

AGENDA

Thursday June 22, 2017 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2017-

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. 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.)*

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

1. Resolution No. _____ for a Clackamas County Supplemental Budget, Greater than 10% and Budget Reduction for Fiscal Year 2016-2017 (Diane Padilla, Budget Manager)

WATER ENVIRONMENT SERVICES

2. Second Reading of Ordinance No. 10-2017 for Water Environment Services Establishing the Rules & Regulations Regarding Sanitary Sewer and Surface Water Management Services and Declaring an Emergency (Greg Geist, Water Environment Services) *First Reading was June 8, 2017*

SERVICE DISTRICT NO. 5 (Street Lighting)

(Wendi Coryell, Department of Transportation & Development, will present the following 2 Assessment Areas together)

3. Board Order No. _____ Forming a 7-Lot Assessment Area within Clackamas County Service District No. 5, Assessment 24-17 32nd Ave. 7-Lot Petition
4. Board Order No. _____ Forming a 600-Lot Assessment Area within Clackamas County Service District No. 5, Assessment 44-15 Scouters Mountain 600-Lot Subdivision

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

A. Health, Housing & Human Services

1. Approval for an Intergovernmental Facility Lease Agreement with the Oregon Trail School District No. 46 for the Sandy Health & Wellness Center – *Health Centers*
2. Approval of a Renewal Intergovernmental Agreement with State of Oregon, Oregon Health Authority, for the Foodborne Illness Prevention Program – *Public Health*
3. Approval of an Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority for Operation as the Local Public Health Authority for Clackamas County – *Public Health*

B. Department of Transportation & Development

1. Authorization to Purchase a Grandall 3100XL Excavator the Department of Transportation Maintenance Division - *Procurement*

C. Finance Department

1. Resolution No. _____ for Clackamas County for Budgeting of New Specific Purpose Revenue for Fiscal Year 2016-2017
2. Resolution No. _____ for Clackamas County Transfer of Appropriations for Fiscal Year 2016-2017
3. Approval of a Contract Amendment and Extension with Moss Adams LLP for Annual Audit Services
4. Approval of a Requirement Contract with Tyree Oil Inc. for Fuel for Clackamas County Fleet Services

D. Elected Officials

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

E. Juvenile Department

1. Approval of Intergovernmental Agreement with Clackamas Education Service District (ESD) to Provide Education and Vocational Opportunities for At-Risk Youth
2. Approval of Renewal No. 2 of an Intergovernmental Agreement with the City of West Linn for Youth Offender Community Service Projects

F. Technology Services

1. Approval of an ORMAP Intergovernmental Agreement Contract No. 3625-17 between Clackamas County and the Oregon Department of Revenue for Digital GIS Tax Lot Conversion

G. Human Resources

1. Resolution No. _____ Approving a Workplace Violence Prevention Plan

H. Business & Community Services

1. Approval of an Intergovernmental Agreement with Washington County, Multnomah County Library District, Hood River Library District, Fort Vancouver Regional Library, and the City of Camas for Exchange of Library Services (Metropolitan Interlibrary Exchange)

IV. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of an Intergovernmental Agreement between North Clackamas Parks & Recreation District and Clackamas Community College for Educational & Enrichment Services
2. Resolution No. _____ for a Transfer of Appropriations for North Clackamas Parks & Recreation District for Fiscal Year 2016-2017
3. Approval of an Amendment to the Strategic Partnership Purchase and Sale Agreement between the North Clackamas Parks & Recreation District and the North Clackamas School District No. 12

V. SERVICE DISTRICT NO. 5 (Street Lighting)

1. Approval of a Contract with Harper Houf Peterson Righellis, Inc. to Provide Design and Engineering Services for the SE McLoughlin Blvd. Phase 2 Street Lighting Improvements Project - *Procurement*

VI. WATER ENVIRONMENT SERVICES

(Service District No. 1, Tri-City Service District & Surface Water Management Agency of Clackamas County)

1. Approval of a Goods and Service Contract with Braun Construction & Design LLC for Detention Pond Maintenance and Restoration Services - *Procurement*

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. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. www.clackamas.us/bcc/business.html



MARC GONZALES
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution for a Clackamas County Supplemental Budget
(Greater Than Ten Percent and Budget Reduction) for Fiscal Year 2016-2017

Purpose/Outcome	Supplemental budget change FY 2016-2017
Dollar Amount and Fiscal Impact	The effect is an increase in appropriations of \$3,824,000
Funding Source	Includes State Operating Grants, Charge for Services, Miscellaneous Revenue and Interfund Transfer
Duration	July 1, 2016-June 30, 2017
Previous Board Action/Review	Budget Adopted June 29, 2016 and revised August 18, November 3, December 19 and April 27, 2017
Strategic Plan Alignment	Build public trust through good government
Contact Person	Diane Padilla, 503-742-5425

BACKGROUND:

Each fiscal year it is necessary to reduce allocations or allocate additional sources of revenue and appropriate additional expenditures to more accurately meet the changing requirements of the operating departments. The attached resolution reflects such changes requested by departments in keeping with a legally accurate budget. These changes are in compliance with ORS 294.473, which allows for governing body approval of supplemental budget changes for items ten percent or greater of the qualifying expenditures of the budget funds(s) being adjusted. The required notices have been published.

The Property Resources Fund is recognizing additional tax foreclosure and charge for services revenue and budgeting it for special payments to local government agencies and reserves.

The DTD Capital Projects Fund is recognizing an interfund transfer from the Road Fund to provide working capital for the Capital Projects Fund to cover expenses while awaiting grant revenue from their funding partners. This transfer will be returned back to the Road Fund in FY 2018-19.

The Risk Management Claims Fund is transferring from contingency provide for higher than anticipated claim costs.

The effect of this Resolution is an increase in appropriations of 3,824,000 including revenues as detailed below:

Other Financing Sources	\$ 237,000.
Charge for Services	87,000.
Interfund Transfers	<u>3,500,000.</u>
Total Recommended	<u>\$ 3,824,000.</u>

RECOMMENDATION:

Staff respectfully recommends adoption of the attached Resolution Order and Exhibit A in keeping with a legally accurate budget.

Sincerely,

Diane Padilla
Budget Manager

In the Matter of Providing Authorization
Regarding Adoption of a Supplemental
Budget for Items Greater Than 10
Percent of the Total Qualifying Expenditures
and Making Appropriations for Fiscal
Year 2016-17

Resolution No

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased or transferred from one appropriation category to another;

WHEREAS, a supplemental budget for the period of July 1, 2016 through June 30, 2017, inclusive, has been prepared, published and submitted to the taxpayers as provided by statute;

WHEREAS; a hearing to discuss the supplemental budget was held before the Board of County Commissioners on June 22, 2017.

WHEREAS; the funds being adjusted are:

- . Property Resources Fund
- . DTD Capital Projects Fund
- . Risk Management Claims Fund;

It further appearing that it is in the best interest of the County to approve this greater than 10 percent change in appropriations for the period of July 1, 2016 through June 30, 2017.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Pursuant to its authority under OR 294.473, the supplemental budget be adopted and appropriations established as shown in the attached Exhibit A which by this reference is made a part of this Resolution.

Dated this ____ day of _____, 2017

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary



Gregory L. Geist
Director

June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Ordinance No. 10-2017 Establishing the Rules and Regulations
of Water Environment Services
for Sanitary Sewer and Surface Water Management Services and Declaring an Emergency

Purpose/Outcomes	Adoption of Sanitary Sewer and Surface Water Rules and Regulations for WES and declaring an emergency for adoption
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Indefinite.
Previous Board Action/Review	WES Partnership created on November 3, 2016 (Ordinance Nos. 05-2016 & 06-2016), and amended on May 18, 2017 (Ordinance Nos. 07-2017, 08-2017, & 09-2017). First reading June 8, 2017.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This supports the WES Strategic Plan that customers will continue to benefit from a well-managed utility. 2. This project supports the County Strategic Plan to build public trust through good government.
Contact Person	Ron Wierenga, WES Surface Water Manager, 503-742-4581 Greg Geist, WES Director, 503-742-4560

BACKGROUND:

As part of the ongoing efforts associated with the formation of the Water Environment Services (“WES”) partnership, Tri-City Service District (“TCSD”) and the Surface Water Management Agency of Clackamas County (“SWMACC”) are on target to be fully integrated into WES by July 1, 2017. The third member of the partnership, Clackamas County Service District No. 1 (“CCSD1”), is scheduled to be fully integrated by July 1, 2018.

In order to accomplish the integration of TCSD and SWMACC, sanitary sewer and surface water management rules and regulations need to be adopted to ensure WES’ compliance with its National Pollutant Discharge Elimination System Permits issued under the Federal Clean Water Act relating to both sewer and surface water services. A draft ordinance adopting the proposed rules and regulations, attached thereto as Exhibit A (“WES Regulations”), is provided for second reading. The first hearing was held on June 8, 2017.

The WES Regulations are a compilation of the existing rules for TCSD and SWMACC, which have been updated to include rate zone-specific chapters consisting of the current TCSD and SWMACC rules and regulations, respectively, and they apply only to the TCSD (Rate Zone 1)

and SWMACC (Rate Zone 3) areas of WES. They do not apply at this point to CCSD1 (Rate Zone 2) even though it is inside the boundaries of WES. That application will be made during the integration of CCSD1 by July 1, 2018.

This ordinance has been reviewed and approved by County Counsel.

RECOMMENDATION:

District staff respectfully recommends that the Board of County Commissioners of Clackamas County, as the governing body of Water Environment Services, hold a second public hearing on the adoption of the WES Rules and Regulations for June 22nd, 2017, at 10:00 AM in the Commissioners' Hearing Room, 2051 Kaen Road, 4th Floor, Oregon City, OR, and subsequently adopt the WES Rules and Regulations regarding Sanitary Sewer and Surface Water Management Services.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

ORDINANCE NO. 10-2017

An Ordinance Establishing the Rules and Regulations of Water Environment Services for Sanitary Sewer and Surface Water Management Services and Declaring an Emergency

WHEREAS, this matter comes before the Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of Water Environment Services (“Board”), an intergovernmental entity formed pursuant to Oregon Revised Statutes Chapter 190 (“District”); and

WHEREAS, the District has a need to adopt a set of Rules and Regulations (“Ordinance”) for sanitary sewer and surface water management services to ensure the District’s compliance with its National Pollutant Discharge Elimination System Permits issued under the Federal Clean Water Act; and

WHEREAS, the Rules and Regulations attached hereto are found to be necessary for the proper operation and administration of the District;

NOW, THEREFORE, the Board of Commissioners of Clackamas County, acting as the governing body of Water Environment Services, ordains as follows:

- Section 1:** The Rules and Regulations attached hereto as Exhibit A and incorporated by reference (“Rules and Regulations”) are hereby approved and adopted as an ordinance of the District as of the effective date specified below.
- Section 2:** The Rules and Regulations are on file at the District’s offices where they may be examined and will be published online promptly after adoption.
- Section 3:** This Ordinance has been included in the published agenda at the adopting meeting. The agenda did state the time, date, and place of the meeting and gave brief description of the Ordinance to be considered at the meeting, and states that copies of the Ordinance are available at the offices of the District.
- Section 4:** Pursuant to Oregon Revised Statutes, Chapter 198, the Ordinance was read at two regular meetings of the District’s Board on two different days, at least six days apart, prior to adoption thereof, to wit: the 8th day of June, 2017, and the 22nd day of June, 2017.
- Section 5:** This Ordinance was adopted unanimously by the members of the District Board at its regular meeting on the 22nd day of June, 2017. The Secretary of the District is instructed to cause this Ordinance to be filed in the records of the District and file a certified copy of this Ordinance with the County Clerk.
- Section 6:** Emergency Declaration: The Board of Commissioners hereby finds and declares that an emergency exists inasmuch as an expedited effect of this Ordinance is necessary for the health and welfare of the residents of the County. Accordingly, this Ordinance shall be effective upon its adoption.

ADOPTED this 22nd day of June, 2017.

BOARD OF COUNTY COMMISSIONERS
Acting as governing body of
Water Environment Services

Chair

Recording Secretary

Exhibit A

WATER ENVIRONMENT SERVICES
RULES AND REGULATIONS

JUNE 2017



TABLE OF CONTENTS

CHAPTER 1: GENERAL PURPOSES & PROVISIONS

CHAPTER 2: SANITARY SEWER RULES AND REGULATIONS FOR RATE ZONE 1

CHAPTER 3: SURFACE WATER MANAGEMENT RULES AND REGULATIONS FOR RATE
ZONE 3

CHAPTER 1
GENERAL PURPOSES AND PROVISIONS

SECTION 1 DECLARATION OF POLICY

1.1 PURPOSE

Water Environment Services (“WES”) is an intergovernmental entity within Clackamas County, Oregon. WES was organized pursuant to Oregon Revised Statutes Chapter 190 for the purpose of holding the assets of the Partner organizations and to provide for a singular management ability of the same. This management structure provides for a regional, consistent, and efficient way to plan for and provide North Clackamas County’s current and future wastewater and surface water needs in a way that protects public health and the environment while supporting economic development.

These Water Environment Services Rules and Regulations (“Rules and Regulations”) are established to serve a public use and promote the health, safety, prosperity, security, orderly and uniform administration of the affairs of WES, and general welfare of the inhabitants of the Tri-City Service District (“TCSD”) and the Surface Water Management Agency of Clackamas County (“SWMACC”).

1.2 PARTNER(S)

WES is an entity consisting of TCSD, a regional provider of only sanitary sewer services, Clackamas County Service District No. 1, (“CCSD1”), and SWMACC, a regional provider of only surface water management services. Each are individually commonly referred to as a "Partner" and collectively as the "Partners." TCSD and SWMACC will be fully integrated into WES by July 1, 2017, with CCSD1 becoming fully integrated by July 1, 2018. Accordingly, these Rules and Regulations do not apply to CCSD1.

1.3 BOARD

The Board of County Commissioners of Clackamas County (“Board”) is the governing body of WES. The business and affairs of WES shall be managed by the Board in accordance with Oregon Revised Statutes Chapter 190. All powers, privileges and duties vested in or imposed upon WES by law shall be exercised and performed by and through the Board, whether set forth specifically or implied in these Rules and Regulations. The Board may delegate to officers and employees of WES any or all executive, administrative, and managerial powers.

1.4 DECLARATION OF POLICY

It is intended that these Rules and Regulations shall be liberally construed to affect the general purposes set forth herein, and that each and every part hereof is separate, distinct and severable from all other parts. Omission from, and additional materials set forth in, these Rules and Regulations shall not be construed as an alteration, waiver or deviation from any grant of power, duty or responsibility or limitation or restriction imposed or conferred upon the Board by virtue of the statutes as now existing or as may hereafter be amended. Nothing contained herein shall be so construed as to prejudice, limit or affect the right of WES to secure the full benefit and protection of any laws which are now or hereafter may be enacted by the Oregon State Legislature. These Rules and Regulations become effective on the date the ordinance is adopted by the Board and, to the extent there is a conflict, shall supersede all former TCSD and

SWMACC rules and regulations.

1.5 ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS

Upon the recommendation of the Director, or on its own motion, the Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of WES, may promulgate new or amended rules pertaining to these Rules or Regulations. Except as specifically provided in these Rules and Regulations, any new or amended rule(s) will be adopted pursuant to ORS 198.510 through 198.600 and ORS 451.

1.6 SERVICE AREAS / WES RATE ZONES

The service area of WES encompasses the geographic boundaries of (i) the TCSD, which includes the City of West Linn, the City of Oregon City, the City of Gladstone, and certain unincorporated areas; and (ii) SWMACC, which includes the City of Rivergrove and unincorporated areas of Clackamas County within the Tualatin River Drainage Basin. The rate zones were established by the WES Intergovernmental Partnership Agreement executed by the parties on November 3, 2016, and amended on May 18, 2017.

1.6.1 TCSD / RATE ZONE 1

Tri-City Service District, Clackamas County, Oregon, was organized for the purpose of providing sewerage works, including all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage.

WES Rate Zone 1 is coterminous with the boundaries of TCSD, as they may be adjusted from time to time. Rate provisions listed in Chapter 2 only apply to the area known as 'Rate Zone 1.'

1.6.2 SWMACC / RATE ZONE 3

Surface Water Management Agency of Clackamas County, Clackamas County, Oregon, was organized for the purpose of protecting, maintaining and enhancing the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment.

WES Rate Zone 3 is coterminous with the boundaries of SWMACC, as they may be adjusted from time to time. Rate provisions listed in Chapter 3 only apply to the area known as 'Rate Zone 3.'

1.7 ENFORCEMENT OF RULES AND REGULATIONS

In the event WES must take an enforcement action to ensure compliance with these Rules and Regulations, any actions taken by WES shall be performed in accordance with the subsequent chapters within these Rules and Regulations.

1.8 SEVERABILITY

If any provision of these Rules and Regulations or the application thereof to any person or circumstance is held invalid, such determination shall not affect the enforceability of any other provision or application of these Rules and Regulations. A determination by a court of competent jurisdiction that any section, clause, phrase, or word of these Rules and Regulations or its application is invalid or unenforceable for any reason shall not affect the validity of the remainder of this Rules and Regulations or its application, and all portions not so stricken shall continue in full force and effect.

1.9 DELEGATION OF AUTHORITY TO THE DIRECTOR

Standards. The Director shall have the authority to promulgate such technical standards and requirements necessary to implement the purpose and intent of these Rules and Regulations, including but not limited to pipe type, size, connection requirements, elevation, grade, materials, and any other good and necessary item. Such standards shall be contained in one or more documents that are publicly available and WES shall provide 30 days public notice on its website of any potential change to such standards or requirements.

CHAPTER 2

SANITARY SEWER RULES AND REGULATIONS FOR RATE ZONE 1

TABLE OF CONTENTS

		PAGE
SECTION 1	DECLARATION OF POLICY	1
1.1	PURPOSE AND OBJECTIVES	1
1.2	ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS.....	1
SECTION 2	DEFINITIONS.....	1
2.1	WORDS AND TERMS.....	1
2.1.1	Act.....	1
2.1.2	Applicable Pretreatment Standards.	1
2.1.3	ASTM Specifications.....	1
2.1.4	Biochemical Oxygen Demand or BOD.....	1
2.1.5	Biosolids	1
2.1.6	Board	1
2.1.7	Building.....	1
2.1.8	Building Drain.....	1
2.1.9	Building Sewer.....	1
2.1.10	Capital Improvement(s).....	1
2.1.11	Categorical Pretreatment Standards.....	1
2.1.12	City.....	2
2.1.13	Cleanout.	2
2.1.14	Cooling Water.	2
2.1.15	Combined Sewer System.	2
2.1.16	Composite Sample.....	2
2.1.17	Contractor.....	2
2.1.18	County.	2
2.1.19	Day.	2
2.1.20	Department of Environmental Quality, or DEQ.	2
2.1.21	Development.....	2
2.1.22	Direct Discharge.	2
2.1.23	Director.	2
2.1.24	Discharger or User.....	2
2.1.25	District.....	2
2.1.26	Domestic Sewage.....	3
2.1.27	Dwelling Unit.....	3
2.1.28	Engineer.	3
2.1.29	Environmental Protection Agency, or EPA.....	3
2.1.30	Equivalent Dwelling Unit, or EDU.....	3
2.1.31	Garbage.....	3
2.1.32	Government Agency.	3
2.1.33	Grab Sample.....	3
2.1.34	Hauled Waste.	3
2.1.35	Improvement Fee.....	3
2.1.36	Indirect Discharge.....	3
2.1.37	Industrial User.....	3
2.1.38	Industrial Waste.	4

2.1.39	Inspector.....	4
2.1.40	Installer.....	4
2.1.41	Interference.....	4
2.1.42	Local Collection Facilities.....	4
2.1.43	May.....	4
2.1.44	National Pollution Discharge Elimination System, or NPDES Permit.....	4
2.1.45	New Source.....	4
2.1.46	Operation, Maintenance, and Replacement; or O, M, & R.....	4
2.1.47	This Ordinance.....	4
2.1.48	Pass Through.....	5
2.1.49	Permit.....	5
2.1.50	Person.....	5
2.1.51	pH.....	5
2.1.52	Pollutant.....	5
2.1.53	Pretreatment or Treatment.....	5
2.1.54	Pretreatment Requirement.....	5
2.1.55	Properly Shredded Garbage.....	5
2.1.56	Publicly Owned Treatment Works, or POTW.....	5
2.1.57	Public Right-of-Way.....	5
2.1.58	Public Sewer or Public Sewerage System.....	6
2.1.59	Qualified Public Improvements.....	6
2.1.60	Receiving Waters.....	6
2.1.61	Reimbursement Fee.....	6
2.1.62	Replacement.....	6
2.1.63	Rules and Regulations.....	6
2.1.64	Sanitary Sewer.....	6
2.1.65	Service Connection.....	6
2.1.66	Sewage.....	6
2.1.67	Sewage Disposal Agreement.....	6
2.1.68	Sewage Treatment Plant.....	6
2.1.69	Sewer Easement.....	6
2.1.70	Sewer Main Extension.....	7
2.1.71	Sewer Service Area.....	7
2.1.72	Sewer User.....	7
2.1.73	Shall.....	7
2.1.74	Significant Industrial User.....	7
2.1.75	Significant Non-Compliance.....	7
2.1.76	Slugload.....	8
2.1.77	Standard Industrial Classification, or SIC.....	8
2.1.78	Standard Methods.....	8
2.1.79	Storm Sewer.....	8
2.1.80	Storm Water.....	8
2.1.81	Suspended Solids.....	9
2.1.82	System Development Charge.....	9
2.1.83	Toxic Pollutant.....	9
2.1.84	Unit.....	9
2.1.85	Unpolluted Water or Liquids.....	9
2.1.86	Upset.....	9

	2.1.87 Useful Life.....	9
	2.1.88 User Charge.....	9
	2.1.89 Water of the State.....	9
	2.2 ADDITIONAL WORDS OR TERMS	10
	2.3 PRONOUNS.....	10
	2.4 ABBREVIATIONS.....	10
SECTION 3	DISCHARGE REGULATIONS	1
3.1	GENERAL DISCHARGE PROHIBITIONS	1
	3.1.1 Unpolluted Water and Storm Water	1
	3.1.2 Prohibited Substances.....	1
3.2	DISCHARGE LIMITATIONS.....	3
	3.2.1 National Categorical Pretreatment Standards.....	3
	3.2.2 State Requirements	3
	3.2.3 District Requirements.....	4
	3.2.4 Wastewater Discharge Permit Limitations.....	4
	3.2.5 Tenant Responsibility.....	4
	3.2.6 More Stringent Limitations	4
	3.2.7 Notification of Hazardous Waste Discharges	5
	3.2.8 Dilution.....	5
3.3	ACCIDENTAL DISCHARGES	5
	3.3.1 Written Notice	5
	3.3.2 Notice to Employees	6
SECTION 4	INDUSTRIAL WASTES	1
4.1	GENERAL STATEMENT.....	1
	4.1.1 Scope.....	1
	4.1.2 Signatory Requirements	1
	4.1.3 Provision on Fraud and False Statements	1
4.2	INDUSTRIAL WASTEWATER DISCHARGE PERMITS	2
	4.2.1 Requirements for a Permit	2
	4.2.2 Permit Applications	2
	4.2.3 Industrial Waste Inspection	3
	4.2.4 Issuance of Permit	3
	4.2.5 Permit Conditions.....	3
	4.2.6 Permit Modifications.....	4
	4.2.7 Permit Duration/No Property Interest Acquired	5
	4.2.8 Limitations on Permit Transfer	5
	4.2.9 Permit Revocation.....	5
4.3	PRETREATMENT FACILITIES	6
	4.3.1 General Requirements.....	6
	4.3.2 Condition of Permit	6
	4.3.3 Plans, Specifications, and Construction	6
	4.3.4 Sampling and Monitoring Facility	7
4.4	REPORTING REQUIREMENTS	7
	4.4.1 Initial Compliance Report.....	7
	4.4.2 Report on Compliance	8
	4.4.3 Periodic Compliance Reports.....	9

	4.4.5 Violations	9
4.5	INSPECTION AND SAMPLING.....	10
	4.5.1 Inspection	10
	4.5.2 Sampling.....	10
	4.5.3 Monitoring Facilities	11
4.6	CONTROL OF DISCHARGE.....	12
4.7	CHANGE IN PERMITTED DISCHARGE.....	12
4.8	RECORDS.....	12
4.9	CONFIDENTIAL INFORMATION	13
	4.9.1 Public Inspection.....	13
	4.9.2 Disclosure in the Public Interest.....	13
	4.9.3 Procedure	13
4.10	ENFORCEMENT OF STANDARDS THROUGH ADMINISTRATIVE PENALTIES.....	14
	4.10.1 Enforcement	14
	4.10.2 Imposition of Civil Penalties	16
	4.10.3 Procedure for Imposition of Civil Penalties.....	16
	4.10.4 Emergency Suspension of Service and Permits Notwithstanding Any Other Provisions of This Ordinance	16
	4.10.5 Operational Upset.....	17
	4.10.6 Bypass.....	17
	4.10.7 Affirmative Defense.....	18
	4.10.8 Public Notification	18
SECTION 5	USE OF PUBLIC SEWERS REQUIRED.....	1
5.1	GENERAL	1
5.2	DISCONNECTION	1
5.3	HEALTH HAZARDS	1
SECTION 6	CONNECTION RULES AND SPECIFICATIONS.....	1
6.1	GENERAL REQUIREMENTS	1
6.2	GREASE, OIL, SAND AND SCUM TRAPS.....	1
6.3	HOLD HARMLESS.....	1
6.4	ABANDONED CONNECTION.....	1
SECTION 7	PUBLIC SEWER CONSTRUCTION	1
7.1	CONSTRUCTION GENERALLY	1
7.2	PLANS.....	1
7.3	SPECIFICATIONS.....	1
7.4	SEWER EXTENSIONS	1
7.5	CERTIFICATION.....	1
7.6	ACCEPTANCE BY DISTRICT.....	2
SECTION 8	[RESERVED].....	1
SECTION 9	CHARGES AND RATES FOR SEWAGE SERVICES.....	1
9.1	SYSTEM DEVELOPMENT CHARGES.....	1
	9.1.1 Purpose	1

9.1.2	System Development Charge Imposed; Method for Establishment Created.....	1
9.1.3	Methodology	1
9.1.4	Authorized Expenditure	2
9.1.5	System Development Charge Project Plan.....	2
9.1.6	Collection of Charge	2
9.1.7	Installment Payment of District's System Development Charges.....	4
9.1.8	Exemptions.....	5
9.1.9	Credits	6
9.1.10	Payment of System Development Charges	7
9.1.11	Changing Class of Service.....	8
9.1.12	Notification/Appeals	8
9.1.13	Challenges.....	8
9.2	USER CHARGES.....	9
9.2.1	Dwelling Unit Monthly User Charge	9
9.2.2	Low Income Senior Citizen Monthly User Charge.....	9
9.3	OTHER CHARGES	9
9.3.1	Sewer Tap-In Charge.....	9
9.3.2	Other Connecting Charges	9
9.3.3	Industrial Waste User Charge.....	9
9.3.4	Surcharge	10
9.3.5	Setting Other Charges and Fees	10
9.4	PAYMENT OF CHARGES	10
9.4.1	User Charges	10
9.4.2	Notification Requirements.....	10
9.4.3	Charges and Fees	10
9.5	ACCOUNT SETUP, BILLING AND COLLECTION POLICY.....	11
9.5.1	General.....	11
9.5.2	Account Setup	11
9.5.3	Notices.....	11
9.5.4	Collection of Charges.....	11
9.5.5	Delinquent Charges	12
9.5.6	Discontinuance of Service.....	12
9.5.7	Restoration of Service.....	12
9.5.8	Fees and Costs.....	13
SECTION 10	SEPTIC TANK WASTES.....	1
10.1	GENERAL STATEMENT.....	1
10.2	DEFINITIONS.....	1
10.2.1	Septic Tank Wastes	1
10.2.2	Operator in Charge	1
10.3	SEPTIC TANK WASTE DUMP PERMITS.....	2
10.3.1	Requirements for a Permit	2
10.3.2	Permit Applications	2
10.3.3	Surety Bond.....	2
10.3.4	Issuance of Permit	3
10.3.5	Permit Duration/No Property Interest Acquired	3
10.3.6	Limitations on Permit Transfer	3

10.3.7	Revocation of Permit.....	3
10.4	WASTE DISCHARGE REQUIREMENTS.....	3
10.4.1	Prohibited Discharges.....	3
10.4.2	Discharge Limitations.....	4
10.5	HOLDING TANKS	5
10.6	DROP TANKS	5
10.7	FEES AND CHARGES.....	6
10.7.1	Permit Fee	6
10.7.2	Disposal Charges.....	6
10.8	COLLECTION AND BILLING	6
10.9	PROTECTING THE PUBLIC INTEREST	7
SECTION 11	APPEALS	1
11.1	INTERPRETATION OF THIS ORDINANCE.....	1
11.1.1	Appeal.....	1
11.1.2	Decision of District	1
11.1.3	Appeal to Board	1
11.1.4	Circuit Court Review	1
11.2	VIOLATIONS AND CIVIL PENALTIES.....	1
11.2.1	Violation of These Rules and Regulations	1
11.2.2	Definitions for Enforcement.....	2
11.3	PROCEDURE FOR ENFORCEMENT	4
11.3.1	Prior Notice and Exceptions.....	4
11.4	ENFORCEMENT ACTION	4
11.4.1	Notice of Non-Compliance (NON).....	4
11.4.2	Notice of Violation and Intent to Assess a Penalty (NOV).....	5
11.4.3	Notice of Civil Penalty Assessment.....	5
11.4.4	Memorandum of Agreement and Order	5
11.4.5	Right to Hearing.....	5
11.5	CIVIL PENALTY SCHEDULE MATRICES	6
11.5.1	Base Penalty Matrix.....	7
11.5.2	Petroleum Spills.....	7
11.5.3	Civil Penalty Determination Procedure.....	7
11.6	COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR.....	10
11.7	STIPULATED PENALTIES.....	11
11.8	APPOINTMENT OF HEARINGS OFFICER	11
11.9	APPEALS	11
11.10	COLLECTION OF CIVIL PENALTY	11
11.10.1	Time Limit	12
11.10.2	Relief in Circuit Court	12
11.11	ENFORCEMENT.....	12
SECTION 12	SUPPLEMENTARY RULES.....	1
12.1	COMPLIANCE WITH LAWS	1
12.2	REGULATIONS AND RULES AS CONTRACT.....	1
12.3	NO PROPERTY INTEREST ACQUIRED BY PURCHASE OF PERMIT OR CONNECTION TO SYSTEM.....	1

12.4	CONFLICTS WITH EXISTING AND FUTURE REGULATORY REQUIREMENTS.....	1
12.5	PREVIOUS ORDINANCES, RESOLUTIONS REPEALED	2
12.6	ADMINISTRATION OF THIS ORDINANCE	2
12.7	SEVERABILITY	2
12.8	EFFECTIVE DATE	2

SECTION 1 DECLARATION OF POLICY

1.1 PURPOSE AND OBJECTIVES

Tri-City Service District, Clackamas County, Oregon, was organized pursuant to Chapter 451, Oregon Revised Statutes, for the purpose of providing sewerage works, including all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage within its boundaries. It is further declared to be the policy of the District to provide and offer sewage disposal service for such areas adjacent to the District as may, in the judgment of the District, be feasibly served upon such terms, conditions, and rates as the District shall, from time to time, determine. The objectives of these Rules and Regulations (“Rules and Regulations” or this Ordinance) are: (a) to advance public health and welfare; (b) to prevent the introduction of pollutants which will interfere with the operation of the sewage system or contaminate the resulting biosolids; (c) to prevent the introduction of pollutants which will pass through the sewage system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system; (d) to protect City and District personnel who may come into contact with sewage, biosolids and effluent in the course of their employment as well as protecting the general public; (e) to ensure that the District complies with its NPDES permit conditions, biosolids use and disposal requirements and other applicable Federal and State laws; (f) to improve the opportunity to recycle and reclaim wastewaters and sludges from the system; and (g) to provide for the equitable distribution of the costs of the sewage system.

1.2 ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS

Upon the recommendation of the Director, or on its own motion, the Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of the District, may promulgate new or amended rules pertaining to these Rules or Regulations. Except as specifically provided in these Rules and Regulations, any new or amended rule(s) will be adopted pursuant to ORS 198.510 through 198.600.

SECTION 2 DEFINITIONS

2.1 WORDS AND TERMS

Unless the context specifically indicates otherwise, the following words and terms, as used in this Ordinance, shall have the meanings hereinafter designated:

2.1.1 Act. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et. seq.

2.1.2 Applicable Pretreatment Standards. Local, state, and federal standards, whichever are more stringent and apply to the Industrial User.

2.1.3 ASTM Specifications. The Standard specifications or methods of the American Society for Testing and Materials. Unless otherwise stated, it shall refer to the latest adopted revisions of said specifications.

2.1.4 Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under a standard laboratory procedure in five (5) days at a temperature of twenty degrees centigrade (20°C), expressed in milligrams per liter or parts per million. Laboratory determinations shall be made in accordance with the applicable techniques prescribed in 40 CFR Part 136.

2.1.5 Biosolids. Domestic wastewater treatment facility solids that have undergone adequate treatment to permit land application, recycling or other beneficial use.

2.1.6 Board. The Board of County Commissioners of Clackamas County, acting as the governing body of Tri-City Service District.

2.1.7 Building. Any structure containing sanitary facilities.

2.1.8 Building Drain. That part of the lowest piping of a sewerage system which receives the discharge from the drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the building wall.

2.1.9 Building Sewer. The extension from the building drain to the service connection.

2.1.10 Capital Improvement(s). Facilities or assets used for the purpose of providing sanitary sewerage collection, transmission, treatment and/or disposal.

2.1.11 Categorical Pretreatment Standards. National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged or introduced into a public sewer system by specific industrial categories. These standards are promulgated pursuant to Section 307(b) and (c) of the Clean Water Act.

2.1.12 City. The Cities of Oregon City, West Linn and Gladstone, Oregon.

2.1.13 Cleanout. A sealed aperture permitting access to a sewer pipe for cleaning purposes.

2.1.14 Cooling Water. The water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

2.1.15 Combined Sewer System. A conduit or system of conduits in which both sewage and storm water are transported.

2.1.16 Composite Sample. A series of samples mixed together so as to approximate the average strength of discharge to the sewer. A composite sample is collected over a period of time greater than 15 minutes, formed by an appropriate number of discrete samples which are: (a) collected at equal intervals and combined in proportion to wastewater flow; (b) are equal volumes taken at varying time intervals in proportion to the wastewater flow; or (c) equal volumes taken at equal time intervals.

2.1.17 Contractor. A person duly licensed or approved by the State of Oregon, the District or City to perform the type of work to be done under a permit or contract issued by the District or City.

2.1.18 County. Clackamas County, Oregon.

2.1.19 Day. A continuous twenty-four (24) hour period from 12:01 a.m. to 12:00 p.m.

2.1.20 Department of Environmental Quality, or DEQ. The State of Oregon, Department of Environmental Quality.

2.1.21 Development. The act of conducting a building operation, or making a physical change in the use or appearance of a structure or land, which increases the usage of any capital improvements or which creates the need for additional capital improvements.

2.1.22 Direct Discharge. The discharge of treated or untreated wastewater directly to the waters of the State of Oregon.

2.1.23 Director. The Director of the Water Environment Services Department of Clackamas County, Oregon.

2.1.24 Discharger or User. Any person who causes wastes or sewage to enter directly or indirectly to the District or City sewerage system.

2.1.25 District. Tri-City Service District.

2.1.26 Domestic Sewage. Sewage derived from the ordinary living processes free from industrial wastes and of such character as to permit satisfactory disposal without special treatment into the District sewerage system.

2.1.27 Dwelling Unit. A living unit with kitchen facilities including those in multiple dwellings, apartments, hotels, motels, mobile homes, or trailers.

2.1.28 Engineer. A registered professional engineer licensed to practice by the State of Oregon.

2.1.29 Environmental Protection Agency, or EPA. The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.

2.1.30 Equivalent Dwelling Unit, or EDU. A unit of measurement of sewer usage which is assumed to be equivalent to the usage of an average dwelling unit. Equivalent Dwelling Unit (EDU) has the following definition for the purposes listed below:

- (a) User Charge. A unit, based on water consumption and strength of sewage of a single dwelling unit, by which all users of the sanitary sewers may be measured.
- (b) System Development Charge. A unit, based upon a single dwelling unit or its equivalent, for connecting to the District sewerage system.

2.1.31 Garbage. Solid wastes from the preparation, cooking, and dispensing of food and from the handling, storage and sale of produce.

2.1.32 Government Agency. Any municipal or quasi-municipal corporation, state or federal agency.

2.1.33 Grab Sample. A sample which is taken from a waste stream on a onetime basis with no regard to the flow in the waste stream and without consideration of time.

2.1.34 Hauled Waste. Any waste hauled or transported by any method which may include but not be limited to drop tanks, holding tanks, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

2.1.35 Improvement Fee. A fee for costs associated with capital improvements to be constructed after the date this ordinance becomes effective.

2.1.36 Indirect Discharge. The discharge or the introduction of non-domestic pollutants or industrial wastes into the sewerage system from any source regulated under Section 307(b) or (c) of the Act (33 U.S.C. 1317), including hauled tank wastes discharged into the sewerage system.

2.1.37 Industrial User. Any person who discharges industrial waste into the District and City sewerage system.

2.1.38 Industrial Waste. Any liquid, gaseous, radioactive or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources, or as defined by the Oregon State Department of Environmental Quality or the United States Environmental Protection Agency, exclusive of domestic sewage.

2.1.39 Inspector. A person designated by the District or City to inspect building sewers, service connections, and other installations to be connected to the District or City sewerage systems.

2.1.40 Installer. Either the owner of the property being served or a contractor doing work in connection with the installation of a service connection or building sewer under a proper permit from the District or City.

2.1.41 Interference. A discharge which, alone or in conjunction with a discharge from other sources, inhibits or disrupts the public sewer system, treatment processes or operations, or its biosolids processes, biosolids use or disposal, or which contributes to a violation of any requirement of the District's NPDES Permit or other permit issued to the District.

2.1.42 Local Collection Facilities. All sewerage facilities that are owned, operated and maintained by a City which collect and convey sewage to the District sewerage system.

2.1.43 May. The word "may" is permissive.

2.1.44 National Pollution Discharge Elimination System, or NPDES Permit. A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

2.1.45 New Source. Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced according to the deadlines and conditions of 40 CFR 403.3.

2.1.46 Operation, Maintenance, and Replacement; or O, M, & R. Those functions that result in expenditures during the useful life of the treatment works or sewerage system for materials, labor, utilities, administrative costs, and other items which are necessary for managing and maintaining the sewage works to achieve the capacity and performance for which such works were designed and constructed.

2.1.47 This Ordinance. This Ordinance as adopted, any and all rules and orders adopted pursuant hereto, and any and all amendments to the Ordinance or an such rules or amendments. This Ordinance may also be referred to as Rules and Regulations.

2.1.48 Pass Through. A discharge which exits the POTW into waters of the state in quantities or concentration which alone or in conjunction with a discharge or discharges from other sources is a cause of a violation of any requirement of the District's NPDES permit (including an increase in the magnitude or duration of the violation) or any other permit issued to the District.

2.1.49 Permit. Any authorization required pursuant to this or any other regulation of the District or City for connection of facilities to the public sewerage system and/or continued discharge of sewage to the public sewerage system.

2.1.50 Person. Any individual, public or private corporation, political subdivision, governmental agency, municipality, industry, partnership, association, firm, trust or any other legal entity.

2.1.51 pH. The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution. pH shall be determined using one of the applicable procedures prescribed in 40 CFR Part 136.

2.1.52 Pollutant. Any of the following, including but not limited to: dredged soil spoil, solid waste, incinerator residue, sewage, garbage, sewage biosolids, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

2.1.53 Pretreatment or Treatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the public sewage system. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except as prohibited by 40 CFR, Section 403.6(d).

2.1.54 Pretreatment Requirement. Any substantive or procedural pretreatment requirement other than applicable pretreatment standard, imposed on an Industrial User.

2.1.55 Properly Shredded Garbage. The wastes from foods that have been shredded to such a degree that all particles will be carried freely under the flow and conditions normally prevailing in public sewers with no particle greater than one-half inch ($\frac{1}{2}$ ") in any dimension.

2.1.56 Publicly Owned Treatment Works, or POTW. A treatment works as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned by a governmental entity. This definition includes any public sewers that conveys wastewater to the POTW treatment plant, but does not include pipes, sewers, or other conveyances not connected to a facility providing treatment. For the purposes of this ordinance, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the District who are, by contract or agreement with the District, users of the District's POTW.

2.1.57 Public Right-of-Way. Any public highway, road, street, avenue, alleyway, public place, public easement, or public right-of-way.

