



AGENDA

Thursday, February 16, 2012 - 10:00 AM
Board of County Commissioners Business Meeting

Beginning Board Order No. 2012-14

~Pledge of Allegiance~

I. APPROVAL OF ORDER OF AGENDA

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

1. Recognition of the Clackamas County Gatekeeper Program (Brenda Durbin, Clackamas County Social Services)

III. DISCUSSION ITEM *(The following items will be individually presented by County staff or other appropriate individuals. Citizens who wish to comment on a discussion item should complete a blue testimony card noting the agenda number.)*

Department of Finance

1. Resolution No. _____ Adopting a Budget Policy as to Providing Reserve for Future Expenditure and Contingency Accounts in the Annual Budget (Marc Gonzales)

IV. 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 hearing. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

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 Study Session. 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 an Agency Service Contract with the Children's Center of Clackamas County for Child Abuse Assessment Program Services - CYF

B. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC

C. Technology Services

- 5
1. Approval of a Memorandum of Understanding between Clackamas County and the City of Milwaukie for Use of City Right-of-Way for the Installation of County Broadband Facilities

VI. WATER ENVIRONMENT SERVICES

- 6
1. Approval of an Intergovernmental Agreement between Clackamas County Service District No. 1, the City of Milwaukie and Metro - Regarding the Nature in Neighborhoods Grant from the Mt. Scott Creek Restoration at North Clackamas Park
- 7
2. Approval of an Agreement between Clackamas County Service District No. 1 and CFM Strategic Communications to Conduct Ratepayer E-Panel Research

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 by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.

<http://www.clackamas.us/bcc/business/>

COPY

February 16, 2012

Board of Commissioners
Clackamas County

Members of the Board:

**Request for Recognition of the
Clackamas County Gatekeeper Program**

The Social Services Division of the Health, Housing and Human Services Department (H3S) requests the recognition of the Clackamas County Gatekeeper Program.

Funded by H3S as part of the broader Addiction Prevention Initiative, the Gatekeeper Program educates community members to keep their eyes and ears alert for seniors and people with disabilities who are at risk, particularly those who are isolated, living alone and potentially in need of some type of assistance in order to maintain their independence. The Gatekeeper Program trains community members who come in to regular contact with the public, such as postal workers, utility workers, bank tellers, and health care professionals.

The first Gatekeeper presentation occurred in November of 2011 and, to date, over 100 people have been trained. By October of 2012 there will be more than 350 additional trained Gatekeepers in Clackamas County.

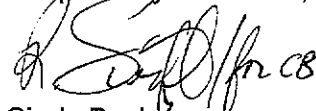
When Gatekeepers have a concern about an older individual or a person with disability, they contact the Clackamas Resource Connection at 503 650-5622 where staff specially trained in issues relating to aging and disability triage the call and direct the Gatekeeper to the appropriate resource. Sometimes this means a call to Adult Protective Services. At other times the most appropriate response involves a connection to Behavioral Health or the Family Caregiver Program.

Trained Gatekeepers help to keep our communities safer and ensure that vulnerable residents have access to the information and services they need to stay safe and independent.

Recommendation:

We recommend the approval of this request for recognition of the Clackamas County Gatekeeper Program.

Respectfully submitted,



Cindy Becker
Director

MARC GONZALES
DIRECTOR



DEPARTMENT OF FINANCE

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

February 16, 2012

Board of County Commissioners
Clackamas County, Oregon

Members of the Board

Approval of a Resolution Adopting a Budget Policy as to Providing Reserve for Future Expenditure and Contingency Accounts in the Annual Budget

As a matter of course, the Board of County Commissioners regularly reviews and creates statements of policy, including policies governing financial and budgetary activities of Clackamas County. Examples include policies on debt management, types and proportions of investments held by the County, and methods through which the annual budget may be amended after adoption. County policies are designed to comply with and support applicable laws and other requirements.

The Board has recently reviewed a draft proposal presented by staff to further clarify and formalize the process by which budgeting for Reserve for Future Expenditure and Contingency Accounts will be estimated and included in the annual County budget. Under this policy, amounts to be placed in the Contingency account in the General County Fund will be targeted to constitute a maximum of five (5) percent of the total General Fund budget, excluding amounts restricted for special uses. Likewise, amounts to be included in the Reserve for Future Expenditure account in the General Fund will constitute no more than ten (10) percent of the General Fund budget excluding amounts restricted for special uses. The General Fund is the repository for funds which are primarily discretionary in nature.

The policy provides that in funds other than the General County Fund, Reserve for Future Expenditure accounts may be budgeted for amounts restricted as to use through law, by source or by commitment by the Board of Commissioners. Funds other than the General Fund may also budget Contingency accounts where needed and appropriate, with the exception of funds created solely for debt service.

The attached policy and procedure will apply to annual budgets prepared by the County in the future, beginning with the budget for the 2012-13 fiscal year.

This resolution has been reviewed and approved by County Counsel.

RECOMMENDATION

County staff respectfully recommends the Board of County Commissioners approve this Budget Policy as to Providing Reserve for Future Expenditure and Contingency Accounts.

Sincerely,


Marc Gonzales
Finance Director

For information on this issue or attachments please contact Marc Gonzales at (503) 742-5405

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

A Resolution Adopting A Budget Policy
As to Providing Reserve for Future
Expenditure and Contingency Accounts
In the Annual Budget



RESOLUTION NO.

Page 1 of 2

WHEREAS, the annual budget for Clackamas County will exceed half a billion dollars, and the full breadth of programs and activities overseen by the Board of County Commissioners brings their total budgetary responsibilities to more than eight hundred million dollars; and

WHEREAS, the responsible allocation of those sums requires that the budget reflect an annual financial and operational plan that clearly reflects County priorities as established by the County Commissioners; and

WHEREAS, the budget shall be a balanced budget for each fund, requiring that budgeted expenditures plus contingencies and reserves be met by an equal amount of budgeted resources; and

WHEREAS, the budget is a measure of the performance of departments, with accountability determined in the context of performance within the budget;

NOW, THEREFORE, BE IT RESOLVED that in order to best attain the Vision, Mission, Principles, and Areas of Focus of the annual budget, and to articulate the budget according to a strategic plan and budget priorities, the Board of County Commissioners declares its Policy as to the Reserve for Future Expenditure and Contingency accounts to be as follows:

**Clackamas County Policy on
Reserve for Future Expenditure and Contingency Accounts**

I. Budgeted Reserves as defined in this policy will be the sum of two types of budgeted accounts:

1. **Contingency** – a nonspendable account which under Local Budget Law may be accessed during the fiscal year to transfer appropriations to a spendable account, when the need for such appropriations is approved by the Board of County Commissioners;
2. **Reserve for Future Expenditure** – an unappropriated nonspendable account from which under Oregon Local Budget Law no appropriation can be transferred. The amount budgeted at adoption of the annual budget will be maintained for the fiscal year period.

Reserve for Future Expenditure accounts exist for a twelve month fiscal year period and then are subject to reconsideration during the annual budget process by the Budget Committee and Board of Commissioners. If sufficient resources exist for funding the reserve in the succeeding fiscal year, amounts may be reallocated through the budget process to a spendable category account in whole or in part.

Budgeted Reserves in a fund may include amounts for Contingency, Reserve for Future Expenditure, or both.

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

A Resolution Adopting A Budget Policy
As to Providing Reserve for Future
Expenditure and Contingency Accounts
In the Annual Budget



RESOLUTION NO.

Page 2 of 2

II. Budgeted Reserves Policy for the County General Fund:

Clackamas County will maintain adequate budgeted reserves in the General Fund in order to:

- provide for future resource needs,
- protect program budgets from periodic resource fluctuations, and
- maintain cash flow levels in amounts sufficient to bridge months in each year during which inflows of revenues are slower.

The amount to be budgeted in the account titled "**Contingency**" in the General Fund should be targeted each year to measure 5% of the overall County General Fund budget.

The amount to be identified in the account titled "**Reserve for Future Expenditure**" in the General Fund should be targeted each year to measure 10% of the overall County General Fund budget, less resources in the General Fund that are dedicated to particular identified uses by law or source. *[Example: Secure Rural Schools and Community Self-Determination Act dollars dedicated to specific purposes.]*

In no year will the General Fund **Budgeted Reserves** exceed 15% of the total General Fund budget.

III. Other Funds Budgeted Reserves Policy:

Funds other than the General Fund may budget **Reserve for Future Expenditure** accounts when the reserves are composed of dollars dedicated to particular identified uses, either:

- by law,
- by source, or
- by commitment of the Board of County Commissioners.

These other funds may also budget **Contingency** accounts, composed of amounts which may be reappropriated to other spendable accounts during the budget year by approval of the Board of County Commissioners. Per Local Budget Law, Contingency and Reserve accounts should not be budgeted in Debt Service Funds.

BE IT FURTHER RESOLVED that any budget policy contrary to the aforesaid declaration shall be replaced by this statement of the County's Policy on Reserve for Future Expenditure and Contingency accounts.

Dated this 16th day of February, 2012.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

COPY

Cindy Becker, Director

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February 16, 2012

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of an Agency Service Contract with Children's Center of Clackamas County
For Child Abuse Assessment Program Services**

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of an *Agency Services Contract with Children's Center of Clackamas County for Comprehensive Assessment and Support services*.

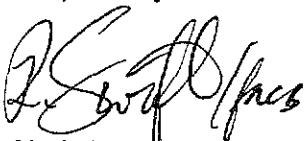
Services to be provided under this contract include: Comprehensive assessment services, (i.e. medical, forensic, psychosocial history), to 500 children suspected to be victims of abuse; Support services (i.e. crisis counseling, behavior therapy, family therapy, crime victims assistance services, medical care), to 500 children and their families; Timely response to 100% of child abuse referrals from Clackamas County agencies, mandatory reports and families.

Total amount of this agreement is \$175,000. Funds are budgeted in the Abuse and Family Violence Prevention "bridge funding" grant stream for fiscal year 2011-2012 to cover this agreement. This contract is funded with County General Funds. This agreement is effective upon acceptance by all parties and will terminate December 31, 2012. This contract is in the format approved by County Counsel as part of the H3S contract standardization project.

Recommendation:

We recommend the approval of this contract and that Cindy Becker be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,



Cindy Becker
Director

AGENCY SERVICE CONTRACT
(Regular Services or Community Development)
(FY 11-12)

This contract is between Clackamas County, acting by and through its Health, Housing and Human Services Department, Children, Youth & Families Division, hereinafter called "COUNTY," and Children's Center of Clackamas County hereinafter called "AGENCY."

I. SCOPE OF SERVICES

A. AGENCY agrees to accomplish the following work under this contract as described in Work Plan exhibit 1 attached hereto;

1. Timely response to 100% of child abuse referrals from Clackamas County agencies, mandatory reporters and families.
2. At minimum, provide comprehensive assessment services, (medical, forensic, psycho-social history), to 500 children suspected to be victims of abuse.
3. At minimum, provide support services, (i.e. crisis counseling, behavior therapy, family therapy, crime victims assistance services, medical care), to 500 children and their families.

B. Services required under the terms of this agreement shall commence when this contract is signed by all necessary parties, but not prior to January 1, 2012. This agreement shall terminate December 31, 2012.

II. COMPENSATION AND RECORDS

A. Compensation. COUNTY shall compensate the AGENCY for satisfactorily performing the services identified in Section I as follows:

The COUNTY shall make 4 quarterly payments up to a maximum compensation of \$175,000 in the amount of \$43,750.

The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage and incidentals necessary to perform the work and services.

B. Method of Payment. To receive payment, the AGENCY shall submit invoices and accompanying performance reports as follows:

AGENCY shall be paid on a cost reimbursement basis and shall submit invoices and accompanying performance reports as described in Exhibits 2 and 3 attached hereto.

Withholding of Contract Payments: Notwithstanding any other payment provision of this agreement, should the AGENCY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, the COUNTY shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until the AGENCY submits required reports, performs required services, or establishes to the COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of the AGENCY.

AGENCY SERVICE CONTRACT

- C. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this contract and all other pending matters are closed.
- D. **Access to Records.** The COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the AGENCY which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts, and transcripts.

If an audit discloses that payments to the AGENCY were in excess of the amount to which the AGENCY was entitled, then the AGENCY shall repay the amount of the excess to the COUNTY.

III. MANNER OF PERFORMANCE

- A. **Compliance with Applicable Laws and Regulations.** The AGENCY shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this contract.

When a requirement is listed both in the main boilerplate of the contract and in an Exhibit, the Exhibit shall take precedence.

- B. **Special Federal Requirements - Common rule restricts lobbying** (Volume 55, NO38 of Fed. Register, Feb. 1990).
- C. **AGENCY shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from the COUNTY.**
- D. **AGENCY certifies that it is an independent AGENCY and not an employee or agent of the COUNTY, State, or Federal government. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of the AGENCY.**

IV. GENERAL CONDITIONS

- A. **Indemnity.** The AGENCY agrees to indemnify, defend and hold harmless the County and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable in whole or in part to the acts or omissions of Agency, and Agency's officers, agents and employees, in performance of this contract

- B. **INSURANCE** During the term of this contract AGENCY shall maintain in force at its own expense, each insurance noted below:

- 1. **Commercial General Liability Insurance**

Required by COUNTY **Not required by COUNTY**

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of the County, its officers,

AGENCY SERVICE CONTRACT

commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract.

2. Commercial Automobile Insurance

Required by COUNTY Not required by COUNTY

AGENCY shall also obtain, at AGENCY's expense, and keep in effect during the term of the contract, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1 Million.

