



AGENDA

Thursday, March 5, 2015 - 10:00 AM BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2015-17

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

1. Recognition of March as National Essential Tremor Awareness (Commissioner Jim Bernard)

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

III. PREVIOUSLY APPROVED LAND USE ISSUE *(No public testimony on this item)*

- 2 1. Board Order No. _____ Approving a Previously Approved Comprehensive Plan Map Amendment and Zone Change Application for James R. Dierking/Oregon Lavender Farm & Liberty natural Inc. (Nate Boderman, County Counsel)

IV. BOARD DISCUSSION ITEMS *(The following items will be individually discussed by the Board only, followed by Board action.)*

Department of Transportation & Development

- 3 1. Resolution No. _____ Regarding Transportation System Development Charges for Certain Developments in the Happy Valley/Clackamas County Joint Transportation Area (Dan Johnson)

DEVELOPMENT AGENCY

- 4 2. Approval of a Disposition and Development Agreement with Veritas Investment Co. and New Hope Community Church (Dan Johnson)

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

- 5 1. Approval of a Revenue Agreement with Central City Concern for Funding of Mental Health Services at Chez Am Apartments – Behavioral Health
- 6 2. Approval of an Intergovernmental Program Performance Agreement with Clackamas Education Service District – *Children, Youth & Families*
- 7 3. Approval of Amendment No. 2 to a Professional Services Agreement with Passport to Languages for Interpretation Services at the Clackamas County Health Centers – *Health Centers*
- 8 4. Approval of a Services Contract between Clackamas County and Alpha Energy Savers, Douthit Thermal, Green Energy Solutions, Green Horizons Weatherization, Northwest Insulation, Performance Insulation and Energy Services, and Sensible Energy Solutions for Multiple Weatherization Projects Performed on Low-Income Dwelling Located Throughout Clackamas County – *Community Solutions*

B. Elected Officials

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

C. Community Corrections

- 10 1. Approval of Amendment No. 2 to Intergovernmental Agreement No. 4855 with the State of Oregon for Funding for Community Corrections Substance Abuse Program

VI. WATER ENVIRONMENT SERVICES

- 11 1. Approval of a Contract with CDM Smith, Inc. for Professional Services Related to the Blue Heron Aerated Stabilization Basin Sludge Management Project - *Purchasing*

VII. COUNTY ADMINISTRATOR UPDATE

VIII. 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.

www.clackamas.us/bcc/business.html



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD OREGON CITY, OR 97045

March 5, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

Stephen L. Madkour
County Counsel

Kimberley Ybarra
Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Assistants

A Board Order approving an amendment to a previously approved Comprehensive Plan Map Amendment and Zone Change Application

Purpose/Outcome	Adopt a board order approving a previously approved land use action
Dollar Amount and Fiscal Impact	None identified
Funding Source	N/A
Safety Impact	None anticipated
Duration	Indefinitely
Previous Board Action/Review	Board of County Commissioners (Board) held a public hearing on December 3, 2014. At the hearing, BCC voted 5-0 to approve the application, and directed staff to draft the board order and the findings of fact, both of which are included with this report.
Contact Person	Nate Boderman, 503-655-8364
Contract No.	None

BACKGROUND:

On December 3, 2014, the Board conducted land use hearings to consider a comprehensive plan map amendment and zone change application. The applicant is James R. Dierking/ Oregon Lavender Farm & Liberty Natural Inc. The applicant specifically requested a Comprehensive Plan Amendment from Agriculture to Rural Industrial and a corresponding zoning map amendment from EFU (Exclusive Farm Use) to RI (Rural Industrial) on property described as T2S R3E Section 28, Tax Lots 304 and 306 and portions of property described T2S R3E Section 27C, Tax Lots 1400 and 1500, located off S. Springwater Road, approximately three miles northeast of Redland and more commonly referred to as 20948 S. Harris Road, Oregon City, Oregon 97045.

In order to change the Comprehensive Plan Map designation to any designation other than Agriculture, it is necessary to take an exception to Statewide Planning Goal 3 (Agriculture), under the procedure described in the Oregon Administrative Rules (OAR) 660, Division 4. The applicant has proposed to do so under the "reasons" exception criteria, to allow for the warehousing, repackaging and commercial distribution of agricultural and related goods not

produced on the property, in conjunction with agricultural uses currently on the property.

The Planning Staff, in a staff report dated November 4, 2014 analyzed the proposal and recommended denial of the application to the County Planning Commission.

The Planning Commission conducted a public hearing on this matter on November 10, 2014. By a vote of 7-0, the Planning Commission recommended that the Board approve the application, subject to the resolution of an identified traffic issue. Prior to the Board's public hearing, the traffic issue was resolved to the satisfaction of the county and the applicant.

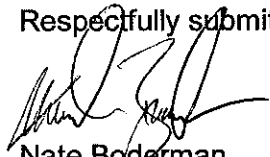
The Board conducted a public hearing on this matter on December 3, 2014. By a vote of 5-0, the Board voted to approve the application, limited to that area identified in Exhibit B and limited to the uses identified in Exhibit C, which is attached to the Board Order included with your materials.

A copy of the Board Order and the Findings and Conclusions adopted by the Board is attached.

RECOMMENDATION:

Staff recommends the Board approve the attached Board Order.

Respectfully submitted,



Nate Boderman
Assistant County Counsel

For information on this issue or copies of attachments please contact Nate Boderman at (503) 742-8364

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

In the Matter of a Comprehensive
Plan Amendment and Zone Map
Amendment from James R. Dierking/
Oregon Lavender Farm & Liberty
Natural, Inc., on property described as
T2S R3E Section 27C, Tax Lots
1400 & 1500 and T2S R3E Section 28,
Tax Lots 304 & 306



ORDER NO.

File Nos.: Z0212-14-CP & Z0213-14-ZAP

Whereas, This matter coming regularly before the Board of County Commissioners, and it appearing that James R. Dierking/ Oregon Lavender Farm & Liberty Natural, Inc., made an application for a Comprehensive Plan Amendment from Agriculture to Rural Industrial and a corresponding zoning map amendment from EFU (Exclusive Farm Use) to RI (Rural Industrial) on property described as T2S R3E Section 28, Tax Lots 304 and 306 and portions of property described T2S R3E Section 27C, Tax Lots 1400 and 1500, located off S. Springwater Road, approximately three miles northeast of Redland and more commonly referred to as 20948 S. Harris Road, Oregon City, Oregon 97045.

Whereas, it further appearing that in order to change the Comprehensive Plan Map designation to any plan designation other than Agriculture, it is necessary to take an exception to Statewide Planning Goal 3 (Agriculture), under the procedure described in the Oregon Administrative Rules (OAR) 660, Division 4, and the applicant has proposed to do so under the "reasons" exception criteria.

Whereas, it further appearing that after appropriate notice a public hearing was held before the Planning Commission on November 10, 2014, at which testimony and evidence was presented, and that, at this hearing, the Commission, by the vote of 7-0, recommended approval of this request, subject to the resolution of an identified traffic issue; and

Whereas, it further appearing that after the November 10, 2014 Planning Commission hearing, the applicant, his traffic engineer and staff from the County's Engineering Division resolved the identified traffic issue to all the parties' satisfaction; and

Whereas, it further appearing that after appropriate notice a public hearing was held before the Board of County Commissioners on December 3, 2014 at which testimony and evidence were presented, and that, at that hearing, a decision was made by the Board, by the vote of 5-0 to approve the application, with the Comprehensive Plan Amendment and Zone Map Amendment limited to that area identified in Order Exhibit B and limited to the uses identified in Order Exhibit C, which are attached to this order and incorporated herein by reference.

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

In the Matter of a Comprehensive
Plan Amendment and Zone Map
Amendment from James R. Dierking/
Oregon Lavender Farm & Liberty
Natural, Inc., on property described as
T2S R3E Section 27C, Tax Lots
1400 & 1500 and T2S R3E Section 28,
Tax Lots 304 & 306



ORDER NO.
(Page 2 of 2)

File Nos.: Z0212-14-CP & Z0213-14-ZAP

Based on the evidence and testimony presented this Board makes the following findings and conclusions:

1. The applicant requests approval of a "reasons" exception to Statewide Planning Goal 3 (Agriculture), to allow for the uses identified in Order Exhibit C.
2. The applicant requests approval of a Comprehensive Plan Amendment from Agriculture to Rural Industrial and a corresponding zoning map amendment from EFU (Exclusive Farm Use) to RI (Rural Industrial) limited to that area identified in Order Exhibit B.
3. This Board adopts as its findings and conclusions the *Findings of Fact and Conclusions of Law* document attached hereto and incorporated herein as Order Exhibit A, which finds the application to be in compliance with the applicable criteria.

NOW THEREFORE, IT IS HEREBY ORDERED that the requested "reasons" exception to Statewide Planning Goal 3 and the requested Comprehensive Plan Amendment and Zone Map Amendment are hereby APPROVED, limited to that area identified in Order Exhibit B, and limited to the uses identified in Order Exhibit C, which are attached to this order and incorporated herein by reference.

DATED this 5th day of March, 2015

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

**ORDER EXHIBIT A:
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

FILE NOS. Z0212-CP & Z0213-14-ZAP

I. BACKGROUND.

A. GENERAL INFORMATION.

APPLICANT: James R. Dierking
Oregon Lavender Farm & Liberty Natural, Inc.
20949 S. Harris Road,
Oregon City, Oregon 97045

APPLICANT'S REPRESENTATIVE: Andrew H. Stamp, Esq.
Andrew H. Stamp, P.C.
Kruse-Mercantile Professional Offices, Suite 16
4248 Galewood Street
Lake Oswego, OR 97035
Tel: 503.675.4318
Fax: 503.675.4319
Email: andrewstamp@comcast.net

TAX LOT NUMBERS: T2S R3E Sec. 27C, Tax Lots 1400, 1500.
T2S R3E Sec. 28, Tax Lots 304, 306
Note: The following Tax Lots are part of the same tract but are not subject to this application:
T2S R3E Sec. 27C, Tax Lots 1000, 1200, 1300, 1301, 1600, 1700 & 1701
T2S R3E Sec. 27B, Tax Lot 700

SITE ADDRESS: 20949 S. Harris Road, Oregon City, Oregon 97045

SITE AREA: 8.77 acres

TOTAL AREA IN TRACT: Approximately 90 acres

COUNTY COMPREHENSIVE PLAN: AGRICULTURE

CURRENT COUNTY ZONING: EFU

REQUESTED PLAN DESIGNATION: RURAL INDUSTRIAL

REQUESTED ZONING DESIGNATION: RURAL INDUSTRIAL

B. REQUEST.

The applicant requests approval of a Post-Acknowledgment Comprehensive Plan Amendment (“PAPA”) and Zoning Map Amendment for two (2) parcels of land totaling approximately 8.77 acres, more or less. The property is located 20949 S. Harris Road, Oregon City, Oregon 97045 and currently has a Clackamas County zoning designation of “EFU” Approval of a reasons exception for a PAPA and zone change to “Rural Industrial” will allow the present OLF operations to continue. The Board’s approval of this application provides a solution to the land use compliance issues otherwise facing the applicant, and results in zoning that is appropriate for the uses proposed on the subject property.

C. REASONS FOR THE PAPA AND ZONE CHANGE.

Since 1999, Liberty Natural Products has utilized the 90-acre Oregon Lavender Farm, which has over 150,000 square feet of rural industrial building space, as both a lavender farm and a distribution center for over 1000 different farm crops, herbs, botanicals and extracts sourced and distributed in Oregon, the United States and throughout the world. Before the establishment of the Oregon Lavender Farm, various rural industrial operations existed on the property. These structures predated the 1973 enactment of Senate Bill 100. Liberty’s operation at the Oregon Lavender Farm is the only sustainable business that has ever operated at the property over a long time period. Past operations failed to be economically or environmentally sustainable. Liberty Natural’s and OLF’s investment in property improvements exceeds \$2,000,000 over the past 14 years. Liberty has funded the cleanup and improvement of one of the largest nuisance properties in Clackamas County, and established a showcase 25-acre lavender farm benefiting the local agricultural community.

The uses at issue in this application are related to the quantity of distributed agricultural goods, primarily essential oil crops produced at other farms, the processing of agricultural goods, primarily herbs, grown at other farms into herbal extracts and the distribution of related goods that originate from outside of the region.

D. HISTORICAL USES ON THE PROPERTY.

The subject property was initially developed in the early 1960s by the Carnation Company as a large factory egg production and distribution facility named the Logan Farms with approximately 150,000 square feet of building space. From 1980 to 1990 the property housed several commercial rabbit farms. From 1990 to 1999 the property was used for several businesses, including a tannery, auto parts sales, commercial storage of food and agricultural products, an exotic pets and reptiles operation, unlawful firearms dealing, unpermitted dwellings, at least one methamphetamine lab, a stolen automobile “chop shop,” and a cockfighting gambling ring. Some of these activities were illegal nuisances that degraded the quality of life for the neighbors. These uses came to an end after Mr. Dierking purchased the property in 1999.

E. EXISTING AND PLANNED USES OF THE PROPERTY.

Liberty Natural Products Inc., an Oregon C corporation, now operates an herb farming operation at the OLF, which grows and distills 25 acres of lavender and other specialty herb crops, as well as the development of a complex integrated permaculture, which includes the production of worms, compost tea, mulch, compost, mushrooms and an aquaculture steelhead farming practice powered by appropriate technology solar and water resources.

Liberty also processes and distributes a broad variety of agricultural crops produced by other farms and distributes related goods and packaging, sourced substantially from other states and countries around the world. The distributed goods include approximately 500 different essential oils derived from herb crops, several hundred different bulk herbs and herbal extracts made from herbs grown on the farm and also substantially from herbs grown on other farms Liberty has been in the agricultural product distribution business since 1982 and currently has 35 employees. Annual sales for fiscal year 13-14 are estimated at approximately \$7,000,000.00

1. The agricultural processing at the OLF includes:

- (1) steam distillation of lavender grown on the farm;
- (2) repackaging of bulk botanical farm products acquired from Oregon and around the world;
- (3) extraction and processing of herbal extracts and the manufacture of value added products, such as lavender soaps and lotions, from botanicals grown at the farm and acquired from other farms from around the world.
- (4) distillation and processing of botanicals from the local area and from around the world.

All of these activities utilize the same farm infrastructure, which includes facilities, equipment, and staff for cultivation, processing, shipping and receiving, sales and administration. The OLF operations process, package and distribute agricultural crops that are estimated to represent more than one million acres of crops worldwide.

The Oregonian newspaper published several articles in September 2013, including one on the front page, which addressed the OLF land use dilemma and a follow up editorial in support of the OLF operations and resolution of the land use problem. In over seven years of complete operation at the OLF, no complaints or negative impacts from the OLF operations have been raised in any way by any neighbor or party (other than the out-of-state complainants). Adjoining neighbors have expressed their appreciation for the OLF having removed nuisance and illegal uses, which impacted their businesses and livability of their property

Currently, the OLF property and facilities are being used for the following uses:

1. **Crop Production.** Currently, OLF actively manages approximately 25 acres of land for farm crops. Of this total, the applicant manages 15 acres of lavender and 10 acres of lavandin. In addition, the property is used to grow Oregon Tilth Organic Certified Herb Crops include Burdock, Coltsfoot, Cut flowers, dandelion, Boneset, Calendula, Catnip, Chamomile, Citronella, Dill, Echinacea, Elecampane, Fennel, Fenugreek, Feverfew, Ginkgo, Heal All, Horehound, Lavender, Lavandin, Lemon Balm, Marshmallow, Melissa Officinalis, Motherwort, Nettle, Pleurisy, Rosemary, Sage, Tea, Thistle, Valerian, and Yarrow. Other herbs currently in production include Monarda (Bee Balm), Rose Hips and Hops. The company also maintains a community vegetable garden for the benefit of the company's employees and their families.
2. **Processing.** The applicant engages in a number of processing / manufacturing operations. Primary among these processes is the steam distillation of essential oil crops, such as lavender, rosemary, clary sage, Douglas fir, and Noble fir. The applicant is also involved in the production of tinctures, which are herb extracts obtained by using alcohol to extract their constituents. The applicant produces over 180 different tinctures from herbs, over 30 of which are grown at the OLF. The process of extracting constituents from botanicals is an accepted farming practice. ORS 215.203(2)(a) defines the term "farm use" as including the preparation, storage and disposal my marketing or otherwise of the product or products of or by-products raised on such land for human or animal use. Such extracts are identified by US government agencies as farm crops or produce. See Section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621) and amended under section 10010 of the Agricultural Act of 2014, Public Law 113-79 (the Farm Bill). 2002, Market Opportunities and Strategic Directions for Specialty Herbs and Essential Oil Crops in Montana. (Applicants, Exhibit 76).
3. **Storage.** One of the most space-intensive aspects of the operations is the storage of oils for sale, dried herbs, containers and similar materials, as wells as the storage of shipping and packaging materials.
4. **Drying, Milling.** The facilities are used to dry various herbs for future sale. OLF recently acquired a dryer for the hops it is also growing at the farm.
5. **Other Farm and Value Added Products.** OLF produces Culinary Lavender, Lavender Honey, Lavender Soap, and Lavender Lotion.
6. **Herbal Extracts – Tincture production.** The OLF lab facility engages in the production of herbal oils and tinctures.
7. A complex permaculture practice is under development that utilizes distillation by-products and water resources at the OLF to sustainably produce worms, compost/compost tea, mulch, mushrooms and steelhead.

8. Liberty Natural Products Inc -.Distribution Operations. The current operations are heavily dependent on the importation, repackaging and distribution of oils and herbal extracts produced outside of Clackamas County. The long term goal for this facility is to transition to the processing, packaging and distribution of locally grown herbal products. At present, products from OLF farm operations account for 2-3% of sales, and bring in \$150,000 to \$200,000 per year in revenue. This figure includes revenue made from the sale of herb crops grown on the farm (includes lavender buds, bunches), lavender oil, and waters obtained from distillation of lavender grown on the farm, herbal extracts produced from herb crops grown on the farm, and other value-added products made from crops grown at the farm, such as lavender soap and lotion. Liberty is now negotiating contracts with Oregon growers for specialty herb crops, such as Melissa/Lemon Balm for its high value essential oil. Liberty is reaching out to Clackamas County growers to establish new specialty crop acreage. (Applicants, Exhibit 77). The prospects for the establishment of high value specialty herb crop cultivation in Oregon in the coming decades are good. Crop distribution, such as possessed by Liberty, is a key component to the developing new specialty crop acreage in Oregon.
9. Distribution of crops. Distribution of products produced by other farms brought in revenue of \$6.5 - \$7 million for fiscal year 2013. This includes the distribution of over 1,200 different farm products from Oregon, the US and around the world. Of this total, an estimated 20 to 30% are grown in the United States, including 3-4%, which are from Oregon farms. These farm products include the following:
 - ❖ Dried herbs – thirty of which are grown at the farm.
 - ❖ Essential oils – only (5) of which are produced from crops grown or produced at the farm.
 - ❖ Herbal extracts – thirty of which are produced from herbs grown at the farm.
 - ❖ In addition, the distribution operations includes container packaging, supplies and incidental goods., as well as the distribution of manufactured personal care products, such as TIB® Breath Freshener, made with Oregon & Washington Mint Oils.
10. Shipping. Once ordered, products are packaged and shipped via UPS and other carriers. Typically, there will be one UPS pick-up per day.
11. Administration. The facilities are also used for a variety of business-related activities, including book-keeping, purchasing, marketing, sales, personnel management, computer systems – IT, facilities management, inventory & quality control, laboratories, and packaging and shipping.

OLF and Liberty Naturals support Oregon agriculture in the following ways:

- a) Purchase and distribution of Oregon agricultural crops for three decades, e.g. mint, blue green algae, other essential oil crops, meadowfoam oil, herbs etc. (Liberty has

historical company sales exceeding \$70,000,000.00, it is estimated that it has grown, purchased and distributed in excess of \$1,500,000.00 of Oregon and southern Washington agricultural crops;

- b) Examples of growers-producers: Funke, Kropf, Rose City, RCB, Plant Technologies, Klamath Valley Botanicals, Mountain Rose Herbs, beekeepers for wax and honey;
- c) Distribution of packaging and container supplies to beekeepers;
- d) Distribution of essential oils for use in agriculture as sustainable natural source herbicides and pesticides, *e.g.* Advanced Marketing of Wilsonville: \$53,000.00 in three years;
- e) Distribution of essential oils and other farm sourced ingredients to small Oregon farms for value added manufacturing;
- f) Development and operation of the Oregon Lavender Farm.

OLF and Liberty Naturals supports interstate commerce in the following ways:

- a) Production of herbal extracts used in bovine veterinary practice;
- b) Distribution of botanical extracts used in university and private research
- c) Supply of farm produced ingredients for small farm value added product manufacture;
- d) Agricultural use of botanical extracts as herbicides and pesticides.

The future plans for this facility include:

1. Construction of a “mother distillery” to support the following operations: (a) distillation of 200 to 500 acres of local lavender cultivation, (b) distillation of Christmas tree culls from neighboring growers, and (c) R&D of other potential extractions: raspberry seed extraction, cucumber waters.
2. Provision of support services to commercial lavender growers in the area, including: (a) propagation of lavender plugs, (b) lavender practice consultation: planting, irrigation, cultivation, (c) provide services: harvest, distillation, quality control and analysis, and (d) contract – purchase lavender essential oil from local producers as a part of the distillation services.
3. Lease or purchase of adjoining properties to increase lavender cultivation. Properties which would be ideal for this purpose include the MS Growers property (20 acres) and Moriarity property (100 acres).
4. Contract with local farmers to grow herb crops to be used for making herbal extracts and bulk herb sales.
5. Acquire additional herb drying and processing equipment.
6. Development of compost by-products from distillation spent charge.

II. LEGAL ANALYSIS: REASONS SUPPORTING THE COMPREHENSIVE PLAN AMENDMENT & ZONE CHANGE TO RURAL INDUSTRIAL.

An exception is authorized only when “compelling reasons and facts” support the conclusion that it is not possible to apply the appropriate goal ...” This conclusion must be accompanied by a statement addressing four points: (1) need, (2) alternatives, (3) consequences, and (4) compatibility. ORS 197.732(2)(c); *see also* Goal 2, Part II. These four standards are known as the “need” standard, the “alternatives,” standard, the “consequences” standard, and the “compatibility” standard. An administrative rule, OAR 660-004-0020(2)(a)–(d), fleshes out the four standards described in Goal 2, Part II, and ORS 197.732(2)(c). *See generally Still v. Board of Commissioners, Marion County*, 42 Or App 115, 122 600 P2d 433 (1979).

1. The Need Standard: “Reasons Justify Why the State Policy Embodied in the Applicable Goals Should Not Apply.”

The first of the four standards for a “reasons” exception requires the applicant to prove that a need for the use exists, and that the use must be undertaken on the particular resource land at issue. ORS 197.732(2)(c)(A) and OAR 660-004-0020(2) provide as follows:

(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:

(a) “Reasons justify why the state policy embodied in the applicable goals should not apply.” The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;

The specific state policies embedded in Goal 3 that should not apply to the subject property are as follows:

- ❖ “Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space * * *.”
- ❖ “Counties may authorize farm uses and those nonfarm uses defined by commission rule that will not have significant adverse effects on accepted farm or forest practices.”

OAR 660-004-0022(3)(c) is an administrative rule which implements ORS 197.732(2)(c)(A) and OAR 660-004-0020(2). In fact, OAR 660-004-0022(3)(c) is the heart of

the “needs” component of a reasons exception for a rural industrial use. It provides standards for determining whether there exists a need to site a rural industrial facility at a particular location zoned for resource use, as follows:

- (3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:**
- (a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports;**
 - (b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or**
 - (c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages that support the decision.**

In this case, the applicant seeks an exception to 8.77 acres of property that is currently zoned EFU. The applicant seeks to rely on the third of the three listed reasons set forth above: i.e. that “the use would have a significant comparative advantage due to its location * * * which would benefit the county economy and cause only minimal loss of productive resource lands.”

- b. The Proposed Industrial Use Would Have “a Significant Comparative Advantage” Due to its Current Location, both on Account of the Existing Facilities and its Close Proximity to Clackamas Area Farms, as Opposed to if the Same Business Were Sited in an Area Otherwise zoned for Industrial Uses.

The Board finds that the proposed use presents a very unique business model, and the business enterprise is only viable if a required degree of efficiency is maintained; that requires the farming operations to be co-located with the laboratory, distillation facility and distribution facility.

The applicant provided substantial evidence to show that its present use is a complex mixture of interrelated agriculturally-related and farm uses, some which are permitted outright,

allowed through a conditional use process (CACFU), and others not allowed without a RI rezone because of the origin of the agricultural crops. As discussed in the application, there is a blind spot in the structure of the current state land use legal framework that does not allow a commercial activity in conjunction with farm use ("CACFU") to be authorized unless and until it meets a certain threshold of interaction with local agricultural activities, even though that use might otherwise support public policy goals. In this case, it may take years before the applicant can establish a large enough network of local farmers to fulfill the need for farms products processed on the site. Clackamas County has identified the importance of increasing processing facilities for local farmers. In the 2012 "Clackamas County Agriculture and Foodshed Strategic Plan," the County emphasized this need to "[f]ocus especially on processing for small farmers and incubating new value-added products." (Applicant's, Exhibit 90). Indeed, the applicant's lavender operation is mentioned by name on page 24 as an example of a "value added plus" Clackamas County product. *Id.*

The Board finds it is imperative that the proposed wholesale agricultural distribution of Liberty Products Inc. use be allowed to continue at the proposed location. As an initial matter, the Board agrees that the proposed distribution facility use only achieves the necessary efficiencies if it is co-located with the primary farm facility, distillery, and laboratories, which are all "Farm Uses," allowed by right. In order to be competitive in a global market, the Board finds OLF must have similar efficiencies that mirror production and processing methods worldwide.

OLF has testified that it cannot compete with producers in the developing world on cost alone, however. "Production costs in the U.S. are higher than in developing countries because of higher land values, wage rates, and regulations, which govern environmental and labor standards." Market Opportunities and Strategic Directions for Specialty Herbs and Essential Oil Crops in Montana, Dr. Gary Brester, Kole Swanser, and Tim Watts, U.S. Department of Agriculture Federal-State Marketing Improvement Program, February 27, 2002, section IV.B.1, page 45 (hereinafter "Brester study"). (Applicant's, Exhibit 76). Thus it is very unlikely American producers "will be able to compete with foreign providers of specialty herbs and essential oils on a cost basis." There is no evidence to the contrary.

The applicant would have to build, operate, and maintain a second distillery at the second location if operations were split. Such a distillery would cost between \$250,000 and \$500,000. This would be cost-prohibitive and would create additional inefficiencies that, when combined with the other impediments mandated by two locations, would make the enterprise unprofitable. The inefficiencies are not exclusive to infrastructure, but include duplication of management and supervisory personnel as required by federal and state laws and good management practices.

Thus, the Board finds a break-up of the current integrated Oregon Lavender Farm and the Liberty Naturals Products operations and a move of the LNP distribution operations to another industrial facility would render both operations unprofitable and economically unsustainable. Capital improvement costs, down payment and monthly debt service/lease payments arising from the acquisition or lease of a replacement facility, are not within Liberty's financial capacity.

Accountant Edward Kalberg, C.P.A., analyzed the financial implications of splitting the Oregon Lavender Farm and Liberty Natural Products into two separately-sited enterprises, and determined this would prove economically disastrous for both operations. Mr. Kalberg found:

- “Given the current NNN/lease rates or the debt service of an acquisition, the expenditures for a new facility estimated at \$35,000.00 to \$50,000.00 per month would render Liberty Natural Products Inc. unprofitable and would push it in the direction of insolvency over a period of a few years. Liberty presently expends \$165,000.00 per year for its facility. An additional facility would add expenditures likely exceeding \$500,000.00 per year, more than triple the current expenditures.
- The costs of a move not only impair Liberty’s cash flow for its distribution operation, but impacts the agricultural operation in two regards: 1) would remove the monetary and operational efficiencies of shared resources cross-utilized and co-located with the distribution operation, e.g. employees, equipment, management, data processing and thereby increase costs; 2) impair if not altogether remove Liberty’s ability to continue to capitalize the agricultural operations to accomplish its business plan to further grow and develop the scope of the agricultural operations.”

The Board finds that Mr. Kalberg’s testimony constitutes substantial evidence, and there was no evidence presented to the contrary.

The Board also finds that transportation costs incurred traveling between the two facilities would also increase dramatically, particularly if efforts were made to share equipment and personnel between the two facilities. Indeed, with fuel prices indexing upwards over the long term, the economic and sustainability downside to split operations will only increase over time.

The Board also notes that there are key efficiencies related to labor that can only occur if the entire operation is co-located on the same site. Oregon’s growing season is limited to one summer season with up to two flushes (harvests) of lavender, which translates into peaks and valleys with regard to work cycles. This leads to a problem whereby it is not possible to keep all of the full-time employees occupied with productive work unless the off-peak times are supplemented with other types of production / activities. While this is certainly true of most farming operations, many farms are able to solve this problem by tapping into a large supply of unskilled migrant workers, an overwhelming percentage of which are undocumented. On the other hand, OLF / Liberty Natural Products largely employs workers that have received extensive training, and, as a result, are quite skilled with regard to the production methods employed at this facility. In order to keep these employees working at full-time capacity year round, Liberty Natural engages in “off-season” production activities such as (1) repackaging of bulk botanical farm products acquired from Oregon and around the world, and (2) distillation and processing of herbal extracts from botanicals acquired from Oregon and around the world. The Board finds it is essential that Liberty Naturals be allowed to continue to offer this year-round employment in order to maintain and retain a trained professional full-time work force.

Clackamas County has a strong agricultural tradition. Clackamas County consistently ranks between second and fourth annually in agriculture sales “at the farm gate” in Oregon. The county is “an agricultural powerhouse that has the capability of growing a variety of agricultural products.” Stewart, et al, *Agritourism Master Plan for Clackamas County*, 2012 (bold emphasis supplied). According to one recent report:

“Clackamas County has a long history of successful agricultural production. The agricultural sector of the county’s economy is an important foundation for the region and contributes significantly to the health and well-being of its citizens. With a growing interest in sustainable and locally-produced farm products, Clackamas County’s agricultural economy and lifestyle are expected to become more important in the years ahead.”

(Rural Lifestyles 2009, R. Oberg, M. Stewart, p. 8). Nonetheless, even though Clackamas County is a strong agricultural producer, many family farms in the County are struggling. One of the reasons for this is the concentration on traditional lower-value crops like grass seed, alfalfa, clover, fescue seed, and hay. Fortunately, the long term prospects for a greater development of high-value specialty herb crop practices in Clackamas County are favorable. The historical producers of these high-demand agricultural goods are developing countries like India, China and Egypt who have traditionally exported these crops to developed countries such as the United States for use in consumer personal care products, cosmetics and food. With the emergence of middle classes in these countries, an increasing portion of these foreign crops are being retained for domestic consumption, reducing the quantity of goods available to consumer countries such as the United States. Concurrently, worldwide consumer demand continues to grow for organic and natural products and the raw material high-value specialty herb crops from which they are created. These two supply and demand factors have resulted in the continuous price increase of specialty herb crops in the past decade and are projected to continue to increase over the long term. The development of high tech, low energy consumption cultivation, harvesting and processing equipment and technologies is an important factor in the ability of US/Clackamas County farmers to compete in the international specialty herb marketplace. As developing countries reach parity in land and labor costs, and prices continue to rise, the economics of specialty herb crop production will emerge as one of the most environmentally sustainable and profitable crop options for Clackamas County farmers.

It is precisely this identified need that the applicant addresses. Clackamas County is indeed an “agricultural powerhouse,” but county agriculture needs to diversify into higher value crops in order to prosper. Here is one clear and illustrative example. Oregon has a high value crop, peppermint, that is a fine example of what the applicant wishes to build on, and expand. Peppermint was once an ignored and unimportant plant, considered a weed with odorous leaves. Since that time, peppermint became highly valued in tea, ice cream, confectionery, chewing gum, toothpaste, shampoos, breath freshener, soaps and skin care products. In 2007, Italian medical researchers reported a major breakthrough in treating debilitating Irritable Bowel Syndrome using peppermint oil. Oregon has now become a major peppermint producer, based on all of these discovered uses (including medicinal properties) of peppermint oil. Peppermint must

be grown fresh, regularly tested *in situ* for purity, pH, and potency, and then quickly plucked and processed on site to retain its soothing and healing properties. That cannot be done if the farm growing the peppermint and the laboratory testing and processing the peppermint into oil are many miles apart. According to Dr. Roberts:

“Typically, freshly harvested essential oil crops are distilled as soon as possible because of a loss of the volatile oils at the harvested crop dries. Transportation of the crop to another location, much less a long distance, may result in a loss of oil yield due to drying and adds the time and expense of shipping, which undermines the overall profitability and sustainability of the enterprise.”

For these reasons, the Board finds that allowing the co-location of the allowed uses (farm, distillery, labs, etc.) with the distribution operations is critical to the viability of the applicant’s business, and creates a significant comparative advantage due to its location * * * which would benefit the county economy. The Board emphasizes that this fact situation is very unique that is not typical for most business enterprises.

1. Product Differentiation Based On Pristine, Natural Wholesome Rural Production Site.

The Board further finds that the current location of the business is critical to its success. Both the Oregon Lavender Farm and Liberty Natural Products have sought to emphasize certain intangible qualities, reflected in their names, such as authenticity, place, naturalness, freedom, and purity. These desirable “value-added” qualities are inextricably intertwined with the current rural production site, and critical to the business’ appeal to many customers. The 2012 “Clackamas County Agriculture and Foodshed Strategic Plan” cites the applicant’s lavender operation as an example of a “value added plus” county product (Table 4, page 27 of the report). In large part, OLF / Liberty Natural achieves this product differentiation via the *terroir* of the land. The second strategy identified in the Brester study for the success of an American specialty crops and essential oils producer is product differentiation. “A differentiation (also called benefit strategy) strategy is one in which a producer incorporates features into goods or services which cause buyers to prefer that firm's product/service over those of others.” Brester study, p. 44. “Differentiation strategies are often attained by generating product attributes which are valued by purchasers for tangible or intangible reasons.” In this case, the Board finds that the applicant uses the lavender farm and view of Mt Hood as a mechanism to differentiate its product in the marketplace.

