

# AGENDA

**Thursday, January 23, 2020 - 10:00 AM**  
**BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2020-05

**CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

**I. HOUSING AUTHORITY PUBLIC HEARING**

1. Public Hearing and Approval of Resolution No. 1942 for Exemption and Authorization to use the Request for Proposals Method to Obtain a Construction Manager/General Contractor for the Webster Redevelopment Project (George Marlton, Procurement)

**II. PRESENTATION** *(Following are items of interest to the citizens of the County)*

1. Rhododendron Community Centennial Celebration Proclamation – (Commissioner Ken Humberston)

**III. CITIZEN COMMUNICATION** *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the meeting. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

**IV. PUBLIC HEARING** *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the department or organization they represent. In addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

1. Approval of Resolution No. \_\_\_\_ Adopting Mass Gathering Application Fees and Declaring as Emergency (Stephen Madkour, County Counsel)

**V. CONSENT AGENDA** *(The following Items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Work Sessions. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

**A. Health, Housing & Human Services**

1. Approval of a Revenue Contract and Business Associate Agreement with CareOregon, Inc. for Behavioral Health Services – *Behavioral Health*

2. Approval of Intergovernmental Agreement with Clackamas Community College for HB2017 State Transportation Improvement Fund Regional Coordination Program Funds for Expansion of the CCC Xpress Shuttle – *Social Services*

**B. Finance Department**

1. Authorization to Purchase a Freightliner Loader Truck from McCoy Freightliner of Portland for the Department of Transportation and Development - *Procurement*

**C. Elected Officials**

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Request by the Clackamas County Sheriff's Office (CCSO) to Enter into an Agreement with Portland Mountain Rescue for Search and Rescue Volunteer Activities - *CCSO*
3. Request by the Clackamas County Sheriff's Office (CCSO) to Enter into an Agreement with Mountain Wave Search and Rescue for Search and Rescue Volunteer Activities – *CCSO*
4. Request by the Clackamas County Sheriff's Office (CCSO) to Enter into an Agreement with Pacific Northwest Search and Rescue, Inc. for Search and Rescue Volunteer Activities - *CCSO*
5. Approval of Intergovernmental Agreement between Clackamas County Behalf of the Clackamas County Sheriff's Office and Department of Homeland Security, Immigration and Customs Enforcement, Enforcement and Removal Operations-Seattle use of the Public Safety Training Center (PSTC) - Bowman Training Complex - *CCSO*

**D. Disaster Management**

1. Intergovernmental Agreement between the State of Oregon (Oregon State Police) and Clackamas County for Medical Examiner's Office Building Agreement

**E. Technology Services**

1. Approval for a Service Level Agreement between Clackamas Broadband eXchange and Allstream Business US
2. Approval for a Service Level Agreements Amendment No. 1 between Clackamas Broadband eXchange and Summit Learning Charter

**F. Community Corrections**

1. Approval to Apply for a Grant Award

**VI. COUNTY ADMINISTRATOR UPDATE**

**VII. COMMISSIONERS COMMUNICATION**

**NOTE:** Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. <https://www.clackamas.us/meetings/bcc/business>

January 23, 2020

Housing Authority Board of Commissioners  
Clackamas County

Members of the Board:

Public Hearing and Approval of Resolution No. 1942 for Exemption and Authorization to use the Request for Proposals Method to Obtain  
a Construction Manager/General Contractor for the Webster Redevelopment Project

<b>Purpose/Outcomes</b>	Public Hearing before the governing body of the Housing Authority of Clackamas County and Approval of Resolution No. 1942 on the Proposed Exemption and Authorization to use the Request for Proposals procurement method to obtain a Construction Manager/General Contractor (CM/GC) for the Webster Redevelopment Project
<b>Dollar Amount and Fiscal Impact</b>	The Project has a construction budget of approximately \$8,000,000
<b>Funding Source</b>	Pending Awards: 4% Low Income Housing Tax Credit ("LIHTC"), Project Based vouchers, tax exempt private activity bonds, Metro Housing Bonds, Permanent bank financing, Permanent Supportive Housing Funding
<b>Duration</b>	If Resolution #1942 is approved, a Request for Proposal for a CM/GC will be issued and a contractor selected in the summer of 2020. The Project is expected to be complete by the end of 2021
<b>Previous Board Action</b>	6/6/19 – Approval of IGA with Metro to acquire the property
<b>Strategic Plan Alignment</b>	1. Sustainable and affordable housing 2. Ensure safe, healthy and secure communities
<b>Counsel Review</b>	1/6/20
<b>Contact Person</b>	Stephen McMurtrey, HACC Development Manager 503-650-3414 George Marlton, Chief Procurement Officer 503-742-5442

**BACKGROUND:**

The Housing Authority of Clackamas County (HACC), a Division of Health, Housing and Human Services Department, is requesting an exemption from the traditional competitive procurement process and authorization to use the Request for Proposals procurement method to obtain a Construction Manager/General Contractor (CM/GC) for the Webster Redevelopment Project ("Project").

The Public Hearing satisfies requirements under ORS 279C.355 to provide notice and the opportunity for a public hearing when an exemption to use the Request for Proposals method for construction contracting is sought by a public agency. Clackamas County Procurement placed a Public Notice on the Oregon Procurement Information Network (ORPIN) on January 8, 2020, and with the Business Tribune online edition on January 9, 2020 and its print version on January 14, 2020, which included the date and time of a Public Hearing to take place before the Board of the Housing Authority of Clackamas County (HACC Board).

The Project is the redevelopment of a 2.21 acre parcel with an existing 24,000 sq ft building that previously was used as a juvenile rehabilitation facility. The Project's goal is to create 44-50 single-room occupancy or studio units providing long-term supportive housing for individuals making less than 30% of area median income, with a focus on serving individuals existing homelessness.

The Project is one that has been developed and refined by Carlton Hart Architecture as well as the Housing Developers at HACC. The scope of work is one that anticipates replacing and upgrading aging building systems within the existing structure, including a potential seismic upgrade, replacing the original plumbing piping and fixtures, upgrading and repairing the existing HVAC system, bringing the electrical system up to current code, abating materials with asbestos and replacing interior finishes.

Because of the intricate nature of the proposed scope of work, a CM/GC is the preferred project delivery methodology for the Project. The current construction budget is estimated to be approximately \$8 million dollars.

A CM/GC is an alternative form of contracting that results in an agreement with a CM/GC contractor who becomes involved at a much earlier point in the Project compared to the standard low-bid process. This early involvement allows the contractor to provide input during the design phase and accelerate the overall construction schedule. The CM/GC contractor undertakes a scope of work that includes design development; constructability reviews; value engineering; scheduling; estimating; sub-contracting procurement and coordination; establishing a Guaranteed Maximum Price ("GMP") to complete the work as may be allowed under the contract; coordinating and managing the building process; general contractor expertise; and participating as a member of the project team along with HACC staff, project architects and engineers, and other consultants.

Once HACC has been approved to use the CM/GC process the following competitive process will be used to select the CM/GC Contractor:

1. Publicly advertise a Request for Proposal ("RFP").
2. The contractor will be selected through an evaluation process that will consider qualifications, construction team experience and will include both a technical proposal and fee proposal.
3. The submitted proposals will be reviewed and scored by the evaluation committee. Points will be awarded based on the relative merit of the information provided in response to the solicitation. The highest rated response in each area will be given the maximum number of points available. HACC may ask proposers to make oral presentations to discuss and clarify the submitted proposal.
4. The Selection Committee will provide a recommendation to the Board of HACC for their consideration.

The anticipated cost savings from the exemption to use the Request for Proposals Method to Obtain CM/GC Construction Services is as follows:

1. The CM/GC approach will provide for an accelerated Project timeline that will assist HACC in addressing the critical scope of work items quickly while meeting critical financial milestones required by third parties.

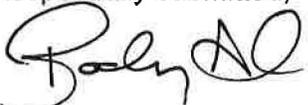
2. The selection of construction methods and sequencing will benefit the Project significantly by involving a single entity for both management and construction of the site improvements. The CM/GC approach provides HACC with many alternative approaches to the Project. Therefore, it is less likely that an optimal solution will be overlooked due to time and resource constraints.
3. Project costs may be lower because of the close working relationship between the designer and constructor. This may lead to incorporation of more economical design features and the application of cost-saving construction methods while optimizing the final product within the Project budget.
4. The Project may proceed more efficiently because designers and contractors are members of the same team thereby fostering a cooperative exchange of ideas. This dynamic will allow for design efficiencies to be woven into the construction process and allow for resolution of design issues that arise during construction.
5. HACC gains the opportunity to fix the total project cost early in the process cooperatively with the CM/GC team.
6. HACC's administrative burden for the Project is reduced by conducting one solicitation for the project, as opposed to conducting multiple solicitations for a design/ bid/ build approach.
7. One of the highest potential areas for claims filed by subcontractors, or excessive bid costs involves issues related to perceived schedule difficulties, delays and disruptions in the workflow. This type of project is especially prone to such problems if not continually and carefully supervised. Construction expertise and considerations for constructability are incorporated into the Project because the CM/GC is working closely with the design team and HACC. Resolution of construction conflicts or deficiencies is the responsibility of the CM/GC entity, not HACC.

**RECOMMENDATION:**

Staff respectfully recommends the HACC Board take the following actions:

- 1) Hold a Public Hearing to provide the opportunity for members of the public to provide statements related to the request for an exemption.
- 2) Direct Housing Authority staff to make any changes necessary to the proposed exemption as a result of the Board's consideration of any testimony received.
- 3) Barring the need for significant revisions to the exemption findings, proceed with approval of Resolution No. 1942 by the HACC Board on January 23, 2020.

Respectfully submitted,

 ASK, HAS DEPUTY / FOR

Richard Swift, Director  
Health, Housing and Human Services

Placed on the Agenda of \_\_\_\_\_ by Procurement and Contract Services

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

A RESOLUTION GRANTING  
EXEMPTION FROM COMPETITIVE  
BIDDING FOR THE WEBSTER  
REDEVELOPMENT PROJECT BY  
MEANS OF A CONSTRUCTION  
MANAGER/GENERAL CONTRACTOR  
AND AUTHORIZING SELECTION BY  
REQUEST FOR PROPOSALS



RESOLUTION NO. 1942

WHEREAS, the Board of the Housing Authority of Clackamas County (“Board”) acts as the local contract review board for the Housing Authority of Clackamas County (“HACC”), and in that capacity, has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C; and

WHEREAS, ORS 279C.335 provides a process for exempting certain contracts from competitive bidding and authorizes the selection of a contractor through the request for proposal (“RFP”) process; and

WHEREAS, draft findings, attached hereto as Exhibit A and incorporated herein (“Findings”), addressing competition, operational, budget and financial data, public benefits, value engineering, specialized expertise required, market conditions, technical complexity, public safety and funding sources recommended by the HACC were available 14 days in advance of the public hearing on this Resolution as related to the Webster Redevelopment Project (“Project”); and

WHEREAS, the Findings also highlight the public benefits of using the RFP process for selection of a Construction Manager/General Contractor and using the Construction Manager/General Contractor method of project delivery;

WHEREAS, the Board has reviewed the Findings and is satisfied with the supporting information and materials that has been provided to justify the application of the exemption and the use of the RFP process in its place;

NOW THEREFORE, BE IT RESOLVED BY BOARD OF THE HOUSING AUTHORITY OF CLACKAMAS COUNTY THAT:

1. The Board adopts the Findings, as set forth in Exhibit A to this Resolution, and makes the following additional findings:
  - a. The exemption from competitive bidding will promote competition and will not encourage favoritism because the contractor will be chosen by the RFP process, and the major portion of the construction work may be performed by subcontractors chosen by competitive bidding.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

A RESOLUTION GRANTING  
EXEMPTION FROM COMPETITIVE  
BIDDING FOR THE WEBSTER  
REDEVELOPMENT PROJECT BY  
MEANS OF A CONSTRUCTION  
MANAGER/GENERAL CONTRACTOR  
AND AUTHORIZING SELECTION BY  
REQUEST FOR PROPOSALS



RESOLUTION No. 1942

- b. The exemption from competitive bidding is likely to result in substantial cost savings to HACC, for the reasons set forth in the adopted Findings.
2. The Board authorizes the Housing Authority of Clackamas County to proceed with the procurement of Construction Manager/General Contractor services for the Project using the Request for Proposals process in accordance with the Attorney General Model Rules under ORS 279A.065(3).

ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2020.

HOUSING AUTHORITY OF CLACKAMAS  
COUNTY:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



## **Rhododendron Community Centennial Celebration Proclamation**

**WHEREAS**, In 1846 Sam Barlow established the Barlow Trail along the modern-day U.S. Route 26 as an alternative to the treacherous Columbia River portion of the Oregon Trail; and

**WHEREAS**, weary travelers along the Barlow Trail once stopped at a “wide spot in the road” at the western foot of Mount Hood to gather strength for the last stretch of their trip to the Willamette Valley; and

**WHEREAS**, in 1905, former Portland Mayor Henry S. Rowe directed the construction of and operated the an inn on his parcel of land at that “wide spot in the road,” naming it the Rhododendron Inn due to the large number of rhododendrons growing in the area; and

**WHEREAS**, the community of Rhododendron developed around the inn as a summer resort colony for travelers wishing to enjoy the mountain and forest scenery, as well as outdoor recreation; and

**WHEREAS**, on January 26, 1920 the United States Postal Service dedicated a new post office for the area to be named Rhododendron, Oregon; and

**WHEREAS**, the unincorporated community of Rhododendron today remains an important part of the mountain communities of Clackamas County, and is home to nearly 2,000 Oregonians.

**BE IT RESOLVED BY THE CLACKAMAS COUNTY BOARD OF COMMISSIONERS IN THE STATE OF OREGON:** That we, the members of the Board of County Commissioners, commemorate the centennial anniversary of the dedication of the community of Rhododendron and thank its residents, business owners, and community planners for their century of contributions to Clackamas County and the State of Oregon.

### **CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

Jim Bernard  
Chair

Sonya Fischer  
Commissioner

Ken Humberston  
Commissioner

Paul Savas  
Commissioner

Martha Schrader  
Commissioner



**OFFICE OF COUNTY COUNSEL**

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

**Stephen L. Madkour**  
 County Counsel

**Kathleen Rastetter**  
**Scott C. Ciecko**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
**Andrew R. Naylor**  
**Andrew Narus**  
**Sarah Foreman**  
 Assistants

January 23, 2020

Board of County Commissioners  
 Clackamas County

Members of the Board:

Approval of a Resolution Adopting Mass Gathering  
 Application Fees and Declaring as Emergency

<b>Purpose/Outcomes</b>	The approval of the attached resolution would establish an application fee for mass gatherings applications submitted to the County. If approved, this application fee will be incorporated into Appendix A of the County Code and will be effective on signing.
<b>Dollar Amount and Fiscal Impact</b>	The imposition of fees are intended to be a cost recovery mechanism. The cost to implement the new fees would be internal to the county involving staff time and resources.
<b>Funding Source</b>	Not applicable.
<b>Duration</b>	The fee will be effective immediately on approval and would be indefinite in duration.
<b>Previous Board Action</b>	The Board considered this proposal at its January 14, 2020 session under issues.
<b>Strategic Plan Alignment</b>	Building public trust through good government
<b>Contact Person</b>	Stephen Madkour and Anja Mundy, County Counsel x 5396

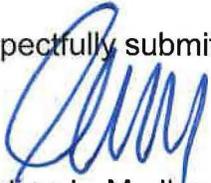
**Background:**

Pursuant to HB 2790, a county may charge permit applicants a fee reasonably calculated to reimburse the county for its reasonable and necessary costs in receiving, processing and reviewing applications for permits to hold outdoor mass gatherings. However, a fee authorized by this subsection may not exceed the greater of \$5,000 or \$2 per anticipated attendee of the gathering.

**Recommendation:**

Staff recommends the Board of County Commissioners approve and sign the attached resolution adopting Mass Gathering Application fees for Clackamas County and declaring an emergency to be effective on signing.

Respectfully submitted,



Stephen L. Madkour  
County Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

A RESOLUTION OF THE  
CLACKAMAS COUNTY BOARD  
OF COUNTY COMMISSIONERS  
ADOPTING FEES FOR MASS  
GATHERING APPLICATIONS  
AND DECLARING AN  
EMERGENCY



Resolution No. \_\_\_\_\_

NOW, THEREFORE; BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Section 1: Pursuant to Section 1.01.090 of the Clackamas County Code, the Board adopts the fees shown on the attachment which are incorporated by this reference.

Section 2: The Board hereby directs that the new fee for Mass Gathering applications shown on the attachment shall be included in Appendix A of the Clackamas County Code.

Section 3: The County shall charge all fees set by state or federal law. If such a fee is changed the County shall charge the new amount when it becomes effective.

Section 4: Pursuant to ORS 310.145, the Board classifies the fees adopted by this resolution as fees not subject to the limits of section 11b, Article XI of the Oregon Constitution.

Section 5: Effective Date. The Board declares an emergency with respect to this Resolution and the changes to fees authorized by Section 1 of this Resolution and shown on the attachments shall become effective immediately upon signing.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2020.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

DEPARTMENT/DIVISION	AUTH. LEGISLATION	FEE SET BY ORS	ORS AUTH. FEE	CODE AUTH. FEE	CURRENT FEE AMOUNT	PROPOSED FEE 2019-2020
DTD - Admin						
Mass gathering application	Code §1.01.090			x	n/a	\$5000 or \$2 per anticipated attendee of gathering

January 23, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Revenue Contract and Business Associate Agreement with  
CareOregon, Inc. for Behavioral Health Services

<b>Purpose/Outcomes</b>	This contract provides the funding for certain behavioral health services.
<b>Dollar Amount and Fiscal Impact</b>	Contract maximum payment is \$3,580,095.00.
<b>Funding Source</b>	No County General Funds are involved. State of Oregon, Oregon Health Plan (OHP) provided through CareOregon.
<b>Duration</b>	Effective January 1, 2020 and terminates on December 31, 2020
<b>Previous Board Action</b>	None
<b>Counsel Review</b>	Contract reviewed and approved January 8, 2020.
<b>Strategic Plan Alignment</b>	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals. 2. Ensure safe, healthy and secure communities.
<b>Contact Person</b>	Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305
<b>Contract No.</b>	9605

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of revenue contract with CareOregon, Inc. for the funding for certain behavioral health services. This Contract provides the funds for Intensive Care Coordination for adults and children, Substance Use Disorder Care Coordination, Wraparound Services, Choice Services, and administrative support. The Contract supports 23.25 FTE.

This Contract is effective January 1, 2020 and continues through December 31, 2020. Maximum compensation is \$3,580,095.00. County Counsel reviewed and approved this Contract on January 8, 2020.

*Healthy Families. Strong Communities.*

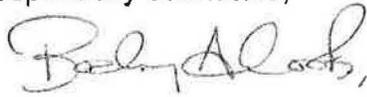
2051 Kaen Road, Oregon City, OR 97045 • Phone (503) 650-5697 • Fax (503) 655-8677

[Clackamas.us/h3s](http://Clackamas.us/h3s)

**RECOMMENDATION:**

Staff recommends the Board approval of this Contract and authorization for Richard Swift, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

 Bob Alcott, H3S DEPUTY FOR

Richard Swift, Director  
Health, Housing & Human Services Department

## CAREOREGON

### CLACKAMAS COUNTY AGREEMENT

This Agreement (“Agreement”) is made and entered into as of January 1, 2020 (“Effective Date”), by and between CareOregon, an Oregon nonprofit corporation (“CareOregon”), and Clackamas County (“County”).

#### RECITALS

A. CareOregon is a nonprofit organization that provides management services for and operates as a coordinated care organization as such term is defined under Oregon law (“CCO”), and as such, CareOregon coordinates health care coverage for enrollees of the Oregon Health Plan (“OHP”) or otherwise;

B. As a CCO or subcontractor of a CCO, CareOregon desires to provide Members with a broad network of high quality, efficient and convenient health care facilities, professionals, and other provider types from which Members may receive covered services;

C. County provides distinct services that CareOregon Members may be eligible for; and

D. CareOregon desires, in support of developing a network, to contract with County to become a participating provider in CareOregon’s network; and County wishes to so participate in CareOregon’s network all in accordance with the terms and conditions set forth in this Agreement.

#### AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants and promises contained herein, CareOregon and County agree as follows:

#### ARTICLE I DEFINITIONS

“**Contracted Services**” has the meaning given to that term in Section 2.1.

“**Covered Service**” means health care services and supplies that are Medically Necessary and for which benefits are available under a Member’s Plan.

“**Medically Necessary**” means services and medical supplies required for prevention, diagnosis or treatment of a health condition that encompasses physical or mental conditions, or injuries and are (a) consistent with the symptoms of a health condition or treatment of a health condition; (b) appropriate with regard to standards of good medical practice and generally recognized by the relevant scientific community and professional standards of care as effective; (c) not solely for the convenience of a Member or a provider of the service or medical supplies, and; (d) the most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to a Member.

**“Member”** means a person who is enrolled in a Plan with CareOregon, generally identifiable through a CareOregon identification card issued to the person, and who is eligible to receive Covered Services.

**“PHI”** has the meaning given to that term in Section 2.1.

**“Plan”** means the contract or arrangement that has been established with CareOregon, including contracts or arrangements established by federal and state governmental programs, that entitles Members to receive specific Covered Services through CareOregon.

**“Practitioners”** has the meaning given to that term in Section 2.3.

**“Provider Qualifications”** has the meaning given to that term in Section 2.9.

**“Records”** has the meaning given to that term in Section 2.13.

**“Plan Partner”** means the individual entities that have entered into an Agreement with CareOregon in exchange for a per member per-month payment described in the same agreement. The entities defined as Plan Partners, which may change from time-to-time, are listed in Exhibit A. CareOregon Members will be assigned to a particular Plan Partner.

## **ARTICLE II OBLIGATIONS AND REPRESENTATIONS OF COUNTY**

**2.1 Covered Services.** County will accept Members as patients and provide to Members the Covered Services listed in the Exhibits attached and incorporated herein Covered Services and Compensation Addendum(s) of this Agreement that are Medically Necessary (the “Contracted Services”). County will provide those Contracted Services to Members in an amount, duration and scope that is not less than the amount, duration and scope for the same services provided by County to other individuals who receive services equivalent to those Contracted Services at locations approved by CareOregon. County will ensure that Contracted Services rendered by County: (i) are within the scope of, and in accord with, the County’s and Practitioner’s license and certifications, (ii) are within the scope of privileges granted by CareOregon or the applicable Plan Partner, and (iii) meet the community professional standards relevant to the services provided. County acknowledges that the rights of Members to receive particular services is governed by the terms of the relevant Plan covering the Members.

