amendment marked Exhibit A is attached hereto as incorporated by reference herein as if fully set forth.
2. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council and at a regular meeting thereof this 3rd day of March 2003 and filed with the Wilsonville City Recorder this date.


JOHN HELSER, CITY COUNCIL PRESIDENT

ATTEST:


Sandra C. King, CMC, City Recorder

SUMMARY of votes:

Mayor Lehan Excused

Councilor Helser Yes

Councilor Kirk Yes

Councilor Scott Tabb Yes

Councilor Holt Yes

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This Amendment #1 is entered into by and between THE STATE OF OREGON, by and through its Department of Corrections (the "DOC"), and the CITY OF WILSONVILLE ("City") (all hereinafter the "Parties") as of the date that the Amendment #1 has been fully executed by the Parties and all required State of Oregon approvals have been obtained (the "Effective Date"). This Amendment #1 pertains to that certain Intergovernmental Agreement between the Parties, dated November 30, 1999, and more particularly described below (the "Agreement").

RECITALS

WHEREAS, the City and the DOC entered into an agreement entitled "Cooperative Agreement for the Provision of Public Services Necessary for the Construction and Operation of the Women's Prison and Intake Center, Day Road Property at Wilsonville, Oregon", dated November 30, 1999 (the "Agreement"); and

WHEREAS, the Parties agree that modifications to this Agreement are needed to recognize impacts to the Agreement from Washington County conditions of approval to the Facility; and

WHEREAS, the Parties agree that certain clarifications are warranted relating to the Facility's deferred right-of-way costs and the final Facility needs for the provision of water and sewer services by the City; and

WHEREAS, the Parties agree that the Capped Costs need to be adjusted to recognize the additional Washington County conditions of approval for the Facility, changes in construction requested by DOC and the final Facility needs and estimates of SDCs for the provision of irrigation water by the City; and

WHEREAS, the Parties agree that the costs of oversizing storm sewer facilities to drain the area from the intersection of Day Road and Grahams Ferry Road to the Facility site and other areas required by the Washington County conditions of approval need to be identified for the Final Accounting; and

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WHEREAS, the Parties agree that the DOC's proportionate share of monthly Storm Water fees to the City need to be determined; and

WHEREAS, the Parties agree that this Amendment #1 will serve as the validation to the Final Accounting as required in Section 7.4 of the Agreement and confirm that each Party has fully performed their requirements for the infrastructure development related to the Capped Costs.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration described herein, the Parties agree as follows:

AGREEMENT

- 1. Amendment/Contract Information.** The Agreement, this Amendment #1 and the project to which they pertain are further identified as follows:

Amendment Title: Amendment #1 to the Cooperative Agreement for the Provision of Public Services Necessary for the Construction and Operation of the Women's Prison and Intake Center, Day Road Property at Wilsonville, Oregon ("Amendment #1").

Agreement Number: 2260

Project Title: Coffee Creek Correctional Facility Complex at Wilsonville, Oregon (the "Project").

- 2. Specific Amendments to the Agreement.** The Agreement is hereby amended as follows:

(The particular paragraph or section of the Agreement is identified, followed by the revised form of the paragraph or section, or the new provisions being added to the Agreement; new language is indicated by underscore and deleted language by [*brackets*]):

- A. RECITAL A.** - "The DOC is responsible for planning, developing and building a Women's Prison/Intake Center Complex ("Facility") currently designed to house permanent inmate population of approximately 1600 inmates and approximately 500 staff, to be located on the land near Wilsonville, in Washington County, Oregon, which is commonly referred to as the [*"Day Road" property.*]"Coffee Creek Correctional Facility." DOC agrees these approximate numbers shall not increase by more than five percent. The Parties agree that the Facility will be built in phases and that the City will

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not levy additional SDCs or other requirements beyond those stated in the Agreement unless assumed staff, or total inmate population is exceeded by 5% of the number listed in this Recital A."