2. Terroir and the Relationship of the Natural Environment to Product Marketing.

As the applicant explained in its application narrative, the French term “*terroir*” can be translated as “a sense of the land” and denotes the set of special characteristics that the geography, geology and climate of a certain place, interacting with plant genetics, express in

agricultural products such as wine, coffee, flowers, chocolate, herbs, hops, tomatoes, heritage wheat, medicinal plants, and tea. Perspectives on terroir tend to range from it being an all-encompassing concept (a holistic combination of nature and nurture), to nature in isolation (fixed and largely immutable by human efforts).

People enjoy and value a connection to the soil and the land that nourishes and sustains them. This is one of the primary reasons that “agritourism” is a growing industry, especially in Clackamas County. “Agritourism is defined as an enterprise at a working farm or woodland, ranch or agricultural plant conducted for the enjoyment and benefit of visitors that generates supplemental income for the owner. It combines the best of what we produce locally in Clackamas County and our local sustainable vision with the public’s desire for local products and experiences resulting in increased local revenue and in keeping family farms viable.” Mary D. Stewart, *et al*, Clackamas County Tourism Development Council, *Agritourism Master Plan for Clackamas County*, 2012.

The Board finds the applicant’s successful annual Lavender Festival is a shining example of the sort of agritourism Clackamas County seeks to promote, attracting five thousand visitors annually to a two-day harvest celebration promoting local products, food, music, and showcasing agriculture as an appealing and viable way of life. This festival has been a yearly event since 2007, entertaining families and educating young people about farm life and natural resources in ways they could never learn from books, television, or the internet. The Lavender Festival has become a tradition for many Oregon families, a wholesome and enjoyable way to spend time together in a beautiful countryside setting while children learn valuable lessons that could influence their future lives and careers.

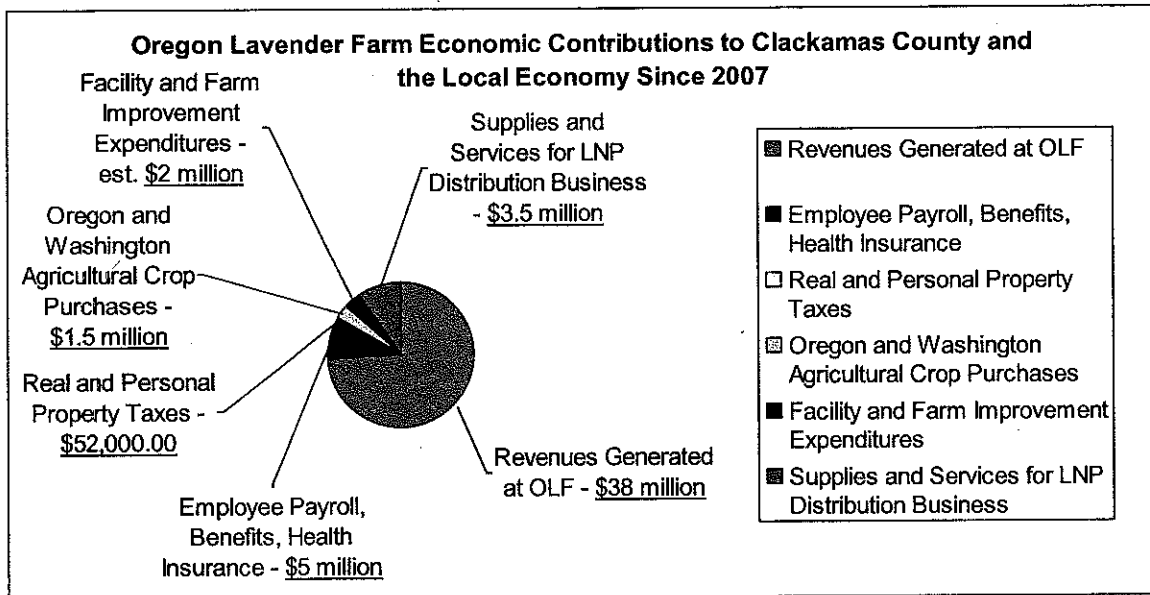
c. Locating the Proposed Use at the Proposed Site Will “Benefit the County Economy.”

In this particular unique circumstance, the Board finds an exception to Goal 3 will provide greater support of agriculture. This business is not portable; and the Board finds it would not be financially feasible to move portions of the business that are not allowed under Goal 3 and ORS 215.283(1) & (2) offsite to a location not needing an exception. This is due to the fact that the relocation costs would be far in excess of what the company could hope to recoup over any reasonable planning horizon. Therefore, as a practical matter, a denial of this exception request would effectively end the integrated business venture.

Apart from the farm, and the fact that the business employs 35 persons, the OLF / Liberty Natural operations contribute to the County economy in many other regards.

Liberty Natural’s distribution facility is needed to support Clackamas County agriculture. The County’s agricultural businesses are changing and evolving to meet new market demand. In this regard, Liberty Natural Products, Inc. is one of the new faces of Oregon’s agricultural economy. Liberty’s distribution and the picturesque OLF support Clackamas County’s marketing image as a both an agricultural producer and tourist destination. The 2012 “Clackamas County Agriculture and Foodshed Strategic Plan” cites the applicant’s lavender operation as an

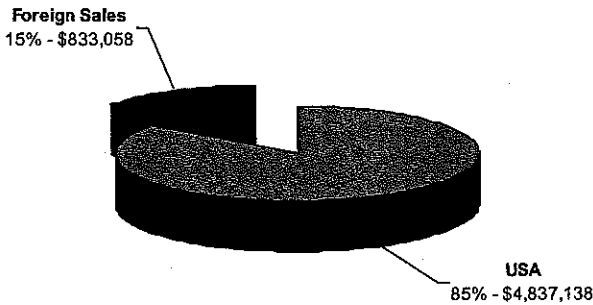
example of a “value added plus” county product that encourages tourism. (Table 4, page 27 of the report.). The following charts illustrate some of the benefits to the local economy.



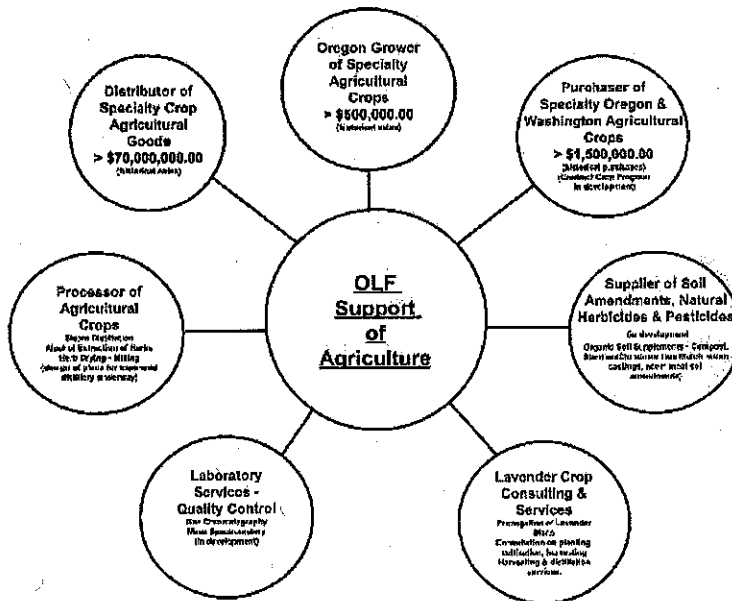
Just to examine one measure, payroll and benefits expenditure, the Oregon Lavender Farm/Liberty Natural Products business has 25 full time employees, and 10 part-time employees. Assuming this works out to 30 jobs FTE (full time equivalent), we can use Professor Wayne P. Miller’s income multiplier of 1.5 for skilled agricultural jobs to arrive at a figure of 45 jobs.¹ That means the economic value of 45 full-time skilled jobs with benefits are added to the local economy. In other words, in addition to the applicants’ employees, an equivalent of 15 new full-time benefitted local jobs result from the goods and services those employees need to consume including groceries, housing, health care, fuel, utilities, vehicle payments and maintenance, clothing, child care, education, recreation, and all of the other expenses of modern life.

¹ “Economic Multipliers: How Communities Can Use Them for Planning,” Professor Wayne P. Miller, University of Arkansas Division of Agriculture, 2010.

Fiscal Year YTD Sales USA vs Foreign Sales Breakdown
July 1, 2013 to May 4, 2014.
Projected Fiscal Year Sales \$6,500,000.00



To consider the money that the Oregon Lavender Farm/Liberty Natural Products business brings into the local economy, we will rely on the sales figures for the fiscal year 2013-2014. This year the applicant's business generated sales revenues of roughly \$6.5 million, with 15% of that total coming from foreign sales. Assuming that no more than 7% of the applicant's total sales of \$6.5 million came from Oregon buyers, that is over \$6 million coming into the local economy from out-of-state and overseas purchasers. Using Professor Miller's methodology and an output multiplier of 1.7, that amounts to over 10 million dollars' worth of value being created for the local economy.



The applicant's Oregon Lavender Farm/Liberty Natural Products business also supports local agriculture. In addition to the factors shown in this diagram, the Board finds the Oregon

Lavender Farm/Liberty Natural Products operation supports the local area's agriculture in the following ways:

- provide services and support for the planting of new lavender acreage, including propagation of new plants, harvesting, distillation and distribution;
 - sustainable processing of Christmas tree culls for essential oil, reduced air quality problems resulting from traditional burning practice problems as identified by the ODA;
 - the OLF agricultural facility is a stabilizing presence in the EFU zone, which is subject to incremental erosion caused by continued rural residential development pressures, such as Measure 49.
 - The applicant has purchased and distributed over \$1,000,000 of Oregon agricultural goods, including mint, blue green algae, other essential oil crops, meadowfoam oil, herbs, *etc*, from growers including Funke, Kropf, Rose City, RCB, Plant Technologies, Klamath Valley Botanicals, Mountain Rose Herbs, and several beekeepers for beeswax and honey. (Applicants, Exhibits 65, 92, 97, 98, 99, 100, 101).
- d. Locating the Proposed Use at the Proposed Site Will "Cause Only Minimal Loss of Productive Resource Lands" Because the Site is Already Partially Paved and the Buildings Are Already Constructed.

The subject site is extensively developed with industrial buildings that were established prior to any zoning. At various times in the past, these buildings were used for industrial-scale farm uses, including the raising of poultry for egg production, and the raising of rabbits for meat and fur production. Continued use of these building for agricultural uses is doubtful for three reasons. As an initial matter, the subject site was offered for sale for almost a decade (1991 to 1999). There was no interest or attempts to purchase the property for agricultural uses allowed by the code. Secondly, the amount of actual tillable farm land located on the site is low compared to the overall acreage, due to the size of the improvements. Third, there are very few other farm uses that need this much unlit interior space, especially given the long, narrow configuration of the buildings. Nurseries and greenhouses, for example, make up 60% of agricultural sales in Clackamas County. However, nurseries and greenhouses need buildings with translucent roofs, which allow in plenty of natural light to bathe the plants grown therein. The buildings on the present property were not built with the intent that they be used for storing plants. Rather, the buildings were built for the purpose of housing chickens on an industrial scale, using methods that are largely considered obsolete in the egg-production industry.

In Clackamas County, there is only one large scale egg production facility, Willamette Egg Farm, LLC, and there does not seem to be much opportunity for other egg producers to break into this market over the short-term planning horizon. Farms engaging in egg production are moving away from the traditional cage system. A "cage-free" campaign, led by the nation's largest animal welfare group, the Humane Society, have had success in changing policies in this area. Political opposition to factory farmed egg production is growing.

On the other hand, the property is ideally suited to distill Christmas tree by-products into essential oils, a use already being done by Liberty Naturals at the subject property. Currently there is no other location in Clackamas County providing this value-added process.

Similarly, these buildings are, for the most part, not suitable for raising horses. Buildings used to house equines typically do not have concrete floors because that is not comfortable for the horses. Equine stables also require good natural lighting, which these buildings lack, to make it easy to work in, pleasant for the horses, and to detract flies. Finally, modern equine facilities are very image conscious, and the architecture of the barns on the subject property is not consistent with current trends in that business. As a result, these buildings are not very attractive for those purposes.

Clackamas County does have a fairly high number of small berry and fruit operations. However, while berries and small fruits make up a large portion of the percentage of sales in Clackamas County, these operations are almost always small and dispersed. For this reason, there is no current need in the County for a large (150,000 square foot) facility for processing fruits and berries. As with egg and pig operations, the existing facilities would not substantially meet the improvement requirements of a fruit and berry operation. The same is true of vegetable producers. Moreover, the subject property does not have sufficient water rights to serve as a processing facility for fruits or vegetables.

For these reasons, the Board finds that this situation is factually unique, and it is unlikely County approval of this Goal 3 exception will deny an opportunity for some other farm use to take over and use the subject buildings. Again, the evidence indicates that the buildings sat either vacant or underutilized for many years in the 1990s, a time when the economy was robust. The Board views this fact as evidence that the building are not in high demand for agricultural users.

There is some potential that the buildings could be used by other Commercial Activities in Conjunction with Farm Uses. For example, it is possible that agricultural suppliers of farm equipment, such as machinery, greenhouses, buildings and chemicals could use the buildings. Clackamas County has 103 agricultural suppliers that provide 916 jobs and approximately \$37 million in annual payroll. However, the site is very unique and is not an attractive location for a supplier because it is off the main road and has poor street visibility. Potential suppliers want to be located on key traffic corridors that offer high accounts of pass-by traffic. Furthermore, using these buildings as an agricultural supply operation would result in underutilization of the surrounding acreage of agricultural land, which would have no connection to the primary CACFU use.

e. Discussion of the "Lost Resource Productivity and Values" in Relation to the County's Gain from the Proposed Rural Industrial Use.

As discussed elsewhere, the site is already fully developed and, as a result, the granting of a Goal 3 exception does not entail any loss in resource productivity. Given that this criterion starts from a premise not applicable in this case (*i.e.* an undeveloped property), it is not applicable here.

f. Discussion of the Specific Transportation and Resource advantages that Support the Decision.

The facility takes advantage of existing Gerber Road infrastructure that may or may not be present at competing locations.

The last fifty years have seen gasoline and diesel fuel prices increase from \$0.30 per gallon to more than \$4.00 per gallon. Any decision which would effectively require the applicant to split apart its operations into two facilities (one urban and one rural) would introduce considerable transportation inefficiencies. For this reason, the Board finds that leaving the distribution facilities co-located with the permitted farming operations and distilling operations creates a significant transportation advantage.

2. The “Alternatives” Standard: Areas Which Do Not Require a New Exception Cannot Reasonably Accommodate the Use.

As discussed above, the second of the four state-mandated standards for justifying a “reasons” exception requires the applicant to undertake an alternative-site analysis to satisfy ORS 197.732(2)(c)(B) and OAR 660-004-0020(2)(A). Areas that do not “require a new exception” includes lands located outside of an urban growth boundary zoned for rural industrial uses, as well as sites within an urban growth boundary zoned for industrial uses.

a. Criteria Used to Identify Suitable Alternative Sites.

In this case, the minimum criteria for a suitable alternative site are broken down into mandatory requirements and desirable attributes. The mandatory requirements represent quantifiable thresholds which are absolutely essential to achieve the economy of scale needed for the successful operation of the business. These three identified thresholds are as follows:

Mandatory Requirements for a Suitable Site

- Minimum of five (5) acres for industrial uses.
- Minimum of 150,000 s.f. of existing building space.
- Minimum of twenty (20) acres of on-site agricultural land (Class 1 & 2 soils) & gardens.

The desirable attributes are not in-and-of-themselves absolute bottom-line thresholds, but rather represent features that, when viewed together, are important to the overall feasibility and economic viability of the operation. A suitable site would have all of the following four attributes in varying quantities:

- Proximity to other agricultural land which can potentially be used for herb or other specialty high-value crop production.
- Sufficient space and buffer land for an on-site composting facility and distillery.

- Presence of natural scenic beauty (view of Mount Hood, etc.).
- Close proximity to Portland airport (PDX), Port of Portland, UPS / Fed Ex / Common Carriers to gain favorable shipping rates.

The Board finds that any potential site that does not meet any of the first three threshold criteria must be rejected as not providing a feasible alternative. Sites that do not have some or all of the remaining four characteristics are disfavored.

b. Reasons for Rejecting All Sites Within An Urban Growth Boundary As Viable Alternatives.

Before considering any specific alternative sites, the applicant addressed why, in general, *any* site inside the Urban Growth Boundary is not a reasonable alternative in this case. First, the current site contains significant improvements, such as paving and large buildings, which results in the land thereunder being physically committed since 1962. To recreate these improvements on vacant land located inside an Urban Growth Boundary would be cost prohibitive. The applicant has spent over two million dollars improving this site.

Second, the applicant noted, and the Board finds, that sites that do not have on-site agricultural land cannot be operated as an “integrated whole,” which is critical to the success of this combined business. In general, the complex integrated enterprise proposed in this application cannot be reasonably located on other sites located within an urban growth boundary due to the following reasons:

- Distillation and extraction operations must be located in close proximity to both the farming operations and the laboratory. The distillate outputs must be constantly checked and adjusted using both laboratory and human testing. The process can be considered analogous to an expert chef constantly observing and tasting a delicate sauce and adjusting the temperature, adding ingredients, stirring or whisking, checking again, and then repeating the process until the sauce has reached perfection. Such a process cannot be performed remotely, or by a computer, or by unskilled workers, or via a Skype internet connection. The distiller must be present and must have the freshest ingredients and laboratory testing equipment available immediately, or the end product will suffer. “Typically, freshly harvested essential oil crops are distilled as soon as possible because of a loss of the volatile oils at the harvested crop dries. Transportation of the crop to another location, much less a long distance, may result in a loss of oil yield due to drying and adds the time and expense of shipping, which undermines the overall profitability and sustainability of the enterprise.” Dr. Roberts letter, (Applicants, Exhibit 92), Bontoux letter, (Applicants, Exhibit 91). Many consumers will be satisfied with automated mass-produced food that was never touched by a human hand, but there is also a market segment of those people who value highly (and will pay accordingly for) top-notch gourmet fare personally crafted by experts from the freshest, highest quality ingredients.
- Manufacturing and distribution uses support the sustainability of the permitted farming operation through co-location and cross-utilization of common resources, the benefits of

which cannot be obtained if the operation were broken up into separate locations. For example, OLF / Liberty Natural Products largely employs workers that have received extensive training, and, as a result, are quite skilled with regard to the production methods employed at this facility. In order to keep these employees working at full-time capacity year round, Liberty Natural engages in production activities such as repackaging of bulk botanical farm products, and distillation and processing of herbal extracts from botanicals acquired from Oregon and around the world. This combined operation also takes advantage of the cost savings and synergy of maintaining one (rather than two) business departments, including book-keeping, telephone system, purchasing, marketing, sales, personnel management, computer systems, facilities management, inventory & quality control, laboratories, and packaging and shipping.

- Organic composting of distillation and herbal extract by-products is best done on-site, at an EFU zoned property. The applicant, working with the assistance of the Clackamas County Business and Economic Development Department, has been unable to locate a single non-EFU-zoned site in Clackamas County that would allow the compost operations. Even assuming such a site existed, completing composting operations at a non-EFU site would require transport and increase operational costs and likely give rise to odor conflicts with neighboring uses.
- Maintaining an integrated operation would require acquiring industrial zoned land that has either contiguous adjoining EFU land or has the same quantity of industrial zoned acres. There are no properties in the current land inventory, with or without facilities, which have contiguous zoned EFU land. There are alternative property sites with sufficient acreage zoned industrial. However, industrially zoned land is valued substantially higher than EFU farmland. The cost of the land for alternative sites is cost prohibitive. The high cost of available alternative improvements also poses a significant economic obstacle to re-location.

Third, the Board finds the applicant's Liberty Natural Products business cannot realistically be located inside an urban growth boundary due to impacts potentially incompatible with densely populated areas. Included in these impacts are the following:

1) Odors. The distillation of lavender, peppermint, and other herbs oils creates odors that would create conflicts with other surrounding industrial uses inside an urban growth boundary. The nature of this business requires that there be considerable distance separating the distillery aspect of the use from adjacent properties. Otherwise, the proposed use is vulnerable to being deemed a private nuisance. Furthermore, it is necessary to have the distillery co-located with a laboratory so that samples may be tested for potency and purity. Dr. Roberts letter, (Applicant's Exhibit 92), and Funke Essential Oils letter, (Applicant's Exhibit 99).

The aromas created by Liberty Natural are not hazardous, of course, but under current social norms, it is incompatible with commercial operations and residential activities being in densely populated places. The growing and processing of aromatic plants is, by definition, odorous (that is the "aroma" part of "aromatic"). Lavender, peppermint, rosemary, cilantro-

corriander, and the like are not offensive to most people most of the time, but that can change if people nearby must smell these odors all the time, and at close proximity. "The substantial aromas generated and discharged by the steam distillation process makes it problematic to locate such operations in urban locations because of likely conflicts with neighboring uses." Dr. Roberts letter, Applicant's Exhibit 92. Funke Essential Oils letter, Applicant's Exhibit 99.

The applicant cited numerous examples of cases where businesses have been adversely affected due to complaints from neighbors related to odors. As Liberty Natural Products primarily processes herbs and aromatic plants, the Board finds it must realistically be sited a considerable distance away from any working or residential area containing people who might complain and/or take legal action about the smells (however faint, and however pleasant) the operation might generate. This precludes the operation from being sited in an industrial or commercially zoned area, because those areas are densely populated (the population might be a workforce rather than a residential population, but workers are still a population). Thus the applicant's business fits the criteria of a "use [that] cannot be located inside an urban growth boundary due to impacts that incompatible in densely populated areas," as stated in OAR 660-004-0022(3)(b).

2. Cost. Given the high cost of urban land, locating a comparable facility with sufficient land for the farm practices would be economically prohibitive. The applicant estimated that a comparable facility located inside an urban growth boundary would cost more than \$10,000,000. Any such industrial site would likely lack the aesthetic and natural resources of the subject site.

3. Inconsistent Zoning. Utilization of industrially zoned land for agricultural purposes is inconsistent with the highest and best use and underlying goals for urban or rural industrial zoned land.

C. Alternative Sites Analysis For Other Sites Not Requiring an Exception (i.e. sites already zoned Industrial)

Working with Jamie Johnk and Cindy Hagen of the Clackamas County Business and Economic Development Department, the applicant located available alternative Clackamas County industrially-zoned sites. No site met all (or even most) of the necessary criteria, such as proximity to arable land, so the criteria were narrowed to only two: (a) minimum of 150,000 square feet of existing building space; and (b) close proximity to United Parcel Service / Federal Express / common carrier routes to gain favorable shipping rates. Applying these reduced criteria resulted in locating seven sites, with the following addresses:

- 11241 SE Hwy 212, Clackamas
- 12601 SE Hwy 212, Clackamas
- 10755 SE Jennifer St., Clackamas
- 11210 SE Jennifer St., Clackamas
- 13009 SE Jennifer St., Clackamas
- 12472 SE Capps Rd., Clackamas
- 12480 SE Capps Rd., Clackamas

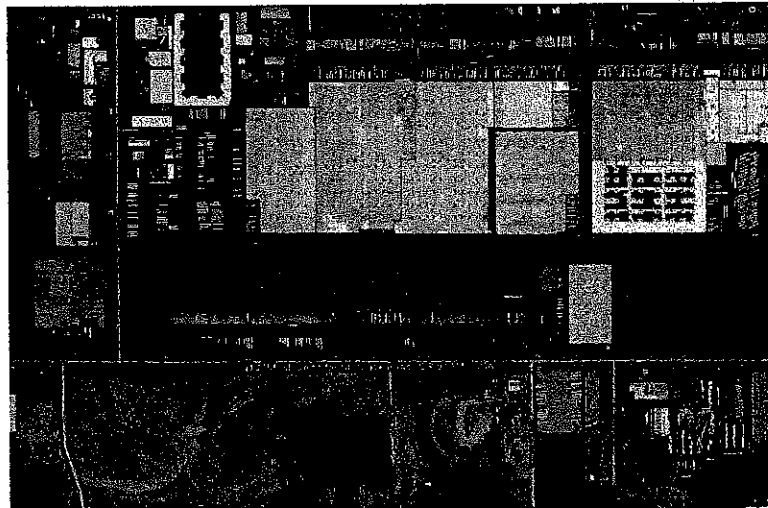
An examination and analysis of these seven sites revealed that none of the sites are *remotely* suitable for the applicant's operation. Aside from the most obvious reason – all of the sites are in paved-over, industrial areas nowhere near arable land suitable for growing crops and composting – the sites had the following additional deficiencies:



11241 SE Hwy 212, Clackamas. This is a single story light manufacturing facility of 164,000 square feet. It is in close proximity to numerous small businesses, including Oregon Bookkeeping Services, Righteous Clothing Agency, Priority One Property Management, Clackamas Blueprint and Copy, North America Mattress Corp., Les Schwab Tire Center, Sounds in Music, Big Rock Sports, and others. Though zoned commercial, this area is located in close proximity to retail and service companies open to the public. This proximity to small businesses disqualifies this site due the possibility of odor objections or other conflicts with nearby uses and their customers.



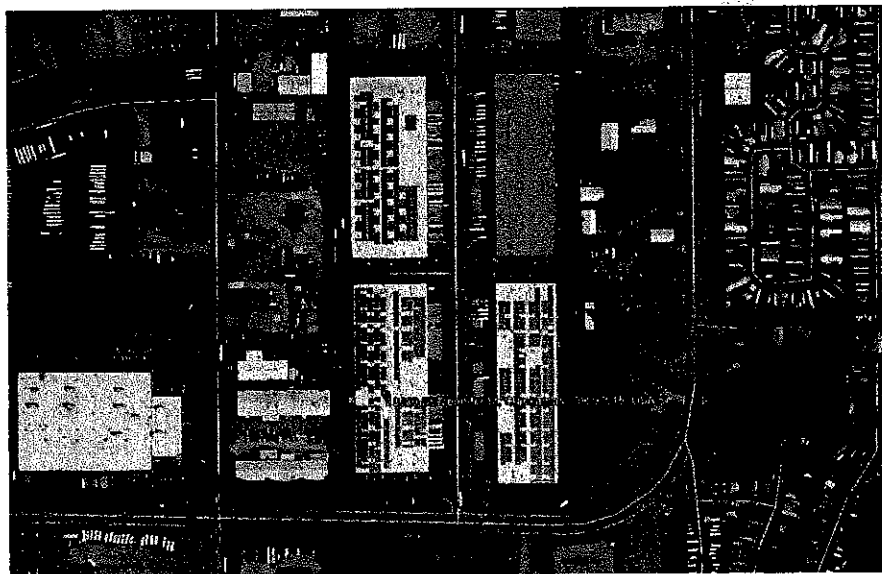
12601 SE Hwy 212, Clackamas – this site is directly south of a higher-end residential development of single-family homes along Southeast Bluff Drive, separated only by a visual buffering green space a little over 300 feet wide. On the other three sides it is surrounded by small businesses within yards, including Precision Elite Gymnastics, Portland Party Works, Dean’s Homestyle Café, American Wood Dryers, Inc., Fastenal, and Knez Building Materials and Insulation, Clackamas. This proximity to many residences and small businesses disqualifies this site due the possibility of odor objections or other conflicts with nearby uses. In addition, this site is incorrectly configured as a large, hollow warehouse, designed for high capacity truck operation, such as a distribution center. Loading docks and massive metal doors run the length of the building and it has docking spaces for twenty or more semi-trailer trucks. Leasing such a large, transportation-intensive facility would force the applicant to pay a premium for trucking facilities and fixtures he does not want, could not use, and cannot afford. Lastly, due to the massive open-warehouse design, this building would be cost prohibitive to heat and cool as needed to preserve the Liberty Naturals products.



10755 SE Jennifer St., Clackamas. This a large open warehouse distribution-type building intended for major railroad and truck freight operations. It sits due south of a rail line with a dedicated railroad siding running right into the north side of the building. The entire south side is a loading platform with numerous truck loading stations. Again, this site is a large, hollow warehouse, designed for high capacity truck and rail operations, such as a distribution center. Loading docks and massive metal doors run the length of the building and it has docking spaces for twenty or more semi-trailer trucks. Leasing such a large, transportation-intensive facility would force the applicant to pay a premium for trucking and rail facilities and fixtures he does not want, could not use, and cannot afford. It sits directly across the street from a large gravel pit operated by the Portland Road & Driveway Company. As a warehouse, this building has the same impossibility and prohibitive costs for necessary climate control for the storage and processing of botanicals and organic goods.



11210 SE Jennifer St., Clackamas. This site is just down the block from the previous site, cater-corner to the Portland Road & Driveway gravel pit. It is next door to several small businesses, including Gary's Mustangs, CalPortland, and Precision Truss and Lumber. This proximity to small businesses disqualifies this site due the possibility of odor objections or other conflicts with nearby uses and their customers. The building is a large warehouse with fifteen truck loading stations, and leasing this site would force the applicant to pay a premium for trucking facilities and fixtures he does not want, could not use, and cannot afford. This site has the same disqualifying cost-prohibitive climate control problem due to its open-space design with numerous poorly-insulated metal trucking doors.



13009 SE Jennifer St., Clackamas. Again, this is a large open warehouse space, making climate control cost prohibitive. It is mere yards away from the Clackamas Fire Department Station 08 to the west, as well as multiple small businesses including Bunzl Papercraft, P&A Metal Fabrication, Fuji Produce, Grabber Northwest, Trillium US Inc., K&D Services of Oregon, and Extreme Shears. A large residential manufactured home and RV park, Clackamas River Village, is to the east of the warehouse site. This proximity to small businesses and residences disqualifies this site due the likelihood of odor objections or other conflicts with nearby uses and residents.



12472 SE Capps Rd. Clackamas. Again, this is a large open warehouse space, making climate control cost prohibitive. It is another distribution-type warehouse with a dozen truck docking spaces, thus leasing this site would force the applicant to pay a premium for trucking facilities and fixtures he does not want, could not use, and cannot afford. It is mere yards away from multiple small businesses including Rescue Rooter, Jack Howk Plumbing, Forged Iron Supply, Warn Industries, LaSalle Bristol, Health Wright Products and Leverage 5 Productions. The site abuts the Sah-Hah-Lee Golf Course, to the east. Golfers are famously sensitive to distracting noises, smells, or other impediments to focused concentration. This proximity to small businesses and the private golf course disqualifies this site due the possibility of odor objections or other conflicts with nearby uses and their customers.



12480 SE Capps Rd. Clackamas. This is simply the other end of the previous warehouse site, 12472 SE Capps Road, and has all the same problems: a large open-plan distribution-type warehouse that would be cost-prohibitive to heat and cool, expensive unnecessary trucking facilities the applicant cannot use, and close proximity to small businesses and a private golf course that would likely give rise to odor complaints or other conflicts with neighbors.

These seven sites had additional deficiencies, as well. As an initial matter, none are for sale, but rather are offered for lease only. This is cost-prohibitive, and effectively limits the amount of modification allowed by a leasehold tenant (the installation of distillery equipment, for example). None of these sites permit composting, requiring numerous expensive truck trips to a commercial compost site or a landfill accepting bio-waste – and no landfill in the tri-county area will accept bio-waste. In addition, moving the Liberty Naturals Products operation to one of these sites would denigrate the quality of life for employees: moving their workplace from a beautiful farm to grim, dreary industrial buildings in an industrial zone would lead to an erosion of morale and increased turnover.

Co-location of the integrated uses at one site allows for cross-utilization of resources that lowers energy costs and transportation needs. Multiple locations would greatly increase the amount of back & forth travel of employees and attendant consumption of expensive fuel. Location in an urban or rural industrial site would likely require greater travel by employees. This combined operation also takes advantage of the cost savings and synergy of maintaining one (rather than two) business departments, including book-keeping, telephone system, purchasing, marketing, sales, personnel management, computer systems, facilities management, inventory & quality control, laboratories, and packaging and shipping. Kalberg letter, (Applicants, Exhibit 93).

D. The Board Finds Rural Residential Lands located in Clackamas County Do Not Provide Feasible Alternatives.

The vast majority of Clackamas County rural residential lands were initially zoned on the basis of lot size. Clusters of lots that were 5 acres or smaller were typically zoned RFFF5. Areas where the existing development pattern was 1 or 2 acres were typically zoned RA-1 or RA-2, or similar. Similarly, 5 -10 acre parcels were typically zoned FF-10, etc. Rural Area, Rural Residential, or small Farm Forest lands are most commonly seen on the edge of the urban growth boundary, or at the border of a rural center. Clackamas County maps reveal an abundance of Rural Residential areas on the interface to EFU land. Although these land parcels have the potential to be of meaningful agricultural or forest use, with thoughtful landowner planning and application of resources, they are by their very nature too small to be used as a processing and distribution facility.

Consistent with OAR 660-004-0020(3), it is fair to generalize that rural residential areas typically are too heavily parcelized to provide the applicant with the amount of high-quality farm land that it needs for its lavender production. The distillation operations would invariably create conflicts with neighboring rural residential uses. In contrast, the preferred site has few neighbors, features adequate farm land, and the potential to expand its agricultural operations onto neighboring properties over time.

Rural Residential lands would not satisfy the Clackamas County Rural Industrial Lands Policy 3. For these reasons, the Board rejects any rural residential site as a potential alternative.

E. The Board Finds Unincorporated Communities or Rural (Population) Centers Located in Clackamas County Do Not Provide Feasible Alternatives.

Unincorporated Communities or Rural (Population) Centers are settlements located outside urban growth boundaries in which concentrated residential development is combined with limited commercial, industrial or public uses. Unincorporated communities in Clackamas County include Beavercreek, Redland, Mulino, Colton, Marquam, Boring, Wildwood, Welches, Zig Zag and Rhododendron. The Board finds that none of the areas meet the needs posed by the applicant's business.

First, the Board finds that none of these communities possesses an available site with the required eight built and paved acres with 150,000 square feet of existing industrial space coupled with twenty or more acres of suitable agricultural land for growing specialty herb crops (*i.e.* class 1 and class 2 soils). That alone disqualifies any of these communities from consideration.

Second, the Board finds that many of these locations are too far away from the Portland International Airport and the Port of Portland. The US Customs and Border Protection Service, enforcing federal import and export regulations on organic products, often requires Liberty Natural Products personnel to travel to the Portland Airport field office to personally deal with Customs questions, forms and complete package pickup and delivery. These longer distances may increase the common carrier rates from United Parcel Service, Federal Express, and transportation costs as well.