**2.2 Plan Partner Access to Provider Services.** County acknowledges and agrees that under the requirements of this Agreement, County will provide Contracted Services on behalf of either CareOregon or the applicable Plan Partner to which a Member is assigned. County will cooperate in good faith with CareOregon and each Plan Partner in providing the Contracted Services to Members under this Agreement.

**2.3 Practitioners.** County will ensure that all of County's employed and contracted professionals who provide Contracted Services to Members (the "Practitioners"): (i) comply with all of the terms and conditions of this Agreement (unless the context requires otherwise), (ii) are credentialed by County prior to providing services to Members and meet CareOregon's credentialing and recredentialing requirements as applicable, and (iii) comply with all requests for information from CareOregon related to Practitioners' qualifications. County will not bill for or be entitled to receive any compensation for providing any services that are inconsistent with the privileges granted to a particular Practitioner. County will be solely responsible for payment of all wages, salary, compensation, payroll and withholding taxes, unemployment insurance, workers' compensation coverage and all other compensation, insurance and benefits with respect to its employees.

**2.4 Hours of Operation.** County will arrange for provision of Contracted Services during normal office hours that are not less than the hours of operation offered to County's other clients.

**2.5 Care Integration and Coordination.** County will support CareOregon and Plan Partner in the implementation of care integration and coordination activities to develop, support and promote CareOregon's and Plan Partner's efforts to integrate and coordinate care among providers to create a continuum of care that integrates mental health, addiction treatment, dental health, physical health and community-based interventions seamlessly and holistically. County will also participate with CareOregon and Plan Partner in the implementation of evidence based clinical practice guidelines. County will consult with and comply with the Provider Manual related to the referral of Members to other providers for services.

**2.6 Compliance with CareOregon Policies.** . County agrees to comply with relevant policies and procedures necessary to meet the obligations under this Agreement.

**2.7 Reporting Responsibilities.** County agrees to provide any reports, information, or documents reasonably requested by CareOregon or Plan Partner in the form and format requested by CareOregon or Plan Partner within a reasonable period of time. Such reports may include without limitation, reports regarding access, capacity to serve Members, utilization, performance measures, quality metrics, Member satisfaction, coordination, expenses and savings. Provider represents and warrants that any reports and data provided pursuant to this Section 2.8 shall be accurate.

**2.8 Qualifications.** At all times during the term of this Agreement, County shall meet each of the following qualifications (“**Provider Qualifications**”) and ensure that all Practitioners meet those qualifications:

**2.8.1** It’s Practitioners have and maintain in good standing all required or appropriate state and federal licenses, permits, registrations, certifications, approvals and authorizations to provide Covered Services under this Agreement consistent with state licensure requirements, Medicaid certification and other professional qualifications. County shall furnish evidence of the same to CareOregon on request;

**2.8.2** Has never been (unless appropriately reinstated), and is not currently, suspended, debarred, or excluded from any federal or state funded health care program or from participating in any government procurement or non-procurement contract;

**2.8.3** If compliance with any provision of this Agreement would result in the County’s or Practitioner’s loss of license, County agrees to notify CareOregon within thirty (30) days of discovery of such conflict. County shall promptly notify CareOregon of any action against County or any Practitioner’s professional license to practice, including but not limited to suspension, revocation or probation. County shall also promptly notify CareOregon if a Practitioner is convicted of a felony or County is expelled or suspended from the Medicaid program.

**2.9 Representations and Warranties.** County represents and warrants to CareOregon the following, which warranties are in addition to, and not in lieu of, any other warranties provided herein:

**2.9.1** County has the power and authority to enter into and perform the obligations described in this Agreement;

**2.9.2** This Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms;

**2.9.3** County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession; and

**2.9.4** County's Practitioners shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Covered Services.

**2.10 External Quality Review; Access to Records and Facilities.** County shall cooperate by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, Covered Services provided under this Agreement. If copies of such records are required, County shall provide those copies at no charge. County shall provide timely access to records and facilities and cooperate with CareOregon in the collection of information through consumer surveys, on-site reviews, medical chart reviews, financial reporting and financial record reviews, interviews with staff, and other information for the purposes of monitoring compliance with this Agreement, including but not limited to verification of services actually provided, and for developing and monitoring performance and outcomes. County and CareOregon agree to cooperate to ensure that the confidentiality restrictions in 42 C.F.R. Part 2-Confidentiality of Alcohol and Drug Abuse Patient Records, as may be amended from time to time ("42 C.F.R. Part 2"), are complied with prior to any review. The requirements described in this Section 2.10 shall survive termination of the Agreement.

**2.11 Medical Records.** County shall develop and maintain a medical record keeping system that:

**2.11.1** Includes sufficient detail and clarity to permit internal and external review to validate encounter submissions and to assure Medically Necessary services are provided consistent with the documented needs of the Member;

**2.11.2** Conforms to accepted professional practice; and

**2.11.3** Allows CareOregon and Plan Partners to ensure that data received from County is accurate and complete by: (i) verifying the accuracy and timeliness of reported data; (ii) screening the data for completeness, logic, and consistency; and (iii) collecting service information in standardized formats to the extent feasible and appropriate.

**2.12 Record Retention.**

**2.12.1** County shall retain, and shall cause its personnel to retain, clinical records for ten (10) years after the date of service for which claims are made. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the ten-year period, County shall retain, and shall cause its personnel to retain, the clinical records until all issues arising out of the action are resolved.

**2.12.2** County shall maintain all financial records related to this Contract in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipment and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Contract in such a manner to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Contract, are collectively referred to as "**Records.**" County acknowledges and agrees that OHA, the Secretary of State's Office, CMS, the Comptroller General of the United States, the Oregon Department of Justice Medicaid Fraud Control Unit and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for the longer of: (i) ten (10) years following final payment and termination of this Agreement; (ii) the retention period specified in this Agreement for certain kinds of records; (iii) the period as may be required by applicable law, including the records retention schedules set forth in OAR Chapters 410 and 166; or (iv) until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

**2.13 Business Associate Agreement; Consent to Disclose, Rediscover.** County acknowledges and agrees that protected health information ("PHI") disclosed by County to CareOregon may be used by or disclosed to Plan Partner pursuant to a business associate agreement between those parties when permissible by law or pursuant to a written consent in compliance with 42 C.F.R. Part 2, as may be amended from time to time. Notwithstanding the foregoing, CareOregon and County agree to comply with any and all applicable privacy laws including without limitation, 42 C.F.R. Part 2.

**2.131** County will obtain Member's written consent, as required by 42 C.F.R. Part 2 and as may be specified by CareOregon, to allow Member's patient identifying information to be disclosed by County to the Plan Partners and to CareOregon and the State of Oregon, only as such disclosure is allowed by Federal law..

**2.14 Subrogation.** County agrees to subrogate to CareOregon any and all claims related to County's provision of Services hereunder that County has or may have against any third parties related to the Contracted Services provided to Members, but only to the extent CareOregon has incurred damages. If the County also incurs damages, then this provision shall not prevent the County from pursuing its own claims.

**2.15 Compliance with Applicable Law.** County shall comply and cause all its personnel to comply with all applicable Federal, State and local laws, regulations, executive orders and ordinances.

**2.16 Informed Consent; Dignity and Respect.** County shall inform Members about available treatment options and alternatives. County shall ensure that its personnel treat Members with respect and with due consideration for their dignity and privacy to the same extent as all of County's other patients who receive services equivalent to Covered Services.

prior authorization. County will comply with policies and procedures related to prior authorization included in the Provider Manual and will not be entitled to receive any compensation if the County fails to comply with those policies and procedures.

**2.17 Nondiscrimination.** County will not discriminate in the provision of services to Members on the basis of enrollment in the Plan, race, color, national origin, ethnicity, ancestry, religion, sex, marital status, sexual orientation, mental or physical disability, medical condition or history, age or any other category protected under state or federal law.

**2.18 Compliance with Health Care Programs.** County and County's Practitioners agree to cooperate with the Medical Directors of CareOregon and the Plan Partners in the Medical Directors' review of, and in the establishment of programs, policies and procedures to, improve the quality of care delivered to Members.

**2.19 Regulatory Updates.** All terms and conditions of this Agreement are subject to federal and state Laws regulating Medicaid and Medicare . Any term, condition or provision now or hereafter required to be included in this Agreement by Laws shall supersede previous terms and conditions and

be deemed incorporated herein and binding upon and enforceable against the Parties, regardless of whether or not the term, condition or provision is expressly stated in this Agreement.

### **ARTICLE III COMPENSATION AND BILLING**

**3.1 Compensation. In consideration of all the work to be performed under this Agreement,** CareOregon shall pay County per the schedule outlined in Exhibit \_\_\_\_\_. Such payment will be made via electronic funds transfer and shall be paid monthly on a date agreed upon by CareOregon and County.. County shall be entitled to the amounts and types of compensation described in that Exhibit for furnishing Covered Services to Members in accordance with the terms and conditions of this Agreement. County agrees to accept as payment in full for Covered Services furnished to Members the compensation described in this Agreement.

**3.2 Billing.** County will be solely responsible to bill and collect for the provision of Covered Services under this Agreement. The primary payer for any compensation owed to County is CareOregon. County shall bill and collect for Covered Services in accordance with the following:

**3.2.1** County shall comply with all relevant policies and procedures regarding billing, coding, claim submission, clean claims, overpayment recovery, audits, documentation, and any other matter related to claims for compensation as described in the Provider Manual.

**3.2.2** County shall submit claims for Covered Services including all the fields and information needed to allow the claim to be processed without further information from County, and within time frames that assure all corrections have been made within one hundred twenty (120) days of the date of service.

**3.2.3** Except as specifically permitted by this Agreement, including Third Party Resource recovery, County and its personnel may not be compensated for Covered Services performed under this Agreement from any other department of the State, nor from any other source including the federal government.

**3.2.4** County and County's Practitioners will seek only to obtain compensation for Covered Services from the Members' applicable Plan Partner, and at no time will seek compensation from Members other than for those items set forth in the Plan, such as applicable copayments, coinsurance and deductible amounts. In the event of non-payment by CareOregon or the applicable Plan Partner for any reason, County and County's Practitioners will not bill or otherwise attempt to collect any amounts owed.

**3.2.5** County will bill and make reasonable efforts to collect any copayments, coinsurance and deductibles, if applicable, from Members in accord with the terms of the Plan.

**3.3 Coordination of Benefits.** County agrees to abide by policies and procedures for coordination of benefits, duplicate coverage and third-party liability policies as described in Exhibit C: Oregon Health Plan Addendum, attached hereto and the Provider Manual. If any services to which Members are entitled are also covered under any other group or non-group health plan, prepaid medical plan, insurance policy or Workers' Compensation, County and the applicable Plan Partner

shall cooperate in the investigation of all such benefits so that CareOregon or Plan Partner shall bear no more of the total cost than is required by this Agreement. Except as otherwise set forth herein, County agrees to accept the negotiated amount as payment in full, whether that amount is paid in whole or in part by the Member, Plan Partner or CareOregon, or by any combination of payers, including other payers which may pay before CareOregon or Plan Partner in the order of benefit determination.

#### **ARTICLE IV RELATIONSHIP OF THE PARTIES**

**4.1 Independent Parties.** The parties to this Agreement are independent parties, and nothing in this Agreement shall be construed or be deemed to create between them any relationship of principal and agent, partnership, joint venture, or any relationship other than that of independent parties. No party hereto, nor the respective agents or employees of either party, shall be required to assume or bear any responsibility for the acts or omissions, or any consequences thereof of the other party under this Agreement. No party hereto, nor the respective agents or employees of either party, shall be liable to other persons for any act or omission of the other party in performance of their respective responsibilities under this Agreement.

**4.2 Tax Obligations.** County shall be responsible for appropriate management of all federal and state obligations applicable to compensation or payments paid to County under this Agreement.

#### **ARTICLE V TERM AND TERMINATION**

**5.1 Term of Agreement.** When executed by both parties, this Agreement shall become effective as of the Effective Date and shall continue in effect until December 31, 2020 unless otherwise terminated pursuant to this Agreement

**5.2 Termination on Default.** In the event CareOregon or County should materially default in the performance of any obligation imposed on it by this Agreement, the non-defaulting party shall elect to provide the defaulting party with written notice describing the facts and circumstances of the default. After providing such notice, the non-defaulting party may elect, by written notice to the defaulting party, to terminate this Agreement if the defaulting party has not cured any default within thirty (30) days following the defaulting party's receipt of the applicable default notice; provided, however that with respect to any default covered by this subsection which reasonably requires additional time to cure, such failure shall not result in a termination of the Agreement so long as the defaulting party has commenced performance of a cure within the stated cure period and diligently pursues such cure to completion.

**5.3 Immediate Termination by CareOregon.** Notwithstanding any other term herein to the contrary, CareOregon may immediately terminate this Agreement or the participation of any individual health care provider providing services for County pursuant to this Agreement on delivery of written notice to County if any of the following occurs:

**5.3.1** County Practitioner does not fully meet all County Qualifications set forth in Section

2.9 of this Agreement at the time the relevant services are provided under this Agreement;

**532** Any of County's contracted or employed personnel providing or assisting in the provision of Covered Services is excluded, debarred, suspended or declared ineligible to participate in any federal health care program, or in any federal procurement or non-procurement program and is not removed by County from providing Covered Services under this Agreement;

**533** If County: (i) voluntarily files a petition in or for bankruptcy or reorganization; (ii) makes a general assignment or another arrangement for the benefit of creditors; (iii) is adjudged bankrupt; (iv) has a trustee, receiver or other custodian appointed on its behalf; or (v) has any other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding commenced against it.

**534** Professional liability insurance covering County, as required by this Agreement, is terminated without replacement coverage being obtained in amounts required by this Agreement.

**535** County's knowing or deliberate submission of false billing information to CareOregon or any Plan Partner.

**536** County is found to be in violation of or has failed to comply with any of the requirements of this Agreement that are not curable by County due to their nature.

**5.4 Termination without Cause.** The parties agree that they are contracting at will. Either CareOregon or County may terminate this Agreement without cause upon ninety (90) days' advance written notice to the other party. However, such termination shall not relieve either party of any contractual obligation(s) incurred prior to the Effective Date of the termination.

**5.5 Change in Law.** In the event state or federal laws are enacted, or state or federal regulations are promulgated which make this Agreement illegal under such laws or regulations, or this Agreement is otherwise deemed by appropriate state or federal governmental authorities to violate such laws or regulations, this Agreement shall be immediately amended to comply with such laws or regulations or be terminated.

**5.6 Continuity of Care.** In the event of termination of this Agreement, the following provisions shall apply to ensure continuity of the Covered Services to Members. County shall ensure:

**5.6.1** Continuation of Covered Services to Member for the period during which Plan Partner has paid Compensation to County, including inpatient admissions up until discharge;

**5.6.2** Notification to Members of the effective date of the termination and ensure orderly and reasonable transfer of Member care in progress, whether or not those Members are hospitalized;

**5.6.3** Timely submission of information, reports and records, including encounter data, required to be provided to CareOregon and Plan Partners during the term of this Agreement;

**5.6.4** Timely payment of valid claims for services to Members for dates of service included within the term of the Agreement; and

**5.6.5** If County continues to provide services to a Member after the date of termination of this Agreement and continuity of care is no longer required as determined by CareOregon, CareOregon shall have no responsibility to pay for such services unless otherwise agreed to by CareOregon to allow for an orderly and reasonable transfer of Member care in process; (ii) to notify Members of the termination of this Agreement, and (iii) to direct Members to other participating providers.

## **ARTICLE VI INDEMNIFICATION**

**6.1 Indemnification by CareOregon.** CareOregon hereby covenants and agrees to indemnify, protect, defend and hold County, County Commissioners, and its officers, employees affiliates and agents (collectively, "Provider Parties") harmless from and against all claims, suits, actions, losses, liabilities, settlements, damages, costs, and expenses of any nature whatsoever (including attorneys' fees and expenses at trial, at mediation, on appeal, and in connection with any petition for review) resulting from, arising out of, or relating to the activities of County or its officers, employees, subcontractors, agents, and insurers under this Agreement. ,

**6.2 Indemnification by County.** To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by Oregon Tort Claims Act, County shall defend, indemnify and hold harmless Health Share and its directors, officers, employees, affiliates and agents from and against all claims, suits, actions, losses, damages, liabilities, settlements, costs and expenses of any nature whatsoever (including reasonable attorneys' fees and expenses at trial, at mediation, on appeal, and in connection with any petition for review) resulting from, arising out of, or relating to the activities of County or its officers, employees, subcontractors, agents, insurers, and attorneys (or any combination of them) under this Agreement.

## **ARTICLE VII INSURANCE**

**7.1 Insurance.** County shall maintain, at County's sole expense, and keep in force, insurance policies, providing comprehensive general liability and professional liability or any other insurance as may be necessary to insure County and its officers, directors, agents and employees against any claim or claims for damages arising out of the providing of, or failure to provide, Covered Services pursuant to this Agreement. Evidence of insurance coverage required under this Section will be made available to CareOregon on request. County will provide CareOregon at least fifteen (15) days' advance written notice of revocation, suspension, reduction, limitation, probationary or other disciplinary action taken on any of County's required insurance coverage. A fully funded program of self-insurance shall address the above insurance requirements.

**7.2 Claims, Incidents, Suits and Disciplinary Actions.** County agrees to promptly report to CareOregon any claim made, suit filed, or disciplinary action commenced against County or its personnel relating to the provision of Covered Services under this Agreement.

**7.3 Workers' Compensation.** If County employs subject workers, as defined in ORS § 656.027, County shall comply with ORS § 656.017, and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS § 656.126(2).

## **ARTICLE VIII DISPUTES AND COMPLAINTS**

**81 Arbitration.** Except as otherwise provided in Section 8.2, any dispute, controversy, or claim arising out of the subject matter of this Agreement will be settled by arbitration before a single arbitrator in Portland, Oregon. If the parties agree on an arbitrator, the arbitration will be held before the arbitrator selected by the parties. If the parties do not agree on an arbitrator, each party will designate an arbitrator and the arbitration will be held before a third arbitrator selected by the designated arbitrators. Each arbitrator will be an attorney knowledgeable in the area of business and healthcare law. The arbitration will be initiated by filing a claim with Arbitration Service of Portland and will be conducted in accordance with the then-current rules of Arbitration Service of Portland. The resolution of any dispute, controversy, or claim as determined by the arbitrator will be binding on the parties. Judgment on the award of the arbitrator may be entered by any party in any court having jurisdiction.

**82 Compelling Arbitration.** A party may seek from a court an order to compel arbitration, or any other interim relief or provisional remedies pending an arbitrator's resolution of any dispute, controversy, or claim. Any such action, suit, or proceeding will be litigated in courts located in Multnomah County, Oregon. For the purposes of the preceding sentence, each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon. If a claim must be brought in a federal forum, then it shall be conducted solely and exclusively within the United States District Court for the District of Oregon.

**83 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

**84 Dispute Resolution.** Before a Party initiates arbitration regarding a claim or dispute under this Agreement (a “Dispute”), the Parties shall meet and confer in good faith to seek resolution of the Dispute. If a Party desires to initiate the procedures under this paragraph, the Party shall give notice (a “Dispute Initiation Notice”) to the other Party providing a brief description of the nature of the Dispute, explaining the initiating Party’s claim or position in connection with the Dispute, including relevant documentation, and naming an individual with authority to settle the Dispute on such Party’s behalf. Within 20 days after receipt of a Dispute Initiation Notice, the receiving Party shall give a written reply (a “Dispute Reply”) to the initiating Party providing a brief description of the receiving Party’s position in connection with the Dispute, including relevant documentation, and naming an individual with the authority to settle the Dispute on behalf of the receiving Party. The Parties shall promptly make an investigation of the Dispute, and commence discussions concerning resolution of the Dispute within 20 days after the date of the Dispute Reply. If a Dispute has not been resolved within 30 days after the Parties have commenced discussions regarding the Dispute, either Party may submit the dispute to arbitration subject to the terms and conditions herein. Failure to comply with this paragraph shall not bar a party from submitting the Dispute to arbitration; however, a Party’s failure to take advantage of this informal process may be considered by the arbitrator in making any award of attorneys’ fees hereunder.

## ARTICLE IX GENERAL PROVISIONS

### 9.1 Amendments.

**9.1.1 Mutual Amendment.** The terms of this Agreement may be amended from time to time in a writing signed by CareOregon and County.

**9.1.2 Amendments Required by Law.** CareOregon may modify this Agreement immediately to comply with changes in state or federal laws or regulations, as described in Section 5.5 of this Agreement.. While CareOregon will strive to give advance notice of such Amendments to County, advance notice may not be possible if CareOregon is required to immediately amend this Agreement to comply with changes in Applicable Laws.

### 9.2 Notices and Communications between the Parties.

**9.2.1 Certain Notices Required Under This Agreement.** The following notices must be sent via overnight delivery with delivery confirmation or certified mail, return receipt requested:

- (a) All notices for termination of this Agreement; and
- (b) All requests for mediation and/or arbitration.

**9.2.2 All Other Notices and Communications.** All other notices and communications between the parties which are necessary for the proper administration of this Agreement (including notices required within this Agreement which are not included in Section 9.2.1 above) may be communicated via regular U.S. mail, confirmed facsimile or confirmed electronic mail.

**9.2.3 Confidential and Protected Health Information.** If a notice or communication includes information which is confidential or proprietary to either or both parties and/or which includes PHI as defined under HIPAA, then the following restrictions must be observed when communicating such information:

- (a) U.S. Mail/Certified Mail/Overnight Delivery: no additional requirements.
- (b) Facsimile Transmission: The information must be prefaced by a formal cover sheet noting the confidentiality of such information.
- (c) Web Site: Not a permitted method of notice or communication for confidential information and PHI, unless the Web Site is secured or the information appropriately encrypted.
- (d) Electronic Mail: Not a permitted method of notice or communication for confidential information and PHI, unless the electronic mail is secured or the information is appropriately encrypted.

**9.2.4 Address for Notices.** Notices to County shall be sent to: (i) the facsimile or postal address of County's billing service location or any other revised postal address or facsimile provided by County to CareOregon in writing; or (ii) the electronic mail address designated by County for electronic notices. Notices to CareOregon shall be sent to:

CareOregon, Inc.  
315 SW 5<sup>th</sup> Avenue  
Portland, Oregon 97204  
Attention: Contract Department

Or any revised address provided to County in writing. The facsimile, postal address or electronic mail address for notice may be changes on prior written notice to the other party.