2.1.58 Public Sewer or Public Sewerage System. Any or any part of the facilities for collection, pumping, treating and disposing of sewage as acquired, constructed, or used by the District or City within the boundaries of the District.

2.1.59 Qualified Public Improvements. A capital improvement that is: (a) required as a condition of development approval; (b) identified in the District's adopted Capital Improvement Plan pursuant to ORS 223; and (c) not located on or contiguous to a parcel of land that is the subject of the development approval.

2.1.60 Receiving Waters. Any body of water into which effluent from a sewage treatment plant is discharged either directly or indirectly.

2.1.61 Reimbursement Fee. A cost associated with capital improvements constructed or under construction on the effective date of this Ordinance.

2.1.62 Replacement. Any actions which result in expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works or other facilities to maintain the capacity and performance for which such works were designed and constructed.

2.1.63 Rules and Regulations. This Ordinance and all amendments thereto.

2.1.64 Sanitary Sewer. A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

2.1.65 Service Connection. That portion of a private sewer which has been constructed from the public sewer to the edge of the public right-of-way or sewer easement in which the public sewer is located.

2.1.66 Sewage. The water-carried human, animal, or vegetable wastes from residences, business buildings, institutions, and industrial establishments, together with groundwater infiltration and surface water as may be present. The admixture with sewage of industrial wastes or water shall be considered "sewage" within the meaning of this definition.

2.1.67 Sewage Disposal Agreement. An agreement between the District or City and any government agency or person providing for the delivery or receipt of sewage to or from the District sewerage system.

2.1.68 Sewage Treatment Plant. An arrangement of devices, structures, and equipment for treating sewage.

2.1.69 Sewer Easement. Any easement in which the District or City has the right to construct and maintain a public sewer.

2.1.70 Sewer Main Extension. Any extension or addition of the public sewer.

2.1.71 Sewer Service Area. An area served by sewage treatment facilities within the District or a defined geographic area which becomes a part of the District.

2.1.72 Sewer User. Any person using any part of the public sewerage system. In the case of tenants, the property owner shall also be considered the sewer user for that property.

2.1.73 Shall. The word "shall" is mandatory.

2.1.74 Significant Industrial User. The term significant industrial user means:

- (a) All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter 1, subchapter N; and
- (b) Any other industrial user that: discharges an average of 25,000 gallons per day or more of processed wastewater to the sewerage system (excluding sanitary, non-contact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up five (5%) percent or more of the average dry weather hydraulic or organic capacity of the District's treatment plant; or is designated as such by the District on the basis that the industrial user has a reasonable potential for

adversely affecting the treatment plant's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

- (c) Upon finding that an industrial user meeting the criteria of this definition has no reasonable potential for adversely affecting the District's operations or for violating any pretreatment standard or requirement, the District may at any time, on its own initiative or in response to a petition received from the industrial user, determine that such industrial user is not a significant industrial user.

2.1.75 Significant Non-Compliance. An Industrial User is in significant non-compliance if its violation meets one or more of the following criteria:

- (a) Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent or more of all the measurements taken during a six-month period exceeded (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- (b) Technical Review Criteria (TRC) violations, defined as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceeded the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (c) Any other violation of a Pretreatment effluent limit (daily maximum or longer-termed average) that the District determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of District or City personnel or the general public);
- (d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the District's exercise of its emergency authority to halt or prevent such a discharge;
- (e) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a permit or order for starting construction, completing construction, or attaining final compliance.
- (f) Failure to provide within 30 days after the due date, required reports, initial compliance reports, periodic compliance reports, and reports on compliance with compliance schedules;
- (g) Failure to accurately report noncompliance;
- (h) Any other violation or group of violations, which the District determines will adversely affect the operation or implementation of the Pretreatment Program.

2.1.76 Slugload. Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary discharge. Any discharge which exceeds, for a period of longer than fifteen (15) minutes, more than five (5) times the average twenty-four (24) hour flow during

normal operation or more than five (5) times a specified allowable concentration of any hazardous or toxic substance listed in, but not limited to, the toxic pollutant list set forth in Table II, attached to this Ordinance. In the case of batch discharges, the average flow shall be calculated using the actual discharge times.

2.1.77 Standard Industrial Classification, or SIC. A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget.

2.1.78 Standard Methods. The examination and analytical procedures set forth in the most recent edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

2.1.79 Storm Sewer. A sewer designed to carry only storm waters, surface runoff, street washwaters, or drainage.

2.1.80 Storm Water. Waters on the surface of the ground or underground resulting from precipitation.

2.1.81 Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids, and which is removable by laboratory filtering in accordance with the applicable procedures prescribed in 40 CRF Part 136.

2.1.82 System Development Charge. A reimbursement fee, an improvement fee or a combination thereof assessed or collected as a condition of connection to the sanitary sewer system. It shall also include that portion of a sanitary sewer connection charge that is greater than the amount necessary to reimburse the District for its average cost of inspecting connections to the sanitary sewer system. "System Development Charge" does not include (a) any fees assessed or collected as part of a local improvement district; (b) a charge in lieu of a local improvement district or assessment; or (c) the cost of complying with requirements or conditions imposed upon a land use decision.

2.1.83 Toxic Pollutant. Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under the provision of CWA 307(a), 503(13), or other federal Acts.

2.1.84 Unit. A unit of measurement of sewer usage assumed to be equivalent to the usage of an average single family dwelling unit. A unit is equivalent to sewage of a strength and volume normally associated with an average single family dwelling unit or its equivalent. Where unit equivalency must be computed it shall be equivalent to: (a) 1,000 cubic feet of water consumption per month; (b) .449 pounds of BOD5 per day; and (c) .449 pounds of suspended solids per day.

2.1.85 Unpolluted Water or Liquids. Any water or liquid containing none of the following: free or emulsified grease or oil, acids or alkalis, substances that may impart taste and odor or color characteristics, toxic or poisonous substances in suspension, colloidal state or solution, odorous or otherwise obnoxious gases. Such water shall meet the current state standards for water use and recreation. Analytical determination shall be made in accordance with the applicable procedures prescribed in 40 CRF Part 136.

2.1.86 Upset. An exceptional incident in which an Industrial User unintentionally and temporarily is in a state of noncompliance with this Ordinance, due to factors beyond the reasonable control of the Industrial User, and excluding noncompliance to the extent caused by operational error, improperly designed or inadequate treatment facilities, lack of preventive maintenance or careless or improper operation thereof.

2.1.87 Useful Life. The period during which a treatment works or other specific facility operates.

2.1.88 User Charge. The periodic charges levied on all users of the public sewerage system for the cost of operation, maintenance, and replacement; including but not limited to, any other costs, such as, but not limited to, debt service, debt service coverage, capital improvements, etc.

2.1.89 Water of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Oregon or any portion thereof.

2.2 ADDITIONAL WORDS OR TERMS

Words, terms or expressions peculiar to the art or science of sewerage not hereinabove defined shall have the meanings given therefor in Glossary, Water and Wastewater Control Engineering, published in 1969 and prepared by a Joint Committee representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.

2.3 PRONOUNS

Pronouns indicating number or gender in this Ordinance are interchangeable and shall be interpreted to give effect to the requirements and intent of this Ordinance.

2.4 ABBREVIATIONS

The following abbreviations shall have the designated meanings:

ASTM	American Society for Testing and Materials
BOD	Biochemical Oxygen Demand
CFR	Code of Federal Regulations
COD	Chemical Oxygen Demand
CWA	Clean Water Act
DEQ	Department of Environmental Quality
EDU	Equivalent Dwelling Unit
EPA	Environmental Protection Agency
L	Liter
mg	Milligrams
mg/l	Milligrams per liter
OAR	Oregon Administrative Rules
ORS	Oregon Revised Statutes

SECTION 3 DISCHARGE REGULATIONS

3.1 GENERAL DISCHARGE PROHIBITIONS

3.1.1 Unpolluted Water and Storm Water

No persons shall discharge or contribute to the discharge of any storm water or other unpolluted water into the District or City sewerage systems.

3.1.2 Prohibited Substances

No persons shall discharge or cause to be discharged, directly or indirectly, into the public sewerage system any pollutant, substances, or wastewater which will interfere with the operation or performance of the public sewerage system, cause a pass through, have an adverse effect on the receiving stream, endanger life, limb or public property, or constitute a nuisance. Prohibited substances, shall include, but not be restricted to, the following:

- (a) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient, either alone or by interaction with other substances to cause fire or explosion or be injurious in any way to persons, property or the public sewerage system. Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods of 40 CFR 261.21. At no time shall two (2) successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system), be more than five percent (5%) nor any single reading over ten percent (10%) of the Lower Explosive Limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, fuel oils, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.
- (b) Any sewage containing pollutants in sufficient quantity either at a flow rate or pollutant concentration, singularly or by interaction with other pollutants, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters, or exceed the limitations set forth in federal categorical pretreatment standards. Toxic pollutants shall include, but not be limited to, any pollutant listed in the toxic pollutant list set forth in Table II, attached to this Ordinance.
- (c) Any sewage having a pH lower than 5.5 Standard Unit ("S.U.") or higher than 11.5 S.U., or having any corrosive property capable of causing damage or hazard to structures, equipment or persons.

Facilities with continuous monitoring of pH shall not exceed the pH range of 5.5 S.U. to 11.5 S.U. more than a total of 15 minutes on any single day (cumulative duration of all excursions) provided that, at no time shall any discharge of a pH be lower than 5.0 S.U. or at/or above 12.5 S.U.

- (d) Any solid or viscous substances in quantities or size capable of causing obstruction to the flow of sewers or other interference with the proper operation of the sewage treatment plant such as, but not limited to, ashes, cinders, sand, mud, straw, insoluble shavings, metal, glass, rags, feathers, tar, creosote, plastics, wood, animal paunch contents, offal, blood, bones, meat trimmings and wastes, fish or fowl heads, entrails, trimmings and wastes, lard, tallow, baking dough, chemical residues, paint residues, cannery waste, bulk solids, hair and fleshings, or plastic or paper dishes, cups, or food or beverage containers, whether whole or ground.
- (e) Any pollutant having a temperature higher than 140 degrees Fahrenheit (60 degrees Celsius) or having temperatures sufficient to cause the influent to the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius). If, in the opinion of the District, lower temperatures of such wastes could harm either the sewers, sewage treatment process, or equipment, or could have an adverse effect on the receiving streams or otherwise endanger life, health or property, or constitute a nuisance, the District may prohibit such discharges.
- (f) Any sewage containing garbage that has not been properly shredded to one-half inch ($\frac{1}{2}$ ") or less in any dimension.
- (g) Any sewage containing unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate), which may interfere with the operation of the sewerage system.
- (h) Any sewage with objectionable color not removed in the treatment process (such as, but not limited to, dye and printing wastes and vegetable tanning solutions).
- (i) Any slug discharge, which means any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a single discharge episode of such volume or strength as to cause interference to the sewerage system.
- (j) Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into sewers for maintenance and repair.
- (k) Any hauled wastes or pollutants, except such wastes received at the District's sewage treatment plant under a District permit or at a District approved dump station pursuant to Section 10 of this Ordinance.
- (l) Any substance which may cause the District's sewage treatment plant to violate its NPDES Permit or the receiving water quality standards or any other permit issued to District or City.
- (m) Any wastewater which causes or may cause a hazard to human life or creates a public nuisance.

- (n) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as to exceed limits established by State or Federal regulations.
- (o) Any substance which may cause the District's sewage treatment plant effluent or any other product of the District's sewage treatment process such as residues, biosolids, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. (In no case, shall a substance discharged to the District's sewerage system cause the District to be in noncompliance with biosolids use or disposal criteria, guidelines, or regulations developed under Section 405 of the Clean Water Act; any criteria, guidelines, or regulations affecting biosolids use or disposal developed pursuant to the Solid Waste Disposal Act, the Clear Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used, or any amendments thereto.)
- (p) Petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through.
- (q) Pollutants which result in presence of toxic gases, vapors, or fumes in the POTW that may cause acute worker health and safety problems.

3.2 DISCHARGE LIMITATIONS

3.2.1 National Categorical Pretreatment Standards

National categorical pretreatment standards, as promulgated by the Environmental Protection Agency (EPA) pursuant to the Federal Water Pollution Control Act, if more stringent than limitations imposed under this Ordinance, shall be met by all Dischargers into the sewerage system who are subject to such standards.

3.2.2 State Requirements

State requirements and limitations on all discharges to the public sewerage system shall be met by all Dischargers who are subject to such standards in any instance in which the State standards are more stringent than Federal requirements and limitations, or those in this or any other applicable Ordinance.

3.2.3 District Requirements

No persons shall discharge into the public sewerage system any sewage containing the following:

- (a) Fats, wax, grease, or oils whether emulsified or not, in excess of 100 milligrams per liter for sources of petroleum origin, or in excess of 300 milligrams per liter for sources composed of fatty matter from animal and vegetable sources, or containing substances which may solidify or become viscous at temperatures between 32 degrees Fahrenheit and 150 degrees Fahrenheit (0 degrees Celsius and 65 degrees Celsius).

- (b) Strong acid, iron pickling wastes or concentrated plating solutions, whether neutralized or not, unless the Discharger has a valid Industrial Wastewater Discharge Permit that allows otherwise.
- (c) Pollutants in excess of the concentrations in Table III measured as a total of both soluble and insoluble concentrations for a composite representing the process day or at any time as shown by grab sample, unless the Discharger has a valid Industrial Wastewater Discharge Permit which establishes a different limitation for the specific pollutant as set forth in Table III.

3.2.4 Wastewater Discharge Permit Limitations

It shall be unlawful for an Industrial User with a valid Industrial Wastewater Discharge Permit to discharge wastes to the public sewerage system in excess of the limitations established in the discharge permit or in violation of the prohibited discharge substances described in Subsection 3.1.

3.2.5 Tenant Responsibility

Any occupant of the premises as a tenant under any rental or lease agreement shall be jointly and severally responsible for compliance with the provisions of these Rules and Regulations in the same manner as the owner.

3.2.6 More Stringent Limitations

The District reserves the right to amend these Rules and Regulations at any time to provide for more stringent limitations or requirements on discharges to the public sewerage system where it deems necessary to comply with the objectives of this Ordinance. Nothing in these Rules and Regulations shall prohibit a City served by the District from adopting more stringent limitations or requirements than are contained herein for its sewerage system.

3.2.7 Notification of Hazardous Waste Discharges

All Industrial Users shall notify the District in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR, Part 261, as set forth in 40 CFR 403.12(p). Any Industrial User who commences discharging shall provide notification in accordance with 40 CFR 403.12(p) no later than 180 days after the discharge of any listed or characteristic hazardous waste(s).

3.2.8 Dilution

No discharger shall increase the use of potable or processed water in any way for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the standards set forth in this Ordinance.

3.3 ACCIDENTAL DISCHARGES

Each Discharger shall provide protection from accidental discharge of prohibited substances or other substances regulated by this Ordinance. Where necessary, facilities to prevent accidental discharge

of prohibited substances shall be provided and maintained at the Discharger's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the District for review, and shall be approved by the District before construction of the facility. Each existing Discharger shall complete his plan and submit it to the District upon request. No Discharger shall be permitted to introduce pollutants into the public sewerage system until the accidental discharge protection procedures have been approved by the District. Review and approval of such plans and operating procedures by the District will not relieve the Discharger from the responsibility to modify its facility as necessary to meet the requirements of this Ordinance. Dischargers shall notify the District immediately upon the occurrence of an accidental discharge of substances, or slug loadings, prohibited by this Ordinance. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, corrective actions taken.

3.3.1 Written Notice

Within five (5) days following an accidental discharge; the Discharger shall submit to the District a detailed written report describing the cause of the discharge and the measures to be taken by the Discharger to prevent similar future occurrences. Such notification shall not relieve the Discharger of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, harm to aquatic life, or any other damage to person or property; nor shall such notification relieve the discharger of any fines, civil penalties, or other liability which may be imposed by this subsection or other applicable law.

3.3.2 Notice to Employees

A notice shall be permanently posted on the Discharger's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge. Employers shall insure that all employees who may cause or discover such a discharge to occur are advised of the emergency notification procedure.

SECTION 4 INDUSTRIAL WASTES

4.1 GENERAL STATEMENT

4.1.1 Scope

This section of the Rules and Regulations sets forth uniform requirements for direct and indirect discharges of industrial wastes into the public sewerage system, and enables the District to comply with all applicable State and Federal laws required by the Clean Water Act and the General Pretreatment Regulations (40 CFR, Part 403). The District shall be empowered to enforce Section 307(b) and (c) and 402(b)(8) of the Clean Water Act and any implementing regulations pursuant to these Rules and Regulations. Enforcement may include injunctive or any other relief in Federal and State courts or through administrative hearings.

The objectives of this section of the Rules and Regulations are to prevent the introduction of pollutants into the public sewerage system which will interfere with the operation of the systems or contaminate the resulting biosolids; to prevent the introduction of pollutants into the public sewerage system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system; to improve the opportunity to recycle or reclaim wastewaters and biosolids from the system; and to provide for equitable distribution of the cost of the District sewerage system.

This section provides for the regulation of direct and indirect discharges of industrial wastes to the public sewerage system through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, assumes that existing customer capacity will not be preempted, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

4.1.2 Signatory Requirements

All applications, reports, or information submitted to the District shall be signed and certified in accordance with 40 CFR 403.12(l).

4.1.3 Provision on Fraud and False Statements

Any reports required in this Ordinance and any other documents required to be submitted to the District or maintained by the Industrial User shall be subject to enforcement provisions of municipal and state law relating to fraud and false statements. In addition, the Industrial User shall be subject to: (a) the provisions of 18 U.S.C. Section 1001 relating to fraud and false statements; (b) the provisions of Sections 309(c)(4) of the Clean Water Act, as amended governing false statements, representation or certification; and (d) the provision of Section 309(c)(6) regarding responsible corporate officers.

4.2 INDUSTRIAL WASTEWATER DISCHARGE PERMITS

4.2.1 Requirements for a Permit

All users discharging or proposing to discharge industrial wastes into any sewer outlet within the jurisdiction of the District or which flow to the public sewerage system shall obtain an Industrial Wastewater Discharge Permit from the District if:

- (a) The discharge is subject to promulgated national categorical pretreatment standards; or
- (b) The discharge, as determined by the District, under 40 CFR Part 403 contains pollutants in concentrations or quantities that interfere or have the potential to interfere with the operation of the public sewerage system; has a significant impact or potential for a significant adverse impact on the public sewerage system, either singly or in combination with other contributing industries; or increases the cost of operation of the sewerage system; or
- (c) The discharge requires pretreatment in order to comply with the discharge limitations set forth in Section 3 of this Ordinance; or
- (d) The discharge contains suspended solids or BOD in excess of 350 mg/l, or in excess of thirty (30) pounds in any one day; or
- (e) The discharge contains wastes requiring unusual quantities of chlorine (more than 20 mg/l) for treatment at the treatment plant; or
- (f) The discharge exceeds an average flow of 10,000 gallons or more in any one day, excluding sanitary, non-contact cooling water and boiler blowdown wastewater, or contributes a maximum instantaneous flow which exceeds ten (10) percent of the capacity of the available lateral or appropriate trunk sewer; or
- (g) Contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW; or
- (h) The discharge is a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR, Part 261.

4.2.2 Permit Applications

Application for an Industrial Wastewater Discharge Permit shall be made to the District on forms provided by the District. The application shall not be considered as complete until all information identified on the form is provided, unless specific exemptions are granted by the District. Completed applications shall be made within thirty (30) days of the date requested by the District or, for new sources, at least ninety (90) days prior to the date that discharge to the sewerage system is to begin.

4.2.3 Industrial Waste Inspection

After the submitted discharge permit application has been received and reviewed, the District may schedule with the applicant an industrial waste inspection. The industrial waste inspection will consist of an interview with applicant personnel and a plant tour. At the interview, the applicant's application, waste generating process, water consumption, wastewater composition and quantities of wastewater flow are discussed. As part of the tour of that plant, an industrial waste sampling point will be identified. The sampling location, if appropriate and acceptable to the District, will be used for both self-monitoring and monitoring by District personnel for water quality and quantity monitoring and permit enforcement. The investigator's report of the inspection, together with the completed permit application from the industry, form the basis for establishing the discharge permit conditions.

4.2.4 Issuance of Permit

After full evaluation and acceptance of the data furnished by the applicant, the District may approve the basis for a permit and issue an Industrial Wastewater Discharge Permit subject to the terms and conditions provided herein. No permit shall be issued or effective until payment of the applicable initial or renewal fees as the Board may prescribe by Order. All fees charged by the District may be amended at any time by an Order of the Board. The permittee shall reapply with the District for reissuance of its permit at least 90 days prior to the permit expiration date. Reapplication shall be on the form provided by the District.

4.2.5 Permit Conditions

Industrial Wastewater Discharge Permits shall specify, where applicable, the following:

- (a) Fees and charges to be paid upon initial permit issuance;
- (b) Limits on the average and maximum wastewater constituents and characteristics;
- (c) Limits on average and maximum rate and time of discharge and/or requirements for flow regulations and equalization;
- (d) Requirements for installation and maintenance of inspection and sampling facilities compatible with facilities of the District;
- (e) Special conditions as the District may reasonably require under particular circumstances of a given discharge including sampling locations, frequency of sampling, number, types, and standards for test and reporting schedule;
- (f) Compliance schedules;
- (g) Requirements for submission of special technical reports or discharge reports where the same differ from those prescribed by this Ordinance;
- (h) An effective date and expiration date of the permit;

- (i) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the District, Oregon DEQ and the EPA, and affording District access thereto for purposes of inspection and copying;
- (j) Requirements for inspection and surveillance by District personnel and access to the Industrial User's parcel;
- (k) Requirements for notification to the District of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents, including listed or characteristic hazardous wastes, being introduced into the District sewerage system or any significant change in the production where the permit incorporates equivalent mass or connection limits calculated from a production based standard.
- (l) Requirements for notification to the District of slugload discharges and slug control plans;
- (m) Other conditions as deemed appropriate by the District to ensure compliance with this Ordinance and Federal and State statutes, and Administrative Rules.
- (n) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.
- (o) Duty to reapply and to obtain a new permit should the permittee wish to continue the activity regulated by the discharge permit following the expiration date of the discharge permit.
- (p) Requirements that samples and measurements taken for purposes of monitoring be representative of the monitored activity, including but not limited to the volume and nature of the discharge.

4.2.6 Permit Modifications

An Industrial Wastewater Discharge Permit may be modified for good and valid cause at the written request of the permittee and/or at the discretion of the District. Any new or increased discharge shall require the Discharger to apply for permit modification. The District at all times has the right to deny or condition new or increased contributions or changes in the nature of pollutants to meet applicable pretreatment standards or requirements or to prevent violation of its NPDES permit or any permit issued to the District or City. Permittee modification requests shall be submitted to the District and shall contain a detailed description of all proposed changes in the discharge. The District may request any additional information needed to adequately prepare the modification or assess its impact.

The District may deny a request for modification if, as determined by the District, the change will result in violations of District, State, or Federal laws or regulations; will overload or cause damage to any portion of the District or City sewerage systems; or will create an imminent or potential hazard to personnel.

If a permit modification is made at the discretion of the District, the permittee shall be notified in writing of the proposed modification at least 30 days prior to its effective date and shall be informed of the reasons for the changes. Any request for reconsideration shall be made before the effective date of the changes.

4.2.7 Permit Duration/No Property Interest Acquired

All Industrial Wastewater Discharge Permits shall be issued for a specified time period, not to exceed five (5) years, as determined by the District and subject to amendment, revocation, suspension or termination as provided in these Rules. No Discharger acquires any property interest by virtue of permit approval and continued approval is expressly contingent upon compliance with all applicable federal, state, and local requirements.

4.2.8 Limitations on Permit Transfer

Industrial Wastewater Discharge Permits are issued to a specific Discharger for a specific operation and are not assignable to another Discharger or transferable to any other location without the prior written approval of the District and provision of a copy of the existing permit to the new owner or operator.

4.2.9 Permit Revocation

Industrial Wastewater Discharge Permits may be revoked for the following reasons:

- (a) Failure to notify the District of significant changes to the wastewater prior to the changed discharge;
- (b) Falsifying self-monitoring reports;
- (c) Tampering with monitoring equipment;
- (d) Refusing to allow the District timely access to the facility premises and records;
- (e) Failure to meet effluent limitations;
- (f) Failure to pay fines;
- (g) Failure to pay user charges;
- (h) Failure to meet compliance schedules;
- (i) Failure to provide advance notice of the transfer of a permitted facility;
- (j) Violation of any applicable pretreatment standard or requirement or any terms of the permit or these Rules and Regulations.

Permits shall be voidable upon nonuse, cessation of operations, transfer of business ownership. All are void upon the issuance of a new Industrial Wastewater Discharge Permit.

4.3 PRETREATMENT FACILITIES

4.3.1 General Requirements

If, as determined by the District, treatment facilities, operation changes or process modifications at an Industrial User's facility are needed to comply with any requirements under this Ordinance or are necessary to meet any applicable pretreatment standards or requirements, the District may require that such facilities be constructed or modifications or changes be made within the shortest reasonable time, taking into consideration construction time, impact of the untreated waste on the public sewerage system, economic impact on the facility, impact of the waste on the marketability of the District's treatment plant biosolids, and any other appropriate factor.

Existing Sources and New Sources shall meet the deadlines for installation and start-up of equipment and compliance with Categorical Pretreatment Standards established according to 40 CFR 403.6(b).

4.3.2 Condition of Permit

Any requirement in Paragraph 4.3.1 may be incorporated as part of an Industrial wastewater Discharge Permit issued under Subsection 4.2 and made a condition of issuance of such permit or made a condition of the acceptance of the waste from such facility.

4.3.3 Plans, Specifications, and Construction

Plans, specifications and other information relating to the construction or installation of pretreatment facilities required by the District under this Ordinance shall be submitted to the District. No construction or installation thereof shall commence until written approval of plans and specifications by the District is obtained. Plans must be reviewed and signed by an authorized representative of the Discharger and certified by a qualified professional engineer. No person, by virtue of such approval, shall be relieved of compliance with other laws of the City, County, or State relating to construction and to permits. Every facility for the pretreatment or handling of wastes shall be constructed in accordance with the approved plans and installed and maintained at the expense of the Discharger.

4.3.4 Sampling and Monitoring Facility

Any person constructing a pretreatment facility, as required by the District, shall also install and maintain at his own expense a sampling manhole or other suitable monitoring access for checking and investigating the discharge from the pretreatment facility to the public sewer. The sampling manhole or monitoring access shall be placed in a location designated by the District and in accordance with specifications approved by the District.

4.4 REPORTING REQUIREMENTS

4.4.1 Initial Compliance Report

Within one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard issued by the Environmental Protection Agency (EPA) or within ninety (90) days after receiving

notification from the District that such a standard has been issued, whichever is sooner, existing Industrial Waste Dischargers subject to such standard shall submit to the District a baseline monitoring report, as required by the EPA pretreatment regulations, which includes the following:

- (a) The name and address of the facility and the name of the owner and operator;
- (b) A list of any environmental control permits on the facility;
- (c) A description of the operation(s);
- (d) The measured average and maximum daily flow from regulated process streams and other streams as necessary to allow use of the combined wastestream formula;
- (e) Measurement of the particular pollutants that are regulated in the applicable pretreatment standard and results of sampling as required in the permit;
- (f) A statement reviewed by an authorized representative and certified by a qualified professional as to whether the applicable standards are being consistently met and, if not, what additional measures are necessary to meet them; and
- (g) If additional pretreatment and/or operation and maintenance will be required to meet the pretreatment standards, a report on the shortest schedule by which the needed pretreatment and/or operation and maintenance can be provided. The compliance date for users covered by categorical pretreatment standards should not be later than the compliance date established for the particular standard. The report shall be reviewed and signed by an authorized representative of the Discharger and certified to by a qualified professional engineer.

New sources subject to an effective categorical pretreatment standard issued by the EPA shall submit to the District, 90 days prior to commencement of their discharge into the sewerage system, a report which contains the information listed in items (a) through (e) above, along with information on the method of pretreatment the source intends to use to meet applicable pretreatment standards.

These reports shall be completed in compliance with the specific requirements of Section 403.12(b) of the General Pretreatment Regulations for Existing and New Sources (40 CFR Part 403) promulgated by the EPA on January 28, 1981, or any subsequent revision thereto, including the signatory requirements 403.12(l) for industrial user reports.

If the information required by these reports has already been provided to the District and that information is still accurate, the Discharger may reference this information instead of submitting it again.

4.4.2 Report on Compliance

Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards or, in the case of a New Source, within sixty (60) days following commencement of the introduction of wastewater into the public sewerage system, any Discharger subject to applicable pretreatment standards and requirements shall submit to the District a report

indicating the nature and concentration of all pollutants in the wastestream from the regulated process and the average and maximum daily flow for these process units, and long term production data, or actual production data, when requested. This report shall also include an estimation of these factors for the ensuing twelve (12) months. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the Discharger into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the Discharger and certified to by a qualified professional engineer. A new source is required to achieve compliance within 90 days after commencement of discharge.

If the Industrial Discharger is required to install additional pretreatment or provide additional operation and maintenance, a schedule will be required to be submitted. The schedule shall contain increments of progress in the form of dates for commencement and completion of major events leading to the construction and operation of additional pretreatment or operation and maintenance (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.) No increment of progress shall exceed nine (9) months. The Industrial Discharger shall submit a progress report to the District including, at a minimum, whether or not it complied with the increment of progress to be met on such a date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial discharger to return the construction to the schedule established. This progress report shall be submitted not later than fourteen (14) days following each date in the schedule and the final date of compliance. In no event shall more than nine (9) months elapse between such progress reports to the District.

4.4.3 Periodic Compliance Reports

Any Discharger that is required to have an Industrial Wastewater Discharge Permit pursuant to this Ordinance shall submit to the District during the months of June and December, unless required on other dates and/or more frequently by the District, a report indicating the nature of its effluent over the previous six-month period. The report shall include, but is not limited to, a record of the nature and concentrations (and mass if limited in the permit) for all samples of the limited pollutants that were measured and a record of all flow measurements that were taken or estimated average and daily maximum flows, and long term production data, or actual production data, when requested.

The frequency of the monitoring shall be determined by the District and specified in the Industrial Wastewater Discharge Permit. If there is an applicable effective Federal Categorical Pretreatment Standard, the frequency shall be not less than that prescribed in the standard. If a Discharger monitors any pollutant more frequently than required by the District, all monitoring results must be included in the periodic compliance reports.

Flows shall be reported on the basis of actual measurement; provided, however, where cost or feasibility considerations justify, the District may accept reports of average and maximum flows estimated by verifiable techniques.

The District may require reporting by Industrial Dischargers that are not required to have an Industrial Wastewater Discharge Permit if information and/or data is needed to establish a sewer charge,

determine the treatability of the effluent or determine any other factor which is related to the operation and maintenance of the sewer system.

The District may require self-monitoring by the Discharger, or if requested by the Discharger, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this Subsection of the Ordinance. If the District agrees to perform such periodic compliance monitoring, the District will charge the Discharger for the monitoring based upon the costs incurred by the District for the sampling and analyses.

4.4.4 TTO Reporting

Those industries which are required by EPA to eliminate and/or reduce the levels of total toxic organics (TTO's) discharged into the public sewerage system must follow the National Categorical Pretreatment Standards for that industry.

4.4.5 Violations

The Industrial User shall notify the District within twenty-four (24) hours of becoming aware of a sampling activity which indicates a violation of the permit. The Industrial User shall repeat the sampling and analysis and submit their results to the District as soon as possible, but in no event later than thirty (30) days after becoming aware of the violation.

4.5 INSPECTION AND SAMPLING

4.5.1 Inspection

Authorized District representatives may inspect the monitoring facilities of any Industrial Waste Discharger to determine compliance with the requirements of the Ordinance. The Discharger shall allow the District to enter upon the premises of the Discharger at all reasonable hours, for the purpose of inspection, sampling, or records examination and copying. The District shall also have the right to set up on the Discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. The right of entry is to the Industrial User's entire premises, and includes, but is not limited to, access to manufacturing, production, and chemical storage areas, to those portions of the premises that contain facilities for sampling, measuring, treating, transporting, or otherwise handling wastes, and storing records, reports or documents relating to the pretreatment, sampling, or discharge of the wastes. The following conditions for entry shall apply:

- (a) The authorized District representative shall present appropriate credentials at the time of entry;
- (b) The purpose of the entry shall be for inspection, observation, measurement, sampling, testing or record examination and copying in accordance with the provisions of this Ordinance;

- (c) The entry shall be made at reasonable times during normal operating or business hours unless an emergency situation exists as determined by the District; and
- (d) All regular safety and sanitary requirements of the facility to be inspected shall be complied with by the District representative(s) entering the premises.

4.5.2 Sampling

Samples of wastewater being discharged into the public sewage system shall be representative of the discharge and shall be taken after treatment, if any. A minimum of four grab samples must be used for pH, cyanide, total phenols, oil grease, sulfides, and volatile organics. For all other pollutants, the sampling method shall be by obtaining 24-hour composite samples through flow proportional composite sampling techniques where feasible. The District may waive flow proportional composite sampling for any industrial user that demonstrates that flow proportional composite sampling is infeasible. In such cases, the samples may be obtained through time proportional composite sampling techniques or through a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged.

Samples that are taken by the District for the purposes of determining compliance with the requirements of this Ordinance shall be split with the Discharger (or a duplicate sample provided in the instance of fats, oils, and greases) if requested before or at the time of sampling.

All sample analyses shall be performed in accordance with techniques prescribed in 40 CFR Part 136 and any amendments thereto. Where 40 CFR Part 136 does not include a sampling or analytical technique for the pollutant in question, or where the District determines that the Part 136 Sampling and Analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other sampling and analytical procedures including procedures suggested by the District or other parties, that have been approved by the Administrator of the United States Environmental Protection Agency.

4.5.3 Monitoring Facilities

- (a) Any person discharging industrial waste into the public sewerage system which requires an Industrial Wastewater Discharge Permit shall, at their own expense, construct and maintain an approved control manhole, together with such flow measurement, flow sampling and sample storage facilities as may be required by the District. The facilities required shall be such as are reasonably necessary to provide adequate information to the District to monitor the discharge and/or to determine the proper user charge.
- (b) Such monitoring facilities shall be located on the Discharger's premises except when, under circumstances approved by the District, it must be located in a public street or right-of-way, provided it will not be obstructed by landscaping or parked vehicles.
- (c) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measurement equipment shall be maintained at all times in a safe and proper operating condition at the expense of the Discharger.

- (d) Whether constructed on private or public property, the sampling and monitoring facilities shall be provided in accordance with the District's requirements and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification by the District.
- (e) Dischargers shall allow the District and City and their representatives, access to monitoring facilities on their premises at all times. The District and City shall have the right to set up such supplementary monitoring equipment as it may require.
- (f) The District may, in lieu of requiring measurement sampling and monitoring facilities, procure and test, at the user's expense, sufficient composite samples on which to base and compute the user charge. In the event that measurement sampling and monitoring facilities are not required, the user charge shall be computed using the metered water flow to the premises as a basis for waste flow and the laboratory analysis of samples procured as the basis for computing BOD and suspended solids content. Metered water flow shall include all water delivered to or used on the premises. In the event that private water supplies are used, they shall be metered at the user's expense. Cooling waters or other waters not discharged into the public sewerage system may be separately metered at the user's expense in a manner approved by the District, and all or portions of these waters deducted from the total metered water flow to the premises subject to District approval.

4.6 CONTROL OF DISCHARGE

It shall be the responsibility of every Industrial User to control the discharge of industrial wastewater into the public sewerage system, or any private or side sewer which drains into the public sewerage system, so as to comply with this Ordinance and the requirements of any applicable wastewater discharge permit issued pursuant to the provisions of this Ordinance.

4.7 CHANGE IN PERMITTED DISCHARGE

It shall be the responsibility of every Industrial User to promptly report to the District any changes (permanent or temporary) to the Discharger's premises or operations that change the quality or quantity of the wastewater discharge. Changes in the discharge involving the introduction of a wastestream(s), or hazardous waste as set forth in 40 CFR, Part 261, not included in or covered by the Discharger's Industrial Wastewater Discharge Permit Application itself shall be considered a new discharge, requiring the completion of an application as described under Subsection 4.2. Any such reporting shall not be deemed to exonerate the Discharger from liability for violations of this Ordinance. Any industrial user operating under equivalent mass or concentration limits calculated from a production based standard shall notify the District within two business days after the industrial user has a reasonable basis to know that the production level will significantly change within the next calendar month. An industrial user not notifying the District of such anticipated change will be required to meet the mass or concentration limits that were based on the original estimate of the long-term average production rate.

4.8 RECORDS

All Dischargers subject to this Ordinance shall retain and preserve for not less than three (3) years all records, books, documents, memoranda, reports, correspondence, and any and all summaries thereof, relating to monitoring, sampling, and chemical analyses made by or on behalf of a Discharger in connection with its discharge. All such records shall be subject to review by the District. All records which pertain to matters subject to appeals or other proceedings before the Director or the Board, or any other enforcement or litigation activities brought by the District shall be retained and preserved until such time as all enforcement or other activities have concluded and all periods of limitation with respect to any and appeals have expired.

4.9 CONFIDENTIAL INFORMATION

4.9.1 Public Inspection

Information and data furnished to the District regarding frequency and nature of discharges into the public sewerage system or other information submitted in the regular course of reporting and, compliance with the requirements of these Rules and Regulations or the Industrial User's Permit, shall be available to the public or other governmental agencies without restriction unless the industrial user claims, when submitting the data, and satisfies the District as to the validity of the claim, that release of the information would divulge information, processes or methods of production entitled to protection as "trade secrets" under federal laws or ORS 192.501(2). Such portions of an industrial user's report which qualify as trade secrets shall not be made public. Notwithstanding the foregoing, the United States Environmental Protection Agency and the State of Oregon Department of Environmental Quality shall have access to all records at all times. Effluent data, as defined and set forth in 40 CFR Part 2 incorporated by reference hereto, shall be available to the public.

4.9.2 Disclosure in the Public Interest

Nothing in paragraph 4.9.1 shall prevent disclosure of any information submitted by an industrial user when the public interest in that case requires disclosure. Disclosure to other governmental agencies for uses related to this ordinance is in the public interest.

4.9.3 Procedure

- (a) An industrial user submitting information to the District may assert a "trade secret" or "business confidentiality" claim covering the information by placing on or attaching to the information a cover sheet, stamped or type legend or other suitable form of notice employing language such as "trade secret", "proprietary" or "business confidential". This shall be done at the time of submission. Post submittal claims of confidentiality will not be considered unless good cause is shown by the industrial user to the satisfaction of the Director. Allegedly confidential portions of otherwise non-confidential documents shall be clearly identified by the industrial user and may be submitted separately to facilitate identification. If the industrial user desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice shall so state. If no claim of confidentiality is made at the time of submission, the District may make the information available to the public without

further notice. If a claim is asserted, the information will be evaluated pursuant to the criteria of ORS 192.501(2) and 40 CFR Part 2 relating to Effluent Data.

- (b) The industrial user must show that it has taken reasonable measures to protect the confidentiality of the information, that it intends to continue to take such measures and must show that the information claimed to be confidential (a) is not patented; (b) is known only to a limited number of individuals within the industrial user who are using it to make or produce an article of trade or a service or to locate a mineral or other substance; (c) has commercial value; (d) gives the industrial user a chance to obtain a business advantage over competitors not having the information; and (e) is not, and has not been, reasonably obtainable without the industrial user's consent by other persons (other than governmental bodies) by use of legitimate means (excluding discovery in litigation or administrative proceedings).
- (c) The District shall examine the information meeting the criteria set forth above and to the extent allowed, will determine what information, if any, is confidential.
- (d) If the District determines that the information is confidential, it shall so notify the industrial user. If a request for inspection under the public records law has been made, the District shall notify the person requesting the information of its confidentiality and notify the industrial user of the inquiry and the District's response.
- (e) If the District determines that the information is not entitled to confidential treatment, the District shall notify the industrial user of its decision, as well as any other person who has requested the information.
- (f) Any party aggrieved by a ruling of the District may, within three business days of the decision, seek reconsideration by filing a written request accompanied by any additional supporting arguments or explanation supporting or denying confidentiality. Once the final decision is made, the District will wait five business days before releasing the subject information so that the industrial user may have an adequate time to obtain judicial relief to prevent disclosure.
- (g) Information deemed confidential or, while a decision thereon is pending, will be kept in a place inaccessible to the public.
- (h) Nothing herein shall prevent a party requesting information to exercise remedies provided by the Oregon Public Records law to obtain such information. Nothing herein shall prevent the industrial user from undertaking those remedies to prevent disclosure if the District has determined that such disclosure will occur. The District will not oppose any motion to intervene or other action taken by an industrial user to perfect standing to make any confidentiality claims before a court of competent jurisdiction.