Third, the Board finds that many of these locations are too far away from the residences of the current specialized Liberty Natural Products 35-person workforce, making employee commuting more expensive, difficult, and demoralizing.

Fourth, some of these communities (*e.g.* Zig Zag, Rhododendron) are at higher elevations, which are much less desirable for growing lavender and herbs, as compared to the applicant's current integrated agricultural operation. These locations receive heavy winter snowfall, making employees' commutes difficult or impossible and thus effectively shutting down the commercial operation for several weeks every year. This very costly annual productivity hiatus could, in and of itself, make the applicant's business untenable in the competitive market.

A site-by-site examination of all Clackamas County rural commercial lands reveals the following sites that must be evaluated under this criterion:

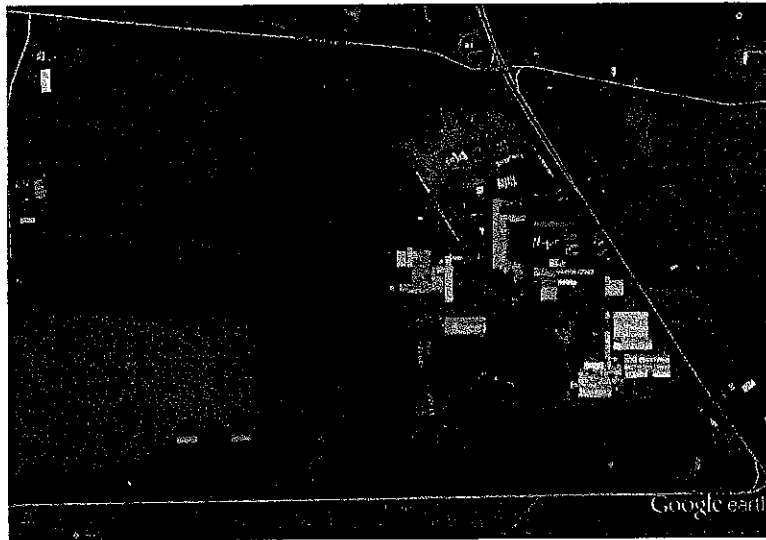
First, there is a cluster of parcels located in the Eagle Creek area zoned for Rural Industrial uses. This site is located on the east side of Highway 224, at 23123 Eagle Creek Road. The larger parcel, tax lot 2403, is already occupied by a long-established business, the Eagle Foundry Company. This company is an iron and steel castings manufacturer, and has been in continual industrial use since the late 1950s and under the current ownership since 1974. The parcel is 38 acres but it has inadequate building space, only 68,000 sq. feet. It would likely not be permitted today, as the area has become more residential and there is a residential RV park right across Eagle Creek Road. The building space on the vacant site is eight (8) acres, which would be sufficient if it were surrounded by available farm land that can be used to grow lavender and other botanical herbs. However, the lack of available farm land for sale on adjacent or nearby properties is a definite problem. Moreover, the Eagle Creek industrial site is also not ideal because it offers no view of Mt Hood.



Second, there exists a small parcel of rural industrial land north east of Mulino, at 13626 S Freeman Rd, Mulino, OR 97042. The property is occupied by Sunstone Circuits, a well-established firm that specializes in manufacturing and marketing printed circuit boards. This property is not available and is too small in any event.



Third, there is an isolated patch of Rural Industrial land located in Liberal, Oregon, north of Molalla, which is the site of the RSG Forest Products Mill. This mill has been in continuous operation for decades, and is not available for redevelopment. The site is located on Highway 213, which is a highly congested road. Businesses in this area do not get favorable rates from UPS, Fed Ex and other common carriers, making this a highly unsuitable location for Liberty Products.



A fourth rural industrial site is located directly south of Canby. This site is fully developed with existing uses. According to the applicant, "a dashboard survey of this location reveals no available land for purchase." There is no evidence to the contrary in the record, and the Board finds that it is substantial evidence to support the conclusion that this site is not a feasible alternative.



A. OAR 660-004-0020(2)(b)(B)(ii): The Proposed Use Cannot Reasonably Be Accommodated on Resource Land that is Already Irrevocably Committed to Non-resource Uses Not Allowed by the Applicable Goal, Including Resource Land in Existing Unincorporated Communities.

1. The Board Finds Unincorporated Communities or Rural (Population) Centers Located in Clackamas County Do Not Provide Feasible Alternatives.

Unincorporated Communities or Rural (Population) Centers are settlements located outside urban growth boundaries in which concentrated residential development is combined with limited commercial, industrial or public uses. Unincorporated communities in Clackamas County include Beaver Creek, Boring, Redland, Mulino, Colton, Marquam, Boring, Wildwood, Welches, Zig Zag and Rhododendron. With the exception of Boring, none of these areas have any parcels zoned for Rural Industrial. The Board finds that none of these areas, including Boring, meet the needs posed by the applicant's business, because none of the sites have 25 acres of tillable farmland that can be used to grow lavender and other herb crops.

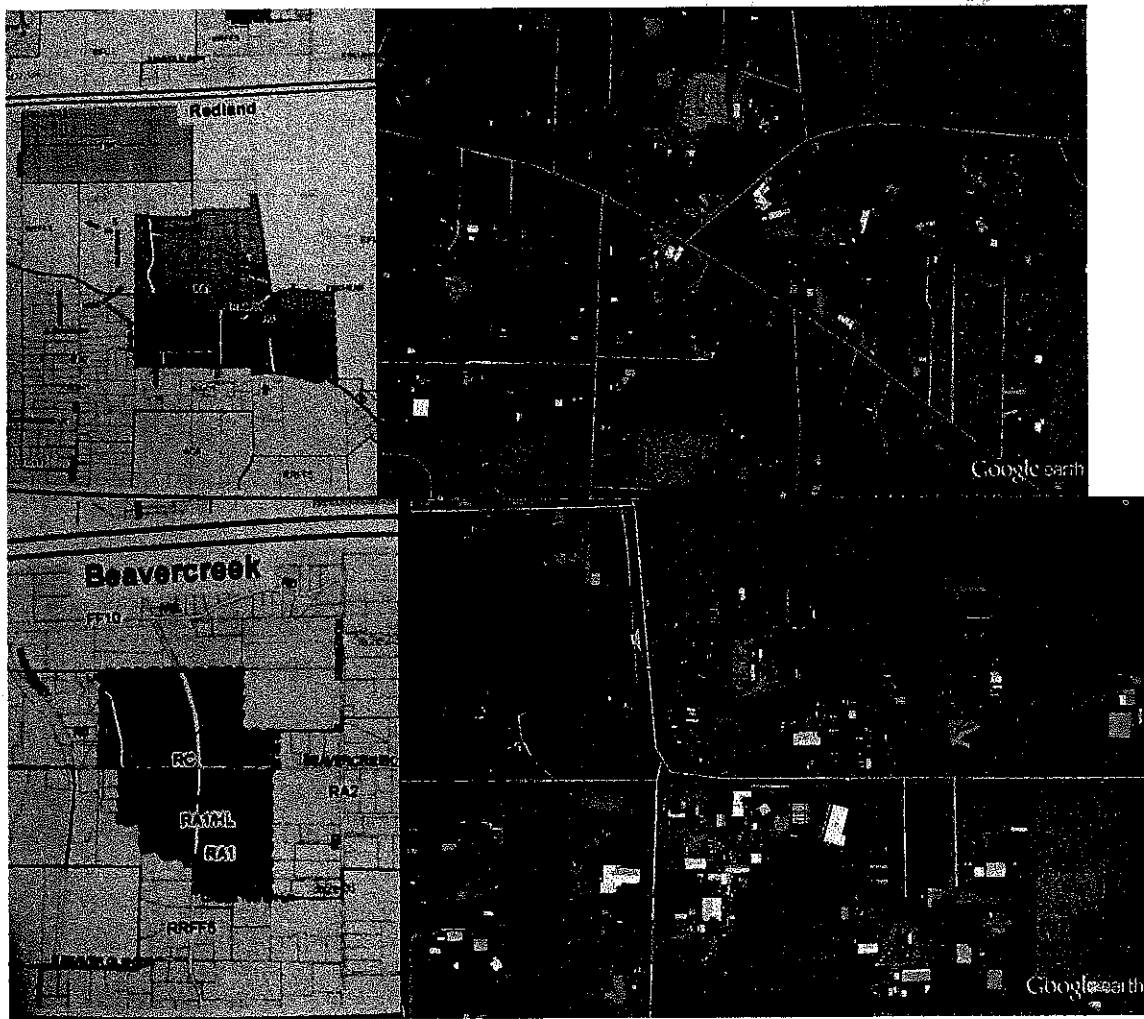
The unincorporated area of Boring has two Rural Industrial zones, as highlighted on this county zoning map (left) and shown in the accompanying aerial photo:

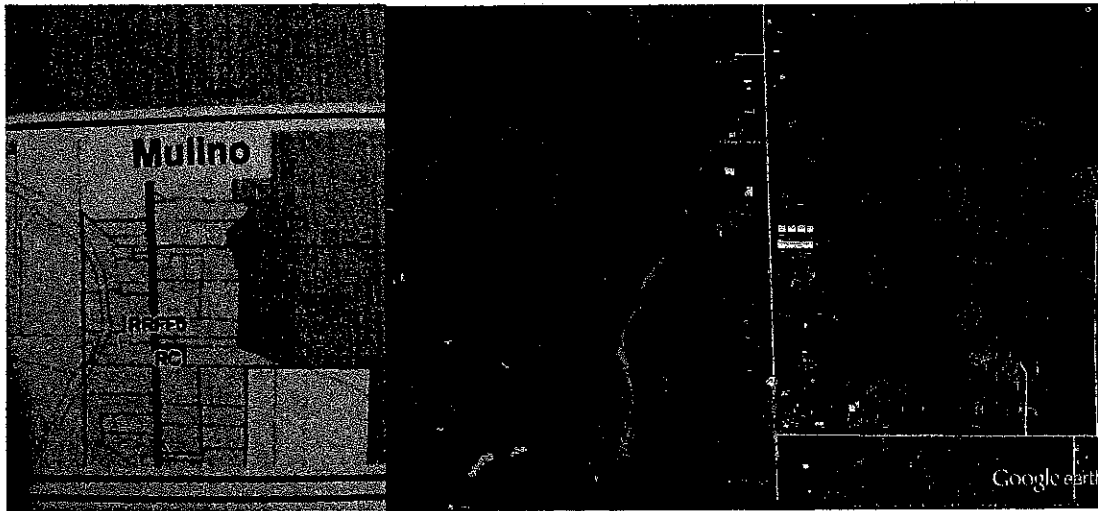


This aerial photograph shows that these two Rural Industrial areas are fully built out with existing uses. One of the larger collections of buildings is the location of Plymart, Inc. (27600 SE Hwy 212, Boring, OR 97009). Plymart Inc. provides panel and lumber products for use in construction, industry, and furniture manufacturing sectors, and has been at this location since 1977. The only other collection of larger buildings is located at 12401 SE 282nd Ave Boring, OR 97009, and is the current location of CCR Inc. Collision Repair. A dashboard survey of the remainder of Boring industrial area revealed that there were no available buildings in the two RI zones. Furthermore, there is no suitable tillable farm land nearby that is available to be used in

conjunction with the industrial use. Furthermore, the area is close to residential dwellings that would undoubtedly not appreciate the odors originating from the distillation facility.

The unincorporated Redland and Beavercreek areas contain no land zoned for industrial purposes. Both of these hamlets have a small area zoned for rural commercial uses, but in both cases those lands are fully utilized by existing uses. Also, in both cases, the areas zoned for rural commercial are surrounded by urban and rural density residential uses. Since the applicant needs at least 25 acres of attached farm land to grow herbs, the Board finds that these sites are not viable alternatives. The unincorporated Mulino area also suffers from similar flaws which make it an unsuitable alternative as well:





In this case, the Board finds that the applicant's preferred site is already developed, and the rural industrial operation for which the exception is sought is already up and running as a practical matter. Thus, this fact situation creates the need for a much different analytical process for comparing reasonable alternatives, as compared to the more common scenario where the comparison is between competing vacant parcels.

In this case, the Board finds that comparing the preferred property (already developed exactly as needed to allow Applicant's use to prosper) to a vacant parcel of land results in a situation where the vacant parcel loses out in virtually every case. This is due to the fact that the capital costs associated with building the 150,000 s.f. of needed infrastructure is simply cost prohibitive under any reasonable scenario. The rule allows the county to consider "[e]conomic factors * * * along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas." The "along with other relevant factors" language means that increased cost by itself cannot generally be a sole determinative justification. *Oregon Department of Land Conservation and Development v. Douglas County*, 38 Or LUBA 542, 554-555 (2000). Nonetheless, it can be a crucial factor. In this case the Board finds that under the unique circumstances presented by this case, the sheer enormity of the cost differential, combined with the fact that (1) the preferred site is very close to town as compared to the majority of rural Clackamas County, (2) is in an area of relatively low residential density and far from potential conflicts, and (3) contains excellent views of Mt Hood all combine to disqualify virtually all vacant rural sites as reasonable alternatives.

3. The "Consequences" Standard: EESE Analysis for Alternative Sites That Also Require An Exception (i.e. other sites zoned EFU).

The third standard requires the applicant to evaluate the long-term environmental, economic, social and energy consequences of selecting the requested site over other similar sites that would also require an exception. The rule requires the Board to set forth "facts used to determine which resource land is least productive or lands that would not be significantly more adverse." In addition, the Board considered:

- ❖ the ability to sustain resource uses near the proposed use, and
- ❖ the long-term economic impact on the general area caused by irreversible removal of the land from the resource base.

Here, the Board finds there are two facts that, when viewed together, are dispositive on the issue of agricultural productivity. First, the preferred site is *already developed* with structures that prohibit the use of that land for farm uses. For this reason, there is no long-term economic impact on the general area by the “irreversible removal of the land from the resource base.” Second, the applicants have identified *no other site* in the County with similar improvements. For this reason, the land under the buildings on the proffered site is, by its very nature, the least productive farm land.

Furthermore, allowing the facility to remain in operation at the preferred location will provide neighboring farms with one more potential list of crops that can be sold for processing into essential oils and other related products.

a. Environmental Consequences of Choosing The Proposed Site Over Competing EFU Zoned Sites.

Here, the Applicant’s proposed site is already developed with all the infrastructure needed to carry out the business LNP operations. After conducting an extensive search, with assistance from the Clackamas County Business and Economic Development Department, the applicant could locate no other site containing a concentration of existing and available industrial buildings located on “lands that require an exception” (*i.e.* EFU zoned lands) in Clackamas County. As such, evaluating the environmental consequences of remaining on the current site versus building a new facility on other vacant EFU land is simple. The Board finds constructing a similar facility on other EFU land would be much more environmentally detrimental, as it would require paving over five or more acres of farmland, and constructing very large buildings. All other things being equal, it is better for the environment if productive farmland is left alone, and already-built facilities are put to their most productive use.

Given this unique factual situation, the evaluation of environmental consequences becomes quite simple in this case. As an initial matter, to build a similar facility on any other EFU-zoned site would require the construction of 150,000 square feet of industrial space, which would take at least 5 acres of agricultural land out of farm production. In contrast, allowing the existing operations to remain at the current site takes no – zero - additional land out of agricultural production.

Furthermore, moving to another EFU-zoned site would leave the current property idle. In the past, the property sat vacant for a long time due to a lack of demand for such facilities. As a result, the property attracted a high degree of nuisance and illegal activity, including such activities such as cock-fighting, meth production, illegal arms dealing and similar criminal activity. (Applicants, Exhibit 20). The Board finds there is a high potential for the abandoned property to once again revert to being a hotbed of undesirable, dangerous, and illegal activity.

Finally, the Board finds there are no negative environmental consequences of continuing to use the subject property for the proposed rural industrial use. Specifically, the Board finds:

1. **Soils:** The soils at the current site are ideal for pesticide-free organic growing of specialty crops like lavender and herbs. Many alternative crops would likely require pesticides and herbicides.
2. **Composting:** The use of the current site allows the applicant to compost biological plant by-product, reducing vehicle trips to a landfill. It is very unlikely that other sites located in closer proximity to conflicting neighbors' uses would permit efficient composting. Agricultural by-product composting may give rise to neighbor complaints about odors (plant aromas and decomposition smells) and unsightliness. As Liberty expands its operations into other types of drying and processing, processing dusts could also contribute to nuisance in an urban environment.
3. **Water:** The previous permitted and allowed uses required substantial amounts of water for operations and waste processing. The subject use requires minimal water and has irrigation water rights in the final stage of beneficial use confirmation for the farm practices. Water used for distillation is uncontaminated (as one would expect, as it is pure distilled water produced by evaporation) and can be sustainably be re-used for irrigation purposes.
4. **Waste:** Previous animal husbandry operations generated substantial amounts of animal feces and other noxious waste. The present use generates no noxious waste whatsoever, only moderate amounts of plants and organic compost used onsite as soil amendments to sustain the long-term health of the soil.
5. **Noise:** the previous uses generated significant noise, as one would expect from an egg farm housing thousands of disgruntled chickens. The applicant's current (and future proposed) uses create no significant noise; indeed, the loudest sound heard all day is the arrival of the daily UPS truck delivery. The applicant anticipates distilling unused Christmas trees to obtain essential oil extracts, but grinding these surplus Christmas trees will be substantially performed offsite where the trees were grown, in the local Clackamas County agricultural community.
6. **Sustainability:** Co-location of the integrated uses at one site allows for cross-utilization of resources that lowers energy costs and transportation needs. Multiple locations would increase the amount of travel of employees (both commuting, and work-based trips) with attendant increased consumption of fuel without any corresponding gain in productivity. Location in an urban or rural industrial site would likely require greater travel by employees.
7. **Herbicides and Pesticides:** Organic herb crop practices supported by the subject uses, in contrast to other common Clackamas County agricultural activity such as Christmas tree

growing, do not utilize herbicides and pesticides. These substances, while necessary, can contribute to water quality problems and soil degradation. The applicant takes a holistic and organic approach to farming, and prides himself on being one of the few Clackamas County farm operations that is Oregon Tilth Certified Organic.

In sum, the Board finds the current business operation has fewer adverse environmental impacts than any previous agricultural use at this site, currently operates in a sustainable, efficient, and environmentally responsible manner with no greater impact than allowed EFU uses. The Board finds it is extremely unlikely the applicant's current business operation could be conducted at some hypothetical alternative EFU-zoned site (assuming such a suitable site existed) with the same fastidious degree of environmental sensitivity and ecologically beneficial practices, such as composting and pesticide-free, certified-organic farming.

b. Economic Consequences of Choosing the Proposed Site Over Competing EFU-Zoned Sites.

The 150,000+ square foot facilities of the Oregon Lavender Farm are likely much too large to be fully utilized or economically supported by any known agricultural practice from crops grown only on the property. For this reason alone, the long-term economic consequences of not allowing the existing business enterprise to remain at the present location but instead requiring it to move to another location zoned EFU are highly negative. – a successful, multimillion-dollar business would be forced to shutter its doors and lay off thirty-five hardworking Oregonians. Specifically, the Board finds:

First, moving to another EFU-zoned site would likely leave the current property idle, wasting the economic value of the already-built facilities. It is highly unlikely that there is another farming use that could efficiently utilize these large facilities, as evidenced by the fact that the property sat idle and neglected for many years, before being purchased by the applicant's Liberal Natural Products, Inc. fifteen years ago.

Second, the Liberty Natural Products facility is currently located close to the key Clackamas County residential and commercial centers of Oregon City, Damascus, and the Highway 224 corridor. Many of the operations employees reside in nearby Estacada and benefit from a short drive to work. After conducting an extensive search, with assistance from the Clackamas County Business and Economic Development Department, the applicant has found that no suitable EFU-zoned site exists in Clackamas County, let alone one so close to employees' homes. A short commute to a pleasant, scenic workplace adds to employee job satisfaction, helps morale, and lowers the turnover of the specially-skilled and dedicated workers upon whom the applicant depends to run his business. The current site is also close to the Clackamas County small businesses, vendors, suppliers and contractors the applicant regularly patronizes to run and maintain his operation and facilities. The applicant has spent over two million dollars making improvements to the site, and the lion's share of those millions went to local businesses. Travel-time factors into any contractor's calculations when formulating a bid, and the applicant currently enjoys a comparative advantage to other potential EFU-zoned sites due to his proximity to major Clackamas County commercial areas.

In a similar vein, the Board finds moving to another EFU-zoned site (if one existed) would be wildly economically wasteful, as millions would have to be spent to recreate the facilities that the applicant already possesses and occupies, while abandoning the current successful site to fall into disrepair, dilapidation and decrepitude.

c. Social Consequences of Choosing the Proposed Site Over Competing EFU-Zoned Sites.

The Oregon Lavender Farm/Liberty Natural Products business has become a strong and respected pillar of the local social community over the last fifteen years. The vast majority of the people employed at the subject site are residents of the local area. The ability of employees to work and live in the same area supports a strong community identity and furthers vital community interests, such as stable families buying homes and investing their time and devotion to strengthening local schools, churches, and social organizations such as 4-H, Future Farmers of America, the Boy Scouts and Girl Scouts, Kiwanis, Rotary, Lions Club, and similar groups. A local employer, close to home and deeply involved in the community, creates a stable, reliable, quality work environment for employees, enabling them plan for their families and futures. To put it simply, the applicant has invested heavily (in time, in money, in years of loving devotion) to this property and his business, and that cannot be blithely transferred to some other site. In furtherance of this goal, the applicant supports a Clackamas Community College scholarship for agriculture students and participated in the Clackamas County Green Ribbon Committee, among other community activities.

If the applicant was to shutter his Oregon City site and move his business to some other EFU-zoned site, the Board finds all of that carefully accumulated social capital and goodwill would be lost. The applicant would be forced to start all over, and some employees would likely decline to make the move.

The applicant has been very successful in promoting both his business and Clackamas County agriculture as an appealing, viable way of life through his annual Lavender Festival. This two-day event, featuring local foods, music, and agricultural products, has become a family tradition for many local residents, attracting 5,000 people each year. It is very doubtful that the Lavender Festival would have enjoyed this success at the some other EFU-zoned site lacking the stunning Mount Hood view and short drive-time that make the festival so appealing to so many local residents at the Oregon City site. The 2012 "Clackamas County Agriculture and Foodshed Strategic Plan" cites the applicant's lavender festival as an example of a "value added plus" county product that benefits the County and promotes agritourism (Applicant's, Exhibit 90, p27).

The Board finds that the OLF / Liberty Natural facility has proven itself to be a good neighbor, and does not have negative social consequences on the community. A corridor of RRFF-5 rural residential zoned properties to the east and south of the property are insulated by roughly a quarter of a mile of farmland from the distribution and warehousing activities located to the west of the subject property.

Lastly, at the current Oregon City site, the applicant and his 35 employees have excellent and harmonious social relations with all of their neighbors. There is no guarantee the new neighbors at some other EFU-zoned site would be anywhere near as understanding and sympathetic, and that could lead to conflicts. Dr. Roberts letter, (Applicant's, Exhibit 92). Neighbor conflicts are very common in EFU zones, and it is to the applicant's credit that he has worked hard to resolve any that arose in the past and now enjoys harmonious relations with his neighbors. Moving to some other EFU-zoned site would require the applicant to build those same relationships of trust and mutual reliance all over again, with a new cast of characters. Some of those characters might see the world very differently, and it only takes one irascible neighbor to ruin the quality of life for everyone.

d. Energy Consequences of Choosing The Proposed Site Over Competing EFU Zoned Sites.

The Board finds relocating the existing business to a new EFU-zoned location would have enormous negative energy implications, far greater energy-related expenses than could be recouped over a twenty-year planning horizon. In fact, the construction of new replacement facilities would be an endeavor requiring the consumption of *far* more energy resources.

The biggest day-to-day energy-related operational expense for the facility is electricity. After considerable expenditure and upgrading, the current site is quite efficient with regard to electrical usage. The cost related to electrical usage would be roughly the same regardless of where the facility is located, *assuming* – and this is a huge and unlikely assumption – that the new EFU-zoned site would already be upgraded to the same energy-efficient technologies the applicant has invested in. (The extensive 3 phase electrical infrastructure alone is worth several hundred thousand dollars)

The second largest energy-related cost to operate the facility is fuel. The existing site maximizes efficiency of fuel and resources, because employees, suppliers, contractors, and common carriers have only one close-in Oregon City site to drive to and from. If the operations were to be split into multiple locations, or moved to any other location that is further away from the current centralized Oregon City location, then the overall fuel costs for the applicant's operation would undoubtedly increase, perhaps greatly.

The farm is not located in an extended area surcharge location. Other EFU alternative sites may be in an extended area which would increase transportation charges. Liberty's presence and substantial daily shipments provide stability for UPS/FedX services in the local area. Liberty's presence and substantial daily shipments support UPS/FedX services for the benefit of package service in the local area. If Liberty were to relocate to into a delivery area surcharge zip code, it would result in additional charges for both inbound and outbound shipments making it less competitive in the marketplace. In addition, the current operations utilize composting of biological plant waste, reducing truck trips to a regional landfill.

In sum, the Board finds moving to a new facility would consume a huge amount of energy (human, gasoline, diesel, electricity, productive capacity, and wasted moving and packing resources (e.g. crates, boxes, pallets, bubble wrap, visqueen, padding materials, tape, fasteners, straps). Paving five or more acres of farmland consumes a vast amount of energy (e.g. human, gasoline, diesel, electricity, productive capacity, and all the energy required to make the aggregate, asphalt, and concrete). Constructing 150,000 square feet of commercial building space and/or modifying existing structures consumes a huge amount of energy (e.g. human, gasoline, diesel, electricity, productive capacity, steel, fiberglass, wallboard, sheetrock, sawn and treated lumber, electrical wiring, carpeting, insulation, fireproofing, Tyvek sheeting, glass, putty, fasteners, steel cable, flooring, roofing, drains and gutters). Lastly, requiring 35 employees to commute to another (likely more distant) location would require more consumption energy in the form of gasoline and diesel fuel, contribute to the degradation of road and intersections, and increase the consumption of vehicular components like tires, brake pads, and motor oil. All of these energy consequences add up, and add up quickly. Allowing the applicant to continue his operations at the current site will be far, far more efficient (from an energy consumption standpoint) than any other alternative.

e. The Effects of the Proposal on the Water Table.

Oregon Lavender Farm has a total of four wells on its contiguous property. Two were pre-existing and two were installed by Liberty. Liberty filed an application for water rights (G-16444) to be able to irrigate 52.9 acres of its lavender and other specialty herb crops in May of 2005, and thereafter obtained Permit No.164555 in May of 2006. A new 8" casing 115 gallon per minute irrigation well, identified as No.3 (Clack 62440), was drilled in May of 2006, in order to meet the State of Oregon Water Rights Division well construction specifications necessary to obtain water rights approval. Additionally, 3,200 lineal feet of buried three to four inch PVC irrigation mainline was installed to distribute irrigation water to crops. In September of 2013, Liberty submitted a CWRE Claim of Beneficial Use. Well No. 3 has been in operation since May of 2007. There has been no unrecovered drawdown of the water table. In March 2014, the Water Rights Division accepted the pump test results for Well No. 3. It is anticipated a water rights certificate will be issued in the next 12-18 months. (Applicants, Exhibit 105).

Well No. 1 is a 50 gpm fully functioning well, designated for emergency use. Well No.2 is an 80 gpm well that serves the potable water requirements of the facility. It is subject to quarterly water testing and water quality reporting. Well No. 4 is a 6" casing domestic well for the existing 7 acre homesite that has been drilled but not improved. A ¾ acre rainwater pond is being developed from an old drainage pond. This pond will be used for both as an irrigation reservoir and for fire protection. Thus the Board finds that the water supply at the current site is adequate and does not harm the neighbors' ability to use their properties as they wish.

f. Cost to Special Service Districts.

The Board finds allowing the Oregon Lavender Farm and Liberty Natural Products to continue current operations and expand into the new operations proposed herein will not have any impacts on Special Service Districts. There are no Special Service Districts that provide service to the subject property, except for fire protection with Clackamas County Fire District 1. The farm and business operation will continue to meet fire, life, health and safety requirements. Special service districts supported by the current business, from the Assessor's tax statement:

Education Districts:
COM COLL CLACK
ESD CLACKAMAS
SCH OREGON CITY

General Government:
COUNTY CLACKAMAS
COUNTY EXTENSION & 4-H
COUNTY LIBRARY
COUNTY PUBLIC SFTY LOC OPT
COUNTY SOILS CONS
FD 1 CLACK CO
PORT OF PTLD
URBAN RENEWAL COUNTY
VECTOR CONTROL
VECTOR CONTROL LOC OP

g. Cost of Improving Roads.

According to County staff and, the Board concurs that there are not improvements that are required to offsite roadways or intersections in order to support the proposed use. In summary on the issue of comparative impact analysis: the Board finds the subject site is the most optimal site for the subject uses – in large part because it is already built to support such uses.

4. The “Compatibility” Standard: The Board Finds the Proposed Uses are Compatible with Other Adjacent Uses (or Will be so Rendered Through Measures Designed to Reduce Adverse Impacts).

a. Site Description.

The subject property is located on nearly 90 acres of farmland in an established rural area. The site features rustic-looking newer buildings housing the administrative and business offices along with multiple old simple agricultural warehouse storage buildings. The land in the territory to be rezoned exhibits relatively flat topography with a gentle downward slope to the

east exhibiting, twenty-five acres of lavender fields and a stunning view of Mount Hood. There are no special or noteworthy topographic features or hills.

North of Harris Road there are eight large rectangular building once built for housing chickens in the old commercial egg farm. South of Harris Road are the four new structures housing the administrative and business offices, laboratory, inventory, distillery, shipping and receiving department, and staff lunchroom. There is a small gazebo and patio tables for guests overlooking the lavender fields.

b. Description of Neighboring Uses.

The following tables identify land uses, utilities, and the area surrounding the subject property.

Direction	Comp Plan	Zoning	Use
North	Farm Use	EFU	Rural residential, not planted, woods to the NE
East	Farm Use	EFU	Rural residence, screened by thick woods, no crops
South	Farm Use	EFU	Beyond the lavender crops is a thick tree stand, then acres of Christmas trees
West	Farm Use	EFU	M.S. Growers nursery: azaleas, rhododendron, japonica, Christmas trees

c. Demonstration of Compatibility between the Proposed Use and Adjacent Neighbor's Uses.

The law requires the applicant's proposed use to be compatible with the adjacent neighbor's uses. The Board so finds. This is quite easy to demonstrate, because the applicant's proposed use (*i.e.* the Oregon Lavender Farm, the Liberty Natural Products business, and the annual Lavender Festival) has been taking place uninterrupted for years, with no problems whatsoever for the neighbors. In fact, the applicant's neighbors are in support this application and there have been no objections. (*See Applicant's Exhibits 61, 62, 63, 64, 66, 68, 73, 74, 107, letters in support of the application signed by LB Day, Dennis Moriarity, Moriarity Christmas Trees, Rita Snyder, MS Growers, John Anderson, McKenzie Farms and Steve and Bobbe Fendall, Lila Elliot and other Logan area neighbors*).

Possible sources of conflict with the neighbors' uses could include water disputes, traffic problems, noises, pesticide spraying, odors, degradation of the visual environment, or other interference with the neighbors' quiet enjoyment of their property. As previously discussed, the production of plant aromas (and possibly allergens) has become a major problem today for many businesses, as aggrieved neighbors initiate government enforcement action and file private

nuisance lawsuits to curb activities their nostrils allegedly find objectionable. Not a hint of any of those issues exist here. In fact, it is quite the opposite. The applicant's current use has *ended* previous incompatible (and even noxious and criminal) uses on this site. Before the applicant acquired this site in 1999, it was a long-time nuisance property with multiple unlawful uses, solid waste violations, and even dangerous criminal activity. (See Applicant's, Exhibit 20, (*The Oregonian article from 2000*). The applicant cleaned up the property (literally and figuratively) and has become a true asset to his neighborhood and community over the past fifteen years.

The language of OAR 660-004-0020(2)(d) repeats the words "proposed" use because it contemplates a use proposed but not yet put into place and practice. In this case, the applicant's proposed use is exactly the use he has been practicing for many years, and so there is no need to speculate about whether his "proposed" use will be compatible with his neighbors' uses. We *know* it is compatible, because it long has been. The best proof of *future* compatibility is *past* compatibility, and the applicant's use has long since been proven to be compatible with his neighbors. The Board finds this standard has been met.

III. CLACKAMAS COUNTY ZONE CHANGE APPROVAL STANDARDS

Clackamas County has adopted the following standards applicable to a zone change:

1202.01 APPROVAL CRITERIA

The Hearings Officer may approve a zone change, pursuant to Section 1300, if the applicant provides evidence substantiating the following:

A. Approval of the zone change is consistent with the Comprehensive Plan;

Both the applicant and staff identified a number of plan policies as being relevant to this zone change application. The first of these relates to the policies to be applied when considering a property for a "Rural Industrial" zoning classification. The applicable section of the Comprehensive Plan states as follows:

POLICIES

1.0 The Rural Industrial plan designation may be applied in non-urban areas to provide for industrial uses that are not labor-intensive and are consistent with rural character, rural development, and rural facilities and services.

2.0 The Rural Industrial (RI) zoning district implements the Rural Industrial plan designation.

3.0 Areas may be designated Rural Industrial when the first, the second, or both of the other criteria are met:

a. Areas shall have an historical commitment to industrial uses; or

b. The site shall be an abandoned or diminished mill site, as defined in the Zoning and Development Ordinance, provided that only the portion of the site that was improved for the processing or manufacturing of wood products may be designated Rural Industrial; or

c. Areas shall be located within an Unincorporated Community; and

d. The site shall have direct access to a road of at least an arterial classification.

In this unique case, the Board finds the application can be approved under Policy 3.0(a), because the site has a historical commitment to industrial uses. The Comprehensive Plan does not define what is meant by an “industrial use” in this specific context. LUBA has stated that uses can be categorized in different ways for different purposes. *Swenson v. DEQ*, 9 Or LUBA 10 (1983) The Board is not aware of a prohibition in the goals that a use must be either exclusively a farm use or an industrial use in making a determination whether or not a commitment to historical industrial use has existed.

The Board interprets Plan Policy 3.0(a) to further the goal of preserving farm land for resource uses by limiting rural industrial uses to those areas of the county that have been previously been “committed” to activities which are industrial in nature. The goal the policy seeks to further is to prevent the existing limited supply of useable and unspoiled agricultural land from being converted to rural industrial use. Conversely, the policy seeks to steer the zoning and development of new rural industrial lands towards those properties that have previously been used for that purpose. In other words, only areas that are already developed or “committed” to rural industrial uses as a result of past practices may be made available for continued rural industrial use.