**9.2.5 When Made.** For notices described under Section 9.2.1 above, the notice will be deemed to have been made on the date it was delivered. For notices and communications described under Section 9.2.2, the notice or communication will be deemed to have been made when the facimile or email is confirmed.

### **9.3 Assignment of Contract, Successors in Interest.**

**9.3.1** CareOregon shall be permitted to assign or transfer its interest in this Agreement without prior consent of County.

**9.3.2** County shall not assign or transfer its interest in this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or in any other manner, without prior written consent of CareOregon. Any such assignment or transfer, if approved, is subject to such conditions and provisions as CareOregon may deem necessary. No approval by CareOregon of any assignment or transfer of interest shall be deemed to create any obligation of CareOregon in addition to those set forth in this Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.

**9.4 Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

**9.5 Entire Agreement; Amendments.** This Agreement and Exhibits constitute the full and complete expression of the rights and obligations of the parties with respect to the subject matter and supersedes all prior understandings and agreements, whether oral or written. This Agreement may only be amended pursuant to the provisions described in Section 9.1.

**9.6 Trade Secrets.** Except as otherwise required by law, County agrees not to disclose to any third party any trade secrets that are disclosed to it as a result of its participation in this Agreement. "Trade Secrets" shall mean information that is defined as a trade secret under ORS 192.345(2) CareOregon considers this Agreement to be a trade secret. County agrees that it will not make use of, disseminate, disclose or in any way circulate any trade secrets. Trade secrets may be used as necessary to perform the services required under this Agreement and may be disclosed by a party to this Agreement to its own employees that require access to such information for the purposes of this Agreement. This paragraph does not prevent disclosure in connection with an audit or survey in the normal course of business by regulatory authorities, certified public accountants, accrediting institutions and the like; provided the recipient is under a duty to protect the confidentiality of the information disclosed.

**9.7 Waiver.** The waiver of any provision of this Agreement shall only be effective if set forth in writing and signed by the waiving party. Any such or other waiver shall not operate as, or be deemed to be, a continuing waiver of the same or of any other provision of this Agreement.

**9.8 Third-Party Rights.** The parties do not intend the benefits of this Agreement to inure to any third person not a signatory to this Agreement. The Agreement shall not be construed as creating any right, claim, or cause of action against any party by any person or entity not a party to this Agreement except as otherwise described in this Agreement.

**9.9 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all counterparts together shall constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of the Agreement.

*[Signature Page Follows]*

The foregoing terms are agreed to by the parties.

**CareOregon, Inc.**

By: \_\_\_\_\_

Name: Eric C. Hunter \_\_\_\_\_

Title: Chief Executive Officer \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Clackamas County**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

TIN: \_\_\_\_\_

## BUSINESS ASSOCIATE AGREEMENT

CareOregon, Inc.  
315 SW Fifth Avenue  
Portland, Oregon 97204

THE COMPANIES

Clackamas County  
2051 Kaen Road  
Oregon City, OR 97045

BUSINESS ASSOCIATE

This Business Associate Agreement (“BAA”) is between the Companies and Business Associate.

Business Associate and the Companies have entered into an CareOregon Clackamas County Agreement effective January 1, 2020 (“Agreement”). The parties’ activities pursuant to the Agreement sometimes may involve (i) the disclosure of PHI by the Companies (or another business associate of the Companies) to Business Associate, (ii) the use or disclosure by Business Associate of PHI received from the Companies and (iii) the transmission by Electronic Media or the maintenance in Electronic Media of Individually Identifiable Health Information by Business Associate. Accordingly, the relationship between the Companies and Business Associate is subject to provisions of the HIPAA Rules. The Companies and Business Associate intend to protect the privacy of PHI and the security of electronic PHI held by Business Associate in connection with the Agreement in compliance with this BAA, the HIPAA Rules and other applicable laws.

### 1. Definitions

Capitalized terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Rules.

- (a) “Agent” means an agent as used and defined under the HIPAA Rules and federal common law.
- (b) “Breach” has the same meaning as in 45.C.F.R. § 164.402.
- (c) “Designated Record Set” has the same meaning as in 45 C.F.R. 164.501.
- (d) “Discovery” means the first day on which a Breach is known, or reasonably should have been known, to Business Associate (including any person, other than the individual committing the Breach, who is an employee or officer of Business Associate) or any Agent or Subcontractor of Business Associate.

- (e) “Effective Date” means the date first written above.
- (f) “Electronic Media” means the same as in 45 C.F.R. § 160.103.
- (g) “Electronic Protected Health Information” or “EPHI” means the same as in 45 C.F.R. § 160.103, limited for purposes of this BAA to EPHI received by Business Associate from, or received or created by Business Associate on behalf of, the Companies.
- (h) “Electronic Transactions Rules” means 45 CFR Part 162.
- (i) “Fundraising” means raising funds for the Business Associate’s own benefit as governed by 45 CFR § 164.514.
- (j) “HIPAA Rules” means the Privacy Rules, the Security Rules, and the Electronic Transactions Rules.
- (k) “Individual” means a person to which specific PHI applies.
- (l) “Marketing” means the same as in 45 CFR § 164.501.
- (m) “PHI” or “Protected Health Information” means the same as in 45 CFR § 160.103, limited for purposes of this BAA to PHI received by Business Associate or its Agent or Subcontractor from, or received or created by Business Associate, its Agent or Subcontractor on behalf of, the Companies.
- (n) “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.
- (o) “Required by Law” means the same as in 45 C.F.R. § 164.103.
- (p) “Secretary” means the Secretary of the United States Department of Health and Human Services or the Secretary’s designee.
- (q) “Security Incident” means the same as in 45 CFR § 164.304.
- (r) “Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information in 45 CFR Part 164, Subpart C.
- (s) “Subcontractor” means the same as in 45 C.F.R. § 160.103.
- (t) “Unsecured PHI” means the same as the term “unsecured protected health information” in 45 C.F.R. § 164.402.

**2. Obligations and Activities of Business Associate**

- (a) Business Associate agrees to not use or disclose PHI other than as permitted or required by this BAA or as Required by Law.

- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this BAA.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or a Subcontractor or Agent of Business Associate in violation of the requirements of this BAA.
- (d) Business Associate agrees to report to the Companies any use or disclosure of PHI by Business Associate or a Subcontractor or Agent of Business Associate not permitted under this BAA within five business days after Business Associate becomes aware of such disclosure.
- (e) Business Associate agrees to report to the Companies any Security Incident, Breach of Unsecured PHI or any use or disclosure of PHI that is not authorized by this BAA of which Business Associate becomes aware.
- (f) Business Associate will ensure that any Subcontractor or Agent of Business Associate using or disclosing PHI has executed a business associate agreement containing substantially the same terms as this BAA, including the same restrictions and conditions that apply through this BAA to Business Associate with respect to such PHI. Business Associate will ensure that any Agent to whom Business Associate provides PHI received from, or created or received by Business Associate on behalf of, the Companies has executed an agreement containing substantially the same restrictions and conditions that apply through this BAA to Business Associate with respect to such PHI. Business Associate will provide, upon written request by the Companies, a list of any such Subcontractors of Business Associate and any Agents of Business Associate using or disclosing PHI.
- (g) Business Associate will ensure that any permitted disclosure will be only as minimally necessary for the purpose of the disclosure.
- (h) Business Associate agrees to provide access, at the reasonable request of, and in the time and manner designated by, the Companies to PHI in a Designated Record Set, to the Companies or, as directed by the Companies, to an Individual in order to meet the requirements under 45 CFR § 164.524. If the Companies request an electronic copy of PHI that is maintained electronically in a Designated Record Set in Business Associate's custody or control or the custody or control of a Subcontractor or Agent of Business Associate, Business Associate will provide such PHI in the electronic format requested by the Companies unless the PHI is not readily produced in such format, in which case Business Associate will provide another reasonable electronic format as agreed to by the parties and the Individual requesting such PHI.
- (i) Within 30 days of receiving a request by the Companies, Business Associate will document disclosures of PHI and information related to such disclosures in such form as would be required for the Companies to respond to a request by an Individual for an accounting of disclosures in accordance with 45 C.F.R. § 164.528.
- (j) Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Companies pursuant to 45 CFR § 164.526, at the request of the Companies or of the Individual concerned.

(k) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, the Companies available to the Companies or, at the request of the Companies, to the Secretary or other regulatory official as directed by the Companies, in a time and manner requested by the Companies or such official for the purpose of determining the Companies' or Business Associate's compliance with the HIPAA Regulations.

(l) Business Associate agrees to implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it receives from, or creates or receives on behalf of, the Companies as required by the Security Rule. Business Associate will ensure that any Agent or Subcontractor to whom Business Associate provides EPHI agrees to implement reasonable and appropriate administrative, physical and technical safeguards to reasonably and appropriately protect the confidentiality, integrity and availability of such EPHI. Business Associate agrees to comply with Sections 164.306, 164.308, 164.310, 164.312, and 164.316 of Title 45, Code of Federal Regulations with respect to all EPHI.

(m) In conducting any electronic transaction that is subject to the Electronic Transactions Rule on behalf of the Companies, Business Associate agrees to comply with all requirements of the Electronic Transactions Rule that would apply to the Companies if the Companies were conducting the transaction itself. Business Associate agrees to ensure that any Agent or Subcontractor of Business Associate that conducts standard transactions with PHI of the Companies will comply with all of the requirements of the Electronic Transactions Rule that would apply to the Companies if the Companies were conducting the transaction itself.

(n) Business Associate shall not disclose PHI to any member of its workforce unless Business Associate has advised such person of Business Associate's privacy and security obligations under this BAA, including the consequences for violation of such obligations. Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in violation of this BAA or applicable law.

(o) Business Associate shall notify the Companies of any Breach without unreasonable delay, and in no case later than five business days after Discovery of the Breach. Business Associate will require its Subcontractors and Agents to notify the Companies of a Discovery of a Breach at the same time its Subcontractors and Agents notify the Business Associate and the following shall apply:

(1) Notice to the Companies shall include, to the extent possible: (i) the names of the Individual(s) affected by the Breach; (ii) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known; (iii) a description of the types of Unsecured PHI that were involved in the Breach; (iv) any steps affected Individuals should take to protect themselves from potential harm resulting from the Breach; (v) a description of what Business Associate is doing to investigate the Breach, to mitigate harm to the affected Individual(s), and to protect against further Breaches; (vi) any notice Business Associate has given pursuant to 45 CFR § 164.404 and (vii) any other information that the Companies reasonably requests.

(2) After receipt of notice, from any source, of a Breach involving PHI used, disclosed, maintained, or otherwise possessed by Business Associate or any Subcontractor or Agent of Business Associate, the Companies may: (i) require Business Associate, at Business Associate's sole expense, to use a mutually agreed upon written notice to notify, on the Companies' behalf, the affected Individual(s), in accordance with the notification requirements set forth in 45 CFR § 164.404, without unreasonable delay, but in no case later than sixty (60) days after discovery of the Breach; or (ii) elect to itself provide such notice. Business Associate shall indemnify, hold harmless, and defend the Companies from and against any and all costs (including mailing, labor, administrative costs, vendor charges, and any other costs determined to be reasonable by the Companies), losses, penalties, fines, and liabilities arising from or associated with the Breach, including without limitation, the costs of the Companies' actions taken to: (i) notify the affected Individual(s) of and to respond to the Breach; (ii) mitigate harm to the affected Individual(s); (iii) respond to questions or requests for information about the Breach; and (iv) fines, damages or penalties assessed against the Companies on account of the Breach of Unsecured PHI.

(p) Business Associate shall not use or disclose PHI that is genetic information, or sell (or directly or indirectly receive remuneration in exchange for), any PHI in violation of 45 CFR §164.502(a)(5).

(q) Business Associate shall not use or disclose PHI for Marketing or Fundraising purposes without prior written consent from the Companies, subject to any conditions of such consent.

### **3. Permitted Uses and Disclosures by Business Associate**

(a) Subject to this BAA and applicable law, Business Associate may use or disclose PHI in connection with functions, activities or services for, or on behalf of, the Companies under the Agreement, provided that such use or disclosure would not violate the HIPAA Rules or the Companies' own policies and procedures concerning compliance with the "minimum necessary" standard under 45 CFR § 164.502(b) if performed by the Companies.

(b) Business Associate may use and disclose PHI for the proper management and administration of Business Associate or to carry out the legal obligations of Business Associate, but only if:

(1) The disclosure is required by Law; or

(2) Business Associate receives reasonable assurances from any party to whom the PHI is disclosed that: (i) the PHI will be held confidentially by that party; (ii) the PHI will be used or further disclosed by that party only as required by law or for the purpose for which it was disclosed to that party; and (iii) the party agrees to notify Business Associate of any Breaches of which the party becomes aware.

**4. Obligations of the Companies**

(a) The Companies shall provide Business Associate with its notice of privacy practices produced in accordance with 45 CFR § 164.520 and any changes to such notice while this BAA is in effect.

(b) The Companies shall provide Business Associate with any changes in or revocation of permission by any Individual for use or disclosure of PHI if such change or revocation affects Business Associate's permitted or required uses and disclosures of the PHI.

(c) The Companies shall notify Business Associate of any restrictions on the use or disclosure of PHI that the Companies have agreed to in accordance with 45 CFR § 164.522 to the extent that such restrictions affect Business Associate's use or disclosure of PHI.

**5. Term and Termination**

(a) This BAA shall be effective as of the Effective Date and shall terminate when all PHI provided is destroyed or returned to the Companies, or, if it is infeasible to return or destroy PHI, as long as protections are extended to such PHI in accordance with (c)(2).

(b) Upon the Companies obtaining knowledge of a material breach or violation of this BAA by Business Associate, the Companies shall take one of the following actions:

(1) If the Companies determine that the breach or violation is curable, the Companies shall provide an opportunity for Business Associate to cure the breach or end the violation within a reasonable time period set by the Companies, which shall not exceed 90 days. If the breach or violation is not cured or ended within the time set by the Companies, the Companies may: (i) immediately terminate this BAA and the Agreement; or (ii) suspend performance by the Companies under the Agreement until such breach or violation is cured.

(2) If the Companies determine that the breach or violation is not curable, The Companies immediately terminate this BAA and the Agreement.

(3) If the Companies determine that neither a termination of this BAA and the Agreement nor a cure of a breach or violation is feasible, the Companies may take such other appropriate actions to remedy, correct or mitigate the breach or violation as the Companies shall determine.

(4) In addition to the forgoing, the Companies may immediately terminate this BAA and the Agreement if the Companies determine that Business Associate has violated a material term of this BAA concerning the Security Rule.

(c) Effect of Termination.

(1) Except as provided in paragraph (c) (2), upon termination of this BAA for any reason, Business Associate shall return or destroy all PHI in possession of Business Associate, its Agents or Subcontractors. Business Associate, its Agents and Subcontractors shall retain no copies of the PHI.

(2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to the Companies notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI (including PHI held by Agents or Subcontractors of Business Associate) and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate, its Agents or Subcontractors maintain such PHI.

## **6. Indemnification**

Business Associate agrees to indemnify and hold harmless the Companies from direct losses and damages suffered as a result of Business Associate's breach of its obligations under this BAA, including but not limited to direct losses and damages relating to third party claims. The obligations under this Section 6 regarding indemnification will survive any expiration or termination of this BAA.

## **7. Miscellaneous**

(a) A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.

(b) The Parties agree to take such action as is necessary to amend this BAA from time to time for the Companies to comply with the requirements of the HIPAA Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, as amended.

(c) The respective rights and obligations of Business Associate under Section 5 of this BAA shall survive the termination of this BAA.

(d) Any ambiguity in this BAA shall be resolved in favor of a meaning that permits the Companies to comply with the HIPAA Rules and other applicable law. The section and paragraph headings of this BAA are for the convenience of the reader only, and are not intended to act as a limitation of the scope or meaning of the sections and paragraphs themselves.

(e) Subject to the following, this BAA shall not be assigned or otherwise transferred by a party without the prior written consent of the other party, which consent shall not be unreasonably withheld. However no such consent shall be required for either party's assignment or transfer of this BAA in connection with a merger, sale or transfer of all or substantially all of the business or assets of the assigning party.

(f) The invalidity of any term or provision of this BAA will not affect the validity of any other provision. Waiver by any party of strict performance of any provision of this BAA will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision on the same or any other occasion.

(g) Any notices permitted or required by this BAA will be addressed to the receiving party at the address shown at the top of this BAA or at such other address as either party may provide to the other.

(h) This BAA may be executed in multiple counterparts, all of which together will constitute one agreement, even though all parties do not sign the same counterpart.

(i) To the extent of any inconsistency between any other agreement between the parties and this BAA, the provisions of this BAA shall prevail.

(j) This BAA supersedes any other business associate agreement in effect among or between the parties to this BAA.

IN WITNESS WHEREOF, the parties have caused this Business Associate Agreement to be executed on their behalf by their duly authorized representatives' signatures as of the dates set forth below.

**THE COMPANIES**

**CareOregon, Inc.**

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BUSINESS ASSOCIATE**

**Clackamas County**

By \_\_\_\_\_  
NAME:

Title: \_\_\_\_\_

Date: \_\_\_\_\_

January 23, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement with Clackamas Community College for  
HB2017 State Transportation Improvement Fund Regional Coordination Program Funds  
for Expansion of the CCC Xpress Shuttle

<b>Purpose/Outcomes</b>	The purpose of this grant is to pass through funding to Clackamas Community College to fund expansion of their existing shuttle service CCC Xpress
<b>Dollar Amount and Fiscal Impact</b>	The maximum agreement amount is \$273,083.24. The agreement is funded through HB 2017 funds received under agreement with TriMet
<b>Funding Source</b>	HB 2017 State Transportation Improvement Fund (STIF) Discretionary Funds.
<b>Duration</b>	Upon signature of both parties until June 30, 2021
<b>Previous Board Action</b>	062719-A10 Intergovernmental Agreement with Tri-County Metropolitan District of Oregon for HB 2017 transportation funding
<b>Strategic Plan Alignment</b>	1. This aligns with the Social Service Division's strategic priority to provide services that allow individuals and families to remain in their own homes and communities. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
<b>Counsel Review</b>	County Counsel approved the agreement on 1/2/2020
<b>Contact Person</b>	Brenda Durbin, Director – Social Services Division – (503) 655-8641
<b>Contract No.</b>	H3S9612

**BACKGROUND:**

The Social Services Division of the Department of Health, Housing, and Human Services requests approval of an intergovernmental agreement with Clackamas Community College (CCC) for Special Transportation Improvement Fund (STIF) for expansion of the CCC Xpress Shuttle to provide transit service between Oregon City and Clackamas.

House Bill 2017 (HB 2017), titled Keep Oregon Moving, implemented a new 0.1% employee payroll tax to fund public transportation. This tax went into effect July 1, 2018 and provides a dedicated source of funding for expanding public transportation service in Oregon. This new funding source is called the Statewide Transportation Improvement Fund (STIF).

Under the STIF program rules, TriMet is the Qualified Entity (direct recipient) of funds for Washington, Multnomah, and Clackamas Counties. The funds generated within each transit/transportation district's boundaries will go directly to that transit provider.

*Healthy Families. Strong Communities.*

This agreement also includes funds generated within the TriMet Service district for the Regional Coordination Program. TriMet has set aside funds as part of their plan to fund projects in Clackamas County that enhance transit access opportunities. Clackamas County has received funds on behalf of Clackamas Community College to expand their existing CCC Xpress Shuttle project. CCC Xpress provides bus service between the CCC Oregon City campus and the Harmony Road campus in Clackamas, as well as Clackamas Town Center. This service is for students attending CCC but is also open to general public. These funds will allow CCC to provide service during summer term as well as evening service.

This agreement is effective upon execution and continues until June 30, 2021. County Counsel approved the agreement on 1/2/2020. No county general funds are involved.

**RECOMMENDATION:**

Staff recommends the Board approval of this agreement and that Richard Swift, H3S Director, be authorized to sign on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, H3S Deputy 1 For

Richard Swift, Director  
Health, Housing, and Human Services Department

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN CLACKAMAS COUNTY  
AND CLACKAMAS COMMUNITY COLLEGE**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Clackamas Community College ("Agency"), a unit of local government, collectively referred to as the "Parties" and each a "Party."

**RECITALS**

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

1. ORS 184.751 establishes the Statewide Transportation Improvement Fund ("STIF"), which appropriates funds to the Oregon Department of Transportation to finance investments and improvements in public transportation services.
2. The STIF Formula Fund is intended to improve Public Transportation Services for current and potential future Oregon transit users by distributing moneys to Qualified Entities. STIF Formula Funds are not intended to supplant local funding sources to maintain existing services.
3. The Commission has approved TriMet's multi-year plan for use of STIF Formula Funds through the end of Fiscal Year 2021. TriMet is a recipient of STIF Formula Funds as it is authorized to receive STIF Formula Funds directly from the Oregon Department of Transportation. TriMet's STIF plan consists of numerous projects to provide public transportation services in TriMet's area of responsibility based on anticipated STIF Formula Funds.
4. County is authorized to receive STIF Formula Funds and provide public transportation services in and around Clackamas County, Oregon. County provides public transportation services in TriMet's "Area of Responsibility," as that phrase is defined by OAR 732-040-0005(5). County may disburse STIF Formula Funds to transportation service providers as outlined in the subrecipient agreement entered into by and between County and TriMet (GP200809EV) (the "Subrecipient Agreement"), attached hereto as Exhibit C and incorporated by this reference herein.
5. TriMet's STIF Plan anticipates sufficient future STIF Formula Funds for Clackamas County for a project or projects that provide Public Transportation Services as specified in this Agreement.
6. Pursuant to ORS Chapter 184 and OAR Chapter 732, Divisions 40 and 42, Clackamas County and CCC enter into this Agreement for the sole purpose of disbursing the approved STIF Formula Funds to Agency in order for Agency to complete one or more tasks specified in TriMet's STIF plan. **Funds shall be used solely for the project(s) identified in the STIF Plan and shall not be used for any other purpose.**

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2021, whichever is sooner.

The parties acknowledge that Work has been performed pursuant to this Agreement prior to its execution and hereby ratify the Work performed beginning on June 1, 2019, through execution of this agreement, in accordance with the terms of this Agreement.

2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed \$273,083.24, for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**
  - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
  - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
  - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
6. **Termination.**
  - A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
  - B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the

Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.

- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
  - D. Either party may terminate this Agreement in the event that party fails to receive expenditure authority, including but not limited to receipt of state or federal funds, including STIF Formula Funds, sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either party is prohibited from paying for such work from the planned funding source.
  - E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
7. **Indemnification.** The Agency shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Agency, its subcontractors, agents, or employees. The Agency agrees to indemnify, hold harmless and defend Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Agency or the Agency's employees, subcontractors, or agents.

However, neither Agency nor any attorney engaged by Agency shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Agency settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

- 8. **Insurance** Agency shall maintain insurance, or self-insurance, in the amounts provided in Exhibit B of the Subrecipient Agreement .
- 9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon

receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Teresa Christopherson or their designee will act as liaison for the County.

**Contact Information:**

Teresa Christopherson  
Administrative Services Manager  
Clackamas County  
2051 Kaen Road Oregon City, OR 97045  
P: 503-650-5718

Ray Atkinson or their designee will act as liaison for the Agency.

**Contact Information:**

Ray Atkinson  
Transportation Systems Analyst  
Clackamas Community College  
19600 Molalla Ave, Oregon City, OR 97045  
P: 503-594-0989

**10. General Provisions.**

A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein.

Agency shall comply with ORS 184.751 through 184.766 and the provisions of OAR Chapter 732, Divisions 40 and 42, as may be amended, and the terms of the of the Subrecipient Agreement, as if Agency were the subrecipient under the Subrecipient Agreement.

Agency shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable State or Federal agencies providing funding for performance under this Agreement, whether or not specifically referenced herein.

Failure to comply with such obligations is a material breach of this Agreement.

- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the District's Project Manager.
- F. **Hazard Communication.** Agency shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon

County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.

- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **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.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. 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 and all necessary approvals have been obtained. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written

approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement. Agency shall not be relieved of any responsibility for performance of Agency's duties under this Agreement, regardless of any subcontract entered into. Agency shall require any subcontractor performing services under this Agreement to enter into a written agreement with Agency before the commencement of services, which shall require the subcontractor to comply with ORS 184.751 through 184.766 and the provisions of OAR Chapter 732, Divisions 40 and 42, as may be amended, and the terms of this Agreement. Agency shall specifically include in all subcontracts a requirement that the subcontractor shall be bound as provided in this Agreement and exhibits thereto.

- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (B), (C), (D), (G), (H), (I), (J), (L), (P), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement. This includes, but is not limited to, Agency's obligation to take all necessary steps, and execute and deliver any and all necessary written instruments, necessary for County to comply with applicable State or Federal funding requirements.
- Q. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same

degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

**IN WITNESS HEREOF**, the Parties have executed this Agreement by the date set forth opposite their names below.

**Clackamas County**

Commissioner: Jim Bernard, Chair  
Commissioner: Sonya Fischer  
Commissioner: Ken Humberston  
Commissioner: Paul Savas  
Commissioner: Martha Schrader

**Clackamas Community College**

**Signing on Behalf of the Board:**

\_\_\_\_\_  
Richard Swift, Director  
Health, Housing & Human Services Dept

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Alissa Mahar  
VP of College Services

\_\_\_\_\_  
1-9-2020  
Date



GEORGE MARLTON, JD  
PROCUREMENT DIVISION DIRECTOR

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

Board of County Commissioners  
Clackamas County

Members of the Board:

**Authorization to Purchase a Freightliner Loader Truck from McCoy Freightliner of Portland for the Department of Transportation and Development**

<b>Purpose/Outcomes</b>	Approval to purchase a Freightliner loader hot patch truck for the Clackamas County Department of Transportation and Development.
<b>Dollar Amount and Fiscal Impact</b>	\$221,227.21
<b>Funding Source</b>	Clackamas County Transportation Maintenance Division 215-7433-00-485520
<b>Duration</b>	To expire December 30, 2020
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Alignment</b>	This project will provide strong infrastructure and ensure safe communities by maintaining the County's existing road infrastructure.
<b>Counsel Review</b>	N/A
<b>Contact Person</b>	Warren Gadberry, Fleet Manager 503-650-3988

**BACKGROUND:**

Clackamas County Department of Transportation and Development has requested that Clackamas County Procurement purchase a Freightliner Hot Patch Truck from McCoy Freightliner of Portland to replace their current hot patch truck that has reached the end of its useful life. These trucks are used to maintain an adequate and safe surface on County roads.

**Procurement Process:**

Approval of this purchase is being requested under the Local Contract Review Board Rule C-046-0440, Authority of Cooperative Procurements. The purchase will be made off cooperative contract #5560 State of Oregon Price Agreement with JMR Group LLC dba McCoy Freightliner of Portland for Freightliner.

**RECOMMENDATION:**

Staff recommends the Board of County Commissioners approve this purchase.

Respectfully submitted,

Tralee Thorn  
Clackamas County Procurement  
Placed on the Agenda of \_\_\_\_\_ by Procurement and Contract Services

Board Approval \_\_\_\_\_

DRAFT

Approval of Previous Business Meeting Minutes:  
January 9

# BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at

<https://www.clackamas.us/meetings/bcc/business>

**Thursday, January 9, 2020 – 10:00 AM**

**Public Services Building**

**2051 Kaen Rd., Oregon City, OR 97045**

**PRESENT:** Chair Jim Bernard  
Commissioner Sonya Fischer  
Commissioner Ken Humberston  
Commissioner Paul Savas  
Commissioner Martha Schrader

## **CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

## **I. PRESENTATION** *(Following are items of interest to the citizens of the County)*

### 1. Selection of the Board of Commissioner's Vice Chair for 2020

The Commissioners discussed the appointment

Chair Bernard asked for a motion

#### **MOTION:**

Commissioner Savas: I move we appoint Commissioner Schrader as Vice Chair for 2020

Commissioner Humberston: Second.

~Board Discussion~

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

## **II. CITIZEN COMMUNICATION**

<https://www.clackamas.us/meetings/bcc/business>

1. Steven Graeper, Rhododendron – Gave thanks to the Commissioners for adding improvements to the road on the mountain to the long range work program and was supportive of the transportation growth management grant that on consent agenda item B.1.

2. Thelma Haggemiller, Oak Grove – Spoke regarding Chair Bernard's legal fees and said the taxpayers should not pay the bill that was incurred by the Chair.

3. Les Poole, Gladstone – Spoke on tolling that people need to be able to vote on that, the County Budget & expenditures and Chair Bernard's legal fees

~Board Discussion~

Chair Bernard announced the Board would recess as the Board of County Commissioners and convene as the Board of Health for the next item.

## **III. BOARD OF PUBLIC HEALTH**

### 1. Presentation - Housing: A Public Health Issue

Abe Moland, H3S presented the PowerPoint along with Jill Smith and Rich Swift of Health, Housing & Human Services

~Board Discussion~

Chair Bernard announced the Board would adjourn as the Board of Health and reconvene as the Board of County Commissioners for the remainder of the meeting.

#### **IV. PUBLIC HEARINGS**

1. Second Reading and Adoption of **Ordinance No. 01-2020** Amending County Code Chapter 2.07, Compliance Hearings Officer 1st reading was 12-12-19

Jeff Munns, Assistant County Counsel presented the report.

Chair Bernard opened the public hearing and asked if anyone would like to speak, seeing none he closed the public hearing and asked for a motion.

**MOTION:**

Commissioner Humberston: I move we read the Ordinance by title only.

Commissioner Savas: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

Chair Bernard asked the Clerk to read the Ordinance by title only.

He then asked for a motion

**MOTION:**

Commissioner Humberston: I move we Adopt Ordinance No. 01-2020 Amending County Code Chapter 2.07, Compliance Hearings Officer

Commissioner Schrader: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

2. Approval of a **Board Order No. 2020-01** for Boundary Change Proposal CL 19-006 Annexation to Clackamas County Service District No.1

Ken Martin, Boundary Change Consultant presented the report.

Chair Bernard opened the public hearing and asked if anyone would like to speak, seeing none he closed the public hearing and asked for a motion.

**MOTION:**

Commissioner Humberston: I move we approve the Board Order for Boundary Change Proposal CL 19-006 Annexation to Clackamas County Service District No. 1

Commissioner Savas: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

3. Approval of a **Board Order No. 2020-02** for Boundary Change Proposal CL 19-007 Annexation to Clackamas County Service District No. 1

Ken Martin, Boundary Change Consultant presented the report.

Chair Bernard opened the public hearing and asked if anyone would like to speak, seeing none he closed the public hearing and asked for a motion.

**MOTION:**

Commissioner Humberston: I move we approve the Board Order for Boundary Change Proposal CL 19-007 Annexation to Clackamas County Service District No. 1  
Commissioner Savas: Second.  
all those in favor/opposed:  
Commissioner Fischer: Aye.  
Commissioner Humberston: Aye.  
Commissioner Savas: Aye.  
Commissioner Schrader: Aye.  
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

**V. CONSENT AGENDA** Chair Bernard asked the Clerk to read the consent agenda by title, then asked for a motion.

**MOTION:**

Commissioner Humberston: I move we approve the consent agenda as amended.  
Commissioner Savas: Second.  
~Board Discussion~  
all those in favor/opposed:  
Commissioner Humberston: Aye.  
Commissioner Savas: Aye.  
Commissioner Schrader: Aye.  
Commissioner Fischer: Aye.  
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

**A. Health, Housing & Human Services**

1. Approval to Enter into a Grant Agreement to Coordinate the Youth Homelessness Demonstration Program, Housing and Urban Development (HUD) Grant – *Community Development*
2. Approval of a Local Subrecipient Grant Agreement with Oregon Child Development Coalition to provide Preschool Promise Program Services – *CFCC*
3. Approval of Intergovernmental Agreement No. 160440, Amendment with The State of Oregon, Department of Human Services, Aging and People with Disabilities Division for the Provision of Services to Clackamas County Residents – *Social Services*
4. Approval to Accept Award and Sign an Intergovernmental Agreement with the State of Oregon, Housing and Community Services Department to administer Winter Shelter Funds for Warming Season 19-20 – *Social Services*
5. Approval of Agreement No. 18623 with Ride Connection, Inc. to Provide Funding for Rides Provided by Members of the Clackamas County Transportation Consortium – *Social Services*
6. Approval of Agreement No. 18624 with Ride Connection, Inc. to Provide Funding for Rides Provided by the Social Services Division-Transportation Reaching People Unit – *Social Services*

7. Approval of Amendment No. 2 to the Intergovernmental Agreements with Clackamas Fire District #1, City of Lake Oswego and Tualatin Valley Fire & Rescue District for Advanced Life Support Emergency Medical System Integration. – *Public Health*
8. Approval of Amendment No. 06 to the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority for Operation as the Local Public Health Authority for Clackamas County – *Public Health*
9. **REMOVED** - Approval of a Personal Services Contract with Cascadia Behavioral Healthcare for Crisis Respite Services – *Behavioral Health*
10. Approval for Amendment No. 7 to Agreement No. 7642 to a Provider Agreement with CareOregon for Medicare Quality and Pharmacy Metric Services to members enrolled with the Oregon Health Plan (OHP) – *Health Centers*

**B. Department of Transportation & Development**

1. Approval to Sign Intergovernmental Agreement for Transportation Growth Management (TGM) Grant – “Quick Response Program” For US Route 26 Main Street Site Redevelopment Plan

**C. Technology Services**

1. Amendment No. 3 to the Service Level Agreement between Clackamas Broadband eXchange and the State of Oregon

**D. Elected Officials**

1. Approval of Previous Business Meeting Minutes – *BCC*

**E. Disaster Management**

1. Approval of a Subrecipient Agreement Amendment between the City of Portland and Clackamas County to reduce debris management equipment from the Homeland Security’s Urban Area Security Initiative (UASI)

**F. County Counsel**

1. Approval of Settlement with OTAK, Inc.

**VI. WATER ENVIRONMENT SERVICES**

1. Approval of Amendment No. 4 to the Contract Documents with CH2M Hill Engineers Inc. for Tri-City Water Resource Recovery Facilities Solids Handling Improvements Project for Additional Integration Services - *Procurement*

**VII. COUNTY ADMINISTRATOR UPDATE**

<https://www.clackamas.us/meetings/bcc/business>

**VIII. COMMISSIONERS COMMUNICATION**

<https://www.clackamas.us/meetings/bcc/business>

**MEETING ADJOURNED 11:51 AM**



# Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

January 23, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office (CCSO) to enter into an Agreement with  
Portland Mountain Rescue for Search and Rescue Volunteer Activities

<b>Purpose/Outcome</b>	To establish the terms and conditions for the Clackamas County Sheriff's Office use of Portland Mountain Rescue as a volunteer search and rescue organization
<b>Dollar Amount and Fiscal Impact</b>	This agreement has no fiscal impact
<b>Funding Source</b>	No funds will be exchanged as a result of this agreement
<b>Duration</b>	The Agreement is effective once signed by all parties and remains in effect until either party chooses to terminate it as stipulated in Section 7 of the agreement
<b>Previous Board Action/Review</b>	This is a new agreement brought forward for the Board's approval
<b>Strategic Plan Alignment</b>	Ensure safe, healthy and secure communities
<b>Counsel Review</b>	12/18/19
<b>Contact Person</b>	Lt. Brian Jensen – Office phone: (503) 785-5071
<b>Contract No.</b>	None

**BACKGROUND:**

Portland Mountain Rescue is a designated search and rescue organization that is registered with the Clackamas County Sheriff's Office under the terms stated in ORS 404.200(1)(c). This Agreement provides the terms and conditions whereby CCSO will utilize Portland Mountain Rescue for search and rescue callouts in a volunteer capacity. The agreement stipulates the manner in which both parties will communicate with one another and the expectations of both entities. County Counsel reviewed and approved this agreement.

**RECOMMENDATION:**

Clackamas County Sheriff's Office requests that the Board of County Commissioners approve and sign this Agreement with Portland Mountain Rescue.

Respectfully submitted,

*for*   
Craig Roberts,  
Sheriff

*"Working Together to Make a Difference"*

**SEARCH AND RESCUE ORGANIZATION AGREEMENT**

**BETWEEN**

**CLACKAMAS COUNTY, BY AND THROUGH THE CLACKAMAS COUNTY  
SHERIFF'S OFFICE**

**AND**

**Portland Mountain Rescue**

THIS AGREEMENT ("Agreement") is entered into and between Clackamas County, a political subdivision of the State of Oregon (the "County"), by and through the Clackamas County Sheriff's Office (the "CCSO"), and Portland Mountain Rescue ("Volunteer Organization"), collectively referred to as the "Parties" and each a "Party."

**RECITALS**

Oregon Revised Statute 404.110 requires the sheriff of each county to be responsible for search and rescue ("SAR") activities within the county.

The County, by and through its Board of County Commissioners, and the Sheriff of Clackamas County have made a policy decision that, although the CCSO has resources sufficient to lead and coordinate SAR missions within the County, the CCSO currently does not have sufficient resources available that would permit CCSO deputies to directly conduct certain SAR activities including alpine, high elevation, back country, high angle rescues, and other SAR missions.

Volunteer Organization is a designated search and rescue organization that is registered with CCSO as those terms are used in ORS 404.200(1)(c). Volunteer Organization is a SAR organization that has members who are "qualified search and rescue volunteers" ("Volunteers") as that term is defined in ORS 404.200.

The Sheriff has made a policy decision to designate and utilize certain volunteer groups, including Volunteer Organization, to assist the CCSO in conducting SAR activities, including but not limited to alpine, high elevation, back country, and high angle searches, which require Volunteers to conduct SAR missions on dangerous and unpredictable conditions on Mount Hood and in wilderness and remote areas within and outside Clackamas County.

Volunteer Organization desires to act at the direction of the Sheriff in these and other types of SAR missions to the extent consistent with the training and availability of its Volunteers, because Volunteer Organization has the training, skill, and ability needed to perform such SAR activities.

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### TERMS

1. **Term.** This Agreement shall be effective upon execution and shall remain in effect until it is terminated by either Party pursuant to Section 7 below.

2. **General Scope of Work.**

A. CCSO agrees to:

- i. Notify Volunteer Organization of situations wherein CCSO requires the assistance of Volunteer Organization's Volunteers for SAR missions. For purposes of this Agreement, such notification shall occur as described in Exhibit A hereto;
- ii. Provide direction to Volunteer Organization's Volunteers regarding the roles and responsibilities of all participants in each SAR mission;
- iii. Share information and collaborate with Volunteer Organization's Volunteers regarding SAR scenarios and the planning of missions;
- iv. Coordinate SAR missions and resources to ensure that all participants involved in a mission are effectively communicating and working together;
- v. Share equipment and resources that are available and needed for SAR missions;
- vi. Timely consider and respond to requests for reimbursement from Volunteer Organization pertaining to equipment that is damaged during SAR missions wherein Volunteer Organization is acting at the direction of CCSO.

B. Volunteer Organization agrees to:

- i. Promptly provide Volunteers, within Volunteer Organization's reasonable capacity, when requested by CCSO for SAR missions, provided that Volunteer Organization may determine not to take mission assignments that they, in their sole discretion, determine to pose unacceptable risks;
- ii. Share information and collaborate with CCSO regarding SAR scenarios and the planning of SAR missions;
- iii. During the course of a SAR mission and following a mission, refrain from communicating or providing information to media about the mission without prior consent from CCSO;

- iv. During the course of a SAR mission and following a mission, refrain from social media posts or other public communications about the mission without prior consent from CCSO;
  - v. Provide Volunteers with regular training in best practices for SAR missions;
  - vi. Notify and receive direction from CCSO before the commencement of any SAR mission within Clackamas County;
  - vii. Within 15 days of the date of this Agreement, notify CCSO of the names of all Volunteer Organization members and regularly update CCSO of changes in Volunteer Organization's roster of members;
  - viii. Submit any requests for reimbursement for equipment that is damaged in SAR missions to the CCSO in writing within 15 days after completion of the mission in which the equipment is damaged.
3. **CCSO Approval of Volunteer Organization Training.** Volunteer Organization will notify CCSO in advance of all SAR training to be offered by Volunteer Organization to its members and may request CCSO's approval of such training, which approval shall be in writing and shall not be unreasonably denied. This notice and request for approval may cover Volunteer Organization's training calendar for an entire year or shorter period, or notice and request for approval may be made for specific training events. CCSO promptly shall review and respond to such requests for approval and shall provide a written explanation for any requests that are denied. Any training approved by CCSO under this paragraph shall be deemed approved for purposes of ORS 404.200(2)(b).
4. **Request for SAR Resources.** If Volunteer Organization is asked by any non-party to this Agreement to participate in a SAR mission, Volunteer Organization shall promptly notify CCSO of the request and direct the non-party to contact CCSO with their request.

The CCSO in its sole discretion shall determine whether Volunteer Organization will assist in any out of County SAR missions. CCSO promptly shall respond to such requests for approval. If CCSO determines that Volunteer Organization may assist in an out of County SAR mission, then Volunteer Organization shall act under the direction of CCSO during the course of that mission for purposes of ORS 404.210.

If CCSO determines that Volunteer Organization shall not assist in an out of County SAR mission, the Volunteer Organization will comply with that determination.

Notwithstanding the foregoing, if Volunteer Organization is asked by a non-party to this Agreement to participate in an out of State SAR mission, Volunteer Organization shall promptly notify the CCSO of the request and Volunteer Organization may determine whether it will participate in the out of State mission.

If Volunteer Organization does participate in any out of State SAR mission, then Volunteer Organization and its members are not acting as agents of the Sheriff of Clackamas County for purposes of ORS 404.210, nor will Volunteer Organization and its members be provided workers' compensation by Clackamas County as provided by ORS 404.215.

5. **Consideration.** The County acknowledges that Volunteer Organization is a designated search and rescue organization registered with CCSO within the meaning of ORS 404.200(1)(c).

The County will not provide direct payment or compensation to Volunteer Organization or its members or Volunteers for the performance of SAR activities. However, pursuant to ORS 404.210, and subject to the limitations of the Oregon Tort Claims Act, the County shall defend, save harmless and indemnify Volunteer Organization and its Volunteers when such Volunteers are performing SAR activities under the direction of the Clackamas County Sheriff or his designee, and when the Volunteer Organization's Volunteers are acting within the course and scope of their duties in performing SAR activities for the County.

In addition, the County will provide worker's compensation benefits to Volunteer Organization's Volunteers pursuant to ORS 404.215.

Notwithstanding any provision of this Agreement potentially to the contrary, nothing in this Agreement limits, or waives any rights, obligations, or liabilities of any Party to this Agreement as set forth in ORS Chapter 404 or other applicable statute.

6. **Representations and Warranties.**

- A. *Volunteer Organization's Representations and Warranties:* Volunteer Organization represents and warrants to County that Volunteer Organization has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Volunteer Organization enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to Volunteer Organization that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.

7. **Termination.**

- A. Either the Clackamas County Sheriff or the Volunteer Organization may terminate this Agreement, without cause, at any time upon seven (7) days written notice to the other party.
  - B. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
8. **Volunteer Organization Liability.** Subject to Section 2 above, Volunteer Organization shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from a negligent or willful act or omission of Volunteer Organization, its Volunteers, members, subcontractors, agents, or employees, when such act or omission : (1) is by Volunteer Organization Volunteers who are not performing SAR activities under the direction of the Clackamas County Sheriff or the Sheriff's designee; or (2) is by Volunteer Organization Volunteers acting outside of the course and scope of their duties in performing SAR activities for the CCSO.
9. **Insurance.** Volunteer Organization agrees to obtain at its own cost and furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage.
10. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below.
- A. The Clackamas County Sheriff or the Sheriff's designee will act as liaison for the County.  
**Contact Information:**  
Sheriff Craig Roberts  
9101 SE Sunnybrook Blvd  
Clackamas OR 97015  
503-785-5000  
[craigrob@co.clackamas.or.us](mailto:craigrob@co.clackamas.or.us)
  - B. The president of Volunteer Organization or their designee will act as liaison for the Volunteer Organization.  
**Contact Information:**  
Chris Baker  
President  
Portland Mountain Rescue

P.O. Box 5391  
Portland, OR 97229  
[president@pmru.org](mailto:president@pmru.org)  
503-222-7678

## 11. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County. Any claim between County and Volunteer Organization that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Volunteer Organization, by execution of this Agreement, hereby consents to the *in personam* jurisdiction of the courts referenced in this section. Nothing in this Agreement shall limit any right or obligation of any Party under any statute or regulation.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** Volunteer Organization shall retain, maintain, and keep accessible all records ("Records") relevant to this Agreement for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Volunteer Organization shall maintain its financial records in accordance with reasonably acceptable accounting standards for a volunteer organization of similar size. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Volunteer Organization shall permit the County's authorized representatives access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **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 to the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties. 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 and all necessary approvals have been obtained. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

- I. **No Third-Party Beneficiary.** Volunteer Organization and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right or create any obligation, duty, or liability, whether directly, indirectly or otherwise to any person or entity not a party to this Agreement.
- J. **Subcontract and Assignment.** Volunteer Organization shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Volunteer Organization of any of its duties or obligations under this Agreement.
- K. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- L. **Survival.** All provisions in sections 5, 6, 8, and 9 shall survive the termination of this Agreement.
- M. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- N. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- O. **Force Majeure.** Neither Volunteer Organization nor County shall be held responsible for delay or default caused by events outside of the Volunteer Organization or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, each Party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- P. **Confidentiality.** "Confidential Information" means any and all information of any form obtained by Volunteer Organization or its members from the County or

during the course of a mission for CCSO, that the County identifies as confidential or as part of a criminal investigation, or that Volunteer Organization or its members should reasonably know to be confidential. Such Confidential Information includes, but it not limited to: personal medical information; information about suspected criminal activity; information pertaining to ongoing SAR missions. Confidential Information does not include information that Volunteer Organization or its members obtain outside the course of a mission or that is publicly available. Volunteer Organization acknowledges that it and its members may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire Confidential Information and agree to hold Confidential Information in strict confidence, using at least the same degree of care that Volunteer Organization uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement by the Clackamas County Sheriff or the Sheriff's designee.