- B. RECITAL G.** - "The City agrees to "cap" the DOC's off-site infrastructure development costs for the Facility [*to a maximum cost of \$24,116,043 (the "Capped Costs")*]. Additional costs for off-site infrastructure shall be paid by the City, as detailed in this Agreement. [*The capped costs do not include the costs of easement and right-of-way acquisition to be paid by DOC, which are estimated to be \$2,185,000. The Capped Costs does include an inflation adjustment pursuant to Section 5.13 of this Agreement assuming a construction start date March 1, 2000 in the amount of \$796,743 (4.1% per annum for 10 months).*]
- C. DEFINITION of "Capped Costs"** - "'Capped Costs' shall mean [*\$24,116,043*] \$23,609,349 as the maximum the DOC will be required to pay for the Project Costs associated with off-site infrastructure and the costs of on-site improvements specifically included in Capped Costs pursuant to Section 4.1.1 to serve the Facility, and includes the SDC's. The capped costs do not include the costs of easement and right-of-way acquisition to be paid by DOC."
- D. Section 1.3 - "Irrigation Water.** City agrees to cooperate fully in DOC's efforts to obtain an adequate, permanent and acceptable source of irrigation water for the Facility, which may include purchase of a well or wells in the vicinity for such purposes. City agrees not to protest or interfere with any such purchase or use, provided the quality of such water does not adversely effect the City's water system. When the City's planned Willamette River treatment plant is completed and functioning, the City shall reserve [*330,000*] 100,000 gallons of water per day for the purposes of landscape irrigation at the Facility as described in paragraphs II.4 and II.6 of Exhibit A. [*until such time as the quantity and quality of water available to the Facility for this purpose from other sources is verified to the satisfaction of DOC and City.*] Costs associated with locating and developing an

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alternative source of irrigation water for the Facility shall not be included in the Capped Costs. The Parties agree that the reduction in SDCs, as described in paragraphs II.6 of Exhibit A, based on 100,000 gallons of water per day shall decrease the Capped Cost and the actual Project Costs incurred."

- E. Section 3.1.1 - "The City shall use existing City easements, rights-of-way, and sewer trunk line capacity wherever practicable and feasible. DOC will obtain necessary additional right of way and easements in accordance with Section 6.1.7 below, except for \$119,000 which DOC shall pay to the City for deferred right-of-way acquisition for capacity replacement of sanitary sewer lines. The \$119,000 referenced in this Section 3.1.1 will be included in the Capped Costs and replace those amounts previously estimated in I.3.b.(2) and I.3.d.(2) of Exhibit A and will be paid by the DOC to the City upon invoicing by the City to the DOC."
- F. Section 3.1.3 – "*[Initially.] DOC shall be charged SDC's based upon a loading of 600 mg/l BOD5 and 600 mg/l TSS and charges in effect on June 1, 1998. [DOC shall immediately, upon full occupancy, challenge for evaluation of flow rate and BOD5 and TSS concentrations. City will hold all SDC's paid for concentrations above 350 mg/l BOD5 and TSS in escrow until completion of a one- year evaluation. Upon completion of the evaluation the City will return to DOC (if the Project Costs are under the Capped Costs) any excess funds paid as SDC's for concentrations of BOD5 and/or TSS in excess of the actual concentrations but in no event below 350 mg/l. If Project Costs exceed Capped Costs, such excess shall be subtracted from and shall reduce any refund under this Section 3.1.3.]*"
- G. New Section 4.1.1.1 - "4.1.1.1 The Parties agree that the DOC oversized the on-site storm water system in the amount of \$50,000 and these costs are part of the Capped Costs as described in IV.2 and IV.3.b of Exhibit A."