As discussed in more detail below, the subject property has over 150,000 square feet of “industrial” buildings on the property. The Board finds these buildings are not well-suited for modern agriculture, for reasons previously discussed in these Findings. The ZDO defines the term “industrial uses” in the zoning sense, as “[t]he use of land and/or structures for manufacturing and processing of primary secondary, or recycled materials into a product; warehousing and associated trucking operations, wholesale trade; and related development.” The Board finds the subject property contains buildings that have been used in the past for uses that are industrial in nature, and the infrastructure is more similar to industrial uses than agricultural uses.

The subject property was constructed and used primarily as an egg production and distribution facility and rabbit processing facility and rendering plant. When one thinks about the practical nature and impacts of an egg production facility, it becomes quite clear that these operations are factories, not farms. Take, as an example, Willamette Egg Farms, LLC. With over 200 employees, Willamette Egg Farms operates one of the largest facilities in rural Clackamas County. Willamette Egg Farms does not rely on farm land to produce its eggs. In fact, the chickens raised at Willamette Egg Farm never go outside and never touch the ground. There is no relationship to the land other than a place to place the buildings and sewage system

needed for the plant's waste. A detailed examination of the historical uses on this property reveals there was never a "typical" farm operation growing crops. Instead, there were a series of uses that more closely resemble industrial and commercial uses in terms of scale and impacts:

- Carnation poultry-egg operation (1963-1978):
 - Onsite raising of chickens for eggs
 - Processing and wholesale distribution of eggs raised onsite and secondary processing to make packaged egg products.
 - Processing and wholesale distribution of eggs obtained offsite and secondary processing to make packaged egg products.
 - Placement of waste (chicken manure & egg shells) from operations on agricultural ground:
 - a. a) portion derived from onsite poultry-egg operation (a "farm use")
 - b. b) portion derived from eggs obtained from offsite (an industrial use).

- Rabbit breeding, slaughter, meat processing – tannery, fur operation:
 - Onsite breeding and raising of rabbits (a "farm use").
 - Processing, distribution and marketing of rabbits raised onsite – farm use.
 - Processing, distribution and marketing of rabbits obtained from off-site – 1983 GAD CACFU conditional use permit for remodel and use of building as a rabbit meat processing plant – industrial use.
 - Tanning of rabbit hides and other commercial livestock pelts, produced onsite and offsite. 1988 GAD CACFU conditional use permit - industrial use.
 - Processing and onsite disposal of slaughter gray water waste disposal of rabbits raised onsite – farm use.
 - Processing and onsite disposal of slaughter gray water waste disposal of rabbits raised offsite – industrial use.

- Liberty Natural Products use: area used for warehousing, processing and distribution of agricultural goods from other farms between 1999 to the present, which has been identified by the County in the report as a nonfarm use in land use pre-application conferences beginning in 2004.

Thus, substantial evidence shows that a mix of farm and associated and non-associated industrial uses have existed historically at the OLF property from 1963 to the present. Both the egg and rabbit operations included substantial industrial processing of eggs and rabbits obtained from non-local offsite producers and as such were nonfarm industrial uses.

For these reasons, the Board finds that there is a history of extensive rural industrial use of the property. The Board finds the requirement of Rural Industrial Plan Policy 3.0 has been met.

B. If development under the new zoning district designation has a need for public sanitary sewer, surface water management, and/or water service, it can be accommodated with the implementation of service providers' existing capital improvement plans. The cumulative impact of the proposed zone change and development of other properties under existing zoning designations shall be considered.

The proposed use does not have a need for public sanitary sewer, surface water management, and/or water service. For this reason, the Board finds this standard does not apply.

C. The transportation system is adequate, as defined in Subsection 1007.09(D), and will remain adequate with approval of the zone change.

The subject land use application proposes a PAPA and zone change to convert land planned and zoned for agriculture to Rural Industrial designations. The 8.77-acre portion of the subject property at issue contains 150,000 square foot of existing pre-development building improvements. The site has been occupied by Liberty Natural Products Inc. an integrated agricultural operation engaged in the cultivation and processing of specialty herb crops, such as lavender, and the distribution of wholesale agricultural goods since 1999.

The traffic impact study establishes that the transportation system is safe and adequate to serve the proposed use. County staff and this Board concur.

The Board finds this PAPA and zone change will limit the rural industrial use to 8.77 acres of the 90 acres property, and would not allow any significant changes that would result in substantial increases in current and historical transportation volumes for operations that have been conducted at the facility. The Board finds this standard has been satisfied in the record by the Lancaster Engineering traffic studies and the findings of the Clackamas County Department of Transportation.

Description of Area Roadways Serving The Site:

The local area is primarily zoned EFU with some RRF5-5 and is sparsely populated. S. Harris Road – is a paved 6/10 of a mile long local County road that runs from Gerber Road on the west to the subject property on the east. In addition to the subject farm site, there are only three single-family residences that have their primary access on .6 mile long Harris Road. The west end of Harris Road at its intersection with S. Gerber Road is .5 mile north of S. Springwater Road south and 1.1 mile south of S. Bakers Ferry Road.

S. Gerber Road – is a paved 1.6 mile long local County road that runs between S. Springwater Road on the south to S. Bakers Ferry Road on the north. There are only 23 residences on Gerber a local road with low traffic volume.

S. Springwater Road – is a paved 15.2 mile long major arterial County road that connects Hwy 224 to Hwy 211.

S. Bakers Ferry Road – is a paved 4 mile long minor arterial County road that connects S Springwater Road to Hwy 224 at Barton.

The roadways serving the site have interconnection with a variety of minor and major arterials providing alternate routes in various directions.

Current Transportation Volumes:

Liberty Natural / Oregon Lavender Farm’s regular days of operation are Monday through Friday. The operation is closed on weekends. The hours of operation vary according to the seasonal daylight time, but are generally between 7:30am and 6:30pm. In the past three years, Liberty Natural / Oregon Lavender Farm has employed an average of 32 regular employees at the site.

According to the applicant, in the past three years, Liberty Natural/Oregon Lavender Farm has employed an average of 32 regular employees at the site. Of those employees, 10 are associated with the agricultural operation unaffected by the approval of the land use application, and 24 are associated with the distribution operation subject to the application. Adjustments have not been made for: 1) agricultural employee trips; 2) vehicular trip reduction of employees who, from time to time, alternatively rideshare, bike or walk, are not deducted from the trip volume breakdown; 3) regular employees who do not work full time; 4) vehicular trips of short term temporary seasonal agricultural workers.

Breakdown of total actual site trips:

Employee arrival	= 32
Employee departure	= 32
Employee lunch trips	= 4
Employee pickup and delivery	= 2
UPS pickup and delivery	= 4
Other small parcel/common carrier	= 6
Wholesale will call customers	= 6
Vendor and other misc visits	= 4
Total	= 88

Employees have regular daily work schedules but are allowed a degree of flexibility in their arrival and departure times. Typically, most employees take lunch on site. The employees who go out for lunch will join with other employees and take one vehicle.

Speed Study & Sight Distance Analysis

S. Gerber Road has a statutory 55-mph speed limit. The applicant collected speed data at the intersection of S Gerber Road at S Harris road for a 24-hour period from 12:00 AM to 11:59PM on Tuesday, November 18, 2014. For the purposes of this PAPA and zone change, data

from the southbound direction (which was found to have limited intersection site distance (“ISD”) will be analyzed.

For vehicles traveling southbound, the 85th percentile speed was measured to be 49 mph. The complete set of data from the study is provided in an attachment to the memo provided by the applicant’s transportation engineering firm. Based on both AASHTO standards and the Clackamas County Roadway Standards, the required ISD is 554 feet and the required SSD is 412 feet for the 85th percentile speed of 49 mph.

Based upon field measurements, the available sight distance to the north for vehicles departing Harris Road is 530 feet. This distance very nearly meets the ISD standard of 554 ft, but easily satisfies the SSD requirement of 412 feet.

At 530 feet, the existing sight distances is 14 feet less than the 544 feet specified by Clackamas County as the necessary intersection sight distance (ISD) for this intersection at an 85th percentile speed of 49 mph. However, the applicant has requested, and staff has agreed to, a design modification as allowed in Section 170.1 of the Clackamas County Roadway Standards to use stopping sight distance (SSD) in lieu of ISD as the applicable design standard. Based upon this standard, the sight distance available to the north to vehicles turning left (southbound) onto S Harris Road is sufficient to accommodate safe operation of the intersection from this direction. The existing sight distance exceeds the minimum necessary ISD for an 85th percentile speed of 49 mph by 118 feet.

Mitigation measures:

The current low-level usage of the roadways serving the subject site and the land use planning goals for the area to remain in the EFU zone well beyond 2030, if not indefinitely, do not provide basis to conclude that there will be any significant increase in the amount of business or residential traffic. Should future traffic impacts occur in the area, the applicant has indicated a willingness to employ the following mitigation efforts:

- Freight consolidation -common carriers and parcel shippers can be utilized to maximize cargo loads and reduce vehicular trips.
- Employee rideshare/shuttle - the company can coordinate and encourage employees to share rides and/or provide shuttles from central locations.
- Employee work at home – while not feasible for the majority of the employees, customer service, administrative and some other employees could utilize the remote computer access to work at home as a part of their work schedule.
- Four-day work week – vehicular trips could be reduced 10-15% per week. It is anticipated production and shipping would functions would need to be maintained, but that customer service functions could be done from home in order to maintain just in time shipment of goods Monday through Friday.

There is no immediate demand for these measures, however, and the Board does not impose any conditions of approval related to these types of mitigation measures at this time.

D. The proposal, as it relates to transportation facilities under the jurisdiction of the State of Oregon, complies with the Oregon Highway Plan.

This application does not impact any transportation facilities under the jurisdiction of the State of Oregon.

IV. TRANSPORTATION PLANNING RULE

As discussed in the applicant's Transportation Analysis Letter ("TAL"), the applicant asserts that the current trip generation, measured at the site, is 88 total weekday trips. Under a worst-case scenario of development, with the OLF doubling the size of its distillery operations, a total of 188 weekday trips are projected given the existing traffic behavior at the site. Trip calculations using the ITE Trip Generation Manual (9th edition) indicate lower weekday trip generation of 88 weekday trips under current conditions and 132 weekday trips under the worst-case development scenario.

In order to consider an appropriate trip cap for the site, Lancaster Engineering revisited the capacity analysis conducted in the TAL for the nearby intersection of S Gerber at S Springwater Road. That analysis was done for projected 2034 traffic volumes with the addition of additional trips from the site as discussed above.

The analysis was updated to determine how many trips could be generated by the site and still allow the intersection to meet the applicable Clackamas County performance standards, where the acceptable level of service (LOS) on the critical approach is LOS D. Based on this analysis a total of 682 new trips could be generated during the evening peak hour, with 341 entering and 341 exiting, and still maintain acceptable operation.

The traffic counts on S Gerber Road contained in the original TAL show that there are approximately 30 evening peak hour trips along the roadway presently. The analysis shows that the site could generate over 20 times the volume of trips that are already on S Gerber Road and still meet applicable performance standards.

V. COMPLIANCE WITH STATEWIDE PLANNING GOALS.

A Post Acknowledgement Plan Amendment (PAPA) is a planning responsibility under ORS 197.175(1) and is subject to compliance with the statewide planning goals. Thus, to the extent they are applicable, the Board finds the applicant demonstrated compliance with the Statewide Planning Goals as follows:

Goal 1 – Citizen Involvement. Citizen involvement is always applicable to quasi-judicial applications such as this. Statewide Planning Goal 1 is met via the implementation of the provisions in the acknowledged Clackamas County Zoning & Development Ordinance (ZDO) that relate to citizen participation. This application was reviewed by staff, the Clackamas County Planning Commission, and the Board of County Commissioners. Public hearings were conducted with notice and opportunity to be heard presented, as required by the ZDO. The property was posted with notice as well as mailed notice to surrounding property owners and affected governmental agencies. At the public hearings anyone wishing to present relevant testimony or documentary evidence was allowed to do so. The Board finds adequate citizen involvement occurred in this case.

Goal 2 – Land Use Planning. The Clackamas County Comprehensive Plan (CCCP) and ZDO are acknowledged to be in compliance with statewide planning goals and guidelines. Goal 2's coordination obligation will be met because the applicant and County shall seek public comment from any affected unit of government, including and any special district whose boundaries overlap with the site. The application does trigger the Goal 2 exception standards, and those standards are addressed herein. The Board finds this statewide planning goal was met.

Goal 3 – Farm. The applicant's proposed use does not comply with Goal 3 and therefore, an exception was granted.

Goal 4 - Forest. The subject property does not contain forest land. Therefore, Goal 4 does not apply to this land.

Goal 5 – Open Spaces, Scenic and Historic areas, and Natural Resources - The subject property is not designated as an open space, scenic, or historic area and has no natural resources to protect. There are no natural resources located on the portion of the subject property at issue. There are no landslide hazard areas. There are no historic resources or cultural areas located or identified on the site. There are no identified mineral or aggregate resources on the site. The site is not located downtown or in a neighborhood conservation district. Therefore the Board finds this goal does not apply.

Goal 6 – Air, Water and Land Resources Quality - The proposed use of this property will be for rural industrial use. The distribution operations do not generate any substantive wastes or emissions, other than odors. Liberty Naturals and OLF are dedicated to being a sustainable enterprise. Metal and plastic containers are collected and recycled. By-products of distillation/processing, spills and expired goods are composted and returned to the soil as inputs. Storm water will be detained on-site and through the existing storm drainage system and future on-site drainage. There are no significant water demands, and no potential for pollution. This application will not affect in any way the air, water or land resources. Therefore, this goal is met.

Goal 7 – Areas Subject to Natural Disasters and Hazards - There are no identified landslide areas on the subject property. There are no identified wetlands or floodplains on the portion of the subject property subject to this application. The portion of the subject property subject to this

application is basically flat and devoid of natural hazards. The Board finds Goal 7 does not apply.

Goal 8 – Recreational Needs - The subject property is proposed primarily for rural industrial uses and a rural residence. This goal is not applicable.

Goal 9 - Economic Development. Goal 9 does not apply to this application, as Goal 9 only applies to areas within an urban growth boundary. OAR 660-09-0010(1). *Port of St. Helens v. Land Conservation & Development Committee*, 164 Or App 487, 495, 996 P 2d 1014 (2000). Nevertheless, the Board finds this land use approval furthers the aims of Goal 9 “[t]o provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare and prosperity of Oregon’s citizens.” As discussed in these Findings, the applicant’s Oregon Lavender Farm/Liberty Natural Products combined operation is a going business concern with thirty-five employees, over \$6.5 million in gross annual sales, and demonstrated success in its field. Approving this application will allow this business operation to continue, and hopefully prosper, benefiting its employees, the local economy, and the development of high-value specialty crops among local farmers to supply the applicant’s growing business.

Goal 10 – Housing. The subject property is proposed primarily for rural industrial uses and a rural residence. This goal is not applicable.

Goal 11 – Public Facilities and Services. Goal 11 concerns the provision of public health, safety, and welfare facilities such as water, sewer, and transportation. OAR 660-011-0005(5). As such, Goal 11 does not apply to this application, a privately-owned business operation.

Goal 12 – Transportation. The transportation impacts of the proposal are discussed *supra*. The Board finds this land use decision does not have a significant impact on a transportation facility.

Goal 13 – Energy. This application presented a positive alternative from an energy consumption and efficiency standpoint, when compared to any decision which would result in current operations being split into urban and rural components. The Board finds this goal was satisfied by substantial evidence in the record as a whole.

Goal 14 – Urbanization. The land is considered “rural” because it is located outside of a UGB. Goal 14 is violated if the applicant proposes an urban use on rural land without taking an exception to Goal 14. LUBA has stated that the determination of whether a proposed land use is rural or urban will in most cases require a case-by-case analysis. *Hammack & Assoc. v. Washington County*, 16 Or LUBA 75, 80 (1987), *aff’d Hammack v. Washington County*, 89 Or App 40, 747 P2d 373 (1987); *1000 Friends of Oregon v. LCDC (Curry Co.)*, 301 Or 447, 724 P2d 268 (1986). In *Curry County*, the Oregon Supreme Court identified a number of relevant factors which must be considered when determining whether a use is “urban or “rural.” When combined with other case law from LUBA and the courts, the list of relevant factors can be summarized as follows:

- The size and extent of commercial and industrial uses;

- Propensity to attract consumers from urban areas. *City of Sandy v. Clackamas County*, 3 LCDC 139 (1979); *Conaway v. Coos County*, 2 Or LUBA 190 (1980). *Shaffer v. Jackson County*, 17 Or LUBA 922 938 (1990) (LUBA stated in dicta that a determination that commercial uses are limited to serving the needs and requirements of the rural area, “that factor might be significant, or even determinative, in deciding whether [that] commercial use is rural or urban.”); *City of Ashland v. Jackson County*, 2 Or LUBA 378 (1980).
- Proximity to UGB. *Cox v. Yamhill County*, 29 Or LUBA 263 (1995) (A church that does not require urban services and serves “primarily a rural population” is not a rural use despite being located only 1000 feet outside a UGB); *City of Sandy v. Clackamas County*, 3 LCDC 139 (1979) (90,000 square foot shopping center located 4 miles from the nearest UGB is an urban use of land); *Geaney v. Coos County*, 34 Or LUBA 189, 200 (1998) (PAPA from rural residential to commercial triggers the need for an exception to Goal 14, when the decision would allow any number of commercial uses of any size as a permitted use).
- Types and levels of facilities and services, esp. water & sewer. *Doob v. Josephine County*, 32 Or LUBA 364, 373 (1996); *DLCD v. Douglas County*, 17 Or LUBA 466, 473 (1987).
- Dependence on a site-specific resource. In *Shaffer v. Jackson County*, 17 Or LUBA 922 938 (1990), LUBA held that whether an industrial use is dependent on a site specific resource is relevant in determining whether the industrial use is rural in nature.

Note: Density, parcel size and ownership patterns are not particularly relevant when determining whether a commercial or industrial use is “urban” or “rural” in nature. *Hammack v. Washington County*, 89 Or App 40, 747 P2d 373 (1987).

In this case, the applicant is not proposing an “urban use of rural land.” Each of the factors identified above are addressed in turn:

The size and extent of commercial and industrial uses;

The integrated specialty crop production and distribution operations at the OLF are not found in urban locations, as the agricultural nature of the operation requires acreage for cultivation and composting and a low density setting to avoid processing operation conflicts with surrounding uses. While there are examples of integrated specialty crop operations worldwide, the OLF operation is the only one of its kind in Clackamas County. An integrated specialty crop operation like the OLF is not contemplated in any urban land use descriptions in the ZDO or statute statute. Farm owners expand their operations both vertically and horizontally in order to achieve economy of scale and sustained profitability. The OLF operation includes a variety of integrated uses that are both agricultural and directly related to agriculture. Farm based distribution of agricultural goods, such as the specialty crops and related goods distributed at the OLF, is an historical and customary practice worldwide.

The record in this application has established that the operations of the Oregon Lavender Farm are not labor intensive, consistent with the rural character of the local area and Clackamas County rural development policies for facilities and services, and are rural industrial in character.

Propensity to attract consumers from urban areas.

The wholesale distribution operations are not directed at consumers and have not attracted consumers from the Portland Metro areas in the seven years they have been conducted at the OLF. With the exception of the two-day lavender festival once per year, even wholesale sales are not procured onsite. 100% of distributed goods sales are obtained by internet, phone and fax.

Proximity to UGB.

The OLF is approx. 2 ½ to 3 miles from the present UGB. The Metro UGB mapping tool shows that the 1.52 acre westerly portion of the proposed 8.77 acre rural industrial area of existing facilities and the northerly 40 acres, to remain zoned as EFU land, are within the County's rural reserves.

Types and levels of facilities and services, esp. water & sewer.

OLF does not rely on any urban services or facilities. OLF utilizes on-site subsurface septic systems for treatment of sanitary wastes. Existing subsurface systems conform to state standards, are fully functioning and have greater capacity than required. OLF composts all processing and distillation by-products. Water is obtained from a well.

Dependence on a site-specific resource.

Considered as integrated whole, the OLF operation is dependent on the size of the existing farm improvements and the availability of cultivable ground onsite and in the local area.

For all of the reasons stated above, the Board finds that the proposed PAPA and zone change does not propose an "urban" use of land. The Board finds that Goal 14 does not therefore apply to this case.

The Board finds that the applicable Statewide Planning Goals have all been met.

VI. CONCLUSION.

For all the reasons given above, the Board finds this land use application complies with all relevant state and Clackamas County statutes, rules, ordinances, and policies by substantial evidence in the whole record. The entire application and all its exhibits are incorporated into these Findings by this reference. This land use application is approved by county ordinance.

This Comprehensive Plan Amendment and Zone Change is limited in scope to the existing and future uses set forth in Section I(E) of these findings. These uses are considered uses allowed by right in this zone. Any other future uses that are outside the scope of the uses contemplated in Section I(E) will require a new PAPA and Zone Change, in addition to any conditional use permits or other land use permits that might be required.

11000

This map was prepared for assessment purposes only.

SW 1/4 SEC. 27 T2S. R3E. W.M. CLACKAMAS COUNTY

D.L.C. NATHAN P. MACKS D.L.C. NO. 37

SEE MAP 2 SE. 27B

1300

62-04

RRF-5

D.L.C. NO. 37

21600

CANCELLED T.L.S. FROM 1400M

2 3E 27C

Boundary of 8.77 acre Rural Industrial zone change area. Approved per Z0212-14CP & Z0213-14ZAP.

23E28 T.L. 306

23E28 T.L. 304

23E27C T.L. 1200

23E27C T.L. 1500

FFU

P PLAT

2001-46

Parcel 1

W. LINE ISAAC M. FOSTER D.L.C. NO. 42

SEE MAP 2 3E 27

16700

15900

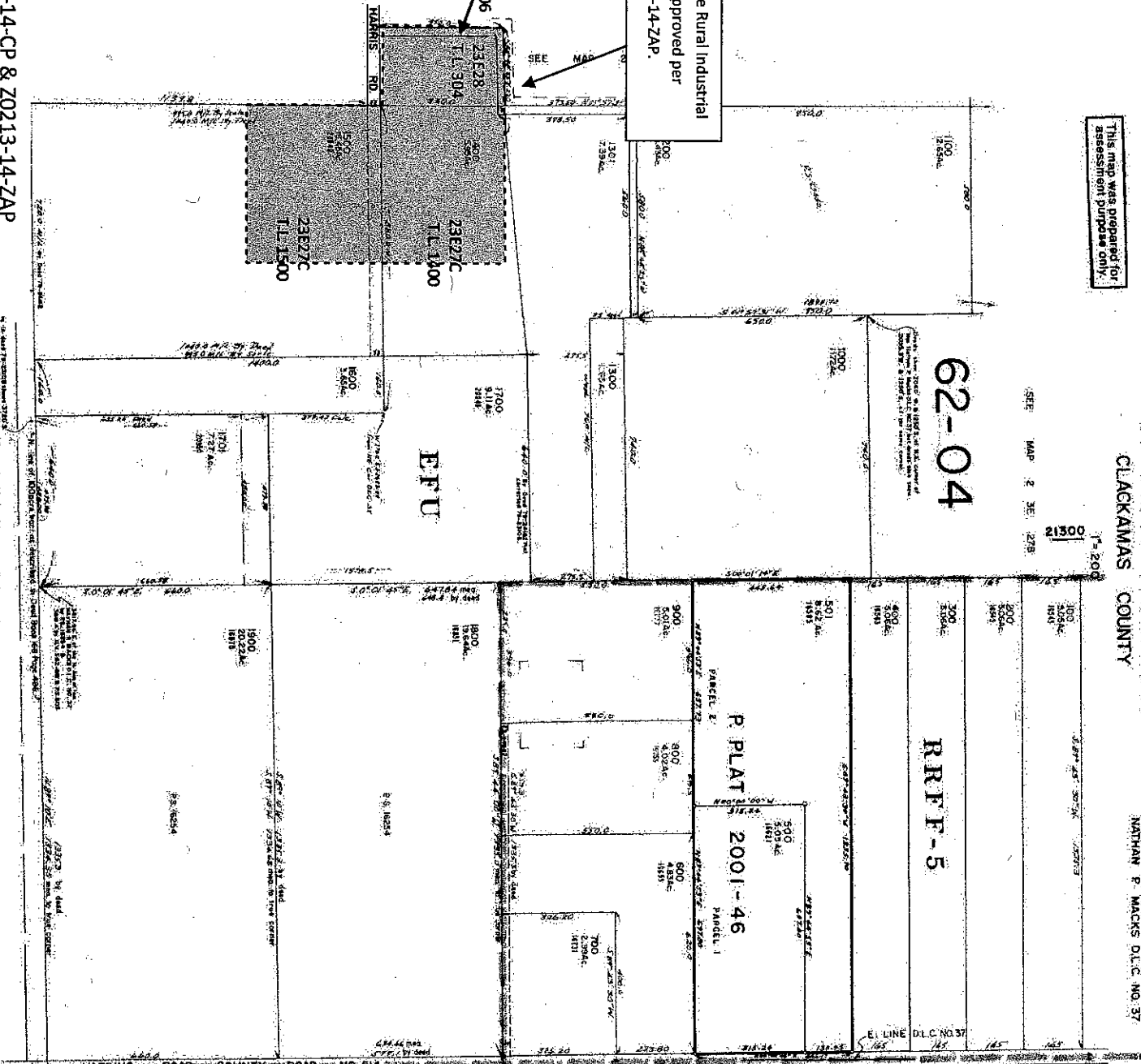
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File Nos. Z0212-14-CP & Z0213-14-ZAP ORDER EXHIBIT B - PAGE 1 OF 3 (3/5/2015)

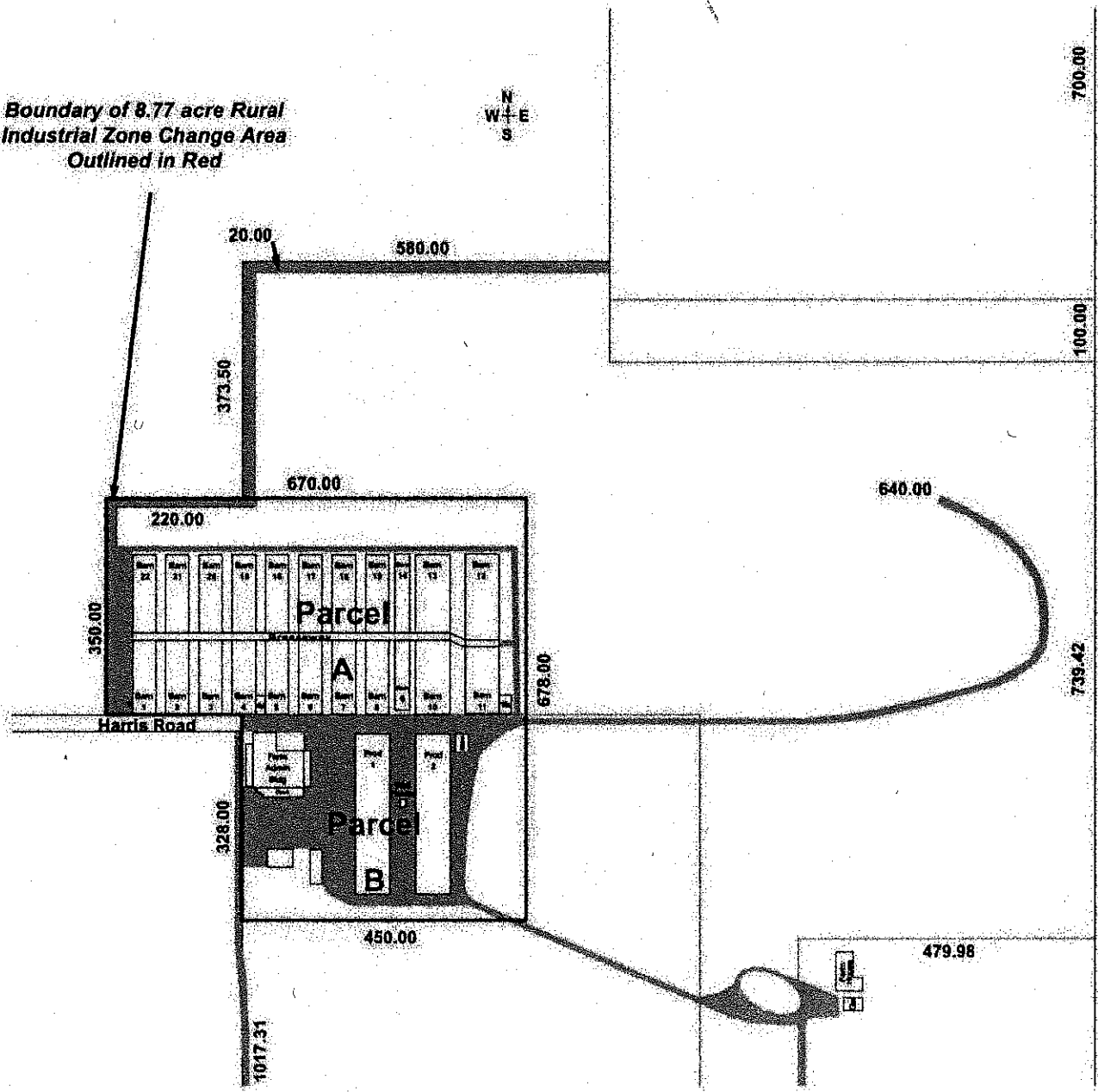
SEE MAP 2 3E 34

17000

2 3E 27C



Boundary of 8.77 acre Rural Industrial Zone Change Area Outlined in Red



Legal Description of the Oregon Lavender Farm Area to be Designated Rural Industrial, Pursuant to the Approval of Z0212-14-CP, Z0213-14-ZAP and Order of the Board of the County Commissioners.

Parcel A:

Beginning at a point 2060 feet West and 1900 feet South of the Northeast corner of said Macks Donation Land Claim said point being the Southeast corner of that tract sold on Contract to Jerry C. Robinson, recorded June 11, 1979, as Recorder's Fee No. 79-24183, Clackamas County Records; thence West along the South line of said Jerry C. Robinson Tract 580 feet to a point; thence South parallel to the East line of that tract conveyed to Jack Barber by Deed recorded July 9, 1875, in Book "L", on Page 107, Clackamas County Deed Records, 373.50 feet to the North line of that tract sold on Contract to Constance A. Robinson, recorded July 11, 1979, as Recorder's Fee No. 79-24182, Clackamas County Records; thence West along said North line 220 feet, more or less, to the Northwest corner thereof, which is the true point of beginning of the herein described Parcel B; thence South along the West line thereof 350 feet to the South line thereof being on the North line of Harris Road (County Road No. 1659); thence East along the North line of said Harris Road 670 feet more or less to the Northeast corner of the above described Parcel A; thence North 350 feet to a point; thence West 670 feet more or less to the true point of beginning of Parcel B.

Parcel B: The West 450 feet and North 328 feet of the parcel of land described as:

Part of the Nathan P. Macks Donation Land Claim No. 37, in Section 27, Township 2 South, Range 3 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the point of intersection of the Northeast corner of Harris County Road No. 1659 and the West line of that tract sold on Contract to Constance A. Robinson by instrument recorded June 11, 1979, as Recorder's Fee No. 79-24182, Clackamas County Records; thence South along said West line 1040 feet, more or less, to the Southwest corner thereof; thence East along said South line and its Easterly extension to a point which is 160 feet East of the Southeast corner thereof; thence North parallel to the East line of said Robinson Tract 1040 feet, more or less, to a point which is 880 feet, more or less due East from the Northeast corner of aforesaid Harris County Road; thence West 880 feet, more or less, to the point of beginning.



MIKE McCALLISTER
PLANNING AND ZONING DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

EXHIBIT C:

Approved Uses for the Oregon Lavender Farm/Liberty Natural Products LLC "Reasons" exception and Comp Plan designation/zone change

File Nos. Z0212-14-CP & Z0213-14-ZAP

The following lists the **current uses** on the property that are subject to the Reasons exception:

- Processing operations, including
 - The steam distillation of essential oil crops, such as lavender, rosemary, clary sage, Douglas fir, and Noble fir;
 - The production of tinctures, which are herb extracts obtained by using alcohol to extract their constituents;
 - The production of other "farm and value-added" products such as culinary lavender and lavender honey, soaps, and lotions; and
 - The drying, milling of various herbs for future sale including hops it is also growing at the farm.
- Storage/warehousing of oils for sale, dried herbs, containers and similar materials, and shipping and packaging materials.
- Distribution operations, including the importation, repackaging and distribution of over 1,200 different farm products and oils and herbal extracts produced outside of Clackamas County.
- Administration offices, including book-keeping, purchasing, marketing, sales, personnel management, computer systems – IT, facilities management, inventory & quality control, laboratories, and packaging and shipping.

Future uses expected on the property subject to the Reasons exception are limited to the expansion of the existing processing and warehousing/distribution facilities to include the construction of a "mother distillery" to support the following operations: (a) distillation of 200 to 500 acres of local lavender cultivation, (b) distillation of Christmas tree culls from neighboring growers, and (c) research & development (R&D) of other potential extractions: raspberry seed extraction, cucumber waters; and the composting of byproducts on on-site processing (which may be subject to additional land use permitting).



3



M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

March 5, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution Regarding Transportation System Development Charges for Certain Developments in the Happy Valley/Clackamas County Joint Transportation Area

Purpose/ Outcomes	Resolution to adjust Transportation System Development Charges (TSDC) for certain developments in the Happy Valley / Clackamas County Joint Transportation Area
Dollar Amount and Fiscal Impact	\$0 – \$7,000,000 (Estimated)
Funding Source	Not Applicable
Safety Impact	Not Applicable
Duration	Subject to milestones identified in the resolution.
Previous Action	Prior resolution approval – December 20, 2012 Policy Session – December 9, 2014
Contact Person	Dan Johnson, Assistant Director Department of Transportation and Development 503-742-4325 or danjoh@co.clackamas.or.us
Contract No.	Not Applicable

BACKGROUND:

On December 20, 2012, the Board of County Commissioners adopted Resolution 2012-121 offering reduced transportation system development charges (“TSDC”) as an incentive to certain types of commercial and residential developments in the Happy Valley/Clackamas County Joint Transportation System Development Charge Area. During the term of this resolution, which expired on December 20, 2014, only one project, a development effort referred to as “Eagle Landing”, sought to utilize the incentives offered in the Resolution.