**[Signatures on Following Page]**

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

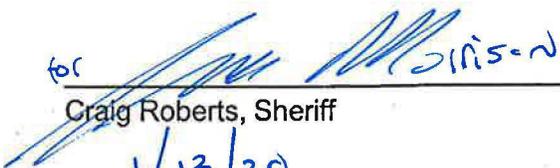
**Clackamas County**

**Clackamas County Sheriff**

\_\_\_\_\_  
Chair, Board of County Commissioners

\_\_\_\_\_  
Date

for

  
\_\_\_\_\_  
Craig Roberts, Sheriff

\_\_\_\_\_  
Date

1/13/20

**Portland Mountain Rescue**

  
\_\_\_\_\_  
Chris Baker, President

\_\_\_\_\_  
Date

12/11/19

## Exhibit A

### Procedures for CCSO callout to Volunteer Organization

When CCSO determines that Portland Mountain Rescue (PMR) Volunteers are needed to respond to a SAR situation and participate in a SAR mission, CCSO shall notify and callout PMR by taking the following steps:

1. CCSO shall call PMR's 24-hour answering service at 503.222.7678
  - a. CCSO shall identify themselves as a **law-enforcement** agency requesting a response for a **SAR mission**
  - b. CCSO shall provide their name and contact phone number
  - c. CCSO will receive a call back directly from a PMR team leader



# Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

January 23, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office (CCSO) to enter into an Agreement with  
Mountain Wave Search and Rescue for Search and Rescue Volunteer Activities

<b>Purpose/Outcome</b>	To establish the terms and conditions for the Clackamas County Sheriff's Office use of Mountain Wave Search and Rescue as a volunteer search and rescue organization
<b>Dollar Amount and Fiscal Impact</b>	This agreement has no fiscal impact
<b>Funding Source</b>	No funds will be exchanged as a result of this agreement
<b>Duration</b>	The Agreement is effective once signed by all parties and remains in effect until either party chooses to terminate it as stipulated in Section 7 of the agreement
<b>Previous Board Action/Review</b>	This is a new agreement brought forward for the Board's approval
<b>Strategic Plan Alignment</b>	Ensure safe, healthy and secure communities
<b>Counsel Review</b>	12/18/19
<b>Contact Person</b>	Lt. Brian Jensen – Office phone: (503) 785-5071
<b>Contract No.</b>	None

**BACKGROUND:**

Mountain Wave Search and Rescue is a designated search and rescue organization that is registered with the Clackamas County Sheriff's Office under the terms stated in ORS 404.200(1)(c). This Agreement provides the terms and conditions whereby CCSO will utilize Mountain Wave Search and Rescue for search and rescue callouts in a volunteer capacity. The agreement stipulates the manner in which both parties will communicate with one another and the expectations of both entities. County Counsel reviewed and approved this agreement.

**RECOMMENDATION:**

Clackamas County Sheriff's Office requests that the Board of County Commissioners approve and sign this Agreement with Mountain Wave Search and Rescue.

Respectfully submitted,

for   
Craig Roberts,  
Sheriff

*"Working Together to Make a Difference"*

**SEARCH AND RESCUE ORGANIZATION AGREEMENT**

**BETWEEN**

**CLACKAMAS COUNTY, BY AND THROUGH THE CLACKAMAS COUNTY  
SHERIFF'S OFFICE**

**AND**

**Mountain Wave Search & Rescue**

THIS AGREEMENT ("Agreement") is entered into and between Clackamas County, a political subdivision of the State of Oregon (the "County"), by and through the Clackamas County Sheriff's Office (the "CCSO"), and Mountain Wave Search & Rescue (MWSAR), ("Volunteer Organization"), collectively referred to as the "Parties" and each a "Party."

**RECITALS**

Oregon Revised Statute 404.110 requires the sheriff of each county to be responsible for search and rescue ("SAR") activities within the county.

The County, by and through its Board of County Commissioners, and the Sheriff of Clackamas County have made a policy decision that, although the CCSO has resources sufficient to lead and coordinate SAR missions within the County, the CCSO currently does not have sufficient resources available that would permit CCSO deputies to directly conduct certain SAR activities including alpine, high elevation, back country, high angle rescues, and other SAR missions.

Volunteer Organization is a designated search and rescue organization that is registered with CCSO as those terms are used in ORS 404.200(1)(c). Volunteer Organization is a SAR organization that has members who are "qualified search and rescue volunteers" ("Volunteers") as that term is defined in ORS 404.200.

The Sheriff has made a policy decision to designate and utilize certain volunteer groups, including Volunteer Organization, to assist the CCSO in conducting SAR activities, including but not limited to alpine, high elevation, back country, and high angle searches, which require Volunteers to conduct SAR missions on dangerous and unpredictable conditions on Mount Hood and in wilderness and remote areas within and outside Clackamas County.

Volunteer Organization desires to act at the direction of the Sheriff in these and other types of SAR missions to the extent consistent with the training and availability of its Volunteers, because Volunteer Organization has the training, skill, and ability needed to perform such SAR activities.

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### TERMS

1. **Term.** This Agreement shall be effective upon execution and shall remain in effect until it is terminated by either Party pursuant to Section 7 below.
2. **General Scope of Work.**
  - A. CCSO agrees to:
    - i. Notify Volunteer Organization of situations wherein CCSO requires the assistance of Volunteer Organization's Volunteers for SAR missions. For purposes of this Agreement, such notification shall occur as described in Exhibit A hereto;
    - ii. Provide direction to Volunteer Organization's Volunteers regarding the roles and responsibilities of all participants in each SAR mission;
    - iii. Share information and collaborate with Volunteer Organization's Volunteers regarding SAR scenarios and the planning of missions;
    - iv. Coordinate SAR missions and resources to ensure that all participants involved in a mission are effectively communicating and working together;
    - v. Share equipment and resources that are available and needed for SAR missions;
    - vi. Timely consider and respond to requests for reimbursement from Volunteer Organization pertaining to equipment that is damaged during SAR missions wherein Volunteer Organization is acting at the direction of CCSO.
  - B. Volunteer Organization agrees to:
    - i. Promptly provide Volunteers, within Volunteer Organization's reasonable capacity, when requested by CCSO for SAR missions, provided that Volunteer Organization may determine not to take mission assignments that they, in their sole discretion, determine to pose unacceptable risks;
    - ii. Share information and collaborate with CCSO regarding SAR scenarios and the planning of SAR missions;
    - iii. During the course of a SAR mission and following a mission, refrain from communicating or providing information to media about the mission without prior consent from CCSO;

- iv. During the course of a SAR mission and following a mission, refrain from social media posts or other public communications about the mission without prior consent from CCSO;
  - v. Provide Volunteers with regular training in best practices for SAR missions;
  - vi. Notify and receive direction from CCSO before the commencement of any SAR mission within Clackamas County;
  - vii. Within 15 days of the date of this Agreement, notify CCSO of the names of all Volunteer Organization members and regularly update CCSO of changes in Volunteer Organization's roster of members;
  - viii. Submit any requests for reimbursement for equipment that is damaged in SAR missions to the CCSO in writing within 15 days after completion of the mission in which the equipment is damaged.
3. **CCSO Approval of Volunteer Organization Training.** Volunteer Organization will notify CCSO in advance of all SAR training to be offered by Volunteer Organization to its members and may request CCSO's approval of such training, which approval shall be in writing and shall not be unreasonably denied. This notice and request for approval may cover Volunteer Organization's training calendar for an entire year or shorter period, or notice and request for approval may be made for specific training events. CCSO promptly shall review and respond to such requests for approval and shall provide a written explanation for any requests that are denied. Any training approved by CCSO under this paragraph shall be deemed approved for purposes of ORS 404.200(2)(b).
4. **Request for SAR Resources.** If Volunteer Organization is asked by any non-party to this Agreement to participate in a SAR mission, Volunteer Organization shall promptly notify CCSO of the request and direct the non-party to contact CCSO with their request.

The CCSO in its sole discretion shall determine whether Volunteer Organization will assist in any out of County SAR missions. CCSO promptly shall respond to such requests for approval. If CCSO determines that Volunteer Organization may assist in an out of County SAR mission, then Volunteer Organization shall act under the direction of CCSO during the course of that mission for purposes of ORS 404.210.

If CCSO determines that Volunteer Organization shall not assist in an out of County SAR mission, the Volunteer Organization will comply with that determination.

Notwithstanding the foregoing, if Volunteer Organization is asked by a non-party to this Agreement to participate in an out of State SAR mission, Volunteer Organization shall promptly notify the CCSO of the request and Volunteer Organization may determine whether it will participate in the out of State mission.

If Volunteer Organization does participate in any out of State SAR mission, then Volunteer Organization and its members are not acting as agents of the Sheriff of Clackamas County for purposes of ORS 404.210, nor will Volunteer Organization and its members be provided workers' compensation by Clackamas County as provided by ORS 404.215.

- 5/ **Consideration.** The County acknowledges that Volunteer Organization is a designated search and rescue organization registered with CCSO within the meaning of ORS 404.200(1)(c).

The County will not provide direct payment or compensation to Volunteer Organization or its members or Volunteers for the performance of SAR activities. However, pursuant to ORS 404.210, and subject to the limitations of the Oregon Tort Claims Act, the County shall defend, save harmless and indemnify Volunteer Organization and its Volunteers when such Volunteers are performing SAR activities under the direction of the Clackamas County Sheriff or his designee, and when the Volunteer Organization's Volunteers are acting within the course and scope of their duties in performing SAR activities for the County.

In addition, the County will provide worker's compensation benefits to Volunteer Organization's Volunteers pursuant to ORS 404.215.

Notwithstanding any provision of this Agreement potentially to the contrary, nothing in this Agreement limits, or waives any rights, obligations, or liabilities of any Party to this Agreement as set forth in ORS Chapter 404 or other applicable statute.

**6. Representations and Warranties.**

- A. *Volunteer Organization's Representations and Warranties:* Volunteer Organization represents and warrants to County that Volunteer Organization has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Volunteer Organization enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to Volunteer Organization that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.

**7. Termination.**

- A. Either the Clackamas County Sheriff or the Volunteer Organization may terminate this Agreement, without cause, at any time upon seven (7) days written notice to the other party.
  - B. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
8. **Volunteer Organization Liability.** Subject to Section 2 above, Volunteer Organization shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from a negligent or willful act or omission of Volunteer Organization, its Volunteers, members, subcontractors, agents, or employees, when such act or omission : (1) is by Volunteer Organization Volunteers who are not performing SAR activities under the direction of the Clackamas County Sheriff or the Sheriff's designee; or (2) is by Volunteer Organization Volunteers acting outside of the course and scope of their duties in performing SAR activities for the CCSO.
9. **Insurance.** Volunteer Organization agrees to obtain at its own cost and furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage.
10. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below.

- A. The Clackamas County Sheriff or the Sheriff's designee will act as liaison for the County.

**Contact Information:**

Sheriff Craig Roberts  
9101 SE Sunnybrook Blvd  
Clackamas OR 97015  
503-785-5000  
[craigrob@co.clackamas.or.us](mailto:craigrob@co.clackamas.or.us)

- B. The president of Volunteer Organization or their designee will act as liaison for the Volunteer Organization.

**Contact Information:**

Russell Gubele, President  
Mountain Wave Search & Rescue  
10117 S.E. Sunnyside Road Suite F547

Clackamas, Oregon 97015  
503-793-6345  
Mw8@mwave.org

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## 11. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County. Any claim between County and Volunteer Organization that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Volunteer Organization, by execution of this Agreement, hereby consents to the *in personam* jurisdiction of the courts referenced in this section. Nothing in this Agreement shall limit any right or obligation of any Party under any statute or regulation.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** Volunteer Organization shall retain, maintain, and keep accessible all records ("Records") relevant to this Agreement for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Volunteer Organization shall maintain its financial records in accordance with reasonably acceptable accounting standards for a volunteer organization of similar size. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Volunteer Organization shall permit the County's authorized representatives access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriate of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **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 to the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties. 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 and all necessary approvals have been obtained. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

- I. **No Third-Party Beneficiary.** Volunteer Organization and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right or create any obligation, duty, or liability, whether directly, indirectly or otherwise to any person or entity not a party to this Agreement..
- J. **Subcontract and Assignment.** Volunteer Organization shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Volunteer Organization of any of its duties or obligations under this Agreement.
- K. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- L. **Survival.** All provisions in sections 5, 6, 8, and 9 shall survive the termination of this Agreement.
- M. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- N. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- O. **Force Majeure.** Neither Volunteer Organization nor County shall be held responsible for delay or default caused by events outside of the Volunteer Organization or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, each Party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- P. **Confidentiality.** "Confidential Information" means any and all information of any form obtained by Volunteer Organization or its members from the County or

during the course of a mission for CCSO, that the County identifies as confidential or as part of a criminal investigation, or that Volunteer Organization or its members should reasonably know to be confidential. Such Confidential Information includes, but it not limited to: personal medical information; information about suspected criminal activity; information pertaining to ongoing SAR missions. Confidential Information does not include information that Volunteer Organization or its members obtain outside the course of a mission or that is publicly available. Volunteer Organization acknowledges that it and its members may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire Confidential Information and agree to hold Confidential Information in strict confidence, using at least the same degree of care that Volunteer Organization uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement by the Clackamas County Sheriff or the Sheriff's designee.

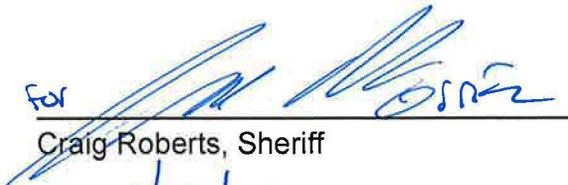
**[Signatures on Following Page]**

**IN WITNESS HEREOF**, the Parties have executed this Agreement by the date set forth opposite their names below.

**Clackamas County**

**Clackamas County Sheriff**

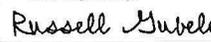
\_\_\_\_\_  
Chair, Board of County Commissioners

for   
\_\_\_\_\_  
Craig Roberts, Sheriff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date 1/13/20

**Volunteer Organization**

DocuSigned by:  
  
\_\_\_\_\_  
F4A12D8CD0864EF...

\_\_\_\_\_  
12/5/2019  
Date

## Exhibit A

### Procedures for CCSO callout to Volunteer Organization

When CCSO SAR member determine that Volunteer Organization Volunteers are needed to respond to a SAR situation and participate in a SAR mission, CCSO shall notify and callout Volunteer Organization by taking the following steps:

1. CCSO shall call Russell Gubele at 866-689-2831
2. CCSO shall email Russell Gubele at mw8@mwave.org
3. CCSO shall page [name] at [pager number]
4. Other



# Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

January 23, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office (CCSO) to enter into an Agreement with Pacific Northwest Search and Rescue, Inc. for Search and Rescue Volunteer Activities

<b>Purpose/Outcome</b>	To establish the terms and conditions for the Clackamas County Sheriff's Office use of Pacific Northwest Search and Rescue, Inc. as a volunteer search and rescue organization
<b>Dollar Amount and Fiscal Impact</b>	This agreement has no fiscal impact
<b>Funding Source</b>	No funds will be exchanged as a result of this agreement
<b>Duration</b>	The Agreement is effective once signed by all parties and remains in effect until either party chooses to terminate it as stipulated in Section 7 of the agreement
<b>Previous Board Action/Review</b>	This is a new agreement brought forward for the Board's approval
<b>Strategic Plan Alignment</b>	Ensure safe, healthy and secure communities
<b>Counsel Review</b>	12/18/19
<b>Contact Person</b>	Lt. Brian Jensen – Office phone: (503) 785-5071
<b>Contract No.</b>	None

**BACKGROUND:**

Pacific Northwest Search and Rescue, Inc. is a designated search and rescue organization that is registered with the Clackamas County Sheriff's Office under the terms stated in ORS 404.200(1)(c). This Agreement provides the terms and conditions whereby CCSO will utilize Pacific Northwest Search and Rescue, Inc. for search and rescue callouts in a volunteer capacity. The agreement stipulates the manner in which both parties will communicate with one another and the expectations of both entities. County Counsel reviewed and approved this agreement.

**RECOMMENDATION:**

Clackamas County Sheriff's Office requests that the Board of County Commissioners approve and sign this Agreement with Pacific Northwest Search and Rescue, Inc.

Respectfully submitted,

for   
Craig Roberts,  
Sheriff

*"Working Together to Make a Difference"*

**SEARCH AND RESCUE ORGANIZATION AGREEMENT**

**BETWEEN**

**CLACKAMAS COUNTY, BY AND THROUGH THE CLACKAMAS COUNTY  
SHERIFF'S OFFICE**

**AND**

**PACIFIC NORTHWEST SEARCH AND RESCUE, INC.**

THIS AGREEMENT ("Agreement") is entered into and between Clackamas County, a political subdivision of the State of Oregon (the "County"), by and through the Clackamas County Sheriff's Office (the "CCSO"), and Pacific Northwest Search and Rescue, Inc. ("PNWSAR"), collectively referred to as the "Parties" and each a "Party."

**RECITALS**

Oregon Revised Statute 404.110 requires the sheriff of each county to be responsible for search and rescue ("SAR") activities within the county.

The County, by and through its Board of County Commissioners, and the Sheriff of Clackamas County have made a policy decision that, although the CCSO has resources sufficient to lead and coordinate SAR missions within the County, the CCSO currently does not have sufficient resources available that would permit CCSO deputies to directly conduct certain SAR activities including alpine, high elevation, back country, high angle rescues, and other SAR missions.

PNWSAR is a designated search and rescue organization that is registered with CCSO as those terms are used in ORS 404.200(1)(c). PNWSAR is a SAR organization that has members who are "qualified search and rescue volunteers" ("Volunteers") as that term is defined in ORS 404.200.

The Sheriff has made a policy decision to designate and utilize certain volunteer groups, including PNWSAR, to assist the CCSO in conducting SAR activities, including but not limited to alpine, high elevation, back country, and high angle searches, which require Volunteers to conduct SAR missions on dangerous and unpredictable conditions on Mount Hood and in wilderness and remote areas within and outside Clackamas County.

PNWSAR desires to act at the direction of the Sheriff in these and other types of SAR missions to the extent consistent with the training and availability of its Volunteers, because PNWSAR has the training, skill, and ability needed to perform such SAR activities.

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### TERMS

1. **Term.** This Agreement shall be effective upon execution and shall remain in effect until it is terminated by either Party pursuant to Section 7 below.
2. **General Scope of Work.**
  - A. CCSO agrees to:
    - i. Notify PNWSAR of situations wherein CCSO requires the assistance of PNWSAR's Volunteers for SAR missions. For purposes of this Agreement, such notification shall occur as described in Exhibit A hereto;
    - ii. Provide direction to PNWSAR's Volunteers regarding the roles and responsibilities of all participants in each SAR mission;
    - iii. Share information and collaborate with PNWSAR's Volunteers regarding SAR scenarios and the planning of missions;
    - iv. Coordinate SAR missions and resources to ensure that all participants involved in a mission are effectively communicating and working together;
    - v. Share equipment and resources that are available and needed for SAR missions;
    - vi. Timely consider and respond to requests for reimbursement from PNWSAR pertaining to equipment that is damaged during SAR missions wherein PNWSAR is acting at the direction of CCSO.
  - B. PNWSAR agrees to:
    - i. Promptly provide Volunteers, within PNWSAR's reasonable capacity, when requested by CCSO for SAR missions, provided that PNWSAR may determine not to take mission assignments that it, in its sole discretion, determines to pose unacceptable risks;
    - ii. Share information and collaborate with CCSO regarding SAR scenarios and the planning of SAR missions;
    - iii. During the course of a SAR mission and following a mission, refrain from communicating or providing information to media about the mission without prior consent from CCSO;
    - iv. During the course of a SAR mission and following a mission, refrain from social media posts or other public communications about the mission without prior consent from CCSO;

- v. Provide Volunteers with regular training in best practices for SAR missions;
  - vi. Notify and receive direction from CCSO before the commencement of any SAR mission within Clackamas County;
  - vii. Within 15 days of the date of this Agreement, notify CCSO of the names of all PNWSAR members and regularly update CCSO of changes in PNWSAR's roster of members;
  - viii. Submit any requests for reimbursement for equipment that is damaged in SAR missions to the CCSO in writing within 15 days after completion of the mission in which the equipment is damaged.
3. **CCSO Approval of PNWSAR Training.** PNWSAR will notify CCSO in advance of all SAR training to be offered by PNWSAR to its members and may request CCSO's approval of such training, which approval shall be in writing and shall not be unreasonably denied. This notice and request for approval may cover PNWSAR's training calendar for an entire year or shorter period, or notice and request for approval may be made for specific training events. CCSO promptly shall review and respond to such requests for approval and shall provide a written explanation for any requests that are denied. Any training approved by CCSO under this paragraph shall be deemed approved for purposes of ORS 404.200(2)(b).
4. **Request for SAR Resources.** If PNWSAR is asked by any non-party to this Agreement to participate in a SAR mission, PNWSAR shall promptly notify CCSO of the request and direct the non-party to contact CCSO with their request.