3. Professional Liability Insurance

Required by COUNTY Not required by COUNTY

AGENCY agrees to furnish the County evidence of Professional Liability Insurance in the amount of not less than \$1 Million combined single limit per occurrence/\$2 Million general annual aggregate for malpractice or errors and omissions coverage for the protection of the County, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this contract. The County, at its option, may require a complete copy of the above policy.

4. Additional Insurance Provision

The insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured.

Such insurance shall provide sixty (60) day written notice to the COUNTY in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under this insurance. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by the COUNTY shall be excess and shall not contribute to it.

5. Notice of Cancellation.

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to the Clackamas County Purchasing Division. Any failure to comply with this provision will not affect the insurance coverage provided to the County. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.

6. Insurance Carrier Rating.

Coverages provided by the AGENCY must be underwritten by an insurance company deemed acceptable by the County. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. The County reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

AGENCY SERVICE CONTRACT

7. Certificates of Insurance.

As evidence of the insurance coverage required by this contract, the AGENCY shall furnish a Certificate of Insurance to Clackamas County. No contract shall be effected until the required certificates have been received, approved and accepted by the County. The certificate will specify that all insurance-related provisions within this contract have been complied with. A renewal certificate will be sent to the Clackamas County Purchasing Division 10 days prior to coverage expiration.

8. Independent Contractor Status.

The service or services to be rendered under this contract are those of an independent contractor. AGENCY is not an officer, employee or agent of the COUNTY as those terms are used in ORS 30.265.

9. Primary Coverage Clarification.

AGENCY's coverage will be primary in the event of a loss.

10. Cross-Liability Clause.

A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.

C. Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

D. Termination. This contract may be terminated by mutual consent of both parties, or by either party, upon 30 days' notice, in writing and delivered by certified mail or in person.

The COUNTY may terminate this contract effective upon delivery of written notice to the AGENCY, or at such later date as may be established by the COUNTY, under any of the following conditions:

1. If COUNTY funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified to accommodate a reduction in funds.
2. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this contract.
3. If any license or certificate required by law or regulation to be held by the AGENCY to provide the services required by this contract is for any reason denied, revoked, or not renewed.
4. If AGENCY fails to provide services or reports called for by this contract within the time specified herein or any extension thereof; or
5. If AGENCY fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its

AGENCY SERVICE CONTRACT

terms, and after receipt of written notice from the COUNTY, fails to correct such failures within 10 days or such longer period as the COUNTY may authorize.

Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

E. Oregon Public Contracting Provisions and Constitutional Limitations. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.335, and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this contract:

1. AGENCY shall:

- (a) Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.
- (b) Pay all contributions or amounts due the Industrial Accident Fund from such AGENCY or subcontractor incurred in the performance of this agreement.
- (c) Not permit any lien or claim to be filed or prosecuted against Clackamas County on account of any labor or material furnished.
- (d) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

2. If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due AGENCY by reason of this agreement.

3. No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay: (a) for all overtime in excess of eight (8) hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (b) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

In the case of contracts for personal services as defined in ORS 279A.055, employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC Section 201 to 209 from receiving overtime.

4. AGENCY shall promptly, as due, make payment to any person or partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury, to the employees of AGENCY, of all sums which AGENCY collected or deducted from the wages of its employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

AGENCY SERVICE CONTRACT

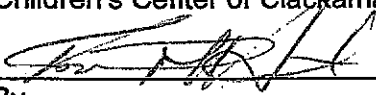
5. Agency, if it is an employer of one or more workers subject to workers' compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or as an exempt employer under ORS 656.126. Agency shall maintain employer liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.
 6. This contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- F. AGENCY shall comply with Section 504 of the Rehabilitation Act of 1973, and Title VI of the Civil Rights Act of 1964.
- "The contractor will not discriminate against any employee or applicant for employment because of race, color, or national origin."
- "The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified."
- G. Future Support. The COUNTY makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this contract.
 - H. Ownership of Work Product. All work products of the AGENCY which result from this contract are the exclusive property of the COUNTY.
 - I. Integration. This contract contains the entire agreement between the COUNTY and the AGENCY and supersedes all prior written or oral discussions or agreements.

AGENCY SERVICE CONTRACT

This contract consists of three sections plus the following attachments which by this reference are incorporated herein:

- Exhibit 1 Scope of Work, Performance Standards, and Work Plan
- Exhibit 2 Reporting Requirements
- Exhibit 3 Budget

AGENCY
Children's Center of Clackamas County


By _____

Tonia Hunt
Name (Typed) _____

Executive Director
Title _____

2/2/2012
Date _____

1713 Penn Lane
Street Address _____


Oregon City 97045
City/Zip _____

503-655-7725
Phone Number _____

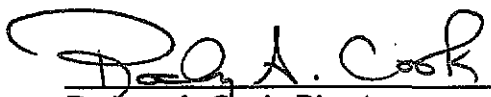
75-3027143
TIN, FIN or S.S.# _____

CLACKAMAS COUNTY
Commissioner Charlotte Lehan, Chair
Commissioner Jim Bernard
Commissioner Jamie Damon
Commissioner Ann Liningier
Commissioner Paul Savas

Signing on Behalf of the Board:


Cindy Becker, Director
Health, Housing and Human Services

Date


Rodney A. Cook, Director
Children, Youth & Families Division

2-2-12
Date _____

AGENCY SERVICE CONTRACT

EXHIBIT 1
SCOPE OF WORK AND PERFORMANCE STANDARDS

- I. AGENCY shall meet all performance outcomes as outlined in attached Work Plan, *Exhibit B*,
- II. Performance Standards:
 1. **Community Based, Holistic Approach**
 - AGENCY programs and services shall be community-focused, incorporating the greatest level of input from multiple stakeholders, including clients, families, and other agencies.
 - AGENCY programs and services shall have ongoing community investment and involvement.
 2. **Family-Centered Programs**
 - AGENCY programs and services shall involve families in all aspects, recognizing that they are the most important teachers, caregivers, and role models for their children.
 - AGENCY programs and services shall support and strengthen families in providing the foundation for the physical, social, emotional, and intellectual development for their children.
 3. **Establish/Maintain Effective Partnerships**
 - AGENCY, in order to enable data linkages, information sharing, and ongoing collaboration between partners to most effectively meet and address needs, shall ensure that appropriate staff attend CYF contractor's meetings, and training sessions, and participate in other activities as required by COUNTY.
 - AGENCY shall develop and promote continuous communications with similar organizations.
 4. **Utilize a Balanced SWOT (Strengths, Weaknesses, Opportunities, Threats) Approach**
 - AGENCY programs and services shall address both the risks/deficiencies, challenges and the strengths/assets/opportunities in their communities.
 5. **Implement Research Based Accountability**
 - AGENCY, in order to ensure programs and services are based on research-based, proven practices, shall complete and submit the Best Practices Assessment as required by CYF. In areas where proven practices are not available, AGENCY is encouraged to develop innovative strategies based on research principles.
 - AGENCY programs and services shall include research-based measurements of success to enable tracking of effectiveness toward meeting planned outcomes. These data shall be monitored by CYF on the Quarterly Work Plan. Quarterly Work Plans are to be submitted on or before date due.
 - 1st Quarter, Jul 1 – Sep 30: due on Oct 17, 2012
 - 2nd Quarter, Oct 1 – Dec 31: due on Jan 16, 2013
 - 3rd Quarter, Jan 1 – Mar 31: due on Apr 16, 2012
 - 4th Quarter, Apr 1 – Jun 30: due on Jul 16, 2012
 6. **Reflect and Incorporate Diversity**
 - AGENCY, in order to provide programs and services that meet the needs of diverse cultures and people with disabilities, shall complete and submit the Cultural Competency Assessment and Action Plan as required by CYF.

AGENCY SERVICE CONTRACT

- AGENCY, in order to provide programs and services that meet the needs of girls, shall complete and submit the Gender Specific Services Assessment and Action Plan as required by CYF.
7. **Internal Controls**
- AGENCY shall submit a completed Annual Fiscal Capability Assessment to CYF on or before April 30, 2012.
8. **Funder Recognition**
- AGENCY shall demonstrate good faith efforts to acknowledge the COUNTY's Commission on Children & Families when communicating with media representatives and when creating and distributing flyers describing services, workshops and other contract related details.
9. **Resource Expansion**
- AGENCY shall demonstrate good faith effort to secure other funding to increase program capacity, enter into collaborative efforts and initiatives, and/or decrease dependence on long-term Commission on Children and Families funding.
10. **Use of Grant Funds**
- No grant funds shall be used, directly or indirectly, to promote or oppose any political committee, or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder.
11. **HIPAA Compliance**
- If the work performed under this Contract is covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), AGENCY agrees to perform the work in compliance with HIPAA. Without limiting the generality of the foregoing, if the work performed under this Contract is covered by HIPAA, AGENCY shall comply with the following:
 - i. Privacy and Security of Individually Identifiable Health Information. On or after April 14, 2003, AGENCY, its agents, employees and subcontractors shall protect individually identifiable health information obtained or maintained about Department's clients from unauthorized use or disclosure, consistent with the requirements of HIPAA. This Contract may be amended to include additional terms and conditions related to the privacy and security of individually identifiable health information.
 - ii. Data Transaction Systems. Any electronic exchange of information on or after October 16, 2002, between AGENCY and COUNTY to carry out financial or administrative activities related to health care will be in compliance with HIPAA standards for electronic transactions published in 65 Fed. Reg. 50312 (August 17, 2000). The following types of information exchanges are included: Health care claims or equivalent encounter information; health care payments and remittance advice; coordination of benefits; health claim status; enrollment and disenrollment in a health plan; eligibility for a health plan; health plan premium payments; referral certification and authorization; first report of injury; and health claims attachments. This Contract may be amended to include additional terms and conditions related to data transactions.

AGENCY SERVICE CONTRACT

- iii. Consultation and Testing. If AGENCY reasonably believes that the AGENCY's or COUNTY's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, AGENCY shall promptly consult the COUNTY's HIPAA officer. AGENCY or COUNTY may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the COUNTY's testing schedule.

III. Performance Standards-County:

County shall:

1. Administer this contract in compliance with the Commission on Children and Families Act (Oregon laws 1993), and the Oregon Administrative Rules for the Commission on Children and Families, Chapter 423.
2. Communicate with service providers about contract performance and about Children, Youth & Families Division' operations, standards and objectives.
3. Provide technical assistance to the AGENCY in developing activities to address the needs of minority youth, program contract amendments, wellness referrals, collaborative services, community development projects and resources.

EXHIBIT 2

PAYMENT PROCEDURES AND REPORTING REQUIREMENTS

1. PAYMENT PROCEDURES

The compensation authorized in this agreement shall include reimbursable expenses as prescribed in the COUNTY-approved budget in Exhibit 3 and in accordance with OMB Circulars A-87 if agency is a local government, A-122 if non-profit, A-133 if college. This amount does not include expenses for unusual and special activities or materials not included in the scope of services. Such unusual and special expenses will not be incurred without prior COUNTY approval. In addition, expense totaling an amount greater than the total budget for this project shall not be incurred without prior written consent of the COUNTY.

a) Payment Options:

AGENCY shall submit a monthly Request for Funds and Fiscal Report within 15 days of the end of each month. COUNTY reserves the right to reduce monthly payment by the amount of unexpended funds during the previous month. The monthly fiscal report shall be in accordance with the approved budget in Exhibit 3.

OR

AGENCY shall submit a quarterly Request for Funds and Fiscal Report within 15 days of the end of each quarter. COUNTY reserves the right to reduce quarter payment by the amount of unexpended funds during the previous quarter. The quarterly fiscal report shall be in accordance with the approved budget in Exhibit 3.

The COUNTY shall make payment to AGENCY within 30 days of receipt and approval of each funds request and fiscal report submittal. AGENCY shall submit a quarterly "Program Performance Progress Report" in accordance with Exhibit 1, and section 3 of Exhibit 2 of this contract.

Reimbursement request required to be prepared and submitted by AGENCY to the COUNTY shall be accurate and correct in all respects, supported by attached documentation and traceable to source documents through AGENCY's accounting records. Should inaccurate reports be submitted to the COUNTY, the COUNTY may elect to have AGENCY secure the services of a certified accounting firm. Cost of such accounting services are to be borne by AGENCY and not reimbursed from funds authorized by the agreement unless specifically agreed to between AGENCY and COUNTY in writing.

AGENCY shall submit a financial statement covering all expenditures within 30 days following the end of the contract. When the total fund advanced does not equal the AGENCY's total actual expenditures and the total budget, the financial statement shall include either:

- A. A request for reimbursement of program expenditures. Such request shall not bring the total of funds received by the AGENCY in an amount in excess of the budget; or
- B. Contract amendment suitable to both the COUNTY and AGENCY.
- C. The return of all unexpended funds to the COUNTY.

AGENCY SERVICE CONTRACT

AGENCY shall return all unexpended funds to the COUNTY within 10 days of the contract's termination when such termination is due to the AGENCY's failure to provide services in accordance with the contract.

Withholding of Contract Payments: Notwithstanding any other payment provision of this contract, should the AGENCY fail to submit required reports when due or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, the COUNTY shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until the AGENCY submits required reports, performs required services, or establishes to the COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of the AGENCY.

2. RECORDKEEPING

AGENCY shall keep detailed records of time and expenditures incurred and funded by this contract. Such records shall adequately identify the source and application of funds for activities within this contract in accordance with the provisions of OMB Circular (A-110 for non-profits, A-102 for local governments). These records shall allow accurate statements pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income in accordance with generally accepted accounting practices.