4.10 ENFORCEMENT OF STANDARDS THROUGH ADMINISTRATIVE PENALTIES

4.10.1 Enforcement

In addition to the imposition of civil penalties, the District shall have the right to enforce this ordinance by injunction, or other relief, and seek fines, penalties and damages in Federal or State courts.

Any discharger that fails to comply with the requirements of these Rules and Regulations or provisions of its Industrial Wastewater Discharge Permit may be subject to enforcement actions as prescribed below in addition to those developed by the District.

(a) Violations

- (1) A violation shall have occurred when any requirement of these Rules and Regulations has not been met.
- (2) Each day a violation occurs or continues shall be considered a separate violation.
- (3) For violations of discharge limits, each parameter that exceeds a discharge limit shall be considered a separate violation;
- (4) Significant Non-Compliance: Significant non-compliance with applicable pretreatment requirements exists when a violation by any discharger meets one or more of the criteria defined in Section 2.

(b) Enforcement Mechanisms

- (1) In enforcing any of the requirements of this ordinance or rules or procedures adopted hereunder, the District may:
 - (i) Take civil administrative action (such as issuance of notices of violations, administrative fines, revocation of a permit) as outlined in herein;
 - (ii) Issue compliance orders;
 - (iii) Cause an appropriate action (such as civil litigation, criminal prosecution) to be instituted in a court of competent jurisdiction;
 - (iv) Terminate sewer service; or
 - (v) Take such other action as the District deems appropriate.
- (2) The type of enforcement action shall be based, but not limited by the duration and the severity of the violation; impacts on water quality, biosolids, disposal, interference, worker health and safety; violation of the District's NPDES permit. Enforcement shall, generally, be escalated in nature.
- (3) Whenever the District finds that any discharger has violated any provisions of these Rules and Regulations, or its waste discharge permit, it shall take appropriate enforcement action against the noncomplying industry based on its enforcement response procedures. The discharger will be required to comply with all requirements contained in the enforcement document issued by the District to include such items

as responding in a timely fashion to notices of violation letters, compliance inquiry letters, or show cause hearings, and compliance with all terms of compliance orders or other enforcement mechanisms as established by the District.

4.10.2 Imposition of Civil Penalties

The District may impose civil penalties including, but not limited to, fines, damages, modification or revocation of permit and/or cessation of services when any Industrial User (a) fails to factually report the wastewater constituents and characteristics of its discharge; (b) fails to report significant changes in wastewater constituents or characteristics; (c) tampers with sampling and monitoring equipment; (d) refuses reasonable access to the user's premises by representatives of the District for the purpose of inspection or monitoring; or (e) violates any condition or provision of its permit, this Ordinance, any rule adopted pursuant hereto, or any final judicial order entered with respect thereto. Nothing herein shall prevent the District from seeking injunctive or declaratory relief or any other remedy available under Federal or State law.

4.10.3 Procedure for Imposition of Civil Penalties

Procedures for the imposition of civil penalties on Industrial Users shall be in accordance with Section 11. In addition to any other remedy or penalty, the District may assess civil penalties of at least \$1,000 per day for each violation.

4.10.4 Emergency Suspension of Service and Permits Notwithstanding Any Other Provisions of This Ordinance

In addition to the procedures given in Section 11 for the enforcement of the civil penalty, the District may immediately cause to be suspended wastewater treatment service and/or the sewer permit of an Industrial User when it appears that an actual or threatened discharge presents, or may present, an imminent danger to the health or welfare of persons or the environment, interferes with the operations of the public sewerage system, or violates any pretreatment limits imposed by this Ordinance, any rule adopted or any permit issued pursuant hereto, or any other applicable law.

The suspension notice shall be served upon the Industrial User by personal, office, or substitute service as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, unless the emergency nature of the suspension makes service impracticable.

Any Industrial User notified of the suspension of the Industrial User's permit and/or service shall cease all discharges within the time determined solely by the District and specified in the suspension notice. If the Industrial User fails to comply voluntarily with the notice of suspension, the District may immediately, in its discretion, enter upon the property and disconnect the service, or seek a temporary restraining order or other relief from the Circuit Court to compel compliance or may proceed judicially or administratively as set forth in these Regulations to insure compliance with this Ordinance. The District shall reinstate the permit and/or service of the Industrial User and may terminate, in its discretion, any proceedings brought upon proof by the user of the elimination of the noncomplying discharge or conditions creating the threat of imminent or substantial danger as set forth above.

4.10.5 Operational Upset

Any Industrial User who experiences an upset in operations which place the industrial user in a temporary state of noncompliance with this Ordinance, and/or any rule adopted or permit issued pursuant hereto, shall inform the District thereof as soon as practicable, but not later than twenty-four (24) hours after first awareness of commencement of the upset. Where such information is given orally, a written follow-up report thereof shall be filed by the industrial user with the District within five (5) days.

An upset shall constitute an affirmative defense to an action brought for noncompliance if the Industrial User demonstrates, through properly signed, contemporaneous operating logs or other relevant evidence (a) a description of the upset, the cause(s) thereof, and the upset's impact on the industrial user's compliant status; (b) the duration of noncompliance including exact dates and times or if not corrected the anticipated time that noncompliance is expected to continue; (c) all steps taken, or to be taken to reduce, eliminate and prevent recurrence of such upset or other conditions of noncompliance; and workmanlike manner and in compliance with applicable operational maintenance procedures.

A documented, verified, and bona fide operation upset, including good faith and reasonable remedial efforts to rectify the same, shall be an affirmative defense to any enforcement action brought by the District against an industrial user for any noncompliance with this Ordinance or any rule adopted or permit issued pursuant hereto which arises out of violations alleged to occur during the period of the upset. In an enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

The Industrial User shall control production for all discharges to the extent necessary to maintain compliance with this ordinance or any rule adopted or permit issued pursuant hereto upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in a situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

4.10.6 Bypass

Bypass means the intentional diversion of waste streams from any portion of an industrial users treatment facility. Bypass is prohibited and the District may take enforcement action against an industrial user for a bypass, unless: (a) the bypass was unavoidable to prevent loss of life, personal injury or severe property damage as defined in 40 CFR 403.17(a)(2); (b) there was no feasible alternatives to the bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of down time or preventative maintenance; and (c) the Industrial User submitted notices as set forth below.

If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the District, if possible, at least ten days before the date of the bypass. The District may approve an anticipated bypass after considering its adverse effects, if the District determines that it will meet the three conditions set forth above.

An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the District within 24 hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within five days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The District may waive the written report on a case-by-case basis if the oral report has been received.

An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of the paragraphs of this section.

4.10.7 Affirmative Defense

Any Industrial User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions covered in 40 CFR 403.5(a)(1) and the specific prohibitions covered in 40 CFR 403.5(b)(3), (4), (5), (6) and (7) in addition to those covered in this Ordinance. The Industrial User in its demonstration shall be limited to provisions of 40 CFR 403.5(a)(2)(i) and (ii).

4.10.8 Public Notification

At least annually, the District shall publish in a newspaper of general circulation in the District, a list of the Industrial Users who were in significant noncompliance of Applicable Pretreatment Standards or requirements for the preceding twelve (12) months, in accordance with and as defined in 40 CFR 403.8(f)(2)(viii).

SECTION 5 USE OF PUBLIC SEWERS REQUIRED

5.1 GENERAL

The owner of any building situated within the District and proximate to any street or sewer easement in which there is located a public sewer of the District or City may request permission, at owner's expense, to connect said building directly to the proper public sewer in accordance with the provisions of these Rules and Regulations and other applicable codes. Such request shall be made through proper application to connect to the sanitary sewer system.

5.2 DISCONNECTION

A property owner may request disconnection from the District's system provided all applicable statutes, rules and ordinances are complied with. The property owner shall pay a disconnection inspection fee at the time disconnection is requested. The inspection fee is based upon staff time, materials, mileage, other expenses, and a reasonable allocation of general overhead expenses. The fee shall be due and payable immediately upon billing. The fee may be amended from time to time by order of the Board.

5.3 HEALTH HAZARDS

Where it is determined that property not within the boundaries of the District has a failing subsurface disposal system constituting a health hazard, the property owner may apply to the District for annexation. Annexation will occur by an Order of the Board finding a health hazard, said Order subject to compliance with all applicable statutes. If the property is within the Urban Growth Boundary the property must be annexed to the City and District, and no extraterritorial extension of service will be allowed unless in conformance with the then existing Rules of the Tri-City Advisory Committee. If extraterritorial extension is allowed, the property owner shall agree to pay all amounts determined under these Rules and Regulations in the District's applicable assessment formulas or collection sewer charge so that the proportionate fair share for service is fully paid.

SECTION 6 CONNECTION RULES AND SPECIFICATIONS

6.1 GENERAL REQUIREMENTS

All connections and specifications shall be in accordance with the Ordinances and laws of the District, the affected City, the Plumbing Code of the State of Oregon, and any other federal or state requirement.

6.2 GREASE, OIL, SAND AND SCUM TRAPS

All restaurants, fast food, delicatessens, taverns, and other food preparation facilities which prepare food onsite, service stations, automotive repair facilities or any other facility so determined by the District and/or city shall install grease, oil, sand and scum trap separators to remove fats, oils, greases, and scums. In addition, all proprietors will be responsible for cleaning and maintaining these separators. The District and/or City shall also have the authority to enter upon premises drained by any side sewer, at all reasonable hours, to ascertain whether this provision of limiting the introduction of fats, oils, greases, and scums to the system has been complied with. Violators of this provision may be directed to prepare a schedule of corrective action, pay a penalty as prescribed in Section 11, or both.

6.3 HOLD HARMLESS

All users of the system, all contractors who may perform work on the system in any manner, and all other persons or entities whose actions may affect the system shall indemnify and hold harmless the District, the City, their officers, employees, and representatives from and against all suits, actions, or claims of any character or nature brought because of any injuries or damages received or sustained by any person, or property, or alleged to have been so received or sustained on account of the actions, or failure to act, of such users, contractors, or other persons, their subcontractors, employees or representatives. Such indemnification shall include the cost of defense of such claims, including attorney's fees.

6.4 ABANDONED CONNECTION

Any connection that is abandoned shall be capped or plugged by the property owner at the private property line or easement line at his sole cost and expense. All materials to plug or cap the service connection shall be approved by the District and/or city and inspected by the District and/or City prior to backfilling.

SECTION 7 PUBLIC SEWER CONSTRUCTION

7.1 CONSTRUCTION GENERALLY

All sewer construction shall conform to all standards of the District, the City, and the Department of Environmental quality of the State of Oregon, including but not limited to, OAR Chapter 340, Division 52, or as may be amended and specifically incorporated by reference hereto. Any sewer construction must be constructed under the continuous inspection of a registered professional engineer approved by the District. If a third party is involved, the agreement between the person causing construction and the registered professional engineer shall provide that the engineer shall have the sole responsibility for determining that design, materials and construction of the sewer extension conform to all of the applicable specifications of the District. Such agreement shall further provide that the engineer shall furnish such testing and inspection services as are required by the District and are deemed necessary by the engineer to permit him to make the certification required by Subsection 7.5 of these regulations.

7.2 PLANS

Three (3) copies of the plans and specifications prepared by the engineer shall be furnished to the District and shall be approved by the District in writing.

7.3 SPECIFICATIONS

All construction and material specifications for any sewer construction shall be in conformance with the construction and material specifications which are then in use by the District for sewer extensions constructed by the District.

7.4 SEWER EXTENSIONS

Sewer construction shall be constructed by a contractor duly licensed by the State of Oregon and any other licensing political subdivision having jurisdiction over the work. All sewer construction shall be located within the public right-of-way wherever possible.

7.5 CERTIFICATION

Prior to the acceptance of sewer construction by the District, the engineer shall certify in writing to the District that all workmanship and materials have been tested by methods approved by the District, that all workmanship and materials conform to the applicable plans and specifications approved by the District, and for the purpose of enabling the District to maintain adequate records relating to the construction costs of the District's sewerage system, the engineer shall certify in writing on forms provided by the District the total construction costs of the sewer construction.

7.6 ACCEPTANCE BY DISTRICT

When the District is in receipt of the certification required of the engineer, the engineer shall arrange with the District for the District to perform a joint inspection of the sewer construction with the engineer. Following completion of the joint inspection, the District shall, if it determines as a result of such inspection that the construction is in conformance with the construction materials specifications of the District, accept the sewer construction upon receipt of: 1) a bond or deposit in the amount of 25 percent of the construction cost guaranteeing the sewer construction against any defects in labor and materials for a period of one year from the date of acceptance by the District; 2) a sufficient bill of sale or other conveyancing document in the form approved by the District (or on a District supplied form) transferring all rights, title and interest in and to the sewer construction to the District; 3) a document conveying any easements required and in a form approved by the District, providing that the District have a perpetual right to maintain, repair and replace the sewer construction; 4) a certificate of completion, certifying in writing that the work was done under the engineer's supervision or inspection and is in conformance with the approved plans and specifications and meets all required tests; 5) a complete and stamped sewer service connection record form for each service connection; 6) blackline mylar As-Built drawings capable of being reprinted with all details legible, showing the connection size, station length and depth at the property line on a 22" x 34" or 24" x 36" plan sheet at the scale of 1" = 50 feet; 7) CAD As-Built drawings on a 3 1/2" IBM compatible floppy disk formatted for 1.44 MB capacity, using native Auto Cad (DWG or DXF Data exchange file format) with layer data as provided by District personnel; and 8) construction and engineering cost data on District forms.

SECTION 8 [RESERVED]

SECTION 9 CHARGES AND RATES FOR SEWAGE SERVICES

9.1 SYSTEM DEVELOPMENT CHARGES

9.1.1 Purpose

Section 9.1 is intended to provide authorization for system development charges for capital improvements pursuant to ORS 223.297-223.314 for the purpose of creating a source of funds to pay for existing system capacity and/or the installation, construction and extension of capital improvements to accommodate new connections to the system. These charges shall be due and payable at the time of permitted increased improvements by new development whose impacts generate a need for those facilities. The system development charges imposed by Section 9.1 are separate from and in addition to any applicable tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development.

9.1.2 System Development Charge Imposed; Method for Establishment Created

Unless otherwise exempted by the provisions of these Rules and Regulations or other local or state law, a system development charge is hereby imposed on all development within the District that increases usage upon the sanitary sewer facilities for each equivalent dwelling unit as defined in the Table I. System development charges shall be established and may be revised by resolution or order of the Board. The resolution or order shall set the methodology and amount of the charge.

9.1.3 Methodology

- (c) The methodology used to establish the reimbursement fee shall consider the cost of the then-existing facilities, prior contributions by then-existing system users, the value of unused capacity, ratemaking principles employed to finance publicly-owned capital improvements, and other relevant factors identified by the board. The methodology shall promote the objective that future system users shall contribute not more than an equitable share of the cost of then-existing facilities.
- (d) The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and other relevant factors identified by the Board.
- (e) The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be adopted by resolution or order of the Board.

9.1.4 Authorized Expenditure

- (a) Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.
- (b)(1) Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity occurs if a capital improvement increases the level of

performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to demands created by current or projected development.

- (2) A capital improvement being funded wholly or in part from the revenues derived from the improvement fee shall be included in the Capital Improvement Program adopted by the Board; and
- (c) Notwithstanding 9.1.4(a) and (b), system development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge funds.

9.1.5 System Development Charge Project Plan

- (a) The Board has adopted by resolution or order the Tri-City Service District System Development Charge Report. This Report:
 - (1) Lists existing facilities and the capacity available for new development;
 - (2) Lists the planned capital improvements that may be funded with improvement fee revenues; and
 - (3) Lists the estimated cost and time of construction of each improvement.
- (b) In adopting this Report, the Board may incorporate by reference all or a portion of any Public Facilities Plan, Master Plan, Capital Improvements Plan or similar plan that contains the information required by this section. The Board may modify the projects listed in that Report at any time through the adoption of an appropriate resolution.

9.1.6 Collection of Charge

- (a) As a condition to connection of the sanitary sewer system, the applicant shall pay all applicable charges to the District and the City. Except as allowed in Section 9.1.7, the system development charge is payable at the time of permitted increased usage upon issuance of:
 - (1) A building permit; or
 - (2) A development permit for development not requiring the issuance of a building permit; or
 - (3) Increased usage of the system or systems provided by the District.
- (b) The resolution which sets the amount of the charge shall designate the permit or systems to which the charge applies.

- (c) If development is commenced or connection is made to the systems provided by the District within an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required or increased usage occurred.
- (d) The Director of Water Environment Services or his/her designee shall not issue such permit or allow connection or increased usage of the system(s) until the charge has been paid in full, unless provision for installment payments has been made pursuant to Section 9.1.7, or unless an exemption is granted pursuant to Section 9.1.8.
- (e) All moneys collected through the system development charge shall be retained in a separate fund and segregated by type of system development charge and by reimbursement versus improvement fees.
- (f) In addition, each person making an application for connection shall pay an inspection charge equal to the average costs incurred by the District in providing sewer system construction inspection and testing for the type of service for which the application has been submitted and the permit to be reasonably calculated. The applicant shall pay an estimated inspection charge which may be adjusted as follows:
 - (1) If the actual inspection costs exceed the estimated costs, an additional charge equal to the costs in excess of those estimated shall be levied. The charge shall be immediately due and payable.
 - (2) If the actual inspection costs are less than the estimated inspection costs, the balance of the inspection charges in excess of actual costs shall be refunded.

9.1.7 Installment Payment of District's System Development Charges

- (a) Where the District's share of system development charges is greater than two times the amount of a system development charge for a single family residential unit, the applicant may, at the time of application, with the consent of the District, make a one-time election to pay the charge in installments. If approved, payment in 20 semi-annual installments, secured by a lien on the property upon which the development is to occur or to which the connection is to occur or to which the connection is to be made, to include interest on the unpaid balance.
- (b) The District shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.
- (c) The District reserves the right to reject any application for installment payments. Requirements and procedures for installment payments of the District's share of the system development charge shall be in accordance with the following:
 - (1) A person requesting installment payments shall have the burden of demonstrating the person's authority to assent to the imposition of a lien on

the property and that the interest of the person is adequate to secure payment of the lien.

- (2) Any eligible property owner requesting the installment shall at the time of the application for connection submit to the District an application for deferral on a form provided by the District.
- (3) Upon receipt of an application, the applicant, at his expense, shall order a preliminary title report from a title insurance company doing business in Clackamas County, Oregon, and provide it to the District.
- (4) The applicant, at his expense, shall furnish the District with a current statement of amount due to each lienholder disclosed by the preliminary title report, the tax assessor's statement of true cash value, and, for property proposed for improvement, an MAI appraisal, certified by the appraiser, as to the estimated fair market value upon completion of the proposed improvement. The applicant shall answer such questions as the District deems proper regarding the applicant's ability to make the installment payments, as well as any other lienholder. The applicant also authorizes the District to contact other lienholders regarding applicant's payment history.
- (5) If, upon examination of the title to the property and other information, the District is satisfied:
 - (i) That the total unpaid amount of all liens disclosed, together with the amount of the system development charge sought to be paid by installments, does not exceed (1) the appraised value of the property as determined by the current appraisal of the County Assessor or (2) if the District elects, based upon the appraisal or other evidence of value acceptable to the District, the amount does not exceed the estimated fair market value of the property; and
 - (ii) The District, in its discretion, upon review of the applicant's ability to make payments as required under the proposed mortgage or trust deed and other debt obligations and the status of applicant's title to the property, consents to execution of the mortgage or trust deed; then
 - (iii) The applicant shall execute an installment promissory note, payable to the District in the form prescribed by the District for payment in installments not to exceed 20 equal semi-annual installments due January 1 and July 1 of each year, together with interest on the deferred principal balance at the prime rate of interest being charged on each principal payment date by the bank doing business in Oregon and having the largest deposits. The promissory note shall be secured by a mortgage or trust deed covering the property to be connected thereto. The cost of recording, preparation of security documents, title company report and filing fees shall be borne by the

applicant in addition to the system development charge. The applicant, by electing to pay in installments, agrees that as an additional remedy to recovery upon the promissory note and foreclosure of the mortgage or remedy in lieu thereof, the District may after ten (10) days' notice of delinquent installments cause termination of service to the defaulting property.

- (d) If the District determines that the amount of system development charge, together with all unpaid liens, exceeds the appraised value of the property or that the applicant cannot execute a mortgage or trust deed which will be a valid lien; or if the District believes that it will not have adequate security, or that the applicant cannot make the required payments, it shall so advise the applicant and installment payments shall not be accepted.
- (e) The District shall docket the lien in the lien docket. From that time, the District shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the Board. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230.

9.1.8 Exemptions

The System Development Charge shall not apply to:

- (a) Structures and uses using the sewerage facilities on or before the effective date of the resolution.
- (b) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the Uniform Building Code or the City's Zoning Development Ordinance.
- (c) An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the sanitary sewer facilities.

9.1.9 Credits

- (a) A permittee is eligible for credit against the improvement fee element of the system development charge for constructing a qualified public improvement. A qualified public improvement means one that meets all of the following criteria:
 - (1) Required as a condition of development approval by the Board or its designee through the development review process; and
 - (2) Identified in the District's Capital Improvement Plan; and
 - (3)(i) Not located within or contiguous to the property or parcel that is subject to development approval; or

- (ii) Located in whole or in part on, or contiguous to, property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.
- (4) This credit shall be only for the improvement fee charged for the type of improvement being constructed. Credit under this section may be granted only for the cost of that portion of the improvement that exceeds the facility size or capacity needed to serve the development project and their oversizing provides capital usable by the district.
- (b) Applying the adopted methodology, the District may grant a credit against the improvement charge for capital facilities provided as part of the development that reduces the development's demand upon existing District capital improvements or the need for further District capital improvements or that would otherwise have to be constructed at District expense under the then-existing Board policies.
- (c) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project.
- (d) All credit requests must be in writing and filed with the District before the issuance of a building permit. Improvement acceptance shall be in accordance with the usual and customary practices, procedures and standards of the District. The amount of any credit shall be determined by the District and based upon the subject improvement construction contract documents, or other appropriate information, provided by the applicant for the credit. Upon a finding by the District that the contract amounts exceed the prevailing market rate for a similar project, the credit shall be based upon market rates. The credit shall state the actual dollar amount that may be applied against any system development charge imposed against the subject property. The applicant has the burden of demonstrating qualification for a credit.
- (e) Credits shall be apportioned against the property which was subject to the requirements to construct an improvement eligible for credit. Unless otherwise requested, apportionment against lots or parcels constituting the property shall be proportionate to the anticipated public facility service requirements generated by the respective lots or parcels. Upon written application to the District, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit. Reapportionment shall be noted on the original credit form retained by the District.

- (f) Any credits are assignable; however, they shall apply only to that property subject to the original condition for land use approval upon which the credit is based or any partitioned or subdivided parcel or lots of such property to which the credit has been apportioned. Credits shall only apply against system development charges, are limited to the amount of the fee attributable to the development of the specific lot or parcel for which the credit is sought, and shall not be a basis for any refund.
- (g) Any credit request must be submitted before the issuance of a building permit. The applicant is responsible for presentation of any credit and no credit shall be considered after issuance of a building permit.
- (h) Credits shall be used by the applicant within ten years of their issuance by the District.

9.1.10 Payment of System Development Charges

As a condition of connection to the sewerage system, the applicant shall pay all fees and charges, except as allowed under Section 9.1.7 to the jurisdiction that bills the user.

In addition, each person making an application for connection directly to a District facility shall pay an Inspection Charge equal to the average costs incurred by the District in providing sewer system construction inspection and testing for the type of service for which the application has been submitted and the permit to be reasonably calculated, the applicant shall pay an estimated inspection charge which may be adjusted as follows:

- (a) If the actual inspection costs exceed the estimated costs, an additional charge equal to the costs in excess of those estimated shall be levied. The charge shall be immediately due and payable.
- (b) If the actual inspection costs are less than the estimated inspection costs, the balance of the inspection charges in excess of actual costs shall be refunded.

9.1.11 Changing Class of Service

Whenever a parcel of property shall have become connected to the City or District sewerage system and shall thereafter undergo a change of use so that a different number of dwelling units would be assigned to the property if connection were made after the change, the following shall occur:

- (a) If the change results in the assignment of a greater number of EDU's pursuant to Table I, an additional system development charge shall be levied at the time of such change. The additional charge shall be equal to the net increase of EDU's times the current system development charge by EDU.
- (b) If the change results in the assignment of a lesser number of EDU's pursuant to Table I, there shall be no additional charge or rebate. However, the full number of EDU's originally assigned shall be used as a basis for determining any future system development charges in the event of a further change of use resulting in the assignment of additional EDU's.

9.1.12 Notification/Appeals

The District shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of the system development charge methodology. These persons shall be so notified in writing of any such proposed changes at least 45 days prior to the first hearing to adopt or amend such methodology(ies). This methodology shall be available at least 30 days prior to the public hearing. Any challenge to the system development charge methodology shall be filed not later than 60 days following final adoption by the Board and only pursuant to the provisions of ORS 34.010 to 34.100.

9.1.13 Challenges

Any citizen or interested person may challenge expenditure of system development charge revenues according the Section 11.1 of the Rules and Regulations. Notwithstanding Section 11.1.1, the initial appeal of that Section with respect to an expenditure of system development charge revenues shall be filed within two years of the expenditure complained of. Thereafter, all time limits of Section 11.1 shall apply including Circuit Court review pursuant to ORS 34.010 to 34.100.

9.2 USER CHARGES

9.2.1 Dwelling Unit Monthly User Charge

As shown on Table I, a monthly sewer user charge for each residential dwelling unit is assigned each residential class of service listed in the attached Table I and shall be paid by the property owner or user commencing on the third month following the date of connection to the District or City's sewer system unless the City requires an earlier charge. All nonresidential users shall pay from the date of connection to the system. The Board may set user fees and charges by resolution or order.

9.2.2 Low Income Senior Citizen Monthly User Charge

The monthly user charge for service provided to the principal residence of a person 65 years of age or older, having a maximum income of \$13,616 for a single person residing in the residence or a maximum of \$18,204 for all persons residing in the residence shall be 50% of the monthly sewer service charge. This amount will be automatically adjusted annually commencing July 1, 1998, and thereafter depending upon the poverty level amounts established by the United States of America. In order to be eligible for the reduced user charge, the qualified person must be the person to whom the monthly user charge is billed and must have completed and filed with the District an application for the rate on a form supplied by the District.

9.3 OTHER CHARGES

9.3.1 Sewer Tap-In Charge

Whenever any property requiring sanitary facilities directly connects to the District sewerage system and there has not been provided a service connection to serve such property, the owner at the time of connection shall pay a tap-in charge. The charge shall be equal to the costs incurred by the District in providing the sewer tap-in and shall be set by resolution or order of the Board.

9.3.2 Other Connecting Charges

Whenever service to a property requires special facilities to be provided by the District, the property owner shall be charged the actual cost incurred by the District in providing the special facilities. Special facilities shall include, but are not limited to, manhole connections, extension of the public sewer, or modification of the public sewer.

9.3.3 Industrial Waste User Charge

An industrial waste user charge will be applied to each class of industrial user as defined in Tables I. The user charge shall be comprised of rates for the customer's proportionate contribution of flow, the suspended solids ("TSS") and biochemical oxygen demand ("BOD") which are in excess of domestic sewage contributions.

Rates for industrial flows shall be based on their Equivalent Dwelling Units as determined by metered water consumption. Rates for TSS and BOD removal shall be based on the actual treatment cost per pound incurred by the District, including administrative overhead, operation, maintenance, and other expenses as established by the District. The user charge shall be based on simultaneous monitoring of flow, TSS, and BOD concentrations measured at the customer's property and the sewage treatment plant periodically during the preceding three-month period. Quarterly adjustments may be made to reconcile differences in projected versus actual conditions.

Such user charge shall be payable from the date of connection to the District or City sewage system or from the date on which the property owner is required to connect to the District or City sewage system, whichever occurs first.

9.3.4 Surcharge

If the District or City verifies that any customer has discharged waste on a sustained, periodic, or accidental basis, and those wastewater characteristics result in additional costs above the normal costs associated with treating, operating, maintaining, or complying with regulatory requirements, then that customer may be billed for the additional costs resulting from that discharge.

9.3.5 Setting Other Charges and Fees

The Board shall create, adopt, and amend charges and fees by resolution or order.

9.4 PAYMENT OF CHARGES

9.4.1 User Charges

Owners of property will be billed by the jurisdiction that provides collection sewer services according to the schedule set by that entity. No single point of connection to the sewage system shall have a user charge less than the amount specified on Table I as amended from time to time. Users will be billed on a monthly or bimonthly basis.

9.4.2 Notification Requirements

In conjunction with a regular bill, the city will provide an annual notification to each user of that portion of the monthly user rate which is attributable to wastewater treatment services. The City shall state separately the portion imposed by it for sewer services.

9.4.3 Charges and Fees

All charges and fees shall be due and payable at the time of service, unless otherwise specifically provided by these Rules.

9.5 ACCOUNT SETUP, BILLING AND COLLECTION POLICY

9.5.1 General

It is the policy of the District that the user (in whose name the account is set up) is primarily responsible for all fees and charges at the service location.

9.5.2 Account Setup

All applications for service shall be on forms provided by the District or City. The account holder shall be considered the user of the service. In the case of a landlord-tenant situation, the tenant shall be the account holder unless the rental agreement (oral or written) provides that the landlord is responsible or the landlord has executed a written document stating that he/she/it is responsible for service. If the landlord is responsible, then both the landlord and the tenant shall be listed as the account holder. While the rental unit is unoccupied, any charges shall be the responsibility of the landlord.

9.5.3 Notices

Regardless of who is listed as the user, the District or City will make all reasonable efforts to provide the landlord and tenant with copies of all invoices, notices, and other information relating to fees and charges. This policy is intended to comply with ORS 91.255 and to provide notices to enable the landlord and tenant a reasonable opportunity within the time set by the District or City to avoid delinquent charges and discontinuance of service.

9.5.4 Collection of Charges

All invoices or bills for fees and charges shall be sent to the user at the address set forth on the records of the billing entity. If the District or City's records reveal that the user is not the owner and the owner has not executed a document to pay for services, then the District or City may take all reasonable steps to provide the owner with copies of all invoices, bills and notices pursuant to ORS 91.255.

If the owner has executed such an agreement to be bound or if the rental agreement provides, then the landlord and the tenant shall be jointly and severally liable and, following notices to each in accordance with the District or City's procedures, collection practices may ensue or service may be terminated. The District or City may look to either or both parties for payment in addition to the remedies of ORS 91.255.

If the user is different than the owner, the District or City may take all reasonable efforts to provide notice of delinquent status on billings by First Class mail to the last address of the owner or owner's agent that is on file with the District or City not later than 30 days from the time payment is due on the account. Thereafter, in accordance with typical procedures, the District or City may terminate or deny service to the property regardless of who is occupying the property, including any subsequent tenant, based upon the unpaid fees and charges incurred by the previous tenant following provision of the notices set forth above. In the case of a subsequent tenant, the District will provide not less than ten (10) days' written notice to that subsequent tenant prior to termination of services.

The District or City may enter into a payment plan in its sole discretion to avoid hardship to the user and leave the ultimate resolution between landlord and tenant.

The District or City may also deny or terminate service to the delinquent user at a new service location within the District based upon the outstanding fees and charges at the previous service location.

The Director may enter into such agreements regarding payment of delinquent fees and charges as are reasonable and necessary to obtain payment to the District and avoid hardship and inequities.

Nothing herein shall limit the City from undertaking those procedures or actions authorized by statute, charter or ordinance and using any collection or method available, including but not limited to, termination of water service.

9.5.5 Delinquent Charges

All District user charges shall bear interest at 9% per annum from the date of the levy until paid. In addition, the District may certify the amount to the Assessor for inclusion on the property tax statement pursuant to ORS 454.225, and in such case those charges shall become a lien upon the property from the date of the certification to the Assessor and any such collection of the debt and foreclosure of said lien shall be according to the Oregon Revised Statutes. In any action or suit to collect any delinquent user charges, the District shall be entitled to reasonable attorneys fees and costs and disbursements that may be awarded by the trial court, including any appeal therefrom.

9.5.6 Discontinuance of Service

The District may, at any time after any charges or fees hereunder become delinquent, remove or close sewer connections and enter upon any delinquent owner's property for such purpose. In addition, when any property owner fails to cease discharging into the sewerage system prohibitive substances after being notified by the District to do so, sewerage service may be similarly discontinued. The expense of such discontinuance as well as the expense of restoring service shall be a debt due to the District and may be recovered in the same manner as other delinquent charges.

9.5.7 Restoration of Service

Sewer service which has been discontinued by the District or City shall not be restored until all accrued charges, including the expenses of discontinuance and restoration have been paid and the cause for discontinuance corrected.

9.5.8 Fees and Costs

By resolution, the District shall set fees and charges, for collection efforts, including fees and charges necessary to recover all costs related to insufficient fund check or the cost of processing lien searches and the like based upon labor rates or other items deemed reasonable by the Board or the Director as its designee.

SECTION 10 SEPTIC TANK WASTES

10.1 GENERAL STATEMENT

This Section of the Rules and Regulations sets forth uniform requirements for discharges of septic tank wastes at the Tri-City Service District (TCSD) Water Pollution Control Plant, as required by applicable Oregon laws, the federal Clean Water Act, and the Environmental Protection Agency General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this Section of the Rules and Regulations are to prevent the introduction of pollutants into the District's sewerage system which will interfere with the operation of the system or contaminate the resulting biosolids; to prevent the introduction of pollutants into the District's sewerage system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system; to improve the opportunity to recycle or reclaim wastewaters and sludges; and to provide for equitable distribution of the cost of the District's sewerage system.

This section provides for the regulation of discharges of septic tank wastes at the TCSD Water Pollution Control Plant through the issuance of Septic Tank Waste Discharge Permits to approved septic tank waste haulers, authorizes monitoring and enforcement activities, requires septic tank waste hauler reporting, and establishes fees for the equitable distribution of costs of the District's sewerage system.

10.1 DEFINITIONS

In addition to the definitions provided in Section 2 of the Rules and Regulations, as used in this Section, the following additional words and terms shall have the meanings hereinafter designated:

10.2.1 Cesspool

A lined pit which receives domestic sewage, allows separation of solids and liquids, retains the solids and allows liquids to seep into the surrounding soil through perforations in the lining.

10.2.2 Chemical Toilet

A non-flushing, non-recirculating toilet facility wherein domestic sewage is deposited directly into a chamber containing a solution of water and toilet facility chemical.

10.2.3 Holding Tank

A watertight receptacle designed to receive and store domestic sewage generated on-site to facilitate disposal at another location, such as a chemical toilet, camper, trailer, septic tank and pumping facility used to pump domestic sewage up to an available gravity sewer line.

10.2.4 Operator in Charge

The designated personnel on duty at the TCSD Water Pollution Control Plant responsible for supervising and directing any discharge of septic tank wastes hauled to the Plant.

10.2.5 Septic Tank

A watertight receptacle, which receives domestic sewage from an on-site sanitary drainage system, is designed to separate solids from liquids, digest organic matter during a period of detention, and allows the liquid to discharge to a second treatment unit or to a soil absorption facility.

10.2.6 Septic Tank Wastes

Septic tank wastes include and are limited to domestic sewage from the sanitary facilities of residences, hotels, motels, and domestic sewage from the sanitary facilities of commercial and industrial property whether collected from septic tanks, cesspools, holding tanks, pumping facilities or chemical toilets. Process wastes from commercial and industrial property are excluded.

10.3 SEPTIC TANK WASTE DISCHARGE PERMITS

10.3.1 Requirements for a Permit

Only those persons possessing a valid Septic Tank Waste Discharge Permit from the District and displaying a valid charge card issued by the District will be allowed to discharge septic tank wastes at the TCSD Water Pollution Control Plant. The applicant must obtain a separate charge card for each truck and trailer in order for each truck and trailer to be authorized to discharge septic tank wastes.

Septic Tank Waste Permits for the discharge of septic tank wastes at the TCSD Water Pollution Control Plant will be issued by the District only to those persons possessing a valid Sewage Disposal Service Business License issued by the Oregon Department of Environmental Quality (DEQ), and who have submitted a complete application to the District with all information required by the District pursuant to the Rules and Regulations. Licenses from the DEQ will not be required of governmental units.

The District may refuse to issue a Septic Tank Waste Discharge Permit to any applicant who has had one or more permits previously revoked or canceled under the provisions of this Section of the Rules and Regulations, or to any agent, or associates of such person. The District may also refuse to issue a permit to any applicant who has been or is currently under an enforcement action by the District or another governmental unit and relating to the discharge of pollutants to waters of the State or to POTWs.

10.3.2 Permit Applications

Application for a Septic Tank Waste Discharge Permit to discharge septic tank wastes at the TCSD

Water Pollution Control Plant shall be made to the District on forms provided by the District. The application shall not be considered as complete until all information identified on the form is provided, unless specific exemptions are granted by the District. The District shall impose appropriate conditions in Septic Tank Waste Discharge Permits to ensure compliance with requirements in these Rules and Regulations.

10.3.3 Surety Bond

Except for governmental agencies, each permit applicant, regardless of the number of trucks for which application is made, shall post a surety bond in a form approved by the District in the sum of ten thousand dollars (\$10,000.00), which bond shall be forfeited to the District under any of the following conditions:

- (a) The discharge of wastes which are toxic or harmful to the treatment plant operation or process.
- (b) The discharge of septic tank wastes at any unauthorized location within the boundaries of the Tri-City Service District.
- (c) Failure to pay all charges for discharge within 30 days of billing by the District.

10.3.4 Issuance of Permit

After full evaluation and acceptance by the District of the information and data furnished by the applicant, the District shall issue a Septic Tank Waste Discharge Permit to the applicant subject to the terms and conditions required by the District consistent with or pursuant to the Rules and Regulations.

Each permit holder will be issued one Septic tank Waste Discharge Permit. Each truck and trailer will be issued one charge card, which card, after issuance by the District must be presented to the operator in charge before any septic tank wastes may be discharged at the TCSD Water Pollution Control Plant.

In addition to complying with the requirements of the Septic Tank Waste Discharge Permit and these Rules and Regulations, the permittee is required to file annually with the District the permittee's current Oregon DEQ Sewage Disposal Service Business License or annual proof of application for renewal of the DEQ License if the DEQ has not issued a renewed License and the permittee is operating under an approved License that administratively continues in effect under Oregon law.

10.3.5 Permit Duration/No Property Interest Acquired

All Septic Tank Waste Discharge Permits shall be issued for a term not to exceed three years. Each Septic Tank Waste Discharge Permit shall expire on July 1 of each permit term.

If the permittee wishes to continue an activity regulated by Septic Tank Waste Discharge Permit, the permittee must file with the District a complete application to renew their permit no later than 30 days prior to the expiration date and obtain a renewed permit by no later than the expiration date.

No permit holder acquires any property interest by virtue of permit approval and continued approval is expressly contingent upon compliance with this Section of the Rules and Regulations and all other applicable Federal, State, and local requirements.

10.3.6 Limitations on Permit Transfer

A Septic Tank Waste Discharge Permit is issued to a specific applicant and a charge card is issued for a specific truck and trailer. The permit is not assignable or transferable to another waste hauler, and the charge card is not assignable or transferable to another truck and trailer without the prior written approval of the District.

10.3.7 Enforcement and Revocation of Permit

Any septage hauler that fails to comply with the requirements of these Rules and Regulations or the provisions of its Septic Tank Waste Discharge Permit is subject to enforcement by the District. The District shall conduct enforcement pursuant to and in accordance with Section 11 of these Rules and Regulations. In enforcing any of the requirements of the Rules and Regulations or Septic Tank Waste Discharge Permit, the District may:

1. Take civil administrative action (such as issuance of Notices of Violations, administrative fines or revocation of a permit);
2. Issue compliance orders;
3. Cause an appropriate action (such as civil litigation, criminal prosecution) to be instituted in a court of competent jurisdiction;
4. Terminate service; or
5. Take such other action as the District deems appropriate.

All Septic Tank Waste Discharge Permits issued to an applicant by the District shall be revoked or canceled for any of the following reasons:

- (c) Failure to accurately certify the source or sources of a waste load prior to discharge, and to provide verifiable, complete and accurate information in the manner required by the operator in charge at the TCSD Water Pollution Control Plant.
- (d) Failure to pay all fees and charges for discharging septic tank wastes within thirty (30) days of billing by the District.
- (e) Any act which is named a cause for forfeiture of the surety bond, as outlined in Subsection 10.3.3 of these Rules and Regulations.