The CCSO in its sole discretion shall determine whether PNWSAR will assist in any out of County SAR missions. CCSO promptly shall respond to such requests for approval. If CCSO determines that PNWSAR may assist in an out of County SAR mission, then PNWSAR shall act under the direction of CCSO during the course of that mission for purposes of ORS 404.210.

If CCSO determines that PNWSAR shall not assist in an out of County SAR mission, PNWSAR will comply with that determination.

Notwithstanding the foregoing, if PNWSAR is asked by a non-party to this Agreement to participate in an out of State SAR mission, PNWSAR shall promptly notify the CCSO of the request and PNWSAR may determine whether it will participate in the out of State mission.

If PNWSAR does participate in any out of State SAR mission, then PNWSAR and its members are not acting as agents of the Sheriff of Clackamas County for purposes of ORS 404.210, nor will PNWSAR and its members be provided workers' compensation by Clackamas County as provided by ORS 404.215.

5. **Consideration.** The County acknowledges that PNWSAR is a designated search and rescue organization registered with CCSO within the meaning of ORS 404.200(1)(c).

The County will not provide direct payment or compensation to PNWSAR or its members or Volunteers for the performance of SAR activities. However, pursuant to ORS 404.210, and subject to the limitations of the Oregon Tort Claims Act, the County shall defend, save harmless and indemnify PNWSAR and its Volunteers when such Volunteers are performing SAR activities under the direction of the Clackamas County Sheriff or his designee, and when PNWSAR's Volunteers are acting within the course and scope of their duties in performing SAR activities for the County.

In addition, the County will provide worker's compensation benefits to PNWSAR's Volunteers pursuant to ORS 404.215.

Notwithstanding any provision of this Agreement potentially to the contrary, nothing in this Agreement limits, or waives any rights, obligations, or liabilities of any Party to this Agreement as set forth in ORS Chapter 404 or other applicable statute.

6. **Representations and Warranties.**

A. *PNWSAR's Representations and Warranties:* PNWSAR represents and warrants to County that PNWSAR has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of PNWSAR enforceable in accordance with its terms.

B. *County Representations and Warranties:* County represents and warrants to PNWSAR that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.

7. **Termination.**

A. Either the Clackamas County Sheriff or PNWSAR may terminate this Agreement, without cause, at any time upon seven (7) days written notice to the other party.

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

8. **PNWSAR Liability.** Subject to Section 2 above, PNWSAR shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from a negligent or willful act or omission of PNWSAR, its Volunteers, members, subcontractors, agents, or employees, when such act or omission: (1) is by PNWSAR Volunteers who are not performing SAR

activities under the direction of the Clackamas County Sheriff or the Sheriff's designee; or (2) is by PNWSAR Volunteers acting outside of the course and scope of their duties in performing SAR activities for the CCSO.

9. **Insurance.** PNWSAR agrees to obtain at its own cost and furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage.

10. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below.

A. The Clackamas County Sheriff or the Sheriff's designee will act as liaison for the County.

**Contact Information:**

Sheriff Craig Roberts  
9101 SE Sunnybrook Blvd  
Clackamas, OR 97015  
503-785-5000  
craigrob@co.clackamas.or.us

B. The president of PNWSAR or their designee will act as liaison for PNWSAR.

**Contact Information:**

Diana Worthen, President  
With a copy to Tony Hobkirk, Vice President  
PO Box 1263  
Oregon City, OR 97045  
503-451-3860  
pnwboard@pnwsar.org

11. **General Provisions.**

A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County. Any claim between County and PNWSAR that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and

conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. PNWSAR, by execution of this Agreement, hereby consents to the *in personam* jurisdiction of the courts referenced in this section. Nothing in this Agreement shall limit any right or obligation of any Party under any statute or regulation.

- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** PNWSAR shall retain, maintain, and keep accessible all records ("Records") relevant to this Agreement for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. PNWSAR shall maintain its financial records in accordance with reasonably acceptable accounting standards for a volunteer organization of similar size. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, PNWSAR shall permit the County's authorized representatives access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon

appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

- F. **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 to the intentions of the Parties.
  
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties. 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 and all necessary approvals have been obtained. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
  
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
  
- I. **No Third-Party Beneficiary.** PNWSAR and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right or create any obligation, duty, or liability, whether directly, indirectly or otherwise to any person or entity not a party to this Agreement.
  
- J. **Subcontract and Assignment.** PNWSAR shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve PNWSAR of any of its duties or obligations under this Agreement.

- K. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- L. **Survival.** All provisions in sections 5, 6, 8, and 9 shall survive the termination of this Agreement.
- M. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- N. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- O. **Force Majeure.** Neither PNWSAR nor County shall be held responsible for delay or default caused by events outside of PNWSAR's or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, each Party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- P. **Confidentiality.** "Confidential Information" means any and all information of any form obtained by PNWSAR or its members from the County or during the course of a mission for CCSO, that the County identifies as confidential or as part of a criminal investigation, or that PNWSAR or its members should reasonably know to be confidential. Such Confidential Information includes, but it not limited to: personal medical information; information about suspected criminal activity; information pertaining to ongoing SAR missions. Confidential Information does not include information that PNWSAR or its members obtain outside the course of a mission or that is publicly available. PNWSAR acknowledges that it and its members may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire Confidential Information and agree to hold Confidential Information in strict confidence, using at least the same degree of care that PNWSAR uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement by the Clackamas County Sheriff or the Sheriff's designee.

**[Signatures on Following Page]**

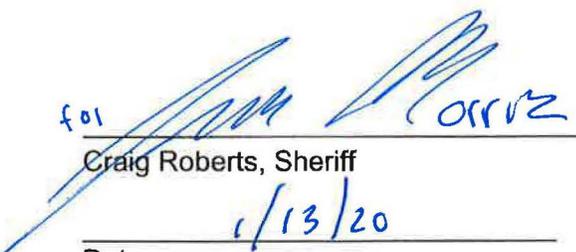
**IN WITNESS HEREOF**, the Parties have executed this Agreement by the date set forth opposite their names below.

**Clackamas County**

**Clackamas County Sheriff**

\_\_\_\_\_  
Chair, Board of County Commissioners

for

  
\_\_\_\_\_  
Craig Roberts, Sheriff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

1/13/20

**PNWSAR**

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Date

## Exhibit A

### **Procedures for CCSO callout to PNWSAR**

When CCSO SAR members determine that PNWSAR Volunteers are needed to respond to a SAR situation and participate in a SAR mission, CCSO shall notify and callout PNWSAR by taking the following steps:

1. CCSO shall call the PNWSAR Board of Directors at 971-217-6769
2. CCSO shall call Tony Hobkirk at 503-519-8303
3. CCSO shall email the PNWSAR Board of Directors at [pnwboard@pnwsar.org](mailto:pnwboard@pnwsar.org)

### **Procedures for PNWSAR notification to CCSO**

When PNWSAR is requested by a non-party to this Agreement to participate in an out of State SAR mission, PNWSAR shall notify CCSO by taking the following steps:

1. PNWSAR will call Deputy Scott Meyers at 503-849-3006

If Deputy Scott Meyers cannot be immediately reached at that number, PNWSAR shall take the following steps:

1. PNWSAR will call Deputy Mike Lightner at 971-409-1402
2. PNWSAR will call CCSO Dispatch at 503-655-8211
3. PNWSAR will email Deputy Scott Meyers at [scottmey@co.clackamas.or.us](mailto:scottmey@co.clackamas.or.us)

When PNWSAR notifies CCSO of its roster of members, evidence of insurance, or SAR training to be offered to its members, and when PNWSAR requests CCSO's approval of such training, PNWSAR shall take the following steps:

1. PNWSAR will email Deputy Scott Meyers at [scottmey@co.clackamas.or.us](mailto:scottmey@co.clackamas.or.us)
2. PNWSAR will call Deputy Scott Meyers at 503-849-3006
3. PNWSAR will call Deputy Mike Lightner at 971-409-1402

CCSO shall provide its approval of PNWSAR training in writing to:

1. [pnwboard@pnwsar.org](mailto:pnwboard@pnwsar.org)
2. [president@pnwsar.org](mailto:president@pnwsar.org)
3. [trainingcom@pnwsar.org](mailto:trainingcom@pnwsar.org)



# Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

January 23, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County Behalf of the Clackamas County Sheriff's Office and Department of Homeland Security, Immigration and Customs Enforcement, Enforcement and Removal Operations-Seattle use of the Public Safety Training Center (PSTC) - Bowman Training Complex

<b>Purpose/Outcome</b>	Approval of the IGA to authorize use of the PSTC-Bowman Training Complex and purchase of training related items including ammunition
<b>Dollar Amount and Fiscal Impact</b>	Cost for facility use will be billed to the Department of Homeland Security based upon actually cost as outlined in County Code Appendix A - Fee
<b>Funding Source</b>	Facilities Rental, training supplies and ammunition sales
<b>Duration</b>	Upon execution until January 31, 2023
<b>Previous Board Action/Review</b>	None
<b>Strategic Plan Alignment</b>	Furthers the County's focus to keeping our residents safe, healthy and secure
<b>Counsel Review</b>	Andrew Naylor, via email 12/30/19
<b>Contact Person</b>	Nancy Artmann, CCSO Finance Manager 503.785.5012

**BACKGROUND:**

The purpose of this IGA is to enhance working relationship with law enforcement agencies surrounding Clackamas County through sharing resources. This provides the means for agency partners to train in the local facility. This enhances their opportunity to keep skills up to date and have meaningful, practical application.

**RECOMMENDATION:** Sheriff's Office respectfully requests that the Board of County Commissioners approves this intergovernmental agreement between Clackamas County by and through its Sheriff's Office and Department of Homeland Security, Immigration and Customs Enforcement, Enforcement and Removal Operations-Seattle for the safety of its citizens of both the County and the State of Oregon.

Respectfully submitted,

*Craig Roberts*  
Craig Roberts  
Sheriff

## INTERGOVERNMENTAL AGREEMENT

Between Clackamas County on Behalf of the Clackamas County Sheriff's Office

and

DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS  
ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS-SEATTLE

For Use of Public Safety Training Center - Bowman Training Complex

This intergovernmental agreement ("Agreement") is entered into as of the 1<sup>st</sup> day of November, 2019 by and between Clackamas County ("County"), a political subdivision of the State of Oregon, by and through its Sheriff's Office ("CCSO"), and the Department of Homeland Security, Immigration and Customs Enforcement, Enforcement and Removal Operations- Seattle ("Agency"). This Agreement is authorized pursuant to ORS 190 *et. seq.* and becomes effective upon full execution by the parties.

### RECITALS

Whereas, ORS 190 *et. seq.* authorizes County, a local unit of government, and Agency, a local, state, or federal agency, to enter into this Agreement for the performance of any and all activities that a party to the Agreement has authority to perform;

Whereas, County owns and the Clackamas County Sheriff's Office operates the Public Safety Training Center (PSTC) Complex ("Complex"), which includes the Bowman Building, located at 12700 SE 82<sup>nd</sup> Ave Clackamas, OR 97015;

Whereas the Complex is an ideal facility for various law enforcement training activities and exercises;

Whereas Agency wishes to utilize the Complex, obtain training from CCSO staff, purchase ammunition for use at the PSTC Bowman Training Complex shooting range, or otherwise utilize the Complex for uses approved by the Sheriff's Office;

NOW THEREFORE, pursuant to ORS 190.003 *et. seq.*, and for good and valuable consideration, the receipt of which is hereby acknowledged, County and Agency agree as follows:

1. **Term:** this Agreement shall remain in effect until January 31, 2023 or until terminated by one or more of the parties hereto.
2. **Scope:** Subject to the terms and conditions of this agreement, Agency may use the Complex for law enforcement education, training, and development purposes.
3. **Consideration:** Agency shall compensate County for use of the Complex pursuant to the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to using the Complex. County shall provide Agency an invoice for all amounts due and owing for use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
4. **County/CCSO Responsibilities:** County agrees to the following:
  - a. County/CCSO will maintain the Complex in a clean and functional manner, consistent with the general maintenance and care of other County facilities.
  - b. CCSO will make available the Complex, including its classrooms, training rooms, and shooting range, to Agency subject to the terms and conditions of this Agreement.
  - c. CCSO will sell to Agency ammunition, as supplies allow, for use by the Agency at the Complex's shooting range. The sales price of the ammunition shall be in an amount determined by CCSO, which is subject to change due to market fluctuations.
5. **Agency Responsibilities:**
  - a. Agency shall ensure timely arrival and departure from the Complex in accordance with an approved reservation.
  - b. Agency shall ensure use of the Complex is limited only to those activities approved by the CCSO.
  - c. Agency will return any portion of the Complex used by the Agency to its original, clean condition.
  - d. Agency shall promptly report to CCSO any incident caused by Agency and resulting in injury or property damage to or within the Complex.
  - e. An executed waiver and release, in a form approved and provided by the County, is required for each employee of Agency that will use the Complex. Agency shall ensure all of its employees intending to use the Complex sign the waiver and release prior to using the Complex.
  - f. Agency shall timely pay any invoice for use of the Complex.

- g. Agency shall complete all trainings, instructions, or certifications required by CCSO prior to use of the Complex.
- h. Agency shall, upon request by the County/CCSO, immediately cease use and vacate the Complex if the County determines, in its sole discretion, that Agency's use of the Complex conflicts with County's intended use of the Complex.
- i. Agency shall comply with all other terms and conditions of this Agreement.

**6. Reservations and Conflicting Use:** Agency's use of the Complex is conditioned upon submission of a timely, written reservation identifying the dates, times, and intended use of the Complex. Agency shall pay a reservation fee in the amount set forth in the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to making a reservation. All reservations shall be for a minimum of 4 hours of use unless CCSO consents, in writing, to a lesser period. For reservations cancelled between seven (7) days and four (4) weeks prior to the intended date of use, Agency shall pay 50% of the reservation fee. For reservations cancelled less than seven (7) days before the date of intended use, Agency shall pay the full reservation fee. If Agency intends to use the Complex's shooting range, Agency shall notify CCSO of its intent to purchase ammunition as part of its written reservation. Agency shall, to the maximum extent possible, submit a written reservation request at least one (1) month in advance of the intended use.

Notwithstanding any other provision of this Agreement, the undersigned parties expressly agree and acknowledge that Agency's use of the Complex is subordinate and subject to CCSO use of the Complex. Agency may not use the Complex if such use conflicts with the CCSO use of the Complex. The County/CCSO may, for any reason and in County/CCSO's sole discretion, deny Agency's requested use of the Complex, or revoke and rescind a previously authorized use of the Complex.

**7. Afterhours Access:** CCSO may, in its sole discretion, permit Agency access to the Complex outside of normal business hours, including weekends and holidays. Agency's access to the Complex outside of normal business hours is subject to, and contingent upon, Agency's successful completion of any and all trainings, instructions, or certifications CCSO determines, in its sole discretion, are required to permit such access. CCSO may condition Agency's access to the Complex outside of normal business hours upon Agency's acceptance of any additional terms and conditions CCSO determines, in its sole discretion, may be required to permit such access.

**8. Condition of PSTC Bowman Complex:** County makes no representations or warranties, express or implied, as to the condition of the Complex or its fitness for any particular use by Agency.

- 9. Cleaning and Repair Costs:** Prior to leaving the Complex, Agency will return any portion of the Complex used by the Agency to its original, clean condition. Agency shall be responsible for any cleaning, repair, or remediation costs arising from or related to Agency's use of the Complex. County shall provide Agency an invoice for any cleaning, repair, or remediation costs incurred by County as a result of Agency's use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
- 10. Gun Handling.** Gun handling or other use outside of the Complex's shooting range is not permitted. All guns must be holstered, cased, or slung muzzle-down when transferred from the parking lot into the Complex.
- 11. Targets and Shooting Lane Use.** When using the Complex's shooting range, targets should be placed at the appropriate height and orientation to avoid shooting the ground, ceiling, or carrier components. Whenever possible, shooting lanes near the walls should not be used to avoid wall strikes.
- 12. Compliance with Applicable Law.** Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to Agency's use of the Complex.
- 13. Express Assumption of Risk, Release, and Hold Harmless.** By signing this agreement, Agency appreciates the risks involved in Agency's use of the Complex and hereby expressly assumes any and all risks arising out of or relating to Agency's use of the Complex. Agency hereby releases and holds harmless the CCSO, its employees, and its elected officials, from any and all liability, loss, damages, expenses, action and claims arising directly or indirectly on account of or out of the use of the Complex.

**14. Liability.**

The parties agree that each party is responsible for the negligent or wrongful acts and omissions of its employees.

In addition, the parties agree that, should a claim arise involving the negligent or wrongful act or omission of an Agency employee in the scope of his employment, Agency shall be responsible for the investigation and disposition of said claim in accordance with the federal tort claims act (FTCA), Title 28, United States Code, Sections 1346(b), 2401(b) and 2671 -80. The United States, Agency, and Agency's employees shall be liable only to the extent permitted by the federal

tort claims act. The CCSO agrees to notify Agency of any administrative claim arising out of an activity conducted pursuant to this memorandum of understanding. Nothing in this paragraph prevents any party from conducting an independent administrative review or the incident giving rise to the claim; however, final disposition of the claim will be handled as provided herein. Both parties agree to cooperate fully with one another in the event of an official investigation arising from alleged negligence or misconduct arising from acts related to the use of the Complex.

CCSO, its agents, employees, program attendees and instructors shall not be responsible for any loss of any property or equipment belonging to Agency.

Nothing herein should be construed as supplanting any applicable statute, rule, or regulation.

Agency, as part of ICE, is a component of DHS and as such, it is a self-insured entity supported by the U.S. Government. The Federal Tort Claims Act, Title 28, U.S.C., Sections 1346. et seq., provides the sole means through which the U.S.

Government resolves all issues of liability for the loss or destruction of property or personal injury or death caused by the negligent or wrongful acts or omissions of any employee of the government while acting within the scope of his or her offices or employment. If CCSO, its personnel, patients, or other third parties suffer damage to or loss of property, personal injury, or death caused by the negligent or wrongful acts or omissions of Agency while they are acting within the scope of their offices or employment as part of HSI-Seattle, and wish to submit a claim under the FTCA, they must file a completed Form SF-95, and they or their estate will contact HSI-Seattle for information on how to do so.

**15. Termination.** This Agreement may be terminated as follows:

- a. Termination for Convenience. This Agreement may be terminated at any time by mutual consent of the parties, or by County/CCSO for convenience upon thirty (30) days written notice to Agency.
- b. Termination for Cause. Either Agency or County/CCSO may terminate this Agreement at any time if that party (the "terminating Party") has determined, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default (the "defaulting Party"). The terminating Party shall promptly notify the defaulting Party in writing of that determination and document such default as outlined herein. The defaulting Party shall have 30 days to cure the default described by the terminating Party. If the defaulting Party fails to cure the default within such 30-day period, then this Agreement shall terminate 10 days following the expiration of such 30-day period.

- 16. Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it, will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim, action, or suit that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- 17. 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.
- 18. Integration.** This Agreement contains the entire agreement between County/CCSO and Agency and supersedes all prior written or oral discussions or agreements.
- 19. Amendments.** County and Agency may amend this Agreement at any time. No amendment shall bind either party unless in writing and signed by all parties. Any such amendment shall be effective only in the specific instance and for the specific purpose given.
- 20. Waiver.** Failure of County to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by County of the right to such performance in the future nor of the right to enforce any other provision of this Agreement. Waiver of any default under this Agreement by County shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Agreement.
- 21. Debt Limitation.** This Agreement 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.
- 22. No Third Party Beneficiaries.** County and Agency are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless



Attachment 1 to MOU Between CCSO and ICE: ICE specific firearms range training requirements

1. Annually:
  - a. ICE requires a 360-degree simunition shoot facility for a minimum anticipated 32 training days per year
2. Quarterly: (October-December; January-March; April through June; July-September)
  - a. ICE requires capacity for an anticipated 50 shooters per quarter, using at least 8 training days per quarter.
  - b. ICE requires its officers to participate in a minimum of 8 consecutive hours of firearms range live fire training per quarter.
  - c. ICE requires quarterly Ability to schedule at least 8 training sessions per quarter, inclusive of shotgun/rifle training.
3. Per Training Day:
  - a. ICE requires at least 8 barricaded shooter/lane positions per 4- or 8-hour training day
4. Training facility room assets reserved by ICE will be utilized exclusively by ICE during training days/sessions.
5. For remedial training following an ICE employee non-qualifying score, ICE will seek range time for remedial training for four-hour periods within 10 days of the failure to qualify. These remedial periods are in addition to the base training days specified above.
6. ICE requires the ability to conduct low light and flashlight training, accomplished through light reduction.
7. ICE requires the ability to introduce sirens and flashing lights while shooting.
8. ICE requires that any outdoor shooting areas be at least semi-enclosed to protect officers from inclement weather.
9. ICE requires on-site training rooms that can be used for classroom/lecture, conducting physical techniques/defensive tactics, and virtual training, if available.
10. ICE training sessions require officers to transition from pistol to long arms and vice versa.
11. ICE training sessions require officers to transition from standing to kneeling to prone, while loaded and unholstered with all weapon platforms, and maintaining range safety protocols.

12. For indoor training, the berm must be properly mined, or a trap properly installed and maintained to deflect bullets.
13. ICE requires that indoor ranges must also be properly ventilated to appropriate safety and health standards.
14. ICE will provide its own duty and training ammunition for use on the range.
15. ICE will provide its own duly trained and certified range officers and firearms instructor, who shall receive training from the vendor on facility protocol and equipment prior to the first day of training under this agreement.
16. ICE officers will arrive and depart the range with duty weapons loaded and ready for duty carry. All guns will be holstered, cased, or slung muzzle-down when transferred from the parking lot to the facility.
17. Pistol shoot requirements are as follows:
  - a. Delineated distances of 1.5 yd, 3 yd, 7 yd, 15 yd and 25 yd.
  - b. The 25 yd must have "barricades" to use as "cover" for the officer to shoot from behind.
  - c. The officer must be able to draw unobstructed from the holster.
  - d. The officer must be able to move from standing to kneeling to prone and also be able to move to the left, right, forward and backward, 90 and 180 degree turns while shooting.
18. Shotgun requirements:
  - a. The shotgun is a Remington 870.
  - b. The Remington 870 must be allowed to use "00" shot and slug ammunition
  - c. Delineated distances for shotgun are 7 yd, 15 yd and 25 yd.
19. Rifle requirements:
  - a. The rifle is an M-4 utilizing .223/5.56 ammunition.
  - b. The M-4 must be allowed to fire 3 round automatic fire bursts at the 7-yard line.
  - c. Delineated distances for an M-4 are 100 yd, 50 yd, 25 yd and 7 yd.