While Eagle Landing developers were unable to meet all the requirements and timelines established under Resolution 2012-121, good faith efforts were taken to advance the project. Eagle Landing Developers have requested an extension of the resolution specific to the Eagle Landing project.

Mindful of the specificity of this request to the Eagle Landing Development and a desire to ensure performance, the Board directed staff to draft a new resolution with a narrower focus, more specific performance measures and term limit to encourage immediate development. Performance measures include, but are not limited to:

- Site specific Land Use milestones,
- Minimum Development requirements, and
- Applicability to taxable private investment only.

The resolution does not exempt payment of TSDC charges but does adjust the collection rates for charges associated with specific uses. Failure to meet any of the resolution milestones or performance measures will trigger collection for all development at the currently adopted TSDC rates.

The City of Happy Valley, a partner and co-beneficiary to the funds collected within this joint area, has been consulted on this matter and has expressed their approval of the concept. Formal concurrence of the attached resolution from the City is required.

The attached Resolution is the result of these negotiations and is consistent with the terms discussed with the Board at the December 9, 2014 Policy Session.

The Resolution has been reviewed by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency:

- Approve the Resolution regarding Transportation System Development Charges for Certain Developments in the Happy Valley/Clackamas County Joint Transportation Area.
- Delegate authority to the Chair to execute the Resolution and any other necessary documents on behalf of the Board of County Commissioners.

Respectfully submitted,



Dan Johnson, Assistant Director

For information on this issue or copies of attachments, please contact
Dan Johnson @ 503-742-4325

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

A Resolution Regarding Transportation
System Development Charges for
Certain Developments in the
Happy Valley / Clackamas County
Joint Transportation Area



Resolution No.

Page 1 of 3

WHEREAS, the Board of County Commissioners ("Board") adopted Resolution 2012-121 on December 20, 2012 (the "Resolution") that offered a reduced transportation system development charge ("TSDC") as an incentive to certain types of commercial and residential development in the Happy Valley/Clackamas County Joint Transportation System Development Charge Area (the "Area");

WHEREAS, the City of Happy Valley adopted a concurrence to the Resolution and endorsed the system of incentives to be offered in the Area pursuant to the terms thereof;

WHEREAS, the opportunity for a party to avail themselves of a reduced TSDC rate according to the Resolution expired on December 20, 2014;

WHEREAS, during the pendency of the Resolution a development effort called the "Eagle Landing Project" proposed by a co-development team of Veritas LLC and New Hope Community Church, Inc. (together, "Developer") in the Area sought to utilize the incentives offered in the Resolution;

WHEREAS, for various reasons Developer was unable to meet all the requirements of the Resolution but undertook good faith efforts relating thereto and expended funds regarding the same;

WHEREAS, the Board has discussed the Developer's efforts to date and is desirous of seeing the continuation of the Eagle Landing Project;

WHEREAS, the Board is only willing to support a continuation of the concepts articulated in the Resolution if new, higher conditions are met;

WHEREAS, to encourage continued work on the Eagle Landing Project to provide additional employment and living opportunities for the residents of Clackamas County the Board is willing to offer a limited opportunity for reduced TSDCs in the Area pursuant to the terms and conditions set forth below;

WHEREAS, officials of the City of Happy Valley has indicated that it is desirous of the same and will consider the matter promptly;

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

A Resolution Regarding Transportation
System Development Charges for
Certain Developments in the
Happy Valley / Clackamas County
Joint Transportation Area



Resolution No.

Page 2 of 3

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

Section 1: Pursuant to Section 11.03.010(B) of the Clackamas County Code, the Board declares that it will choose to impose a Transportation System Development Charge (TSDC) that is less than the maximum allowed by law in order to promote important public policy considerations.

Section 2: In order to qualify for a reduction of TSDCs the Eagle Landing Project must meet all of the following characteristics and/or conditions:

- A. The proposed development must occur in the Area.
- B. The project must consist entirely of new development, no part of which was completed or under construction prior to January 1, 2013.
- C. The Master Plan for the Project shall include a total area equal to or exceeding two million square feet of planned developed space.
- D. The new development must be a mix of uses involving components of office, retail, and housing and related uses, with not less than 600,000 square feet of office, 400,000 square feet of retail, and 600 housing units.
- E. Developer must file a qualifying Master Plan (as described in 2.C and 2.D above) by April 15, 2015 and secure Master Plan approval by the local regulatory agencies within one (1) year of the date of the execution of this resolution; *provided, however*, that if a party other than Developer appeals the Master Plan, the deadline shall be extended by the lesser of (i) an additional 18 months or (ii) resolution of the appeal.

Section 3: A development meeting each and every one of the requirements set out above shall be able to claim a modification in the TSDC for a minimum of 560,000 square feet and a maximum of 750,000 square feet of building development included in Phase 1 of the approved Master Plan that is taxable and eligible upon completion to be added to the Clackamas County Assessor's rolls. Use of this TSDC modification shall not be in combination with any other form of credit for demolition of existing structures. Use of these demolition credits can be reserved for future phases or for use on non-taxable development included in Phase 1 of the approved Master Plan.

Section 4: The ability to claim this reduction in TSDC rates is limited to a term of three years from the date of the approved Master Plan (the "Term"). Benefits assigned through this Resolution shall be in a form of a reduction of the TSDC collection at the time of building permit

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

A Resolution Regarding Transportation
System Development Charges for
Certain Developments in the
Happy Valley / Clackamas County
Joint Transportation Area



Resolution No.

Page 3 of 3

issuance. Assessment shall be consistent with those rates in effect in 1996 as identified in Exhibit A of this Resolution.

Section 5: Application of these adjusted TSDC rates shall be limited to individual building permits for taxable construction. The rate reduction shall not be available for: (i) permits sought after expiration of the Term, (ii) structures covered by expired permits, or (iii) permits extended after the Term. Failure to secure or advance completion of a building permit where the aforementioned rate reductions have been applied shall result in a loss of the credits for the associated square footage and the TSDCs must be paid at then-current rates. More than one building may proceed concurrently with the other building permits and qualify for the rate reduction up to the maximum square footage allowed as set forth in Section 3.

Section 6: The modification of the TSDCs set out in this Resolution shall only become effective upon concurrence by the City of Happy Valley. Prior to the concurrence of the City and as a necessary precondition to the effectiveness of this Resolution, Developer shall enter into an annexation agreement on terms and conditions to be negotiated by the County, the City of Happy Valley, and the Developer.

Dated this ____ day of March, 2015.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary



DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

March 5, 2015

Development Agency Board
Clackamas County

Members of the Board:

Approval of a Disposition and Development Agreement with
Veritas Investment Co, LLC and New Hope Community Church, Inc.

Purpose/ Outcomes	Disposition and Development Agreement to convey real property from the Clackamas County Development Agency to New Hope Community Church (collectively referred to as the "developer").
Dollar Amount and Fiscal Impact	Purchase Price: \$2,400,000.00 (Supported by Appraisal)
Funding Source	Not Applicable.
Safety Impact	Not Applicable
Duration	Conveyance within approximately 90 days of execution of this agreement. Extendable subject to additional considerations.
Previous Action	Executive Session Policy Session – December 9, 2014
Contact Person	Dan Johnson, Manager – Development Agency 503-742-4325 or danjoh@co.clackamas.or.us
Contract No.	Not Applicable

BACKGROUND:

The Development Agency owns approximately five acres of property located at the intersection of SE Bob Schumacher Road and SE Stevens Way. Originally acquired in 1999 for the construction of the Bob Schumacher frontage road project, the site is currently developed with 37 apartment units known as the Stevens Orchard Apartments. The property is zoned Regional Center High Density Residential; however, the site has received conditional zone change approval to the Planned Mixed Use zoning designation.

The Agency has been approached by New Hope Community Church and Veritas Investments Co. LLC (collectively referred to as the "developer") to acquire the property for redevelopment purposes, which was presented to the Board for discussion in Executive Session. At the December 9, 2014 Policy Session, the Board directed staff to proceed with drafting the attached Disposition and Development Agreement to formalize discussions to date for consideration by the Board.

The Disposition Agreement (Attached) is the result of preceding negotiations and is consistent with the terms discussed at the December 9, 2014 Policy Session. Terms include:

- Sale of property for appraised value of \$2.4 million,
- Due Diligence period up to 90 days from date agreement is executed,
- Closing can be extended for four (4) separate periods of 30 days subject to a non-refundable sum of \$6,000 per period,
- Sales proceeds to be held in escrow for up to three (3) years,
- Releasable to the developer if specific milestones and development thresholds identified in the agreement are met or releasable to the Agency should the milestones and development thresholds not be met, and
- All escrow interest shall be released to the Agency.

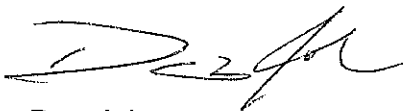
The Disposition Agreement has been reviewed by County Counsel as to form.

RECOMMENDATION:

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency:

- Approve the Disposition Agreement with Veritas Investment Co, LLC and New Hope Community Church, Inc.
- Delegate authority to the Chair to execute the Agreement and any other necessary documents on behalf of the Development Agency Board.
- Delegate staff authority to act on behalf of the Agency at closing.
- Record the Disposition Agreement in the Deed Records of Clackamas County at no cost to the Development Agency.

Respectfully submitted,



Dan Johnson
Development Agency Manager

For information on this issue or copies of attachments, please contact
Dan Johnson @ 503-742-4325

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the _____ day of _____, 2015 by and between the CLACKAMAS COUNTY DEVELOPMENT AGENCY, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "Agency"), VERITAS INVESTMENT CO, LLC, an Oregon limited liability company ("Veritas") and NEW HOPE COMMUNITY CHURCH, INC. an Oregon nonprofit corporation (the "Church") (collectively, Veritas and the Church are herein referred to as the "Developer"). The Agency and the Developer hereby agree as follows:

ARTICLE 1: SUBJECT OF AGREEMENT

Section 1.1: Purpose of Agreement.

The purpose of this Agreement is to effectuate a development proposal for property located within the Clackamas Town Center Urban Renewal Plan ("Plan") by providing for the disposition of certain real property and the development of the "Developer Improvements" on the "Property" (as such terms are hereinafter defined). The Agency has found that the development of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the County of Clackamas, Oregon (the "County") and the Plan and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

Section 1.2: The Plan.

The Plan was approved and adopted on December 30, 1980 by Resolution and Order No. 80-2685 of the Clackamas County Commission, as amended from time to time, and the Plan, together with such amendments are incorporated herein by this reference. This Agreement is subject to the provisions of the Plan. Agency represents and warrants that the Plan, as it presently exists, is in full force and effect and that this Agreement, and the obligations of Agency set forth in this Agreement, are all in accordance with the Plan. A copy of the Plan is on file in the Clackamas County Department of Transportation and Development.

Section 1.3: The Property.

The "Property" consists of certain real property owned by the Agency (the "Steven's Orchard Parcel"), as well as certain real property owned by the Developer, all located in Clackamas County, shown on the map attached hereto as **Exhibit "A"**. The Steven's Orchard Parcel is more particularly described in the legal description attached hereto as **Exhibit "B"** and the remainder of the Property is more particularly described in the property descriptions attached hereto as **Exhibit "C"**.

Section 1.4: The Project or Developer Improvements.

The term "Project" or "Developer Improvements" shall mean the improvements required to be constructed by Developer on the Property pursuant to this Agreement, and as set forth on a master plan to be filed with the appropriate jurisdiction or jurisdictions, as required under Section 3.5. The Developer Improvements shall include at least two million square feet of new construction which shall include a mix of uses and shall incorporate, at a minimum, 600,000 square feet of office use, 400,000 square feet of retail use, and 600 housing units. Once the master plan, described below in Section 3.5, is approved by the appropriate jurisdiction or jurisdictions, the parties agree that the approved master plan shall be the controlling document for determining what is included within the scope of the terms "Project" or "Developer Improvements."

Section 1.5: The Agency.

The Agency is a corporate body politic of the State of Oregon, as the duly designated Urban Renewal Agency of Clackamas County, Oregon, exercising governmental functions and powers and organized and existing under Oregon Revised Statutes, Chapter 457. The term "Agency" as used in this Agreement includes the Urban Renewal Agency of Clackamas County, Oregon and any assignee of or successor to its rights, powers, duties and responsibilities. The principal offices and mailing address of the Agency for purposes of this Agreement is:

Clackamas County Development Agency
c/o Development Agency Manager
150 Beavercreek Road
Oregon City, OR 97045

Section 1.6: The Developer.

The Developer is Veritas Investment Co, LLC, an Oregon limited liability company, and New Hope Community Church, Inc., an Oregon nonprofit corporation. The term "Developer" as used in this Agreement is Veritas Investment Co, LLC, New Hope Community Church, Inc, and any affiliate of Developer, and any permitted assignee of Developer, as provided in Section 1.7 below, and any permitted assignee of or successor to its rights, powers, duties and responsibilities. The principal office and mailing address of the Developer for purposes of this Agreement is:

Veritas Investment Co
c/o Neil Nedelisky, Pres.
10220 SE Causey Ave.
Happy Valley, OR 97086

The principal office and mailing address of the Church for purposes of this Agreement is:

New Hope Community Church, Inc.
c/o Jerry Schmidt
11731 S.E. Stevens Road
Happy Valley, Oregon 97086

The principal office and mailing address of Veritas for purposes of this Agreement is:

Veritas Investment Co
c/o Neil Nedelisky, Pres.
10220 SE Causey Ave.
Happy Valley, OR 97086

Section 1.7: Prohibition Against Change in Ownership, Management and Control of Developer.

The qualifications and identity of Developer and its members or officers are of particular concern to Agency and were essential to the selection of Developer by Agency for development of the Property. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein. All assignments of this Agreement shall require written consent of Agency, which consent may be granted in the Agency's sole and absolute discretion. Subject to the notice and opportunity to cure provisions set forth in Article 5 below, this Agreement may be terminated by Agency at its option before Closing if there is any change (voluntary or involuntary) in the ownership, management or control of Developer or any successor-in-interest of Developer not consistent with this Agreement.

ARTICLE 2: ASSEMBLY OF THE SITE

The Agency owns fee title to the Steven's Orchard Parcel and shall convey the Steven's Orchard Parcel to the Church subject only to those title and survey exceptions agreed to by both parties pursuant to this Article 2 ("Permitted Exceptions").

Section 2.1 Title Commitment.

In the event the Church desires to acquire title insurance, then within ten (10) days after the Effective Date, the Church, at the Church's cost and expense, will cause the Title Company to furnish to the Church its preliminary title report on the Steven's Orchard Parcel (the "Preliminary Commitment"), along with copies of all documents that give rise to exceptions listed in the report (the "Underlying Documents"). Within ten (10) days of receiving the Preliminary Commitment and the Underlying Documents, the Church will give Agency written notice setting forth the exceptions that are not acceptable to the Church (the "Unacceptable Exceptions"). All exceptions other than those timely objected to will be deemed acceptable to the Church as Permitted Exceptions. Agency will have ten (10) days after receiving the Church's notice within which to notify the Church in writing whether Agency is willing or able to eliminate the Unacceptable Exceptions. If Agency agrees to eliminate the Unacceptable

Exceptions, Agency will be obligated to do so at its cost and as of the Closing Date. If Agency is unwilling or unable to eliminate the Unacceptable Exceptions, the Church may terminate this Agreement or elect to accept the Unacceptable Exceptions and proceed to close escrow by giving written notice to Agency within ten (10) days of receiving notice from Agency. If the Church does not provide timely written notice of its election to terminate this Agreement, it will be deemed to have waived its objections to the Unacceptable Exceptions and all of the Unacceptable Exceptions shall become Permitted Exceptions.

Section 2.2 Survey.

Within five (5) days after the Effective Date, Agency shall deliver the most recent survey of the Steven's Orchard Parcel, if any, in its possession to Developer (the "Existing Survey"). At its expense, Developer may order an update to the Existing Survey (or if there is no Existing Survey, a new survey) (the Existing Survey, as updated, or a new survey, the "Survey"). If applicable, Developer shall deliver a copy of the Survey to Agency promptly upon receipt. Within ten (10) days after receipt of the Survey, Developer may deliver to Agency, in writing, any objections to any matters shown on the Survey (the "Objections"). Developer's failure to timely object to any such matters shall be deemed to constitute Developer's approval thereof and such shall then become Permitted Exceptions, as defined in Article 2. If Developer timely objects to any matters shown on the Survey, then Agency shall have the right, but not the obligation, to agree in writing to cure before Closing such Objections, or to decline to cure such Objections. Agency will have ten (10) days after receiving Developer's Objections within which to notify Developer in writing whether Agency is willing or able to cure the Objections. If Agency agrees to cure the Objections, Agency will be obligated to do so at its cost and as of the Closing Date. If Agency is unwilling or unable to cure the Objections, Developer may terminate this Agreement or elect to accept the Objections and proceed to close escrow by giving written notice to Agency within ten (10) days of receiving notice from Agency. If Developer does not provide timely written notice of its election to terminate this Agreement, it will be deemed to have waived its Objections and all of the Objections shall become Permitted Exceptions. Notwithstanding anything to the contrary above, although Developer may elect to obtain a Survey, Developer is not obligated to obtain a Survey.

ARTICLE 3: DISPOSITION OF STEVEN'S ORCHARD PARCEL

Section 3.1: Earnest Money, Sale and Purchase.

In accordance with, and subject to all the terms, covenants, and conditions of this Agreement, the Agency agrees to sell to the Church, and the Church agrees to purchase from Agency, the Steven's Orchard Parcel, for the amount of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 DOLLARS (\$2,400,000.00) (the "Purchase Price") in the manner as hereinafter provided.

The Church or the Developer shall, within ten (10) days of execution of this Agreement, deliver into escrow the sum of \$10,000.00 as earnest money in the form of cash, a certified check, or an irrevocable letter of credit reasonably satisfactory to the Agency (the "Earnest Money"). If the Church or the Developer fails to timely deposit the Earnest Money as provided

above, this Agreement shall terminate and neither Developer nor Agency shall have any further obligations to one another. Provided Developer is not in default under this Agreement, the Earnest Money shall be fully refundable to the Church or the Developer so long as Developer's election to terminate is received in writing by the Agency prior to the expiration of Developer's Due Diligence period, described in Section 3.3 below. Upon expiration of Developer's Due Diligence period, the Earnest Money shall become nonrefundable. At closing, the Earnest Money shall be credited toward payment of the Purchase Price.

Section 3.2: Conveyance.

Conveyance of the Steven's Orchard Parcel shall be made on or before the date established in Section 3.4.3 below, in an escrow account established at a title company that is mutually acceptable to all parties. The Church agrees, upon satisfaction of the conditions precedent for conveyance of the Steven's Orchard Parcel, to accept conveyance of the Steven's Orchard Parcel and pay into escrow the Purchase Price for the Steven's Orchard Parcel in the amount set forth above in the form of cash or immediately available funds. The Agency and Developer agree to perform all acts necessary for conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions and will execute escrow instructions consistent with this Agreement and close the transaction as provided herein. The escrow shall close and the conveyance of the Steven's Orchard Parcel ("Closing") shall be made in accordance with Section 3.4 below after satisfaction or written waiver of the conditions precedent to conveyance contained in this Agreement and on or before the date set forth pursuant to Section 3.4.3 below.

The Church shall accept title and possession on or before the date referred to above, unless such date is extended as provided herein.

Section 3.3: Due Diligence

Developer shall have up to ninety (90) days after the execution of this Agreement (the "Effective Date") to complete its environmental due diligence and approve of the Steven's Orchard Parcel. During this period, the Agency will provide Developer access to the Property as is reasonably necessary to complete its environmental due diligence. Developer hereby indemnifies and holds the Agency and the County, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any activity of Developer, its agents, employees and contractors performed and conducted on the Steven's Orchard Parcel for the purposes of completing its due diligence. Due diligence shall include, without limitations, physical inspections of the Steven's Orchard Parcel; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments. Developer agrees to provide the Agency with copies of all materials obtained or produced as a result of its due diligence investigation. Developer may notify the Agency in writing, with supporting documentation, of any issues which may affect Developer's willingness or ability to purchase the Steven's Orchard Parcel. Upon receipt of such notice and supporting documentation by the Agency, the parties shall have sixty (60) days to negotiate the impact, if any, of the identified issue or issues. If the parties cannot reach a mutually agreeable resolution prior to the end of the sixty (60) day period, either party may terminate this Agreement. If no issues are raised by Developer, or if neither party

chooses to terminate the Agreement after discussion of the issues, then the Steven's Orchard Parcel shall be transferred as-is, with no representations or warranties from the Agency regarding environmental issues, and an appropriate release from Developer as to the Agency or County's liability for environmental issues.

Developer shall have the option to extend the due diligence period set forth above for four (4) separate periods of thirty (30) days each. Developer may exercise each option by delivering written notice to the Agency of its intent to extend the due diligence period prior to the expiration of the due diligence period or any extension thereto, and delivering the nonrefundable sum of \$6,000 to the Title Company. The nonrefundable sum of \$6,000 for each of the 30 day extension periods shall not be applied to the Purchase Price or any costs or fees associated with this transaction at Closing. The Title Company shall release each \$6,000 payment to the Agency immediately upon written request by the Agency to do so.

Section 3.4: Conditions Precedent to Obligation to Convey and Purchase.

3.4.1 So long as Developer is not in default under the terms of this Agreement, the Agency shall become obligated to convey the Steven's Orchard Parcel to the Church once the notice attached hereto as **Exhibit "E"**, has been provided to the occupants of the Steven's Orchard Parcel, and the Purchase Price required for conveyance of the Property has been tendered to the Title Company, along with all fees and costs described below in Section 3.8, including, but not limited to, recording, title, escrow and closing fees, at or before Closing.

3.4.2 The Church's obligation to purchase the Property is subject to the satisfaction or occurrence of the following conditions precedent to the reasonable satisfaction of the Church:

3.4.2.1 There shall be no material breach of this Agreement by the Agency.

3.4.2.2 Developer has had the opportunity to perform due diligence and raise issues arising there from as allowed under this Agreement.

3.4.2.3 The Agency has tendered to the Title Company a Bargain and Sale deed, as required in Section 3.6 of this Agreement, in a form approved by both parties.

3.4.3 Closing shall occur on or before the thirty (30) days following the expiration of the due diligence period, set forth in Section 3.3, or any extension thereto.

3.4.4 The agency will join in any application(s) necessary for developer to obtain Master Plan Approval by the governing authority.

Section 3.5: Conditions for Release of Purchase Price to the Church.

The Title Company shall retain the funds for the Purchase Price in escrow and shall only release the funds for the Purchase Price to the Church upon the satisfaction of all of the following conditions, as determined in the sole discretion of the Agency. Failure to meet any of the conditions of the release set forth below shall result in the immediate release of the Purchase Price to the Agency. Any interest which may accrue on the Purchase Price during its time in escrow, whether the Purchase Price be distributed to the Church or the Agency, the interest accrued shall be distributed to the Agency. The conditions for release of the Purchase Price are as follows:

3.5.1 The Developer shall file the Master Plan for the Eagle Landing development by April 15, 2015, and secure master plan approvals within one (1) year of the date of execution of this Agreement; provided, however that if a party other than Veritas or the Church appeals the master plan decision, the deadline shall be extended by the lesser of:

- (i) an additional 18 months, or
- (ii) resolution of the appeal.

3.5.2 Agency receives evidence, satisfactory to it in its sole and absolute discretion, that the Developer has received final certificates of occupancy for the initial tenant or owner occupancy for at least 560,000 square feet of taxable building development added to the Clackamas County Assessor's rolls, and that taxable building development is on property subject to an annexation agreement with the City of Happy Valley.

3.5.3 The certificate of occupancy for such taxable building development must be received by the Agency no later than four (4) years after the date of the approved master plan.

Section 3.6: Deed Form.

The Agency shall convey to the Church fee simple title to the Steven's Orchard Parcel in the condition provided in Section 3.7 of this Agreement, and subject to the covenants described in Article 4, by Bargain and Sale Deed, duly executed, acknowledged and delivered in a form that is mutually acceptable to the parties (the "Deed"). Conveyance of title to the Property to the Church shall conclusively establish compliance by Developer with all conditions precedent to the conveyance of the Property as contained herein.

Section 3.7: Condition of Title.

The Agency shall convey to the Church fee simple title to the Steven's Orchard Parcel free and clear of all liens and encumbrances except:

3.7.1 The Permitted Exceptions, as defined in Article 2 and listed in **Exhibit "D"**; and

3.7.2 Such regulations and controls, covenants and restrictions that may be imposed

on the Property by the Developer and Agency consistent with this Agreement or land use approvals obtained by Developer for development of the Property and the Developer Improvements.

Section 3.8: Title Insurance, Property Taxes and Closing Costs.

3.8.1 The Church shall be responsible for obtaining title insurance for the Property.

3.8.2 Recording costs will be paid by the Developer. Real property taxes for the current year (if any) shall be prorated as of the date of the delivery of the Deed to the Church. All real property taxes subsequently assessed and levied against the Property shall be paid by the Church. Agency shall be responsible for any and all real property taxes for the period of time prior to the delivery of the Deed, and the Church subsequent thereto. Escrow fees and any excise or conveyance tax that may be imposed, shall be paid by the Church or the Developer.

Section 3.9: Conditions of the Property.

The Church acknowledges that it is purchasing the Property "As Is," except as provided otherwise herein.

ARTICLE 4: USE OF THE PROPERTY

Section 4.1: Discrimination.

The Developer covenants for itself and its successors and assigns that it will not discriminate against any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry or disability, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property. The foregoing covenant shall run with the land.

Section 4.2: Effect of Covenants.

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on and for the benefit of the Agency, the County, Developer and Developer's successors and assigns, and further successors-in-interest to the Property or any part thereof.

Section 4.3: Breach of Covenants.

In the event the Developer or an Owner, or their lessee, licensee, agent or other occupant, uses the Property in a manner inconsistent with Article 4 of this Agreement, the Agency may bring all appropriate legal and equitable actions.

Section 4.4: Local, State and Federal Laws.

Developer shall carry out the construction of the Developer Improvements in conformity with all applicable local, state and federal laws.

Section 4.5: Notice of Default to Holders; Right to Cure.

Unless otherwise provided herein, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the holder of any such Mortgage or any owner of the Property or any part thereof, whose title thereto is acquired by foreclosure, trustee sale or otherwise.

ARTICLE 5: DEFAULTS AND REMEDIES

Section 5.1: Default/General.

Subject to the extensions of time set forth in Section 6.4, and subject to the notice and opportunity to cure provisions contained in this Agreement, the failure or delay by any party to perform any term or provision of this Agreement constitutes a default under this Agreement. Any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies to enforce a term or provision of this Agreement.

Section 5.2: Applicable Law.

The law of the State of Oregon shall govern the interpretation and enforcement of this Agreement without giving effect to the conflicts of law provisions thereof.

Section 5.3: Acceptance of Service of Process.

In the event that any legal or equitable action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service on the Manager of the Agency, or in such other manner as may be provided by law.

In the event that any legal or equitable action is commenced by the Agency against the Developer, service of process on either Veritas or the Church shall be made in such manner as may be provided by law.

Section 5.4: Rights and Remedies Are Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same default or any other default by the other party.

Section 5.5: Termination by Agency Prior to Conveyance.

In the event that any of the following occur prior to the conveyance of title to the Steven's Orchard Parcel, then this Agreement, and any rights of the Church, or any assignee or transferee, in Article 3 of this Agreement, or the Steven's Orchard Parcel, or any portion thereof, shall, at the option of the Agency, be terminated by the Agency, in which event the Developer shall pay any fees related to title, escrow and closing, and neither the Developer nor the Agency shall have further rights against or liability to the other under Article 3 of this Agreement:

5.5.1 Developer (or any successor in interest thereto) assigns or attempts to assign this Agreement or any rights therein, or to the Property, in violation of this Agreement;

5.5.2 There is a change in the ownership of the Developer contrary to the provisions of Section 1.7 hereof; or

5.5.3 The Church does not tender the Purchase Price or take title to the Property on tender of conveyance by the Agency pursuant to this Agreement after Developer has satisfied or obtained waiver of all conditions precedent set forth in Section 3.4.

ARTICLE 6: GENERAL PROVISIONS

Section 6.1: Attorneys Fees.

The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

Section 6.2: Notice, Demands and Communications Between the Parties.

Formal notices, demands and communications between the Agency and the Developer shall be in writing to the addresses shown in Section 1.5 and Section 1.6 of this Agreement and to the attention of the person indicated.

Section 6.3: Nonliability of Officials and Employees.

No member, agent, official or employee of any of the parties shall be personally liable to the other parties or any successor-in-interest thereto, in the event of any default or breach by a party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

Section 6.4: Unavoidable Delay; Extension of Time of Performance.

In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to causes that are unforeseeable, beyond its control and without its fault or negligence, including, but not limited to, war, insurrection, strikes, lockouts, labor disputes, riots, volcanoes, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemic, and quarantine restrictions. In the

Page 10 - DISPOSITION AND DEVELOPMENT AGREEMENT (Veritas Investment/New Hope Community Church)

event of delay, the party delayed shall give written notice of the delay and the reason therefore to the other party within thirty (30) days after the delayed party learns of the delaying event. An extension of time for any such cause shall be for the period of duration of the cause.

Section 6.5: Merger.

None of the provisions of this Agreement are intended to or shall be merged by reason of any deed referred to herein and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

Section 6.6: Headings.

Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 6.7: Time of Essence.

Time is of the essence of this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.

Section 6.8: Severability.

Except for the provisions of Article 4, if any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

Section 6.9: No Partnership.

Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

Section 6.10: Nonwaiver of Government Rights.

Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, the County, or any other agency with respect to any discretionary action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required. This provision shall not be interpreted in a manner that renders moot or ineffective the protections granted Developer by provisions found in paragraph 3.4.4.

Section 6.11: Entire Agreement; Waivers.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Agency and the Developer, and all amendments thereto must be in writing by the appropriate authorities by the Agency and the Developer.

Section 6.12: Counterparts

This Agreement may be executed in counterparts.

ARTICLE 7: SUCCESSOR INTEREST

This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

ARTICLE 8: STATUTORY DISCLAIMER

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

"AGENCY"

CLACKAMAS COUNTY DEVELOPMENT
AGENCY, a corporate body politic

By: _____
Chair

"VERITAS"

VERITAS, LLC, an Oregon limited liability
company

By: _____

"CHURCH"

NEW HOPE COMMUNITY CHURCH, INC., an
Oregon nonprofit corporation

By: _____

STATE OF OREGON)
) ss.
County of Clackamas)

On this ____ day of _____, 2015, before me the undersigned, a notary public in and for such state, personally appeared _____, personally known to be (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the Chair of the Clackamas County Development Agency, a corporate body politic, and acknowledged to me that said Agency executed the within instrument.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of _____)

On this _____ day of _____, 2015, before me the undersigned, a notary public in and for such state, personally appeared _____, personally known to be (or proved to me on the basis of satisfactory evidence) the person who executed the within instrument as _____ of Veritas Investment Co., LLC, and acknowledged to me that said company executed the within documents.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of _____)

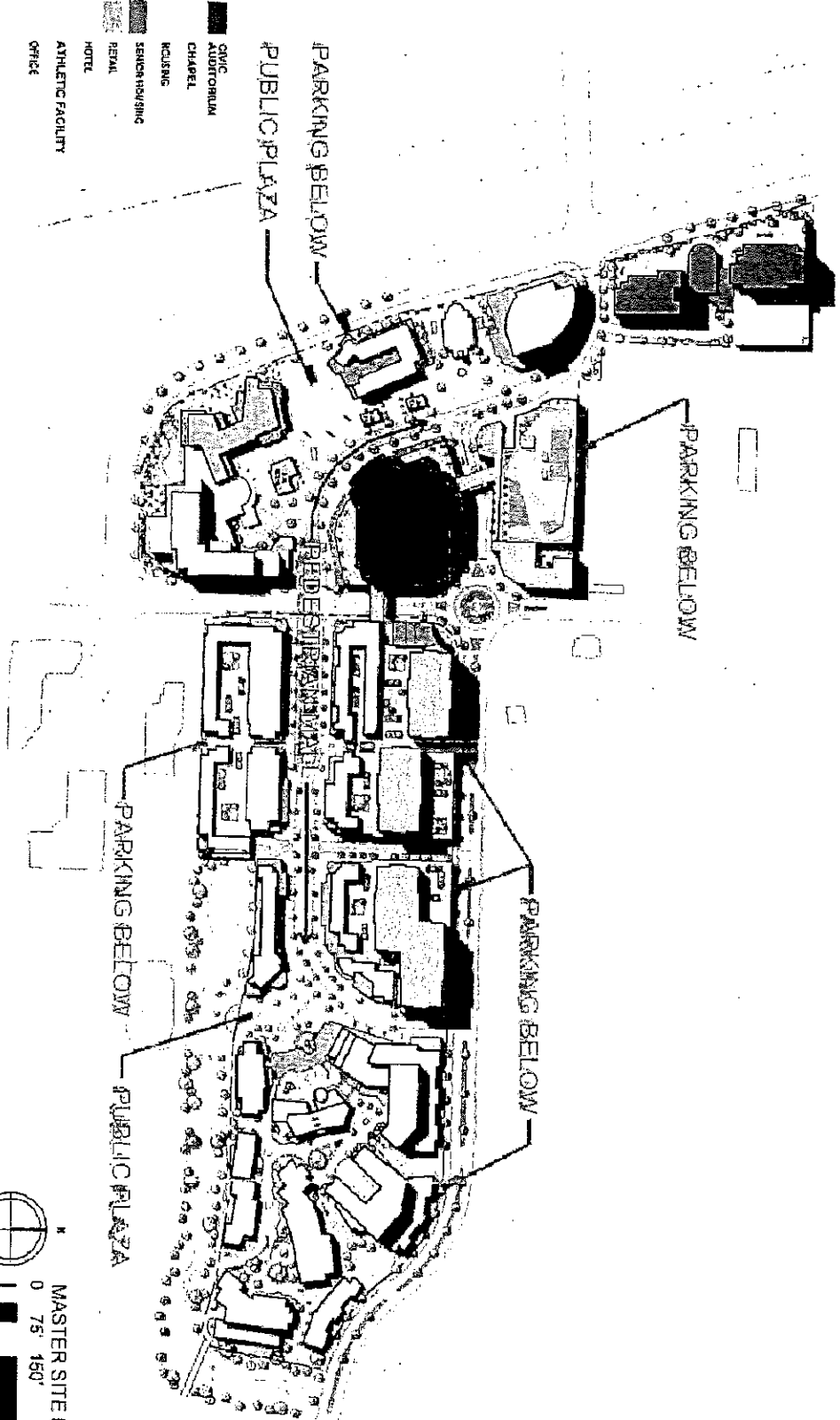
On this _____ day of _____, 2015, before me the undersigned, a notary public in and for such state, personally appeared _____, personally known to be (or proved to me on the basis of satisfactory evidence) the person who executed the within instrument as _____ of New Hope Community Church, Inc., and acknowledged to me that said company executed the within documents.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

LIST OF EXHIBITS

EXHIBIT A	Map
EXHIBIT B	Property Description – Steven’s Orchard Parcel
EXHIBIT C	Property Descriptions – Remainder of Property
EXHIBIT D	Exceptions to Title as Contained in Preliminary Title Report
EXHIBIT E	Steven’s Orchard Resident Notice

EAGLE LANDING



SIENNA
architecture company

Exhibit A – For Illustration Purposes

EXHIBIT B

All that portion of that property located in the Southeast 1/4 of Section 33, Township 1 South, Range 2 East, of the Willamette Meridian, described in that deed to Clackamas County Development Agency, recorded November 24, 1999 as Document No. 99-109960, Deed Records of Clackamas County, Oregon, which lies West, North and East of the following described line:

Beginning at a point that is 10.417 meters (34.18 feet) westerly from and perpendicular to Engineer's "SR" Centerline Station "SR"6+143.125 (in meters); thence southerly in a straight line to a point 14.555 meters (47.75 feet) westerly from and perpendicular to Engineer's "SR" Centerline Station "SR" 6+062.788 (in meters) ; thence continuing southerly in a straight line to a point that is 14.555 meters (47.75 feet) westerly from and perpendicular to Engineer's "SR" Centerline Station "SR"6+021.889 (in meters), which point is also 21.942 meters (71.99 feet) northerly from and perpendicular to Engineer's "FR" Centerline Station "FR"1+337.031 (in meters); thence southwestwardly in a straight line to a point that is 13.500 meters (44.29 feet) northerly from and perpendicular to Engineer's "FR" Centerline Station "FR"1+348.556 (in meters); thence westerly and northerly along a line parallel with and 13.500 meters (44.29 feet) from Engineer's "FR" Centerline to a point that is 13.500 meters (44.29 feet) easterly from and perpendicular to Engineer's "FR" Centerline Station "FR"1+636.191PC and there terminating.