10.4 WASTE DISCHARGE REQUIREMENTS

10.4.1 Prohibited Discharges

No septic tank waste hauler shall discharge or cause to be discharged, directly or indirectly, to the TCSD Water Pollution Control Plant, any waste that is not septic tank waste or any pollutant, substances, or wastewater which will interfere with the operation or performance of the District sewerage system, have an adverse effect on the receiving stream, endanger life, limb or public property, or constitute a nuisance. Prohibited discharges shall include, but are not limited to the following:

- (a) Any process waste from industrial or commercial locations;
- (b) Any wastes containing liquids, solids, or gases that will create a fire or explosion hazard;
- (c) Any wastes containing solid or viscous substances which may cause obstruction to flow such as, but not limited to, oil, grease, sand, rags, or metals;
- (d) Any wastes having a pH lower than 6.0 or higher than 9.0, or having any corrosive property capable of causing damage or hazard to structures, equipment or people;
- (e) Any wastes having a temperature higher than 140 degrees Fahrenheit (60 degrees Celsius) or having temperatures sufficient to inhibit biological activity or cause the influent to the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius); and
- (f) Any other type of waste that may be untreatable by the treatment plant, or will interfere with the operation of the treatment plant, such as but not limited to toxic, radioactive, or hazardous wastes.

Any septic tank waste hauler who violates these conditions and discharges wastes with the above characteristics is subject to forfeiture of their surety bond and revocation of their Septic Tank Waste Discharge Permit, in addition to any other penalties, assessments, fines, or damages that may be recoverable.

10.4.2 Discharge Limitations

- (f) The District will accept domestic septic tank wastes originating from within Clackamas, Multnomah, and Washington Counties and hauled to the TCSD Water Pollution Control Plant subject to the provisions of this Section of the Rules and Regulations.
- (g) Discharge of septic tank wastes at the TCSD Water Pollution Control Plant will only be allowed during plant hours established by the Tri-City Service District. The District reserves the right to change the hours and/or days that waste haulers are allowed to

discharge at the TCSD Water Pollution Control Plant.

- (c) Each septic tank waste load hauled to the TCSD Water Pollution Control Plant shall be accompanied by a manifest in a form provided by the District which provides verifiable, complete and accurate information on the source or sources of the septic tank waste load. The permittee shall certify under penalty of law the information provided in the manifest.
- (d) The operator in charge shall have full authority to take any of the following steps if any septic tank waste exhibits prohibited discharge characteristics, exhibits inconsistencies between certified contents and actual contents, contains materials that are suspected to be harmful to the treatment plant, or if the TCSD Water Pollution Control Plant exhibits capacity or operational problems:
 - (1) Refuse acceptance of the waste;
 - (2) Limit the volume of discharge; or
 - (3) Establish such restrictions as deemed necessary for the efficient and safe operation of the treatment plant.
- (e) If for reason of lack of capacity or operational problems, the operator in charge is unable to accept any waste material, the operator in charge will notify the Oregon DEQ.
- (f) In the event a load of waste is rejected by the operator in charge, the Oregon DEQ will be notified of such rejection and the reason therefore.
- (g) No wastes from septic tanks, holding tanks, or pumping facilities, shall be discharged into any sewer system within the jurisdiction of the District, except as specifically authorized by existing codes, ordinances, and regulations.

10.5 FEES AND CHARGES

10.5.1 Permit Fee

The fee for the initial Septic Tank Waste Discharge Permit and for the renewal thereof is set forth in Table I, payable at the time the permit application or renewal application is filed with the District. The initial and renewal permit fees may be amended at any time by an Order of the Board.

10.5.2 Disposal Charges

The charge for disposing of septic tank wastes at the TCSD Water Pollution Control Plant shall be based upon each gallon discharged as set forth on Table I. This charge rate per gallon may be amended at any time by an Order of the Board.

Determination of the quantity of septic tank wastes discharged shall be made by the operator in charge. Any appeal of the determination of the quantity of wastes discharged must be made before

the wastes are discharged to the TCSD Water Pollution Control Plant.

10.6 COLLECTION AND BILLING

The operator in charge shall retain two copies of every manifest executed by permit holders.

The District's accounting office shall mail a statement of account to each permit holder once per month. The statement shall contain the warning that failure to pay the amount shown therein within thirty (30) days of the date of billing will result in revocation of the Septic Tank Waste Discharge Permit, and the statement will contain a total amount due and payable based on the charges set forth in Subsection 10.5 of these Rules and Regulations.

10.7 PROTECTING THE PUBLIC INTEREST

No provision of this Section of the Rules and Regulations shall be construed to create any right to the disposition of septic tank wastes at a District facility inconsistent with the public interest.

No provision of this Section of the Rules and Regulations shall be construed to create any right in any individual to a Septic Tank Waste Discharge Permit, which in the opinion of the District would be inconsistent with the public interest.

SECTION 11 APPEALS

11.1 INTERPRETATION OF THIS ORDINANCE

11.1.1 Appeal

Any person aggrieved by a ruling or interpretation of the provisions of this Ordinance may submit a written appeal to the Director. The appeal shall set forth the events and circumstances leading to the appeal, the nature of the ruling or interpretation from which relief is sought, the nature of the impact of the ruling on appellant's property or business, together with any other reasons for the appeal. This provision shall not apply in cases arising under Section 11.2.

11.1.2 Decision of District

The District shall study the matter, hear testimony if deemed necessary, and issue written findings and reasons for such recommendations to the appellant.

11.1.3 Appeal to Board

If the appellant considers that his grievance has not been handled to his satisfaction, he may apply to the governing body of the District for an independent review of his case within thirty (30) days from the date of the written decision. The Board may make an independent review of the case and hear additional testimony on the matter if it deems necessary. Within thirty (30) days from receipt of the appeal if the Board chooses to review the matter, it will prepare a written decision on the matter, which shall be sent to the applicant. In lieu of a hearing by the Board, a hearing officer may be appointed.

11.1.4 Circuit Court Review

Decisions of the Board shall be reviewable by the Circuit Court of the State of Oregon for Clackamas County, solely and exclusively under the provisions of ORS 34.010 to 34.100.

11.2 VIOLATIONS AND CIVIL PENALTIES

11.2.1 Violation of These Rules and Regulations

The District may impose civil penalties, including but not limited to fines, damages, modification or revocation of permit, cessation of services or seek an injunction or other relief provided by law when any user or person violates any condition or provision of this Ordinance or any rule adopted thereto or any final order with respect thereto as well as violation of federal or state statutes, regulations or administrative rules. The goal of enforcement is to (a) obtain and maintain compliance with the District's statutes, rules and regulations, permits and orders; (b) protect the public health and the environment; (c) deter future violators and violations; and (d) ensure appropriate and consistent enforcement. Except as provided by 11.3.1, the District shall endeavor by conference, conciliation and persuasion to solicit compliance. The District shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth herein under the particular circumstances of each violation. The violators who do not comply with

initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

11.2.2 Definitions for Enforcement

- (a) "Compliance" means meeting the requirements of the District's statutes, rules, permits or orders.
- (b) "Documented Violation" means any violation which the District or other government agency verifies through observation, investigation or data collection.
- (c) "Enforcement" means any documented action taken to address a violation.
- (d) "Flagrant" means any documented violation where the respondent had actual knowledge of the law and had consciously set out to commit the violation.
- (e) "Formal enforcement" means an administrative action signed by the Director or designee which is issued to a respondent on the basis that a violation has been documented, requires the respondent to take specific action within a specified time frame and states consequences for continued noncompliance.
- (f) "Intentional" means respondent consciously and voluntarily took an action or admitted to take an action and knew the probable consequences of so acting or omitting to act.
- (g) "Magnitude of Violation" means the extent and effects of a violator's deviation from the District's statutes, rules, permits or orders. In determining magnitude, the District shall consider all available applicable information, including such factors as, but not limited to, concentration, volume, duration, toxicity or proximity to human or environmental receptors and the extent of the effects of the violation. Deviations shall be classified as major, moderate or minor.
- (h) "Prior Significant Action" means any violation proven pursuant to a contested case hearing or established with or without admission of a violation by payment of a civil penalty, by order or default, or by Stipulated Final Order of the District.
- (i) "Respondent" means the person to whom a formal enforcement action is issued.
- (j) "Risk of Harm" means the level of risk created by the likelihood of exposure, either individual or cumulative or the actual damage either individual or cumulative, caused by a violation to public health or the environment. Risk of harm shall be categorized as major, moderate or minor.
- (k) "Systematic" means any documented violation which occurs on a regular basis.
- (l) "Violation" means a transgression of any statute, rule, order, license, permit or any part thereof and includes both acts and omissions. Violations shall be classified as follows:

- (1.) “Class I” means any violation which poses a major risk of harm to public health or the environment, or violation of any compliance schedule contained in a District permit or a District order:
- (i) Violation of a District Order;
 - (ii) Intentional unauthorized discharges;
 - (iii) Negligent spills which pose a major risk of harm to public health or the environment;
 - (iv) Waste discharge permit limitation violations which pose a major risk of harm to public health or the environment;
 - (v) Discharge or introduction of waste to the publicly owned treatment works as defined in 40 CFR 403.3(o), without first obtaining an Industrial User Waste Discharge Permit;
 - (vi) Failure to immediately notify the District of a spill or upset condition which results in an unpermitted discharge to public waters or to the publicly owned treatment works as defined in 40 CFR 403.3(o);
 - (vii) Violation of a permit compliance schedule;
 - (viii) Failure to provide access to premises or records;
 - (ix) Any other violation related to water quality which poses a major risk of harm to public health or the environment;
 - (x) Two Class II violations or one Class II and two Class III violations or three Class III violations.
- (2.) “Class II” means any violation which poses a moderate risk of harm to public health or the environment, including but not limited to:
- (i) Waste discharge permit limitation violations which pose a moderate risk of harm to public health or the environment;
 - (ii) Negligent spills which pose a moderate risk of harm to public health or the environment;
 - (iii) Failure to submit a report or plan as required by permit or license;
 - (iv) Any other violation related to water quality which poses a moderate risk of harm to public health or the environment.

(3.) "Class III" means any violation which poses a minor risk of harm to public health or the environment, including but not limited to:

- (i) Failure to submit a discharge monitoring report (DMR) on time;
- (ii) Failure to submit a completed DMR;
- (iii) Negligent spills which pose a minor risk of harm to public health or the environment;
- (iv) Violation of a waste discharge permit limitation which poses a minor risk of harm to public health or the environment;
- (v) Any other violation related to water quality which poses a minor risk of harm to public health or the environment.

11.3 PROCEDURE FOR ENFORCEMENT

11.3.1 Prior Notice and Exceptions

Except as otherwise provided, prior to the assessment of any civil penalty, the District shall serve a notice of violation upon the Respondent. The written notice shall be served, either personally, by office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, specifying the violation and stating that the District will assess a civil penalty if a violation continues or occurs after five days following receipt of the notice.

The above notice shall not be required where the Respondent has otherwise received actual notice of the violation not less than five days prior to the assessment of civil penalty. No advance notice, written or actual, shall be required if (a) the act or omission constituting the violation is intentional; or (b) the water pollution would normally not be in existence for five days.

11.4 ENFORCEMENT ACTION

11.4.1 Notice of Non-Compliance (NON)

A notice of noncompliance (NON) is an enforcement action which: (a) informs a person of the existence of a violation, the actions required to resolve the violations and the consequences of continued noncompliance. The notice may specify the time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated; (b) shall be issued under the direction of the Director or designee; (c) shall be issued for all classes of documented violations; and (d) is consistent with the policy of 11.2.1. Typically a NON will be in the form of a Compliance Telephone Memorandum and may include a request for a written report within five (5) business days. The report shall detail the event, steps taken to correct the problem and steps to prevent future events. 11.4.2 Notice of Violation and Intent to Assess a Penalty (NOV).

11.4.2 Notice of Violation and Intent to Assess a Penalty (NOV)

The Notice of Violation and Intent to Assess a Civil Penalty (NOV) is a formal enforcement action which: (a) is issued pursuant to 11.3.1; (b) may include a time schedule by which compliance is to be achieved; (c) shall be issued by the Director or designee; (d) shall be issued for the first occurrence of a documented Class I violation which is not excepted under 11.3.1 or the repeated or continued occurrence of documented Class II or Class III violations where notice of noncompliance has failed to achieve compliance or satisfactory progress toward compliance.

11.4.3 Notice of Civil Penalty Assessment

A notice of Civil Penalty Assessment is a formal enforcement action which (a) is escalated pursuant to Section 11.5; (b) shall be issued by the District or designee; and (c) may be used for the occurrence of any class of documented violation, for any class of repeated or continuing violations if a person has failed to comply with a Notice of Violation and intent to assess a civil penalty or other order or Stipulated Final Order.

11.4.4 Memorandum of Agreement and Order

A Memorandum of Agreement and Order (MAO) is a formal enforcement action which is in the form of a MAO, stipulated final order or consent order issued by the Director that (a) may be negotiated between the District and the subject party prior to or after any notice set forth above; (b) shall be signed by the Director or designee on behalf of the District and the authorized representative of the subject party; and (c) shall set forth action to be taken and set civil penalties. This may be issued for any class of violations. The formal enforcement action as described in these sections in no way limits the District from seeking other legal or equitable remedies in the proper court as provided by Oregon law.

11.4.5 Right to Hearing

- (a) A civil penalty shall be due and payable 10 days after the date of service of the Notice of Civil Penalty Assessment. The decision of the Director or the Director's designee to assess a civil penalty or other enforcement action or any violation pertaining to the District's statutes, regulations, permits, or orders shall be served on the user or person (hereinafter "Respondent") by personal service, office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure or by certified or registered mail, return receipt requested. Service may be made upon any agent, officer or authorized representative of the user or person. The Notice shall specify the violation, the reasons for the enforcement action and the amount of the penalty. It shall comply with ORS 183.090 relating to notice and contested cases. The decision shall be final unless the respondent files a written Notice of Appeal and Request for Hearing with the District within 21 days from the date of the Director's decision. The Notice of Appeal and Request for Hearing shall contain the following:
 - (b) The name of the Respondent and the case file number or permit number;
 - (c) The name and signature of the Respondent and a statement that if acting on behalf of a partnership or corporation, that the person executing the Notice of Appeal is duly authorized to file such appeal and such person is the contact representative;

- (d) The date that the Notice of Civil Penalty Assessment or other formal enforcement was received by the Respondent;
- (e) The nature of the decision and the specific grounds for appeal. In the Notice of Appeal, the party shall admit or deny all factual matters and shall affirmatively allege any affirmative claim and defense and the reasons therefore.
- (f) The appeal shall be limited to the issues raised in the petition.
- (g) The hearing shall be conducted in accord with ORS Chapter 183. The record of the hearing shall be considered by the District or Hearings Officer, which shall enter appropriate orders , including the amount of any civil penalty assessed. Appeal of such orders may be taken by the Respondent as provided in Section 11.9, below. Notwithstanding the foregoing, nothing shall be construed to prevent the District from taking any other enforcement action or remedy available.

11.5 CIVIL PENALTY SCHEDULE MATRICES

In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the District's statutes, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the respondent as set forth in Paragraph 11.04 above. The amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in Section 11.5.3.

11.5.1 Base Penalty Matrix

	Magnitude of Violation		
	Major	Moderate	Minor
Class I	\$5,000	\$2,500	\$1,000
Class II	\$2,000	\$1,000	\$500
Class III	\$500	\$250	\$100

No civil penalty issued by the Director pursuant to this matrix shall be less than one hundred dollars (\$100) or more than ten thousand dollars (\$10,000) for each day of each violation.

11.5.2 Petroleum Spills

Persons causing oil spills to waters of the state within the jurisdiction of the District through intentional or negligent acts shall incur a civil penalty of not less than one hundred dollars (\$100) or more than twenty thousand dollars (\$20,000) per violation. The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection 11.5.1 of this rule in conjunction with the formula contained in 11.5.3. In determining whether to seek a civil penalty, the District shall take into account the circumstances and enforcement efforts of other governmental agencies having jurisdiction.

11.5.3 Civil Penalty Determination Procedure

(a) When determining the amount of civil penalty to be assessed for any violation the Director shall apply the following procedures:

(1) Determine the class of violation and the magnitude of violation;

(2) Choose the appropriate base penalty established by the matrices of Section 11.5.1 based upon the above finding;

(3) Starting with the base penalty (BP), determine the amount of penalty through the application of the formula $BP + [(.1 \times BP) (P + H + E + O + R + C)]$ where:

(i) "P" is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for P and the finding which supports each are as follows:

- 0 if no prior significant action or there is insufficient information on which to base a finding;
- 1 if the prior significant action is one Class II or two Class III violations;
- 2 if the prior significant action is one Class I or equivalent;
- 3 if the prior significant actions are two Class I or equivalents;
- 4 if the prior significant actions are three Class I or equivalents;
- 5 if the prior significant actions are four Class I or equivalents;
- 6 if the prior significant actions are five Class I or equivalents;
- 7 if the prior significant actions are six Class I or equivalents;
- 8 if the prior significant actions are seven Class I or equivalents;
- 9 if the prior significant actions are eight Class I or equivalents;
- 10 if the prior significant actions are nine Class I or equivalents.

In determining the appropriate value for prior significant actions as listed above, the District shall reduce the appropriate factor by:

- A value of two if all prior significant actions are greater than three years old, but less than five years old;
- A value of four if all the prior actions are greater than five years old;

In making the above reductions no finding shall be less than zero. Any prior significant action which is greater than ten years old shall not be included in the above determination.

(ii) "H" is past history of the Respondent taking all feasible steps or procedures necessarily appropriate to correct any prior significant actions. The values for H and the findings which support each are as follows:

- Minus 2 if the Respondent took all feasible steps to correct any violation;
- 0 if there is no prior history or insufficient information on which to base a finding;
- 1 if the Respondent took some but not all feasible steps to correct a Class II or III violation;
- 2 if the Respondent took some but not all feasible steps to correct a Class I violation;
- 3 if no action to correct prior significant actions.

(4) "E" is the economic condition of the Respondent. The values for E and the finding which support each are as follows:

- 0 to minus 4 if economic condition is poor, subject to any significant economic benefit gained by Respondent through non-compliance.
- 0 if there is insufficient information on which to base a finding, the Respondent gained no economic benefit through noncompliance, or the Respondent is economically sound;
- 2 if the Respondent gained a minor to moderate economic benefit through noncompliance;
- 4 if the Respondent gained a significant economic benefit through noncompliance.

(5) "O" is whether the violation was a single occurrence or was repeated or continuous during the period resulting in the civil penalty assessment. The values for "O" and the finding which supports each are as follows:

- If a single occurrence;
- If repeated or continuous.

(6) "R" is whether the violation resulted from an unavoidable accident, or a negligent or intentional act of the Respondent. The values for "R" and the finding which supports each are as follows:

- Minus 2 if unavoidable accident;
- 0 if insufficient information to make any other finding;
- 2 if negligent;
- 4 if grossly negligent;
- 6 if intentional
- 10 if flagrant.

(7) "C" is the Respondent's cooperativeness in correcting the violation. The values for "C" and the finding which supports each are as follows:

- Minus 2 if Respondent is cooperative;
- 0 if Respondent is neither cooperative nor uncooperative or there is insufficient information on which to base a finding;
- 2 if violator is uncooperative.

- (b) In addition to the factors listed in 11.5.3(a) of this rule, the Director may consider any other relevant rule or statute and shall state the effect the consideration had on the penalty. On review, the Board of county Commissioners or Hearings Officer shall consider the factors contained in 11.5.3(a) of this rule and any other relevant rule or statute.
- (c) If the District finds that the economic benefit of noncompliance exceeds the dollar value of 4 in subsection 11.5.3(a)(iii) of this section, it may increase the penalty by the amount of economic gain, as long as the penalty does not exceed the maximum penalty allowed by rule and statute.
- (d) In any contested case proceeding or settlement in which Respondent has raised economic condition as an issue, Respondent has the burden of providing documentary evidence concerning its economic condition. In determining whether to mitigate a penalty based on economic condition, the Hearings Officer or District may consider the causes and circumstances of Respondent's economic condition.

11.6 COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR

11.6.1 Any time subsequent to service of a written notice of assessment of civil penalty the Director may compromise or settle any unpaid civil penalty at any amount that the Director deems appropriate. Any compromise or settlement executed by the Director shall be final.

11.6.2 In determining whether a penalty should be compromised or settled, the Director may take into account the following:

- (a) New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors.
- (b) The effect of compromise or settlement on deterrence.
- (c) Whether Respondent has or is willing to employ adequate means to correct the violation or maintain compliance.
- (d) Whether Respondent has had any previous penalties which have been compromised or settled.
- (e) Whether the compromise or settlement would be consistent with the District's goal of protecting the public health and environment as set forth in Section 1.1 of these Rules and Regulations.
- (f) The relative strength or weaknesses of the District's case.

11.7 STIPULATED PENALTIES

Nothing herein shall affect the ability of the District to include stipulated penalties in a Stipulated Final Order or any other agreement.

11.8 APPOINTMENT OF HEARINGS OFFICER

For any contested case hearing, the District, through the Director, may appoint a hearings officer to determine all issues.

11.9 APPEALS

The decision of the District or the Hearings Officer shall be sent to the user or person by certified mail, return receipt requested. This decision shall be final unless a notice of intent to file a writ of review in the Circuit Court from the user or person is received by the District or the Hearings Officer within ten (10) days after the decision of the District or the Hearings Officer was sent to the user or person. Upon filing of the notice of intent to seek writ of review in the Circuit Court, the user or person shall comply with ORS Chapter 34 relating to writ of review procedures.

Every notice of intent to file a writ of review shall contain (a) a reference of the matter to be reviewed; (b) a statement of the interest of the appellant/user or person; (c) the specific ground relied upon as to why the decision being appealed is improper or erroneous; and (d) the date of the decision of the initial action.

11.10 COLLECTION OF CIVIL PENALTY

Procedures for the enforcement of the civil penalty shall be as follows:

11.10.1 Time Limit

Any civil penalty imposed shall be a judgment and lien and may be registered with the Court Clerk. The penalty shall be paid in full within fifteen (15) days of the date the decision is final. Payment shall be made either in cash or by certified check made payable to the District.

11.10.2 Relief in Circuit Court

If full payment is not made, the District may take further action for collection and/or cause sewer service to be terminated. Alternatively, counsel for the District may, following the authorization of such action by the District, commence an action for appropriate legal and/or equitable relief in the Circuit Court. Notwithstanding the foregoing administrative hearing processes, nothing in this Subsection shall prohibit the District from commencing civil action in the Circuit Court for injunction or other relief or seeking imposition of civil penalties described above by the court.

11.11 ENFORCEMENT

Nothing shall prevent enforcement of this ordinance or applicable Federal or State statutes or rules or regulations in Federal and State Courts.

SECTION 12 SUPPLEMENTARY RULES

12.1 COMPLIANCE WITH LAWS

Conformance with this Ordinance shall in no way be a substitute for, or eliminate the necessity of, conforming with any and all federal, state and local laws, ordinances, rules and regulations which are now, or may in the future be, in effect.

12.2 REGULATIONS AND RULES AS CONTRACT

The terms and conditions contained in this Ordinance, the ordinances of the Cities, and all resolutions and orders adopted pursuant hereto, shall constitute a contract between the District, Cities, and all users, contractors, and connectors to the system. The consideration for the conditions imposed upon such users and connectors shall be the privilege of the use of, and connection to, the sewerage system.

12.3 NO PROPERTY INTEREST ACQUIRED BY PURCHASE OF PERMIT OR CONNECTION TO SYSTEM

A user or connector to the sewerage system does not thereby acquire a vested property interest in continued use or connection to the system. Such use or connection is conditioned always upon such user or connector complying with all applicable terms and conditions contained in this Ordinance, and all regulations and orders adopted pursuant hereto and, further, upon compliance with all federal, state or local requirements which are, or may hereafter be, imposed upon such user or connector.

Nothing contained herein shall require the District to provide service or access to the system to such user when any federal, state, or local agency having jurisdiction over the District has imposed limitations upon such service or access, or when the District, in its discretion, has determined that the public interest requires any such limitation.

12.4 CONFLICTS WITH EXISTING AND FUTURE REGULATORY REQUIREMENTS OF OTHER AGENCIES

Any provision or limitations of this Ordinance and any regulation and order adopted pursuant hereto are superseded and supplemented by any applicable federal, state, or local requirements existing or adopted subsequent hereto which are more stringent than the provisions and limitations contained herein provided, always, that any provision of this Ordinance and resolution and order adopted pursuant hereto which are more stringent than any such applicable federal, state or local requirement shall prevail and shall be the standard for compliance by the users of and connectors to the sewerage system.

12.5 PREVIOUS ORDINANCES, RESOLUTIONS REPEALED

Any portion of any Ordinance, regulation and minute order heretofore adopted by the District or its predecessor agencies or City is hereby repealed to the extent that such portion is inconsistent with this Ordinance and any regulation and order adopted pursuant hereto.

12.6 ADMINISTRATION OF THIS ORDINANCE

The District, through its Director or other authorized designee or representative, shall have the authority to do all things necessary to administer the provisions of this Ordinance and any rules adopted pursuant thereto.

12.7 SEVERABILITY

If any section, subsection, provision, clause, or paragraph of this Ordinance or rules adopted pursuant hereto shall be adjudged or declared to be unconstitutional or invalid by any court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions of this Ordinance or such rules, and it is hereby declared that every other section, subsection, provision, clause, or paragraph is, and shall remain, irrespective of the validity of any other provision.

12.8 EFFECTIVE DATE

The provisions of this Ordinance and the rules herein adopted shall be effective on the date of enactment.

CHAPTER 3
SURFACE WATER MANAGEMENT RULES AND REGULATIONS FOR
RATE ZONE 3

**SURFACE WATER MANAGEMENT AGENCY
OF
CLACKAMAS COUNTY**

RULES AND REGULATIONS

December 15, 2002



SECTION	PAGE
1. DECLARATION OF POLICY	
1.1 PURPOSE AND OBJECTIVES	1
1.2 ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS ...	1
2. DEFINITIONS	
2.1 WORDS AND TERMS	1-9
3. DISCHARGE REGULATIONS	
3.1 DISCHARGE PROHIBITIONS	10
3.1.1 Discharge to Public Storm Water System	10
3.1.2 Discharge to Creeks or Drainageways	10
3.2 PRETREATMENT FACILITIES	10
3.3 PERMIT REQUIREMENTS	11
3.3.1 Connection Permit	11
4. ENVIRONMENTAL PROTECTION AND EROSION CONTROL RULES	
4.1 GENERAL POLICY	12
4.2 EROSION CONTROL	12
4.2.1 Sediment and Pollutants	12
4.2.2 Erosion Prohibited	12
4.2.3 General Requirements	12
4.2.4 Site Plan	13
4.2.5 Wet Weather	14
4.2.6 NPDES Permit	14
4.2.7 Performance	14
4.2.8 Erosion Control Certification	14
4.2.9 Maintenance	14
4.2.10 Inspection	14
4.2.11 Deposit of Sediment	14
4.2.12 Permit Fee	15
4.3 AIR POLLUTION	15
4.3.1 Dust	15
4.4 MAINTAINING WATER QUALITY	16
4.5 FISH AND WILDLIFE HABITAT	17
4.6 NATURAL VEGETATION	17
4.7 PESTICIDES, FERTILIZERS, CHEMICALS	17
4.8 CONTAMINATED SOILS	17
5. ADDITIONAL SURFACE WATER MANAGEMENT STANDARDS	
5.1 GENERAL STANDARDS	18
5.2 WATER QUANTITY STANDARDS	19
5.2.1 Conveyance Standards	19
5.2.2 Springs and Groundwater	19
5.2.3 Curb drains	20
5.2.4 Onsite Detention Design Criteria	20
5.2.5 Onsite Detention Design Method	20
5.2.6 Infiltration/Retention Systems	21

	5.2.7 Development Standards	21
5.3	NATURAL RESOURCE PROTECTION.....	22
	5.3.1 Study	22
	5.3.2 Undisturbed Buffer Required	22
	5.3.3 Design Standards for the Undisturbed Buffer	23
	5.3.4 Location of Undisturbed Buffer	24
	5.3.5 Construction in Undisturbed Buffer	24
6.	PERMANENT ONSITE WATER QUALITY FACILITIES	
6.1	PURPOSE OF SECTION	25
6.2	APPLICATION OF SECTION	25
6.3	EXCEPTIONS	25
6.4	PERMIT REQUIRED	25
6.5	STORM WATER QUALITY FACILITIES REQUIRED	25
6.6	PHOSPHOROUS REMOVAL STANDARD	26
6.7	DESIGN STORM	26
6.8	DESIGN REQUIREMENTS	26
6.9	FACILITY PERMIT APPROVAL	26
6.10	ENFORCEMENT	26
6.11	PERMIT FEE	27
6.12	RESIDENTIAL DEVELOPMENTS	27
6.13	PLACEMENT OF WATER QUALITY FACILITIES	27
6.14	OPERATION AND MAINTENANCE	27
7.	RATES FOR SURFACE WATER SERVICE	
7.1	CUSTOMER CHARGES	28
7.2	PAYMENT OF CUSTOMER CHARGES	29
8.	COLLECTION OF CHARGES	
8.1	ACCOUNT SETUP	30
8.2	NOTICES	30
8.3	COLLECTION OF CHARGES	30
8.4	DELINQUENT CHARGES	31
8.5	DISCONTINUANCE OF SERVICE	31
8.6	RESTORATION OF SERVICE	31
8.7	CERTIFICATION TO TAX ASSESSOR	31
8.8	FEES AND COSTS	32
9.	ENFORCEMENT	
9.1	VIOLETIONS AND CIVIL PENALTIES	33
	9.1.1 Violation of These Rules and Regulations	33
	9.1.2 Definitions for Enforcement	33
9.2	PROCEDURE FOR ENFORCEMENT	35
	9.2.1 Inspection, Entry and Sampling	35
	9.2.2 Prior Notice and Exceptions	35
	9.2.3 Notice of Non-Compliance (NON)	36
	9.2.4 Notice of Violation and Intent to Assess a Penalty (NOV)	36
	9.2.5 Notice of Civil Penalty Assessment	36
	9.2.6 Memorandum of Agreement and Order (MAO)	36

9.2.7	Other Remedies	36
9.2.8	Right to Hearing	36
9.3	CIVIL PENALTY SCHEDULE MATRICES	37
9.3.1	Base Penalty Matrix	37
9.3.2	Petroleum Spills	37
9.3.3	Civil Penalty Determination Procedure	38
9.4	STOP WORK ORDERS	41
9.4.1	Erosion Control Violations	41
9.4.2	Other Violations	41
9.5	ABATEMENT	41
9.6	COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR	42
9.7	STIPULATED PENALITIES	42
9.8	APPOINTMENT OF HEARINGS OFFICER	42
9.9	APPEALS	42
9.10	COLLECTION OF CIVIL PENALTY	42
9.11	ENFORCEMENT	43
10.	APPEALS	
10.1	APPEALS	44
11.	SUPPLEMENTARY RULES	
11.1	COMPLIANCE WITH LAWS	45
11.2	CONFLICTS WITH EXISTING AND FUTURE REGULATORY REQUIREMENTS OF OTHER AGENCIES	45
11.3	ADMINISTRATION OF THIS ORDINANCE	45
11.4	SEVERABILITY	46
11.5	EFFECTIVE DATE	46
TABLE 1	47
TABLE 2	48

SECTION 1 – DECLARATION OF POLICY

1.1 PURPOSE AND OBJECTIVES

The objective of this ordinance is: (a) to prevent or minimize the introduction of pollutants to surface waters; (b) to meet Federal National Pollutant Discharge Elimination System (NPDES) permit requirements; (c) to establish policies which prevent future pollution and erosion through implementation of Best Management Practices; (d) to provide for the equitable distribution of the costs of the surface water management program; and (e) to better manage and control surface water within the Lower Tualatin Basin.

1.2 ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS

The Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of the District, may promulgate new or amended rules pertaining to these rules or regulations in accordance with ORS Chapters 198 and 451.

SECTION 2 – DEFINITIONS

2.1 WORDS AND TERMS

Unless the context specifically indicates otherwise, the following words and terms, as used in this Ordinance, shall have the meanings hereinafter designated:

2.1.1 Advanced Sedimentation and/or Filtration Process.

Any process that through correct application/implementation brings effluent discharge from the site into compliance with local, state and federal requirements. Polymers and electrolytic processes are two possible examples.

2.1.2 Bond.

As required by SWMACC, a surety bond, cash deposit or escrow account, assignment of savings, irrevocable letter of credit or other means acceptable to or required by SWMACC to guarantee that work is completed in compliance with project's surface water plan and in compliance with all SWMACC's requirements and for a maintenance period of one year thereafter.

2.1.3 Bioswale. (See Water Treatment/Bioswale)

2.1.4 Buffer/Undisturbed Buffer.

The zone contiguous with a sensitive area that is required for the continued maintenance, function, and structural stability of the sensitive area. The critical functions of a riparian buffer (those associated with an aquatic system) include shading, input of organic debris and coarse sediments, uptake of nutrients, stabilization of banks, interception of fine sediments, overflow during high water events, protection from disturbance by humans and domestic animals, maintenance of wildlife habitat, and room for variation of aquatic system boundaries over time due to hydrologic or climatic effects. The critical functions of terrestrial buffers include protection of slope stability, attenuation of surface water flows from surface water runoff and precipitation, and erosion control.

2.1.5 Civil Penalty.

A civil penalty is a monetary sanction for violation of these Rules and Regulations, levied pursuant to Section 8 below, whereby SWMACC may impose a fine or penalty for violation of these Rules and Regulations, as well as recover all costs incurred, which are

attributable to or associated with the violations, including but not limited to the costs of administration, investigation, sampling and monitoring, legal and enforcement activities, damages to the storm sewer system, and contracts or health studies necessitated by the violation.

2.1.6 Contractor.

A person duly licensed or approved by the State of Oregon to perform the type of work to be done under a permit or contract issued by SWMACC.

2.1.7 County. Clackamas County, Oregon.

2.1.8 Detention.

The release of surface water runoff from a site at a slower rate than it is collected by the drainage system, the difference being held in temporary storage.

2.1.9 Developed parcel. See "Development."

2.1.10 Development.

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving excavation or any other activity which results in the removal of substantial amounts of vegetation (either over half the site or such that soil movement occurs) or in the alteration of natural site characteristics.

2.1.11 Discharge.

Any addition of water, storm water, wastewater, process water or any pollutant or combination of pollutants to waters of the State, directly or indirectly, by actions of dumping, spilling, disposing or physically connecting to the public storm system or natural drainage conveyance.

2.1.12 Drainageway.

A channel such as an open ditch that carries surface water.

2.1.13 Drywell.

An approved receptacle used to receive storm, surface and other water, the sides and bottom being porous, permitting the contents to seep into the ground. A drywell must conform to SWMACC's current standards.

2.1.14 Easement.

An interest or right to use or occupy real property for construction and maintenance of facilities.

2.1.15 Engineer.

A registered professional engineer licensed to practice in the State of Oregon.

2.1.16 Equivalent Service Unit (ESU).

A configuration of development resulting in impervious surfaces on a parcel, estimated to contribute an amount of runoff to the storm water system which is approximately equal to that created by the average single family residential parcel. One ESU is equal to 2500 square feet of impervious surface area.

The number of ESU attributable to a user's area calculated in whole units, with the minimum user's charge set at 1 ESU. For non-single family users with more than 1

ESU, the charge will be rounded to the nearest whole unit with a half value, or more, being rounded up.

2.1.17 Erosion.

Erosion is the movement of soil particles resulting from the flow or pressure from water, wind, or earth movement.

Visible or measurable erosion includes, but is not limited to:

2.1.17.1 Deposits of mud, dirt, sediment or similar material exceeding ½ cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge, or as a result of the action of erosion.

2.1.17.2 Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of onsite erosion such as rivulets or bare soil slopes, where the flow of water is not filtered or captured on the site.

2.1.17.3 Earth slides, mud flows, earth sloughing, or other earth movement which results in material leaving the property.

2.1.18 Erosion Control Plan.

A plan containing a list of best management practices to be used during construction to control and limit soil erosion in accordance with the District's current erosion control manual.

2.1.19 FEMA.

Federal Emergency Management Agency.

2.1.20 Fences.

Structures which consist of concrete, brick, wood, plastic, or metal posts located in the ground, connected by wood, metal, or plastic, and capable of allowing passage of water.

2.1.21 Government Agency.

Any municipal or quasi-municipal jurisdiction, state or federal agency.

2.1.22 Grab Sample.

A sample which is taken from a surface flow, such as a stream, on a one-time basis without consideration of time.

2.1.23 Hazardous Materials.

Materials described as hazardous by the Department of Environmental Quality, including any toxic chemicals listed as toxic under Section 307(a) of the Clean Water Act or Section 313 of Title III of SARA.

2.1.24 Hearings Officer.

Officer, appointed by the Director, for hearings of appeals of administrative actions.

2.1.25 Highly Erodible.

Soils with erosion (K) factors greater than 0.25, as listed in the Soil Survey of Clackamas County Area, Oregon, developed by the Soil Conservation Service.

2.1.26 Illicit Discharge.

Any discharge to the public or natural stormwater conveyance system that is not composed entirely of stormwater, except discharges governed by and in compliance with an NPDES permit.

2.1.27 Impervious Surface.

That hard surface area which either prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate. Impervious surfaces may include, but are not limited to, rooftops, concrete or asphalt paving, walkways, patios, driveways, parking lots, oiled macadam, gravel, or other surfaces which similarly resist infiltration or absorption of moisture.

2.1.28 Industrial Waste.

Any liquid, gaseous, radioactive or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources, or as defined by the Oregon State Department of Environmental Quality or the United States Environmental Protection Agency, exclusive of domestic sewage.

2.1.29 Infiltration System.

A drainage facility designed to use the hydrologic process of surface and storm water runoff soaking into the ground, commonly referred to as recharge, to dispose of surface and stormwater runoff.

2.1.30 In-Line Detention.

Detention located in a stream channel, a drainageway, or in a regional or subregional piped system. In-line detention mixes flows to be detained with flows from other areas.

- 2.1.31 Inspector.
A person authorized to inspect construction sites and activities affecting surface water.
- 2.1.32 Intermittent Stream.
A stream with no visible surface flows for a period of 30 or more continuous days per year.
- 2.1.33 Mean High Water Line.
The bank of any river or stream established by the annual fluctuations of water generally indicated by physical characteristics, such as a line on the bank, changes in soil conditions or vegetation line.
- 2.1.34 National Pollutant Discharge Elimination System, or NPDES, Permit
A permit issued pursuant to Chapter 402 of the Clean Water Act (40 CRF 122, 123, 124, and 504).
- 2.1.35 Open Spaces.
Land within a development which has been dedicated in common to the ownership within the development or to the public specifically for the purpose of providing places for recreational uses or scenic purposes.
- 2.1.36 Owner.
The owners of record title or the purchasers under a recorded sale agreement and other persons having an interest of record in the described real property.
- 2.1.37 Parcel of Land.
A lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and includes yards and other undeveloped areas required under the zoning, subdivision or other development ordinances.
- 2.1.38 Perennial Stream.
A permanently flowing (non-intermittent) stream.
- 2.1.39 Permit.
Any authorization required by SWMACC pursuant to this or any other regulation.
- 2.1.40 Permittee.
The person to whom a building permit, development permit or any other permit described in this ordinance is issued.
- 2.1.41 Person.
Any individual, firm, company, or corporation, partnership or association, entity, public corporation, political subdivision, governmental agency, municipality, industry, or any department or agency thereof.
- 2.1.42 Pollutant.
Any of the following, but not restricted to: oil, grease, soil, mining waste, spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, heavy metals, asbestos, wrecked or discharged equipment, cellar dirt and untreated industrial, municipal and agricultural discharges into water.
- 2.1.43 Post-developed.

Conditions after development.

2.1.44 Pre-developed.

Conditions at the site immediately before application for development. Man-made site alterations or activities made without an approved development permit will not be considered as pre-developed conditions.

2.1.45 Pretreatment or Treatment.

The reduction of the amount of pollutants, the elimination of pollutants, or the alternation of the nature of pollutant properties in water to a less harmful state prior to discharging to Waters of the State.

2.1.46 Private Storm System.

That portion of the storm system owned and/or maintained by any person or entity other than SWMACC outside the public right-of-way, except as otherwise approved by SWMACC.

2.1.47 Property (or the site).

The property or the site shall mean the real property undergoing development.

2.1.48 Public Stormwater System.

Those portions of the stormwater system that are accepted for repair and maintenance responsibilities by SWMACC. Natural waterways are defined under State and Federal regulations.

2.1.49 Public Right-of-Way.

Any public highway, road, street, avenue, alleyway, public place, public easement, or public right-of-way.

2.1.50 Qualified Public Improvement.

A capital improvement that is:

- a) Required as a condition of development approval;
- b) Identified in the plan adopted pursuant to Section 6.3.5; and
- c) Not located on or contiguous to a parcel of land that is the subject of the development approval.

2.1.51 Rational Method.

A formula for estimating maximum discharge of runoff at a point, using flow (Q), runoff coefficient (C), rainfall intensity (I) for selected recurrence interval, and area (A), in the formula: $Q=CIA$.

2.1.52 Recharge.

The flow to ground water from the infiltration of surface and storm water.