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- H. New Section 4.1.4.1 - "4.1.4.1 The Parties agree that the DOC constructed 3,500 lineal feet of ditch work and appurtenances as identified in IV.2.a of Exhibit A, in the amount of \$200,000 and these costs are part of the Capped Costs savings."
- I. Section 4.1.6 - "The DOC will be required to pay its proportionate share of monthly Storm Water fees to the City, and the DOC's rates shall be reduced based upon the proportion the excess off-site storm water flow bears to the on-site storm water flow, as determined using generally accepted engineering principles, approved by DOC's and the City's engineers [.] and by the debt service that are in normal storm water fees but which has been constructed in full by DOC. The Parties agree that the DOC's proportionate share of monthly Storm Water fees will be based on the Facility representing 756 equivalent residential units (ERU) and that each unit will be charged for 61.4% of the Storm Water utility fee as stipulated in City resolution and as amended by the City for all customers from time to time."
- J. Section 5.1 - "Payment of costs in excess of Capped Costs. The City agrees to control Project Costs for off-site infrastructure to support the Facility and to pay off-site costs that exceed the Capped Costs [\$24,116,043] except for the following:"
- K. Section 5.1.3 - "If the construction start date is delayed beyond [March 1, 1999] May 1, 2000, and the delay is not caused by the City, the Capped Costs including SDC's will be adjusted using the change in the Seattle Construction Cost Index from [May 1, 1999] May 1, 2000 to the start of construction."
- L. Section 5.1.6 - "Any additional costs incurred as a result of conditions required by Washington County in the permitting process that exceed the costs of the improvements identified in Exhibit A, except to the extent such conditions are proposed by the City. As set forth in this Section 5.1.6, the Parties agree that additional street infrastructure as required by the Washington County Land Use Conditions of Approval, was provided by

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the City and these costs of \$81,793 shall be included in, and increase the amount of, the Capped Costs."

M. Section 6.1 - "Project Approach. DOC will expedite prison construction and the City will schedule off-site construction to minimize interference with on-site construction activities. During prison construction beginning in early 2000, the primary construction access will be from Interstate 5 along Boones Ferry Road and then on Day Road to the prison site. The waterline on Boones Ferry Road and Day Road to the prison site will be designed and best efforts will be made to complete construction in 1999 and early 2000 prior to commencement of on-site prison construction. Concurrently with prison construction the City will construct sewer, off-site storm water, and additional waterline (if needed) and secondary roads that have a lesser impact on prison construction. *[Unless the parties otherwise agree, following completion of the first phase of prison construction, the City will reconstruct Day Road, the Day Road and Boones Ferry intersection, the Day Road and Grahams Ferry intersection and the remaining half street adjacent to the prison that is not initially part of the Day Road and Grahams Ferry Road intersection improvements for construction access.]* The Parties agree that Day Road and the intersection of Day Road and Boones Ferry Road was deferred with completion of these improvements October 31, 2002."

N. Section 6.1.1 - "Preliminary Plans; Cost Estimates; and Oversizing Accounting. The City will develop preliminary plans and cost estimates for the infrastructure in accordance with infrastructure requirements and costs set forth in Exhibit A. City acknowledges that Exhibit A is an estimate only based upon current information available to DOC and its consultants. Infrastructure costs may increase beyond those set forth in Exhibit A due to changing circumstances, requirements of other agencies or local governments, or other reasons beyond the control of DOC, and any such increases shall not impact the Capped Costs [*which shall remain at \$24,116,043,*] except for the cost of changes required by Washington County and not requested by the City. The City shall account for oversizing in a manner that allows it to be separately tracked and reported. To the extent any of the

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on-site storm water improvements, which are being constructed by the DOC as part of the Facility construction, are oversized in accordance with City standards, DOC shall cause the on-site storm water construction to be accounted for in a manner to obtain an accurate cost breakdown between the non-oversized portion and the oversized portion of the on-site storm water construction."

- O. Section 6.1.10(c) "To the extent permitted by law (including, but not limited to, Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act) and within the limits of the Tort Claims Act, accept tender of defense by the City if the City is named in any action challenging the siting or location of the Facility or the issuance of any permit (except for permits related to the City's planned water treatment plant) necessary for the construction or operation of the Facility. This is not intended to apply to any damage claims arising out of negligence or intentional conduct related to the City's construction of the Public Services or the City's issuance of permits."
- P. New Section 6.1.13.1 – "The parties agree that there were only two change orders requested by DOC and completed by the City at a total cost of \$36,530 which shall be included in, and increase the amount of, the Capped Costs."
- Q. Exhibit A, Section V. Streets, Section 3. - "[Garden Acres will be converted to a cul-de-sac at the north end and connected to Grahams Ferry Road via Cahalin Road with a new 24-foot wide turnpike roadway improvement cost is included in the infrastructure cap.] Garden Acres Road improvements. The Parties agree that based on requests from property owners to the City, the North end on Garden Acres Road will remain closed to all except emergency vehicles access and to reopen Garden Acres Road at its southern terminus with Clutter Road as determined by consent of approval by the Washington County Board of Commissioners. The Parties agree, based in this Exhibit A, Section V – Streets, that costs for the Garden Acres Road improvements are included in the Capped Costs."