Said Engineer's "SR" Centerline is described as follows:

Beginning at a point on the center line of County Road Number 1258, also known as S.E. Stevens Road, said center line being on the north-south center line of the southeast quarter of said Section 33, said point of beginning bearing North 00°55'52" East, along the north-south center line of the southeast quarter of said Section 33, a distance of 358.296 meters (1175.51 feet) from the southwest corner of the southeast quarter of the southeast quarter of said Section 33, said point of beginning of SR Line being at Engineers Station 6+000.000, SR Line; thence, from said point of beginning, North 00°55'52" East, along the center line of County Road Number 1258, which is also along the north-south center line of the southeast quarter of said Section 33, a distance of 200.000 meters (656.17 feet) to the point of termination at Engineers Station 6+200.000, SR Line.

Said Engineer's "FR" Centerline is described as follows:

Beginning at a point on the center line of S.W. Sunnyside Road at Engineers Station 514+80.06 (in feet) as said center line is delineated in the Oregon Department of Transportation map referred to as "Oregon State Highway Division, Located Line, S.E. 97th Ave. - S.E. 122nd Ave. Section, Sunnyside Road, Clackamas County, Drg. No. 9B-18-14" with a final revision date of March, 1984, said point of beginning bearing North 88°25'27" West, along the south line of said Section 33, a distance of 232.125 meters (761.56 feet) and North 00°08'30" West, a distance of 115.212 meters (377.99 feet) from a 4" aluminum cap at the southeast corner of said Section 33, said point of beginning being at Engineers Station 0+979.918, FR Line; thence, from said point of beginning, North 00°08'30" West, a distance of 106.512 meters (349.45 feet) to a point of curvature at Engineers Station 1+086.430, FR Line; thence, along the arc of a 107.500 meter (352.69 foot) radius curve, concave southwestwardly, the central angle of which is 58°50'25", the long chord of which bears North 29°33'43" West, a distance

of 105.610 meters (346.49 feet), an arc distance of 110.398 meters (362.20 feet) to a point of tangency at Engineers Station 1+196.828, FR Line; thence, North 58°58'55" West, a distance of 65.969 meters (216.43 feet) to a point of curvature at Engineers Station 1+262.797, FR Line; thence, along the arc of a 107.500 meter (352.69 foot) radius curve, concave southwesterly, the central angle of which is 30°17'51", the long chord of which bears North 74°07'51" West, a distance of 56.185 meters (184.33 feet), an arc distance of 56.845 meters (186.50 feet) to a point of tangency at Engineers Station 1+319.642, FR Line; thence, North 89°16'47" West, a distance of 77.585 meters (254.54 feet) to a point of curvature at Engineers Station 1+397.227, FR Line; thence, along the arc of a 90.000 meter (295.28 foot) radius curve, concave northeasterly, the central angle of which is 68°43'22", the long chord of which bears North 54°55'06" West, a distance of 101.594 meters (333.31 feet), an arc distance of 107.950 meters (354.17 feet) to a point of tangency at Engineers Station 1+505.177, FR Line; thence, North 20°33'25" West, a distance of 131.014 meters (429.84 feet) to a point of curvature at Engineers Station 1+636.191, FR Line; thence, along the arc of a 110.000 meter (360.89 foot) radius curve, concave northeasterly, the central angle of which is 05°41'08", the long chord of which bears North 17°42'50" West, a distance of 10.911 meters (35.80 feet), an arc distance of 10.916 meters (35.81 feet) to a point of tangency at Engineers Station 1+647.107, FR Line; thence, North 14°52'16" West, a distance of 126.564 meters (415.24 feet) to the center line of the newly designed center line of S.E. Monterey Avenue, referred to henceforth as the MA Line, at Engineers Station 7+309.362, MA Line, which is also at Engineers Station 1+773.670, FR Line; thence, continuing North 14°52'16" West, a distance of 226.441 meters (742.92 feet) to Engineers Station 2+000.111, FR Line, said point bearing North 02°03'13" East, along the north-south center line of said Section 33, a distance of 654.209 meters (2,146.35 feet) to the MA Line at Engineers Station 7+162.091, MA Line and North 86°51'48" East, along the MA Line, a distance of 147.271 meters (483.17 feet) to Engineers Station 7+309.362, MA Line, and North 14°52'16" West, a distance of 226.441 meters (742.92 feet) from the south quarter corner of said Section 33.

EXHIBIT C

Tax lot 12E33DB-200, Deed no. 83-35576; Tax lot 12E33DB-104, Deed no. 80-8412; Tax lot 12E33DB-400, Deed no. 80-8415; Tax lot 12E33DB -500, Deed no. 80-8412, Tax lot 12E33DB -602, Deed no. 80-22510; Tax lot 12E33DB-603, Deed no. 83-35575; Tax lot 12E33DC-100, Deed no. 88-31876.

Excluding Property as described in Deed no. 99-091731.

ALONG WITH:

PARCEL I: LOTS 1-6, INCLUSIVE, EAGLE LANDING (PLAT BOOK 126, PAGE 0018), CLACKAMAS COUNTY, OREGON, AND PARCEL II: AN EASEMENT FOR RECIPROCAL ACCESS AS DELINEATED ON THE RECORDED PLAT OF EAGLE LANDING (PLAT BOOK 126, PAGE 0018) (the "Property")

SUBJECT to all easements, rights-of-way, protective covenants and mineral reservations of record, if any.

EXHIBIT D

PERMITTED EXCEPTIONS

1. The premises herein described are within and subject to the statutory powers, including the power of assessment of Clackamas County Service District 1.
2. The premises herein described are within and subject to the statutory powers, including the power of assessment of Mt. Scott Joint Water District.
3. Access Restrictions, including the terms and provisions thereof, contained the Deed from Bonnie Jeanne Davis, formerly Bonnie Jeanne Wright, Katherine Stedman, Jesse J. Mosso and Juanita Marie Mosso also known as Juanita M. Mosso, husband and wife, to the State of Oregon, by and through its State Highway Commission, dated October 11, 1971 and Recorded November 29, 1971 with Fee No. 71 33607 in the Records of Clackamas County, Oregon, affecting Parcel 2.
4. Access Restrictions, including the terms and provisions thereof, contained in the Deed from Thomas J. Matthews, Sr. and Hallie C. Matthews, husband and wife, to the State of Oregon, by and through its State Highway Commission dated January 10, 1972 and Recorded February 1, 1992 with the Fee No. 72 02513 in the Records of Clackamas County, Oregon for Parcel 1.
5. Easement, including the terms and provisions thereof from James W. Jamison and Palmer Hewlett to Clackamas County, Oregon, Recorded July 9, 1974 with Fee No. 74 19162 in the Records of Clackamas County, Oregon for sewer and rights incidental thereto and affecting the most Westerly portion of Parcel 2.
6. Easement, including the terms and provisions thereof from Palmer A. Hewlett and James W. Jamison to Clackamas County, Oregon and Recorded on January 24, 1975 with Fee No. 75 02046 in the Records of Clackamas County, Oregon for Sewer and rights incidental thereto which affects the Westerly 20 feet of Parcel 1.
7. Easement, including the terms and provisions thereof from The Robert Randall Company to Portland General Electric Company, an Oregon corporation, Recorded February 20, 1980 with Fee No. 80 06307 in the Records of Clackamas County, Oregon for Electric Power Line Easement and rights incidental thereto affecting ten feet in width along the most Northerly line of Parcel 1.
8. Easement, including the terms and provisions thereof from Robert D. Randall to Clackamas County, Oregon, Recorded December 29, 1981 with Fee No. 81 44145 in the Records of Clackamas County, Oregon for storm sewer drainage and rights incidental thereto which affects the most Southeasterly portion of Parcel 1 and the most Northeasterly portion of Parcel 2.
9. Agreement, including the terms and provisions thereof between Gramor Development, Inc., a Washington corporation and Glenborough Operating Co. Ltd., a California limited partnership, dated April 6, 1992, Recorded May 8, 1992 with Fee No. 92 27762 in the Records of Clackamas County, Oregon.
10. Encroachments of Landscaping, Trees and Irrigation System along the South line of Parcel 2 as disclosed on the Alta Survey of Stevens Orchards by Chase, Jones & Associates, Inc.; dated December 23, 1994 as Project No. 9059, and as disclosed by item #12 on Exhibit B of the Deed of Trust recorded January 9, 1995 as Fee No. 95001624.
11. Unrecorded Lease, including the terms and provisions thereof from S.F. Property Investments, L.L.C., Lessor to Web Service Company, Inc., Lessee as evidenced by Memorandum of Lease Recorded August 25, 1997 with Fee No. 97064966 in the Records of Clackamas County, Oregon for common laundry facilities.

12. Easement for Power and Anchor along East line of Parcel 1 as disclosed on the ALTA Survey of Stevens Orchards by Chase, Jones & Associates, Inc., dated December 23, 1994 as Project No. 9059, and as disclosed by item #13 on Exhibit B of Deed of Trust recorded January 9, 1995 as Fee no. 95001624.

Exhibit E.

NOTICE OF OWNERSHIP CHANGE

Dear Resident:

This is to inform you that, effective _____, 2015, New Hope Community Church Inc. will assume ownership of this property. The change in ownership will not affect the terms of your rental agreement. Until further notice, please direct your rental payments and all correspondence to _____.

If you have any questions about this notice, please contact _____ at _____.

Sincerely,

March 5, 2015

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a Revenue Agreement with Central City Concern for
Funding of Mental Health Services at Chez Am Apartments

Purpose/Outcomes	Central City Concern (CCC) pays the Behavioral Health Division (BHD) to provide on-site services to residents of the Chez Ami Apartments, a 40-unit affordable housing development for low-income people with disabilities.
Dollar Amount and Fiscal Impact	This is a revenue agreement. BHD will receive a total of \$191,092.
Funding Source	CCC received a Continuum of Care grant through the United States Department of Housing and Urban Development (HUD), which provides grant funds to CCC to be allocated for services at the Chez Ami Apartments – No County general funds are involved.
Safety Impact	None
Duration	Effective February 1, 2015 and terminates on January 31, 2016
Previous Board Action	The original agreement has been in place since February 2002. The last agreement was approved by the Board of County Commissioners on January 24, 2013 - agenda item 012413-A3.
Contact Person	Jill Archer, Director – Behavioral Health Division - 742-5336
Contract No.	7065

BACKGROUND:

In August 2000, the Board of County Commissioners authorized H3S to purchase a site for the Chez Ami Apartments located at 8358 SE Causey Avenue in Portland. The Board also approved a long-term ground lease with CCC to assure the use of the property for the term of the lease to serve low-income people with disabilities within Clackamas County.

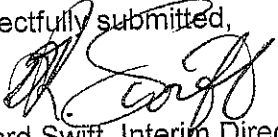
CCC received a Continuum of Care (CoC) grant through HUD for Chez Ami operations and supportive services; however, none of the funds received through the CoC grant for operations or services can be considered income to CCC. Federal layering rules do not allow the use of CoC operating and service funds with tax credits and other Federal funds in the same project. This is one of two agreements to remedy the tax credit accounting problem.

This agreement commences February 1, 2015 and terminates January 31, 2016. County Counsel reviewed and approved this agreement February 19, 2015. This contract is retroactive due to staff turnover.

RECOMMENDATION:

Staff recommends the Board approval of this agreement and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Swift". The signature is stylized and cursive, written over the text "Respectfully submitted,".

Richard Swift, Interim Director

**CHEZ AMI
SERVICES AGREEMENT**

This Agreement is made this 1st day of February, 2015, between **CENTRAL CITY CONCERN**, an Oregon non-profit corporation ("Central City"), and **CLACKAMAS COUNTY BEHAVIORAL HEALTH DIVISION** ("CCBHD").

- A. Central City, as general partner of Chez Ami, is general manager of a 40-unit affordable housing project that delivers mental health services to residents of Clackamas County, Oregon, and provides affordable housing to such residents in connection with the delivery of those services (the "Project").
- B. Central City has received a Continuum of Care Program ("CoC") grant from the United States Department of Housing and Urban Development ("HUD"), which provides grant funds to Central City in connection with the Project.
- C. The parties desire to enter into this agreement to memorialize certain understandings regarding the funding of Project services.

NOW, THEREFORE, the parties agree as follows:

- 1. Central City HUD CoC Grant: Portions of Central City's CoC grant will be dedicated to Project services. Central City will pay to County on behalf of CCBHD One Hundred Ninety One Thousand Ninety Two Dollars (\$191,092.00), all from Central City's CoC grant in order to fund the Project services delivered through CCBHD. Payment will be made in monthly installments as invoiced by CCBHD on the first day of each month during the year.

Central City will be considered in breach of contract if payment is not received within 30 days of due date.

- 2. County on behalf of CCBHD, as subrecipient of Central City's CoC grant, agrees to the following terms as required by HUD:
 - a) CCBHD will maintain the confidentiality of records pertaining to any individual or family that is provided treatment services through the Project.
 - b) CCBHD will provide information, such as data and reports, as required by HUD or Central City.
 - c) CCBHD will operate the Project in accordance with the provisions of the Title IV of the McKinney-Vento Homeless Assistance Act 42 U.S.C 11301 et seq and all requirements under 24 CFR 578.

Chez Ami - Services Agreement

Page 2

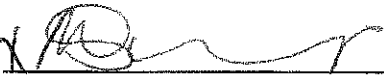
3. Annual Review. The agreement contained herein is subject to annual review and availability of funds. The parties, nonetheless, agree to continue the foregoing funding arrangement from year to year, subject to extension of the CoC grant.

4. 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 thereof. Any provisions herein which would conflict with law are deemed inoperative to that extent.

E. This contract is effective **February 1, 2015** and terminates **January 31, 2016**.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

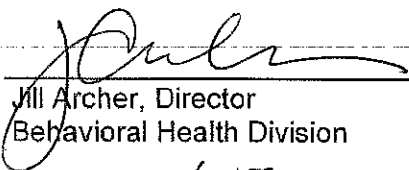
CENTRAL CITY CONCERN,
an Oregon non-profit corporation

By: 

Mariet Steenkamp, CFO
~~Sr. Director of Financial Services~~

Date: 2/17/2015

CLACKAMAS COUNTY

By: 

Jill Archer, Director
Behavioral Health Division

Date: 2-18-15

By: _____
Cindy Becker, Director
Health, Housing and Human Services Department

Date: _____

March 5, 2015

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Intergovernmental Program Performance Agreement with
Clackamas Education Service District

Purpose/Outcomes	This agreement provides the basis for a cooperative working relationship for the purpose of providing early childhood care and education training support to Clackamas rural child care providers.
Dollar Amount and Fiscal Impact	This Program Performance Agreement between Clackamas Education Service District and Clackamas County Children, Youth & Families Division involves funding in the amount of \$33,629.
Funding Source	Oregon Department of Education – Early Learning Division State General Funds –No County General Funds will be involved.
Safety Impact	N/A
Duration	February 1 st and terminates on June 30, 2015
Previous Board Action	N/A
Contact Person	Rodney A. Cook
Contract No.	#6970

BACKGROUND:

The Children, Youth & Family Division (CYF), of the Health, Housing & Human Services Department request approval of the Intergovernmental Program Performance Agreement with Clackamas Education Service District.

The Focused Child Care Network funding is an integral part of the Oregon Early Learning Hub initiative and has been designated to be funded through the Clackamas Early Learning Hub which is administered by H3S-Clackamas County Children, Youth and Families Division. The primary purpose of the Focused Child Care Network project will be to:

- Increase support for safe, supportive early childhood environments to enhanced environments to enhance children’s preparedness for kindergarten

As a result of this focused training, the trainees will implement early learning strategies into their work with parents and children they are currently serving. It is estimated that through this training model 15 child care providers will be networked serving an initial 35 children.

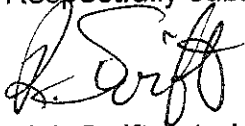
The majority of funds from this Intergovernmental Agreement will be sub-contracted to Clackamas Education Service District-Child Care Resource & Referral.

The contract template has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends the Board approval of this Intergovernmental Program Performance Agreement and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rich Swift". The signature is written in a cursive, flowing style.

Rich Swift, Interim Director

INTERGOVERNMENTAL AGREEMENT

(FY14-15)
INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY – Children, Youth & Families, OREGON
AND
Clackamas Education Service District-Child Care Resource & Referral

I. Purpose

This agreement is entered into between Clackamas County (COUNTY) and Clackamas Education Service District-Child Care Resource & Referral (AGENCY) for the cooperation of units of local government under the authority of ORS 190.010.

This agreement provides the basis for a cooperative working relationship for the purpose of developing early childhood care and education training support network for Clackamas rural child care providers.

II. Scope of Work and Cooperation

A. AGENCY agrees to coordinate and implement the strategies outlined in Exhibit 1 attached.

III. Compensation

The COUNTY agrees to pay AGENCY an amount not to exceed \$33,629 during the **2014-2015 fiscal year** for the services outlined in Section II.A.

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.

All requests for payment are subject to the approval of the COUNTY and will be submitted to:

Korene Mather
Clackamas County-Children, Youth & Families Division
2051 Kaen Road
Oregon City, OR 97045
503-650-5683
korenemat@co.clackamas.or.us

IV. Liaison Responsibility

Carol Middleton will act as liaison from the AGENCY for this project. Karen Gorton will act as liaison from the COUNTY.

V. Special Requirements

A. The COUNTY and AGENCY agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.

INTERGOVERNMENTAL AGREEMENT

- B. 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 the AGENCY or the AGENCY's employees, subject, where applicable, to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7.

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, 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.

INTERGOVERNMENTAL AGREEMENT

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.

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. 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. 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; provided that any records and

INTERGOVERNMENTAL AGREEMENT

documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.

- 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 the agreement for the purpose of making audit, examination, excerpts, and transcripts.
- E. This agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.

VI. Amendment

This agreement may be amended at any time with the concurrence of both parties. Amendments become a part of this agreement only after the written amendment has been signed by both parties.

VII. Term of Agreement

This agreement becomes effective February 1, 2015. This contract will terminate June 30, 2015.

This agreement is subject to termination by either of the parties when thirty (30) days' written notice has been provided.

Upon termination of this agreement, any unexpended balances of agreement funds shall remain with the COUNTY.

INTERGOVERNMENTAL AGREEMENT

EXHIBIT 1 SCOPE OF WORK AND PERFORMANCE STANDARDS

- I. AGENCY shall meet all performance outcomes as outlined in attached Work Plan.
- 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.
 - Reporting Period #2, Jan 1 – Mar 31: due on Apr 15, 2015
 - Reporting Period #3, Apr 1 – Jun 30: due on Jul 15, 2015

INTERGOVERNMENTAL AGREEMENT

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.
7. **Internal Controls**
 - AGENCY shall submit a completed Annual Fiscal Capability Assessment to CYF on or before July 15, 2015.
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

INTERGOVERNMENTAL AGREEMENT

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.

-
- 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.

INTERGOVERNMENTAL AGREEMENT

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. 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. 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 funds 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

INTERGOVERNMENTAL AGREEMENT

- B. Contract amendment suitable to both the COUNTY and AGENCY.

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 form, 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.

INTERGOVERNMENTAL AGREEMENT

4. MONITORING

COUNTY shall evaluate the services provided under this contract primarily by quarterly workplan 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 notification of problem areas related to performance under this contract, including requirements and time lines of corrective action.

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

The AGENCY will provide the client confidentiality releases necessary to facilitate annual site visits by the COUNTY. Site visit activities include, but are not limited to, review of client case files, program personnel policies, and program services procedures.

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

INTERGOVERNMENTAL AGREEMENT

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.

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.

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.

AGENCY shall have the right to make minor budget adjustments.

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 through 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).

EXHIBIT 1
Clackamas County Children, Youth & Families Division
Focused Child Care Networks

Work Plan February 2015-June 30, 2015

Provider: Clackamas Education Service District
Activity: Child Care Networks

Contact: Carol Middleton, Clackamas ESD

Focus Area: School Success

Outcomes:

Kindergarten Readiness

▶ Increased support for safe, supportive early childhood environments to enhance children's preparedness for kindergarten

Increase Community Engagement

▶ Increased awareness of collective actions to support children, youth & families (Quality Improvement Rating System)

Contract Service Numbers: 10-15 Family Child Care Providers
 25-35 Children Impacted

Clackamas ESD-CCR&R-Focused Child Care Networks

Mark all that apply (double click to check the boxes)

Early Childhood Transition Academic Skills Development/Enhancement (Children) Academic Skills Development/Enhancement (Parent) Early Childhood Professional Development Family Stability Supports/Parent Education Family Engagement/Involvement Mentoring Community Awareness/Mobilization Community & Business Engagement

Activities/Outputs

Description of program or project, methods for providing program, specific processes or events undertaken.

Outcomes

- Increasing the number of family child care providers improving the quality of their child care services by engaging in the statewide Quality Improvement Rating System.
- Increasing the number of children ages 0-6 participating in Quality Child Care experiences

Focused Child Care Networks/Outputs

By June 30, 2015, a focused child care network infrastructure will be developed that is integrated into the Clackamas Early Learning Hub Quality Rating Improvement System.

Outcomes

Document submitted to CYF that fully describes the operational structure, policy and procedures for a focused child care network.

Date Completed

Feb-Mar 2015 April-June 2015 Avg.

<p>By June 30, 2015, A focused child care network will have been established with at least 2 accessible meeting locations identified within rural Clackamas County with 5-10 family child care providers engaged in each network.</p>	<p>80% of family child care providers who participate in the network will have signed applications and applied for commitment to quality status</p>	<p># of Focused Child Care Networks formed</p>	<p># of Family Child Care Providers identified as willing to participate in Family Child Care Networks</p>	<p># of family child care providers who have signed applications of commitment to quality</p>	<p># of children served by Networks</p>
<p>By June 30, 2015, CCR&R will provide 3 local Focused Child Care Network trainings to 10-20 family child care providers within the networks. [Training qualifies participants for a minimum of 6 hours of Set 1 training on the Oregon Registry].</p>	<p>90% of the family child care providers within the focused child care networks are trained by CCR&R and qualify for a minimum of 6 hours of Set 1 training and report that they have increased their knowledge and skills leading to increased quality in their program.</p>	<p># who qualify for 6hrs of Set 1 training</p>	<p>% trained family child care providers meeting qualifications.</p>	<p># of Family Child Care Providers participating</p>	<p># of Family Child Care Providers participating in 2 or more learning activities.</p>
<p>By June 30, 2015, 10-20 family child care providers will participate in a minimum of 2 CCR&R sponsored learning events within the duration of the Family Child Care Network.</p>	<p>90% of the family child care providers will participate in a minimum of 2 CCR&R sponsored learning events</p>	<p>% of Family Child Care Providers reporting an increased knowledge or skill level.</p>	<p># of Family Child Care Providers</p>	<p>% of Family Child Care Providers reporting an increased knowledge or skill level.</p>	<p></p>
<p>Quarterly, Provide required report information per the specifications of the Focused Childcare Family Network Grant.</p>	<p></p>	<p></p>	<p></p>	<p></p>	<p></p>
<p>End of Year Report, Participate in an end of grant evaluation designed to assess overall impact of the grant program.</p>	<p></p>	<p></p>	<p></p>	<p></p>	<p></p>

Clackamas County Children, Youth & Families Division

Clackamas ESD – Child Care Resource & Referral

February 2015- June 30, 2015

Focused Child Care Networks

February-March

April-June

Postage			\$	-			\$	-		\$	-		\$	-
Printing			\$	-			\$	-		\$	-		\$	-
Phone			\$	-			\$	-		\$	-		\$	-
Insurance(s)			\$	-			\$	-		\$	-		\$	-
Technical Support			\$	-			\$	-		\$	-		\$	-
Professional Fees & Contract Svcs														
			\$	-			\$	-		\$	-		\$	-
			\$	-			\$	-		\$	-		\$	-
Travel														
Conferences & Training			\$	-			\$	-		\$	-		\$	-
Mileage			\$	-			\$	-		\$	-		\$	-
Additional (please specify)														
Space, mileage, travel, supplies	\$	5,143.00	\$	5,143.00			\$	5,143.00		\$	-		\$	-
Total Program Costs	\$	5,143.00	\$	-			\$	5,143.00		\$	-		\$	-
Total Grant Costs	\$	33,629.00	\$	-			\$	33,629.00		\$	-		\$	-

Please provide information on any budget anomalies in the budget above:

COPY

Richard Swift
Interim Director

7

March 5, 2015

Board of County Commissioner
 Clackamas County

Members of the Board:

Approval of Amendment # 2 to a Professional Services Agreement with
 Passport to Languages for interpretation services at the Clackamas County Health Centers.

Purpose/Outcomes	Passport to languages provides phone and on-site interpretation services to the Clackamas County Health Centers.
Dollar Amount and Fiscal Impact	Contract maximum is being increased by \$105,000 for a new contract maximum to \$185,000.
Funding Source	Fee for service. No County General Funds are involved.
Safety Impact	None
Duration	Effective upon signature and terminates on June 30, 2015
Previous Board Action	No previous action
Contact Person	Deborah Cockrell, Health Center Director – 503-742-5495
Contract No.	6848-2

BACKGROUND:

Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services requests the approval of Amendment # 2 to a Professional Services Agreement with Passport to Languages for interpretation services at the Clackamas County Health Centers.

There was an increase of usage of the interpreting services due to the staff lay-offs in the Health Centers Division and an increase in the number of un-insured clients. Amendment # 2 adds \$105,000 bringing the maximum value of this contract to \$185,000. The amendment is effective upon signature and terminates June 30, 2015.

Recommendation

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

Respectfully submitted


 Richard Swift, Interim Director

Healthy Families. Strong Communities.

Contract Amendment
Health, Housing and Human Services Department

DHS Contract Number 6848 Board Agenda Number _____

and Date _____

Division Health Centers Amendment No. 2

Contractor Passport to Languages

Amendment Requested By Deborah Cockrell, Director

Changes: Scope of Services Contract Budget
 Contract Time Other _____

Justification for Amendment:

This Amendment increases the maximum value by \$105,000. The new contract maximum is \$185,000. This Amendment is effective **upon signature** and continues through **June 30, 2015**.

Except as amended hereby, all other terms and conditions of the Contract remain in full force and effect. The County has identified the changes with "***bold/italic***" font for easy reference.

AMEND:

The total payment to CONTRACTOR shall not exceed ***\$ 80,000.00.***
Payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, travel expenses, mileage, and incidentals necessary to perform the work and services.

TO READ:

The total payment to CONTRACTOR shall not exceed ***\$ 105,000.00.***
Payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, travel expenses, mileage, and incidentals necessary to perform the work and services.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized officers.

Passport to Languages

By: 
Erik Lawson, Director, Business Development

CLACKAMAS COUNTY

Commissioner: John Ludlow, Chair
Commissioner: Jim Bernard
Commissioner: Paul Savas
Commissioner: Martha Schrader
Commissioner: Tootie Smith

2/25/2015
Date
6443 SW Beaverton Hillsdale Hwy. Suite 420
Street Address
Portland, Oregon 97221
City/State/Zip
800-297-2707 / 503-297-1703
Phone / Fax

Signing on Behalf of the Board:

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

Date

March 5, 2015

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of a Services Contract between Clackamas County and Alpha Energy Savers, Inc; Douthit Thermal LLC; Green Energy Solutions, Inc; Green Horizons Weatherization LLC; Northwest Insulation, LLC; Performance Insulation and Energy Services, Inc.; and Sensible Energy Solutions for multiple weatherization projects performed on low-income dwellings located throughout Clackamas County.

Purpose/Outcomes	Increase Community Solutions for Clackamas County Weatherization's program general contractor pool to carry out contract for services.
Dollar Amount and Fiscal Impact	Weatherization has an approved \$930,395 budget for delivery of contracted services in FY 2014/2015.
Funding Source	No County General Funds are involved.
Safety Impact	None
Duration	Effective upon contract execution through December 31, 2015, renewable for up to four additional one year terms with the written approval of both parties.
Previous Board Action	September 26, 2013
Contact Person	Jacque Meier 503-650-3339
Contract No.	CSCC

BACKGROUND: Community Solutions for Clackamas County (CSCC) of Health, Housing and Human Services requests the approval of multiple Construction Contracts between Clackamas County and Alpha Energy Savers, Inc; Douthit Thermal LLC; Green Energy Solutions, Inc; Green Horizons Weatherization LLC; Northwest Insulation, LLC; Performance Insulation and Energy Services, Inc.; Sensible Energy Solutions; for multiple weatherization projects throughout Clackamas County. These projects will be funded using Department of Energy (DOE), Low Income Home Energy Assistance Program (LIHEAP), Bonneville Power Administration (BPA), Energy Conservation Helping Oregonians (ECHO) as well as any other funding received specifically designated for low income weatherization.

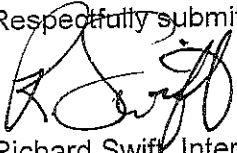
A Request for Qualifications (RFQ) for General Contractor Services for the Weatherization Program was advertised on August 25, 2014. At the due date and time, seven (7) responsive, responsible providers submitted qualifications. An evaluation committee reviewed the qualifications and based upon the criteria listed in the RFQ determined that all seven were qualified to provide general contractor services to the Weatherization Program.

These contracts have been reviewed and approved by County Counsel through Purchasing.

RECOMMENDATION:

Staff recommends the Board approval of these contracts and authorizes Richard Swift, H3S Interim Director to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Swift', written in a cursive style.

Richard Swift, Interim Director

REQUEST FOR QUALIFICATIONS
GENERAL CONTRACTOR SERVICES FOR COMMUNITY SOLUTIONS FOR CLACKAMAS COUNTY'S
WEATHERIZATION PROGRAM

BOARD OF COUNTY COMMISSIONERS

JOHN LUDLOW, Chair

JIM BERNARD, Commissioner

PAUL SAVAS, Commissioner

MARTHA SCHRADER, Commissioner

TOOTIE SMITH, Commissioner

**Donald Krupp
County Administrator**

**Lane Miller
Purchasing Manager**

**Tom Averett
Buyer**

COUNTY REQUEST FOR QUALIFICATIONS OPENING

DATE: **October 8, 2014**

PLACE: **Clackamas County Purchasing
Clackamas County Public Services Building
2051 Kaen Road, Oregon City, OR 97045**

TIME: **2:00 PM**

SCHEDULE

Request for Qualifications issued	August 25 , 2014
Mandatory Pre-Qualifications Conference	September 24, 2014 2:00 PM
Last date for specification protest	SEVEN 7 days prior to RFQ Opening
RFQ opening	October 8, 2014 2:00 PM
Last date to protest award	SEVEN (7) days from the Intent to Award

MANDATORY PRE-QUALIFICATIONS CONFERENCE

A Mandatory Pre-Qualifications conference will be held at 2:00 PM AM on September 24th, 2014 in the Clackamas County Public Services Building, room 497, 2051 Kaen Road, Oregon City, OR 97045. The purpose of this pre-submittal conference is to answer questions about the project.

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SECTION 7	<i>SAMPLE</i> Agreement Form
SECTION 8	Insurance Certificates (to be submitted prior to contract execution)
Exhibit 1	Sample Lead based paint documentation package

SECTION 1
REQUEST FOR QUALIFICATIONS

SECTION 1

REQUEST FOR QUALIFICATIONS

Notice is hereby given that Clackamas County, through its Board of County Commissioners, will receive sealed responses per specifications until **2:00 P.M. October 8, 2014 for**

General Contractor Services for Community Solutions of Clackamas County's Weatherization Program

No responses will be received or considered after that time.

Community Solutions of Clackamas County is seeking the services of qualified General Contractors to provide weatherization services on projects ranging from mobile homes, scattered site single family houses to apartment buildings throughout Clackamas County.

A **Mandatory** pre-qualifications conference will be held at 2:00 PM September 24, 2014 in Room 497 of the Clackamas County Public Services Building, 2051 Kaen Road, Oregon City, OR 97045.