2.1.53 Redevelopment.

A project that proposes to add, replace, and/or alter impervious surface (for purposes other than routine maintenance, resurfacing, regrading, or repair) on a site that is already developed. Requirements related to redevelopment shall be met when the project impacts greater than 800 square feet of impervious surface area. Single family developments on a lot of record are not required to implement water quality and quantity improvements.

2.1.54 Retention.

The process of collecting and holding surface water runoff with no surface outflow.

2.1.55 Sensitive Areas.

Sensitive Areas are:

- 2.1.55.1 Existing or created wetlands, including all mitigated wetlands; limits defined by wetlands reports approved by both the Division of State Lands and SWMACC.
- 2.1.55.2 Rivers, streams, sloughs, swamps, creeks, drainageways and open conveyances draining 50 acres or more; limits defined by the top of the bank or first break in slope measured upland from the mean high water line;
- 2.1.55.3 Impoundments (lakes and ponds); limits defined by the top of the bank or first break in slope measured upland from the mean high water line.
- 2.1.54.4 Sensitive Areas do not include a constructed wetland, an undisturbed buffer adjacent to a sensitive area, or a water feature, such as a lake, constructed during an earlier phase of a development for specific purposes not including water quality, such as recreation.

2.1.56 Stop Work Order.

An Order issued by SWMACC for violation of the Rules and Regulations. All work contributing to the violation must cease when a Stop Work Order is issued and the Stop Work Order will stay in place until such time as removed in writing.

2.1.57 Storm Drainage/Storm Sewer.

A pipe, or any method of conveyance that carries stormwaters, surface runoff, or drainage.

2.1.58 Stormwater.

Waters on the surface of the ground or underground resulting from precipitation.

2.1.59 Stormwater Management.

A program to provide surface water quality and quantity controls through nonstructural methods and capital improvement projects. Nonstructural controls include maintenance of surface water facilities, public education, water quality monitoring, implementation or intergovernmental agreements to provide for regional coordination, and preparation of water quality control ordinances and regulations.

2.1.60 Stormwater Quality Treatment Facility.

Stormwater Quality Treatment Facility refers to any structure or drainageway that is designed, constructed, and maintained to collect, filter, retain, or detain surface water runoff during and after a storm event for the purpose of water quality improvement. It may include, but is not limited to constructed wetlands, water quality swales, and ponds.

2.1.61 Stream.

A drainageway that is determined to be jurisdictional by the Oregon Division of State Lands or the U. S. Army Corps of Engineers.

2.1.62 User.

Any person or entity in whose name service is rendered as evidenced by the signature on the application or contract for that service, or in the absence of a signed instrument, but the receipt and payment of utility bills regularly issued in his/her/its name. A user, under this system and structure of rates, is either single family or non-single family.

2.1.63 User – Non-Single Family.

Any user whose impervious surface results from the development of land for purposes of operating a dwelling unit for occupancy by more than one single family or for other business, industrial, commercial or institutional purposes and to whom utility services are provided at a distinct service location.

2.1.64 User – Single Family.

Any user whose impervious surface results from the development of land for purposes of establishing a dwelling unit for occupancy by a single family and to whom utility services are provided at a distinct service location.

2.1.65 User Charge.

The periodic charges applied to all users for the cost of operation, maintenance, and replacement of the public stormwater quality and quantity systems, including any other costs, such as, but not limited to, debt service, capital improvements, regulatory compliance, program administration, etc.

2.1.66 Variance.

A discretionary decision to permit modification of the terms of any part of this ordinance based on a demonstration of unusual hardship or exceptional circumstance unique to a specific property.

2.1.67 Water Quality Facility.

A facility specifically designed for pollutant removal.

2.1.68 Water Quality Resource Areas.

Areas as defined on the Water Quality and Flood Plain Management Areas Map adopted by Metro or Clackamas County and amended.

2.1.69 Water Treatment Bioswale/Water Quality Swale.

A vegetated natural depression, wide shallow ditch, or similar constructed facility used to filter runoff for the purpose of improving water quality.

2.1.70 Waters of the State.

Those waters defined in ORS Chapter 468B.005 or as amended which include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do

not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

2.1.71 Wetland.

Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are those areas identified and delineated by a qualified wetlands specialist as set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, January 1987, or by a DSL/COE 404 permit. Wetlands may also consist of:

- 2.1.71.1 Constructed Wetlands. As defined in Section 404 of the Clean Water Act, constructed wetlands are those areas developed as a water quality or quantity facility, subject to maintenance as such. These areas must be clearly separated from existing or created wetlands.
- 2.1.71.2 Created Wetlands. Created wetlands are those wetlands developed in an area previously identified as a non-wetland to replace or mitigate wetland destruction or displacement.
- 2.1.71.3 Existing Wetlands. Existing Wetlands are those identified and delineated as set forth in the Federal Manual for Identifying the Delineating Jurisdictional Wetlands, January 1987, or as amended, by a qualified wetlands specialist.

2.1.72 Wet Weather Measures.

Erosion prevention and sediment control methods deemed necessary to meet the types of conditions that occur during the wet weather season, as identified in the District's current erosion control manual.

2.1.73 Wet Weather Season.

The portion of the year when rainfall amounts and frequency tend to have the most significant effect on erosion prevention and sediment control (October 1 to April 30).

2.1.74 Work Area.

Areas of disturbance for activities defined under "Development". Work Area includes areas used for storage of equipment or materials that are used for these activities.

SECTION 3 – DISCHARGE REGULATIONS

3.1 DISCHARGE PROHIBITIONS

3.1.1 Discharge to Public Storm Water System

No person shall discharge or cause to be discharged, directly or indirectly, to the public storm system any quantity of stormwater or any pollutant, substance, stormwater, or wash water, that will violate the NPDES permit, this Ordinance or any environmental law or regulation, or water quality standard. Prohibited activities include, but are not limited to, the following:

- 3.1.1.1 Introduction of pollutants or waters to the public stormwater system containing pollutants or concentrations at levels equal to or in excess of those necessary to protect waters of the State.
- 3.1.1.2 Failure to abide by the terms of any NPDES permit, statute, administrative rule, ordinance, stipulated and final order or decree or other permit or contract.
- 3.1.1.3 Discharges of non-stormwater or spills or dumping of materials other than stormwater into public storm system unless pursuant to a conditional permit approved by SWMACC and in compliance therewith.
- 3.1.1.4 Illegal or unpermitted connection or methods of conveyance to the public stormwater system.
- 3.1.1.5 Any discharge that will violate water quality standards.

3.1.2 Discharge to Creeks or Drainageways

Storm drains and roof drains are not allowed to drain to creeks or drainageways or encroach into the buffer unless approved in writing by SWMACC. Encroachment into buffer areas must be approved in writing and will require mitigation. Existing and replacement storm drains shall be constructed according to State and Federal Regulations. Non-single family development shall provide an approved water quality facility prior to any discharge from the site to a storm drain system, a creek or drainageway, as approved by SWMACC.

3.2 PRETREATMENT FACILITIES

- 3.2.1 If it is determined by SWMACC that pretreatment facilities, in addition to on-site facilities described in Section 6, are necessary to comply with water quality standards, SWMACC may require that such facilities be constructed or modifications made within the shortest reasonable time, taking into consideration the construction time, impact of the surface water on the surface water system, economic impact on the facility and any other appropriate factor. All such facilities shall be constructed and operated under a permit issued by SWMACC.

3.3 PERMIT REQUIREMENTS

3.3.1 Connection Permit

A permit is required to connect to any storm drain facility, including but not limited to pipes, pollution reduction manholes, and detention facilities, whether constructed or natural. Before connecting to any storm drain facilities, a permit authorizing such connection shall first be secured in writing from SWMACC and fees paid.

SECTION 4 – ENVIRONMENTAL PROTECTION AND EROSION CONTROL RULES

4.1 GENERAL POLICY

The policies of this section shall apply during construction and until permanent measures are in place following construction as described herein, unless otherwise noted.

4.1.1 It is the policy to require temporary and permanent measures for all construction projects to lessen the adverse effects of site alteration on the environment. The owner or his/her agent, contractor, or employee, shall properly install, operate and maintain both temporary and permanent works as provided in this section or in an approved plan, to protect the environment during the useful life of the project. These erosion control rules apply to all parcels within the authority of SWMACC.

Nothing in this section shall relieve any person from the obligation to comply with the regulations or permits of any federal, state, or local authority.

4.1.2 Maintenance and repair of existing facilities shall be the responsibility of the owner of record as shown in the real property records.

4.2 EROSION CONTROL

4.2.1 It is SWMACC's policy to prevent erosion and to minimize the amount of sediment and other pollutants reaching the public storm and/or surface water system resulting from development, construction, grading, filling, excavating, clearing, and any other activity which accelerates erosion as required by water quality standards set forth in OAR 340-41-445 through 340-41-470.

4.2.2 Erosion Prohibited.

No visible or measurable erosion shall leave the property during construction or during activity described in Section 4.2.1. The owner of the property, together with any person who causes such action from which the visible or measurable erosion occurs, shall be responsible for clean up, fines, and damages. Clean up responsibilities include clean up of creeks, drainageways, or wetlands impacted by a project.

4.2.3 General Requirements.

Site Plans for storm drainage, grading and erosion control will be required for all development, construction, grading, filling, excavating, clearing, and any other activity which accelerates erosion as required by water quality standards set forth in OAR 340-41-445 through 340-41-470. Such activities impacting areas of 800 square feet or greater must obtain an erosion control permit. Activities impacting areas less than 800 square feet which result in erosion from a site do not need to obtain an erosion control permit but still must comply with the requirements of Section 4.2.2. All sites shall submit an erosion control plan for review, regardless of size. The plans shall use the techniques and methods prescribed in the current WES erosion prevention manual. If the applicant desires to use erosion prevention and sediment control measures different than those contained in the manual, supporting calculations and/or information must be submitted to WES for approval prior to construction. At a minimum the Erosion Control Plan shall include:

- 4.2.3.1 The methods and/or facilities to be used to prevent erosion and pollution created from the activity both during and after construction. Site-specific considerations shall be incorporated.
- 4.2.3.2 Limits of clearing by flagging boundaries in the field before starting site grading or construction. Staging areas shall be included.

- 4.2.3.3 An analysis of source controls such as detention and storage techniques during construction showing existing contours as an alternative method to control erosion from storm water runoff.
- 4.2.3.4 A drainage plan during construction.
- 4.2.3.5 Show existing contours as well as all sensitive areas, creeks, streams, wetlands, and open areas.
- 4.2.3.6 A description of historic localized flooding problems resulting from surface water runoff, FEMA or flooding problems known to the community or SWMACC.
- 4.2.3.7 Erosion control plan shall include a schedule for implementation of erosion control measures. The schedule shall include:
 - measures to cover exposed soil if unworked for 14 days or more
 - Implementation of wet weather measures between October 1st and April 30th, unless otherwise approved by the District.
- 4.2.3.8 On sites where vegetation and ground cover have been removed, District approved ground cover shall be re-established by seeding and mulching on or before September 1 with the ground cover established by October 15. As an alternative to seeding and mulching, or if ground cover is not established by October 15, the open areas shall be protected through the wet season with straw mulch, erosion blankets, or other approved method, where appropriate, with long term site plan.
- 4.2.3.9 Water containing sediment shall not be discharged into the surface water management system, wetlands or streams without first passing through an approved sediment filtering facility or device. Discharge from temporary sedimentation ponds or detention facilities used for sedimentation during construction shall be constructed to District standards to provide adequate sediment filtration.
- 4.2.3.10 Re-inspection fees may be charged for those sites that are notified of deficiencies and fail to complete corrective actions in full by the time of the next inspection.

4.2.4 Site Plan.

A site-specific plan prepared by an engineer shall be required and additional erosion control measures may be required for sites having one or more of the following characteristics:

- 4.2.4.1 Sites greater than five (5) acres disturbed;
- 4.2.4.2 Sites with slopes greater than 15 percent on any portion of the site;
- 4.2.4.3 Sites with highly erodible soils;
- 4.2.4.4 Sites adjacent to sensitive areas;
- 4.2.4.5 Sites where grading and clearing activities are likely between October 1 and April 30.

Refer to the current WES erosion prevention manual for additional measures required. Additional measures may include, but are not limited to, one or more of the following:

1. Limited area cleared at any one time;

2. Additional drainage requirements during construction;
3. Additional water quality treatment, including filtering or treatment of runoff;
4. Cover portions of the site;
5. Maintain a vegetated buffer strip between site and sensitive area;
6. Additional facilities to reduce volume and velocity of water runoff;
7. If there are no workable alternatives, limit clearing and grading in some areas between October 1 and April 30.

4.2.5 No soils shall remain exposed for more than 14 days in the wet weather season unless an advanced sedimentation or filtration process is used. WES must approve such process prior to implementation.

4.2.6 All construction activities disturbing an area that is five (5) or more acres of land shall obtain an NPDES 1200C erosion control permit from SWMACC for construction activities.

4.2.7 Performance.

The Applicant may be required to submit a bond, cashier's check or irrevocable letter of credit from an acceptable financial institution to secure performance of the requirements of this section. Upon default, SWMACC may perform work or remedy violations and draw upon the bond or fund. If SWMACC does not require a bond and the Developer does not perform the erosion control plan in whole or in part, SWMACC may, but shall not be obligated to, perform or cause to be performed corrective work and charge the Developer. Such amount shall bear interest at 9% per annum and shall be a lien upon the property foreclosable in accordance with ORS Chapter 88.

4.2.8 Erosion Control Certification.

1. All building activities requiring erosion control permits or approvals shall identify an individual, with authority over erosion control, to be responsible for erosion control of the site. In the event the individual responsible for erosion control is certified for erosion control, the development is eligible for a discount in erosion control fees, see Section 9.
2. Certification shall involve training in erosion control techniques, issues, and implementation strategies. A minimum of 4 hours of classroom instruction shall be required every 2 years.

4.2.9 Maintenance. The applicant shall maintain the facilities and techniques contained in the approved Erosion Control Plan so as to continue to be effective during construction or other permitted activity. If the facilities and techniques approved in an Erosion Control Plan are not effective or sufficient as determined by SWMACC's site inspector, the permittee shall submit a revised plan within three working days of written notification. In cases where erosion is occurring, SWMACC may require the applicant to implement interim control measures prior to submittal of a revised Erosion Control Plan and without limiting SWMACC's right to undertake enforcement measures. Upon approval of the revised plan by SWMACC, the permittee shall immediately implement the revised plan. The developer shall implement fully the revised plan within 3 working days of approval by the Director, or their designee.

4.2.10 Inspection.

The erosion control measures necessary to meet the requirements of Section 4.2.2 shall be installed by the owner or their representative and shall be inspected by SWMACC prior to the start of any excavation work.

4.2.11 Deposit of Sediment.

No person shall drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock or other such debris upon a public street or into any part of the public storm and surface water system, including natural drainage systems, or any part of a private storm and surface water system which drains or connects to the public storm and surface water system, with the exception of sanding for ice and snow and maintenance such as crack or chip sealing. Any such deposit of material shall be immediately removed using hand labor or mechanical means. No material shall be washed or flushed into the road/street or any part of the storm and surface water system without erosion control measures installed to the satisfaction of SWMACC, and any such action shall be an additional violation.

4.2.12 Permit Fee

SWMACC may collect all fees for the review of plans, administration, enforcement, and field inspection(s) to carry out the rules contained herein as established and amended by SWMACC.

4.2.13 Permit Duration

4.2.13.1 Development or construction must be initiated as per the approved final development plans within one (1) year of the date of erosion control permit issuance or the permit will be null and void. When the Hearings Officer or Board of County Commissioners specify a time period for commencement of a development, that time period shall supersede.

4.2.13.2 Erosion Control permits (excluding 1200-C permits) shall expire and become null and void 24 months after the date of permit issuance unless extended by the Director. If the work authorized by such permit has not received final inspection approval prior to the permit expiration date, and the permit has not been extended by the Director, all work shall stop until a new permit is obtained that conforms to the erosion control regulations in effect at the time of re-application. The Director may extend the time for action by the permittee for a period not exceeding 12 months on written request by the permittee showing that circumstances beyond the control of the permittee have prevented work from being completed. Failure on the part of WES to notify the permittee by mail prior to the original date of expiration shall result in an automatic 12-month extension. No permit shall be extended more than once.

4.2.13.3 1200-C permits shall expire and become null and void if the permit is not renewed annually or as per the general permit schedule set forth by the Oregon Department of Environmental Quality (DEQ).

4.3 AIR POLLUTION

4.3.1 Dust.

Dust and other particulate matters containing pollutants may settle on property and be carried to waters of the state through rainfall or other means.

Dust shall be minimized to the extent practicable, utilizing all measures necessary, including, but not limited to:

4.3.1.1 Sprinkling haul and access roads and other exposed dust producing areas with water.

4.3.1.2 Establishing temporary vegetative cover.

4.3.1.3 Placing wood chips or other effective mulches on vehicle and pedestrian use areas.

4.3.1.4 Maintaining the proper moisture condition on all fill surfaces.

4.3.1.5 Pre-wetting cut and borrow area surfaces.

4.3.1.6 Use of covered haul equipment.

4.4. MAINTAINING WATER QUALITY

4.4.1 Construction of new facilities between stream banks shall be pursuant to permits issued by state and federal agencies having jurisdiction and applying their regulations.

4.4.2 Pollutants such as, but not limited to, fuels, lubricants, asphalt, concrete, bitumens, raw sewage, and other harmful materials shall not be discharged into rivers wetlands, streams, impoundments, undisturbed buffers or any storm drainage system, or at such proximity that the pollutants flow to these watercourses.

4.4.3 The use of water from a stream or impoundment, wetland or sensitive area, shall not result in altering the temperature or water quality of the water body in violation of Oregon Administrative Rules, and shall be subject to water rights laws.

4.4.4 All sediment-laden water from construction operations shall be either routed through sedimentation basins, filtered, or otherwise treated to remove the sediment load before release into the surface water system.

4.5 FISH AND WILDLIFE HABITAT

4.5.1 Construction shall be done in a manner to minimize adverse effects on wildlife and fishery resources pursuant to the requirements of local, state, and federal agencies charged with wildlife and fish protection.

4.6 NATURAL VEGETATION

4.6.1 As far as is practicable, natural native vegetation shall be protected and left in place in undisturbed buffer areas. Work areas shall be carefully located and marked to reduce potential damage. Trees shall not be used as anchors for stabilizing working equipment.

4.6.2 During clearing operations, trees shall not be permitted to fall outside the work area. In areas designated for selective cutting or clearing, care in falling and removing trees and brush shall be taken to avoid injuring trees and shrubs to be left in place.

4.6.3 Where natural vegetation has been removed, or the original land contours disturbed, the site shall be revegetated per a submitted and approved seeding and maintenance plan from a list approved by SWMACC as soon as practicable after construction has commenced, not later than October 15. After that date a reseeded and stabilization plan approved by SWMACC must be used.

4.7 PESTICIDES, FERTILIZERS, CHEMICALS

4.7.1 The use of hazardous chemicals, pesticides, including insecticides, herbicides, defoliants, soil sterilants, and the use of fertilizers, must strictly adhere to federal, state, county, and local restrictions.

4.7.2 All materials defined in Section 4.7.1 delivered to the job site shall be covered and protected from the weather. None of the materials shall be exposed during storage. Waste materials, rinsing fluids, and other such material shall be disposed of in such a manner that pollution of groundwater, surface waste, or the air does not occur. In no case shall toxic materials be dumped into drainageways.

4.8 CONTAMINATED SOILS

In the event the construction process reveals soils contaminated with hazardous materials or chemicals, all parties shall stop work immediately to ensure no contaminated materials are hauled from the site, remove work forces from the contaminated areas, leaving all machinery and equipment, and secure the areas from access by the public until such time as a mitigation team has evaluated the situation and identified an appropriate course of action. The Owner and the Contractor shall notify OSHA and DEQ of the situation upon discovery. The Owner and the Contractor must comply with OSHA and DEQ statutes and rules.

SECTION 5 – ADDITIONAL SURFACE WATER MANAGEMENT STANDARDS

5.1 GENERAL STANDARDS

- 5.1.1 All development shall be planned, designed, constructed and maintained to:
- 5.1.1.1 Protect and preserve existing streams, creeks, natural drainage channels and wetlands to the maximum practicable extent, and to meet state and federal requirements.
 - 5.1.1.2 Protect property from flood hazards. Provide a flood evacuation route if the system fails.
 - 5.1.1.3 Provide a system by which storm/surface water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons.
- 5.1.2 All stream crossings must be approved by the Oregon Division of State Lands, US Army Corps of Engineers, and any other authorized federal, state, or local agency.
- 5.1.3 In the event a development or any part thereof is traversed by any water course, channel, stream or creek, gulch or other natural drainage channel, adequate easements for surface water drainage purposes shall be provided to SWMACC. This does not imply a maintenance obligation by SWMACC.
- 5.1.4 Channel obstructions are not allowed except with approval from SWMACC.
- 5.1.5 Facilities developed on site shall be constructed in a manner consistent with basin-wide or sub-basin drainage management plans.
- 5.1.6 All storm conveyance pipes, vaults, detention facilities or other water quality or quantity facilities shall be built to specifications required by SWMACC.
- 5.1.7 All surface water facilities shall be constructed per SWMACC specifications.
- 5.1.8 Inspection of surface water facilities and approval of shop drawings shall be provided by the developer's engineer.
- 5.1.9 Following completion of construction, the engineer shall submit a document, stamped by a professional engineer, indicating all surface water systems have been inspected and installed per approved plans and approved changes.
- 5.1.10 Maintenance is required for all on-site surface water facilities. The maintenance program must be approved by SWMACC.
- 5.1.11 As-built plans of facilities, easements for all facilities, and approved maintenance plans shall be provided to SWMACC upon completion of construction.
- 5.1.12 Each surface water system shall have adequate easements and access for construction, operation and maintenance. A commercial or industrial user having ownership or control of onsite detention facilities shall maintain such facilities in compliance with these Rules and Regulations and provide documentation of annual maintenance.
- 5.1.13 All surface water facilities shall be maintained as needed and as approved by SWMACC. Proof of maintenance shall be annually submitted in accordance with a schedule approved by SWMACC. If the facility is not maintained, SWMACC may perform the maintenance and charge the owner of the facility.
- 5.1.14 Plan Review.
- All plans and calculations must be stamped and signed by a civil engineer licensed by the State of Oregon and meet the standards of SWMACC.

5.1.15 Bonds.

Developers or owners shall provide a performance bond or other surety acceptable to the District prior to recording of the plat for residential developments or the issuance of building permits for commercial or industrial developments. A maintenance bond shall be provided to the District prior to release of the performance bond. The maintenance bond shall be in favor of the District, in the amount of 25% of the actual construction cost, for a period of one year from the date of final District inspection and acceptance of all completed buffer mitigation and public surface water facilities. During construction and the guarantee period, the District may perform work if the owner fails to do so, and charge the Bond. At the end of the one year guarantee period, the residual bond amount shall be released and remitted to the owner. Nothing herein shall limit the owner's responsibility for repair and maintenance to the amount of the bond.

5.1.16 All activities must meet State and Federal regulations.

5.1.17 All developments and re-developments shall provide water quantity, water quality and infiltration systems to meet requirements of these Rules and Regulations.

5.1.18 Development projects shall not be phased or segmented in such a manner to avoid the requirement of these Rules and Regulations.

5.2 WATER QUANTITY STANDARDS

5.2.1 Surface water collection systems with the potential to serve areas up to 10 acres of land must be sized for the post-developed 10-yr storm, using the Rational Method. All other surface water conveyance systems shall be sized for post-developed conditions in accordance with the following criteria:

5.2.1.1 Storm sewer and outfall pipes draining less than 640 acres: 25-yr, 24-hr design storm

5.2.1.2 Storm sewer and outfall pipes draining greater than 640 acres: 50-year, 24-hour design storm

5.2.1.3 Creek or stream channels draining less than 250 acres: 25-year, 24-hour design storm

5.2.1.4 Creek or stream channels draining greater than 250 acres: 50-year, 24-hour design storm

5.2.1.5 Creek or stream channels draining greater than 640 acres: 100-year, 24-hour design storm

Conveyance calculations shall use the Rational Method for analysis. Areas draining greater than 10 acres of land may use alternate methods such as SBUH, HEC 1, or SWMM, or as approved by the District.

Exceptions must be documented and approved by SWMACC.

In-stream or in-line detention can only be used in locations approved by the Oregon Division of State Lands and US Army Corps of Engineers, and any other authorized federal, state, or local agency.

5.2.2 It shall be the responsibility of the owner to provide a drainage system for all water on site and for water entering the property from off-site. Surface water, springs, and groundwater shall be incorporated into the drainage design. The owner is also

responsible for springs and groundwater that surface during construction and within the warranty period of the drainage system.

5.2.3 Where a drainage system of catch basins and pipes is available, all drains that extend to the curb must be directly connected to the storm system for SWMACC. No drainage will be allowed into the street or roadway where a drainage system is available.

5.2.4 Onsite Detention Design Criteria

Onsite storm quantity detention facilities shall be designed to capture and detain runoff as follows:

- 2 year, 24-hour post-developed runoff rate to a ½ of the 2 year, 24-hour pre-developed discharge rate;

Downstream analysis shall demonstrate adequate conveyance capacity where the project site contributes less than 15% of the upstream drainage area OR a minimum of 1,500 feet downstream of the project, whichever is greater. If the downstream analysis crosses the jurisdictional boundary of another surface water management agency, that agency must be notified by the Developer or Owner and given the opportunity to review and comment on the analysis.

For residential subdivisions and partitions of parcels with the potential to create more than two lots as currently zoned, and for developments having more than 5,000 square feet of impervious surface, on-site stormwater detention, treatment, and infiltration facilities shall be required. For 2- and 3-lot partitions that cannot be further partitioned under current zoning, detention and treatment facilities are not required if there are no downstream impacts. All subdivisions and partitions must include a drainage plan for each proposed lot. Infiltration facilities are required where soil conditions permit.

Open detention facilities shall be planted with vegetation as per the Metro Water Quality Treatment Facility Plant List (in the Metro Native Plant List, October 1998), available from the District. See Standards for details. Planting schedule and maintenance of vegetation shall be approved by the District.

5.2.5 Onsite Detention Design Method

The procedure for determining the detention quantities is set forth in Chapter 4.4, Retention/Detention Facility Analysis and Design, King County, Washington, Surface Water Design Manual Version 4.21 (ibid), except subchapters 4.4.5 Tanks, 4.4.6 Vaults and Figure 4.4.4G Permanent Surface Water Control Pond Sign. This reference shall be used for procedure only. Local rainfall data and information shall apply. The design criteria shall be as noted herein. Engineers desiring to utilize a procedure other than that set forth herein shall obtain the approval of SWMACC prior to submitting calculations utilizing the proposed procedure.

For all developments other than single family and duplex, the sizing of stormwater quantity detention facilities shall be based on the impervious area to be created by the development, including structures and all roads and impervious areas.

For single family and duplex residential subdivisions or partitions, stormwater quantity detention facilities shall be sized for the impervious areas to be created by the subdivision or partitions, including all residences on individual lots at a rate of one ESU of impervious surface area per dwelling unit, plus all roads. If actual impervious area is to be greater than one ESU per dwelling unit, then the actual impervious numbers shall be used. Such facilities shall be constructed as a part of the subdivision or partition.

Redevelopment of sites shall require detention for the areas impacted by construction.

Subregional detention and water quality facilities are encouraged. Where topographically feasible, detention and water quality facilities may be sized and constructed to provide detention and treatment for more than one development. Maintenance must be provided for the facility. Easements and access must also be provided.

Each development shall address drainage for groundwater and springs. Existing problems shall be addressed in plans submitted for review and approval. Groundwater and springs that are encountered during development shall be the responsibility of the developer to address. Plans for drainage of these waters shall be submitted to SWMACC for review and approval prior to construction.

5.2.6 Infiltration systems are required for all new developments and re-developments to infiltrate all runoff from storm events up to one-half inch of rainfall in 24 hours. Treatment shall occur prior to or concurrent with infiltration systems in accordance with Section 6. Infiltration system capacity may be incorporated into the detention system design, in order to reduce the required detention volume. Infiltration facilities shall be sized to infiltrate the design runoff volume within a maximum of 96 hours. Infiltration requirements may be waived, or reduced, if it can be demonstrated by a registered professional engineer that infiltration will destabilize the soil, cause adverse structural problems or environmental impacts, or provide negative impacts to the environment, or due to site constraints such as high groundwater, springs, or impermeable soils.

5.2.7 Development shall conform to SWMACC standards.

5.3 NATURAL RESOURCE PROTECTION

5.3.1 Study

The applicant shall be required to provide a study identifying areas on the parcel which are or may be sensitive areas when, in the opinion of the District:

5.3.1.1 An area or areas on a parcel may be classified as a sensitive area;

5.3.1.2 The parcel has been included in an inventory of sensitive areas adopted by the District and more site specific identification of the boundaries are needed.

5.3.2 Undisturbed Buffer Required

New development or a division of land adjacent to sensitive areas shall preserve and maintain an undisturbed buffer wide enough to protect the water quality functioning of the sensitive area. The undisturbed buffer is a facility required to prevent damage to the sensitive area caused by the development. The width of the undisturbed buffer shall be as specified in Table 5.1.

Undisturbed buffers shall be protected, maintained, enhanced or restored as follows: Vegetative cover native to the region shall be maintained or enhanced, or restored, if disturbed in the buffer. Invasive non-native vegetation may be removed from the buffer and replaced with native vegetation. Only native vegetation shall be used to enhance or restore the buffer. This shall not preclude construction of energy dissipaters at outfalls consistent with watershed enhancement, and as approved by the District. Any disturbance of the buffer requires prior District approval.

Uncontained areas of hazardous materials as defined by DEQ are prohibited in the buffer. Starting point for measurements from the Sensitive Area begin at:

- Either the edge of bankfull stage or 2-year storm level for streams; and
- An Oregon Division of State Lands approved delineation marking the edge of the wetland area.

5.3.2.1 Where no reasonable and feasible option exists for not encroaching within the minimum undisturbed buffer, such as at a road crossing or where topography limits options, then onsite mitigation on the intrusion of the buffer will be on a ratio of 1.5 to 1 (one). All encroachments into the buffer, except those listed in 5.4.3, require a written variance from the District. The Surface Water Manager may grant a variance. The District shall give notice by First Class mail of its decision to grant or deny a variance to the applicant and to owners of property within 250 feet of the affected property.

Table 5.1 – Undisturbed Buffers

Sensitive Area	Upstream Drainage Area	Slope Adjacent to Sensitive Area	Width of Undisturbed Buffer
Intermittent Creeks, Rivers, Streams	Less than 50 acres	Any slope	25 feet
Intermittent Creeks, Rivers, Streams	50 to 100 acres	<25%	25 feet
Intermittent Creeks, Rivers, Streams	50 to 100 acres	≥25%	50 feet
Intermittent Creeks, Rivers, Streams	Greater than 100 acres	<25%	50 feet
Intermittent Creeks, Rivers, Streams	Greater than 100 acres	≥25%	100 to 200 feet
Perennial Creeks, Rivers, Streams	Any upstream area	<25%	50 feet
Perennial Creeks, Rivers, Streams	Any upstream area	≥25%	100 to 200 feet
Wetlands, lakes (natural), and springs.	Any drainage	<25%	50 feet
Wetlands lakes (natural), and springs.	Any drainage	≥25%	100 to 200 feet

Note: See Administrative Procedures for details for application of undisturbed buffer.

5.3.3 Design Standards for the Undisturbed Buffer

No future structures, development, or other activities shall be allowed which otherwise detract from the water quality protection provided by the buffer, as required by state and federal regulations, except as allowed below:

- 5.3.3.1 A road crossing the undisturbed buffer to provide access to the sensitive area or across the sensitive area.
- 5.3.3.2 Utility construction or approved plans by a governmental agency or public utility subject to Public Utility Commission regulation, providing the buffer is restored and a restoration plan approved by the District.
- 5.3.3.3 A walkway or bike path not exceeding eight feet in width, only if it is part of a regional system of walkways and trails managed or adopted by a public agency.
- 5.3.3.4 A pervious walkway or bike path, not exceeding eight feet in width that does not provide access to the sensitive areas or across the sensitive areas. If the walkway or bike path is impervious, then the buffer must be widened by the width of the path. The average distance from the path to the sensitive area must be at least 60% of the total buffer width. At no point shall a path be constructed closer than ten feet from the boundary of the sensitive area, unless approved by the District.
- 5.3.3.5 Measures to remove or abate hazards, nuisances, or fire and life safety violations.

5.3.3.6 Homeowners are allowed to take measures to protect property from erosion, such as protecting river banks from erosion, within limits allowed by State and Federal regulations.

5.3.3.7 The undisturbed buffer shall be left in a natural state. Gardens, lawns, or other landscaping shall not be allowed except with a plan approved by the District. The proposal shall include information to demonstrate that improvement and maintenance of improvements will not be detrimental to water quality.

5.3.3.8 Fences: The District may require that the buffer be fenced, signed, delineated, or otherwise physically set apart from parcels that will be developed.

5.3.4 Location of Undisturbed Buffer

In any new development or redevelopment, the undisturbed buffer shall be contained in a tract, and shall not be a part of any parcel to be used for the construction of a dwelling unit. The District reserves the right to require separate tracts for undisturbed buffers; however, conservation easements will be considered and allowed if the developer can demonstrate that restrictions for activities on the parcel will protect the resource associated with the buffer. Restrictions may include permanent signage, fencing, documentation with the title of the property, or other acceptable methods. All methods shall be approved by the District.

5.3.5 Construction in Undisturbed Buffer

5.3.5.1 With approval of the District and an approved plan, noxious vegetation may be removed and replaced with native vegetation.

5.3.5.2 Any disturbance of the buffer shall be replaced with native vegetation and with the approval of the District.

SECTION 6 - PERMANENT ONSITE WATER QUALITY FACILITIES

6.1 PURPOSE OF SECTION

The purpose of this Section is to require new development and other activities which create impervious surfaces to construct or fund onsite or offsite permanent water quality facilities to reduce the amount of phosphorous entering the storm and surface water system.

6.2 APPLICATION OF SECTION

The provisions of Section 6 shall apply to all activities which create new or additional impervious surfaces, except as provided in Section 6.03.

6.3 EXCEPTIONS

6.3.1 Construction of single family and two family (duplex) dwellings.

6.3.2 Sewer lines, water lines, utilities or other land development that will not directly increase the amount of storm water runoff or pollution leaving the site once construction has been completed and the site is either restored to or not altered from its approximate original condition.

6.4 PERMIT REQUIRED

Except as provided in Section 6.3, no person shall cause any change to improved or unimproved real property that will, or is likely to, increase the rate or quantity of runoff or pollution from the site, without a permit from the District.

6.5 STORM WATER QUALITY FACILITIES REQUIRED

For new development, subject to the exemptions of Section 6.3, no permit for construction, or land development, or plat or site plan shall be approved unless the conditions of the plat, plan, or permit approval require permanent storm water quality control facilities in accordance with this Section.

Permanent water quality control facilities shall be designed in accordance with the "Surface Water Quality Facilities Technical Guidance Handbook", developed by Portland, Lake Oswego, Clackamas County, and the Unified Sewerage Agency, now known as Clean Water Services.

6.6 PHOSPHOROUS REMOVAL STANDARD

The storm water quality control facilities shall be designed to remove 65 percent of the phosphorous from the runoff from 100 percent of the newly constructed impervious surfaces. Impervious surfaces shall include pavement, buildings, public and private roadways, and all other surfaces with similar runoff characteristics.

6.7 DESIGN STORM

The storm water quality control facilities shall be designed to meet the removal efficiency of Section 6.6 for events up to 2/3 of a 2-year, 24-hour storm in post-developed conditions.

6.8 DESIGN REQUIREMENTS

The removal efficiency in Section 6.6 specifies only the design requirements and are not intended as a basis for performance evaluation or compliance determination of the storm water quality control facility installed or constructed pursuant to this Section.

6.9 FACILITY PERMIT APPROVAL

A storm water quality control facility permit shall be approved only if the following are met:

A. The plat, site plan, or permit application includes plans and a certification prepared by an Oregon registered, professional engineer that the proposed storm water quality control facilities have been designed in accordance with criteria expected to achieve removal efficiencies for total phosphorous required by this Section.

B. A financial assurance, or equivalent security acceptable to the District, is provided by the applicant which assures that the storm water quality control facilities are constructed according to the plans established in the plat, site plan, or permit approval. The financial assurance shall be equivalent to the value of the constructed facility. The financial assurance may be combined with other financial assurance requirements deemed appropriate by the District.

6.10 ENFORCEMENT

Failure to comply with any provision of this Section shall be deemed a violation of this Ordinance. In such event, the District may take enforcement action pursuant to applicable Rules and Regulations.

6.11 PERMIT FEE

The District shall collect a fee in accordance with Table 1 for the review of plans, administration, enforcement, and field inspection/s to carry out the rules contained herein.

6.12 RESIDENTIAL DEVELOPMENTS

The permanent storm water quality control facilities for the construction of any single family and duplex subdivision shall be adequately sized for the public improvements of the subdivision and for the future construction of single family and duplex houses on the individual lots at a rate of 2,500 square feet of impervious surface per dwelling unit.

6.13 PLACEMENT OF WATER QUALITY FACILITIES

No water quality facilities shall be constructed within the defined area of existing or created wetlands unless a mitigation action is approved by the District, and is constructed to replace the area used for water quality.

6.14 OPERATION AND MAINTENANCE

Owners of water quality facilities shall provide operation and maintenance manuals to the District and DEQ. Manuals shall indicate maintenance activities and schedules. Owners of facilities are responsible for maintenance.

SECTION 7 - RATES FOR SURFACE WATER SERVICE

7.1 CUSTOMER CHARGES

7.1.1 Equivalent Service Unit Rate Structure

Except as specifically provided below, a monthly surface water charge shall be paid by the User. The rate is set according to the surface water service area, as follows:

Lower Tualatin Basin Surface Water Service Area.

There is hereby imposed a system of rates for users for surface water services established by this ordinance. The rates are set and amended from time to time to fund the administration, planning, design, construction, water quality and quantity programming, operation, maintenance and repair of surface water facilities. The following rates are hereby established for all users within the Lower Tualatin Basin Surface Water Service Area as set forth on Table 2, attached hereto and incorporated by reference. The Table may be amended by Resolution or Order of the Board of County Commissioners.

The District has determined through its review of hydrologic data and computer modeling of storm water quantity and quality events that impervious surface area is, without appropriate mitigation measures, the primary cause of a change in the quantity, quality and timing of the surface water leaving such sites and impacting waters of the state within the boundaries of the District. The following rates are hereby established for all customers within the District's service area.

7.1.2 Rate Calculation.

A monthly customer charge, in accordance with Table 2, shall be paid by each user. All non-single family customers shall pay for the total number of equivalent service units (ESUs) attributable to their sites. The total ESUs shall be calculated by dividing the total impervious on the site by the average amount of impervious area for a single family customer within the service area. The resulting figure, when rounded to the nearest whole number, is multiplied by the monthly base customer charge applied to single-family customers.

7.1.3 Rate Application to Rural Residential and Commercial Agriculture.

All developed rural residential parcels shall be treated as single family parcels if the parcels are used primarily for single-family residence purposes, regardless of secondary activities conducted on such rural residential parcels.

Those developed parcels on which the primary activity is that of commercial agricultural and/or farming shall be treated as non-single family parcels, but measured impervious areas shall reflect only paved areas and rooflines of buildings. Such commercial agricultural and/or farming activities shall be eligible to apply for the onsite mitigation credit delineated in the Surface Water Management Agency's Administrative Policies.

7.1.4 Mitigation Reduction Factor.

The amount of surface water service for sites can be controlled through provision of detention and/or other storm water quantity or quality control mitigation facilities. The District's Surface Water Engineer shall determine the appropriate mitigation credit factor for customers who provide such mitigation in a manner consistent with the Administrative Procedures adopted by the District.

7.2 PAYMENT OF CUSTOMER CHARGES

Single family customers will be billed on a bi-annual basis in advance, with payment due within fifteen (15) days of the billing date. Non-single family customers will be billed on a monthly basis in advance, with payment due within fifteen (15) days of the billing date.

SECTION 8 - COLLECTION PROCEDURES

8.1 ACCOUNT SETUP

All applications for service shall be on forms provided by the District. The account holder shall be considered the user of the service. In the case of a landlord-tenant situation, the tenant shall be the account holder unless the rental agreement (oral or written) provides that the landlord is responsible or the landlord has executed a written document stating that he/she/it is responsible for service. If the landlord is responsible, then both the landlord and the tenant shall be listed as the account holder. While the rental unit is unoccupied, any charges shall be the responsibility of the landlord.

8.2 NOTICES

Regardless of who is listed as the user, the District will make all reasonable efforts to provide the landlord and tenant with copies of all invoices, notices, and other information relating to fees and charges. This policy is intended to comply with ORS 91.255 and to provide notices to enable the landlord and tenant a reasonable opportunity within the time set by the District to avoid delinquent charges and discontinuance of service.

