

AGENDA ITEM FOR ADMINISTRATIVE MEETING

() Discussion only
(X) Action

FROM (DEPT/ DIVISION): Douglas R. Olsen
County Counsel

SUBJECT: Corps Administrative Fee Payment

<p>Background: The Army Corps of Engineers continues to process the application for an easement for water intake station. The Corps is requesting an additional payment of \$86,000 toward additional work to process the application. The payment is before the Board for Approval</p>	<p>Requested Action: Approve payment to Army Corps of Engineers in the amount of \$86,000</p>
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ATTACHMENTS: Draft Agreement

*****For Internal Use Only*****

Checkoffs:

- () Dept. Head (copy)
- () Budget (copy)
- () Fiscal
- (X) Legal (copy)
- () (Other - List:)

To be notified of Meeting:

Needed at Meeting:

Scheduled for meeting on: August 21, 2024

Action taken:



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT
PO BOX 2946
PORTLAND, OR 97208-2946

May 3, 2024

Real Estate Division

John Shafer
Commissioner
Umatilla County
216 SE 4th Street
Pendleton, Oregon 97801

Dear Mr. Shafer,

The U.S. Army Corps of Engineers (USACE) has identified additional expenses that will be incurred for the additional work required to establish a Memorandum of Agreement to outline agreed-upon measures to avoid, minimize and/or mitigate the adverse effects of the undertaking upon historic properties under Section 106 of the National Historic Preservation Act. It has also been determined that USACE will be required to review the undertaking under an Environmental Assessment (EA) pursuant to National Environmental Policy Act, also known as NEPA, which will require a public review and comment period and also require additional work and expenses.

USACE has estimated the additional expenses to be **\$86,000.00**. We request payment based on Title 10, U.S. Code § 2695, which authorizes the collection of administrative fees for processing requests to use Government-controlled property. The party who benefits from the transaction shall pay for the associated administrative expenses.

Enclosed you will find the Administrative Cost and Fee Agreement. Please sign, date and return the agreement to the U.S. Army Corps of Engineers, Portland District, ATTN: Amy Redmond Real Estate Division, P.O. Box 2946, Portland, Oregon 97208 or you may digitally fill out, sign, and return to the email address listed below. Upon receipt of the agreement and payment **made payable to "Finance and Accounting Officer, Portland District"**, we will initiate our review. In the event the transaction cannot be executed, the remaining funds will be refunded. Please note, if the actual administrative costs are greater than the estimate (above), you will be notified in writing and required to pay the additional amount prior to us continuing.

If you have any questions, please contact Amy Redmond, Realty Specialist, at 503-808-4406, or by email Amy.C.Redmond@usace.army.mil.

Sincerely,

Oliver W. King
Chief, Real Estate Division
Real Estate Contracting Officer

Enclosures

**AGREEMENT TO PAY ADMINISTRATIVE FEES AND COSTS
IN CONNECTION WITH
THE ISSUANCE OF AN OUTGRANT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
UMATILLA COUNTY**

THIS AGREEMENT is entered into this _____ day of _____, 2024, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the District Chief of Real Estate, Real Estate Contracting Officer, Portland District, U.S. Army Corps of Engineers, and **UMATILLA COUNTY** (hereinafter the "Requestor").

WITNESSETH THAT:

WHEREAS, the Requestor desires to use certain real property under the control of the Government;

WHEREAS, 31 U.S.C. section 9701 expresses the sense of Congress that each service or thing of value provided by an agency to a person is to be self-sustaining to the extent possible, and 10 U.S.C. section 2695 authorizes the Government to accept funds provided by the Requestor to cover administrative expenses incurred by the Government in entering into the real property transaction; and

WHEREAS, the Government has determined that its anticipated administrative expenses associated with processing this requested transaction are within the range of those normally incurred in completing a real estate interest transfer of the kind proposed, and, therefore, the Government's administrative expenses anticipated for this transaction have been determined based on an estimate of actual project work.

NOW THEREFORE, the Government and the Requestor agree as follows:

1. Upon execution of this Agreement, the Requestor shall pay administrative fees to the Government in the amount of **\$86,000.00**, which represents estimated expenses the Government presently anticipates it will incur in processing the Requestor's application for the construction, operation, and maintenance of a water pump, with an appurtenant pipeline for water supply, as shown on **Exhibits "A-1 and A-2"**, attached hereto and made a part hereof.
2. The Government will not begin processing the Requestor's application until the Government has received from the Requestor the full amount of estimated administrative fees identified in Paragraph 1, above.

3. If the Government, at any time in the course of processing the Requestor's application, determines that it is likely to incur administrative expenses in processing the application in excess of the estimated administrative fees identified in Paragraph 1, above, then the Government will notify the Requestor in writing of the additional amount of administrative fees the Requestor is required to provide to the Government for the Government to continue processing the application. Following receipt of such notification, the Requestor shall make payment for such additional amount of administrative fees or notify the Government in writing that the Requestor is withdrawing its application for the for the construction, operation, and maintenance of a water pump, with an appurtenant pipeline for water supply.

4. The Government retains the right, to be exercised within its sole discretion, to suspend or terminate its activities to process the Requestor's application at any time and for any reason. Additionally, the Government retains the sole discretion to approve or deny the Requestor's application at any time and for any reason. If the Government terminates its activities to process the Requestor's application or denies the Requestor's application, or if the Requestor withdraws its application prior to approval by the Government, then the Requestor may be entitled to a partial refund of any payment(s) already provided to the Government in accordance with Paragraphs 1 or 3, above. In such case, the Requestor is not entitled to a refund for the amount of administrative expenses that the Government incurred in processing the Requestor's application up to the date of such termination, denial, or withdrawal.

5. Notwithstanding any provision to the contrary, nothing in this Agreement shall be construed as obligating the Government to expend funds in advance or excess of appropriations in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or for purposes other than for which funds were appropriated. The Government's responsibilities under this Agreement are subject to the availability of funds appropriated for such purposes to the U.S. Army Corps of Engineers, and nothing herein shall be considered as implying that Congress will at a later date appropriate funds sufficient to meet any deficiencies.

6. All payments required to be made by the Requestor under this Agreement shall be provided by check made payable to **"Finance and Accounting Officer, Portland District"** and submitted to the **U.S. Army Corps of Engineers, Portland District, ATTN: Real Estate Division, P.O. Box 2946, Portland, Oregon 97208-2946**. Upon its execution of this Agreement, the Requestor shall send a signed original of the Agreement to the aforementioned address along with a check for the full amount of estimated administrative fees of **\$86,000.00**. Following receipt of the signed Agreement and check, the Government will send the Requestor one copy of the fully executed Agreement and begin processing the Requestor's application.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Government.

THE DEPARTMENT OF THE ARMY

REQUESTOR

By: _____
Oliver W. King
Chief, Real Estate Division
Real Estate Contracting Officer

By: _____
John Shafer
Commissioner
Umatilla County

DATE: _____

DATE: _____