Qualification packets will be available at Clackamas County Purchasing, Clackamas County Public Services Building, 2051 Kaen Road, 4th Floor, Oregon City, OR 97045, office hours 7:00 AM to 6:00 PM Monday through Thursday, phone 503-742-5444. Sealed QUALIFICATIONS are to be sent to Lane Miller – Purchasing Manager at the Kaen Road address. QUALIFICATIONS will be opened in the Purchasing Division, located on the 4th floor of the Public Services Building, at the designated time.

Clackamas County reserves the right to reject any and all responses not in compliance with all prescribed public bidding procedures and requirements, reject for good cause any and all responses upon the finding that it is in the public interest to do so, and waive any and all informalities.

DATED this 25th day August, 2014

Lane Miller, Purchasing Manager

SECTION 2
INSTRUCTIONS TO CONTRACTORS

SECTION 2

2.1. GENERAL

Contractors shall study carefully and conform to these "Instructions to Contractors" so that their responses will be regular, complete and acceptable.

2.2. RESPONSES

All responses shall be legibly written in ink or typed and comply in all regards with the requirements of this solicitation.

Responses carrying orders or qualifications may be rejected as irregular.

All responses shall be signed in ink in the blank spaces provided herein (Section 4). If the response is made by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the response is made by a corporation, it shall be signed in the name of such corporation by an official who is authorized to bind the contractor. The responses will be considered by the County to be submitted in confidence; Contractors will be notified if a request is made for public disclosure of the response prior to completion of the evaluation and negotiation process.

2.3 SUBMISSION OF RESPONSES:

All responses must be submitted in a sealed envelope bearing on the outside the **name and address of the contractor, the project title, due date and opening time**. Deliveries are to be sent to:

**Clackamas County
Purchasing Manager
Weatherization Contractor
2051 Kaen Road,
Oregon City, OR 97045**

If the response is forwarded by mail, the sealed envelope containing the response and marked as directed above must be enclosed in another envelope.

2.4. RECEIPT AND OPENING OF RESPONSES:

Responses shall be submitted prior to the time fixed in the advertisement for responses. Responses received after the time so designated will be considered late responses and will be returned unopened.

No responsibility will be attached to any official of the County for the premature opening of, or the failure to open, a response not properly addressed and identified.

The responses will be considered by the County to have been submitted in confidence. At the time fixed for the opening, the responses shall be opened so as to avoid disclosure of contents to competing offerors, the public and the media during the process of evaluation and negotiation. A register of responses shall be prepared and shall be open for public inspection after contract award along with the contents of the responses. Once the closing time and date arrive, the names of the offerors submitting responses are read publicly. No other information will be disclosed during the evaluation and negotiation process unless required by law.

2.5. WITHDRAWAL OF RESPONSES

Responses may be withdrawn by written or telegraphic request received from the contractors prior to the time fixed for opening. Negligence on the part of the vendor in preparing the response confers no right for the withdrawal of the response after it has been opened. The response will be irrevocable until such time as the Board of Commissioners:

- a. Specifically rejects the response, or;
- b. Awards a contract and said contract is properly executed.

Contractors' responses shall be valid for at least ONE-HUNDRED TWENTY (120) days.

2.6. MODIFICATION

Any contractor may modify his/her response by registered communication at any time prior to the scheduled closing time for receipt of responses, provided such communication is received prior to the closing time. The communication should not reveal the response price but should provide that the final price or terms will not be known until the sealed response is opened.

2.7. ACCEPTANCE OR REJECTION OF RESPONSES

In the award of the contract, the Board of Commissioners will consider the element of time, will accept the response which in their estimation will best serve the interest of Clackamas County, and reserves the right to award the contract to the contractor whose response shall be best for the public good. The Board of Commissioners reserves the right to accept or reject any or all responses. Without limiting the generality of the foregoing, any response which is incomplete, obscure or irregular may be rejected. Only one response will be accepted from any one firm or association. Any evidence of collusion between Contractors may constitute a cause for rejection of any responses so affected.

The County shall, pursuant to ORS 279A.120, for the purposes of awarding the contract, add a percent increase on the response of a nonresident Contractor equal to the percent, if any, of the preference given to that Contractor in the state in which the Contractor resides. "Resident Contractor" means a Contractor that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the qualifications, has a business address in this state and has stated in the qualifications whether the Contractor is a "resident Contractor".

The County may accept any items or groups of items of any offer, unless the Contractor qualifies his/her offer by specific limitations.

2.8. ADDENDA AND INTERPRETATIONS

No oral interpretations shall be made to any Contractor as to the meaning of any of the contract documents or be effective to modify any of the provisions of the contract documents. Every request for an interpretation shall be made in writing and addressed to the Purchasing Manager and, to be given consideration, shall be received at least **SEVEN (7)** days prior to the date set for the opening of responses.

Any and all such interpretations will be mailed to all prospective Contractors (at the respective address furnished for such purposes) not later than three (3) days prior to the date fixed for the opening of responses. Failure of any Contractor to receive any such addendum or interpretation shall not relieve such Contractor from any obligation under this response as submitted. All addenda so issued shall become as much a part of the contract documents as if bound herein.

2.9. NONDISCRIMINATION

The successful contractor agrees that, in performing the work called for by this response and in securing and supplying materials, contractor will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry unless the reasonable demands of employment are such that they cannot be met by a person with a particular physical or mental handicap.

2.10. FAILURE TO SUBMIT OFFER

If no offer is to be submitted, do not return the Request for Qualifications (RFQ). Failure of the recipient to offer, or to notify the issuing office that future solicitations are desired, will not result in removal of the name of such recipient from the mailing list for the type of supplies or services covered by the solicitation.

2.11. PREPARATION OF OFFERS

Contractors are expected to examine the specifications, schedules and all instructions.

Each Contractor shall furnish the information required by the solicitation. Contractors shall sign the solicitation and print or type their name on other submitted exhibits and each continuation sheet thereof on which an entry is made. Erasures or other changes shall be initialed by the person signing the offer.

Responses signed by an agent are to be accompanied by evidence of his/her authority unless such evidence has been previously furnished.

Contractors shall state a definite time for delivery of supplies or for performance of services.

Time, if stated as a number of days, will include Saturdays, Sundays and holidays.

2.12. SPECIFICATIONS LIMITING COMPETITION

Contractors may comment on any specification or requirement contained within this RFQ, which they feel limits competition in the selection of a Contractor to perform the services herein defined. Protests shall detail the reasons and any proposed changes to the specifications. Such comments shall be formal in writing, and are to be addressed to:

**Clackamas County
Purchasing Manager
Reference: Weatherization Contractor Request for Qualifications
2051 Kaen Road,
Oregon City, OR 97045**

Such comments shall be submitted to Clackamas County no later than **SEVEN (7)** days prior to the opening date. No comments will be accepted after that time.

2.13. EXCEPTIONS:

Responding vendors taking exception to any requirement of this RFQ Document shall indicate such exception(s) on a separate page of their Qualifications response.

Contractors failing to indicate any exceptions shall be interpreted as the responding vendor intends to fully comply with all RFQ requirement(s) as written and subsequent agreement terms as stated. Explanation must be made for each item for which exception is taken giving in detail the extent of the exception and the reason(s) for which it is taken in order for consideration to be given to the vendor.

2.14. EMPLOYEES NOT TO BENEFIT

No employee or elected official of Clackamas County shall be admitted to any share or part of this contract or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

2.15. COUNTY FURNISHED PROPERTY

No material, labor or facilities will be furnished by the County unless otherwise provided for in the Request for Response.

2.16. NOTICE OF INTENT TO AWARD

The notice of intent to award of the contract by Clackamas County shall constitute a final decision of the County's intent to award the contract if no written protest of the award is filed with the County Purchasing Manager within **SEVEN (7)** calendar days of the notice of intent to award. If a protest is timely filed, the award is a final decision of the County's intent to award only upon issuance of a written decision denying the protest and affirming the award. The award and any written decision denying protest shall be sent to every Contractor who provided an address.

Right to Protest: Any actual Contractor who is adversely affected or aggrieved by the County's award of the contract to another Contractor on the same solicitation shall have **SEVEN (7)** calendar days after notice of intent to award has been issued to submit to the County Purchasing Manager a written protest of the award. The written protest shall specify the grounds upon which the protest is based. In order to be an adversely affected or aggrieved Contractor with a right to submit a written protest, a Contractor must be next in line for award, i.e. the protester must claim that all higher rated Contractors are ineligible for award because they are non-responsive or non-responsible. The County will not entertain protests submitted after the time period established in this rule.

2.17. REIMBURSEMENT

There is no expressed or implied obligation for Clackamas County to reimburse responding firms for any expenses incurred in preparing responses in response to this request.

2.18. DEFAULT

The County may, subject to the provisions of paragraph (4) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances.

1. If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
2. If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failures within a period of ten (10) days (or such longer period as the County may authorize in writing) after receipt of notice from the County specifying such failure.
3. In the event the County terminates this contract in whole, or in part, as provided in paragraph (2) above of this clause, the County may procure, upon such terms and in such manner as the County may deem appropriate, supplies or services similar to those terminated, and the Contractor shall be liable to the County for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.
4. Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but, in every case, the failure to perform must be beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
5. The rights and remedies of the County provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
6. As used in paragraph (4) of this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

2.19 CONTRACTOR QUALIFICATIONS

Oregon law (ORS Chapter 701) requires that all contractors must be registered with the Construction Contractors Board in order to submit a bid and to do work as a contractor. No bid for construction contracts shall be received or considered by the County unless the bidder is licensed by the Construction Contractors Board or licensed by the State Landscape Contractors Board as required by ORS 671.530.

If the contract is for a public work subject to ORS 279.348 to 279.380 or the Davis-Bacon Act (40 U.S.C. 276a), no bid will be received or considered by the County unless the bid contains a statement by the bidder as a part of its bid that the provisions of ORS 279.350 or 40 U.S.C. 276a are to be complied with.

2.20. PAYMENTS

The contractor shall be paid, upon the submission of proper instruments as outlined below, the prices stipulated in the response for services rendered and accepted, less deductions, if any, as provided.

1. No claims will be considered for payment until the services are rendered with the exception of Solicitations or Purchase Orders that designate otherwise.
2. Payments will be made monthly, or as agreed, within 30 days following receipt of any claims supported by an invoice and a duplicate.
3. For a period of one year after payment of any claim, Clackamas County reserves the right, under this contract, to recover any damages due the County as specified in the Clause of this contract entitled "Default".

2.21. TAXES

Taxes, whether State or Federal, shall not be included in response. Clackamas County is generally exempted from Federal taxes, specifically, but not limited to excise and transportation taxes.

2.22. LITIGATION:

In the event litigation is necessary the Contractor agrees that such will be conducted in the Courts of Clackamas County and/or the State of Oregon.

2.23. INTERGOVERNMENTAL COOPERATIVE PURCHASING STATEMENT

Pursuant to ORS 279A and Clackamas County procurement rules, other public agencies shall have the ability to purchase the awarded goods and services from the awarded Contractor(s) under terms and conditions of the resultant contract.

Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to Clackamas County. Any estimated purchase volumes listed herein do not include other public agencies and Clackamas County makes no guarantee as to their participation.

Any bidder, by written notification included with their solicitation response, may decline to extend the prices and terms of this solicitation to any and/or all other public agencies.

Clackamas County grants to any and all public serving governmental agencies, authorization to purchase equivalent services or products described herein at the same submitted unit bid price, but only with the consent of the Company awarded the contract by the County.

2.24 SUBCONTRACTORS

Contractor shall not use subcontractors to perform the Work unless specifically pre-authorized in writing to do so by the County. Contractor represents that any employees assigned to perform the Work, and any authorized subcontractors performing the Work, are fully qualified to perform the tasks assigned to them, and shall perform the work in a competent and professional manner. Contractor shall provide, if requested, any documents relating to subcontractor's qualifications to perform required Work.

2.25 COUNTY CLARIFICATION OF QUALIFICATIONS

The County reserves the right to obtain clarification of any point in a firm's qualifications or to obtain additional information necessary to properly evaluate a particular qualifications. Failure of a Contractor to respond to such a request for additional information of clarification could result in rejection of the firms' qualifications.

SECTION 3

QUALIFICATIONS CONTENTS AND RESPONSE

SECTION 3

QUALIFICATIONS CONTENTS

3.1 REQUEST FOR QUALIFICATIONS (RFQ) GUIDELINES AND ASSUMPTIONS

Vendors must observe submission instructions and be advised as follows:

3.1.1. ONE (1) signed original and NINE (9) copies of the technical component of the qualifications shall be submitted. The original shall be marked as such.

3.1.2 The COUNTY reserves the right to solicit additional information or clarification from the firms, or any one firm submitting qualifications, should the COUNTY deem such information necessary.

3.1.3. If a vendor is unable or unwilling to meet any Clackamas County RFQ requirement, an explicit statement to that effect must be made in the qualifications as an exception.

3.1.4 This Request for Qualifications and all supplemental information in response to this RFQ will be a binding part of the final contract entered into by the selected vendor and Clackamas County.

3.1.5 Any Contractor supplied material that may be considered confidential, to the extent allowed under Oregon Public Records Law, must be so marked with statutory exemption asserted.

3.1.6 Clackamas County reserves the right to reject any or all qualifications, and to accept the qualifications deemed most advantageous to the County.

3.1.7 Information should illustrate the quality of the CONTRACTOR'S work.

3.1.8 Clackamas County encourages use of recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

3.1.9 This Request for Qualifications and all supplemental information in response to this RFQ will be a binding part of the final contract entered into by the selected contractor and Clackamas County.

3.2 SUBMISSION

All responses must be submitted in a sealed envelope bearing on the outside the name and address of the contractor, the project title, due date and opening time.

If the response is forwarded by mail, the sealed envelopes containing the response and marked as directed above must be enclosed in another envelope marked with the name and address of the contractor, the project title, due date and opening time.

3.3 QUALIFICATIONS CONTENTS/SELECTION CRITERIA

The Contractor shall provide the following information in the qualifications in the order of their appearance below. This information is scored as in Section 6, Evaluation & Selection.

3.4 PROJECT UNDERSTANDING AND APPROACH

- Detail your understanding of the County’s project. Address the major issues involved in weatherization programs involving mobile homes, single family dwellings and apartments; include instances where structures may be older and in poor condition. How do you deal with those issues?
- Describe key issues that must be addressed in order to keep projects on schedule and on budget.
- Describe your typical process for scattered jobsite projects.
- Describe your experience on projects where residents are in the building while the project is underway. Detail your approach to dealing with residents in such situations.
- Describe your work order process and dispatch system.
- Detail the steps you take to maximize efficiencies of the work crews and minimize time on the jobsite.
- Detail your safety training program. Provide information on other training’s that are available to employees.
- Detail your understanding of Federal and State grant funded projects. Describe you records keeping process

3.5 QUALIFICATIONS

3.5.1 Qualified General Contractors must have demonstrated experience in all phases of weatherizing projects. This type of work is to include and not limited to: insulating walls, floor and attics; mobile home exterior ceiling insulation packages, for example, EPDM, TPO, energy related minor home repairs; infiltration reduction; furnace repair and replacement; heating duct improvements; door and window replacement. The qualifications must describe the ability of the General Contractor and the availability of resources to perform the required activities.

Certifications of both the contractor and workers on the sites are critical to the success of the program. Proof of certifications is required by our funder. Detail your system for tracking certifications, renewing those certifications and providing proof of those certifications to the County

3.5.2 Describe your experience with Oregon Site Built and Mobile Home Weatherization Specifications for the installation of approved weatherization materials.

3.5.3 Does your Firm have an approved and adopted Lead Hazard Compliance Plan?

3.5.4 Pertinent Licenses and Certifications:

The General Contractor must provide each of the following items listed below:

1. Oregon CCB License Number
2. Employer Identification Number
3. Other Appropriate Licenses (specify)

Additionally, if the General Contractor has any other certifications these should be included. For example:

- Lead Base Paint
- EPA lead certification

The General Contractor shall provide the same certifications for known subcontractors to be used on the County’s projects

3.5.5 Capacity

1. Provide a discussion of the Key Personnel
 - a) Supervisor to employee ratio
 - b) Crew size
 - c) In-house weatherization expertise

3.5.6 Subcontractors

The names of proposed subcontracting firms must be clearly identified. Following the award of a contract, no additional subcontractors will be allowed without prior written consent. The use of subcontractors without the prior consent can result in contract termination. The subcontractor must carry their own insurance. It is the contractor's responsibility to ensure that all subcontractors are in compliance with insurance requirements. Subcontractors are the responsibility of the General Contractor, the County will not be held liable for any failings of the subcontractor. Every subcontractor must hold the same training and certification requirements as the General Contractor. The General Contractor will be held financially responsible for correcting any weatherization work determined to be unacceptable.

3.6 EXPERIENCE

Demonstrate the Contractors experience by detailing the following

- Firm and personnel's experience and qualifications for weatherization projects similar to the County's project. Please be as descriptive as you need to be for this question.
- Company's experience with working on projects that continue to be occupied during construction work. Detail the customer service training employees are given to deal with residents.
- Company's experience regarding project management of multiple dwellings or scattered sites?
- Company's experience with weatherization materials and construction methods for; doors, windows, insulation, HVAC and plumbing.
- How many projects has your company completed that have included:
 - a) Projects meeting the Oregon Site Built and Mobile Home specifications
 - b) Weatherization Assistance Programs
 - c) Federally funded projects
- Provide dollar values for at least 10 of your last projects similar in size and scope to the County's project; include Notice to Proceed dates and Completion Dates
- Provide a minimum of 5 references (contacts) for weatherization projects completed in the state of Oregon and/or SW Washington of your company's last 10 projects similar in size and scope to the County's.

3.7 IMPLEMENTATION PLAN:

Provide a detailed project implementation plan from contract execution to start of the first project (for date based criteria, use the number of days from contract execution). Include key dates. Identify the responsibilities of County & Contractor. Detail the steps you will take to have your crews ready to provide services.

SECTION 4

REQUIRED FORMS

The following forms are included in this package and shall be signed, notarized where specified and returned with the qualifications response.

These are the forms:

SIGNED Qualifications Response

Federally required forms:

Affidavit of Non Collusion

Congressional Lobbying Certificate

Certificate Regarding Ineligible Contractors

Conflict of Interest (COI) Disclosure Form

FAILURE TO RETURN THESE FORMS SIGNED WILL RESULT IN THE CONTRACTOR BEING DECLARED NON-RESPONSIVE AND NOT ELIGIBLE FOR CONTRACT AWARD.

SECTION 3

QUALIFICATIONS RESPONSE

Submitted by: _____

Address: _____

Date: _____, 2014

Phone number: _____ Fax number: _____

Oregon Business Registry #

Construction Contractors Board Number: _____

Expiration date: _____

The undersigned, through the formal submittal of this qualifications response, declares that he/she has examined all related documents and read the instruction and conditions, and hereby proposes to provide **General Contractor Services for Community Solutions of Clackamas County's Weatherization Program** as specified, in accordance with the qualifications documents herein, for the price set forth in the Response submittal attached hereto, and forming a part of this response.

The Contractor, by his signature below, hereby represents as follows:

- (a) That no Commissioner, officer, agency or employee of Clackamas County is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the County, its Commissioners, officers, agents, or employees had induced him to enter into this contract and the papers made a part hereof by its terms;
- (b) The Contractor and each person signing on behalf of any Contractor certifies, in the case of a joint qualifications, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
 - 1. The prices in the qualifications have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other Contractor or with any competitor;
 - 2. Unless otherwise required by law, the prices which have been quoted in the qualifications have not been knowingly disclosed by the Contractor prior to the qualifications deadline, either directly or indirectly, to any other Contractor or competitor;
 - 3. No attempt has been made nor will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a qualifications for the purpose of restraining trade;
- (c) The Contractor fully understands and submits its qualifications with the specific knowledge that:
 - 1. The selected qualifications must be approved by the Board of Commissioners.
 - 2. This offer to provide **General Contractor Services for Community Solutions of Clackamas County's Weatherization Program** shall be valid for 120 calendar days from the date that

qualifications are due, and that this offer may not be withdrawn or modified during that time.

- (d)** That this Qualifications is made without connection with any person, firm or corporation making a bid for the same material, and is in all respects, fair and without collusion or fraud.
- (e)** That the Contractor shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
- (f)** That the Contractor accepts all terms and conditions contained in this RFQ and that the RFQ and the Qualifications Response, and any modifications, will be made part of the contract documents. It is understood that all qualifications will become part of the public file on this matter. The County reserves the right to reject any or all qualifications.
- (g)** That the Contractor holds current licenses that businesses or services professionals operating in this state must hold in order to undertake or perform the work specified in these contract documents.
- (h)** That the Contractor is covered by liability insurance and other insurance in the amount(s) required by the solicitation.
- (i)** That the Contractor qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
- (j)** That the Contractor is legally qualified to contract with Clackamas County.
- (k)** That the Contractor has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation or national origin. Nor has Contractor or will Contractor discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225
- (l)** The Contractor agrees to accept as full payment for the services specified herein, the amount as shown in his/her qualifications.
- (m)** That the provisions required by ORS 279C.800 through ORS 279C.870 or 40 U.S.C. 3141 et seq. relating to Prevailing Wage Rates shall be complied with.
- (n)** I, the undersigned, agree to be bound by the form of agreement and all remaining contract documents, including Instructions to Bidders; Standard Terms and Conditions; Special conditions; Federal Provisions, if applicable; plans and specifications.
- (o)** I, the undersigned agree to comply with the provisions of ORS 279C.800 through ORS 279C.870 or Davis Bacon Act (40 U.S.C. 3141 et seq.) as applicable.

The names of the principal officers of the corporation submitting this Qualifications, or of the partnership, or of all persons interested in this Qualifications as principals are as follows:

Name

Title

Name

Title

Name

Title

(If Sole Proprietor or Partnership)

In witness hereto, the undersigned has set his (its) hand this _____ day of _____, 2014

Name of Firm

Signature of Contractor

(If Corporation)

In witness whereof the undersigned corporation has caused this instrument to be executed by it's duly authorized officers this ___ day of _____, 2014

Name of Corporation

By

Title

CONTRACT MANAGER:

Name _____ Title: _____

Telephone number: _____

AFFIDAVIT OF NON-COLLUSION

STATE OF _____

COUNTY OF _____

I state that I am _____ (title) of _____ (name of firm) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this Offer.

I state that:

(1) The price(s) and amount of this Offer have been arrived at independently and without consultation, communication or agreement with any other contractor, Contractor or potential Contractor, except as disclosed on the attached appendix.

(2) That neither the price(s) nor the amount of this Offer, and neither the approximate price(s) nor approximate amount of this Offer, have been disclosed to any other firm or person who is a Contractor or potential Contractor, and they will not be disclosed before Solicitation opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit an Offer higher than this Offer, or to submit any intentionally high or noncompetitive Offer or other form of complementary Offer.

(4) The Offer of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Offer.

(5) _____ (name of firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as described in the attached appendix.

I state that _____ (name of firm) understands and acknowledges that the above representations are material and important, and will be relied on by Clackamas County in awarding the contract(s) for which this Offer is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from Clackamas County of the true facts relating to the submission of Offers for this contract.

(Authorized Signature)

(Name of Company/Position)

Sworn to and subscribed before me this _____ day of _____, 2014.

Notary Public for Oregon
My Commission Expires: _____

FAILURE TO SUBMIT THIS EXECUTED STATEMENT AS PART OF THE RESPONSE DOCUMENTS WILL MAKE THE QUALIFICATIONS RESPONSE NON-RESPONSIVE AND NOT ELIGIBLE FOR AWARD CONSIDERATION

CONGRESSIONAL LOBBYING CERTIFICATE

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of ANY Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with THIS Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Date: _____

Company Name: _____

Signature: _____

Name: _____
(Print)

Title: _____

NOTE: CONTRACTOR IS REQUIRED PURSUANT TO FEDERAL LAW TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.

CERTIFICATE REGARDING INELIGIBLE CONTRACTORS

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION FROM TRANSACTIONS FINANCED IN PART BY THE U.S. GOVERNMENT

(Name of Certifying Officer)

(Title of Certifying Officer)

Hereby certify that: _____
(Name of Contractor)

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any State or Federal department or agency or from participation in Oregon Department of Transportation projects;

Have not within a three (3)-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and

Have not within a three (3)-year period preceding this qualifications had one or more public transactions (Federal, State or local) terminated for cause or default.

vb

If Contractor is unable to certify to any of the statements in this certification, such prospective Bidder shall attach an explanation to this certification.

I hereby certify and affirm the truthfulness and accuracy of the above statement, and I understand that the provisions of 31 United States Code (U.S.C.) §3801 et seq., (Administrative Remedies for False Claims and Statements) are applicable hereto.

Name of Bidder

Street Address

City

State

Zip

Signature of Certifying Officer

Telephone Number of Bidder

FAILURE TO SUBMIT THIS EXECUTED STATEMENT AS PART OF THE RESPONSE DOCUMENTS WILL MAKE THE QUALIFICATIONS RESPONSE NON-RESPONSIVE AND NOT ELIGIBLE FOR AWARD CONSIDERATION

.

CONFLICT OF INTEREST (COI) DISCLOSURE FORM

This COI Disclosure Form must be signed in ink by a principal of the Firm to certify that it is correct. A Firm's certification that its disclosure form is correct includes the disclosure by its Associates and Subcontractors.

My signature certifies that as disclosed on or attached to the present form:

(a) the Firm's disclosures are complete, accurate, and not misleading.

I hereby certify that I am authorized to sign this COI Disclosure Form as a Representative for the Firm identified below:

Complete Legal Name of Firm: _____

Address: _____

Signature: _____

Name (type/print): _____

Title: _____

Telephone: _____ **Fax No.:** _____

Date: _____

Please answer all questions "Yes", "No" or "N/A" (if uncertain answer "Yes.") If the answer to any of the questions is "Yes," then use the applicable "Comments" fields to:

(a) furnish all relevant facts that are necessary to make the response complete, accurate, and not misleading; and

(b) identify any actions that must be taken to avoid, neutralize, or mitigate such conflict of interest (e.g. communications barriers, restraint or restriction upon future contracting activities, or other precaution)

1. a) Is any Associate of the Firm a former employee of Agency within the last year? **No** **Yes**
b) Is any Associate of the Firm a Relative or Member of the Household of a current Agency employee that had or will have any involvement with this Procurement or Contract Authorization? **No** **Yes**

If the answer to either of the above questions is "Yes", complete the attached "Relatives and Former Agency Employees -Roles and Signatures" table (Part A and/or Part B, as applicable).

2. Does the Firm or any Associate of the Firm have an Actual, Apparent or Potential Conflict Of Interest ("Individual" or "Organizational") with regard to any member of an Agency Procurement evaluation or selection team? **No** **Yes** **Comments:**
3. Did the Firm or any Associate of the Firm conduct prior work on the Project described in the Procurement, or participate in preparing any part of the Procurement or any documents or reports related to the Procurement or to which the Procurement refers? **No** **Yes** **Comments:**

4. Does the Firm or any Associate of the Firm have any past, present or currently planned interests which are an Actual, Apparent or Potential Conflict of Interest (“Individual” or “Organizational”), with respect to the Procurement or award of this Contract or performing the work for Agency? **No**

Yes **Comments:**

5. Has the Firm or an Associate of the Firm offered to a Public Official, or is the Firm aware of any Public Official that has solicited or received, directly or indirectly, any pledge or promise of employment or other benefit based on the understanding that the Public Official’s vote, official action or judgment would be influenced thereby? **No** **Yes** : **Comments:**

6. Has (or will) the Firm or an Associate of the Firm provided a direct beneficial financial interest to any person within two years after the person ceased to hold a position as a Public Official who was involved in the Procurement or Authorization for the Contract, or is the Firm aware of any such person or Public Official who has or will receive a direct beneficial financial interest within the two year period?

No **Yes** **Comments:**

7. Is the Firm aware of any current or former Public Official that has an Actual, Apparent or Potential Conflict Of Interest with respect to the Procurement or award of this Contract or performing the work for Agency?

No **Yes** : **Comments:**

8. Does the prospective Contract include development of an environmental assessment (EA), environmental impact statement (EIS) or Finding of No Significant Impact (FONSI)? **No** **Yes** **Comments:**

If yes, in accordance with the disclosure statement requirements of Council on Environmental Quality Regulation, 40 C.F.R 1506.5(c), does the Firm have any financial or other interest in the outcome of this Project; and/or does the Firm have any agreement, enforceable promise, or guarantee to provide any future work on this Project? **No** **Yes** **Comments:**

9. Have Subcontractors or other Associates furnished COI Disclosure Forms separate from the present form? (If yes, attach the disclosures.) **No** **Yes** **N/A** **Comments:**

10. If the prospective Contract includes personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract, is the Firm or an Associate or an Affiliate of the Firm a party to the subject public contract?

No **Yes** **N/A** **Comments:**

FAILURE TO SUBMIT THIS EXECUTED STATEMENT AS PART OF THE RESPONSE DOCUMENTS WILL MAKE THE QUALIFICATIONS RESPONSE NON-RESPONSIVE AND NOT ELIGIBLE FOR AWARD CONSIDERATION

SECTION 5

SCOPE OF WORK

5.1 INTRODUCTION

Community Solutions for Clackamas County is the primary agency responsible for Clackamas County's Weatherization Program. The goal of the Weatherization Program is to provide energy conservation services, health & safety repairs, heating system repair and replacement, base-load measures and energy education to low-income households. Contractors will be responsible for weatherization improvements including: ceiling, wall, and floor insulation; energy related minor home repairs; infiltration reduction such as weather-stripping; furnace repair and replacement; heating duct improvements; door and window replacement; pressure balancing of the thermal boundary and other trade related fine-tuning.

The mission statement for the Weatherization department is:

"To increase the energy efficiency of dwellings owned or occupied by low-income persons, especially those who are particularly vulnerable such as the elderly, persons with disabilities, families with young children, high residential energy users, and households with high energy burden."

This RFQ is for soliciting qualified General Contractors to be placed on a list to provide bids to Community Solutions for weatherization projects including mobile homes, scattered site single family houses and apartment buildings throughout Clackamas County. The County will pre-qualify contractors meeting the RFQ requirements. Once a Contractor has been selected as a pre-qualified WX Contractor, they are then eligible to bid on individual Weatherization projects.

Successful General Contractors will be experienced with Oregon Site Built and Mobile Home Weatherization Specifications for the installation of approved weatherization materials and shall be responsible for whole home ventilation systems, ceiling, wall, and floor insulation; energy related minor home repairs; infiltration reduction such as weather-stripping; furnace repair and replacement; heating duct improvements; door and window replacement; pressure balancing of the thermal boundary and other trade related fine-tuning. General Contractors are to be experienced with State Standards for the installation of approved weatherization materials.

Approximately \$830,000 in funding is available for the current fiscal year, 150-200 units are expected to be weatherized.

Services will be performed in accordance with the regulations set forth by the U.S. Department of Energy (DOE) in 10 CFR 440 and 10 CFR 600 as amended, and in accordance with the provisions and procedures contained in the Oregon Site Built and Mobile Home Weatherization Specifications, available online, on the Oregon Housing and Community Services website.

Manufacturers install instructions (as required) will be brought to a preconstruction meeting.

All work must be performed according to standards outlined in the Oregon Site Built and Mobile Home Weatherization Specifications.

The Contractor must be licensed with the Construction Contractors Board and must be a certified weatherization contractor with a Lead Renovator on staff. All workers on County projects must have the certifications appropriate for the task they are assigned; these include but are not limited to Lead based paint, and EPA Lead certification. Proof of certifications will be required.

5.2 Typical Scenario:

- Individual dwellings will be bundled in a range of 5-10 per project.
- Project sizes may change based on production demand, cost and timelines.
- County staff will build a scope of work outline for each dwelling, identifying specific measures to be included in each dwelling as well as diagnostic target numbers ;
- A **MANDATORY** walkthrough will occur for each dwelling in a project, only those attending the walk through will be eligible to bid on the project.
- Contractors will build their bid based on installing all requested measures ~~installed~~ per state and local building codes, manufacturers and the low-income weatherization specifications,
- Lump sum bids will be received from prequalified contractors,
- Award will be made to the lowest responsive, responsible contractor meeting the specifications, including time frame, for each project.
- **Prior to contract execution, contractor will provide a price schedule for each house in the bundle. The submitted price schedule will include an itemized cost for each measure detailed in the bid documents.** Each measure will have a maximum allowable cost, if the bid received is in excess of the maximum allowable cost, these measures will be removed from the final scope of work and final contract amount amended to reflect the removal of said items.
- **Change orders will be processed as detailed in the contract form, section III**
- Each bundle will have approximately 45 working days for completion.

5.2. CERTIFICATION OF WORK / WARRANTY

General contractor and their subcontractors **must** warranty all weatherization work and materials including base load measures for a period of one year from the time of completion. Warranty includes the repair and replacement of defective measures resulting from improper installation or material defect. The contractor shall:

- Use recycled/recyclable materials whenever possible. Compliance with EPA regulations also applies to the decommissioning of replaced baseload appliances whether subcontracted out or not.
- Have a health and safety program in place. Documentation of all required training, for contractor based programs, is required and must be available for inspection.
- All weatherization crew leaders, crew and contractor based, are required to complete the OSHA 30 hour training course.
- All weatherization workers, crew and contractor based, are required to complete the OSHA 10 hour training course.
- Proper usage of hazardous chemicals and substances such as foams, sealants, and cleaners in the weatherization work environment.
- Provide material Safety Data Sheets (SDS) from suppliers that describe the method to properly handle potentially hazardous materials. Contractor must inform employees where the MSDS are located, how to understand their content, and how to obtain and use appropriate hazard information.

- All weatherization crews working on pre 1978 homes must be trained in Lead Safe Weatherization (LSW)
- Every jobsite where lead paint is being disturbed must have an EPA certified renovator onsite during sign posting, work area setup site and cleanup phases of the work. The renovator must be available by phone when off-site.
- See Exhibit 1, Sample Lead based paint documentation package for a sample current reporting package required for each project
- The Contractor must provide training and certification programs or opportunities to it's workers. Certification and training requirements must be met before bidding on individual weatherization projects. Contractors will not be allowed to bid until proof of necessary training and certifications are received.