AGENCY shall maintain a system of internal control comprising a documented plan of all coordinating procedures adopted to account for and safeguard its assets, check the adequacy and reliability of its accounting data, promote operating efficiency, and assure adherence to applicable regulations.

Expenditures shall be supported by properly executed payrolls, time records, invoices, vouchers, or other source documentation evidencing in proper detail the nature and propriety of charges. All accounting documents shall be clearly identified and readily accessible.

Financial records and supporting documents pertinent to this agreement shall be retained by AGENCY for a period of three years from the date of completion of the contract except as follows:

- Records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.

3. PROGRAM REPORTS

AGENCY shall submit program performance reports for each quarter of the fiscal year. These quarterly reports are to include: 1) Demographic report; 2) work plan outcomes, services and development activities performance report. The quarterly reports are due to the COUNTY within 30 days of the end of each fiscal year quarter.

AGENCY shall complete and submit other reports as required and supplied by the COUNTY.

4. MONITORING

COUNTY shall evaluate the services provided under this contract primarily by quarterly work plan progress reports. The COUNTY may also conduct on-site monitoring of services. These site visits usually include on-site monitoring of client case files, client/parent/staff interviews, and review of program and agency policies, procedures and files. COUNTY shall give written

AGENCY SERVICE CONTRACT

notification of problem areas related to performance under this contract, including requirements and time lines for corrective action.

The AGENCY will gather data necessary to complete quarterly work plan performance and budget, and any other reports required by the COUNTY.

The AGENCY will provide the client confidentiality releases necessary to facilitate site visits by the COUNTY.

At any time during normal business hours and as often as the COUNTY, or other appropriate state or federal representatives may deem necessary, the AGENCY shall make available to the COUNTY for examination all its records with respect to matters covered by this contract for the purpose of making surveys, audits, examinations, excerpts and transcripts.

Should any records not meet the minimum standards of grant administration of the COUNTY, the COUNTY reserves the right to withhold any or all of its funding to AGENCY until such time as the standards are met. The COUNTY may require AGENCY to use any or all of the COUNTY's accounting and administrative procedures used in planning, controlling, monitoring and reporting all fiscal matters relating to this contract.

The COUNTY reserves the right to dispatch auditors of its choosing to any site where any phase of the project is being conducted or controlled in any way. If any audit or examination determines the AGENCY has expended funds which are questionable or disallowed, the AGENCY shall be given the opportunity to justify questioned and disallowed expenditures prior to the COUNTY's final determination. Any disallowed costs resulting from the final determination shall be remitted to COUNTY from AGENCY's non COUNTY-administered funds, payable by check within 30 days of final determination.

5. AUDIT

AGENCY shall have an annual audit performed of projects funded by this agreement unless specifically waived in writing by COUNTY. Audits shall be performed by an independent certified accountant in accordance with GAO Audit Standards, OMB Circulars (A-133 and A-110 for non-profits, A-128 for local government agencies), and generally accepted auditing standards. Audit schedules shall clearly show statement of COUNTY-funded assets, liabilities, fund balance, revenues, and expenditures separately from non COUNTY-funded assets, liabilities, fund balance, revenues and expenditures.

Auditor shall be selected competitively and AGENCY should contract with auditor to assure proper scope, reports and timelines are maintained.

Audits are not required for cost reimbursement contracts under \$25,000.

Audits are due 120 days after the end of the contract period.

6. CAPITAL PURCHASES

Capital purchases through children and youth services grants are subject to Oregon Administrative Rule 436-010-0036 which indicates capital purchases to be the property of the COUNTY unless the COUNTY determines otherwise.

Capital purchases through children and families services grants are defined according to State of Oregon purchasing rules; initial value of more than \$5,000.

AGENCY SERVICE CONTRACT

EXHIBIT 3

BUDGET

1. AGENCY shall submit for COUNTY approval a budget indicating the amount of COUNTY funds allocated for project performance as described in the scope of services. Budget shall be in sufficient detail to provide a sound basis for the COUNTY to effectively monitor compliance with the contract.

Any allocations of budgeted costs not directly allocable to the project shall be made in accordance with OMB Circular A-87, A-122 and A-133, and shall be properly documented by budget attachments.

2. Program income defined as amounts generated by the use of COUNTY funds shall be used to expand the program. AGENCY shall keep records to accurately record and report the use of program income.
3. AGENCY and the COUNTY shall administer budget adjustments and balances through the following processes:

ADJUSTMENTS

AGENCY shall not make major budget adjustments without prior written approval of the COUNTY. AGENCY is to notify the COUNTY of minor budget changes.

Major budget adjustments are defined as:

- those changes that move funds between the major budget categories of Personal Services, Materials and Services, Capital Outlay or Equipment, or
- those changes that exceed 10% within a major budget category.

Minor budget adjustments are those changes where less than 10% of the funds within a budget category (Personal Services, Materials and Services, Capital Outlay or Equipment) are moved between expenditure line items.

The COUNTY, working with the Commission on Children & Families and staff of the Children, Youth & Families Division, will work with the AGENCY to manage budget adjustments.

BALANCES

The AGENCY is to forecast any expected grant balance and notify the Children, Youth & Families Division by April 30 of each fiscal year. See also Payment Procedures in Exhibit 2.

4. Line item budget (COUNTY provided form attached).

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports, of this meeting can be viewed at <http://www.clackamas.us/bcc/business/>

Thursday, January 26, 2012 – 10:00 AM

Public Services Building - 2051 Kaen Road, Oregon City, OR 97045

PRESENT: Commissioner Charlotte Lehan
 Commissioner Ann Lininger
 Commissioner Paul Savas
 Commissioner Jamie Damon

EXCUSED: Commissioner Jim Bernard

~Pledge of Allegiance~

Chair Lehan announced that Commissioner Bernard is attend a Public Safety Symposium and will not be in attendance today.

I. PRESENTATIONS

1. Congressional Update from Congressman Kurt Schrader.

Chair Lehan welcomes Congressman Kurt Schrader to our meeting today.

Congressman Schrader represents Oregon's 5th Congressional District, which includes a large portion of Clackamas County. He will give us an update on what is happening in Congress, and then Commissioners will have an opportunity to ask him questions. She said on behalf of Clackamas County, thank you for all that you do for Clackamas County. You helped bring federal dollars to the County for our broadband fiber project, interagency poly-drug enforcement effort, and to keep the Willamette Falls Locks operating. You are always available and open to meeting with the Commissioners, County staff, and our mutual constituents.

Congressman Kurt Schrader gave a brief update.

<http://www.clackamas.us/bcc/business/>

The Board thanked Congressman Schrader for coming today.

2. Overview of Partnership Agreements between Non-Profits Partners and Clackamas County Service District No. 1

Carol Murdock and Gail Shaloum, Water Environment Services, presented the staff report including a PowerPoint presentation. Gail Shaloum said we want to showcase one of our partners, the North Clackamas Watershed Council. She introduced Susan Shawn, Chair of the Communications Committee of the North Clackamas Urban Watershed Council. Susan spoke about the Council and the project they have been involved with over the past year. She also spoke about their mission.

II. DISCUSSION ITEM

WATER ENVIRONMENT SERVICES

Chair Lehan announced the Board will be sitting as the Service District No. 1 and the Tri-City Service District for this item.

1. Approval of an Agreement to Jointly Purchase Real Property
 Mike Kuenzi, Water Environment Services and Chris Storey, County Counsel presented the staff report. Mike Kuenzi stated that staff is seeking approval of a potential acquisition of real property located in West Linn, currently owned by the Blue Heron bankruptcy estate. The Districts will hold the property jointly for their shared benefit and utilization in addressing long term growth and regulatory needs.

This real property matter was discussed with the Board in executive session on May 17, 2011, October 11, 2011 and Dec. 13, 2011. At the Oct. 11th meeting staff was authorized to negotiate a proposed agreement. Mike stated the Board will need to make two motions on this item one motion as the Service District No. 1 Board and one motion as the Tri-City Service District Board.

~Board Discussion~

Chair Lehan announced this is a discussion item and said there are some folks signed up to speak.

Alice Richmond, West Linn spoke in favor of this item.

Chris Jordan, West Linn City Manager, spoke in favor.

Kim Parker, Clackamas County Business Alliance spoke in support.

~Board Discussion~

Chair Lehan asked for a motion as Service District No. 1 Board.

MOTION:

Commissioner Lininger: Acting as the Service District No. Board, I move approve the agreement to jointly purchase real property as presented by staff.

Commissioner Savas: Second.

Chair Lehan – all those in favor:

Commissioner Damon: Aye.

Commissioner Savas: Aye.

Commissioner Lininger: Aye.

Chair Lehan: Aye.

Chair Lehan – all those opposed: - The Ayes have it and the motion is approved. She then asked for a motion to approve this agreement as the Tri-City Service District Board.

MOTION:

Commissioner Savas: I move approve the agreement to jointly purchase real property as presented by staff.

Commissioner Damon: Second.

~Board Discussion~

Chair Lehan – all those in favor:

Commissioner Damon: Aye.

Commissioner Savas: Aye.

Commissioner Lininger: Aye.

Chair Lehan: Aye.

Chair Lehan – all those opposed: - The Ayes have it and the motion is approved.

III. CITIZEN COMMUNICATION

1. Craig Wilcox, 18299 S. Ramsby Road, Molalla – issues with neighbors cutting his trees.

Stephan Madkour, County Counsel is looking into this issue and is meeting with Mr. Wilcox after the meeting.

2. John Ludlow, Wilsonville – Candidate for Clackamas County Commission Chair.
3. Maryanna Moore, Gladstone – Gladstone Library.
4. Yavonne Lazarus, Milwaukie – Milwaukie light rail.
5. Mack Woods, Canby – right to vote.

-
6. Lori Freeman Johnson, 14708 Macksberg Rd., Molalla – supports the Canby Ferry.

IV. CONSENT AGENDA

Chair Lehan asked the Clerk to read the Consent Agenda by title.

MOTION:

Commissioner Damon: I move we approve the Consent Agenda.

Commissioner Savas: Second.

Chair Lehan – all those in favor:

Commissioner Damon: Aye.

Commissioner Savas: Aye.

Commissioner Lininger: Aye.

Chair Lehan: Aye.

Chair Lehan – all those opposed: - The Ayes have it and the motion is approved.

A. Health, Housing & Human Services

1. Approval of a Revenue Agreement with Central City Concern for Funding of Mental Health Services - BH

B. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC

V. COMMISSIONERS COMMUNICATION

MEETING ADJOURNED – 12:20 PM

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 by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.

<http://www.clackamas.us/bcc/business/>



5
Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

February 8, 2012

Board of County Commissioners
Clackamas County

Members of the Board:

Approve a Memorandum of Understanding between Clackamas County and the City of Milwaukie for use of City Rights-of-Way for the Installation of County Broadband Facilities

Background: In 2009 the Board of County Commissioners authorized Technology Services to apply for a \$7.8 million ARRA Recovery Act grant to construct and operate a broadband system throughout the County. The U.S. Department of Commerce awarded the grant to the County in 2010. The predominant construction method for the system is to place fiber optic cables and broadband facilities on existing utility poles in city, County and Oregon Department of Transportation rights-of-way. In order to do that, the County frequently needs approvals from the managers of the rights-of-way in cities. This Memorandum of Understanding sets out the terms and conditions by which the County can place broadband facilities in the City of Milwaukie's rights-of-way. The Milwaukie City Council approved this MOU and a companion Resolution that waives any fees for County use of its rights-of-way during their regular City Council Session of February 7, 2012.

Financial and Resource impact: The MOU establishes a fee for County use of the right-of-way at \$2.00 per linear foot per year; Milwaukie's companion Resolution waives that fee for 20 years. The waiver of the fee represents approximately \$1.8 million of in-kind match that is required under the terms of the federal grant. The remainder of the terms and conditions of the MOU relate to ordinary right-of-way management issues and do not create any financial or resource impacts.

Legal Review: The MOU has been reviewed and approved by County Counsel.

Public Involvement: Not applicable.

Attachments: A copy of the Memorandum of Understanding and the City of Milwaukie's Resolution waiving fees for County use of its rights-of-way are attached.

RECOMMENDATION:

Staff respectfully recommends the Board authorize the County Chair to execute the Memorandum of Understanding. Your favorable consideration is requested.

Sincerely,

David Cummings,
Director, Technology Services

For information on this issue or copies of attachments, please contact David Soloos at 503-722-6656.

ATTACHMENT 1

Memorandum of Understanding between Milwaukie, Oregon and Clackamas County February 7, 2012

This Memorandum of Understanding ("Agreement") is made and entered into by and between the City of Milwaukie, Oregon, an Oregon municipal corporation ("City"), and Clackamas County, Oregon, a political subdivision of the State of Oregon ("County"), for the purpose of sharing Broadband infrastructure, rights-of-way and easements in Milwaukie.