January 23, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

**Nancy Bush**

*Director*

Disaster Management  
2200 Kaen Road  
Oregon City, OR 97045

T 503-655-8378

[clackamas.us](http://clackamas.us)

Intergovernmental Agreement between the State of Oregon (Oregon State Police) and  
Clackamas County for Medical Examiner's Office Building Agreement

<b>Purpose/Outcome</b>	The purpose of this Agreement is to permit the County's use of and access to facilities and use of an enhanced account for the MDI Log Case Management System
<b>Dollar Amount and Fiscal Impact</b>	Clackamas Medical Examiner's Office will be paying \$2,674.25 monthly for use of the Oregon State Medical Examiner's Office Facility and Log Case Management System. This is a budgeted expense.
<b>Funding Source</b>	General Fund
<b>Duration</b>	Two Fiscal Years
<b>Previous Board Action/Review</b>	None
<b>Strategic Plan Alignment</b>	1. Provide medicolegal death investigation service to decedents and their next of kin, and the medical and legal communities. 2. Ensure safe, healthy and secure communities.
<b>Counsel Review</b>	January 2, 2020
<b>Contact Person</b>	Nancy Bush, Director, 503-655-8665
<b>Contract No.</b>	None

**BACKGROUND:** Since October 2004 Clackamas County Medical Examiner's Office has shared space with the Oregon State Medical Examiner's Office. The County has paid for those services through an IGA. The most recent IGA signed was in 2008. Amendments have been provided since that time, but there were no or little financial impacts and either the department director or the county administrator signed the amendments.

Oregon State Police/Medical Examiner's Office is now updating language regarding the facilities and increasing the monthly fee from \$2,187.50 to \$2,674.25.

The agreement covers 24/7 use and access to the facilities and the Log Case Management System that is required for all medical examiner cases. It is important to note that the Oregon State Medical Examiner's Office provides autopsies and toxicology services at no cost.

**RECOMMENDATION:** Staff respectfully recommends Board approval of the Intergovernmental Agreement between Oregon State Police/Medical Examiner's Office and Clackamas County.

Respectfully submitted,

Nancy Bush, Director

# INTERGOVERNMENTAL AGREEMENT

## Agreement No. IGA-540-19

This Agreement is between the State of Oregon acting by and through its Oregon State Police (“Agency”) and Clackamas County (“County”), each a “Party” and, together, the “Parties”.

### SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110 and ORS chapter 146.

### SECTION 2: PURPOSE

The purpose of this Agreement is to permit the County’s use of and access to certain facilities and use of an enhanced account for the MDI Log Case Management System owned by Agency subject to the terms and conditions identified herein. Other County operating costs are not covered by this Agreement and will be the responsibility of the County.

### SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement is effective on the date of the last signature, and terminates on June 30, 2021 unless terminated earlier in accordance with Section 13.

### SECTION 4: AUTHORIZED REPRESENTATIVES

#### 4.1 Agency’s Authorized Representative is:

Major Alexander R. Gardner  
3565 Trelstad Ave. SE, Salem, OR 97317  
503-934-0237  
[AGardner@osp.oregon.gov](mailto:AGardner@osp.oregon.gov)

#### 4.2 County’s Authorized Representative is:

Nancy Bush, Director  
Disaster Management  
2200 Kaen Road, Oregon City, OR 97045  
503-655-8665  
[nbush@clackamas.us](mailto:nbush@clackamas.us)

#### 4.3 A Party may designate a new Authorized Representative by written notice to the other Party.

## **SECTION 5: RESPONSIBILITIES OF EACH PARTY**

- 5.1 Agency shall perform the work set forth on Exhibit A, attached hereto and incorporated herein by this reference.
- 5.2 County shall pay Agency as described in Section 6.

## **SECTION 6: COMPENSATION AND PAYMENT TERMS**

County shall pay Agency, as identified on Exhibit B (Costs), a fixed monthly fee of \$2,674.25 for the use of the premises as described in Exhibits A and C, and the case management system described in Exhibit A, to conduct business, storage, and other lawful purposes related to the operations of its business.

County shall pay the fee in arrears by the 10th day of each month for the preceding month or partial month. The base fee for any partial month shall be prorated on a per diem basis.

## **SECTION 7: GOVERNING LAW, CONSENT TO JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively “Claim”) between Agency or any other agency or department of the State of Oregon, or both, and County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. COUNTY, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **SECTION 8: DEFENSE AND CONTRIBUTION**

- 8.1 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 (a “Third Party Claim”) against a Party (the “Notified Party”) with respect to which the other Party (the “Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each 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 Section and a 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 contribution obligation under this Section with respect to the Third Party Claim.

- 8.2** With respect to a Third Party Claim for which County is jointly liable with Agency (or would be if joined in the Third Party Claim ), County 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 Agency in such proportion as is appropriate to reflect the relative fault of County on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of Agency 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. County'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.
- 8.3** With respect to a Third Party Claim for which Agency is jointly liable with County (or would be if joined in the Third Party Claim), Agency 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 County in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of County on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of County 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. Agency'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.

## **SECTION 9: DEFAULT**

- 9.1** Agency will be in default under this Agreement if County fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.
- 9.2** County will be in default under this Agreement if County fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

## **SECTION 10: REMEDIES**

- 10.1** In the event Agency is in default under Section 9, County may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to termination of this Agreement under Section 13.

- 10.2** In the event County is in default under Section 10, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to termination of this Agreement under Section 13.

## **SECTION 11: LIMITATION OF LIABILITY**

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 8, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

## **SECTION 12: TERMINATION**

- 12.1** This Agreement may be terminated at any time by mutual written consent of the Parties. If the Agreement is terminated by Agency, Agency will provide County with 30 days to vacate the premises.
- 12.2** Either Party may terminate this Agreement as follows:
- 12.2.1** Upon 30 days advance written notice to the other Party;
  - 12.2.2** Immediately upon written notice to the other Party, if the terminating Party fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in that Party's reasonable administrative discretion, to perform its obligations under this Agreement;
  - 12.2.3** Immediately upon written notice to the other Party, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the terminating Party's performance under this Agreement is prohibited or the terminating Party is prohibited from paying for such performance from the planned funding source;
  - 12.2.4** Immediately upon written notice to the other Party, if the other Party is in default under this Agreement and such default remains uncured 15 days after written notice thereof to the other Party; or
  - 12.2.5** As otherwise expressly provided in this Agreement.

## **SECTION 13: INSURANCE**

- 13.1.1** Agency represents that it is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS chapter 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300).

- 13.1.2** County represents that it is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS chapter 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300).

## **SECTION 14: AMENDMENTS**

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

## **SECTION 15: NOTICE**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

## **SECTION 16: SURVIVAL**

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 7, 8, 11, 19 and this Section 16 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

## **SECTION 17: SEVERABILITY**

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **SECTION 18: COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

## **SECTION 19: INTENDED BENEFICIARIES**

County and Agency are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

## **SECTION 20: FORCE MAJEURE**

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. County may terminate this Agreement upon written notice to Agency after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

## **SECTION 21: MERGER, WAIVER**

This Agreement and all exhibits and attachments, if any, constitute 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 or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

## **SECTION 22: AGREEMENT DOCUMENTS**

This Agreement consists of the following document: this Agreement, Exhibit A (the Statement of Work), Exhibit B (Costs) and Exhibit C (Space Map Diagram). Exhibits A, B and C are incorporated herein by this reference.

## SECTION 23: STATUS OF COUNTY

- 23.1** It is the intent of the Parties that for purposes of this Agreement, County, including its officers, employees, or agents, are not officers, employees or agents of the Oregon Department of State Police, the Oregon State Medical Examiner, or the State of Oregon.
- 23.2** For the purposes of this Agreement, neither County nor its officers, employees or agents shall hold themselves out as officers, employees or agents of the Oregon Department of State Police, the Oregon State Medical Examiner, or the State of Oregon based solely on County's participation in this Agreement or on any right or obligation arising from this Agreement.
- 23.3** County, its subcontractors, if any, and all employers providing work, labor or materials under this Agreement are subject employees under the Oregon Workers' Compensation Law and shall comply with ORS 656.005 *et. seq.* Nothing in this Agreement is intended to create the relationship of employer and employee as between Oregon Department of State Police, the Oregon State Medical Examiner, or the State of Oregon and the County.

## SECTION 24: SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

### STATE OF OREGON acting by and through its Oregon State Police

\_\_\_\_\_  
Major Alex Gardner, Forensic Science and Pathology Bureau

\_\_\_\_\_  
Date

### Clackamas County

\_\_\_\_\_  
Nancy Bush, Director of Disaster Management

\_\_\_\_\_  
Date

### Clackamas County Board of County Commissioners

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date



## EXHIBIT A

### STATEMENT OF WORK

#### PURPOSE

By execution of this Agreement, Agency hereby agrees to let the County access and use that portion of its facility located at 13309 SE 84<sup>th</sup> Avenue Suite 100 in Clackamas County, Oregon which is shown on Exhibit C (“Rental Space”). The access and use of the Rental Space is subject to the following terms and conditions:

- a. County shall be entitled to full access to and use of the Rental Space for the entire term of this Agreement for County’s government office and related purposes. County staff assigned to work in the Rental Space may reasonably use common areas of the facility such as restrooms, break rooms and hallways.
- b. Agency shall be responsible for providing the following:
  - i. One super-administrator account for the MDI-Log Case Management system.
  - ii. Two (2) 8’ X 8’ cubicle workspaces, one (1) 157 sq. ft. office and 100 sq. ft. storage space hereafter referred to as “Rental Space” as identified on Exhibit C (Space Map Diagram).
  - iii. Telephone service for three (3) lines. Includes lines, handsets and local service charges incurred within this facility on building’s telephone equipment.
  - iv. Agency-owned Furniture. Agency will allow County staff the continued use of the already-assigned Agency-owned furniture. This consists of two (2) existing Herman Miller 8’ X 8’ workstations, chairs, and telephone handsets. County is responsible for maintaining furniture in good condition, subject to ordinary wear. Any damage, loss, or destruction to the furniture will be charged to the County at its costs of replacing or repairing the furniture, including materials, parts and labor. County shall not remove any item of furniture from building without Agency’s prior written approval.  
  
Any new furniture or modifications, if requested, to existing will be charged to the County at its costs, including materials, parts and labor. County owned or privately owned items are not included, such as qualifying ergonomic items and chairs.
  - v. All infrastructure support, HVAC, utilities, sewer and water, waste management/biohazard disposal, shredding/recycling, and office janitorial service.
  - vi. Building Security which includes outside fencing of the rear parking and receiving area, security lighting, interior card readers and security logging software and bullet resistant glass at the public receiving area.

- vii. Office Equipment. Use of, maintenance, and support of office equipment deemed necessary by the State Medical Examiner's Office, such as FAX machines, dictation/transcription devices, large volume printer, and copy machines.
  - viii. Lab Equipment. Use of, maintenance, and support of all lab equipment deemed necessary by the State Medical Examiner's Office. To include radiology equipment (including licenses), autopsy tables, sinks, body lifts, dictation systems, floor scales, photography infrastructure, washer/dryer and lab storage cabinets.
  - ix. Cleaning and other supplies for the lab areas, to include autopsy instruments and maintenance, body shrouds, and other related items.
  - x. Information Technology support and hardware. Agency will provide limited information technology support and hardware that includes computer servers, network routers, network hubs, access to outside connectivity, network licenses, and data outlets.
  - xi. Reserved parking for two (2) County Medical Examiner vehicles. Limited off-street parking will be available to County staff on a first come, first served basis. Parking for the disabled will always be provided in compliance with the Oregon Revised Statutes (ORS) 447.233.
- c. County will be responsible for the following:
- i. Its own desktop workstations, notebook computers, and printers, and support of these items.
  - ii. The setup and connection to their external county systems with coordination through the State Medical Examiner and Oregon State Police Information Technology representative.
  - iii. Improvements and Alterations. County may place chattels, partitions, and may make nonstructural improvements and alterations to the Rental Space only at its own expense and only after receiving Agency's written approval, which shall not be unreasonably withheld. County will retain ownership of all its chattels, partitions, and the like placed in the Rental Space by County. Any County improvement work which modifies or affects proper operation of the HVAC system shall not be allowed.

**EXHIBIT B**  
**COSTS**

Services Provided	Fiscal Year 2019-20 Monthly Costs	Fiscal Year 2020-21 Monthly Costs
1. Super Admin MDI- Log Account	\$1,500.00	\$1,500.00
2. Rental Space	\$1,174.25	\$1,174.25
Total Monthly Amount	\$2,674.25	\$2,674.25



Dave Cummings  
Chief Information Officer

## Technology Services

121 Library Court Oregon City, OR 97045

January 23, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval for a Service Level Agreements between  
Clackamas Broadband eXchange and Allstream Business US

<b>Purpose/Outcomes</b>	Clackamas Broadband eXchange (CBX) is looking for approval to enter into a Service Level Agreement (SLA) with the Allstream Business US for a fiber connection.
<b>Dollar Amount and Fiscal Impact</b>	Allstream Business US will pay a non-recurring fee of \$11,835.00 for the new fiber construction and pay a recurring lease fee of \$9,600.00 annually.
<b>Funding Source</b>	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by Allstream Business US.
<b>Duration</b>	Effective upon signature by the board the SLA is effective for three (3) years.
<b>Previous Board Action</b>	Board previously approved CBX to build and maintain similar fiber connections for LSN.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"><li>1. Build a strong infrastructure.</li><li>2. Build public trust through good government.</li></ol>
<b>Contact Person</b>	Dave Devore (503)723-4996

**BACKGROUND:**

CBX is proposing to build a new fiber lateral to extend the CBX network to Advantis Credit Union for Allstream Business US. The connection will be from the Pittock in Portland to the credit union in West Linn.

**RECOMMENDATION:**

Staff respectfully recommends approval to enter into this Service Level Agreements. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

This Service Level Agreement has been reviewed and approved by County Counsel.

Sincerely,

Dave Cummings  
CIO Technology Services

# Clackamas County

## FIBER OPTIC SERVICE LEVEL AGREEMENT

Allstream Business US, LLC  
(Customer Name)

### 1. **Recitals**

**WHEREAS**, Clackamas County (County) desires to provide to Allstream Business US, LLC (Customer) (each a “Party” and together “the Parties”) the services set forth in this Service Level Agreement (“Agreement”) (“Service” or “Services”), between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

**WHEREAS**, Customer desires to use the Services; and

**WHEREAS**, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

### 2. **Fiber Optic Network Description**

County will provide Customer with point-to-point fiber optic connectivity as detailed in Appendix A on a path designated by the County. This connection will be a combination of single mode fiber optic cable and Dense Wavelength Division Multiplexing (DWDM) (collectively hereinafter “Fiber”). County reserves the right, in its sole administrative discretion, to relocate the Fiber at any time provided such relocation does not materially change the Service provided under this Agreement.

### 3. **Service Description**

Service provided to Customer by County is physical connectivity of one (or more) strands of Fiber, between sites specifically identified in Appendix A. Each site listed in Appendix A will have a single mode fiber termination.

### 4. **Construction and Installation Requirements**

- a. County, when installing Fiber cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the Parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for Service. Customer shall provide a path for the Fiber from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.

- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the County's Fiber used to provision the Service within each site.
- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of Service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the Fiber network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice Fiber into existing County fiber optic resources; terminate County's optical Fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

**5. Term of Agreement**

At such time as County completes installation and connection of the necessary facilities and equipment to provide Service herein, County shall then certify and notify Customer in writing that the Service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated with 90 days' notice as herein provided, this Agreement shall continue for a period of three years following the Service Start Date.

**6. Rates**

In return for County providing the Services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for Services as specified in Appendix A.

**7. Payment Options**

a. **Semi-Annual Payments**

County shall provide an invoice for six months of service (July 1 through December 31 and January 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The semi-annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to disconnect the affected Service upon thirty (30) days written notice to Customer.

b. **Alternative Payment Frequency**

If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon at least thirty (30) days' advance written notice to Customer.

8. **Fiber Maintenance**

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and in accordance with Appendix B, throughout the Service Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber, and/or the Service, and/or Customer's use thereof.

9. **Confidentiality**

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct maintenance or repair activity, without written permission of Customer, except as required by law.

10. **Content Control and Privacy**

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

**11. Assignment and Successors**

Either Party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur. Notwithstanding the foregoing, either Party may assign this Agreement without consent, in connection with a merger, consolidation, reorganization, or sale of substantially all of such Party's assets.

**12. Damage and Third Party Indemnity**

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

**13. Force Majeure**

Neither Party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such Party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the Parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

**14. Consequential Damages**

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION,

INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

**15. Public Contracting Provisions**

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

**16. Non-Appropriation**

Notwithstanding any other provisions of this Agreement, the Parties hereby agree and understand that any obligation of Customer to obtain Services as provided herein is subject to fund availability and appropriation by Customer for such Services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of this Agreement, the Agreement shall terminate upon notice to County by Customer and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

**17. Compliance with Laws**

Customer shall comply with all applicable federal, state, county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

**18. Taxes and Assessments**

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" may include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

**19. Termination**

- a. This Agreement shall terminate ninety (90) days following written notice by either Party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

**20. Default**

1. Either of the following events shall constitute a default:
  - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
  - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

**21. Amendment**

Any amendments to this Agreement shall be in writing and shall be signed by all Parties.

**22. No recourse Against the Grantor**

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

**23. Notice**

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by email addressed as follows:

**Notice to the County**

Manager, Clackamas Broadband Express  
Clackamas County Technology Services  
121 Library Court  
Oregon City, Oregon 97045

Fax Number (503) 655-8255

with a copy to

Chief Information Officer  
Clackamas County Technology Services  
121 Library Court  
Oregon City, Oregon 97045  
Fax Number: (503) 655-8255

### **Notice to the Customer**

**Email Notice:** [regulatorynotice@allstream.com](mailto:regulatorynotice@allstream.com)

### **Mail Notice**

Legal Department  
Allstream  
18110 SE 34<sup>th</sup> St., Building One, Suite 100  
Vancouver, WA, 98683

with a copy to

[regulatorynotice@allstream.com](mailto:regulatorynotice@allstream.com)

Either Party, by similar written notice, may change the address to which notices shall be sent.

### **24. Debt Limitations**

This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and County's performance is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

### **25. No Attorney Fees**

No attorney fees shall be paid for or awarded to either Party in the course of any dispute or other recovery under this Agreement. It is the intent of the Parties that each shall bear the costs of its own legal counsel.

### **26. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Customer that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that

if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

**27. Whole Contract**

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the last date of signature below.

**Clackamas County**

By (signature): \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer**

Allstream Business US, LLC  
(Customer Name)

By (signature):  \_\_\_\_\_  
82B212461A914CB...

Name (print): Steve Fisher

Title: COO

Date: 1/9/2020 | 2:58 PM PST

**APPENDIX A**

**SERVICE AND RATE SCHEDULE**

**1. Specified Services and Rates**

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided Services on the Fiber network during the term. It is understood by both parties that Service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term, Customer may add Services to existing or new locations, or change Services and/or locations, but that such changes are subject to the rates for such additional Services.

**2. Construction, Installation and Activation**

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

**3. Service Changes and Conversions**

Both Parties agree that Customer may add or change Services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges, as mutually agreed to by the Parties.

**4. Semi - Annual Recurring Charges**

	<b>From</b> (Connecting Point A:Site Name & Address)	<b>To</b> (Connecting Point B:Site Name & Address)	<b>Service</b>	<b>Monthly Rate (\$)</b>
1	Pittock Building 921 SW Washington St Portland, OR 97205	WES Hub 15941 S Agnes Ave Oregon City, OR 97045	DWDM Wavelength	\$400.00
2	WES Hub 15941 S Agnes Ave Oregon City, OR 97045	21900 Willamette Drive West Linn, OR 97068	One Pair (two) dark fibers	\$300.00
3	Pittock Building 921 SW Washington St Portland, OR 97205	Pittock Building 921 SW Washington St Portland, OR 97205	Optical Cross- Connect	\$100.00

**5. Nonrecurring Charges**

<b>From</b>	<b>To</b>	<b>Service</b>	<b>Amount</b>
-------------	-----------	----------------	---------------

(Connecting Point A:Site Name & Address)		(Connecting Point B:Site Name & Address)		(\$)
1	Pittock Building 921 SW Washington St Portland, OR 97205	21900 Willamette Drive West Linn, OR 97068	Construction	\$11,835.00

**6. Late Payment Interest**

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

**7. Annual Consumer Price Index (CPI) Adjustments**

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

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## **APPENDIX B**

### **MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES**

#### **1. Defined Terms**

- a. “Routine Maintenance” is all preventive maintenance activities and repairs.
- b. “Non-Routine Maintenance” is all efforts and activities in response to an emergency circumstance which requires restoration of service.

#### **2. General**

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain telephone number (503) 742-4219 to contact personnel and NCAM. County’s NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM’s remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer’s personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County’s technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within four (4) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer twenty one (21) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

**3. Fiber Optic Network**

- a. County shall maintain the Fiber optic network in good and operable condition and shall repair the Fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the Fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

**4. Restoration**

- a. When restoring damaged Fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental or safety hazards which would restrict or jeopardize any maintenance work.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the Fiber and the location of the damaged Fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within four (4) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the Fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that four (4) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of Fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the Fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

5. Customer shall be responsible for paying County standard maintenance rates and charges for any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

***Remainder of this page intentionally left blank.***

## APPENDIX C

### FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

#### 1. Fiber and Connector Standards

##### a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

##### b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

##### c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

*Remainder of this page intentionally left blank.*



Dave Cummings  
Chief Information Officer

## Technology Services

121 Library Court Oregon City, OR 97045

January 23, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval for a Service Level Agreements Amendment #1 between  
Clackamas Broadband eXchange and Summit Learning Charter

<b>Purpose/Outcomes</b>	Clackamas Broadband eXchange (CBX) is looking for approval to amend a Service Level Agreement (SLA) with the Summit Learning Charter for a new redundant dark fiber connection to Clackamas ESD.
<b>Dollar Amount and Fiscal Impact</b>	The Summit Learning Charter will pay a non-recurring fee of \$1,000.00 for the new fiber construction. The Summit Learning Charter will pay a recurring lease fee of \$3,060.00 annually.
<b>Funding Source</b>	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by the Summit Learning Charter.
<b>Duration</b>	Effective upon signature by the board and the SLA can be renewed on a year to year basis.
<b>Previous Board Action</b>	Board previously approved CBX to build and maintain a dark fiber connection for Summit Learning Charter.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"><li>1. Build a strong infrastructure.</li><li>2. Build public trust through good government.</li></ol>
<b>Contact Person</b>	Dave Devore (503)723-4996

**BACKGROUND:**

CBX is proposing to build a new fiber connection for the Summit Learning Charter to provide a redundant connection to Clackamas ESD.