8.3 COLLECTION OF CHARGES

All invoices or bills for fees and charges shall be sent to the user at the address set forth on the District's records. If the District's records reveal that the user is not the owner and the owner has not executed a document to pay for services, then the District may take all reasonable steps to provide the owner with copies of all invoices, bills and notices pursuant to ORS 91.255. If the owner has executed such an agreement to be bound or if the rental agreement provides, then the landlord and the tenant shall be jointly and severally liable and, following notices to each in accordance with the District's procedures, collection practices may ensue or service may be terminated. The District may look to either or both parties for payment in addition to the remedies of ORS 91.255.

If the user is different than the owner, the District may take all reasonable efforts to provide notice of delinquent status on billings by First Class mail to the last address of the owner or owner's agent that is on file with the District not later than 30 days from the time payment is due on the account. Thereafter, in accordance with typical procedures, the District may terminate or deny service to the property regardless of who is occupying the property, including any subsequent tenant, based upon the unpaid fees and charges incurred by the previous tenant following provision of the notices set forth above. In the case of a subsequent tenant, the District will provide not less than ten (10) days' written notice to that subsequent tenant prior to termination of services.

The District may enter into a payment plan in its sole discretion to avoid hardship to the user and leave the ultimate resolution between landlord and tenant.

The District may also deny or terminate service to the delinquent user at a new service location within the District based upon the outstanding fees and charges at the previous service location. The Director may enter into such agreements regarding payment of delinquent fees and charges as are reasonable and necessary to obtain payment to the District and avoid hardship and inequities.

8.4 DELINQUENT CHARGES

All user charges by the District shall be due within twenty (20) days of billing. Thereafter, a charge shall be considered delinquent. All delinquent charges shall bear interest at the legal interest rate from the date of delinquency until paid. Failure to make payment when due shall give the District the right to undertake such collection action as it deems appropriate under the circumstances including, but not limited to, letters, telephone calls (reasonable as to time and

place), legal proceedings or certification to the Tax Assessor. In addition, upon ten (10) days written notice, if feasible, the District may undertake those steps to construct on-site mitigation facilities or obtain cessation of customer's impact upon the District's or public's surface water system and the charges therefore shall be owed by customer to the District. Any costs incurred by the District to cease or mitigate the customer's impact on the surface water system, shall be charged at the District's usual labor and material rates.

In any action or suit to collect any delinquent user charges, the District shall be entitled to its reasonable attorney's fees, costs and disbursements as may be awarded by the trial court, including any appeal therefrom.

8.5 DISCONTINUANCE OF SERVICE

The District may, at any time after any charges or fees hereunder become delinquent, remove or close connections and enter upon any delinquent owner's property for such purpose. In addition, when any property owner fails to cease discharging into the District system prohibited substances after being notified by the District to do so, service may be similarly discontinued. The expense of such discontinuance as well as the expense of restoring service shall be a debt due to the District and may be recovered in the same manner as other delinquent charges.

8.6 RESTORATION OF SERVICE

Service which has been discontinued by the District shall not be restored until all accrued charges, including the expenses of discontinuance and restoration, shall have been paid and the cause for discontinuance corrected.

8.7 CERTIFICATION TO TAX ASSESSOR

Pursuant to ORS 454.225, the District may certify all delinquent charges to the Clackamas County Assessor for inclusion in the real property tax statement and collected in accordance therewith.

8.8 FEES AND COSTS

By resolution, the District shall set fees and charges, for collection efforts, including fees and charges necessary to recover all costs related to insufficient fund check or the cost of processing lien searches and the like based upon labor rates or other items deemed reasonable by the Board or the Director of Water Environment Services as its designee.

SECTION 9 - ENFORCEMENT

9.1 VIOLATIONS AND CIVIL PENALTIES

9.1.1 Violation of These Rules and Regulations

The District may impose civil penalties, including but not limited to stop work orders, fines, modification or revocation of permit and/or cessation of services, or seek an injunction or other relief provided by law when any user or person violates any condition or provision of this ordinance or any rule adopted thereto or any final order entered with respect thereto as well as violation of federal or state statutes, regulations or administrative rules.

The goal of enforcement is to (a) obtain and maintain compliance with applicable Federal and State statutes or administrative rules, the District's NPDES permit, ordinances, rules and regulations, permits and orders; (b) protect the public health and the environment; (c) deter future violators and violations; and (d) ensure appropriate and consistent enforcement. Except as provided by 9.3.1, the District shall endeavor by conference, conciliation and persuasion to solicit compliance. The District shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth herein under the particular circumstances of each violation. The violators who do not comply with initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

9.1.2 Definitions for Enforcement

9.1.2.1 "Compliance" means meeting the requirements of the District's statutes, rules, permits or orders.

9.1.2.2 "Documented Violation" means any violation which the District or other government agency verified through observation, investigation or data collection.

9.1.2.3 "Enforcement" means any documented action taken to address a violation.

9.1.2.4 "Flagrant" means any documented violation where the respondent had actual knowledge of the law and had consciously set out to commit the violation.

9.1.2.5 "Formal enforcement" means an administrative action signed by the Director or designee which is issued to a respondent on the basis that a violation has been documented, requires the respondent to take specific action within a specified time frame and states consequences for continued non-compliance.

9.1.2.6 "Intentional" means respondent consciously and voluntarily took an action or admitted to take an action and knew the probably consequences of so acting or omitting to act.

9.1.2.7 "Magnitude of Violation" means the extent of a violator's deviation from the District's statutes, rules, permits or orders taking into account such factors as, but not limited to, pollutant or concentration, turbidity, volume, duration, toxicity or proximity to human or environmental receptors. Deviations shall be classified as major, moderate or minor.

9.1.2.8 "Prior Significant Action" means any violation proven pursuant to a contested case hearing or established with or without admission of a violation by payment of a civil penalty, by order or default or a Memorandum of Agreement and Order of the District.

9.1.2.9 "Respondent" means the person to whom a formal enforcement action is issued.

9.1.2.10 "Risk of Harm" means the level of risk created by the likelihood of exposure, either individual or cumulative or the actual damage either individual or cumulative, caused by a violation to public health or the environment. Risk of harm shall be categorized as major, moderate or minor.

9.1.2.11 "Systematic" means any documented violation which occurs on a regular basis.

9.1.2.12 "Violation" means a transgression of any statute, rule, order, license, permit or any part thereof and includes both acts and omissions. Violations shall be classified as follows:

9.1.2.13 “Class I” means any violation which poses a major risk of harm to public health or environment, or violation of any compliance schedule contained in a District permit or a District order:

- (a) Violation of a District Order or approved plan;
- (b) Intentional unauthorized discharges;
- (c) Negligent spills or discharges which pose a major risk of harm to public health or the environment;
- (d) Discharge of waste to surface waters without first obtaining a National Pollutant Discharge Elimination System Permit;
- (e) Failure to immediately notify the District of a spill or upset condition which results in an unpermitted discharge to public waters which pose a major risk of harm to public health or the environment;
- (f) Violation of a permit compliance schedule;
- (g) Failure to provide access to premises or records;
- (h) Any other violation related to water quality which poses a major risk of harm to public health or the environment;
- (i) Two Class II violations or one Class II and two Class III violations or three Class III violations.

9.1.2.14 “Class II” means any violation which poses a moderate risk of harm to public health or the environment, including but not limited to:

- (a) Violation of a District order or approved plan;
- (b) Waste discharge permit limitation violations which pose a moderate risk of harm to public health or the environment;
- (c) Negligent spills which pose a moderate risk of harm to public health or the environment;
- (d) Failure to submit a report or plan as required by permit or license;
- (e) Any other violation related to water quality which poses a moderate risk of harm to public health or the environment.

9.1.2.15 “Class III” means any violation which poses a minor risk of harm to public health or the environment, including but not limited to:

- (a) Violation of a District order or an approved plan;
- (b) Negligent spills or discharges which pose a minor risk of harm to public health or the environment;
- (c) Violation of a waste discharge permit limitation which poses a minor risk of harm to public health or the environment;
- (d) Any other violation related to water quality which poses a minor risk of harm to public health or the environment.

9.2 PROCEDURE FOR ENFORCEMENT

9.2.1 Inspection, Entry, and Sampling

Authorized District representatives may inspect the property and facilities of any person to determine compliance with the requirements of the Ordinance. The person shall allow the District or its authorized representatives to enter upon the premises at all reasonable hours for the purpose of inspection, sampling or records examination. The District shall also have the right to set up on the person's property such devices as are necessary to conduct sampling, inspection, compliance, monitoring and/or metering operations. The right of entry includes but is not limited to access to those portions of the premises that contain facilities for sampling, measuring, treating, transporting, or otherwise handling surface water and storing records, reports, or other documents related thereto.

9.2.1.1 The District is authorized to conduct inspections and take such actions as required to enforce any provisions of this ordinance or any permit issued pursuant to this ordinance whenever the Director has reasonable cause to believe there exists any violation of this ordinance. If the premises are occupied, credentials shall be presented to the occupant and entry requested. If the premises are unoccupied and no permit has been issued, the District shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and request entry. If entry is refused in either case, the District shall have recourse to the remedies provided by law to secure entry.

9.2.1.2 Where feasible, inspections shall occur at reasonable times of the day. If a permit has been issued and the responsible party or their representative is at the site when the inspection is occurring, the Director or authorized representative shall first present proper credentials to the responsible party. The permittee or person having charge or control of the premises shall allow the Director or the Director's authorized representatives, agents and contractors to:

- a. Enter upon the property where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of a permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of a permit;
- c. Inspect at reasonable times the property, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required by these rules and regulations or under a permit; and
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance with these rules and regulations or as otherwise authorized by local or state law, any substances or parameters at any location.

9.2.2 Prior Notice and Exceptions

Except as otherwise provided, prior to the assessment of any civil penalty the District shall serve a notice of violation upon the Respondent. The written notice shall be served, either personally, by office or substitute service as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, specifying the violation and stating that the District will assess a civil penalty if a violation continues or occurs after five days following receipt of the notice.

The above notice shall not be required where the Respondent has otherwise received actual notice of the violation not less than five days prior to the assessment of civil penalty. No advance notice, written or actual, shall be required if (a) the act or omission constituting the violation is intentional; (b) the violation would normally not be in existence for five days, (c) the

water pollution might leave or be removed from the jurisdiction of the District.

9.2.3 Notice of Non-Compliance (NON)

A notice of non-compliance (NON) is an enforcement action which: (a) informs a person of the existence of a violation, the actions required to resolve the violations and the consequences of continued non-compliance. The notice may specify the time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated; (b) shall be issued under the direction of the Director or designee; (c) shall be issued for all classes of documented violations; and (d) is consistent with the policy of 9.1.1. Typically a NON will be in the form of a Compliance Telephone Memorandum and a request for a written report within five (5) business days. The report shall detail the event, steps taken to correct the problem and steps to prevent future events

9.2.4 Notice of Violation and Intent to Assess a Penalty (NOV)

The Notice of Violation and Intent to Assess a Civil Penalty (NOV) is formal enforcement action which: (a) is issued pursuant to 9.2.1; (b) may include a time schedule by which compliance is to be achieved; (c) shall be issued by the Director or designee; (d) shall be issued for the first occurrence of a documented Class I violation which is not excepted under 9.2.1 or the repeated or continued occurrence of documented Class II or III violations where notice of non-compliance has failed to achieve compliance or satisfactory progress toward compliance.

9.2.5 Notice of Civil Penalty Assessment

A notice of Civil Penalty Assessment is a formal enforcement action which (a) is issued pursuant to 9.4.5; (b) is calculated pursuant to 9.4; (c) shall be issued by the Director or designee; (d) may be issued for the occurrence of any class of documented violation, for any class of repeated or continuing documented violations or where a person has failed to comply with a notice of violation and intent to assess a civil penalty or other order or Stipulated Final Order.

9.2.6 Memorandum of Agreement and Order (MAO)

A Memorandum of Agreement and Order (MAO) is a formal enforcement action which is in the form of an agreement or consent order issued by the Director that; (a) may be negotiated between the District and the subject party prior to or after any notice set forth above; (b) shall be signed by the Director or designee on behalf of the District and the authorized representative of the subject party; and (c) shall set forth action to be taken and set civil penalties. This may be issued for any class of violations.

9.2.7 Other Remedies

The formal enforcement action as described in these sections in no way limits the District from seeking other legal or equitable remedies in the proper court as provided by Oregon law.

9.2.8 Right to Hearing

A civil penalty shall be due and payable fifteen (15) days after the decision is final. The decision of the Director or the Director's designee to assess a civil penalty or other enforcement action or any violation pertaining to the District's statutes, regulations, permits, or orders shall be served on the user or person (hereinafter 'Respondent' by personal service, office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure or by certified or registered mail, return receipt requested. The Notice shall specify the violation, the reasons for the enforcement action, and the amount of the penalty. It shall comply with ORS 183.090 relating to notice and contested cases. The decision shall be final unless the respondent files a written Notice of Appeal and Request for Hearing with the District within 21 days from the date of the Director's decision. The Notice of Appeal and Request for Hearing shall contain the following:

9.2.8.1 The name of the Respondent and the case file number or permit number;

9.2.8.2 The name and signature of the respondent and a statement that if acting on behalf of a partnership or corporation, that the person executing the Notice of Appeal is duly authorized to file such appeal and such person is the contact representative;

9.2.8.3 The date that the Civil Penalty Assessment or other formal enforcement was received by the Respondent;

9.2.8.4 The nature of the decision and the specific grounds for appeal.

9.2.8.5 The appeal shall be limited to the issues raised in the petition. In the Notice of Appeal, the Respondent shall admit or deny all factual matters and shall affirmatively allege any affirmative claim and defense and reasons therefore.

9.2.8.6 The hearing shall be conducted in accord with ORS Chapter 183. The record of the hearing shall be considered by the District or Hearings Officer, who shall enter appropriate orders including the amount of civil penalty assessed. Appeal of such orders may be taken by the Respondent as provided in Section 9.8 below.

Notwithstanding the foregoing, nothing shall be construed to prevent the District from taking any other enforcement action or remedy available.

9.3 CIVIL PENALTY SCHEDULE MATRICES

In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the District's statutes, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the Respondent as set forth in Paragraph 9.3 above. The amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in Section 9.4.3.

9.3.1 Base Penalty Matrix

Magnitude of Violation			
	Major	Moderate	Minor
Class I	\$5,000	\$2,500	\$1,000
Class II	\$2,000	\$1,000	\$500
Class III	\$500	\$250	\$100

No civil penalty issued by the Director pursuant to this matrix shall be less than one hundred dollars (\$100) or more than ten thousand dollars (\$10,000) for each day of each violation.

9.3.2 Petroleum Spills

Persons causing oil spills to waters of the state within the jurisdiction of the District through intentional or negligent acts shall incur a civil penalty of not less than one hundred dollars (\$100) or more than twenty thousand dollars (\$20,000) per violation. The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection 9.4.1 of this rule in conjunction with the formula contained in 9.3.3. In determining whether to seek a civil penalty, the District shall take into account the circumstances and enforcement efforts of other governmental agencies having jurisdiction.

9.3.3 Civil Penalty Determination Procedure

9.3.3.1 When determining the amount of civil penalty to be assessed for any violation the Director shall apply the following procedures:

- (a) Determine the class of violation and the magnitude of violation;
- (b) Choose the appropriate base penalty established by the matrices of Section 8.3.1 based upon the above finding;
- (c) Starting with the base penalty (BP), determine the amount of penalty through the application of the formula $BP + [(.1 \times BP) (P + H + E + O + R + C)]$ where:
 - (1) "P" is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for P and the finding which supports each are as follows:

- 0 if no prior significant action or there is insufficient information on which to base a finding;
- 1 if the prior significant action is one Class II or two Class III violations;
- 2 if the prior significant action is one Class I or equivalent;
- 3 if the prior significant actions are two Class I or equivalents;
- 4 if the prior significant actions are three Class I or equivalents;
- 5 if the prior significant actions are four Class I or equivalents;
- 6 if the prior significant actions are five Class I or equivalents;
- 7 if the prior significant actions are six Class I or equivalents;
- 8 if the prior significant actions are seven Class I or equivalents;
- 9 if the prior significant actions are eight Class I or equivalents;

- 10 if the prior significant actions are nine Class I or equivalents determining the appropriate value for prior significant actions as listed above, the District shall reduce the appropriate factor by:

In determining the appropriate value for prior significant actions as listed above, the District shall reduce the appropriate factor by:

- A value of two if all prior significant actions are greater than three years old, but less than five years old;
- A value of four if all the prior actions are greater than five years old;

In making the above reductions no finding shall be less than zero. Any prior significant action which is greater than ten years old shall not be included in the above determination.

- (2) "H" is past history of the Respondent taking all feasible steps or procedures necessarily appropriate to correct any prior significant actions. The values for H and the findings which support each are as follows:

- Minus 2 if the Respondent took all feasible steps to correct any violation;

- 0 if there is no prior history or insufficient information on which to base a finding;
 - 1 if the Respondent took some but not all feasible steps to correct a Class II or III violation;
 - 2 if the Respondent took some but not all feasible steps to correct a Class I violation;
 - 3 if no action to correct prior significant actions.
- (3) “E” is the economic condition of the Respondent. The values for E and the finding which support each are as follows:
- 0 to minus 4 if economic condition is poor, subject to any significant economic benefit gained by Respondent through non-compliance.
 - 0 if there is insufficient information on which to base a finding, the Respondent gained no economic benefit through noncompliance, or the Respondent is economically sound;
 - 2 if the Respondent gained a minor to moderate economic benefit through noncompliance;
 - 4 if the Respondent gained a significant economic benefit through noncompliance.
- (4) “O” is whether the violation was a single occurrence or was repeated or continuous during the period resulting in the civil penalty assessment. The values for “O” and the finding which supports each are as follows:
- 0 if a single occurrence;
 - 2 if repeated or continuous.
- (5) “R” is whether the violation resulted from an unavoidable accident, or a negligent or intentional act of the Respondent. The values for “R” and the finding which supports each are as follows:
- minus 2 if unavoidable accident;
 - 0 if insufficient information to make any other finding;
 - 2 if negligent;
 - 4 if grossly negligent;
 - 6 if intentional
 - 10 if flagrant.
- (6) “C” is the Respondent’s cooperativeness in correcting the violation. The values for “C” and the finding which supports each are as follows:
- minus 2 if Respondent is cooperative;
 - 0 if Respondent is neither cooperative nor uncooperative or there is insufficient information on which to base a finding;
 - 2 if violator is uncooperative.

9.3.3.2 In addition to the factors listed in 9.3.3.1 of this rule, the Director may consider any other relevant rule or statute and shall state the effect the consideration had on the

penalty. On review, the Board of county Commissioners or Hearings Officer shall consider the factors contained in 9.3.3.1 of this rule and any other relevant rule or statute.

9.3.3.3 If the District finds that the economic benefit of noncompliance exceeds the dollar value of 4 in subsection 9.3.3.1(c)(3) of this section, it may increase the penalty by the amount of economic gain, as long as the penalty does not exceed the maximum penalty allowed by rule and statute.

9.3.3.4 In any contested case proceeding or settlement in which Respondent has raised economic condition as an issue, Respondent has the burden of providing documentary evidence concerning its economic condition. In determining whether to mitigate a penalty based on economic condition, the Hearings Officer or District may consider the causes and circumstances of Respondent's economic condition.

9.4 STOP WORK ORDERS

9.4.1 Erosion Control Violations

In addition to civil penalties described in Section 9.1, erosion control violations will be enforced by on-site control activities to mitigate existing violations and prevent future violations to the greatest extent possible. Initial violations will result in a written description of requirements for repair of the problem and a 24-hour time period for compliance or a specified time for compliance as included in the Deficiency Notice. If the repair is not performed, or violations continue, the inspector will issue a stop work order on the project, which will remain in effect until the violation is repaired to the requirements stated in these Rules and Regulations. If the violation is not remedied or the person fails to commence diligently remedying the violation within 24 hours, the District may enter upon the property to abate the violation. Notwithstanding anything herein to the contrary, if the District reasonably believes the violation constitutes an emergency or other circumstance requiring immediate action, the District may take reasonable and necessary remedial action with or without notice to the owner as deemed appropriate by the District considering the circumstance. Any costs incurred by the District to remedy a violation shall be paid by the owner. If the required repairs are not completed within the specified time frame or if violations continue that require additional site visits, additional daily charges described in Table 1 will be assessed to the owner of the property.

9.4.2 Other Violations

In addition to civil penalties described in Section 9.1, other violations may be enforced by on-site control activities to mitigate existing violations of these rules including failure to follow approved plans and prevent future violations to the greatest extent possible. Initial violations will result in a written description of requirements for compliance and a specified time period for compliance as included in the Deficiency Notice. If compliance is not achieved, or violations continue, the inspector will issue a stop work order on the project, which will remain in effect until the violation is repaired to the requirements stated in these Rules and Regulations. If the violation is not remedied or the person fails to commence diligently remedying the violation within 24 hours, the District may enter upon the property to abate the violation. Notwithstanding anything herein to the contrary, if the District reasonably believes the violation constitutes an emergency or other circumstance requiring immediate action, the District may take reasonable and necessary remedial action with or without notice to the owner as deemed appropriate by the District considering the circumstance. Any costs incurred by the District to remedy a violation shall be paid by the owner. If the required repairs are not completed within the specified time frame or if violations continue that require additional site visits, additional daily charges described in Table 1 will be assessed to the owner of the property.

9.5 ABATEMENT

Nothing herein shall prevent the District, following seven (7) days written notice to the discharger, and discharger's failure to act, from entering upon the property and disconnecting, sealing, or otherwise abating any unauthorized connection to the storm water or system discharger violating any permit, this ordinance or water quality standards. As part of this power, the District may perform tests upon the property to trace sources of water quantity or water quality violation.

9.6 COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR

9.6.1 Any time subsequent to service of a written notice of assessment of civil penalty the Director may compromise or settle any unpaid civil penalty at any amount that the Director deems appropriate. Any compromise or settlement executed by the Director shall be final.

9.6.2 In determining whether a penalty should be compromised or settled, the Director may take into account the following:

9.6.2.1 New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors.

9.6.2.2 The effect of compromise or settlement on deterrence.

9.6.2.3 Whether Respondent has or is willing to employ adequate means to correct the violation or maintain compliance.

9.6.2.4 Whether Respondent has had any previous penalties which have been compromised or settled.

9.6.2.5 Whether the compromise or settlement would be consistent with the District's goal of protecting the public health and environment as set forth in Section 1.1 of these Rules and Regulations.

9.6.2.6 The relative strength or weaknesses of the District's case.

9.7 STIPULATED PENALTIES

Nothing herein shall affect the ability of the District to include stipulated penalties in a Memorandum of Agreement and Order or any other agreement.

9.8 APPOINTMENT OF HEARINGS OFFICER

For any contested case hearing, the District, through the Director, may appoint a hearings officer to determine all issues.

9.9 APPEALS

The decision of the District or the Hearings Officer shall be sent to the user or person by certified mail, return receipt requested. This decision shall be final unless the user or person files a writ of review in the Circuit Court in compliance with ORS Chapter 34 relating to writ of review procedures.

9.10 COLLECTION OF CIVIL PENALTY

Procedures for the enforcement of the civil penalty shall be as follows:

9.10.1 Time Limit: Any civil penalty imposed shall be a judgment and may be registered with the Court Clerk. The penalty shall be paid in full within fifteen (15) days of the date the decision is final. Payment shall be made either in cash or by certified check made payable to the District.

9.10.2 Relief in Circuit Court: If full payment is not made, the District may take further action for collection and/or cause service to be terminated. Alternatively, counsel for the District may, following the authorization of such action by the District, commence an action for appropriate legal and/or equitable relief in the Circuit Court. Notwithstanding the foregoing administrative hearing processes, nothing in this Subsection shall prohibit the District from commencing civil action in the Circuit Court for injunction or other relief or seeking imposition of civil penalties described above by the court.

9.11 ENFORCEMENT

Nothing shall prevent enforcement of this ordinance or applicable federal or state statutes or rules or regulations in federal and state courts.

SECTION 10 - APPEALS

10.1 APPEALS

10.1.1 Appeals to Director or his/her Designee: Except for violations and enforcement matters under Section 9, any person aggrieved by ruling or interpretation (decision) of the provisions of this Ordinance may submit a written appeal to the Director. The appeal shall be in writing and set forth the events and circumstances leading to the appeal, the nature of the impact of the ruling on the appellant, together with any other reasons for the appeal. The Director shall make a written decision within 30 days of written notification of appeal. If the appellant chooses to appeal the Director's decision, the Director shall appoint a hearings officer to decide the appeal.

10.1.2 The hearings officer appointed pursuant to section 10.1.1 shall set a *de novo* hearing on the matter at which he or she will take testimony and hear arguments. The Director shall give notice of the time and place for the hearing to the appellant, the applicant, and all property owners within 250 feet of the subject property. The notice called for in this section shall be given by First Class mail, postage prepaid, at least fourteen (14) days in advance of the time scheduled for the hearing. Only persons who have been aggrieved by the Director's decision shall have standing to participate in the hearing. The hearings officer shall issue written findings and a decision on the appeal within thirty (30) days after the *de novo* hearing, with copies to the Board, all persons who participated in the hearing and those persons who have requested a copy.

10.1.2 The governing body may refer the matter to a hearings officer for resolution, and shall within thirty (30) days from receipt of the application prepare a written decision on the matter which shall be sent to the applicant.

10.1.3 Circuit Court Review: Decisions of the Hearings Officer shall be reviewable by the Circuit Court of the State of Oregon for Clackamas County, solely and exclusively under the provisions of ORS 34.010 to 34.100.

SECTION 11 - SUPPLEMENTARY RULES

11.1 COMPLIANCE WITH LAWS

Conformance with this Ordinance shall in no way be a substitute for, or eliminate the necessity of, conforming with any and all federal, state, and local laws, ordinances, rules and regulations which are now, or may in the future, be in effect.

11.1.1 Regulations and Rules as Contract: The terms and conditions contained in this Ordinance, and all resolutions and orders adopted pursuant hereto, shall constitute a contract between the district and all users, contractors, and connectors to the system. The consideration for the conditions imposed upon such users and connectors shall be the privilege of the use of, and/or connection to, the District's surface water system and programs.

11.1.2 No Property Interest Acquired: A user or connector to the surface water system does not thereby acquire a vested property interest in continued use or connection to the system. Such use or connection is conditioned always upon such user or connector complying with all applicable terms and conditions contained in this Ordinance, and all regulations and orders adopted pursuant hereto and, further, upon compliance with all federal, state, or local requirements which are, or may hereafter, be imposed upon such user or connector.

11.1.3 Nothing contained herein shall require the District to provide service or access to the system to such user or connector when any federal, state, or local agency having jurisdiction over the District has imposed limitations upon such service or access, or when the District, in its discretion, has determined that the public interest requires any such limitation.

11.2 CONFLICTS WITH EXISTING AND FUTURE REGULATORY REQUIREMENTS OF OTHER AGENCIES

Any provisions or limitations of this Ordinance and any regulation and order adopted pursuant hereto are suspended and supplemented by any applicable federal, state, or local requirements existing or adopted subsequent hereto which are more stringent than the provisions and limitations contained herein, provided, always, that any provision of this Ordinance and resolution and order adopted pursuant thereto which are more stringent than any applicable federal, state, or local requirement shall prevail and shall be the standard for compliance by the customers of any connectors to the District surface water system.

11.3 ADMINISTRATION OF THIS ORDINANCE

The District, through its Director or other authorized designee or representative, shall have the authority to do all things necessary to administer the provision of this Ordinance and any rules adopted pursuant thereto.

11.4 SEVERABILITY

If any section, subsection, provision, clause, or paragraph of this Ordinance or rules adopted pursuant hereto shall be adjudged or declared to be unconstitutional or invalid by any court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions of this Ordinance or such rules, and it is hereby declared that every other section, subsection, provision, clause, or paragraph is, and shall remain, irrespective of the validity of any other portion.

11.5 EFFECTIVE DATE

The provision of this Ordinance and the rules herein adopted shall be in effect on the date of enactment.

TABLE 1: SURFACE WATER MANAGEMENT FEES
Effective 7-1-2007

Permit Fees:

Plan Review for Erosion Control* (Includes 2 site inspections)

Single Family Residential or 800 sq. feet or greater without erosion control certification	\$310
Single Family Residential or 800 sq. feet or greater with erosion control certification	\$205
Non-Single Family or NPDES 1200C without erosion control certification	\$460 base \$80 additional per acre over 1 acre
Non-Single Family or NPDES 1200C with erosion control certification	\$270 base \$80 additional per acre over 1 acre

Plan Review for Surface Water Facilities

Single Family Residence	\$55
Non-Single Family	4% of the installed cost of any surface water management system or \$400.00, whichever is greater, EXCEPT, no fee will be due where there is no increase in impervious surface area.

Erosion Control Re-inspection

Single Family Residence	\$65 per visit
Non-Single Family	\$65 minimum per visit (1 acre or less) \$25 additional per acre (over 1 acre)

*See Administrative Procedures for further clarification of fees.

TABLE 2: SURFACE WATER MANAGEMENT FEES

Monthly Service Charge:

Single Family	\$4.00 per month
Non-Single Family	$\$4.00 \times \text{Impervious Area in Sq. Ft.}^*$ $\div 2500 \text{ Sq. Ft}$

Collection Procedures:

Interest for Delinquent User Charges:	9% per Annum
---------------------------------------	--------------

* Graveled surfaces are charged at 60% of the ESUs measured.



M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a 7-Lot Assessment Area
Within Clackamas County Service District No. 5, Assessment
24-17 32nd Ave. 7-Lot Petition

Purpose/Outcomes	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
Dollar Amount and Fiscal Impact	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule B; the current rate for this schedule is \$51.03 per tax lot each year.
Funding Source	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
Duration	N/A
Previous Board Contact	None
Strategic Plan Alignment	Promotes a safe, healthy and secure community through the enhanced nighttime visibility created with new street lighting.
Contact Person	Wendi Coryell, Service District Specialist - DTD Engineering 503-742-4657 (Phone) wendicor@clackamas.us
Contract No.	None

BACKGROUND:

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current addresses as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for June 22, 2017, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

RECOMMENDATION:

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

Wendi Coryell, Service District Specialist, CCSD#5

In the Matter of the Formation
of an Assessment Area 24-17
(32nd Ave. 7-Lot Petition) Within
Clackamas County Service District
No. 5, Clackamas County, Oregon

ORDER NO.
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 24-17, 32nd Ave. 7-Lot Petition, SE 32nd Ave. between SE Park Ave. and SE Evergreen St. have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2015-71 and subsequent rate change Orders shall be applied to Assessment Area 24-17, SE 32nd Ave. Petition, with fractional year assessments pro-rated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule B: \$51.03 per tax lot each year, applied to residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by Order Number 94-1368 and ORS 451.495, and that said public hearing was duly held on the 22nd day of June, 2017, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:

In the Matter of the Formation
of an Assessment Area 24-17
(32nd Ave. 7-Lot Petition) Within
Clackamas County Service District
No. 5, Clackamas County, Oregon

ORDER NO.
Page 2 of 2

IT IS HEREBY ORDERED that properties in the
Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 24-17 All lots in the SE 32nd Ave. Petition Area; and

IT IS FURTHER ORDERED that an assessment
roll be prepared by the Department of Transportation and Development for Clackamas
County showing the amount of each yearly assessment, the property against which it has
been assessed, the owner thereof, and such additional information as is required to keep a
complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department
of Transportation and Development proceed to construct the street lighting facilities in
accordance with District rules and guidelines.

Dated this ____ day of _____, 2017

CLACKAMAS COUNTY BOARD OF COMMISSIONERS
as the governing body of Clackamas County Service District No. 5

Chair

Recording Secretary



M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a 600-Lot Assessment Area
Within Clackamas County Service District No. 5, Assessment
44-15 Scouters Mountain 600-Lot Subdivision

Purpose/Outcomes	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
Dollar Amount and Fiscal Impact	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule W; the current rate for this schedule is \$250.00 per tax lot each year.
Funding Source	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
Duration	N/A
Previous Board Contact	None
Strategic Plan Alignment	Promotes a safe, healthy and secure community through the enhanced nighttime visibility created with new street lighting.
Contact Person	Wendi Coryell, Service District Specialist - DTD Engineering 503-742-4657 (Phone) wendicor@clackamas.us
Contract No.	None

BACKGROUND:

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current addresses as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for June 22, 2017, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

RECOMMENDATION:

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

Wendi Coryell, Service District Specialist, CCSD#5

In the Matter of the Formation
of an Assessment Area 44-15
(Scouters Mountain 600-Lot
Subdivision) Within Clackamas
County Service District No. 5,
Clackamas County, Oregon

ORDER NO.
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 44-15, Scouters Mountain 600-Lot Subdivision, East of 145th/147th Ave; south of Vrandenburg Rd. and SE Nicholas Dr. have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2015-71 and subsequent rate change Orders shall be applied to Assessment Area 44-15, Scouters Mountain 600-Lot Subdivision, with fractional year assessments pro-rated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule W: \$250.00 per tax lot each year, applied to residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by Order Number 94-1368 and ORS 451.495, and that said public hearing was duly held on the 22nd day of June, 2017, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:

In the Matter of the Formation
of an Assessment Area 44-15
(Scouters Mountain 600-Lot
Subdivision) Within Clackamas
County Service District No. 5,
Clackamas County, Oregon

ORDER NO.
Page 2 of 2

IT IS HEREBY ORDERED that properties in the
Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 44-15 All lots in the Scouters Mountain 600-Lot Subdivision,
12E25D 00300, 400, 401 and 900; 12E36A 00200, 300, 301, 400, 500, 600, 700,
701 and 1000; 12E36B 00100 and 300, 13E30C 01800; and

IT IS FURTHER ORDERED that an assessment
roll be prepared by the Department of Transportation and Development for Clackamas
County showing the amount of each yearly assessment, the property against which it has
been assessed, the owner thereof, and such additional information as is required to keep a
complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department
of Transportation and Development proceed to construct the street lighting facilities in
accordance with District rules and guidelines.

Dated this ____ day of _____, 2017

CLACKAMAS COUNTY BOARD OF COMMISSIONERS
as the governing body of Clackamas County Service District No. 5

Chair

Recording Secretary

June 22, 2017

Board of County Commissioner
Clackamas County

Members of the Board:

Approval for an Intergovernmental Facility Lease Agreement with the Oregon Trail School District #46 for the Sandy Health & Wellness Center

Purpose/Outcomes	This agreement renews our facility lease agreement with the Oregon Trail School District 46 for the Sandy Health & Wellness Center.
Dollar Amount and Fiscal Impact	The maximum contract value is \$15,000.
Funding Source	No County General Funds, Fee for service and Medicaid fund
Duration	July 1, 2017 – June 30, 2018
Previous Board Action	No Previous Board Action
Strategic Plan Alignment	1. Improved community safety and health 2. Ensure safe, healthy and secure communities
Contact Person	Deborah Cockrell 503-742-5495
Contract No.	8293

Background

The Clackamas County Health Centers Division (CCHCD) of the Health, Housing and Human Services Department requests the approval of an Intergovernmental Facility Lease Agreement with the Oregon Trail School District 46 for the Sandy Health & Wellness Center. This agreement secures and pays the lease for the property where the Sandy Health & Wellness Center is located.

The maximum contract value is \$15,000. This agreement is effective July 1, 2017 and will expires on June 30, 2018. County Counsel reviewed this Agreement on May 17, 2017.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing, and Human Services

FACILITY USE AGREEMENT

OREGON TRAIL SCL DISTRICT 46 - SANDY HIGH SCHOOL BUILDING

Start Date: July 1, 2017
End Date: June 30, 2018
Owner: Oregon Trail School District 46, hereafter referred to as "District"
Address: PO Box 547
Sandy, OR 97055-0547
Phone: 503-668-5541
Contact: Jim Seipel
E-mail: jim.seipel@ortrail.k12.or.us

Facility User: Clackamas County-Health, Housing & Human Services Department
Acting by and through its Clackamas Health Centers Division
Address: 2051 Kaen Road, #367
Oregon City, OR 97045
Phone: 503-742-5350
Fax: 503-742-5352
Contact: Jeanne Weber
E-mail: jweber2@co.clackamas.or.us

Premises: Sandy High School – Room 4-18 Health Center

- Summer break schedule: July 1 through September 1, 2017; 12:00 pm to 8:00 pm, excluding holidays (July 4)
- School year schedule: Monday through Friday, September 5, 2017 through June 13, 2018; 3:00 pm to 8 pm
- Winter break schedule: Monday through Friday, December 18, 2017 through January 2, 2018; 12:00 pm to 8:00 pm, excluding holidays (December 25 and January 1)
- Spring break schedule: March 26 through March 30, 2018; 12:00 pm to 8:00 pm
- Summer break schedule: June 14 through June 29, 2018; 12:00 pm to 8:00 pm, (pending any snow days that may cause an adjustment to the school-year calendar)

Purpose of Use: To operate an all ages **Community Health Center**

Usage Fee: \$ 1,250 per month

Deposit: \$ None

General Conditions:

1. **Term** – The term of this Facility Use Agreement ("Agreement") is from the Start date to the End date, inclusive. This Agreement may be terminated by either party upon 30 days written notice to addresses as listed.

2. **Usage Fee** – The Usage Fee is due on the first day of the term of this Agreement.
3. **Deposit** – The deposit is refundable within 30 days after termination of this Agreement. District shall have the right to offset against the Deposit any sums owing from the Facility User not paid when due; any damages caused by Facility User; the cost of curing any default by Facility User; and the cost of performing any repair or cleanup that is Facility User’s responsibility. Offset against Deposit shall not be an exclusive remedy in any of the above cases, but may be invoked by District, at its option, in addition to any other remedy provided by law for Facility User’s nonperformance. If an offset is claimed by the District during the term of this Agreement, Facility User will make whole the Deposit within 10-days of demand.
4. **Use** – Facility User shall use the Premises for no other purposes than stated herein without the District’s written consent. Facility User has a nonexclusive right to reasonable use of common areas of the Sandy High School campus which are normally open during Facility User’s times and dates of usage, i.e. parking areas, walkways, etc. Facility User shall not annoy, obstruct or interfere with the rights, privileges and quiet enjoyment of the Sandy High School campus or building by students, guests, personnel of the District, or other permissive users. Facility User shall promptly comply with all applicable laws, ordinances, rules and regulations of any public authority. Facility User shall not conduct any activities that will increase District’s insurance rates for the Premises or that will in any manner degrade or damage the condition or reputation of the District or the Premises.
5. **Condition of Premises** – Except as otherwise expressly set forth in this Agreement, the Premises are accepted by the Facility User in *As Is* condition, subject to any and all patent and latent defects and faults, without reliance upon any representation by District as to the condition or suitability of the Premises for any intended use or purpose by Facility User and without any representation or warranty by District as to its compliance with applicable laws, rules, regulations and ordinances.
Exceptions: District agrees to make electrical grounding improvements for the Premises to meet electrical code requirements imposed for health clinic operation.
6. **Equipment** – Facility User shall use in the Premises only such equipment as is customary for Facility User’s use and shall not overload the floors, or electrical circuits of the Premises or Building. Facility User shall not alter the plumbing or wiring or install heating generating equipment without advance District approval of the location of and manner of installation.
7. **Exterior Signs and Devices** – No signs, awnings, antennas, or other apparatus shall be painted on or attached to the exterior of the Premises, common areas, or elsewhere on any property of the District, nor shall anything be placed on any window or positioned so as to be visible from outside the Premises by Facility User, without prior written approval of the District.
8. **Utilities and Services** – District will furnish power, central heating & cooling, and network connectivity to Facility User during the hours of permitted use. Interruption of these services shall not be deemed to constitute a material disturbance of Facility User’s use and possession of the Premises, shall not render the District liable to Facility User for damages, and shall not relieve Facility User from performance of Facility User’s obligations under this Agreement. Facility User shall be responsible for individual POTS lines for their exclusive use and provide its own surge protection for power furnished to the Premises.

9. **Maintenance and Repair** – District will provide daily janitorial service for Premises. District will maintain interior walls, floors, ceilings, light fixtures, doors, windows and related hardware, within reasonable wear and tear. Repair of damage to the Premises, the Building, or other property of District caused by any negligent or intentional acts or breach of this Agreement by Facility User, its employees, or invitees, shall be at Facility User's expense. District may erect scaffolding and other apparatus necessary for maintenance and repair. District shall have no liability for interference with Facility User's use because of maintenance and repair. Under no circumstances shall Facility User shall have a claim against District for any interruption or interference with Facility User's occupancy of Premises.

Exceptions: Janitorial services will not be provided on District furlough days or during the summer break period. Facility User may request janitorial services during these periods but will be billed, in addition to Usage Fee, the overtime rate of District janitorial staff for such services.