RECITALS

WHEREAS, the County received an \$11.1 million federal grant to construct an open Broadband infrastructure network throughout the County to connect about 160 public buildings on a route that is generally represented on the map attached as Exhibit A; and

WHEREAS, the County desires to invest approximately \$1 million of grant proceeds in and around Milwaukie to directly benefit Milwaukie area public agencies and institutions and, through local internet providers, Milwaukie residents and businesses; and

WHEREAS, the County desires to construct the advanced Broadband infrastructure in the form of a dark fiber optic network through the City, and to connect to over 45 public buildings in and around Milwaukie including schools, fire stations, medical facilities, social service agencies and libraries on a route that is generally represented on the map attached as Exhibit B; and

WHEREAS, the City supports the public benefit of advanced Broadband infrastructure and the consumer choice it brings in order to support its businesses, residents, economic development plans, urban renewal districts, and community plans;

NOW THEREFORE, the City and the County agree as follows:

Section 1. Rights Granted

- A. This Agreement is entered into by Clackamas County (County) and the City of Milwaukie (City). It provides for the installation by the County of high speed broadband fiber optic cables and related facilities in right-of-ways within the City of Milwaukie as part of the Clackamas Broadband Innovation Initiative (CBII).
- B. The City of Milwaukie grants to Clackamas County, permission to construct, operate, repair and maintain a fiber ring within the City as it now exists or may be extended in the future. This Agreement includes the privilege to place broadband facilities, including dark fiber and laterals, upon, over, along, under,

and across the rights-of-way. Nothing in this Agreement limits the City from granting others the right to carry on activities similar to or different from the ones described in this Agreement.

- C. All facilities in possession of the County currently located within the City right of way, and approved by the Milwaukie Engineering Director, are covered by this Agreement and are deemed lawfully placed in their current locations. The City may require relocation as further specified in Exhibit C, Section 6 of this Agreement.
- D. The County does not have regulatory authority from the Oregon Public Utility Commission to offer telecommunications services. In the event that County desires to offer such telecommunications services to third parties, County agrees to notify City and obtain any additional authority, in the form of a franchise or license, as required, and to remit to the City any associated franchise or license fees.
- E. This Agreement does not create or vest in County or any other party any right, title or interest in City easements or rights-of-way, nor does this Memorandum create or vest in City or any other party any right, title or interest in County Broadband infrastructure.

Section 2. **Term**

This Agreement shall be effective as of February 7, 2012 and shall remain effective for a period not to exceed 21 years from that date, or the useful life of the broadband facilities as long as the County's fiber remains in the City right-of-way, whichever occurs first or unless sooner terminated as provided in this Agreement. This Agreement may be amended by mutual consent of the parties in writing.

Section 3. **Payment by the County for Use of Rights of Way**

- A. The County will allow public and private entities to use its broadband facilities. The City historically charges fees for commercial use of the public rights-of-way. Therefore, in consideration for its use of rights of way and for the City's administration thereof, the County agrees to pay the City \$2.00 per linear foot per year of City right of way used.
- B. The County shall be responsible for all costs associated with its work and facilities in the right of way, except as otherwise specifically provided in this Agreement.

Section 4. **Termination for Cause.**

If the County ceases to maintain its facilities and the lack of maintenance increases the risk of personal injury or property damage, or if the County fails to comply with the terms of this Agreement, the City may terminate this Agreement after providing the County a reasonable period of time within which to cure the risk or noncompliance. The Agreement shall not be terminated if the County substantially eliminates such risk or failure to comply within 30 days of the notice.

Section 5. **Sale of Permissions**

The County shall not sell or assign the permissions granted in this Agreement without the prior written consent of the City. County shall notify the City not later than 60 days prior to any intended transfer and the City will not unreasonably withhold any consent required.

Section 6. **Removal of Facilities**

If this Agreement is terminated and is not replaced by a new agreement or similar authorization, the County and the City shall by mutual agreement decide whether the County's facilities are to be removed or remain in place. In the event that the County and the City are unable to reach agreement on the disposition of the County facilities after termination, the City Engineer may issue an order requiring removal of any of the County facilities the City Engineer reasonably determines interfere with future, planned or other City utility projects.

Section 7. **Hold Harmless**

To the extent permissible under the Oregon Tort Claims Act and the Oregon Constitution, the County shall indemnify and hold harmless the City, its public officials and employees against any and all claims, damages, costs and expenses to which they may be subjected as a result of any negligent or wrongful act or omission of the County arising from the rights, obligations and privileges granted by this Agreement. The obligations imposed by this section are intended to survive termination of this Agreement.

Section 8. **Insurance**

The County shall provide the City with an annual statement regarding its self-insurance. The County's self-insurance shall include public liability and property damage insurance that protects the County and the City, as well as the City's officers, agents, and employees from any claims resulting from the construction, operation, repair and maintenance of the fiber ring facilities within the City. The insurance shall provide coverage at all times of not less than \$1,000,000 combined single limit for bodily injury liability and property damage liability per occurrence with an annual aggregate limit of not less than \$3,000,000. The limits of the insurance shall be subject to any changes as to maximum statutory limits of liability imposed on municipalities of the State of Oregon during the

term of the Memorandum of Understanding. Any failure by the County to maintain adequate self-insurance shall be cause for the City to declare a forfeiture of this agreement.

Section 9. Limitation on Privileges

All rights and authority granted to the County by the City are conditioned on the understanding and agreement that the privileges in the rights of way are not to be considered an asset or item of ownership in any appraisal thereof.

Section 10. Effect of Invalidity of a Portion of this Agreement

If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining portions of the Agreement shall remain in full force and effect until the Agreement is terminated or expired. After any declaration of invalidity or unconstitutionality of a portion of this Agreement, either party may demand that the other party meet to discuss amending the Agreement to adjust the relationship of the parties to conform to their original intent in entering into this Agreement. If the parties are unable to agree on a revised Agreement within 90 days after a portion of the Agreement is found to be invalid or unconstitutional, either party may terminate the Agreement on an additional 180 days' notice to the other party.

Section 11. Definitions

- A. "Facility" includes any poles, guy wires, anchors, wires, fixtures, equipment, conduit, circuits, vaults, cabinets, and other property necessary or convenient to the provision of broadband or dark fiber services by the County within the City.
- B. "Right of way" means any street, alley, road and other public way, park and place or public utility easement within the City and under City ownership, control or administration. "Right of way" does not include any state highway or county road.
- C. "Install" means to erect, construct, build, replace or place.
- D. "Public project" means any project for work in the right of way that is not undertaken to benefit a specific development or redevelopment project on private property and that is not undertaken to benefit a public utility or utility service provider other than the City.

City of Milwaukie, Oregon

Clackamas County, Oregon

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

Exhibit A

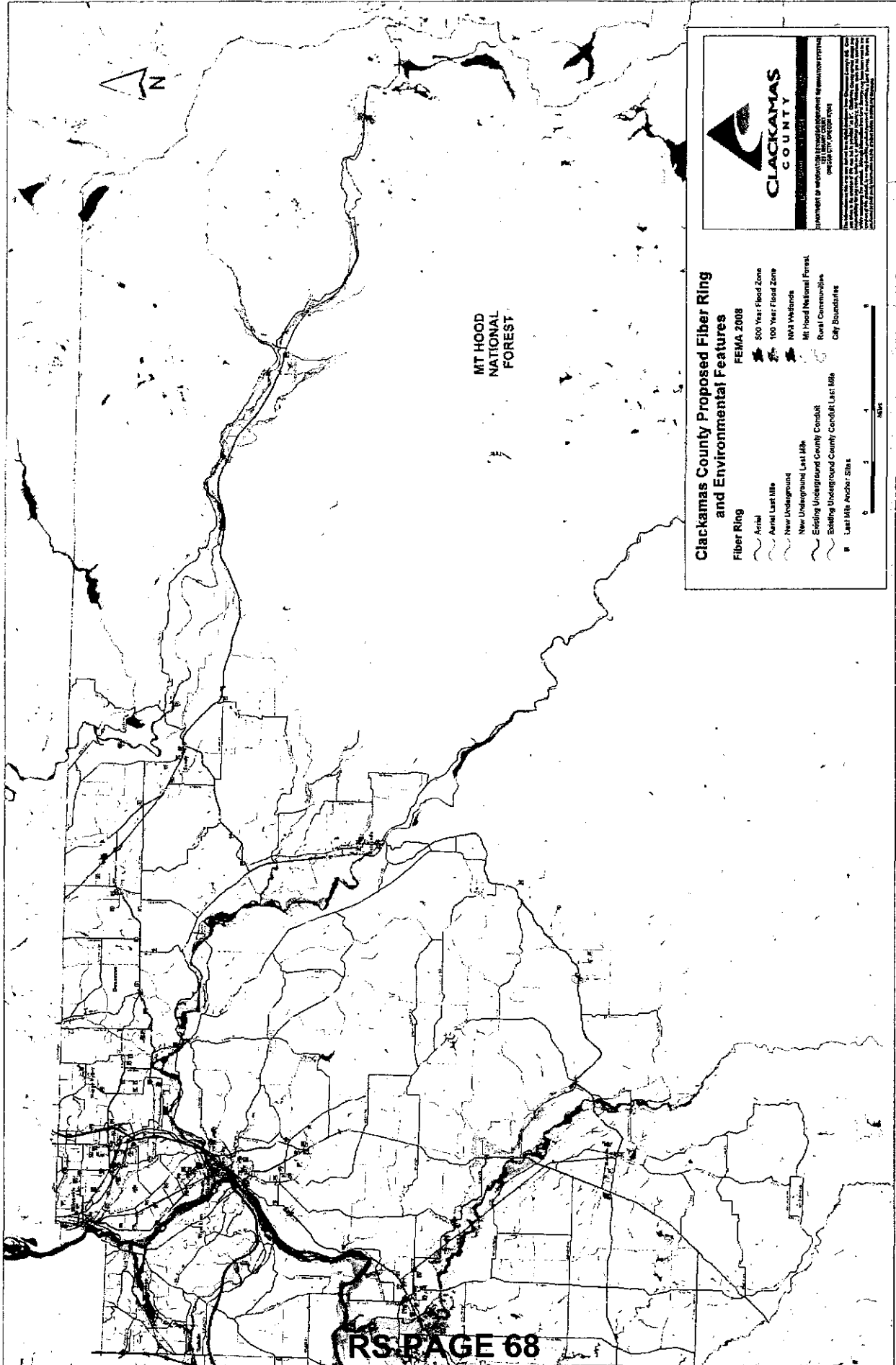


Exhibit B

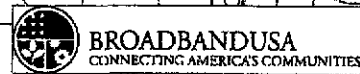
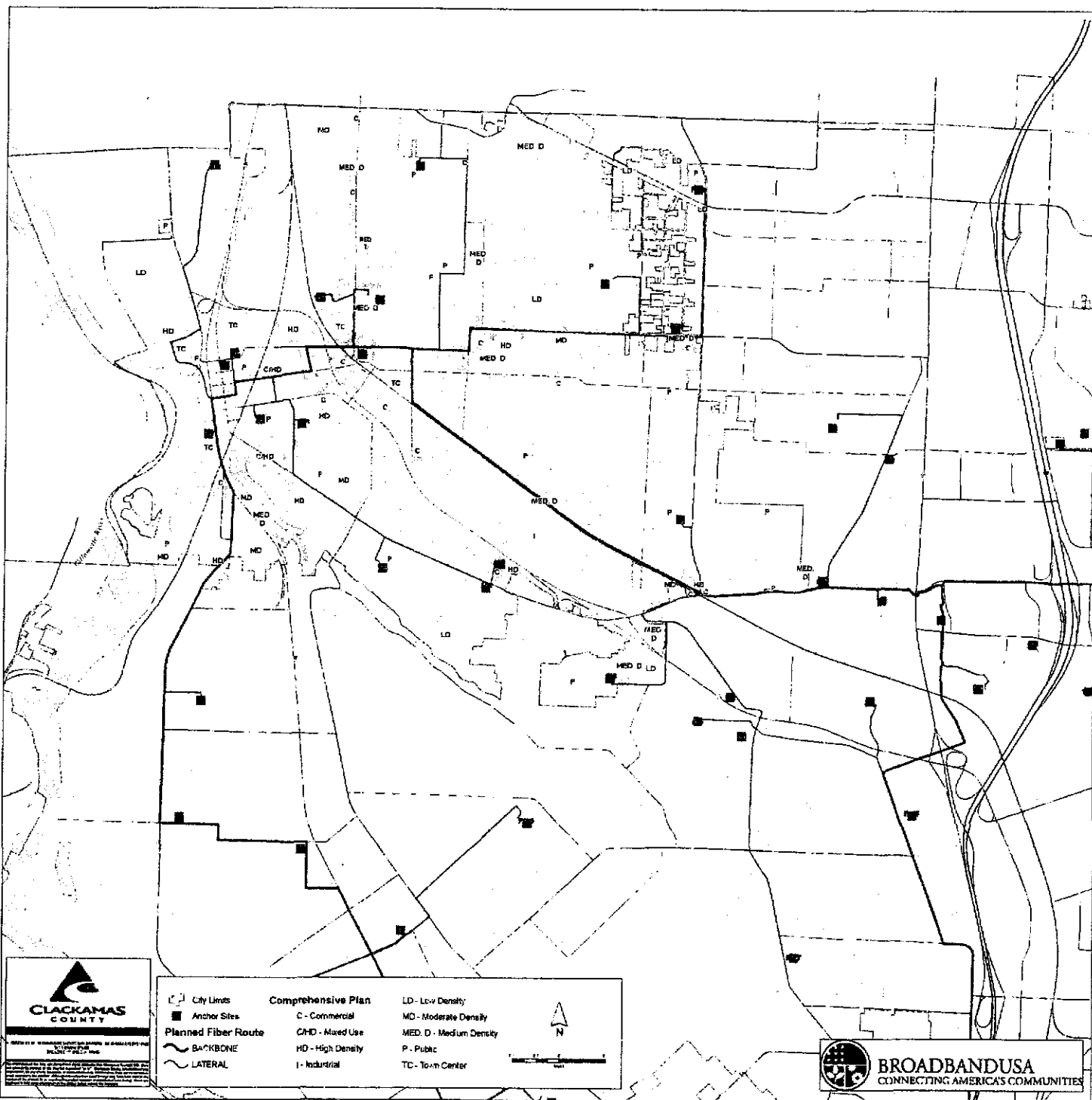


EXHIBIT C: CONSTRUCTION STANDARDS

Section 1. **Non-Emergency Construction Work**

- A. Before the County conducts work involving excavation, new construction including placement of new wires or major relocation work in City rights-of-way, County shall first notify the City Engineer and shall comply with any special conditions relating to scheduling, coordination and public safety as determined by the City Engineer. Special conditions would include work being done in the right of way by the City or other third parties and may include a requirement that the facility be placed underground. "Work" includes but is not limited to open cuts, boring, excavations, and digging new pole holes in the right of way.