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R. New Section 7.4.1 – "7.4.1 Final Payment. The Parties agree, per the provisions of Section 7.4 of the Agreement, that a full accounting and reconciliation of the Project Costs, inclusive of systems development credits and any oversizing has occurred and that each of the Parties' performance for the infrastructure development related to the Capped Costs has been performed. The accounting summary set forth below will therefore form the basis for the final payment by the City to the DOC of \$266,922, which shall be paid by the City to the DOC within thirty (30) day following the execution of this Amendment #1:

| | |
|--|----------------------------|
| <u>Capped Costs</u> | |
| <u>Capped costs per IGA</u> | \$24,116,043 |
| <u>Deferred ROW costs</u> | \$119,000 |
| <u>Washington County conditions of approval costs (previously invoiced at \$270,000)</u> | \$81,793 |
| <u>Construction change orders requested by DOC (not previously invoiced)</u> | \$36,530 |
| <u>Reduction in water SDCs</u> | (\$744,017) |
| <u>Total revised capped costs through Amendment #1</u> | <u>\$23,609,349</u> |
| | |
| <u>Capped Costs Incurred</u> | |
| <u>Project costs paid by City</u> | \$19,223,141 |
| <u>Washington County conditions of approval billed</u> | (\$270,000) |
| <u>Washington County actual costs</u> | \$81,793 |
| <u>On-site storm water oversizing (HCC)</u> | \$50,000 |
| <u>3500 lf Ditch Work Credit (HCC)</u> | \$200,000 |
| <u>Water SDCs reduction</u> | (\$744,017) |
| <u>Total actual costs</u> | <u>\$18,540,917</u> |
| | |
| <u>Capped Costs savings</u> | |
| <u>City share of savings (50%)</u> | \$2,534,216 |
| <u>City total billed</u> | \$19,223,141 |
| <u>Washington County conditions of approval billed</u> | (\$270,000) |
| <u>Washington County actual costs</u> | \$81,793 |
| <u>Water SDCs reduction</u> | (\$744,017) |
| <u>TOTAL owed to City</u> | <u>\$20,825,133</u> |
| | |
| <u>TOTAL paid to City</u> | <u>\$21,003,110</u> |
| | |
| <u>50% of interest earned on advance payments</u> | <u>\$88,945</u> |
| | |
| <u>TOTAL amount due from City to DOC</u> | <u>\$266,922</u> |

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R. New Section 11.16 - "11.16 Incorporation of Recitals. Recitals A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, and Q of this Agreement are hereby incorporated by reference, as if fully set forth herein. The parties to this Agreement acknowledge and agree that significant legal duties, obligations and rights are set forth in these Recitals, and it is the parties' intent to be legally bound by the terms of these Recitals.

3. Incorporation of Recitals. All of the Recitals set forth in the introductory portion of this Amendment #1 are hereby incorporated by reference, as if fully set forth herein.

4. Remaining Contract Provisions; Representations and Warranties. Except as amended by this Amendment #1, the Parties understand and agree that the provisions of the Agreement remain in full force and effect. City hereby confirms and certifies that the representations, warranties and certifications contained in the Agreement, and any Amendment(s) thereto (if applicable), remain true and correct as of the Effective Date of this Amendment #1.

5. Tax Certification. By signature on this Amendment #1, the undersigned authorized representative of the City, as required by ORS 305.385(6), hereby certifies, under penalty of perjury, that the City is not, to the best of the undersigned's knowledge, in violation of any Oregon tax laws. For purposes of this certification, "Oregon tax laws" are those tax laws listed in ORS 305.380(4), which are incorporated herein by this reference.