10. **Improvements** – Provided that District gives advance written approval therefor, Facility User may, at its expense, make such improvements to the Premises as may be reasonably necessary from time to time for its operations. Improvements include, but are not limited to: changing the color of the interior, installing or removing any wall, and modifying floor coverings.
11. **Access** – District authorized staff shall have the right to enter the Premises at any time to determine Facility User's compliance with this Agreement and to perform necessary services, maintenance and repairs or alterations to the Premises. Except in case of emergency, such entry shall be upon one calendar day's advance notice and at such times and in such manner as to minimize interference with the reasonable use of the Premises by Facility User. Facility User will be provided with electronic access cards for Premises and must report the loss of such cards immediately to District. District will program electronic access of facility entrance to coincide with the authorized Premises Use hours.
12. **Compliance with Laws** – Facility User shall substantially comply with all applicable laws relating to its possession and use of the Premises.
13. **Hazardous Substances** – Facility User shall be responsible for the control, use and appropriate disposal of hazardous substances necessarily incurred in Facility User's health clinic operations. Facility User shall defend, indemnify and hold District harmless from any and all claims threatened or made in any way related to hazardous substances attributable to Facility User.
14. **Insurance** – Facility User shall carry at all times during the Term of the Agreement, at its own cost or self-insured fund (in such an amount that is acceptable to District), comprehensive liability insurance in an amount not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate. Such insurance or self-insurance shall cover all risks arising directly or indirectly out of Facility User's use of Premises. A certificate of insurance bearing such endorsements is required prior to Start Date of this Agreement. Government entity Facility Users may self-insure to provide equivalent coverage. During the term of this contract, District shall maintain in force, at its own expense, comprehensive liability insurance in an amount not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate.

15. **Security** – While limited intrusion security is provided for Premises, District shall have no obligation to provide additional security services or measures to Facility User, its employees, officers, agents, clients, or guests, and under no circumstances will the District be deemed liable for any personal injuries or property damage related to breach of Premises security. Facility User will cooperate with security measures established by District.
16. **Regulations** – District shall have the right, but shall not be obligated, to make, revise, and enforce regulations or policies consistent with this Agreement for the purpose of promoting safety, health, order, harmony, economy, cleanliness, and good service to all permissive users of the campus in which Premises are located. All such regulations and policies shall be complied with as if part of this Agreement.
17. **Default** – Any of the following shall constitute a default by Facility User under this Agreement:
 - 1) Facility User's failure to pay Usage Fee or any other charges under this agreement within 5 days after due, 2) failure to comply with any other term or condition within 10 days of written notice from District specifying the noncompliance, 3) Facility User's insolvency or assignment for the benefit of creditors, 4) Facility User's commencement of proceedings under any provision of bankruptcy or insolvency law or failure to obtain dismissal of any petition filed against it under such laws within the time required to answer or the appointment of a receiver for all or any portion of District properties or financial records, 5) vacating or abandoning the Premises, or 6) disturbing the quiet enjoyment of the campus, as District may determine in its sole discretion, which is the grounds for immediate termination.
18. **Remedies** – In case of default, District shall have the right to the following remedies which are intended to be cumulative in addition to any other remedies provided under applicable law:
 - 1) District may terminate the Agreement without notice to Facility User, 2) District may take exclusive possession of the Premises and may make use thereof without accepting surrender or waiving the right to damages 3) District may recover all damages caused by Facility User default, 4) District may make any payment or perform any obligation which Facility User has failed to perform, in which case District shall be entitled to recover from Facility User upon demand all amounts so expended, plus interest from the date of the expenditure at the rate of five (5.00%) percent each month, which rate shall apply to any past due Usage Fees.
19. **Surrender** - On termination of this Agreement, Facility User shall deliver all keys and all access cards to District and surrender the Premises vacuumed, swept, and free of debris and in the same condition as at the commencement of the Term, subject only to reasonable wear and tear from ordinary use. Facility User shall remove all of its furnishings and trade fixtures that remain its property and repair all damage resulting from such removal. Failure to remove shall be deemed an abandonment of the property, and District may dispose of it in any manner without liability. If Facility User fails to vacate the Premises when required, including failure to remove all of its personal property, the hold-over Usage Fee rate shall be one and one-half times the total Usage Fee being charged when the right to occupy expires.
20. **Indemnification** – Within the liability limits stated in the Oregon Tort Claims Act, each party to this Agreement shall defend, indemnify and hold the other party harmless against all liability, loss, or expenses, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property to the extent caused by or resulting from any act, error or omission by the indemnifying party or its agents and employees in connection with the performance of this Agreement. The parties' liability under this contract is subject to the limitations of the Oregon Tort Claims Act.

21. **Assignment and Subletting** – Facility User may not assign this Agreement, or any of its rights hereunder, or attempt to sublet the Premises without District’s prior written consent, which the District may withhold at its sole discretion.
22. **Notices** – Notices between the parties relating to this Agreement shall be in writing, effective when delivered, or if mailed, effective on the second day following certified and first class mailing, postage prepaid, to the address for the party stated in this Agreement or to such other address either party may specify by notice to the other. Notice to Facility User shall be deemed adequate and effective immediately when hand-delivered to, or posted upon or within, the Premises. Usage Fee shall be payable to District at the same address and in the same manner, but shall be considered paid only when received.
23. This agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 1 O of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.
24. **Interpretation of this Agreement** – This Agreement shall be governed by the laws of the state of Oregon. If any provision of this Agreement is found invalid or unenforceable in any respect for any reason, the validity and enforceability of the remaining provisions of the Agreement shall not be diminished. Both District and Facility User have had the opportunity to have this Agreement reviewed and approved by attorneys of their own choosing, and therefore this Agreement shall be interpreted as having been drafted jointly by the parties hereto. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever. If the Facility User is a corporate entity, the person signing this Agreement hereby warrants that he/she is authorized to make this Agreement by the entity’s governing board. The exclusive venue for any disputes shall be in the Clackamas County Circuit Court.
25. **Entire Agreement** – This agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior written and oral agreements and representations and there are no implied covenants or other agreements between the parties except as expressly set forth in this Agreement. Neither District nor Facility User is relying on any representations other than those expressly set forth herein.

Facility User:

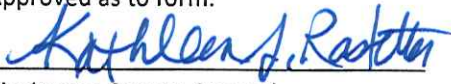
Clackamas County

By: _____

Title: _____

Date: _____

Approved as to form:



Clackamas County Counsel

5/17/17

Date

District:

Oregon Trail School District 46

Timothy Belanger

Director of Business Services

Date: _____

School Board Approved _____

June 22, 2017

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Renewal Intergovernmental Agreement with State of Oregon, Oregon Health Authority, for the Foodborne Illness Prevention Program

Purpose/Outcomes	This agreement allows the Public Health Division to provide complete environmental health food licensing and inspections to safeguard the health of residents in Clackamas County.
Dollar Amount and Fiscal Impact	The contract maximum value is \$\$625,790.00
Funding Source	Fee for Services - No County General Funds are involved.
Duration	Effective July 01, 2017 and terminates on June 30, 2023
Previous Board Action	The BCC approved the following items: FY 2015 – 2017 contract on July 09, 2015 agenda item 070915-A5.
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Contact Person	Dawn Emerick, Public Health Director – 503-655-8479
Contract No.	8351

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Agreement with State of Oregon, Oregon Health Authority for the Food Bourne Illness Prevention Program. This agreement allows CCPHD to provide complete environmental health food licensing and inspections to safeguard the health of residents in Clackamas County.

This Agreement is effective July 01, 2017 and continues through June 30, 2023. The contract was reviewed by County Counsel on June 12, 2017.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing, and Human Services

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

AGREEMENT # 154660-0

**OREGON HEALTH AUTHORITY
INTERGOVERNMENTAL AGREEMENT
FOR ENVIRONMENTAL HEALTH SERVICES**

This Agreement is between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and Clackamas County acting by and through its Health and Human Services Department, the Local Public Health Authority (“LPHA”), acting by and through its Health and Human Services Department, each a “Party” and together, the “Parties.”

SECTION 1. AUTHORITY

- ORS 446.310 to 446.350 establishes a state licensure program for tourist facilities.
- Upon request from a county, ORS 446.425 requires OHA to delegate to the county board of commissioners any of the duties and functions of the director under ORS 446.310, 446.320, 446.330 to 446.340, 446.345, 446.350 and 446.990 if OHA determines that the county is able to carry out the rules of OHA relating to fee collection, inspections, enforcement and issuance and revocation of permits and licenses in compliance with standards for enforcement by the counties and monitoring by OHA.
- ORS 448.005 to 448.090 establishes a state licensure program for pool facilities.
- Upon request from a county, ORS 446.100 requires OHA to delegate to the county board of commissioners any of the duties and functions of the director under ORS 448.005, 448.011, 448.020 to 448.035, 448.040 to 448.060 and ORS 448.100 if OHA determines that the county is able to carry out the rules of OHA relating to fee collection, licensing, inspections, enforcement and issuance and revocation of permits and certificates in compliance with standards for enforcement by the counties and monitoring by OHA.
- ORS 624.010 to 624.121 establishes a state licensure program for restaurants and bed and breakfast facilities.
- ORS 624.310 to 624.340 establishes a state licensure program for commissaries, mobile units, warehouse and vending machines.
- ORS 624.510 requires OHA to enter into this Agreement with a LPHA delegating to the LPHA the administration and enforcement within the jurisdiction of the LPHA of the powers, duties and functions of the OHA director under ORS 624.010 to 624.121, 624.310 to 624.430, 624.650 and 624.992. This Agreement must describe the powers, duties and functions of the local public health authority relating to

fee collection, licensing, inspections, enforcement, civil penalties and issuance and revocation of permits and certificates, standards for enforcement by the LPHA and the monitoring to be performed by the OHA.

SECTION 2. PURPOSE

The purposes of this Agreement are:

- For OHA to delegate responsibility to LPHA for carrying out these programs:
 - The tourist facility program in ORS 446.310 to 446.350 pursuant to ORS 446.425(1);
 - The pool facility program in ORS 448.005 to 448.090 pursuant to ORS 448.100(1); and
 - The restaurant, bed and breakfast facility, commissary, mobile unit, warehouse and vending machine licensing programs in ORS 624.010 to 624.121, 624.310 to 624.430, 624.650 and 624.992 pursuant to ORS 624.510(1).
- To establish the duties, standards and responsibilities of the LPHA in carrying out the delegated duties.
- To establish OHA’s duties and responsibilities under this Agreement to enable the LPHA to meet the requirements of the delegation and to provide for OHA’s review and monitoring of the county’s performance.

SECTION 3. EFFECTIVE DATE

This Agreement shall become effective on the date this Agreement has been fully executed by each Party and, when required, approved by Department of Justice or on **July 1, 2017**, whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2023**. Agreement termination or expiration shall not extinguish or prejudice either Party’s right to enforce this Agreement with respect to any default by the other Party that has not been cured.

This Agreement supersedes and replaces any previous delegations of authority under ORS 446.425, 448.100, and 624.510.

SECTION 4. AUTHORIZED REPRESENTATIVES

4.1 AGENCY’S AUTHORIZED REPRESENTATIVE IS:

Name: Jere High
Title: Administrator, Center for Health Protection
Date: 5/10/17
Phone: (971) 673-0403
Email: Jere.high@state.or.us

4.2 COUNTY’S AUTHORIZED REPRESENTATIVE IS:

Name: _____
Title: _____
Date: _____
Phone: _____
Email: _____

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

SECTION 5. DEFINITIONS

- “CLEHS” means the Conference of Local Environmental Health Supervisors.
- “FIPP” means the Foodborne Illness Prevention Program.

SECTION 6. LPHA RESPONSIBILITIES

LPHA accepts OHA’s delegation of authority to carry out the following programs:

- Tourist facility program in ORS 446.310 to 446.350 and 446.990;
- Pool facility program in ORS 448.005 to 448.090; and
- Restaurant, bed and breakfast facility, commissary, mobile unit, warehouses and vending machine licensing programs in ORS 624.010 to 624.121, 624.310 to 624.430, 624.650 and 624.992.

Pursuant to OHA’s delegation of authority, LPHA shall:

- 6.1 Carry out the statutes and rules of OHA relating to fee collection, inspections, enforcement and issuance and revocation of permits and licenses in compliance with standards for enforcement in ORS 446.310 to 446.350 and 446.990, ORS 448.005 to 448.090, ORS 624.010 to 624.121, 624.310 to 624.430, 624.650 and 624.992, OAR 333, Divisions 12, 29 to 31, 60, 62, 150, 157, 158, 160, 162, 170, and 175.
- 6.2 Not later than thirty (30) days following receipt of an invoice from OHA, remit the following licensing fees to OHA:
 - For the tourist facility program, fifteen percent (15 %) of the state licensing fee or fifteen percent (15 %) of the county licensing whichever is less collected by county that quarter, in accordance with ORS 446.425;
 - For the pool facility program, in the amount of \$45, for each license issued by the LPHA in that quarter under ORS 448.035 or such other amount agreed upon by the parties;
 - For the restaurant, bed and breakfast facility, commissary, mobile unit and warehouse licensing programs, a predetermined percentage of licensing revenue. For each biennium, this amount is determined by dividing OHA’s food program costs by the total projected statewide licensing revenue. Statewide revenue is calculated using marker fees set forth in ORS 624.490. The projected food program cost for the 2017-2019 biennium is \$1,537,673. This figure is reduced by existing funds in the food program account (\$350,000). The total projected licensing revenue for all LPHAs for the 2017-19 biennium is \$10,913,165. $(\$1,537,673 - \$350,000) / \$10,913,165 = 10.88\%$.
 - For the final invoice of a given fiscal year, LPHA may request an invoice in advance of the actual due date and pay the required licensing fees in advance.
- 6.3 Provide to OHA’s Agreement Administrator with each remittance a written summary report that:
 - Describes all work performed with particularity and by whom it was performed;
 - Itemizes and explains each remittance category contained in the report; and
 - Includes the total amount remitted to date by LPHA prior to the current remittance.

SECTION 7. OHA RESPONSIBILITIES

OHA hereby delegates authority to administer the following programs to the LPHA:

- The tourist facility programs in accordance with 446.425;
- The pool facility program in accordance with 448.100(1); and
- The restaurant, bed and breakfast facility, commissary, mobile unit and vending machine licensing programs to the LPHA in accordance with ORS 624.510.

To enable LPHA to carry out its delegated duties under this agreement, OHA shall:

- 7.1 Provide training to LPHA staff including at least one annual conference relating to the food, pool and lodging programs and one in-person regional meeting. OHA will cover the costs for these meetings such as registration, room rental, food and beverages, and speaker fees but will not cover LPHA staff travel expenses (e.g. lodging, mileage, per diem beyond meals provided, etc.).
- 7.2 Provide a statewide computer licensing and inspection program and database for use by LPHA's. OHA will provide support and technical assistance to users of the system. OHA will develop a communication protocol to provide direction on how to request support and technical assistance from contract vendors or FIPP staff.
- 7.3 Provide at no cost, printed materials required in statute or rule that are necessary to implement the programs and are listed on OHA General Requisition for 34-00A, such as but not limited to handwashing placards, compliance stickers, inspection forms, closure orders and license applications. OHA will consult with the CLEHS to determine additional printing needs.
- 7.4 Ensure access to electronic versions of the administrative rules, food handlers manuals and other educational materials.
- 7.5 Work with the CLEHS, using the Four-Factor Analysis adopted by the federal Department of Health and Human Services to determine which forms and documents need to be translated into Spanish, and which forms and documents will be provided to the LPHA in printed form.

In addition, work with CLEHS using the following Four Factor analysis to determine which forms and documents need to be translated into other languages and applicable timelines. The Four Factors are:

- The number or proportion of limited English proficiency (LEP) persons eligible to be served or likely to be encountered by the LPHA;
- The frequency with which LEP individuals come into contact with the LPHA's environmental health services program;
- The nature and importance of the program, activity or service provided by the LPHA to its beneficiaries; and
- The resources available to OHA and the costs of interpretation/translation services.

LPHA is responsible for translating and/or printing any materials in additional languages to meet their own local needs in compliance with any applicable federal standards.

- 7.6 Provide consultation and technical assistance to LPHA's to support implementation of the administrative rules and other laws enforced by LPHA under this Agreement relating to the food, pool and tourist facility programs.

- 7.7 Provide FIPP standardization and certificate of completion to at least one person in each LPHA as required in OAR 333-012-0060(3).
- 7.8 Provide training to LPHA staff on public pool plan review.
- 7.9 Provide public pool plan review and construction inspection services.
- 7.10 Provide LPHA with information relating to the status of variance applications within the LPHA's jurisdiction and communicate when necessary with LPHA's Environmental Health Supervisor if the status changes.
- 7.11 In September of each year, provide the LPHA with the FPLHS program budget and expenditures and provide a list of all county remittance fees for review at a regularly scheduled CLEHS meeting. Starting July 1, 2017, this information shall be provided on a quarterly basis. Starting July 1, 2019, and thereafter, this information shall be provided semi-annually. OHA will communicate the amount of the remittance fee by US Mail to the LPHA.
- .12 In March of each year convene a workgroup consisting of CLEHS representatives, a local public health administrator and food service industry members to review and provide recommendations for the Annual Foodborne Illness Prevention Program and Public Pool and Tourist Facility Program Plans. OHA staff shall provide the workgroup and CLEHS members with a report summarizing program activities from the previous year.
- 7.13 Consult with CLEHS prior to any substantive modification to the Annual Foodborne Illness Prevention Program and Public Pool and Tourist Facility Program Plans and, in a timely manner, consult with CLEHS regarding any other major changes to those programs that affect the LPHA, to the extent possible and feasible.
- 7.14 Provide personnel to LPHA to perform inspection services in the case of an emergency.
- 7.15 Comply with applicable provisions of ORS 446.310 to 446.350 and 446.990, ORS 448.005 to 448.090, ORS 624.010 to 624.121, 624.310 to 624.430, 624.650 and 624.992, OAR 333, Divisions 12, 29 to 31, 60, 62, 150, 157, 158, 160, 162, 170, and 175.

SECTION 8. CONFLICT RESOLUTION

The Parties agree to meet, in person if possible, to discuss any conflict that arises between the Parties concerning this Agreement and to work in good faith to resolve the matter in a way that is mutually agreeable.

SECTION 9. REVIEW OF AGREEMENT

The Parties will review this Agreement every five years or sooner upon the agreement of both Parties.

SECTION 10. SUSPENSION AND TERMINATION

- 10.1 Either Party may terminate this Agreement upon 180 days written notice to the other Party.
- 10.2 OHA may terminate this Agreement in accordance with OAR 333-012-0070(6) to (8).
- 10.3. If the delegations in this Agreement are suspended or terminated the LPHA must return unexpended portion of the fees collected under ORS 446.425(2), 448.100(2) and 624.510(2) to OHA for carrying out the powers, duties and functions under ORS 446, 448 and 624.
- 10.4 The LPHA may terminate this Agreement if the LPHA requests a transfer of the LPHA's responsibilities to OHA in accordance with ORS 431.382, but such a termination does not take effect until 180 days after OHA receives the request.

- 10.5 Upon termination of this Agreement, LPHA shall have no further obligation to make remittance payments to OHA under this Agreement, except as specified in paragraph 10.3.
- 10.6 Any termination of this Agreement shall not prejudice any obligations or liabilities of either Party accrued prior to such termination.

SECTION 11. AMENDMENTS

- 11.1 The terms of this Agreement may not be waived, altered, modified, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement of the Parties.
- 11.2 This Agreement must be amended if the percentages or formulas for remittance in Section 6.2 change.

SECTION 12. NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to a Party's Authorized Representative at the address or number set forth in this Agreement, or to such other addresses or numbers as a Party may indicate pursuant to this section.

SECTION 13. SURVIVAL

All rights and obligations shall cease upon termination of this Agreement, except for those rights and obligations that by their nature or express terms survive termination of this Agreement. Termination shall not prejudice any rights or obligations accrued to the Parties prior to termination.

SECTION 14. SEVERABILITY

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

SECTION 15. COUNTERPARTS

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

SECTION 16. LIABILITY AND INSURANCE

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

SECTION 17. DAS REPORTING REQUIREMENT

The Parties agree that OHA shall be the Reporting Party for purposes of ORS 190.115, Summaries of Agreements of State Agencies. OHA shall submit a summary of this Agreement to the Oregon Department of Administrative Services through the electronic Oregon Procurement Information Network (ORPIN), within the 30-day period immediately following the Effective Date of the Agreement.

SECTION 18. RECORDS

The Parties shall create and maintain records documenting their performance under this Agreement. The Oregon Secretary of State’s Office, the federal government, the other Party, and their duly authorized representatives shall have access to the books, documents, papers, and records of a Party that are directly related to this Agreement for the purposes of making audit, examination, excerpts, and transcripts for a period of six years after termination of this Agreement.

SECTION 19. NO THIRD PARTY BENEFICIARIES

OHA and LPHA are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

SECTION 20. MERGER, WAIVER AND MODIFICATION

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

SECTION 21. SUBCONTRACTS AND ASSIGNMENT

- 21.1 Neither Party may enter into any subcontracts for the performance of any of its obligations under this Agreement, without the prior written consent of the other Party.
- 21.2 Neither Party may assign, delegate or transfer any of its rights or obligations under this Agreement, without the prior written consent of the other Party.

SECTION 22. INDEMNIFICATION BY SUBCONTRACTORS.

LPHA shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of LPHA’s contractor or any of the officers, agents, employees or subcontractors of the contractor (“Claims”). It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

SECTION 23. ADDITIONAL PROVISIONS

23.1 Vendor or Sub-Recipient Determination.

In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.102, OHA’s determination is that:

LPHA is a sub-recipient LPHA is a vendor Not applicable

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: _____

23.2 LPHA Data and Certification.

- a. LPHA Information. LPHA shall provide information set forth below. This information is requested pursuant to ORS 305.385.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

LPHA Name (exactly as filed with the IRS):

Street address:

City, state, zip code:

Email address:

Telephone:

()

Facsimile:

()

Federal Employer Identification Number:

Proof of Insurance:

Workers' Compensation Insurance Company:

Policy #:

Expiration Date:

The above information must be provided prior to Agreement approval. LPHA shall provide proof of Insurance upon request by OHA or OHA designee.

- b. Certification. The LPHA acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the LPHA and that pertains to this Agreement or to the project for which the Agreement work is being performed. The LPHA certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. LPHA further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the LPHA. Without limiting the generality of the foregoing, by signature on this Agreement, the LPHA hereby certifies that:

- (1) The information shown in this Section 23.2., LPHA Data and Certification, is LPHA's true, accurate and correct information;
- (2) To the best of the undersigned's knowledge, LPHA has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- (3) LPHA and LPHA's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- (4) LPHA is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" found at: <https://www.sam.gov/portal/public/SAM/>; and
- (5) LPHA is not subject to backup withholding because:
 - (a) LPHA is exempt from backup withholding;

- (b) LPHA has not been notified by the IRS that LPHA is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified LPHA that LPHA is no longer subject to backup withholding.
- c. LPHA is required to provide its Federal Employer Identification Number (FEIN). By LPHA's signature on this Agreement, LPHA hereby certifies that the FEIN provided to OHA is true and accurate. If this information changes, LPHA is also required to provide OHA with the new FEIN within 10 days.

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

6. Signatures.

Clackamas County acting by and through its Health and Human Services Department

By:

Authorized Signature

Title

Date

State of Oregon, acting by and through its Oregon Health Authority pursuant to ORS 190

By:

Authorized Signature

Title

Date

Approved for Legal Sufficiency:

Shannon Ofallon, Assistant Attorney General

Assistant Attorney General

Date

OHA Program Representative:

Authorized Signature

Title

Date

June 22, 2017

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the State of Oregon,
acting by and through its Oregon Health Authority for Operation as the
Local Public Health Authority for Clackamas County

Purpose/Outcomes	Represents the base funding for public health programs in Clackamas County.
Dollar Amount and Fiscal Impact	Contract maximum value is \$2,236,526.
Funding Source	No County General Funds are involved.
Duration	Effective July 01, 2017 and terminates on June 30, 2019
Previous Board Action	The Board last reviewed and approved this agreement on July 09, 2015, Agenda item 070915A8
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Contact Person	Dawn Emerick, Public Health Director – (503) 655-8479
Contract No.	8327

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Agreement with State of Oregon, Oregon Health Authority. This renewal agreement represents the base funding for public health programs in Clackamas County. It allows the Clackamas County Public Health Division (CCPHD) to provide public health related services to Clackamas County residents, such as, HIV Prevention Services, Tobacco Prevention and Education, City Readiness Initiative, and Women’s, Infants, and Children (WIC) Program.

This contract is effective July 1, 2017 and continues through June 30, 2019. This contract has been reviewed by County Counsel on June 13, 2017.

RECOMMENDATION:

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

Respectfully submitted,

Richard Swift, Director
Health, Housing, and Human Services

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice), or 503-378-3523 (TTY) to arrange for the alternative format.

AGREEMENT #154103

**2017-2019 INTERGOVERNMENTAL AGREEMENT
FOR THE FINANCING OF PUBLIC HEALTH SERVICES**

This 2017-19 Intergovernmental Agreement for the Financing of Public Health Services (the “Agreement”) is between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and Clackamas County Health, Housing, and Human Services, the entity designated, pursuant to ORS 431.003, as the Local Public Health Authority for Clackamas County (“LPHA”).

RECITALS

WHEREAS, ORS 431.110, 431.115 and 431.413 authorizes OHA and LPHA to collaborate and cooperate in providing for basic public health services in the state, and in maintaining and improving public health services through county or district administered public health programs;

WHEREAS, ORS 431.250 and 431.380 authorize OHA to receive and disburse funds made available for public health purposes;

WHEREAS, LPHA has established and proposes, during the term of this Agreement, to operate or contract for the operation of public health programs in accordance with the policies, procedures, and administrative rules of OHA;

WHEREAS, LPHA has requested financial assistance from OHA to operate or contract for the operation of LPHA’s public health programs;

WHEREAS, OHA is willing, upon the terms and conditions of this Agreement, to provide financial assistance to LPHA to operate or contract for the operation of LPHA’s public health programs.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **Effective Date and Duration.** This Agreement shall become effective on **July 1, 2017**. Unless terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2019**.
2. **Agreement Documents, Order of Precedence.** This Agreement consists of the following documents:

This Agreement without Exhibits

- [Exhibit A Definitions](#)
- [Exhibit B Program Element Descriptions](#)
- [Exhibit C Financial Assistance Award and Revenue and Expenditure Reporting Forms](#)
- [Exhibit D Special Terms and Conditions](#)
- [Exhibit E General Terms and Conditions](#)
- [Exhibit F Standard Terms and Conditions](#)
- [Exhibit G Required Federal Terms and Conditions](#)
- [Exhibit H Required Provider Contract Provisions](#)
- [Exhibit I Provider Insurance Requirements](#)
- [Exhibit J Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200](#)

OHA - 2017-2019 INTERGOVERNMENTAL AGREEMENT - FOR THE FINANCING OF PUBLIC HEALTH SERVICES

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibit G, Exhibit A, Exhibit C, Exhibit D, Exhibit B, Exhibit F, Exhibit E, Exhibit H, Exhibit I, and Exhibit J.

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

3. SIGNATURES.

State of Oregon, acting by and through its Oregon Health Authority

By: _____
Name: _____
Title: _____
Date: _____

CLACKAMAS COUNTY LOCAL PUBLIC HEALTH AUTHORITY

By: _____
Name: _____
Title: _____
Date: _____

DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY

Agreement form group-approved by D. Kevin Carlson, Assistant Attorney General, Tax and Finance Section, General Counsel Division, Oregon Department of Justice by email on May 19, 2017, copy of email approval in Agreement file.

REVIEWED:

OHA PUBLIC HEALTH ADMINISTRATION

Reviewed by: _____
Name: _____
Title: _____
Date: _____



GEORGE MARLTON, JD
PROCUREMENT DIVISION DIRECTOR

PROCUREMENT DIVISION

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Authorization to Purchase a Gradall 3100XL Excavator for the
Department of Transportation Maintenance Division**

Purpose / Outcome	Approval to purchase a 2017 Gradall 3100XL Excavator to replace vehicle 547, which is nearing the end of its usable life.
Dollar Amount and Fiscal Impact	\$332,584.05
Funding Source	Department of Transportation Maintenance Division Budget 215-7433-00-485520
Duration	June 30, 2017
Previous Board Action/Review	n/a
Strategic Plan Alignment	Build a strong Infrastructure with continued overall road maintenance.
Contact Person	Randy Harmon, Transportation Operations Manager, 503-650-3246

Background:

Transportation Maintenance Division is requesting the purchase of a 2017 Gradall 3100XL Excavator to replace vehicle 547, which is nearing the end of its usable life. The Gradall Excavator will be used for shoulder maintenance, ditching, and other general road maintenance activities.

Approval of the purchase is being requested under the Local Contract Review Board Rule C-046-0400, Authority of Cooperative Procurements. The purchase will be made off cooperative contract #031014-GRD with National Joint Powers Alliance (NJPA) through Pape Machinery of Portland. A notice of intent to purchase a Gradall 3100XL Excavator was issued on June 05, 2017. No comments were received by the time of closing on June 12, 2017.

Recommendation:

Staff recommends the Board of County Commissioners approve this purchase.

Sincerely

Ryan Rice
Clackamas County Procurement

Placed on the Board Agenda of June 22, 2017 by the Procurement Division.



MARC GONZALES
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution for Clackamas County for Budgeting of
New Specific Purpose Revenue for Fiscal Year 2016-2017

Purpose/Outcome	Budget change for Clackamas County FY 2016-2017
Dollar Amount and Fiscal Impact	The effect is an increase in appropriations of \$294,241.
Funding Source	Includes Federal and State Operating Grant Revenues, Local Government and Other Agencies, Charge for Services and Miscellaneous Revenue
Duration	July 1, 2016-June 30, 2017
Previous Board Action/Review	Budget Adopted June 29, 2016 and revised August 18, November 3, December 20, 2016, March 30 and April 27, 2017
Strategic Plan Alignment	Build public trust through good government
Contact Person	Diane Padilla, 503-742-5425

BACKGROUND:

Each fiscal year it is necessary to appropriate additional expenditures and allocate additional sources of revenue to more accurately meet the changing requirements of the operating departments of the County. The attached resolution reflects those changes that departments have requested which pursuant to O.R.S. 294.338, qualify as grants in trust for specific purposes in keeping with legally accurate budget.

The Children, Youth and Families Fund is recognizing revenue from the Oregon Department of Education and budgeting for program costs for Healthy Families.

The Public Health Fund is recognizing additional revenue from Reproductive Health/Family Planning and Sustainable Relationships with Community Health programs and budgeting it for program costs and to better align special payment costs with programs.

The effect of this Board Order is an increase in appropriations of \$294,241 including new revenues as detailed below:

Federal Operating Grant Revenue	\$ 110,623.
State Operating Grant Revenue	187,560.
Local Government and Other Agencies	14,958.
Charge for Services	(22,246.)
Miscellaneous Revenue	<u>3,346.</u>
Total Recommended	<u>\$ 294,241.</u>

RECOMMENDATION:

Staff respectfully recommends adoption of the attached Resolution Order and Exhibit A in keeping with a legally accurate budget.

Sincerely,

Diane Padilla
Budget Manager

In the Matter of Providing
Authorization to Appropriate Grants
For Specific Purposes within the Fiscal
Year 2016-17

Resolution No.

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased or transferred from one appropriation category to another;

WHEREAS, appropriation of grants entrusted for specific purposes within Clackamas County budget for the period of July 1, 2016 through June 30, 2017, inclusive is necessary to authorize the expenditure of funds, for the needs of Clackamas County residents;

WHEREAS; the fund being adjusted is:

- . Children, Youth and Families Fund
- . Public Health Fund;

It further appearing that it is in the best interest of the County to approve these grants entrusted for specific purpose of appropriations for the period of July 1, 2016 through June 30, 2017.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Pursuant to its authority under OR 294.338, appropriation of specific purpose grants is authorized as shown in the attached Exhibit A which by this reference is made a part of this Resolution.

Dated this ____ day of _____, 2017

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

NEW SPECIFIC PURPOSE REVENUE REQUESTS

Exhibit A June 22, 2017

Recommended items by revenue source:

Federal Operating Grants	\$ 110,623
State Operating Grants	187,560
Local Government and Other Agencies	14,958
Charge for Services	(22,246)
Miscellaneous Revenue	3,346
Total Recommended	<u>\$ 294,241</u>

CHILDREN, YOUTH & FAMILIES FUND

Revenues:

State Operating Grants	\$ 187,560
Total Revenue	<u>\$ 187,560</u>

Expenses:

Health and Human Services	\$ 233,900
Not Allocated to Organizational Unit	
Special Payments	(46,340)
Total Expenditures	<u>\$ 187,560</u>

Children, Youth and Families Fund is recognizing revenue from the Oregon Department of Education and budgeting for program costs for Healthy Families.

PUBLIC HEALTH FUND

Revenues:

Federal Operating Grants	\$ 110,623
Local Government and Other Agencies	14,958
Charge for Services	(22,246)
Miscellaneous Revenue	3,346
Total Revenue	<u>\$ 106,681</u>

Expenses:

Health and Human Services	\$ (48,019)
Not Allocated to Organizational Unit	
Special Payments	154,700
Total Expenditures	<u>\$ 106,681</u>

Public Health Fund is recognizing additional revenue from Reproductive Health/Family Planning and Sustainable Relationships with Community Health programs and budgeting it for program costs and to better align special payment costs with programs.



June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution for Clackamas County for
Transfer of Appropriations for Fiscal Year 2016-2017

Purpose/Outcome	Budget change FY 2016-2017
Dollar Amount and Fiscal Impact	No fiscal impact. Transfer of existing appropriations.
Funding Source	Includes Interfund Transfers
Duration	July 1, 2016-June 30, 2017
Previous Board Action/Review	Budget Adopted June 29, 2016 and revised August 18, September 29, December 20, March 30 and April 27, 2017
Strategic Plan Alignment	Build public trust through good government
Contact Person	Diane Padilla, 503-742-5425

BACKGROUND: Periodically during the fiscal year it is necessary to transfer appropriations to more accurately reflect the changing requirements of the operating departments.

Transfers are a method of moving budgeted appropriations during the fiscal year as required by state budget law per ORS 294.463. There is no financial impact incurred as a result of transfers as appropriations for these amounts have been accomplished through the initial budget process.

The attached resolution accomplishes the above mentioned changes as requested by the following operating departments in keeping with a legally accurate budget.

The County Fair Fund and transferring from contingency and budgeting for repairs needed for the Rodeo Tower at the fairgrounds.

The Road Fund is transferring from contingency and budgeting an interfund transfer to DTD Capital Projects Fund.

The Forest Management Fund is transferring from contingency to cover unanticipated potential capital improvement expenditures.

RECOMMENDATION:

Staff respectfully recommends adoption of the attached Resolution Order and Exhibit A in keeping with a legally accurate budget.

Sincerely,

Diane Padilla-Budget Manager

In the Matter of Providing Authorization
To Transfer Appropriations Within
the Fiscal Year 2016-17

Resolution No.

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased or transferred from appropriation category to another;

WHEREAS, transfer of appropriations for the period of July 1, 2016 through June 30, 2017, inclusive is necessary to continue to prudently manage the distribution of those expenditures for the needs of Clackamas County residents;

WHEREAS; the funds being adjusted are:

- . County Fair Fund
- . Road Fund
- . Forest Management Fund;

It further appearing that it is in the best interest of the County to approve this transfer of appropriations for the period of July 1, 2016 through June 30, 2017.

BE RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Pursuant to its authority under OR 294.463, transfer of appropriation within the fiscal year budget is authorized as shown in the attached Exhibit A which by this reference is made a part of this Resolution.

Dated this ____ day of _____, 2017

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

TRANSFER REQUEST
Exhibit A
June 22, 2017

COUNTY FAIR FUND

Expenses:	
Culture, Education and Recreation	\$ 50,000
Not Allocated to Organizational Unit	
Contingency	(50,000)
Total Expenditures	<u>\$ -</u>

The County Fair Fund and transferring from contingency and budgeting for repairs needed for the Rodeo Tower at the fairgrounds.

ROAD FUND

Expenses:	
Public Ways and Facilities	
Not Allocated to Organizational Unit	
Interfund Transfers	\$ 3,500,000
Contingency	(3,500,000)
Total Expenditures	<u>\$ -</u>

Road Fund is transferring from contingency and budgeting an interfund transfer to DTD Capital Projects Fund.

FOREST MANAGEMENT FUND

Expenses:	
Culture, Education and Recreation	\$ 50,000
Not Allocated to Organizational Unit	
Contingency	(50,000)
Total Expenditures	<u>\$ -</u>

Forest Management Fund is transferring from contingency to cover unanticipated potential capital improvement expenditures.



MARC GONZALES
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Contract Amendment and Extension with Moss Adams LLP for
Annual Audit Services

Purpose/Outcome	Annual Financial Audits Required By ORS 297.425
Dollar Amount and fiscal Impact	The contract is not to exceed \$1,436,500.00.
Funding Source	Funded by cost allocation through the Finance Dept budget and other sources of funding for the respective component units of government.
Duration	4 years, through April 30, 2021
Previous Board Action/Review	06092016E.1 Approval of original contract with the option to renew through 2021.
Strategic Plan Alignment	This aligns with Performance Clackamas goals of building public trust through good government by demonstrating that the County is compliant with statutorily required audit processes.
Contact Person	Christa Bosserman-Wolfe, 503-742-5407
Contract No.	N/A

BACKGROUND:

Each year, Clackamas County and its component units of government are required by ORS 297.425 to undergo an annual financial audit and submit the reports to Oregon Secretary of State Audits Division. The County utilized a Request for Proposal process closing March 3, 2016 to select the provider most qualified to provide audit services. From the three (3) responsive bidders, through an evaluation process, Moss Adams, LLP was the one determined to best meet the needs of the County for this project.

This contract amendment extends the contract with Moss Adams, LLP until the end of the allowable contract extension approved by the Board of County Commissioners on June 9, 2016. Executing all remaining terms of the contract is a matter of efficiency, saving County time and resources, rather than continuing to execute one year at a time.

This contract has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board approve the contract amendment and extension with Moss Adams LLP for Annual Financial Audit Services.

Respectfully submitted,

Marc Gonzales, Finance Director



CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between Moss Adams LLP ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County").

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on April 30, 2021. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: Annual Finance Audit Services ("Work"), further described in Exhibit A.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed \$1,436,500.00 for the term, for accomplishing the Work required by this Contract. Annual payments to Contractor shall be made in accordance with the schedule and requirements in Exhibit A.

4. Travel and Other Expense. Authorized: [] Yes [x] No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html. Travel expense reimbursement is not in excess of the not to exceed consideration.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibits A, B, C and D.

6. Contractor Data.

Address: 975 Oak Street, Suite 500, Eugene, Oregon 97401

Contractor Contract Administrator: Kevin Mullerleile

Phone No.: (541) 225-6022

Email: kevin.mullerleile@mossadams.com

MWESB Certification: [] DBE # [] MBE # [] WBE # [] ESB #

Payment information will be reported to the Internal Revenue Service ("IRS") under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts, provided such books, documents, papers and records shall not include Contractor's audit workpapers. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** (A) Indemnification. To the extent the Contractor is negligent, the Contractor shall indemnify, hold harmless and defend the County, its officers, elected officials, agents, and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the negligent acts, errors, omissions, or fault of the Contractor or the Contractor's employees or agents. (B) Damages to the County. Contractor shall be responsible to the County for all losses and damages to the County arising out of or based upon damage or injuries to County personnel or County property to the extent caused by the negligent acts, errors, omissions, or fault of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, 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); and (C) 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 ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. **INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies are to be issued by an insurance company authorized to do business in the State of Oregon.
11. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B) neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. 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.

12. **NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal

delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us, or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. OWNERSHIP OF WORK PRODUCT. All final audit reports and other completed deliverables of Contractor that results from this Contract and are provided to the County, excluding any Contractor Material (defined below) contained or embodied therein (the "Work Product"), is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author for copyright purposes. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Notwithstanding the foregoing, the County may not alter or modify any audit report issued under Contractor's name, and County's use of the Work Product shall be in conformance with any restrictions set forth herein or otherwise agreed by the parties. Contractor may retain a copy of Work Product for archival purposes.

Contractor shall own its working papers and any engagement documentation and accounting-related general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, materials or other intellectual property which may have been discovered, created, received, developed or derived by Contractor either prior to or as a result of providing services under the Contract (collectively, "Contractor Materials"). County shall have a non-exclusive, non-transferable license to use Contractor Materials for its own internal use and only for the purposes for which they are delivered to the extent they form part of a Work Product. Notwithstanding anything to the contrary in this Contract, Contractor and its personnel are free to use and employ their general skills, know how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of this Contract so long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information of County.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided. For avoidance of doubt, breach of the foregoing warranties shall not give rise to a claim for implied or equitable indemnification.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations which by their nature survive the termination or expiration of this Contract, including those set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.