- B. The County shall file preliminary maps or drawings of its proposed construction work within the City with the City Engineer showing the location of the construction, extension or relocation of its facilities and services in City rights-of-way.

- C. All work by the County within the rights of way shall be conducted with reasonable care and with the goal of eliminating or minimizing the risk to those using City rights of way and to eliminate or minimize the risk of damage to public or private property. All work shall be performed in accordance with all applicable laws and regulations, including applicable street construction standards as adopted by the City. Any work within the right of way may be inspected by the City and its officers to determine whether it has been placed in its approved location.

Section 2. **Emergency Construction Work.**

- A. In the case of a circumstance that could not have been reasonably foreseen; creates a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and requires prompt action to remedy the condition (hereinafter "emergency"), the County may conduct work reasonably required by the emergency at any time and shall provide the City Engineer with written or oral notice of such work as soon as reasonably possible, but in no case later than five (5) business days after the emergency work has commenced.

- B. In emergencies, County shall provide the City Engineer a map of any excavations, repavings, and new facilities work conducted on an emergency basis within 30 days of completion of the work. No facility may be placed in a location other than that approved by the City.

- C. If emergency work has been done and is determined to be in a place not approved by the city, the City will notify the County and give 60 days for the work to be corrected once the emergency has passed.

Section 3. **Supplying Maps**

The County shall maintain maps and data pertaining to its facilities located as described in Section 1 (A) in the City on file at their office located at 121 Library Court Oregon City OR 97045. Upon 24 hours prior notice, the City may inspect the maps at any time during business hours. Upon request of the City and without charge, the County shall furnish current maps to the City, either in a printed form, or, if the City maintains compatible data base capability, then by electronic data in read-only format, showing the location of any electrical system facilities, but not other proprietary information, used in operating the county's transmission and distribution facilities within the City's Urban Growth Boundary area served by the County. The city may not sell or transmit the County maps or data to third parties unless permitted by the County. The City will make available to the County any city-prepared maps or data.

Section 4. **Excavation**

Subject to Exhibit C, Sections 1 and 5, of this Agreement, the County may make all necessary excavations within City right of way for the purpose of installing, repairing or maintaining any facility. Assuming sufficient right of way, all poles shall be placed between the sidewalk and the edge of the right of way unless another location is approved by the City Engineer. The County shall take all reasonable precautions to minimize interruption to traffic flow, damage to property or creation of a hazardous condition.

Section 5. **Restoration after Excavation**

Except as otherwise provided in this section, the County shall restore the surface of any right of way disturbed by any excavation by the County to the same condition it was in prior to its excavation. In the event that the County's work is coordinated with other construction work in the right of way, the City Engineer may excuse the County from restoring the surface of the right of way, providing that as part of the coordinated work, the right of way surface is restored at least to the condition it was in prior to any excavation. All restoration of right of way surface shall be subject to the approval of the City Engineer, who may issue an order requiring correction of the restoration work. If the correction order is not complied with within 30 days or such other time as may be specified in the order, the City may restore the surface of the right of way, and charge the County the cost of the restoration, including all administrative costs of resurfacing and of issuing the correction order.

Section 6. **Relocation**

- A. In accordance with ORS 221.420, City may by written order require the County to move any facility in the right of way. If the relocation is the result of a public project, the County shall be responsible for the costs of relocation. If the

relocation is required to accommodate a private party development or project, the County shall have the right to seek reimbursement from the private party. In any event the City shall not be responsible for the costs of relocation of any of the County's facilities.

- B. As permitted by applicable law, administrative rule, or regulation, the City may require the County to remove any overhead facilities and replace those facilities within underground facilities at the same or different locations subject to the City's engineering and safety standards. The expense of such a conversion shall be paid by the County, and the County shall recover its costs from its customers in accordance with state law, administrative rule, or regulation. Nothing in this paragraph prevents the City and the County from agreeing to a different form of cost recovery consistent with applicable statutes, administrative rules, or regulations on a case-by-case basis, including but not limited to the creation of an underground assessment district pursuant to ORS 758.210.
- C. Whenever it is necessary to temporarily relocate or rearrange any facility of the County to permit the passage of any building, machinery or other object, the County shall perform the work after being notified in writing no later than 30 business days prior to the date specified by the persons desiring to move the building, machinery or other object. The notice shall: (1) specify the date and time upon which County will be required to temporarily relocate or rearrange any facility of the County; (2) bear the approval of the City Engineer; (3) detail the route of movement of the building, machinery, or other object; (4) provide that the person requesting the temporary relocation shall be responsible for the County's costs; (5) provide that the requestor shall provide proof of insurance in an amount sufficient to indemnify and hold harmless the City and the County from any and all damages or claims resulting either from the moving of the building, machinery or other object or from the temporary relocation of the County facilities; and (6) be accompanied by a cash deposit or other security acceptable to the County for the costs of relocation. The County in its sole discretion may waive the security. The cash deposit or other security shall be in an amount reasonably calculated by the County to cover the County's costs of temporary relocation and restoration.
- D. In accordance with ORS 221.420, the City may require the County to remove and relocate transmission and distribution facilities maintained by the Company in any public rights of way, property or place of the City by giving notice to the County. Prior to such relocation the City agrees to provide a suitable location which includes a minimum or maximum square footage set by the County and the required easements from private property owners for such relocated facilities sufficient to maintain service. The cost of removal or relocation of its facilities for public projects shall be paid by the County; however when the City requires more than one temporary relocation and both the initial and subsequent relocations are for public projects and not at the request of or to accommodate a private party, the initial relocation shall be at the expense of the County and subsequent relocations

occurring less than two years after the initial relocation shall be at the expense of the City. In the event that any relocation is requested by or is to accommodate a private party, the County shall seek reimbursement from the private party and not from the City. The City and the County agree to cooperate to minimize the economic impact of such temporary relocation on each party.

- E. The notices required by this Section 6 of Exhibit C shall be in writing and shall be provided at least 30 business days before the date that the County is required to move its facilities. The City will endeavor to provide as much notice as possible. The notice shall specify the date by which the existing facilities must be removed. Nothing in this provision shall prevent the City and the County from agreeing, either before or after notice is provided, to a schedule for relocation. In the event that the County fails to comply with a notice to relocate and the City and the County have not reached agreement on a schedule for relocation, the City may remove or relocate the County's facilities that were the subject of the relocation notice at the County's expense.
- F. The City shall provide the County with a suitable location in existing right of way sufficient to maintain service for all facilities required to be relocated pursuant to Section 6 (A), (B), and (D) of Exhibit C.

Section 7. **City Public Works and Improvements**

Nothing in this Agreement shall be construed in any way to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or doing any work that may be needed or convenient in any rights of way. The City shall coordinate any such work with the County to avoid, to the extent reasonably foreseeable, any obstruction, injury or restrictions on the use of any of the County's facilities.

Section 8. **Vacation of Right of Way**

Whenever the City initiates any proceeding to vacate any rights of way within which the County has a facility, the City will notify the County. The City will maintain a public utility easement for the County's facility, if requested by the County.

ATTACHMENT 2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, WAIVING A \$2.00 PER LINEAR FOOT FEE FOR USE, BY CLACKAMAS COUNTY, OF THE CITY'S RIGHTS OF WAY FOR A DARK FIBER NETWORK INTENDED FOR PROVIDING DATA OR INTERNET SERVICE AS PART OF THE CLACKAMAS BROADBAND INNOVATION INITIATIVE PROJECT.

WHEREAS, the County received an \$11.1 million federal grant to construct an open Broadband infrastructure network throughout the County; and

WHEREAS, the County desires to invest approximately \$1 million of grant proceeds in and around Milwaukie to directly benefit Milwaukie area public agencies and institutions and, through local internet providers, Milwaukie residents and businesses; and

WHEREAS, the County has requested that the City partner with the county in this project by matching project costs through a waiver of ROW use fees;

NOW, THEREFORE, BE IT RESOLVED that the \$2.00 per linear foot fee established under a Memorandum of Understanding with the County for the Clackamas Broadband Innovation Initiative, a dark fiber network intended for providing data or internet service, is hereby waived for the term of the Memorandum of Understanding.

Introduced and adopted by the City Council on February 7, 2012.

This resolution is effective immediately.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



6

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment
Michael S. Kuenzi, P.E.
Director

February 16, 2012

Board of Commissioners
Clackamas County

Members of the Board:

**ADOPTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, THE CITY OF MILWAUKIE
AND METRO REGARDING
NATURE IN NEIGHBORHOODS GRANT FOR THE
MT. SCOTT CREEK RESTORATION AT NORTH CLACKAMAS PARK**

Clackamas County Service District No. 1 (the "CCSD#1"), the City of Milwaukie and Metro Regional Government ("Metro") wish to enter into an intergovernmental agreement regarding the design and construction of creek restoration activities in Mt. Scott Creek at North Clackamas Park that is owned by the City of Milwaukie and operated by North Clackamas Parks and Recreation District (NCPRD). In general terms the IGA provides that the Metro Neighbor in Neighborhoods Capital Grants program will provide a grant in the amount of \$150,034 to fund creek restoration, with the project to be managed by staff of CCSD#1.

The project will address the following goals:

- Enhance ecological functions and diversity for fish and wildlife
- Improve watershed health awareness, provide community stewardship opportunities and increase educational opportunities within the district
- Enhance access to nature

Activities will include a culvert removal, streambank stabilization, riparian planting, in-stream woody debris, a pedestrian bridge and creek overlooks with educational signage. Partners include the City of Milwaukie, North Clackamas Parks and Recreation District, Friends of Trees, Oregon Dept. of Fish & Wildlife and the North Clackamas Urban Watersheds Council.

This agreement was first presented to the County Administrator in August 2010, in a request for approval to apply for the grant. Adoption of the IGA requires consent from the BCC, as the governing body of CCSD#1.

Funding for CCSD#1's portion of the work outlined in this agreement has been budgeted in the 2011-2012 and 2012-13 Surface Water Program budgets. CCSD#1

is committing to \$175,000 in capital costs and \$18,000 in staff time toward the project whose total value is estimated at \$450,000. WES counsel has reviewed the agreement.

RECOMMENDATION

Staff respectfully recommends that:

1. The Board of County Commissioners, acting as the governing body of CCSD#1, agree to enter into the proposed agreement; and that
2. The Board of County Commissioners authorizes Director Michael S. Kuenzi to execute the agreement.

Sincerely,



Michael S. Kuenzi
Director

For questions or information on this issue, please contact Gail Shaloum at 503-742-4597



Metro Contract No. 931046

INTERGOVERNMENTAL AGREEMENT
Natural Areas Bond Measure
Capital Grant Award

This Intergovernmental Agreement (this "Agreement"), entered into under the provisions of ORS chapter 190 and effective on the date the Agreement is fully executed (the "Effective Date"), is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and Clackamas County Service District No. 1 (CCD#1), a County service district, located at 150 Beavercreek Road, Oregon City, Oregon 97045 and the City of Milwaukie, an Oregon municipal corporation, located at 10722 SE Main Street, Milwaukie, OR 97222 (the "City"). CCD#1 and the City are referred to together herein as "Grant Recipient".

RECITALS

WHEREAS, the electors of Metro approved Ballot Measure 26-80 on November 7, 2006, authorizing Metro to issue \$227.4 million in bonds to preserve natural areas, clean water, and protect fish and wildlife (the "Measure");

WHEREAS, the Measure allocated \$15 million from bond proceeds to the Nature in Neighborhoods Capital Grants Program to complement the regional and local share portions of the Measure by providing opportunities for the community to actively protect fish and wildlife habitat and water quality in areas where people live and work;

WHEREAS, Metro has determined to make a grant award to Grant Recipient to fund Mt. Scott Creek Restoration at North Clackamas Park (the "Project") as more specifically identified within the Scope of Work attached hereto as Exhibit A (the "Work");

WHEREAS, this Agreement between Metro and Grant Recipient is now needed to satisfy the terms and conditions of the Nature in Neighborhoods Capital Grants Program as provided for in the Measure;

WHEREAS, except as specifically provided in this Agreement, including the scope of work attached hereto as Exhibit A, and otherwise notwithstanding any statements or inferences to the contrary, Metro neither intends nor accepts any (1) direct involvement in the Project (2) sponsorship benefits or



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supervisory responsibility with respect to the Project; or (3) ownership or responsibility for care and custody of the tangible products which result from the Project.

NOW THEREFORE, the parties agree as follows:

1. Purpose; Scope of Work; Limitations

The purpose of this Agreement is to implement the Measure and facilitate the funding of a Nature in Neighborhoods Capital Grants Program project. Grant Recipient shall perform all activities described in the Scope of Work attached hereto as Exhibit A (the "Work"). In this instance, Grant Recipient consists of two entities. Therefore, any obligation to be performed by Grant Recipient under this Agreement may be performed by either entity as agreed between CCD#1 and the City. As a condition precedent to Metro's agreement to fund the Project, Grant Recipient hereby approves the Project and agrees to comply with the terms and conditions of this Agreement and the applicable provisions of the Measure. At no time will Metro have any supervisory responsibility regarding any aspect of the Work. Any indirect or direct involvement by Metro in the Work shall not be construed or interpreted by Grant Recipient as Metro's assumption of a supervisory role.