**RECOMMENDATION:**

Staff respectfully recommends approval to enter into this Service Level Agreements. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

This Service Level Agreement has been reviewed and approved by County Counsel.

Sincerely,

Dave Cummings  
CIO Technology Services



**APPENDIX A**

**SERVICE AND RATE SCHEDULE**

**1. Specified Services and Rates**

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

**2. Construction, Installation and Activation**

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

**3. Service Changes and Conversions**

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

**4. Monthly Recurring Charges**

<b>From</b> (Connecting Point A:Site Name & Address)	<b>To</b> (Connecting Point B:Site Name & Address)	<b>Service</b>	<b>Monthly Rate (\$)</b>
1 Clackamas ESD 13455 SE 97 <sup>th</sup> Ave Clackamas, OR 97015	Summit Learning Charter 30391 SE Highway 211 Eagle Creek, OR 97022 (north)	One Pair (two) dark fibers	\$255.00
2 Clackamas ESD 13455 SE 97 <sup>th</sup> Ave Clackamas, OR 97015	Summit Learning Charter 30391 SE Highway 211 Eagle Creek, OR 97022 (south)	One Pair (two) dark fibers	\$255.00

**5. Nonrecurring Charges**

<b>From</b> (Connecting Point A:Site Name & Address)	<b>To</b> (Connecting Point B:Site Name & Address)	<b>Service</b>	<b>Amount (\$)</b>
1 Clackamas ESD	Summit Learning Charter	Construction	\$34,355.00

	13455 SE 97 <sup>th</sup> Ave Clackamas, OR 97015	30391 SE Highway 211 Eagle Creek, OR 97022 (north)		(Complete)
2	Clackamas ESD 13455 SE 97 <sup>th</sup> Ave Clackamas, OR 97015	Summit Learning Charter 30391 SE Highway 211 Eagle Creek, OR 97022 (south)	Construction	\$1,000.00

**6. Late Payment Interest**

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

**7. Annual Consumer Price Index (CPI) Adjustments**

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

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Capt. Malcolm McDonald  
Director

**CLACKAMAS COUNTY COMMUNITY CORRECTIONS**  
**1024 MAIN STREET • OREGON CITY • OREGON • 97045**  
**TELEPHONE 503-655-8603 • • • FAX 503-650-8942**

January 15, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval to Apply for a Grant Award

<b>Purpose/Outcome</b>	Community Corrections would like to engage a recovery mentor to assist pre and post-trial populations, leaving jail to connect with treatment, recovery supports, and housing in the community.
<b>Dollar Amount and Fiscal Impact</b>	Maximum amount of award is \$93,750
<b>Funding Source</b>	Bureau of Justice Assistance and the Centers for Disease Control & Prevention
<b>Duration</b>	12 Months
<b>Previous Board Action/Review</b>	No previous Board action.
<b>Strategic Plan Alignment</b>	Provide supervision, resources, intervention, and treatment services. Ensure Safe, Healthy and Secure Communities
<b>Contact Person</b>	Captain Malcolm McDonald, Director, Community Corrections – 503-655-8717

**BACKGROUND:**

In April 2019, Community Corrections was awarded a training/travel scholarship from Arnold Ventures. "Planning Initiative to Build Bridges Between Jail and Community-Based Treatment for Opioid Use Disorder." The Building Bridges project supported a nine-month planning process for selected counties committed to implementing medication-assisted treatment in jail and enhancing collaboration between jail and community-based treatment providers. Community Corrections received coaching and technical assistance to develop a continuum-of-care model. As a result of the work done on the Planning Initiative, Community Corrections has been invited to apply for this funding. This grant would provide funding for a recovery mentor who would work closely with community members releasing from jail to connect them with treatment and recovery supports. Additionally, this funding would be used to pay for recovery housing for those exiting jail.

**RECOMMENDATION:** Community Corrections respectfully requests that the Board of County Commissioners approve application of this Grant Award from Bureau of Justice Assistance and the Centers for Disease Control & Prevention.

Respectfully submitted,

Capt. Malcolm McDonald Director, Community Corrections

# Grant Application Lifecycle Form

Use this form to track your potential grant from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

## \*\* CONCEPTION \*\*

*Note: The processes outlined in this form are not applicable to disaster recovery grants.*

### Section I: Funding Opportunity Information - To be completed by Requester

Lead Department: Community Corrections Application for:  Subrecipient funds  Direct Grant  
Grant Renewal?  Yes  No  
**If renewal, complete sections 1, 2, & 4 only**

Name of Funding Opportunity: Building Bridges Between Jails& Community Based Treatment for Opioid Use Disorder  
Funding Source:  Federal  State  Local: \_\_\_\_\_  
Requestor Information (Name of staff person initiating form): Malcolm McDonald  
Requestor Contact Information: malcolmmcd@clack  
Department Fiscal Representative: Nora Jones  
Program Name or Number (please specify): Building Bridges  
Brief Description of Project:

This funding opportunity, supported by the Bureau of Justice Assistance and the Centers for Disease Control and Prevention, will make \$93,750 available to eligible Building Bridges sites to support projects that increase the capacity of local communities to collaborate across the areas of public safety, behavioral health, and public health.

Name of Funding (Granting) Agency: Bureau of Justice Assistance and Centers for Disease Control & Prevention

Agency's Web Address for Grant Guidelines and Contact Information:

<https://oip.gov/funding/index.htm>

**OR**

Application Packet Attached:  Yes  No

Completed By: \_\_\_\_\_ Date \_\_\_\_\_

## \*\* NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE \*\*

### Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Grant  Non-Competing Grant  Other Funding Agency Award Notification Date: Febraury 17,2020  
CFDA(s), if applicable: 16.560  
Announcement Date: January 15,2020 Announcement/Opportunity #: N/A  
Grant Category/Title: N/A Max Award Value: \$93,750  
Allows Indirect/Rate: Yes Match Requirement: none  
Application Deadline: January 31,2020 Other Deadlines: \_\_\_\_\_  
Grant Start Date: March 1,2020 Other Deadline Description: \_\_\_\_\_  
Grant End Date: February 28,2021  
Completed By: \_\_\_\_\_ Program Income Requirement: \_\_\_\_\_  
Pre-Application Meeting Schedule: \_\_\_\_\_

**Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staff**

**Mission/Purpose:**

1. How does the grant support the Department and/or Division's Mission/Purpose/Goals?

"The mission of Clackamas County Community Corrections is to provide supervision, resources, intervention, treatment & victim services to justice involved individuals and crime victims so they can experience and contribute to a safe community" This grant will allow community corrections to implement strategies within a continuum of care for community member exiting jail and accessing treatment and housing.

2. What, if any, are the community partners who might be better suited to perform this work?

N/A - Community Corrections received an invitation to apply for this opportunity as a result of the work that has been done with the Building Bridges initiative.

3. What are the objectives of this grant? How will we meet these objectives?

The objective of this grant is to implement effective linkage to care programs upon release from incarceration. This will be met by developing a plan which includes a mentor and recovery housing to connect clients with treatment and recovery supports.

4. Does the grant proposal fund an existing program? If yes, which program? If no, what is the purpose of the program?

No, the purpose of this program is to enhance collaboration of public safety, behavioral health and treatment providers.

**Organizational Capacity:**

1. Does the organization have adequate and qualified staff? If no, can staff be hired within the grant timeframe?

This position would be filled by contract with a local non-profit we currently do business with.

2. Are there partnership efforts required? If yes, who are we partnering with and what are their roles and responsibilities?

No

3. If this is a pilot project, what is the plan for sunseting the project and/or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

N/A

4. If funded, this grant would create a new program, does the department intend for the program to continue after initial funding is exhausted? If yes, how will the department ensure funding (e.g. request new funding during the budget process, supplanted by a different program, etc.)?

This grant will not create a new program.

**Collaboration**

1. List County departments that will collaborate on this award, if any.

Clackamas County Jail, Community Corrections

**Reporting Requirements**

1. What are the program reporting requirements for this grant?

Monthly and final progress reports.

2. How will grant performance be evaluated? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

There are currently data sources in place, including our current tracking system for Transition Center clients along with the Department of Corrections Information System, Jail management system, and the Criminal Justice Commission.

3. What are the fiscal reporting requirements for this grant?

Quarterly and final financial reports

**Fiscal**

1. Will we realize more benefit than this grant will cost to administer?

Yes.

2. Are other revenue sources required? Have they already been secured?

No, other revenue sources are not required.

3. For applications with a match requirement, how much is required (in dollars) and what type of funding will be used to meet it (CGF, In-kind, Local Grant, etc.)?

N/A

4. Does this grant cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

Yes, if recipient has a current federally approved indirect cost rate.

Program Approval:

Name (Typed/Printed)	Date	Signature
<b>** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR **</b>		
<b>**ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN.**</b>		

**Section IV: Approvals**

<b>DIVISION DIRECTOR (or designee, if applicable)</b>		
Name (Typed/Printed)	Date	Signature

<b>DEPARTMENT DIRECTOR (or designee, if applicable)</b>		
Malcolm McDonald	1/15/2020	
Name (Typed/Printed)	Date	Signature

<b>FINANCE GRANT MANAGER (or designee, if applicable; FOR FEDERALLY-FUNDED APPLICATIONS ONLY)</b>		
Name (Typed/Printed)	Date	Signature

**Section V: Board of County Commissioners/County Administration**

*(Required for all grant applications. If your grant is awarded, all grant awards must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)*

**For applications less than \$150,000:**

<b>COUNTY ADMINISTRATOR</b>	Approved: <input type="checkbox"/>	Denied: <input type="checkbox"/>
Name (Typed/Printed)	Date	Signature

**For applications greater than \$150,000 or which otherwise require BCC approval:**

BCC Agenda item #:  Date:

**OR**

Policy Session Date:

---

County Administration Attestation

**County Administration: re-route to department contact when fully approved.**

**Department: keep original with your grant file.**

# Building Bridges Between Jails and Community-Based Treatment for Opioid Use Disorder

## Grant Overview and Application

### Overview of Funding Opportunity

Individuals with opioid use disorder (OUD) pass through jails each year, placing correctional facilities at the epicenter of the opioid crisis. Few jails offer the FDA-approved medications—buprenorphine, methadone, and naltrexone—that have consistently been shown to be the most effective forms of treatment for OUD when combined with behavioral therapies.

The Building Bridges demonstration project supported a nine-month planning process for selected counties committed to implementing medication-assisted treatment in jails and enhancing collaboration between jails and community-based treatment providers. Communities received coaching and technical assistance to develop a comprehensive continuum-of-care model that targets the jail population and builds bridges between in-custody and community-based treatment and supervision, including probation, parole, and court-based programs.

This funding opportunity, supported by the Bureau of Justice Assistance and the Centers for Disease Control and Prevention, will make \$93,750 available to eligible Building Bridges sites to support projects that increase the capacity of local communities to collaborate across the areas of public safety, behavioral health, and public health. Please see below for the eligibility criteria, allowable uses of funding, and instructions to apply for funding.

### Eligibility Criteria

- ◀ Participated in at least 80 percent of coaching calls.
- ◀ Implementation of at least one form of medication-assisted treatment (MAT) in your local jail by or before February 29, 2020.

### Allowable Uses of Funding

Funds are to be used only to support the following allowable activities:

- ◀ Implementing effective community-level opioid overdose prevention activities
- ◀ Implementing effective linkage to care programs upon release from incarceration
- ◀ Enhancing public health, behavioral health, and public safety (e.g., police and law enforcement agencies, child welfare, courts and corrections, as well as first responders such as fire and paramedic/emergency services) collaborations, with a focus on scaling up promising interventions

### Mandatory Project Information

Responses to the project activity section must be submitted via the solicitation form (see page 4) by 5:00 p.m., ET, on January 31, 2020. All other required documents must be submitted via email to [COAP@iir.com](mailto:COAP@iir.com).

### Additional Mandatory Application Requirements

#### Work Plan (Required)

Attach a work plan with a start date of March 1, 2020. The work plan should outline all planned activities. The work plan should be laid out as a table and contain the following elements:

- ◀ Activities: All activities should be included in the work plan.

- ◀ Responsible individuals: For each activity in the work plan, identify the organization and/or staff member responsible for carrying out the activity; and
- ◀ Timeline: Outline the specific time period during which the activity will occur.

A work plan template has been emailed to you along with this solicitation.

## Budget and Associated Documentation

The Budget Detail Worksheet and the Budget Narrative are now combined in a single document collectively referred to as the Budget Detail Worksheet. The Budget Detail Worksheet is a user-friendly, fillable, Microsoft Excel-based document designed to calculate totals. In addition, the Excel workbook contains worksheets for multiple budget years that can be completed as necessary. All applicants should use the Excel version when completing the proposed budget in an application, except in cases where the applicant does not have access to Microsoft Excel or experiences technical difficulties. If an applicant does not have access to Microsoft Excel or experiences technical difficulties with the Excel version, the applicant should use the 508-compliant accessible Adobe Portable Document Format (PDF) version. Both versions of the Budget Detail Worksheet can be accessed at <https://ojp.gov/funding/Apply/Forms/BudgetDetailWorksheet.htm>. Applicants should complete only the Year 1 tab, which is defined as March 1, 2020, to February 28, 2021.

The Budget Detail Worksheet should provide the detailed computation for each budget line item, listing the total cost of each and showing how it was calculated by the applicant. For example, costs for personnel should show the annual salary rate and the percentage of time devoted to the project for each employee paid with federal funds. The Budget Detail Worksheet should present a complete itemization of all proposed costs.

For questions pertaining to budget and examples of allowable and unallowable costs, see the DOJ Grants Financial Guide at <https://ojp.gov/financialguide/DOJ/index.htm>. The budget summary page must reflect the amounts in the budget categories as included in the Budget Detail Worksheet. These amounts should mirror the amounts in the Budget Narrative.

## Indirect Cost Rate Agreement (if applicable)

Indirect costs may be charged to an award only if:

- The recipient has a current (unexpired), federally approved indirect cost rate; or
- The recipient is eligible to use, and elects to use, the de minimis indirect cost rate described in the Part 200 Uniform Requirements, as set out at 2 CFR 200.414(f).

An applicant with a current (unexpired) federally approved indirect cost rate must attach a copy of the indirect cost rate agreement to the application. An applicant that does not have a current federally approved rate may request one through its cognizant federal agency, which will review all documentation and approve a rate for the applicant entity, or, if the applicant's accounting system permits, applicants may propose to allocate costs in the direct-cost categories.

Certain OJP recipients have the option of electing to use the de minimis indirect cost rate. An applicant that is eligible to use the de minimis rate and wishes to use the de minimis rate should attach written documentation to the application that advises OJP of both (1) the applicant's eligibility to use the de minimis rate and (2) its election to do so. If an eligible applicant elects the de minimis rate, costs must be consistently charged as either indirect or direct costs but may not be double charged or inconsistently charged as both. The de minimis rate may no longer be used once an approved federally negotiated indirect cost rate is in place. (No entity that ever has had a federally approved negotiated indirect cost rate is eligible to use the de minimis rate.) For the de minimis rate requirements (including information on eligibility to elect to use the rate), see the Part 200 Uniform Requirements, at 2 CFR 200.414(f).

This document should be emailed to [COAP@iir.com](mailto:COAP@iir.com).

## Applicant Certification (Required)

The applicant agency must provide a statement of assurance signed by the authorized representative of the applicant organization stating that:

- ◀ Federal funds made available through this award will not be used to supplant state, local, or tribal funds
- ◀ but will be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for the activities addressed in the application.

- ◀ There has been appropriate coordination with all affected agencies.
- ◀ The project coordinator will agree to work with BJA and its representatives as well as the selected BJA COAP training and technical assistance provider(s) and partner agencies.

This document should be emailed to [COAP@iir.com](mailto:COAP@iir.com).

## Accounting System and Financial Capability Questionnaire (Required)

All applicants must download, complete, and submit this form: <http://ojp.gov/funding/Apply/Resources/FinancialCapability.pdf>.

This document should be emailed to [COAP@iir.com](mailto:COAP@iir.com).

## Post-Award Requirements

### Bimonthly Collaborative Calls

The recipient of the funds will be required to have the project coordinator participate in a bimonthly call with BJA policy advisors, CDC staff members, and the IIR project manager. These calls will last no more than 1.5 hours. Additional staff members may choose to participate.

### Monthly, Quarterly, and Final Reporting

The recipient of funds under this solicitation will be required to submit monthly progress reports, quarterly financial reports, final financial and progress reports, and, if applicable, an annual audit report in accordance with the Part 200 Uniform Requirements or specific award conditions. Future awards and fund drawdowns may be withheld if reports are delinquent.

## Confidentiality and Human Subjects Protection

Any recipient of an award under this solicitation will be required to comply with the U.S. Department of Justice regulations on confidentiality and human subjects' protection. See the "Requirements Related to Research" (<https://www.ojp.gov/funding/Explore/LegalOverview2020/ResearchRelatedRequirements.htm>) webpage of the "Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative

Agreements" (<https://www.ojp.gov/funding/Explore/LegalOverview2020/index.htm>) for additional information. All funded applicants will be required to provide documentation of compliance with this requirement prior to commencing data collection.

## Applicable Federal Laws and Regulations

All awards are subject to the availability of appropriated funds and to any modifications or additional requirements that may be imposed by law. Applicants selected for awards must agree to comply with additional legal requirements upon acceptance of an award. Additional information for each requirement can be found at <https://ojp.gov/funding/index.htm>.

## Applicant Process

**Applications due:** January 31, 2020

**Review of applications:** February 1 through February 10, 2020

**Notification of awards:** No later than February 17, 2020

**Project begins:** March 1, 2020

## Application Checklist

- \_\_\_\_\_ Mandatory Project Information Form (see page 4)
- \_\_\_\_\_ Budget Detail Worksheet (see page 2)
- \_\_\_\_\_ Indirect Cost Rate Agreement (if applicable) (see page 2)
- \_\_\_\_\_ Work Plan (see page 1)
- \_\_\_\_\_ Applicant Certification (see page 2)
- \_\_\_\_\_ Accounting System and Financial Capability Questionnaire (see page 3)

Bureau of Justice Assistance's  
Comprehensive Opioid Abuse Program

# Building Bridges Between Jails and Community-Based Treatment for Opioid Use Disorder

## Submission Deadline

Applications for the Building Bridges between Jails and Community-Based Treatment for Opioid Use Disorder Implementation Funding are due by 5:00 p.m., ET, on January 31, 2020. Please submit the application by completing this form. By using Adobe Acrobat Reader, you will be able to submit your application directly through a button on the form. A free download of Adobe Acrobat Reader can be found at <https://get.adobe.com/reader>. If using another PDF program, please complete the form and save your responses, then email a copy of the completed form, along with any required documents or attachments, to [COAP@iir.com](mailto:COAP@iir.com).

## Questions

Should you have questions about the application process or issues with submission, please send an email to [COAP@iir.com](mailto:COAP@iir.com).

## Mandatory Project Information

### Applicant Information

Applicant jurisdiction:

Applicant organization:

Employer identification number:

Type of applicant:

- County government
- City or township government
- Nonprofit organization
- For-profit organization
- Other (explain)

## Primary Contact for Matters Related to This Application

First name

Last name

Job title

Phone number

Email address

Street address

City

State

ZIP code

## Project Activities

### Category 1: Implementing Effective Community-Level Opioid Overdose Prevention Activities

Check each of your intended use(s) of funding and provide a description of your activities and objectives. You may select more than one, or not applicable if you will have no activities within this category.

Not applicable

Provide training/information to the community and media on the impact of substance abuse and strategies being employed in your community to address SUD.

Provide individual and caregiver education and training on the risks and side effects of prescription and illicit drugs and administering naloxone.

Provide training and technical assistance on naloxone distribution to government agencies, community-based service or treatment providers, or educational institutions.

Provide education to improve family members' or caregivers' understanding of evidence-based treatments and prevention strategies related to SUD.

Other (explain)

Other (explain)

Other (explain)

## Category 2: Implementing Effective Linkage to Care Programs Upon Release From Incarceration

Check each of your intended use(s) of funding and provide a description of your activities and objectives. You may select more than one, or not applicable if you will have no activities within this category.

Not applicable.

Develop recovery communities, recovery coaches, and recovery community organizations to expand the availability of and access to recovery support services.

Develop a plan for pre-trial and post-trial populations leaving jail or secure residential treatment to connect them to treatment and recovery supports.

Improve the availability and coordination of transportation services to connect rural residents to recovery and other support services.

Develop data sharing agreements with public health, behavioral health, and public safety agencies to allow for sharing of information and assessing success of programs and policies.

Develop shared data systems to allow public health, behavioral health, and public safety agencies to effectively share information about individuals who have SUD and connect to appropriate services.

Provide transitional or recovery housing as part of a comprehensive response strategy.

Other (explain)

Other (explain)

Other (explain)

### Category 3: Enhancing Public Health, Behavioral Health, and Public Safety Collaborations, with a Focus on Scaling Up Promising Interventions

Check each of your intended use(s) of funding and provide a description of your activities and objectives. You may select more than one, or not applicable if you will have no activities within this category.

Not applicable.

Develop data sharing agreements with public health, behavioral health, and public safety agencies to allow for sharing of information and assessing success of programs and policies.

Develop shared data systems to allow public health, behavioral health, and public safety agencies to effectively share information about individuals who have SUD and connect to appropriate services.

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Develop outreach teams to follow up with justice-involved individuals at risk of overdose, particularly those who have just experienced nonfatal overdoses.

Establish/expand court-based intervention programs to prioritize or expedite services to court-involved individuals who have SUD.

Develop a plan for pre-trial and post-trial populations leaving jail or secure residential treatment to connect them to treatment and recovery supports.

Expand or enhance models of care that have demonstrated effectiveness in serving justice-involved individuals with a history of SUD.

Other (explain)

Other (explain)

Other (explain)

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Visit the COAP Resource Center at [www.coapresources.org](http://www.coapresources.org).

## About BJA

BJA provides leadership and services in grant administration and criminal justice policy development to support local, state, and tribal law enforcement in achieving safer communities. To learn more about BJA, visit [www.bja.gov](http://www.bja.gov) and follow us on Facebook ([www.facebook.com/DOJBJA](https://www.facebook.com/DOJBJA)) and Twitter (@DOJBJA). BJA is part of the U.S. Department of Justice's Office of Justice Programs.

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