5.3 SITE INFORMATION

All of the projects will be within Clackamas County. The type of projects to be scheduled for weatherization improvements will range from mobile homes to single family dwellings to apartment buildings. Community Solutions will determine the scope of each specific project. Projects may be grouped (5 to 10) of scattered sites under a single contract. Projects may also be for a large single site under a single contract.

THERE WILL BE A MANDATORY WALK THROUGH OF EACH PACKAGE RELEASE FOR BIDS

5.4 QUESTIONS

Questions relating to this qualifications or qualifications document shall be addressed to:

Lane Miller, Purchasing Manager
Reference: Contractor Services, Community Solutions for Clackamas County's Weatherization Program
Clackamas County Purchasing
2051 Kaen Road, Oregon City, OR 97045
(503) 742-5444

SECTION 6

EVALUATION AND SELECTION CRITERIA

6.1 QUALIFICATIONS EVALUATION PROCESS:

QUALIFICATIONS will be evaluated by an internal evaluation committee. QUALIFICATIONS may be subject to a two-phase evaluation process. The first phase will consist of each evaluator independently assigning a score to each evaluation criteria on the written QUALIFICATIONS. Criterion scores will then be summed. The County reserves the right to award the contract at the end of Phase One. Phase Two, if deemed necessary by the evaluation committee, will consist of the highest scoring contractors from Phase One participating in an interview with the evaluation committee. No additions, deletions or substitutions may be made to QUALIFICATIONS during the oral evaluations that cannot be viewed as clarification. Each evaluator will independently assign a score to each evaluation criteria during the oral interview. The scores resulting from the interview and the written evaluation will be summed resulting in a final score. The award will be given to the highest scoring Contractor(s). The County may make multiple awards on this project.

<u>PHASE ONE</u>	<u>POINTS AVAILABLE</u>
Project Understanding and Implementation Plan	0-30
Qualifications	0-30
Experience	0-30
Implementation Plan	0-10
Total phase one points available	<u>100</u>

Once a selection has been made, the County will enter into contract negotiations. During negotiation the County may require any additional information it deems necessary to clarify the approach and understanding of the requested services. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and associated fee that best represents the efforts required. If the County is unable to come to terms with the highest scoring Contractor, discussions shall be terminated and negotiations will begin with the next highest scoring Contractor. The County reserves the right to reject any and all QUALIFICATIONS. In the award of the contract, the Board of County Commissioners will consider the element of time, will accept the qualifications or QUALIFICATIONS which in their estimation will best serve the interests of Clackamas County and will reserve the right to award the contract to the contractor whose qualifications shall be best for the public good.

SECTION 6

SAMPLE MATERIALS AND SERVICES AGREEMENT

**SAMPLE MASTER AGREEMENT
MATERIALS AND SERVICES CONTRACT
WEATHERIZATION CONTRACTOR SERVICES**

This Master Agreement for materials and services is entered into by and between **CLACKAMAS COUNTY** hereinafter referred to as the COUNTY, and **XXXXXXXXXXXXXXXXXXXX**, hereinafter called the CONTRACTOR, to provide the materials and services described below in Section I and in the Request for Qualifications issued August XX, 2014 and the Qualifications response received XXX, which by this reference is hereby made a part of and incorporated herein. The following provisions shall comprise this contract:

I. SERVICES TO BE PROVIDED:

The contractor shall do, perform, and carry out in a satisfactory manner, the work as described in the Request for QUALIFICATIONS issued **August X, 2014** the Qualifications Response opened at the time of closing on **August X, 2014, Weatherization Contractor Services** for the rates established therein.

Individual jobs will be bundled in a range of 5-10 jobs per bundle. Bundle sizes may change based on production demand and timelines. These jobs will have maximum allowable costs for certain items, these will be identified in the bid packet for individual projects. County staff will build specs for each project, a walkthrough will occur for each project, quotes from prequalified contractors, specific contract issued to the lowest responsive, responsible contractor meeting the specifications, including time frame, for each project.

Work shall be performed in accordance with a schedule approved by the COUNTY. The CONTRACTOR shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The contractor shall warranty work performed on each project for a period of one year from individual project completion. The contract shall commence **upon contract execution and continue through June 30, 2015**. This contract may be renewed for up to **four (4)** one year renewals with the written approval of both parties.

II. COMPENSATION

A. The COUNTY agrees to compensate the CONTRACTOR on a fee-for-services basis as detailed in this Contract. Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent COUNTY contract and/or purchase order numbers. All charges shall be billed monthly and will be paid net 30 days from receipt of invoice. The maximum compensation authorized under this Contract shall not exceed **\$XXXXXXXX**.

B. The CONTRACTOR is engaged hereby as an independent contractor and will be so deemed for purposes of the following:

1 The CONTRACTOR will be solely responsible for payment of any Federal or State taxes required as a result of this Contract.

2. This Contract is not intended to entitle the CONTRACTOR to any benefits generally granted to COUNTY employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Contract to the CONTRACTOR are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except

insofar as benefits are otherwise required by law if the CONTRACTOR is presently a member of the Oregon Public Employees Retirement System).

3. *If the CONTRACTOR has the assistance of other persons in the performance of this Contract, and the CONTRACTOR is a subject employer, the CONTRACTOR shall qualify and remain qualified for the term of this contract as an insured employer under Oregon Revised Statutes (“ORS”) Chapter 656.*

C. *The CONTRACTOR certifies that, at present, he or she, if an individual is not a program, County, or Federal employee.*

D. *The CONTRACTOR, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.*

III. CHANGE ORDER PROCESS:

Change orders can be initiated by either the County or the Contractor. An amendment form will accompany any change order that adds or deletes scope of work, cost or time to the existing contract.

a. Before any changes or alterations of the work order are started, CONTRACTOR shall request a written change order. This authorization can only be approved by Clackamas County.

b. CONTRACTOR shall promptly notify Community Solutions, in writing or as instructed by Community Solutions, of any subsurface or latent physical conditions at the site or in an existing structure which differ materially from those indicated or referred to in the Work Order. Community Solutions shall investigate the situation. If Community Solutions finds that there are subsurface or latent physical conditions which differ materially from those intended in the Work Order and which could not reasonably have been anticipated by CONTRACTOR, a change order shall be issued incorporating the necessary revisions.

c. Community Solutions may authorize minor changes in the work not involving an adjustment in the job price or work timeline, which are consistent with the overall intent of the Work Order. Such a field order shall be binding on both Clackamas County and CONTRACTOR.

d. Additional work performed without authorization through a change order shall not entitle CONTRACTOR to an increase in job price or extension of work timeline.

IV. FEDERAL CONTRACT SPECIAL CONDITIONS

Failure to Perform

The County may, subject to the provisions of paragraph (4) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances.

- 1.** *If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or*
- 2.** *If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failures within a period of ten (10) days (or such longer period as the County may authorize in writing) after receipt of notice from the County specifying such failure. CONTRACTOR’S failure to perform the scope of work*

identified or failure to meet established performance standards shall be subject to consequences that include but are not limited to:

- *Reducing or withholding payment;*
 - *Requiring the CONTRACTOR to perform, at the CONTRACTORS expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or*
 - *Declaring a default, terminating the contract and seeking damages and other relief under the terms of the contract or other applicable law.*
3. *In the event the County terminates this contract in whole, or in part, as provided in paragraph (2) above of this clause, the County may procure, upon such terms and in such manner as the County may deem appropriate, supplies or services similar to those terminated, and the Contractor shall be liable to the County for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.*
 4. *The Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control of and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but, in every case, the failure to perform must be beyond the control of the Contractor and without the Contractor's fault or negligence. The Contractor shall not be liable for excess costs for failure to perform, unless the supplies or services to be furnished were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.*
 5. *The rights and remedies of the County provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.*
 6. *As used in this contract, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.*

Termination for Convenience

This contract may be terminated by either party upon at least ten (10) days written notice to the other.

Compliance with Applicable Law

Contractor shall comply with all federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, in effect at the time the Contract is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the Contract may or may not be the basis for modifications to Contractor's schedule, scope and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was anticipated by Contractor or the Parties, and other circumstances then existing.

Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, (iv) Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), (v) Section 508 of the Clean Water Act (33 U.S.C. 1368, (vi) Executive Order 11738, EPA regulations (40 CFR part 15) and ORS 659.425; (vii) Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in

Department of Labor regulations (29 CFR Part 3), (viii) Executive Order 11246 entitled Equal Employment Opportunity as amended by Executive Order 11375 and as supplemented in 41CFR chapter 60, (ix) Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor regulations (29 CFR Part 5), (x) Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5), (xi) Energy Policy and Conservation Act (pub.L. 94-163, 89 Stat. 871), (xii) all regulations and administrative rules established pursuant to the foregoing laws; and (xiii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

County's performance under the Contract is conditioned upon Contractor's compliance with, and Contractor shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.520 and 279C.530, which are incorporated by reference herein.

If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, Contractor shall in writing request County to resolve the conflict. Contractor shall specify if the conflict(s) create a problem for the design or other Services required under the Contract.

Reporting Requirements

Contractor shall comply with the reporting requirements of the Awarding Agency including but not limited to Progress, Status and Performance reports necessary to support progress payments or cost reimbursements.

Records Maintenance; Access.

Contractor, and its Subcontractors, shall maintain all fiscal records relating to the Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain all other records pertinent to the Contract and the Project and shall do so in such a manner as to clearly document Contractor's performance.

County and the federal government and their duly authorized representatives shall have access, and Contractor shall permit the aforementioned entities and individual's access, to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to the Contract to perform examinations and audits and make excerpts and transcripts.

Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 3 years, or such longer period as may be required by applicable law, following final payment and expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later.

Patents; Copy Right; Rights in Data

Any discovery or invention that arises during the course of the contract shall be reported to the County. The Contractor shall promptly disclose inventions to the County, within 2 months, after the inventor discloses it in writing to the Contractors personnel responsible for patent matters. The rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and FAR Part 27. The Contractor shall comply with the requirements and regulations for Copy Rights and Rights in Data pursuant to FAR Part 27.

IV. CONSTRAINTS

The CONTRACTOR agrees:

A. *If the materials and services to be provided pursuant to this Contract are professional and/or consultative, the CONTRACTOR shall not delegate the responsibility for providing those services to any other individual or agency.*

B. *Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:*

1. *CONTRACTOR shall:*

a. *Make payments promptly, as due, to all persons supplying to the CONTRACTOR 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 CONTRACTOR or subcontractor incurred in the performance of this Contract.*

c. *Not permit any lien or claim to be filed or prosecuted against the COUNTY on account of any labor or material furnished.*

2. *If the CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the 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 the CONTRACTOR by reason of this Contract.*

3. *The CONTRACTOR shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.*

All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

4. *In the case of contracts lawn and landscape maintenance the CONTRACTOR shall salvage, recycle, compost or mulch waste material at an approved site, if feasible and cost effective.*

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

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.*

7. *The CONTRACTOR agrees to indemnify, hold harmless and defend the COUNTY, its officers, commissioners, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof (including attorney's fees), arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the CONTRACTOR or the CONTRACTOR'S employees or agents.*

8. *The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.*

9. *In the event the CONTRACTOR encounters on the site material reasonable believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the CONTRACTOR shall immediately stop work in the area affected and report the condition to the COUNTY in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the COUNTY and CONTRACTOR if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos PCBs, or when it has been rendered harmless, by written agreement of the COUNTY and CONTRACTOR.*

10. *The CONTRACTOR shall not be required to perform without consent any work relating to asbestos or PCBs.*

11. *The CONTRACTOR'S failure to perform the scope of work identified or failure to meet established performance standards shall be subject to consequences that include, but are not limited to:*

a. *Reducing or withholding payment;*

b. *Requiring the CONTRACTOR to perform, at the CONTRACTOR'S expense, additional work necessary to perform the identified scope of work or meet the established performance standards;*
or

c. *Declaring a default, terminating the Contract and seeking damages and other relief under the terms of the Contract or other applicable law.*

V *All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.*

VI. BONDS

Individual work orders issued will have bonding requirements. The CONTRACTOR will be required to furnish a performance bond before beginning each project.

The CONTRACTOR shall have a public work bond filed with the Construction Contractors Board prior to starting work on the project, in accordance with ORS279C.830. Additionally the CONTRACTOR shall include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work, in accordance with ORS279C.830

VII. INSURANCE REQUIREMENTS

A. COMMERCIAL GENERAL LIABILITY

Required by COUNTY

Not required by COUNTY

The CONTRACTOR agrees to furnish the COUNTY evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$_____ /

\$2,000,000 general annual aggregate for personal injury and property damage for the protection of the COUNTY, 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 this Contract. The general aggregate shall apply separately to this project / location. The COUNTY, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

Required by COUNTY

Not required by COUNTY

The CONTRACTOR agrees to furnish the COUNTY evidence of business automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage for the protection of the COUNTY, its officers, commissioners, agents and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The COUNTY, at its option, may require a complete copy of the above policy.

C. PROFESSIONAL LIABILITY

Required by COUNTY

Not required by COUNTY

CONTRACTOR agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/ \$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, 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, and damages because of negligent acts, errors and omissions in any way related to this Contract. COUNTY, at its option, may require a complete copy of the above policy.

D. POLLUTION LIABILITY INSURANCE

Required by COUNTY

Not required by COUNTY

The CONTRACTOR shall obtain, at the CONTRACTOR'S expense and keep in effect during the term of the Contract, CONTRACTOR'S Pollution Liability insurance covering the CONTRACTOR'S liability for a third party bodily injury and property damage arising from pollution conditions caused by the CONTRACTOR while performing their operations under the Contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the COUNTY. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance. The policy's limits shall not be less than \$1,000,000 each loss / \$1,000,000 aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this Contract. Any self-insured retention / deductible amount shall be submitted to the COUNTY for review and approval.

E. *The certificate of insurance, other than the pollution liability insurance shall include the COUNTY as an expressly scheduled additional insured using form CG 20-10, CG 20-37, CG 32 61 or their equivalent. A blanket endorsement or automatic endorsement is not sufficient to meet this requirement. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured. Such insurance shall*

provide sixty (60) days 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.

F. If the CONTRACTOR has the assistance of other persons in the performance of this contract, and the CONTRACTOR is a subject employer, the CONTRACTOR agrees to qualify and remain qualified for the term of this contract as an insured employer under ORS 656. The CONTRACTOR shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

G. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

H. The insurance, other than the Workers' Compensation, Professional liability and Pollution liability insurance, shall include the COUNTY as an additional insured. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured.

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the CONTRACTOR to the County.

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.

I. CONTRACTOR shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the COUNTY.

V. SUBCONTRACTS

The CONTRACTOR shall be responsible to the COUNTY for the actions of persons and firms performing subcontract work. The CONTRACTOR certifies that the CONTRACTOR has not discriminated and will not discriminate against any minority, women or emerging small business enterprise in obtaining any subcontract.

TERMINATION - AMENDMENT

A. This Contract may be terminated by either party upon at least ten (10) days written notice to the other.

B. This Contract and any amendments to this contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County.

C. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

The undersigned, by its signature, agrees to perform the scope of work as described in the Contract documents and meet the performance standards set forth therein. By their signatures below, the parties to this contract agree to the terms, conditions, and content expressed herein.

[COMPANY]
[Street]
[Address]

Clackamas County Board of
County Commissioners by:

A _____
Entity Type/State of Formation

XXXXXXXXXX, Director

Authorized Signature

Date

Name / Title (Printed)

Date

Telephone/Fax Number

CCB License #

Oregon Business Registry #

County Counsel
Approved as to Form

Section 7

**CERTIFICATES OF INSURANCE
(to be submitted at the time of contract execution)**

Exhibit 1

SAMPLE JOB REPORTING PACKAGE

- **Lead renovator certificate/ID**
- **Signage and containment photographs**
- **Renovation Recordkeeping Checklist**
- **Multifamily Renovation notice**

MATERIALS AND SERVICES CONTRACT WITH XXXXXXXXXXXX SERVICES, INC. **FOR XXXXXXXXXXXX**

This contract ("Contract") for materials and services is entered into by and between **CLACKAMAS COUNTY**, a political subdivision of the State of Oregon, hereinafter referred to as the COUNTY, and XXXXXXXXXXXX., hereinafter called the CONTRACTOR, to provide the materials and services described below and in Attachment "A", which by this reference is hereby made a part of and incorporated herein. The following provisions shall comprise this Contract:

I. SCOPE

This Contract covers the materials and services as described in Attachment "A." Work shall be performed in accordance with a schedule approved by the COUNTY. The CONTRACTOR shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The Contract shall commence **upon contract execution and continue through XXXXXXXXXXXX.**

II. COMPENSATION

A. The COUNTY agrees to compensate the CONTRACTOR on a fee-for-services basis as detailed in this Contract. Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent COUNTY contract and/or purchase order numbers. All charges shall be billed monthly and will be paid net 30 days from receipt of invoice. The maximum compensation authorized under this Contract shall not exceed **\$XXXXXXXX.**

B. The CONTRACTOR is engaged hereby as an independent contractor and will be so deemed for purposes of the following:

1 The CONTRACTOR will be solely responsible for payment of any Federal or State taxes required as a result of this Contract.

2. This Contract is not intended to entitle the CONTRACTOR to any benefits generally granted to COUNTY employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Contract to the CONTRACTOR are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the CONTRACTOR is presently a member of the Oregon Public Employees Retirement System).

3. If the CONTRACTOR has the assistance of other persons in the performance of this Contract, and the CONTRACTOR is a subject employer, the CONTRACTOR shall qualify and remain qualified for the term of this contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656.

C. The CONTRACTOR certifies that, at present, he or she, if an individual is not a program, County, or Federal employee.

D. The CONTRACTOR, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

III. CONSTRAINTS

The CONTRACTOR agrees:

A. If the materials and services to be provided pursuant to this Contract are professional and/or consultative, the CONTRACTOR shall not delegate the responsibility for providing those services to any other individual or agency.

B. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:

1. CONTRACTOR shall:

a. Make payments promptly, as due, to all persons supplying to the CONTRACTOR 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 CONTRACTOR or subcontractor incurred in the performance of this Contract.

c. Not permit any lien or claim to be filed or prosecuted against the COUNTY on account of any labor or material furnished.

2. If the CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the 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 the CONTRACTOR by reason of this Contract.

3. The CONTRACTOR shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.

All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

4. In the case of contracts lawn and landscape maintenance the CONTRACTOR shall salvage, recycle, compost or mulch waste material at an approved site, if feasible and cost effective.

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

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.

7. The CONTRACTOR agrees to indemnify, hold harmless and defend the COUNTY, its officers, commissioners, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof (including attorney's fees), arising out of or based

upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the CONTRACTOR or the CONTRACTOR'S employees or agents.

8. The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

9. In the event the CONTRACTOR encounters on the site material reasonable believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the CONTRACTOR shall immediately stop work in the area affected and report the condition to the COUNTY in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the COUNTY and CONTRACTOR if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos PCBs, or when it has been rendered harmless, by written agreement of the COUNTY and CONTRACTOR.

10. The CONTRACTOR shall not be required to perform without consent any work relating to asbestos or PCBs.

11. The CONTRACTOR'S failure to perform the scope of work identified or failure to meet established performance standards shall be subject to consequences that include, but are not limited to:

- a.** Reducing or withholding payment;
- b.** Requiring the CONTRACTOR to perform, at the CONTRACTOR'S expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or
- c.** Declaring a default, terminating the Contract and seeking damages and other relief under the terms of the Contract or other applicable law.

IV All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

V. INSURANCE REQUIREMENTS

A. COMMERCIAL GENERAL LIABILITY

- Required by COUNTY Not required by COUNTY

The CONTRACTOR agrees to furnish the COUNTY evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$ _____ / \$2,000,000 general annual aggregate for personal injury and property damage for the protection of the COUNTY, 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 this Contract. The general aggregate shall apply separately to this project / location. The COUNTY, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

Required by COUNTY

Not required by COUNTY

The CONTRACTOR agrees to furnish the COUNTY evidence of business automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage for the protection of the COUNTY, its officers, commissioners, agents and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The COUNTY, at its option, may require a complete copy of the above policy.

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E. The certificate of insurance, other than the pollution liability insurance shall include the COUNTY as an expressly scheduled additional insured using form CG 20-10, CG 20-37, CG 32 61 or their equivalent. A blanket endorsement or automatic endorsement is not sufficient to meet this requirement. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured. Such insurance shall provide sixty (60) days 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.

F. If the CONTRACTOR has the assistance of other persons in the performance of this contract, and the CONTRACTOR is a subject employer, the CONTRACTOR agrees to qualify and remain qualified for the term of

this contract as an insured employer under ORS 656. The CONTRACTOR shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

G. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

H. The insurance, other than the Workers' Compensation, Professional liability and Pollution liability insurance, shall include the COUNTY as an additional insured. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured.

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the CONTRACTOR to the County.

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.

I. CONTRACTOR shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the COUNTY.

V. SUBCONTRACTS

The CONTRACTOR shall be responsible to the COUNTY for the actions of persons and firms performing subcontract work. The CONTRACTOR certifies that the CONTRACTOR has not discriminated and will not discriminate against any minority, women or emerging small business enterprise in obtaining any subcontract.

TERMINATION - AMENDMENT

A. This Contract may be terminated by either party upon at least ten (10) days written notice to the other.

B. This Contract and any amendments to this contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County.

C. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

The undersigned, by its signature, agrees to perform the scope of work as described in the Contract documents and meet the performance standards set forth therein. By their signatures below, the parties to this contract agree to the terms, conditions, and content expressed herein.

[COMPANY]
[Street]
[Address]

Clackamas County Board of
County Commissioners by:

A _____
Entity Type/State of Formation XXXXXXXXX, Director

Authorized Signature

Date

Name / Title (Printed)

Date

Telephone/Fax Number

CCB License # (if applicable)

Oregon Business Registry #

County Counsel
Approved as to Form

Approval of Previous Business Meeting Minutes: February 5, 2015

(minutes 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.html>

Thursday, February 5, 2015 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

PRESENT: Commissioner John Ludlow, Chair
Commissioner Jim Bernard
Commissioner Paul Savas
Commissioner Tootie Smith

EXCUSED: Commissioner Martha Schrader

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. CITIZEN COMMUNICATION

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

1. Kevin Johnson, Gladstone – fair housing and the HUD report.
2. Les Poole, Gladstone – Metro and Road Funding
3. Cliff Thomason, Grants Pass – local control of lottery funds.
4. Mack Woods, Canby – Cable office and public records.

~Board Discussion~

1. Reading and Adoption of Ordinance No. **02-2015** Amending Title 5, Animals of the Clackamas County Code and Declaring an Emergency

Scott Ciecko, County Counsel and Mike Bezner, DTD presented the staff report.

~Board Discussion~

Chair Ludlow opened the public hearing and asked if anyone wishes to speak.

1. Les Poole, Gladstone – concerned about the amount of time for the appeal process.

~Board Discussion~

Chair Ludlow closed the public hearing and asked for a motion to read the Ordinance by title only.

MOTION:

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

Commissioner Savas: Second.

~Board Discussion~

Clerk calls the poll.

Commissioner Bernard: Aye.

Commissioner Smith: Aye.

Commissioner Savas: Aye.

Chair Ludlow: Aye – the motion passes 4-0.

Chair Ludlow asked the Clerk to assign a number and read the ordinance by title only, he then asked for a motion for adoption.

MOTION:

Commissioner Bernard: I move we adopt Ordinance No. 02-2015 Amending Title 5, Animals of the Clackamas County Code and Declaring an Emergency.

Commissioner Smith: Second.

Clerk calls the poll.

Commissioner Smith: Aye.

Commissioner Savas: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye – the motion passes 4-0.

2. First Reading of Ordinance No. **03-2015** for the Proposed Amendment to Chapter 2.10, an Ordinance to Clarify the Hamlet and Village Program

Stephen Madkour, County Counsel and Gary Schmidt, Public and Government Affairs presented the staff report.

~Board Discussion~

Chair Ludlow announced this is a public hearing and asked if anyone wished to speak.

1. Tammy Stevens, Beaver Creek CPO had several suggested changes to the ordinance.
2. Mack Woods, Canby – ethic issues.

Chair Ludlow closed the public hearing.

~Further Board Discussion~

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

Chair Ludlow and asked for a motion to read the ordinance by title only.

MOTION:

Commissioner Bernard: I move we read the Ordinance by title only; and amending page 8 section 2.10.060 C – Removal of a Board Member to read as follows: Any member of the Board of Directors of a hamlet or village may be removed by a 2/3 majority of voting members at a Town hall meeting. The matter of removal may be acted upon at a Town hall meeting of the hamlet or village.

Commissioner Smith: Second.

~Board Discussion~

Clerk calls the poll.

Commissioner Savas: Aye.

Commissioner Bernard: Aye.

Commissioner Smith: Aye.

Chair Ludlow: Aye – the motion passes 4-0.

Chair Ludlow asked the Clerk to assign a number and read the ordinance by title only, he then announced the second reading will be February 19, 2015 at the evening Business Meeting at 6:00 PM. Also requested is a Policy Session with County Clerk prior to the second reading on Feb. 19th.

III. PUBLIC DISCUSSION ITEM

Public and Government Affairs

1. A Resolution Regarding the Clackamas County Coordinating Committee
Gary Schmidt, Public and Government Affairs presented the staff report.

~Board Discussion~

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

Chair Ludlow announced this is a discussion item and asked if anyone wishes to speak.

1. Tammy Stephen, Beaver Creek – she spoke in support of C-4 and stated the importance of communication.

Chair Ludlow asked for a motion.

MOTION:

Commissioner Bernard: I move we approve the resolution affirming the continuation of the Clackamas County Coordinating Committee as a forum to promote coordination and consensus between the jurisdictions and to confirm that the Clackamas County Board of Commissioners will endeavor to achieve agreement on the issues and decisions.

Commissioner Smith: Second.

~Board Discussion~

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

Clerk calls the poll.

Commissioner Bernard: Aye.

Commissioner Smith: Aye.

Commissioner Savas: Aye.

Chair Ludlow: Aye – the motion passes 4-0.

IV. CONSENT AGENDA

Chair Ludlow asked the Clerk to read the consent agenda by title – the then asked for a motion.

MOTION:

Commissioner Smith: I move we approve the consent agenda.

Commissioner Bernard: Second.

Clerk calls the poll.

Commissioner Smith: Aye.

Commissioner Savas: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye – the motion passes 4-0.

A. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC

V. COUNTY ADMINISTRATOR UPDATE

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

VI. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED – 12:25 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.

www.clackamas.us/bcc/business.html



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

March 5, 2015

Board of County Commissioners
Clackamas County

Members of the Board:


Approval of Amendment #2 to Intergovernmental Agreement No. 4855 between the State of Oregon, Department of Corrections and Clackamas County

Purpose/Outcomes	This amendment will provide additional funding for Community Corrections Men's and Women's Corrections Substance Abuse Programs and the Transition Center for the fiscal year 2014-2015.
Dollar Amount and Fiscal Impact	The amendment increases the value of the IGA by \$22,500 to \$679,207 for the 2013-2015 biennium and funds 19% of these programs.
Funding Source	State of Oregon Department of Corrections, Measure 57 supplemental funds.
Safety Impact	Provides Community Corrections in-patient drug treatment services including supervision, sanctions and treatment for convicted felons residing in the county.
Duration	Effective July 1, 2013 and terminates June 30, 2015.
Previous Board Action/Review	On 10/29/13 the Board reviewed and approved our 2013-2015 Biennial Plan. This amendment to the IGA will augment these Substance Abuse Programs for the second year of the Biennial Plan.
Contact Person	Captain Chris Hoy, Director - Community Corrections – 503-655-8866

BACKGROUND: The State of Oregon will redistribute \$186,000 in unspent Measure 57 Supplemental Fund dollars to counties that have or will fully spend their M57 dollars by June 30, 2015. Community Corrections applied for and was granted an additional \$22,500 of the unspent M57 funds to support the ongoing recovery and transition into the community of our felony clients with substance abuse treatment assessments and referrals.

RECOMMENDATION: Community Corrections respectfully requests that the Board of County Commissioners approves Amendment #2 to Intergovernmental Agreement No. 4855 between Clackamas County and the Oregon Department of Corrections, for the Measure 57 supplemental funds.

Respectfully submitted,


Captain Chris Hoy, Director
Community Corrections

**AMENDMENT #2 to
INTERGOVERNMENTAL AGREEMENT #4855**

1. This is Amendment #2 to Contract #4855 (as amended from time to time the "Contract") dated December 5, 2013 between the State of Oregon acting by and through its Department of Corrections hereafter called Department, and Clackamas County, hereafter called County.

2. The Contract is hereby amended as follows (new language is shown in **bold** and underlined and deleted language is indicated by [brackets]):

2.1 Section VIII(G), is hereby amended as follows:

"Maximum Grant Amount. Grant funds are based on COUNTY's Application for Supplemental Funds. Unless amended, the maximum, not-to-exceed County Corrections Intervention Grant Payable to COUNTY under this Agreement is [~~\$656,707~~] **\$679,207**. The maximum grant amount may be increased only by written amendment of this Agreement which is signed by all parties and with all required State approvals.

2.2 Exhibit A-1, 2013-2015 M57 Supplemental Funds Intervention Program Budget Summary, is hereby deleted and replaced with Exhibit A-2 attached.

3. Except as expressly amended above, all other terms and conditions of the original agreement are still in full force and effect. COUNTY certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

IN WITNESS WHEREOF, the Parties acknowledge that they have read and understand this Amendment and agree to be bound by its terms and conditions effective as noted below.

CLACKAMAS COUNTY

**STATE OF OREGON by and through
DEPARTMENT OF CORRECTIONS**

Title

Date

Date



Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Greg Geist
Interim Director

Board of Commissioners
Clackamas County

Members of the Board:

Approval of a Contract with CDM Smith Inc for Professional Services Related to the
Blue Heron Aerated Stabilization Basin Sludge Management Project

Purpose/Outcomes	Approval of the Agreement to Furnish Engineering Services to CCSD#1 and Tri-City Service District for the Blue Heron Aerated Stabilization Basin Sludge Management Project (Project).
Dollar Amount and Fiscal Impact	CDM Smith contract amount is \$380,680 Funds for the project are included in the Districts' FY2014-2015 sanitary sewer capital improvement budgets. There is no impact to the County General Fund.
Safety Impact	None
Duration	CCSD#1 anticipates completing technical studies, alternatives analysis and the final design documents and permitting during 2015 such that clean up construction can be completed during summer of 2016
Previous Board Action	The initial Agreement with CDM Smith to complete a Remedial Action/Feasibility Study was approved on August 23, 2013; Amendment #1 for Phase 2 work was approved on January 31, 2013; and Amendment #2 for Phase 3 work was approved on September 19, 2013.
Contact Person	Leah Johanson, Senior Civil Engineer 503-742-4620
Contract No.	N/A

Background

Clackamas County Service District No. 1 and the Tri-City Service District ("Districts") entered into a co-investment regulatory strategy to acquire the Blue Heron West environmental assets in 2012 to secure a superior outfall pipe and its associated Clean Water Act permit. The objective was to meet the current and future challenges of increasingly stringent environmental regulations governing heat discharges and

toxic mixing into the Willamette River. The Districts' were successful in purchasing the property, finalizing transfer from the bankruptcy court in July 2012.

The Districts' standing advisory boards were briefed on the effort and supported the proposed purchase and public process. Updates have been provided on a regular basis.

Prior to purchasing the property, the Districts entered into a Prospective Purchaser Agreement (PPA) with the Oregon Department of Environmental Quality (DEQ) to limit the Districts' risk from prior industrial activities. The PPA process was based on recognizing the public benefit of the Districts converting the treatment lagoons, and remediating anticipated minor levels of contamination on site, into a productive public use. In return, the Districts will be insulated from any future environmental liability from past use of the property.

As part of the PPA, DEQ developed a Scope of Work (SOW) for completion of a Remedial Investigation & Feasibility Study (RI/FS) that the Districts must complete as part of the PPA. The Remedial Investigation and Human Health and Ecological Risk Assessment were completed in April 2014 and accepted by DEQ in June 2014. As a result of the Report findings, the Districts no longer need to complete a full Feasibility Study, but will need to develop a Contaminated Media Management Plan ("CMMP") for the management of the sludge and cleanup of the lagoon for DEQ review and approval.

Water Environment Services (WES), on behalf of the Districts, solicited proposals to provide professional services to complete technical studies and develop the CMMP for DEQ approval in support of site cleanup in 2016. One proposal was received from CDM Smith. The project team reviewed the proposal and held an interview with the CDM Smith project team. Following the interview, CDM Smith was selected to complete the project.

CDM Smith will work with WES staff to complete all activities necessary for this project. WES is proposing to complete the work under this agreement in two Phases. The following is a summary of the Phases anticipated under this contract:

- Phase 1: Alternatives Discussion/Workshop & Technical Studies
- Phase 2: Odor Management Strategy, CMMP & Construction

CDM Smith has provided WES with a scope of work and budget of \$380,680 for completion of this effort. The Agreement will be funded through the Districts' FY2014-2015 sanitary sewer capital improvement budgets and will be included with the Districts' FY2015-16 and FY2016-17 budget request. District Counsel has reviewed the Agreement.

RECOMMENDATION

The District recommends:

1. The Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 1 and the Tri-City Service District, approve the Agreement to Furnish Consultant Services to the Districts for the Blue Heron Sludge Management Project in the amount of \$380,680.

Sincerely,



Greg Geist
Interim Director

Placed on the Board Agenda of March 5, 2015 by Purchasing Division.



LANE MILLER
MANAGER

PURCHASING DIVISION

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

March 5, 2015

MEMORANDUM TO THE BOARD OF COUNTY
COMMISSIONERS

Please place on the Board Agenda of **March 5, 2015**, this contract with CDM Smith Inc for **Professional Services Related to the Blue Heron Aerated Stabilization Basin Sludge Management Project**. This project was requested by Leah Johanson, Project Manager and was publicly advertised in accordance with ORS 279. Twenty proposal packets were requested and sent out with one proposal response received: CDM Smith. A selection panel reviewed and evaluated the Request for Qualifications based on the selection criteria outlined in the RFQ documents. CDM Smith Inc was determined to be responsive and responsible and was selected to enter into contract. The contract amount is not to exceed \$380,680.00. The contract term is from contract execution through August 31, 2016. This contract has been reviewed and approved by County Counsel. Funds for this project are budgeted under account line 450-6600-00-481200-30002 for fiscal years 2014/2015, 2015/2016 and 2016/2017.

Respectfully Submitted,

Kathryn M. Holder
Purchasing Staff