2. Declaration of Capital Project

In accordance with the Measure, Metro may only provide funds to Grant Recipient for the Project so long as such funds are exclusively used for capital expenses. Grant Recipient hereby confirms that the Project will result in the creation of a capital asset to be owned by Grant Recipient. Grant Recipient covenants that it will (a) own and hold all such capital improvements and real property interests acquired pursuant to this Agreement, and (b) record the asset created by the Project as a fixed, capital asset in Grant Recipient's audited financial statement, consistent with Generally Accepted Accounting Principles ("GAAP") and with Grant Recipient's financial bookkeeping of other similar assets.

3. Contract Sum and Terms of Payment

Metro shall compensate Grant Recipient for performance of the Work as described in Exhibit A. Metro shall not be responsible for payment of any materials, expenses or costs other than those that are specifically described in Exhibit A. In accordance with Section IX of the Scope of Work, CCD#1 shall be considered the fiscal agent of Grant Recipient.



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4. Limitations on Use of the Capital Asset That Results from the Project

Throughout the term of this Agreement, Grant Recipient shall maintain and operate the capital asset that results from the Project in a manner consistent with one or more of the following intended and stated purposes of the Measure (the “Nature in Neighborhood Approved Purposes”):

- To safeguard water quality in local rivers and streams;
- To protect and enhance fish and wildlife habitats;
- To promote partnerships that protect and enhance nature in neighborhoods; and
- To increase the presence of ecological systems and plant and animal communities in nature deficient and other disadvantaged neighborhoods;

Grant Recipient may not sell, use, or authorize others to use such capital asset in a manner inconsistent with such purposes.

Notwithstanding the foregoing, secondary uses that arise as a result of such capital asset being used primarily in accordance with the Nature in Neighborhood Approved Purposes will be permitted, but only to the extent such secondary uses affect a *de minimis* portion of such capital asset or are necessary in order to facilitate the primary Nature in Neighborhood Approved Purposes. For example, if, as part of a land use review proceeding initiated to obtain the necessary approvals to operate such capital asset consistent with the Nature in Neighborhood Approved Purposes, a portion of such capital asset was required to be dedicated as a road, such road dedication would be a permitted secondary use.

If the Work is the acquisition of real property, then Grant Recipient shall satisfy the requirements in this section of the Agreement by granting to Metro a conservation easement substantially comparable to the form of conservation easement approved by the Metro Council at the time the Metro Council approved the grant award to Grant Recipient.

5. Funding Recognition

Grant Recipient shall recognize in any publications, media presentations, or other presentations referencing the Project produced by or at the direction of Grant Recipient, including, without limitation, any on-site signage, that funding for the Project came from the Metro Natural Areas Bond Measure’s Nature in Neighborhoods Capital Grants Program. Such recognition shall comply with the recognition guidelines detailed in the Measure. The Grant Recipient shall place at or near the Project’s location



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signage that communicates that funding for the Project came from the Metro Natural Areas Bond Measure's Nature in Neighborhoods Capital Grants Program.

6. Term

It is the intent of the parties for the Project to have been completed, and for all Metro funding to have been provided to Grant Recipient prior to November 30, 2014. Notwithstanding the forgoing, all provisions set forth in this Agreement, and the obligations of Grant Recipient hereunder, shall continue in effect after the completion of the Project until June 30, 2027.

7. Termination for Cause

A. Subject to the notice provisions set forth in Section 7.B below, Metro may terminate this Agreement, in full or in part, at any time during the term of the Agreement if Metro reasonably determines that Grant Recipient has failed to comply with any provision of this Agreement and is therefore in default.

B. Prior to terminating this Agreement in accordance with Section 7.A above, Metro shall provide Grant Recipient with written notice that describes the reason(s) that Metro has concluded that Grant Recipient is in default and includes a description of the steps that Grant Recipient shall take to cure the default. From the date that such notice of default is received by Grant Recipient, Grant Recipient shall have 30 days to cure the default. In the event Grant Recipient does not cure the default within the 30-day period, Metro may terminate all or any part of this Agreement, effective on any date that Metro chooses following the 30-day period. Metro shall notify Grant Recipient in writing of the effective date of the termination.

C. Grant Recipient shall be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default. Following such termination, should Metro later determine or a court find that Grant Recipient was not in default or that the default was excusable (e.g. due to a labor strike, fire, flood, or other event that was not the fault of, or was beyond the control of, Grant Recipient) this Agreement shall be reinstated or the parties may agree to treat the termination as a joint termination for convenience whereby the rights of Grant Recipient shall be as set forth below in Section 8.

8. Joint Termination for Convenience

Metro and Grant Recipient may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be



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effective only upon the mutual, written termination agreement signed by both Metro and Grant Recipient.

9. Oregon Constitution and Tax Exempt Bond Covenants

Grant Recipient acknowledges that Metro's source of funds for the Nature in Neighborhoods Capital Grants Program is from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, sections 11, 11b, 11c, 11d, and 11e of the Oregon Constitution, and that the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. Grant Recipient covenants that it will take no actions that would cause Metro not to be able to maintain the current status of the real property taxes imposed to repay these bonds as exempt from Oregon's constitutional property tax limitations or the income tax exempt status of the bond interest under IRS rules. In the event Grant Recipient breaches this covenant, Grant Recipient shall undertake whatever remedies are necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof, including, without limitation, reimbursing Metro for any Projects funded under this Agreement that resulted in Grant Recipient's breach of its covenant described in this Section.

10. Liability and Indemnification

As between Metro and Grant Recipient, Grant Recipient assumes full responsibility for the performance and content of the Work; provided, however, that this provision is not intended to, and does not, create any rights by third parties. To the extent permitted by Oregon law, and subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30, and the Oregon Constitution, Grant Recipient shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Agreement by Grant Recipient or Grant Recipient's officers, agents, or employees. Grant Recipient is solely responsible for paying Grant Recipient's contractors and subcontractors. Nothing in this Agreement shall create any contractual relationship between Metro and any such contractor or subcontractor.



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11. Contractors' Insurance

A. Grant Recipient shall require all contractors performing any of the Work to purchase and maintain at each contractor's expense, the following types of insurance covering the contractor, its employees and agents:

1. Commercial general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. Grant Recipient and Metro, and their elected officials, departments, employees and agents, shall be named as additional insureds.

2. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. Grant Recipient and Metro, and their elected officials, departments, employees, and agents, shall be named as additional insureds. Notice of any material change or policy cancellation shall be provided to Grant Recipient thirty (30) days prior to the change.

B. This insurance required by Grant Recipient, as well as all workers' compensation coverage for compliance with ORS 656.017, must cover all contractors' operations under this Agreement, whether such operations are by a contractor, by any subcontractor, or by anyone directly or indirectly employed by any contractor or subcontractor.

C. Grant Recipient shall require all contractors performing any of the Work to provide Grant Recipient with a certificate of insurance complying with this section and naming Grant Recipient and Metro as additional insureds within fifteen (15) days of execution of a contract between Grant Recipient and any contractor or twenty-four (24) hours before services such contract commence, whichever date is earlier.

D. In lieu of the insurance requirements in Sections 11.A through 11.D, above, Grant Recipient may accept evidence of a self-insurance program from any contractor. Such contractor shall name Grant Recipient and Metro as additional insureds within fifteen (15) days of execution of a contract between Grant Recipient and any contractor or twenty-four (24) hours before services such contract commence, whichever date is earlier.

12. Safety



Intergovernmental Agreement

Grant Recipient shall take all necessary precautions for the safety of employees, volunteers and others in the vicinity of the Work and the Project, and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

13. Metro's Right to Withhold Payments

Metro shall have the right to withhold from payments due Grant Recipient such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Grant Recipient's performance or failure to perform under this Agreement or the failure of Grant Recipient to make proper payment to any suppliers, contractors or subcontractors. All sums withheld by Metro under this Section shall become the property of Metro and Grant Recipient shall have no right to such sums to the extent that Grant Recipient has breached this Agreement.

14. Project Records, Audits, and Inspections

A. For the term of this Agreement, Grant Recipient shall maintain comprehensive records and documentation relating to the Project and Grant Recipient's performance of this Agreement (hereinafter "Project Records"). Project Records shall include all records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models, that are prepared or developed in connection with any Project.

B. In accordance with Section 2 above, Grant Recipient shall maintain all fiscal Project Records in accordance with GAAP. In addition, Grant Recipient shall maintain any other records necessary to clearly document:

(i) Grant Recipient's performance of its obligations under this Agreement, its compliance with fair contracting and employment programs, and its compliance with Oregon law on the payment of wages and accelerated payment provisions;

(ii) Any claims arising from or relating to (a) Grant Recipient's performance of this Agreement, or (b) any other contract entered into by Grant Recipient that relates to this Agreement or the Project;

(iii) Any cost and pricing data relating to this Agreement; and

(iv) Payments made to all suppliers, contractors, and subcontractors engaged in any work for Grant Recipient related to this Agreement or the Project.



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C. Grant Recipient shall maintain Project Records for the longer period of either (a) six years from the date the Project is completed, or (b) until the conclusion of any audit, controversy, or litigation that arises out of or is related to this Agreement or the Project and that commences within six years from the date the Project is completed.

D. Grant Recipient shall make Project Records available to Metro and its authorized representatives, including, without limitation, the staff of any Metro department and the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places, regardless of whether litigation has been filed on any claims. If the Project Records are not made available within the boundaries of Metro, Grant Recipient agrees to bear all of the costs incurred by Metro to send its employees, agents, or consultants outside the region to examine, audit, inspect, or copy such records, including, without limitation, the expense of travel, per diem sums, and salary. Such costs paid by Grant Recipient to Metro pursuant to this Section shall not be recoverable costs in any legal proceeding.

E. Grant Recipient authorizes and permits Metro and its authorized representatives, including, without limitation, the staff of any Metro department and the Metro Auditor, to inspect, examine, copy, and audit the books and Project Records of Grant Recipient, including tax returns, financial statements, other financial documents relating to this Agreement or the Project. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provision of Section 12(F) below.

F. Grant Recipient agrees to disclose Project Records requested by Metro and agrees to the admission of such records as evidence in any proceeding between Metro and Grant Recipient, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

G. In the event the Project Records establish that Grant Recipient owes Metro any sum of money or that any portion of any claim made by Grant Recipient against Metro is not warranted, Grant Recipient shall pay all costs incurred by Metro in conducting the audit and inspection.

15. Public Records

All Project Records shall be public records subject to the Oregon Public Records Law, ORS 192.410 to 192.505. Nothing in this Section shall be construed as limiting Grant Recipient's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring



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disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).

16. Law of Oregon; Public Contracting Provisions

The laws of the state of Oregon shall govern this Agreement and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187, 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement. Specifically, it is a condition of this Agreement that Grant Recipient and all employers working under this Agreement are subject to and will comply with ORS 656.017 and that, for public works subject to ORS 279C.800 to 279C.870 pertaining to the payment of prevailing wages as regulated by the Oregon Bureau of Labor and Industries, Grant Recipient and every contractor and subcontractor shall comply with all such provisions, including ORS 279C.836 by filing a public works bond with the Construction Contractors Board before starting work on the project, unless exempt under that statute.

17. Notices and Parties' Representatives

Any notices permitted or required by this Agreement shall be addressed to the other party's representative(s) as set forth below and shall be deemed received (a) on the date they are personally delivered, (b) on the date they are sent via facsimile, or (c) on the third day after they are deposited in the United States mail, postage fully prepaid, by certified mail return receipt requested. Either party may change its representative(s) and the contact information for its representative(s) by providing notice in compliance with this Section of this Agreement.

Grant Recipient's Designated Representatives:

Gail Shaloum
Environmental Policy Specialist
150 Beaver Creek Road
Oregon City, Oregon 97045



Intergovernmental Agreement

Metro's Designated Representatives:

Natural Areas Bond Program Manager
Metro Regional Center
600 N.E. Grand Ave.
Portland, OR 97223

with copy to:

Metro Attorney
600 N.E. Grand Ave.
Portland, OR 97223

18. Assignment

Grant Recipient may not assign any of its responsibilities under this Agreement without prior written consent from Metro, which consent shall not be unreasonably withheld.

19. Severability

If any term or provision in this Agreement shall be adjudged invalid or unenforceable, such adjudication shall not affect the validity or enforceability of the remainder of the Agreement, which remaining terms and provisions shall be valid and be enforced to the fullest extent permitted by law.

20. No Waiver of Claims; Modifications

Metro's failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision of this Agreement. This Agreement may be amended only by written instrument signed by both Metro and Grant Recipient and no waiver, consent, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

21. Integration of Agreement Documents

All of the provisions of any proposal documents including, but not limited to, Requests for Proposals, Grant Proposals and Scopes of Work that were utilized in conjunction with the award of this Grant are hereby expressly incorporated herein by reference; provided, however, that the terms described in Sections 1 through 21 of this Agreement and in Exhibit A shall control in the event of any conflict between such terms and such other incorporated documents. Otherwise, this Agreement represents the entire and integrated agreement between Metro and Grant Recipient and supersedes all prior negotiations, representations or agreements, either written or oral. The law of the state of Oregon shall govern the construction and interpretation of this Agreement. The Parties, by the signatures



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below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year indicated below.

**CLACKAMAS COUNTY SERVICE
DISTRICT #1**

METRO

By: _____

By: _____

Name: _____

Name: Martha Bennett

Title: _____

Title: Metro Chief Operating Officer

Date: _____

Date: _____

THE CITY OF MILWAUKIE

By: _____

Name: _____

Title: _____

Date: _____



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Scope of Work – Exhibit A

Metro Contract No. 931046

**CAPITAL GRANTS PROGRAM
GRANTS AGREEMENT**

Project Title/Project Number: Mt. Scott Creek Restoration

Y. Grant Recipients contact: Clackamas County Water Environmental Services
Gail Shaloum
150 Beaver Creek Rd
Oregon City, OR 97045
503-742-4597
gshaloum@co.clackamas.or.us

City of Milwaukie
JoAnn Herigel
10722 SE Main Street
Milwaukie, OR 97222
503-786-7508
herrigelj@ci.milwaukie.or.us

Z. Fiscal Agent

Clackamas County Water Environmental Services
Gail Shaloum
150 Beaver Creek Rd
Oregon City, OR 97045
503-742-4597
gshaloum@co.clackamas.or.us

Budget at time of award

Total cost of project	\$450,222
Grant award	\$150,034
Financial match	\$235,000
In-kind match	\$ 65,188

Project location

North Clackamas Park
5440 SE Kellogg Creek Drive
Milwaukie, OR

Scope of Work

This scope of work specifies the work and requirements the Grant Recipients shall undertake as part of Metro's Nature in Neighborhoods Capital Grants program grant award. Except as modified herein, the original grant application (see attached Attachment 1) sets forth the scope of work.



Beyond clean water.

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Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

February 16, 2012

Board of County Commissioners
Clackamas County

Members of the Board:

**APPROVAL OF AN AGREEMENT BETWEEN CLACKAMAS COUNTY SERVICE
DISTRICT NO. 1 AND CFM STRATEGIC COMMUNICATIONS
TO
CONDUCT RATEPAYER E-PANEL RESEARCH**

Clackamas County Service District No. 1 ("CCSD#1") seeks approval to continue to utilize and build upon the District's e-panel developed in 2011 for District related research and public engagement. The District's panel is used to conduct research on District policy issues and provides a two-way communication and feedback with customers quickly and efficiently, and allows participants to see results of the research in real time.

Panel research is a web-based tool that can be used for qualitative and quantitative studies. It allows staff to ask more questions than traditional telephone surveys, utilize visual materials, and re-contact and engage participants that would typically not attend public meetings. With 80% of District customers having access to the internet, panel research allows the District an alternative to relying on landline telephone service.

Previously, the District has conducted two panel surveys to evaluate sensitivity to environmental issues, infrastructure needs, customer service and investment priorities. The E-panel includes 9400 email addresses of which 613 are consistent participants out of approximately 15,000 residential customers. Previous panel research has been used to provide feedback to the BCC, the RiverHealth Advisory Board, and District staff on policy related issues and decisions. The panel is a flexible tool that can be used for large survey type research or can be broken up into smaller focus groups that provide more specific and detailed feedback. Most importantly, District staff has a quick way to solicit feedback from customers, and allows staff to immediately thank participants and provide research results. This two-way communication is not possible in a traditional telephone survey. The panel also opens doors for customers to utilize other services such as the County and WES Websites, E-pay Program and E-notification of news and events.

WES staff on behalf of the District conducted a competitive request for proposals with three local firms that specialize in this type of research. The district received only one response to our request. Attached hereto is a proposed agreement to provide professional services between the District (the "Agreement") and the consultant.

The attached agreement allows for up to three online focus groups, the first specific to rate

Serving Clackamas County, Gladstone, Happy Valley, Johnson City, Milwaukie, Oregon City, Rivergrove and West Linn.
150 Beaver Creek Road, Oregon City, Oregon 97045 Telephone: (503) 742-4567 Facsimile: (503) 742-4565

www.clackamas.us/wes/

sensitivity, a flash survey, Website content updates and ongoing panel engagement such as emails and newsletters. The agreement will allow the continuation of building the panel through the end of fiscal year 2011/2012. Funds are budget within the Tri-City and CCSD#1 approved 2011 budget. Staff will use the information to help shape proposed budgets and to make rate recommendations to advisory and budget committees and the Board.

Recommendation:

1. Staff respectfully requests the Board, acting as the governing body of CCSD#1, authorize the Director to execute the attached agreement in an amount not to exceed \$37,000.

Sincerely,



Michael Kuenzi
Director

**AGREEMENT TO FURNISH PROFESSIONAL SERVICES
TO
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
FOR
ONLINE PANEL RESEARCH**

THIS AGREEMENT TO FURNISH PROFESSIONAL SERVICES (this "Agreement"), made and entered into on this _____ day of February in the year 2012 by and between CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, county service district formed under Oregon Revised Statutes ("ORS") 451 (the "DISTRICT") and CFM Strategic Communications, Inc., an Oregon corporation (the "CONSULTANT").

RECITALS

WITNESSETH: That whereas the DISTRICT intends to engage the CONSULTANT to perform the professional services described on Exhibit A as attached hereto and incorporated by reference, hereinafter called the "PROJECT."

WHEREAS, the CONSULTANT shall provide assistance and support to the DISTRICT with the planning and development of strategic ratepayer research utilizing the districts e-panels.

NOW, THEREFORE, the DISTRICT and the CONSULTANT for the considerations herein after set forth agree as follows:

ARTICLE 1 - SERVICES OF THE CONSULTANT

The CONSULTANT agrees to perform, in accordance with applicable District, local, state and federal laws, statutes, ordinances, rules and regulations, professional services in connection with the PROJECT as stated and defined in Exhibit A (the "Services").

ARTICLE 2 - DISTRICT'S RESPONSIBILITIES

Unless otherwise specifically modified in Exhibit A the DISTRICT will:

- 2.1 Provide adequate information to the CONSULTANT regarding the DISTRICT's requirements for the PROJECT.
- 2.2 Assist the CONSULTANT by making available all reasonably available information and technical data pertinent to the PROJECT.
- 2.3 Obtain approvals and permits from governmental authorities having jurisdiction over the PROJECT, and such approvals and consents from others as may be necessary for completion of the PROJECT (excepting any personal qualifications or certifications required for CONSULTANT to perform the work contemplated hereunder).

ARTICLE 3 – CONSULTANT’S RESPONSIBILITIES

3.1 The CONSULTANT agrees to complete the Services according to the schedule set forth in Exhibit B (the “Schedule”). If the DISTRICT has requested significant modifications or changes in the scope of the PROJECT pursuant to Section 3.3, the time of performance of the CONSULTANT's services shall be adjusted accordingly.

3.2 Standards of Performance

3.2.1 The standard of care for all professional services performed or furnished by CONSULTANT under this Agreement will be the care and skill ordinarily used by a competent member of CONSULTANT’s profession.

3.2.2 CONSULTANT shall be responsible for the accuracy of its services and documents resulting there from, and DISTRICT shall not be responsible for discovering deficiencies therein. CONSULTANT shall correct such deficiencies without additional compensation, except to the extent such action is solely attributable to deficiencies in DISTRICT-furnished information.

3.2.3 CONSULTANT and DISTRICT shall comply with applicable Laws or Regulations and DISTRICT-mandated standards. Any changes to these requirements during the term of this Agreement shall not be the basis for any modifications to CONSULTANT’s scope of services, times of performance, or compensation.

3.3 Notice of Changes

In the normal course of administering the work under this Agreement, the DISTRICT may give directives to the CONSULTANT, either written or verbal, which may constitute a change to the Services or Schedule. If an instruction, directive or decision is given that the CONSULTANT believes is a change in scope or schedule, the CONSULTANT shall notify the DISTRICT within seven (7) calendar days of receiving such directive or instruction. The notice shall state the general nature of the change, but need not include a detailed cost or impact estimate. Failure to give timely written notice relieves the DISTRICT from any obligation to adjust the contract amount, scope or schedule as an amendment to the Agreement. To the extent District agrees that a change in the Services required or the Schedule has occurred, the parties shall agree to an amendment to this Agreement pursuant to the process set forth in Paragraph 6.24 hereof.

3.5 CONSULTANT's Project Manager

The CONSULTANT shall assign personnel to do the work in the capacities and amounts designated in Exhibit A. The CONSULTANT shall not change these personnel assignments without the prior written consent of the DISTRICT’s Project Manager (as defined in Paragraph 4.3), which consent shall not be unreasonably withheld.

ARTICLE 4 - AUTHORIZATION AND PROJECT MANAGER

4.1 Specific authorization to proceed with the Services shall be granted in writing by the DISTRICT within a reasonable time after the execution of this Agreement. The CONSULTANT shall not proceed with the work without such authorization. The DISTRICT's Project Manager shall have authority to give such authorizations. The Parties acknowledge that CONSULTANT may be utilizing work previously done to complete the Project and agree that such work shall fall within the scope of Services contemplated herein.

4.2 This Agreement shall be effective as of the CONSULTANT's receipt of the written authorization to proceed and shall be completed as set forth in the Schedule.

4.3 DISTRICT's Project Manager

The DISTRICT's Project Manager is authorized to approve work and billings hereunder, approve subconsultants, give notices referred to herein, terminate this Agreement as provided herein and carry out any other DISTRICT actions referred to herein. The DISTRICT's Project Manager shall be Amy Kyle.

ARTICLE 5 - PAYMENTS TO CONSULTANT

In accordance with the terms and conditions of this Agreement, the DISTRICT shall compensate the CONSULTANT as follows:

5.1 Compensation

5.1.1 The DISTRICT agrees to pay the CONSULTANT an amount equal to THIRTY-SEVEN THOUSAND and NO/100 Dollars (\$37,000.00) at the time upon achievement of milestones set forth in the schedule. Notwithstanding anything else to the contrary herein, the total compensation under this Agreement shall not exceed THIRTY-SEVEN THOUSAND and NO/100 Dollars (\$37,000.00) without prior written approval of the DISTRICT.

5.1.2 The CONSULTANT is entitled to no compensation for the correction or revision of any errors or deficiencies in the services provided.

5.1.3 The DISTRICT may withhold from payments due the CONSULTANT such sums as are necessary, in the DISTRICT's sole and absolute discretion, to protect the DISTRICT against any loss or damage which may result from negligence or unsatisfactory work by the CONSULTANT, the failure of the CONSULTANT to perform as required under this Agreement, or claims filed against the CONSULTANT or the DISTRICT relating to the CONSULTANT's services or work under this Agreement.

5.2 Billing and Payment Procedure

- 5.2.1 The CONSULTANT will provide monthly percentage complete invoices to the DISTRICT for work performed during the preceding month. The percentage complete invoices will be accompanied with a summary cost itemization of effort by individual and their hourly rate tied to the schedule. The CONSULTANT shall maintain detailed records to support these charges and such records shall be available to the DISTRICT for audit and copying. The DISTRICT shall pay monthly payments to the CONSULTANT within 30 days of the DISTRICT's receipt of the CONSULTANT's monthly statement. Interest on unpaid payments due shall accrue at the rate of 1% per month beginning the 60th day after the DISTRICT's receipt of the CONSULTANT's statement. No interest shall be paid on disputed amounts.

ARTICLE 6 - GENERAL CONDITIONS

6.1 Early Termination of Agreement

- 6.1.1 The DISTRICT and the CONSULTANT, by mutual written agreement, may terminate this Agreement at any time.
- 6.1.2 The DISTRICT, on thirty (30) days' prior written notice to the CONSULTANT, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- 6.1.3 Either the DISTRICT or the CONSULTANT 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 to the other party written notice of the breach and of the party's intent to terminate. If the 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 a written notice of termination stating the effective date of the termination.

6.2 Payment on Early Termination

- 6.2.1 In the event of termination under Paragraphs 6.1.1 or 6.1.2, hereof, the DISTRICT shall pay the CONSULTANT for work performed in accordance with the Agreement prior to the termination date.
- 6.2.2 In the event of termination under Paragraph 6.1.3 hereof by the CONSULTANT due to a breach by the DISTRICT, then the DISTRICT shall pay the CONSULTANT as provided in Paragraph 6.3.1.
- 6.2.3 In the event of termination under Paragraph 6.1.3 hereof by the DISTRICT due to a breach by the CONSULTANT, then the DISTRICT shall pay the CONSULTANT

as provided in Paragraph 6.3.1, subject to set off of excess costs, as provided for in Paragraphs 5.1.3 and 6.3.

6.2.4 In the event of early termination, all of the CONSULTANT's work product will become and remain property of the DISTRICT.

6.3 Remedies

6.3.1 In the event of termination under Paragraph 6.1.3 by the DISTRICT due to a breach by the CONSULTANT, then the DISTRICT may complete the work either itself, or by agreement with another consultant or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the compensation provided under Paragraph 5.1.1 hereof, then the CONSULTANT shall promptly pay to the DISTRICT the amount of the excess.

6.3.2 The remedies provided to the DISTRICT under Paragraph, 6.1, 6.2, and 6.3 hereof for a breach by the CONSULTANT shall not be exclusive. The DISTRICT also shall be entitled to any other equitable and legal remedies that may be available.

6.3.3 In the event of breach of this Agreement by the DISTRICT, then the CONSULTANT's remedy shall be limited to termination of the Agreement and receipt of payment as provided in Paragraphs 6.1 and 6.2 hereof.

6.4 Indemnification and Insurance

6.4.1 The CONSULTANT agrees to indemnify, save harmless and defend the DISTRICT, its officers, commissioners, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, errors, or omissions of the CONSULTANT or CONSULTANT's officers, owners, employees, agents, or its subcontractors or anyone over which CONSULTANT has a right to control.

6.4.2 The CONSULTANT agrees to furnish the DISTRICT evidence of comprehensive general (including contractual liability) and automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for personal injury and property damage for the protection of the DISTRICT, its officers, commissioners, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to the CONSULTANT's, or any subcontractors, in the performance of this Agreement. The insurance shall include the DISTRICT, its officers, commissioners, agents and employees, as additional insureds and refer to and support the CONSULTANT's obligation to hold harmless the DISTRICT, its officers, commissioners, agents, and employees.

- 6.4.3 The CONSULTANT agrees to furnish the DISTRICT evidence of professional liability insurance coverage (errors and omissions, on a claims-made basis) in the amount of not less than \$1,000,000 because of personal injury, bodily injury, death or damage to property.

6.5 Oregon Law and Forum

- 6.5.1 This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- 6.5.2 Any litigation between the DISTRICT and the CONSULTANT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon. The parties agree, however, to resolve any disputes between the parties in the manner described in Paragraph 6.23.

6.6 Workers' Compensation Coverage Requirements

The CONSULTANT is an independent contractor for purposes of the Oregon Workers' Compensation Law, as set forth in ORS Chapter 656 ("Workers' Comp Law") and is solely liable for any workers' compensation coverage under this Agreement. If the CONSULTANT hires subconsultants for the performance of this Agreement, the CONSULTANT agrees to require that the subconsultant(s) shall comply with ORS Chapter 656. The signing of this Agreement shall constitute the declaration of independent contractor status by the CONSULTANT.

- 6.6.1 The CONSULTANT will be solely responsible for payment of any local, state or federal taxes required as a result of this Agreement.
- 6.6.2 This Agreement is not intended to entitle the CONSULTANT to any benefits generally granted to DISTRICT, officers, or employees. Without limitation, but by way of illustration, the benefits not intended to be extended by this contract to the CONSULTANT are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime pay, Social Security, workers' compensation, unemployment compensation, or retirement benefits (except so far as benefits are required by law if the CONSULTANT is presently a member of the Public Employees Retirement System).

6.7 Subcontracts

The CONSULTANT shall not subcontract its work under this Agreement, in whole or in part, without the prior written approval of the DISTRICT. The CONSULTANT shall require subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the CONSULTANT as specified in this Agreement. Notwithstanding DISTRICT approval of a subcontractor, the CONSULTANT shall remain obligated for full performance hereunder, and the DISTRICT shall incur no obligation other than its obligations to the CONSULTANT hereunder. The CONSULTANT agrees that if subcontractors are employed in the performance of this Agreement, the CONSULTANT and its subcontractors are subject to the requirements of the Workers' Comp Law.

6.8 Assignment

The CONSULTANT shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the DISTRICT which may be granted or withheld in its sole and absolute discretion. The DISTRICT may assign this Agreement at any time and shall provide CONSULTANT with notice of such assignment within thirty (30) days of such assignment.

6.9 Notice

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing with such notice deemed delivered either upon actual receipt or three (3) days after deposit in U.S. Mail, whichever shall first occur:

If to the DISTRICT: Clackamas County Service District No. 1
 c/o Water Environment Services
 150 Beaver Creek Rd.
 Oregon City, Oregon 97045
 ATTN: Amy Kyle

Copy to: County Counsel
 c/o Water Environment Services
 150 Beaver Creek Rd
 Oregon City, Oregon 97045
 ATTN: Chris Storey

If to the CONSULTANT: CFM Strategic Communications
 Attn: Tom Eiland
 1100 SW 6TH AVE #1425
 Portland, OR 97204

6.10 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.

6.11 Integration

This Agreement contains the entire agreement between the DISTRICT and the CONSULTANT and supersedes all prior written or oral discussions or agreements.

6.12 Funds

The DISTRICT certifies that sufficient funds are available and authorized for expenditure pursuant to this Agreement in Fiscal Year 2011/2012. The funds needed for the balance of the Agreement are subject to appropriation by the Board of County Commissioners, acting as the governing body of the DISTRICT (the "Board"), during budget processes. If the Board does not appropriate funds for subsequent fiscal years for the balance of this contract, the DISTRICT may immediately terminate this Agreement by giving written notice of termination to the CONSULTANT. The CONSULTANT shall not be entitled to compensation for any work performed after the date of such written termination notice. The DISTRICT shall also have the right to accelerate or decelerate the work to match funding limitations. Any termination for lack of funds shall not constitute an "Early Termination" as such term is used in Paragraph 6.1.

6.13 Estimates of Cost

The estimates of cost for a PROJECT provided for herein are to be prepared by the CONSULTANT through exercise of experience and judgment in applying currently available cost data. The CONSULTANT will keep the DISTRICT apprised of changes throughout the PROJECT that significantly impact the estimated costs provided.

6.14 Ownership of Documents

- 6.14.1 All work the CONSULTANT performs 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 the CONSULTANT produces in connection with this Agreement. On completion or termination of the Agreement the CONSULTANT shall promptly deliver these materials to the Project Manager.
- 6.14.2 The CONSULTANT may retain for its own records and at its own cost copies of the materials referred to in Paragraph 6.14.1 hereof.

- 6.14.3 Any use the DISTRICT makes of the materials referred to in Paragraph 6.14.1 hereof, except for purposes of the work contemplated by this Agreement, shall be at the DISTRICT's risk.

6.15 Commencement of Work

Except as discussed in Paragraph 4, the CONSULTANT agrees that work being done pursuant to this Agreement will not be commenced until after:

- 6.15.1 Workers' compensation insurance is obtained, as specified in Paragraph 6.6.
- 6.15.2 This Agreement is fully executed by all parties and approved by the Board and/or Director when applicable.
- 6.15.3 The receipt of a written authorization to proceed from the Project Manager.

6.16 Release of Information

No information relative to the PROJECT shall be released by the CONSULTANT for publication, advertising, communication with the media, the public, other clients of the CONSULTANT, or any other person for any other purpose, without prior written approval of the DISTRICT.

6.17 Maintenance of Records

The CONSULTANT shall maintain books and accounts of payroll costs, travel, subsistence, field contracted services of others and reimbursable expenses pertaining to each PROJECT in accordance with generally accepted professional practices, appropriate accounting procedures and applicable local, state or federal laws, statutes, ordinances, or rules and regulations. The DISTRICT or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the CONSULTANT regarding its billings or any record arising from or related to this Agreement. Records shall be maintained and available until three (3) years after the date of final PROJECT billing or until three (3) years after the date of resolution of any litigation or claim.

6.18 Audit of Payments

- 6.18.1 The DISTRICT, either directly or through a designated representative, may audit the records of the CONSULTANT at any time during the three (3) year period established by Paragraph 6.17.
- 6.18.2 If an audit discloses that payments to the CONSULTANT were in excess of the amount to which the CONSULTANT was entitled, then the CONSULTANT shall immediately repay the amount of the excess to the DISTRICT.

6.19 Public Contracting Law

Pursuant to the requirements of ORS Chapters 279A and 279C, the following terms and conditions are made a part of this Agreement:

- 6.19.1 The CONSULTANT agrees that it shall:
 - 6.19.1.1 Make payments promptly, as due, to all persons supplying to CONSULTANT labor or materials for the performance of work contemplated by this Agreement.
 - 6.19.1.2 Pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of this Agreement.
 - 6.19.1.3 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167 or its successor statutes.
 - 6.19.1.4 Not permit any lien or claim to be filed or prosecuted against the State of Oregon, Clackamas County, the DISTRICT, any municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished for the performance of work contemplated by this Agreement.
- 6.19.2 If the CONSULTANT fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONSULTANT by any person in connection with this Agreement, as such claim becomes due, the proper office representing DISTRICT may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the CONSULTANT by reason of this Agreement. Further, the CONSULTANT or any first-tier subcontractor under this Agreement fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONSULTANT by any person in connection with this Agreement within thirty (30) days after receipt of payment from DISTRICT or the CONSULTANT, as applicable, then such person shall owe the unpaid person the amount due plus interest charges commencing at the end of the ten (10) day period under ORS 279C.580(4) and ending upon final payment unless subject to a good faith dispute as defined in ORS 279C.580. The rate of interest shall be as set forth in ORS 279C.515(2).
- 6.19.3 No person shall be employed for more than eight (8) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100(5) or as defined in the DISTRICT's Contract Review Board Rules, the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours a day and for work performed on Saturday and on any legal holiday, as specified in ORS 279C.
- 6.19.4 If this Agreement is for personal services as defined in ORS 279C or as defined in

the DISTRICT's Contract Review Board Rules, the laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.

6.19.5 The CONSULTANT shall promptly, as due, make payment to any person, partnership, association, corporation, or other entity furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the CONSULTANT, of all sums which the CONSULTANT agrees to pay for such services and all moneys and sums which the CONSULTANT collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

6.19.6 The CONSULTANT and all employers working under this Agreement are subject employers under ORS 656.017.

6.20 Equal Employment Opportunity

During the performance of this Agreement, the CONSULTANT agrees as follows:

6.20.1 The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, age, mental or physical handicap or a national origin. The CONSULTANT agrees that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, marital status, age, mental or physical handicap, or national origin. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided setting forth the provisions of this Equal Opportunity Clause.

6.20.2 The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, marital status, age, physical or mental handicap or national origin.

6.20.3 The CONSULTANT will send to each labor union or representative of workers with which CONSULTANT has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representative of the CONSULTANT's commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6.21 Survival

All express representations, indemnifications or limitations of liability included in this Agreement shall survive its completion and/or termination for any reason.

6.22 Headings

The headings used in this Agreement are for general reference only and are not part of the contract language. This Agreement should be construed without giving any meaning to any headings included herein.

6.23 Dispute Resolution

Any controversy or claim arising out of or relating to this Agreement or any related agreement shall be settled by arbitration in accordance with the following provisions:

6.23.1 Disputes Covered. The parties agree to arbitrate all disputes of every kind relating to or arising out of this Agreement. Disputes include actions for breach of contract with respect to this Agreement, as well as any claim based upon tort or any other causes of action relating to the Agreement or the PROJECT, such as claims based upon an allegation of fraud or misrepresentation and claims based upon a federal or state statute. In addition, the arbitrators selected according to procedures set forth below shall determine the arbitrability of any matter brought to them, and their decision shall be final and binding on the parties.

6.23.2 Forum. The forum for the arbitration shall be Clackamas County, Oregon.

6.23.3 Law. The governing law for the arbitration shall be the law of the State of Oregon, without reference to its conflicts of law provisions.

6.23.4 Selection. There shall be three arbitrators, unless the parties are able to agree on a single arbitrator. In the absence of such agreement within ten (10) days after the initiation of an arbitration proceeding, DISTRICT shall select one arbitrator and CONSULTANT shall select one arbitrator, and those two arbitrators shall then select, within ten (10) days, a third arbitrator. If those two arbitrators are unable to select a third arbitrator within such ten (10)-day period, a third arbitrator shall be appointed by the commercial panel of the American Arbitration Association. The decision in writing of at least two of the three arbitrators shall be final and binding upon the parties.

6.23.5 Administration. The arbitration shall be administered by the American Arbitration Association.

6.23.6 Rules. The rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association, as modified by any other instructions that the parties may agree upon at the time, except that each party shall have the right to conduct discovery in any manner and to the extent authorized by the Federal Rules of Civil Procedure as interpreted by the federal courts. If there is any conflict between those Rules and the provisions of this section, the provisions of this section shall prevail.

6.23.7 Substantive Law. The arbitrators shall be bound by and shall strictly enforce the terms of this Agreement and may not limit, expand or otherwise modify its terms. The

arbitrators shall make a good faith effort to apply substantive applicable law, but an arbitration decision shall not be subject to review because of errors of law. The arbitrators shall be bound to honor claims of privilege or work-product doctrine recognized at law, but the arbitrators shall have the discretion to determine whether any such claim of privilege or work product doctrine applies.

6.23.8 Decision. The arbitrators' decision shall provide a reasoned basis for the resolution of each dispute and for any award. The arbitrators shall not have power to award damages in connection with any dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential or punitive damages.

6.23.9 Expenses. Each party shall bear its own fees and expenses with respect to the arbitration and any proceeding related thereto and the parties shall share equally the fees and expenses of the American Arbitration Association and the arbitrators.

6.23.10 Remedies; Award. The arbitrators shall have power and authority to award any remedy or judgment that could be awarded by a court of law in the State of Oregon. The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction in the United States.

6.24 Amendments

The DISTRICT and the CONSULTANT may amend this Agreement at any time only by written amendment executed by the DISTRICT and the CONSULTANT. Any amendment that increases the amount of compensation payable to the CONSULTANT in excess of the amounts authorized in prior Board approvals shall be subject to approval by the Board. The Director or person designated by Board order may execute amendments to the Agreement to increase compensation within the limits of the authority established by the DISTRICT's Contract Review Board Rules and within the limits authorized by prior Board approvals. The Project Manager may agree to and execute any other amendment on behalf of the DISTRICT.

6.25 Waiver

The DISTRICT and the CONSULTANT 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 be of the same nature as that waived.

6.26 Time is of the essence of this Agreement.

[Signature Page Follows]

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

CONSULTANT:

CLACKAMAS COUNTY SERVICE
DISTRICT NO. 1

Company

Michael S. Kuenzi, Director

Address

Date

City, State, ZipCode

Authorized Signature

Title

Federal Tax ID Number

Date