16. SEVERABILITY If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and

provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

17. SUBCONTRACTS AND ASSIGNMENTS. Contractor may utilize Smith-Wagar Brucker Consulting, LLC as a subcontractor when performing the Work required by this Contract. Contractor shall not enter into any other subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

18. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Section 19 of the Contract, including but not limited to direct indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;

(B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATIONS. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding

source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice; or (E) Contractor may terminate this Contract for cause upon thirty (30) days' written notice to the County if the County fails to cure within the thirty days.

21. REMEDIES. (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving or issuing a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless the parties mutually agree otherwise.

22. NO THIRD PARTY BENEFICIARIES. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

23. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance this Contract.

24. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

26. WAIVER. The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

27. COMPLIANCE. 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:

(A) Contractor shall: (i) 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; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.

(B) 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 to the Contractor by reason of this Contract.

(C) 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.

(D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of 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.

28. CONFIDENTIALITY. Contractor acknowledges that it and its employees, subcontractors and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees, subcontractors, or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person (other than its employees, subcontractors and agents), and that upon termination or expiration of this Contract or the County's request, Contractor will destroy all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Notwithstanding the foregoing, or anything to the contrary in this Contract, the parties acknowledge and agree that Contractor may retain complete workpapers supporting its audit services, and that such workpapers will constitute or contain documents, papers, records and other materials which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened

breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable and mutually agreed requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event, more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify, to the extent known: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information to the extent caused by its breach of its data security or confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

29. CRIMINAL BACKGROUND CHECK REQUIREMENTS. Contractor shall be required to have criminal background checks performed on all employees that perform services under this Contract (pre-employment background checks are sufficient). Only those employees that have met the acceptability standards of Contractor may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.

30. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Moss Adams LLP
975 Oak Street, Suite 500
Eugene, Oregon 97401

Clackamas County

 6/14/2017

Authorized Signature Date

Chair Date

James C. Lanzarotta, Partner

Name / Title (Printed)

Recording Secretary

712938-81

Oregon Business Registry #

Approved as to Form:

FLLP / WA

Entity Type / State of Formation

County Counsel Date

EXHIBIT A
PERSONAL/PROFESSIONAL SERVICES CONTRACT

SCOPE OF WORK

Audit services will include the following:

- The financial statements will be prepared to conform with generally accepted accounting principles (GAAP) of the United States of America and are to be in full compliance with the pronouncements of the Governmental Accounting Standards Board (GASB).
- Audits of the County's CAFR and its component units shall be made in accordance with auditing standards generally accepted in the United States of America, the Governmental Auditing Standards issued by the Comptroller General of the United States, and the Minimum Standards for Audits of Oregon Municipal Corporations. The auditor's opinion will be directed toward the fairness of presentation of the financial statements in accordance with GAAP. The auditor will also provide compliance reports as required under Federal and State laws.
- "Single Audits" covering the County's federal awards in accordance with the U. S. Office of Management and Budget (OMB) Title 2 CFR, Part 200, Subpart F, and related necessary reports pertaining to the County's internal control, compliance with applicable laws, regulations, grants and contracts, and the Schedule of Expenditures of Federal Awards.
- Management recommendations letters issued will be submitted annually for each audit and presented to the Audit Committee. The letters shall include any findings, observations, opinions, comments or recommendations relating to internal control, accounting systems, data processing, compliance with laws, rules, and regulations or any other matters that come to the attention of the independent auditor during the course of the audit.
- The County has been awarded the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting for twenty-two years through the fiscal year ended June 30, 2015. This affirms that the County's financial report not only complies with generally accepted accounting principles and applicable legal requirements but is also easy to read, efficiently organized and conforms to the award program standards. The County intends to annually submit its CAFR to the GFOA Certification program and to continue to receive the award. The County may require assistance from the Contractor relating to presentation or disclosure issues.
- IT review and recommendations letter of the County's technology environment will be submitted to management prior to the start of final audit fieldwork. The letter will include any findings, observations, and recommendations based on the review of the County's information systems and enterprise software.
- Contractor shall provide Auditees' staff up to eight (8) CPE credits of education and training each year that are accepted and approved by the Oregon Board of Accountancy.
- Contractor shall provide provisions for dealing with extraordinary circumstances discovered during the audit that may require an expansion of audit work beyond that in the audit plan. Additionally, the audit firm may be requested to perform special projects for the County or its component units during the year. Because of variations in the demand for additional services, such work will be contracted for, provided, and billed separately to the County on an hourly basis.

Planning Requirements

The scope of each audit should be planned so as to preclude the necessity for exceptions arising from scope limitations and should be sufficient to enable the auditor to issue management letters. The scope of the audits, as detailed in a formal audit plan, will be reviewed and approved by the County's Assistant Finance Director or designee in coordination with appropriate County component units and ancillary agency personnel.

Reporting Requirements

The reports are required as of the dates specified in the Timeline outlined below. Electronic versions in PDF format are to be made available upon issuance. These PDF documents must be created in a format that includes a linked table of contents and is word searchable. The Contractor must provide a minimum of 20 bound copies of the County's CAFR, Single Audit, and Report to the Audit Committee, in addition to the component unit financial statements. Other reports may be required.

Drafting Requirements

The audit firm will be requested to draft the Comprehensive Annual Financial Report for the following units:

- Clackamas County, Oregon – Must report independently
- Clackamas County Development Agency (CCDA), an urban renewal agency
- North Clackamas Parks and Recreation District (NCPRD)

This includes all financial statements, schedules, notes, and reports excluding only the Management Discussion and Analysis, the Transmittal Letter and the Statistical Section with the exception to data that is presented in the financial statements.

AUDIT CONTRACTS

Project Management

The County Assistant Finance Director or designee shall be copied on all correspondence and included in all meetings between the Contractor and County personnel. Entrance conferences shall be held to discuss timelines, planning, and fieldwork. The Assistant Finance Director or designee will require weekly progress meetings with the audit team in-charge and manager during the interim and fieldwork stages of the audits. Meetings during the planning, completion and reporting phases of the audits will be scheduled on an as-needed basis as determined by the Contractor and County. Exit conferences will be held with key audit firm personnel and County management at a mutually agreeable date. Audit firm management is requested to be present at any meetings of the Board of County Commissioners, Audit Committee, and other governing bodies when matters regarding the audit or related reports are discussed. Meetings with individual Commissioners, the County Administrator or other County managers may also be requested.

The County will provide auditors with reasonable workspace, desks, and chairs, in a work area with secure doors. The auditor will also be provided access to a telephone line, Internet, and County Financial System access, photocopying facilities and fax machines, with telephones being restricted to local calls only. Auditors will have access to County staff as required to perform audit functions. Arrangements should be made through the County Assistant Finance Director or designee.

Timeline

The Contractor will commence each audit at a mutually agreeable date as determined during the entrance conference to discuss timing between the Contractor, County Assistant Finance Director or designee, County Finance Manager, County Finance Director and appropriate County staff prior to the commencement of each annual audit. Management's scheduling preference of the work to be performed as follows:

Detailed audit plan, due to County Assistant Finance Director or designee for review no later than ten (10) days prior to the entrance conference.

Two to three weeks of interim financial statement fieldwork to include preliminary planning, analytical reviews, internal control and transaction cycle testing, auditing the County's debt transaction cycle and the County and component unit's budget processes, completed no later than June 30th.

Provided by Client document request to be submitted to the County no later than August 1st.

Audits of the Enhanced Law Enforcement Service District, Clackamas County Service District #5, Library District of Clackamas County and Clackamas County Extension and 4-H Service District, plus required supporting reports and letters to management completed no later than September 30th.

Audits of the Clackamas County Development Agency, North Clackamas Parks and Recreation District, Surface Water Management Agency of Clackamas County, Tri-City Service District, Clackamas County Service District No. 1 plus required supporting reports and letters to management completed no later than November 15.

Audits of the Clackamas County Housing Authority plus required supporting reports and letters to management to be completed no later than November 30th.

Four to six weeks of fieldwork for the County's financial statement audit and the single audit to begin the first week in October and be completed no later than November 30th.

Issuance of the County CAFR and Single Audit plus required supporting reports and letters to management by December 15th.

Note that progress payments for audit work will be based upon satisfactory completion of audit components within the specified framework. Unforeseen circumstances or delays which appear as if they will interfere with meeting the County's deadlines shall be brought to the County's attention prior to that deadline; the circumstances shall be discussed with the County Assistant Finance Director or designee, and Audit Committee upon request, so that the overall timeline for final reviewed County CAFR will be met.

All of the subject entities audited financial statements are required by law to be submitted to the Secretary of State no later than December 31 after the June 30 fiscal year end.

Work Performed by the County

The County is responsible for closing the books, preparing trial balances, reconciling bank accounts, and performing other management functions. The following list of audit workpapers and supporting schedules will be prepared by Finance and Treasurer Staff:

- Accounts Payable, including Salaries & Wages, Taxes, and Accrued
- Cash and Investments
- Capital Assets
- Compensated Absences
- Debt including, bonds, notes payable, leases payable
- Unearned Revenues
- Fund Balances
- Interfund Due To / Due From
- OPEB Liability
- Other Assets
- Payroll / PERS
- Prepaid Expenses
- Pollution Remediation Liability
- Receivables, including Property Taxes, Accounts, Assessments, and Grants
- Restricted Assets
- Risk Management / Insurance (IBNR)
- Self-insurance Claims
- Notes and loans Receivable
- Property held for sale
- Schedule of Federal Awards
- GASB 68 and 71, Financial Reporting for Pensions

Audit Documentation and Retention

All audit documentation, workpapers and reports must be retained, including account rollups supporting CAFR reported balances, at the auditor's expense, for a minimum of three years, unless the firm is notified in writing by Clackamas County government of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designees:

Authorized representatives of the cognizant Federal audit agency, the U. S. General Accounting Office, and the State Audits Division.

Matter of Public Record

Reports covering examinations of financial statements and compliance with grant programs will be a matter of public record. The audited financial statements may appear in all official statements or other documents covering the sale of County securities.

The County Contract administrator for this Contract is: Christa Bosserman-Wolfe
 2051 Kaen Road, 4th floor
 Oregon City, Oregon 97045
 (503) 742-5407
cwolfe@clackamas.us

CONSIDERATION

a. Fee Schedule:

Staff Level	2017	2018	2019	2020
Comprehensive Annual Financial Report (CAFR) of the County, related management letter, and CAFR drafting assistance	\$155,100	\$159,700	\$164,300	\$168,900
Report on Single Audit (fee for 3 major programs)*	\$45,500	\$46,900	\$48,300	\$49,700
Clackamas County Development Agency component unit Financial Report (CUFR), related management letter, CUFR drafting assistance	\$24,700	\$25,500	\$26,300	\$27,100
Clackamas County Service District #1 CUFR & related management letter	\$21,500	\$22,100	\$22,700	\$23,300
Clackamas County Service District #5, (Lighting District)	\$3,400	\$3,500	\$3,600	\$3,700
North Clackamas Parks & Recreation District CUFR, related management letter, and CUFR drafting assistance	\$24,700	\$25,500	\$26,300	\$27,100
Surface Water Management Agency of Clackamas County CUFR and related management letter	\$3,400	\$3,500	\$3,600	\$3,700
Tri-City Service District CUFR and related management letter	\$11,200	\$11,500	\$11,800	\$12,100

Clackamas County Enhanced Law Enforcement Service District	\$3,400	\$3,500	\$3,600	\$3,700
Library District of Clackamas County	\$3,400	\$3,500	\$3,600	\$3,700
Clackamas County Extension and 4-H Service District	\$3,400	\$3,500	\$3,600	\$3,700
Housing Authority of Clackamas County (CUFR) and related management letter	\$43,900	\$45,200	\$46,600	\$48,000
TOTAL FEE	\$343,600	\$353,900	\$364,300	\$374,700

* Each additional major federal program audited is \$11,000 per program

- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$1,436,500.00**. Invoices shall be submitted to:

Christa Bosserman-Wolfe
2051 Kaen Road, 4th floor
Oregon City, Oregon 97045
(503) 742-5407
cwolfe@clackamas.us

- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made to Contractor following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

**EXHIBIT B
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.

Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

2. Required by County Not required by County

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. Contractor shall maintain coverage on a continuing basis for at least two years after the contract is completed; otherwise, the policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

3. Required by County Not required by County

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

4. Required by County Not required by County

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

5. Certificates of Insurance. Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract (blanket endorsement acceptable). Insuring companies or entities are subject to County acceptance. If requested, complete copies of insurance policies (except declarations pages for Professional Liability) shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

6. Notice of cancellation or change. In the event of a cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s), Contractor shall (i) immediately obtain replacement coverage meeting the requirements in this Exhibit B, and (ii) provide written notice to the County at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or purchasing@clackamas.us.

EXHIBIT C
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an "independently established business."

To qualify under the law, an "independently established business" must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- _____ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- _____ B. Bears the risk of loss, shown by factors such as (a) Entering into fixed-price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- _____ C. Provides contracted services for two or more different persons within a 12-month period or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- _____ D. Makes significant investment in the business through means such as (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- _____ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature James C. Layanotto Date 6/14/2017



MARC GONZALES
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Requirements Contract with Tyree Oil, Inc. for
Fuel for Clackamas County Fleet Services**

Purpose/Outcomes	Contract for fuel services for County Vehicles at less than retail prices
Dollar Amount and Fiscal Impact	Not to exceed \$2,000,000 annually/ \$10,000,000 total for term of contract
Funding Source	Direct charges to department for fueling vehicles
Duration	5 years, through June 30, 2022
Previous Board Action/Review	NA
Strategic Plan Alignment	Build public trust through good government (least cost purchasing)
Contact Person	John Stockham, Fleet Manager, 503-650-3222
Contract No.	NA

BACKGROUND:

Clackamas County owns, maintains and operates a diverse fleet of over 1,000 vehicles and pieces of equipment which require various fuel types. Fuel products used include gasoline, diesel and bio-diesel. The amount used in a year is approximately 421,092 gallons of gasoline and 181,693 gallons of diesel/bio-diesel.

LCRB Section C-047-0288, designates class special procurements where specified goods and/or services may be purchased through an alternative procurement process than standard procurement (e.g. RFP, BID). The purchase of gasoline and diesel fuel are in an identified class special procurement category in section C-047-0288(3). The section requires that the County obtain competitive quotes and make its purchase from the least expensive source.

Other than paying full retail prices for fuel, our main alternative is to purchase fuel through commercial dispensers at commercial rates. Pacific Pride and CFN are the two main commercial fuel dispensers located throughout the County. In order to use those locations, we need to contract with a franchise owner. In March 2017, Procurement facilitated a request for proposals

process inviting franchise owners to propose on a new contract. Procurement did not receive any proposals in response to the request for proposals. Without receiving any proposals, Fleet reviewed its options including using a State of Oregon contract and directly reaching out to franchise owners. Fleet was able to successfully negotiate a contract with Tyree Oil at the same rates as the expiring contract. The negotiated rates with Tyree Oil continue to be better than the State of Oregon rates. The term of this requirements contract is for five years, through June 30, 2022.

Fleet Services has budgeted \$2,000,000 in FY 2017/2018 for fuel for County vehicles and equipment and County Counsel has approved the contract.

RECOMMENDATION:

Staff respectfully recommends the Board approve the contract with Tyree Oil, Inc. for Clackamas County fueling needs.

Sincerely,

Marc Gonzales
Finance Director

For information on this issue please contact John Stockham at (503) 650-3222
--

Placed on the _____ Board agenda by Procurement.



CLACKAMAS COUNTY GOODS AND SERVICES CONTRACT

This Goods and Services Contract (this “Contract”) is entered into between Tyree Oil, Inc. (“Contractor”), and Clackamas County, a political subdivisions of the State of Oregon (“County”) for the purposes of providing fuel dispensed through card lock services.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until June 30, 2022. 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. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in the Scope of Work, attached and hereby incorporated by reference as Attachment “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, and Attachment “A”. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County’s Representative for this contract is: John Stockham.

III. COMPENSATION

- 1. PAYMENT.** The County agrees to compensate the Contractor on a [fixed fee or time and material] basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed Two Million and No/100 Dollars (\$2,000,000.00) and the total Contract compensation shall not exceed Ten Million and No/100 Dollars (\$10,000,000.00).
- 2. TRAVEL EXPENSE REIMBURSEMENT.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
- 3. INVOICES.** 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 every two weeks and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. Invoices shall be submitted to the County Representative at: John Stockham, 902 Abernethy Road, Oregon City, OR 97045.

IV. CONTRACT PROVISIONS

1. ACCESS TO RECORDS. Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. AVAILABILITY OF FUNDS. County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

3. CAPTIONS. The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

4. COMPLIANCE WITH APPLICABLE LAW. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

5. EXECUTION AND COUNTERPARTS. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

6. GOVERNING LAW. This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. HAZARD COMMUNICATION. Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

8. INDEMNITY, RESPONSIBILITY FOR DAMAGES. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage

or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

9. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the County employees, including, but not limited to, 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); and (C) 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 ORS Chapter 656.

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. INSURANCE. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof. 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

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof. The County, at its option, may require a complete copy of the above policy.

C. Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. 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 with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

D. 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.

E. 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.

F. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

G. 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.

11. LIMITATION OF LIABILITIES. Except for liability arising under or related to Section 14, neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. 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.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and County's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged

defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

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

17. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

18. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATION. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice; or (E) This Contract may be immediately terminated by Contractor for default (including breach of contract) if County fails to perform any of the provisions of the Contract in accordance with its terms, and after receipt of notice from Contractor, County fails to correct such failure within ten (10) days.

21. REMEDIES. (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work.

22. NO THIRD PARTY BENEFICIARIES. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

23. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

24. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

26. WAIVER. The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

27. COMPLIANCE. 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: (A) Contractor shall: (i) 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; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) 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. (C) 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. (D) 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.

28. DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the County except as to latent defects, fraud and Contractor's warranty obligations.

29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

30. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT,

CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Tyree Oil, Inc
1355 W 1st Ave
Eugene, OR 97402

Clackamas County



6/16/17

Authorized Signature

Date

Jim Bernard, Chair

Date

Ron Tyree

Name / Title (Printed)

Recording Secretary

125878-87

Oregon Business Registry #

Mary Raethke

Date

DBC / Oregon

Entity Type / State of Formation

Approved as to Form:

County Counsel

Date

ATTACHMENT A SCOPE OF WORK

INTRODUCTION / BACKGROUND

Contractor shall supply fuel for the County's fleet of vehicles, which includes vehicles owned by the County or any of its component units (collectively referred to as "County"). The fleet consists of passenger cars, light trucks, heavy trucks and police vehicles. Fuel used includes unleaded, premium unleaded and biodiesel. Most of the travel is within the county but vehicles in the fleet may travel anywhere in the state of Oregon and southwest Washington, so multiple locations are required. Diesel/Biodiesel fuel must be available at all Pacific Pride and CFN locations. Contractor shall provide manuals for Pacific Pride and CFN showing maps and locations of all sites.

Contractor is providing services under this Contract for locations that may be owned by other Pacific Pride and CFN franchise owners. Contractor shall take best efforts to coordinate the services under this Contract with the other non-owned locations, however, locations may not be accessible at all times or provide the amenities as otherwise provided by Contractor.

EMERGENCY REQUIREMENTS

Contractor acknowledge that the County has critical public safety and public service functions that require the use of motorized transportation assets. The successful deployment and use of these assets in an emergency require that a dependable supply of fuel is available. In the event of fuel shortages, power outages and/or impending fuel shortages, the Contractor understands and agrees that the needs of these critical County services must take priority over their private sector customer base. The Contractor agrees to work closely with the County staff to insure that the available fuel is reserved and dispensed for these critical services that will best serve the community's collective needs. The Contractor shall be required to establish and maintain a system of preparation and communication to ensure staff is available and ready to respond to emergency situations that require immediate control of fueling resources in the event of a significant emergency involving County operations.

REPORTING SYSTEM

The County utilizes the FASTER Fleet Management software program to track its fleet expenses. Data from the proposed system will be imported into the FASTER system using the following criteria: In order to perform the data conversion, the FASTER Fleet Management system imports records from a plain text, or ASCII, format file and Contractor shall coordinate with the County to provide necessary data. The file must be set up with one transaction record per line. The format and the one transaction per line requirements are the only file-specific requirements.

The ASCII file must contain the following items:

- Date of transaction
- Time of transaction
- Equipment # - This number must match the equipment numbers within the FASTER database or you must have an FVC (Fuel Vehicle Conversion Code) conversion table set up to convert the equipment number to one that matches the equipment number within the FASTER database.
- Employee Number/Driver – This number must match a valid EMP (Employee Code) within the FASTER database or you must have a FEC (Fuel System Employee Conversion Code) conversion table set up to convert the employee number to one that matches the employee number within the FASTER database.
- Site/Location Number – To reduce tank inventory in the FASTER database, each site must have tanks defined as a table code. Each transaction must be identified by site. The FASTER Fleet

Management system uses a FSC (Fuel Site Conversion Code) to convert sites from the transaction file into the Operational Costs applet.

- Product Code – This code defines the type of fuel that was dispensed. The FASTER Fleet Management system uses a FPS (Fuel Product Conversion Code) to convert fuel types into the database.
- Quantity
- Odometer Reading
- Pump/Hose number – Pumps/Hose numbers are attached to tanks in the Tank Inventory applet. This is used by the software to reduce the inventory for the tank.
- Cost – If the cost is going to come from the automated fuel system, this field must be included

CONTRACTOR REPORTING SYSTEM

The Contractor shall provide an online reporting system with up to date fuel transaction and inquiry functions. Contractor will set up all requested employees of the County (max of 4) through CFN and/or Pacific Pride to reports including, but not limited to, real-time transaction inquiries and fuel summary reports. E-receipts, online real-time transaction receipts and other information will be available through the online system.

STATE AND FEDERAL TAX EXEMPTION

The Contractor shall provide to the County all forms necessary to process State and Federal exemption claims (if applicable). The Contractor shall provide any assistance required by the County to complete and file the forms with the proper agency.

MATERIAL SAFETY DATA SHEET(S)

Upon execution of the Contract, Contractor shall provide a Material Safety Data Sheet for each product will be provided by the Contractor and made part of this Contract. As new or updated MSDS become available, the Contractor will forward copies to be place on file meeting the requirements of OAR 437-155-25.

OSHA REQUIREMENTS

The Contractor shall comply with conditions of the Federal Occupational Safety and Health Act of 1972 (OSHA), and the standards and relations issued there under, and certify that all items furnished and purchased under this order conform and comply with said standards and regulations. The Contractor further agrees to indemnify and hold harmless the County and its elected officials, officers, employees and agents from all damages assessed a County purchaser as a result of the Contractor's failure to comply with the acts and standards there under and for the failure of the items furnished under this order to so comply.

ENVIRONMENTAL CONDITIONS

Each site shall be well lit, clean and be in an open area as to provide a safe environment for 24 hour use by the County. All approved sites shall have functional fire extinguishers that meet State, and/or local Fire Marshall requirements, shall have posted emergency telephone numbers for use in case of problems, and shall provide locally owned pay telephones and/or emergency telephones.

CARDLOCK

The Contractor shall provide a secure card system with the ability to identify the vehicle being fueled and the driver obtaining the fuel. The card(s) shall be clearly labeled with any identifying information. The

Contractor shall provide new cards and replace any lost or unusable cards in a timely manner at its sole cost. The Contractor shall immediately notify their contact at Clackamas County Fleet Services if any problems arise with the cardlock system along with an estimate of when a remedy is expected and will keep Clackamas County Fleet Services updated as information becomes available.

FUELS

The Contractor shall have a system for the purchase of unleaded and diesel fuels which meet the following requirements:

- All motor fuels shall be free from impurities including, but not limited to, water, dirt, harmful oils, fibrous materials and other petroleum products or contaminants
- In case of damage directly traceable to contaminated fuel at a site, the Contractor shall bare the full responsibility for the costs incurred for labor and repairs and/or labor and replacement of necessary components required.
- Fuel storage tanks shall comply with current and future Federal and State regulations.
- Regular unleaded gasoline shall have a minimum octane rating of 87 with 10% ethanol.
- Mid-grade unleaded gasoline shall have a minimum octane rating of 89 with 10% ethanol.
- Premium unleaded gasoline shall have a minimum octane rating of 91 and unblended.
- Diesel shall have a minimum cetane rating of 45.
- Diesel fuel #2 ASTM shall be sulfur free. Diesel fuel shall be winterized for the months of October through March to a cloud point not higher than 6°C above the tenth percentile minimum ambient temperature for the area in which the fuel is sold.

Each fuel site should include, at minimum, one of the higher octane rated fuels (mid-grade or premium), regular unleaded and diesel #2 fuel.

PRICING

The County's cost per gallon for fuel, excluding "rack price", is calculated as follows: \$0.069 per gallon dealer (Contractor) mark-up, plus freight costs, transfer costs, taxes (if applicable) and any other feels/costs associated with the cost of the product (fuel) which are posted by the Pacific Pride or CFN Franchisor. Taxes will either be charged or omitted based on the County's tax exemption pursuant to this Contract. The term "rack" is defined as the cost of the product on the OPIS branded and unbranded averaged for the Portland terminals for fuel products (an accepted industry index for determining the price of fuel products).

DRAFT

Approval of Previous Business Meeting Minutes:

May 4, 2017

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, May 4, 2017 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

PRESENT: Commissioner Jim Bernard, Chair

Commissioner Sonya Fischer

Commissioner Ken Humberston

Commissioner Paul Savas

***Commissioner Martha Schrader** (excused after Citizen Communication to attend another meeting)

CALL TO ORDER

■ Roll Call

■ Pledge of Allegiance

I. PRESENTATIONS

1. Proclaiming the Week of May 7, 2017 as Clean & Plentiful Drinking Water Week in Clackamas County

Greg Geist, Water Environment Services presented the staff report. He introduced Joel Ferguson, H3S and Kim Swan, Clackamas River Water who also spoke supporting the clean drinking water proclamation. Greg Geist read the Proclamation.

Chair Bernard asked for a motion.

MOTION:

Commissioner Schrader: I move we Proclaim the week of May 7, 2017 as Clean and Plentiful Drinking water in Clackamas County.

Commissioner Fischer: Second.

~Board Discussion~

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

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

2. Presentation for Mental Health Awareness in Clackamas County

Mary Rumbaugh, Behavioral Health Director and Ally, Peer Support Coordinator presented the staff report including a PowerPoint presentation. Mary recognized Janie Marsh, Mental Health Association of Oregon, Amanda Willard, Youth MOVE, Shannon Farr, Folk Time, Angel Prater, David Romprey Warm Line and Lifeworks NW and David Dedrickson, Homeless Veterans Peer Support of Clackamas County as Super Heart Heroes for their work with peer support in Clackamas County.

~Board Discussion~

II. CITIZEN COMMUNICATION

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

1. Peter Nordbye, Brightwood – representing the Democratic Party of Clackamas County. Spoke regarding fairness for all citizens, submitted a resolution.
2. William Street, Milwaukie – protections for migrant workers.
3. Andrea Williams, Oak Grove – request the Board approve an Inclusivity resolution.
4. Francisco Aquire, spoke in support of an inclusivity resolution.
5. Brian Brauer, Oregon City – traffic safety on Redland Road.
6. Alberto Moreno, Portland - spoke in support of an inclusivity resolution.

~Board Discussion~

*Commissioner Schrader excused to attend another meeting.

III. PUBLIC HEARINGS

1. Second Reading of 3 Ordinances for Proposed Amendments to the Clackamas County Code
Stephen Madkour, County Counsel stated Ordinance No. 05-2017 requires further review and will come back before the Board for a second reading at the June 15, 2017 Business meeting.

1) **Ordinance No. 03-2017** Amendments to Title 3, Elections.

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

MOTION:

Commissioner Savas: I move we read Ordinance No. 03-2017 by title only.

Commissioner Humberston: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion passes 4-0.

Ask for a motion to adopt.

MOTION:

Chair Bernard: Motion to adopt Ordinance 03-2017.

Commissioner Humberston: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion passes 4-0.

2) **Ordinance No. 04-2017** Amendments to Chapter 6.06, Park Rules and Declaring an emergency.

Stephen Madkour presented Ordinance No. 03-2017.

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

MOTION:

Commissioner Humberston: I move we read Ordinance No. 04-2017 by title only.

Commissioner Fischer: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion passes 4-0.

Ask for a motion to adopt.

MOTION:

Commissioner Savas: I move with today's proposed changes adopt ordinance No. 04-2017 amending Clackamas County Code Chapter 6.06, Park Rules and Declaring an emergency.

Commissioner Humberston: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion passes 4-0.

- 3) **REMOVED - Ordinance No. 05-2017** Amendments to Chapter 8.02, Transient Room Tax and Declaring an emergency. Ordinance No. 05-2017 requires addition review, it will come back for a second reading at the June 15, 2017 Business meeting at 10 AM.

2. **Board Order No. _____** Approving the Americans with Disabilities Act Transition Plan for Public Rights-of-Way

Mike Bezner, Dept. of Transportation & Development presented the staff report.

~Board Discussion~

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

Chair Bernard opened the public hearing and asked is anyone wished to speak, there was not public comment.

Commissioner Fischer asked if we could hold this issue over for further review.

The Board agreed to have this item come back before the Board at the ~~June 15-2017~~ July 6, 2017 Business Meeting at 10 AM.

IV. CONSENT AGENDA

Chair Bernard asked the Clerk to read the consent agenda by title, he then asked for a motion.

MOTION:

Commissioner Humberston: I move we approve the consent agenda.

Commissioner Fischer: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion passes 4-0.

A. Health, Housing & Human Services

1. Approval of Intergovernmental Agreement with Tri-County Metropolitan Transportation District of Oregon (TriMet) for Oregon Department of Transportation Special Transportation Formula Discretionary Funds for Services for Clackamas County Seniors and People with Disabilities – *Social Services*

B. Elected Officials

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

C. Public & Government Affairs

1. **Board Order No. 2017-38** Approving an Extension of the Cable Television Franchise with Canby Telephone Association (dba Canby Telcom)

V. COUNTY ADMINISTRATOR UPDATE

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

VI. COMMISSIONERS COMMUNICATION

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

And to end, today's meeting, I'd like to relay some sad news. Over the weekend, we lost of our long-time television and video producers, Marc Ivanish.

Marc worked with the county for over 16 years and played a key role in many of our most important productions. Since 2001, he directed, edited, or voiced over a thousand videos for us. He was known by staff as "The Voice of Clackamas County". Marc was a fixture in our production booth, typically being the video director of our weekly business meetings. He had probably been to more business meetings than all of us. Maybe more than anyone ever.

He was the lead producer for Town Halls and other high-profile events like the Larry Dahl Memorial Rededication or State of the County.

Marc's knowledge and experience was second to none. He was diligent, incredibly reliable, and by all accounts, a great guy.

Our condolences go to his surviving family, including his son Dylan. He will be missed by staff, producers, and all involved in our production process.

We will adjourned today's meeting in memory of Marc.

MEETING ADJOURNED – 12:00 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. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.*

www.clackamas.us/bcc/business.html



JUVENILE DEPARTMENT
JUVENILE INTAKE AND ASSESSMENT CENTER
2121 KAEN ROAD | OREGON CITY, OR 97045

June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Intergovernmental Agreement with Clackamas Education
Service District (ESD) to Provide Education and Vocational Opportunities
for At-Risk Youth**

Purpose/ Outcomes	Clackamas ESD will contribute funding towards the cost of an employee and flexible spending dollars for wrap around services for youth, to provide services through the Youth Workforce Investment and Opportunity Act (WIOA) to at least 38 youth.
Dollar Amount and Fiscal Impact	Clackamas ESD will provide funding in the sum of \$43,000 through June 30, 2018. General funds dollars will fund the balance of the staff position.
Funding Source	Clackamas Education Service District
Duration	Effective through June 30, 2018.
Previous Board Action	IGA for 2016-17 fiscal year: June 29, 2016; Agenda Item G.2.
Strategic Plan Alignment	Ensure safe, healthy, and secure communities: This service provides vocational and educational opportunities, including tutoring, GED courses and testing, college and vocational training for at risk youth.
Contact Person	Lisa Krzmarzick, Senior Administrative Analyst, Juvenile Department, ext. 8788

BACKGROUND:

For the past five years the Juvenile Department, Oregon Youth Authority, and Clackamas ESD have worked cooperatively to fund a part time staff and flexible funding for wrap around services for youth which provides educational and vocational opportunities. For the 2017-18 fiscal year Clackamas ESD and the Juvenile Department are requesting to enter into an Intergovernmental Agreement describing the services to be provided and the funding being contributed towards the full-time position and flexible spending for wrap around services.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached Intergovernmental Agreement.

Respectfully submitted,

Christina L. McMahan, Director
Juvenile Department

Intergovernmental Agreement
Clackamas ESD/ Clackamas County Juvenile Department
Youth Workforce Innovation and Opportunity Act (WIOA) Services

THIS AGREEMENT, made and entered into this 1st day of July, 2017, by and between the CLACKAMAS EDUCATION SERVICE DISTRICT, hereinafter referred to as "CESD," and Clackamas County Juvenile Department hereinafter referred to as the "Partner Program." As used in this Agreement, CESD is defined as the agency whose responsibility is the planning, coordination, and support of comprehensive workforce development services for WIOA eligible youth in Clackamas County, under the Workforce Innovation and Opportunity Act (WIOA). The Partner Program is defined as the setting in which the workforce development services are implemented and delivered.

WHEREAS, both parties deem it advantageous to provide a workforce development program for youth who may be identified as at-risk or experiencing barriers to education and/or employment, and who can be most appropriately served in a Partner Program setting. The parties agree to meet the Federal Workforce Innovation and Opportunity Act (WIOA) requirements and Performance Standards, CESD and the C-TEC Youth Services program requirements.

The Partner Program will receive a total of \$43,000 to provide the outlined services for a consistent case load size of 38 youth. Case load size includes both active and follow-up youth. As youth fully exit services, Partner Program has 60 days to enroll a new participant. The case load will reflect at least 85% Out-of-School Youth.

I. CESD shall be responsible for the following:

A. Program Coordination

1. Ensure that C-TEC Youth Services meet all WIOA requirements.
2. Align program services with the Region 15 workforce development system.
3. Assist in the development of education, training, and employment opportunities for enrolled youth if not readily available in the community.
4. Work collaboratively with community organizations to provide opportunities for youth participants.
5. Provide regular Partner Program meetings for coordination of services and training.

B. Training

1. Provide training and technical support for Partner Program staff regarding C-TEC Youth Services (WIOA) requirements, processes, and procedures.
2. Provide the C-TEC Youth Services Handbook, program forms, and materials that meet program requirements.

C. Partner Support

1. Partner Support Specialist to provide technical support including services, requirements and documentation.
2. Verify that the youth eligibility policy of WIOA is followed.
3. Input application and registration materials into i-Trac Information Management System (State data management system).
4. Monitor records and services at least two (2) times annually to support the success of the Partner Program.
5. Provide written monitoring results to the Partner Program, and as applicable, suggestions for improvement.
6. Provide quarterly performance reports for the C-TEC Youth Services program, and each Partner Program.

D. Invoices and Payments

1. Provide an invoice template to use for monthly invoicing.
2. Issue payments within 30 days of receiving invoices.

II. The Partner Program shall be responsible for the following:

A. Staffing

1. Identify one grant administrator, as well as one direct service staff to act as the liaisons to CESD.
2. Employ staff that have demonstrated success in working with at-risk youth populations and are familiar with education and employment services. Include CESD in the interview and selection process to identify mutually agreed upon staff to work under this agreement.
3. Ensure that staff performs duties solely for the benefit of WIOA eligible youth when employed under WIOA funding.

B. Outreach, Recruitment, Eligibility Determination, and Enrollment of Youth

1. Establish methods for outreach, recruitment, and referrals within your community.
2. Screen youth for eligibility, and advise youth on how to obtain required eligibility documents.
3. Conduct CASAS math and reading assessments for Out-of-School youth as appropriate.
4. Provide eligibility and enrollment documents to CESD for verification of eligibility and data entry.

5. Maintain a consistent case load size of 38 youth. Case load size includes both active and follow-up youth. As youth fully exit services, Partner Program has 60 days to enroll a new participant.
6. At least 60% of the case load or 23 participants must be in active status at all times.
7. Provide participants a copy of the C-TEC Youth Services *Applicant's Rights and Responsibilities* form at the time of eligibility determination. The *Applicant's Rights and Responsibilities* form and the C-TEC Youth Services Handbook outline the procedure for filing a grievance. Partner Program staff shall be familiar with and act in accordance with the procedures.

C. Youth Services

1. Ensure that the 14 WIOA required program elements are available to enrolled participants: adult mentoring of 12 months or more; alternative secondary school offerings or dropout recovery services; comprehensive guidance and counseling including drug and alcohol abuse counseling; supportive services; tutoring, study skills training, and dropout prevention; paid and unpaid work experiences; occupational skills training; education offered concurrently with and in the same context as workforce preparation activities; financial literacy education; entrepreneurial skills training; services that provide labor market and employment information; activities that help youth prepare for transitions to post-secondary education and training; leadership development opportunities; and follow-up services. See C-TEC Youth Services Handbook for complete definitions.
2. Develop Individual Service Plans (ISPs) with each youth, and update at least quarterly or more frequently as needed
3. Conduct objective assessments with youth to determine appropriate services.
4. Conduct CASAS assessments a minimum of every 5 months for Out-of-School youth that are basic skills deficient unless another measurable skills gain has been documented for that year.
5. Provide a minimum of one (1) WIOA service to each youth, every 90 days while in active service, with more frequent contact/services as appropriate. Be in communication with youth at least once every 30 days. Youth participants in active status that do not receive any service for 90 days must be moved to follow-up services status.
6. Provide a minimum of one (1) WIOA service to each youth, every 90 days while in follow-up services status and more frequent contact and services as appropriate. Be in communication with youth at least once every 30 days.
7. Spend at least 15% of WIOA funded staff time on work experience related activities, such as: helping participants prepare for internships, job shadows, and pre-apprenticeship programs; assisting participants to access career exploration opportunities; promoting work experience and career exploration.
8. Assist youth in working to achieve their education and employment goals, as documented in the ISP.
9. Provide information to all enrolled participants of C-TEC sponsored activities, and assist youth to participate. This includes referring youth through the designated process, and assisting with transportation, childcare, or removal of other barriers that may deter participation.
10. Use the i-Trac Management Information System (internet based tool) to document youth goals, progress, and case notes, with updates made within 5 days of activity. Maintain a hard copy and electronic case file for each participant detailing the service history, in active and follow-up services. Detail shall identify each participant activity by major WIOA component, document receipt of a service or partner service every 90 days or closure of the file. Additionally, information must be maintained in sufficient detail to support the expenditure of funds per program requirements.
11. Assist all youth to work towards obtaining the National Career Readiness Certificate (NCRC), with a goal of at least 25% of youth achieving this certification.
12. Provide a method for staff to make allowable support service purchases to meet youth needs in a timely manner. This may include emergent needs, or purchases that require a credit card, cash, or check.
13. Be knowledgeable of community resources and assist youth to access resources and navigate systems to meet their needs.
14. Follow program policies and procedures as outlined in the C-TEC Youth Services Handbook.

D. Performance Measures

1. Meet performance standards at the benchmark level each program year and not below 80% of benchmark to be considered for renewed funding for the subsequent year.
2. Placement in Employment/Education in the 2nd Quarter After Exit (73%): the percentage of participants who

are in education or training activities, or in unsubsidized employment during the second quarter after the exit quarter.

3. Placement in Employment/Education in the 4th Quarter After Exit (59%): the percentage of participants who are in education or training activities, or in unsubsidized employment during the fourth quarter after the exit quarter.
4. Credential Attainment Rate (74%): the percentage of participants enrolled in an education or training program who attained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent, during participation or within one year after exit from the program.

E. C-TEC Youth Services Team Meetings

1. Require direct service staff to participate in C-TEC Youth Services Team meetings on a regular basis.
2. Grant administrator to participate in annual C-TEC Youth Services Partner Coordination meeting.

III. Liability and Insurance Coverage Required:

The Partner Program shall provide insurance coverage at its own expense for the required level of insurance as specified in this section. All insurance carried by the Partner Program must be primary to and non-contributory with any insurance, including any self-insurance. Partner Program shall be financially responsible for all deductibles or self-insured retention contained within the insurance. Partner Program agrees to maintain continuous, uninterrupted coverage for the duration of this Agreement. There shall be no cancellation, material change, or reduction of limits without thirty (30) days advance written notice from the Partner Program to CESD. If the insurance is canceled or terminated prior to completion of the Agreement, Partner Program shall purchase new policy and provide a certificate of insurance evidencing coverage and limits equal to or greater than the required level of insurance as defined in this section. In the event the Partner Program fails to keep in effect at all times the specified insurance coverage, CESD may terminate this Agreement, subject to the provisions of this Agreement. It is agreed to the extent permitted by law that Clackamas County's self-insurance shall meet the obligations set forth under this Agreement, Section III.

A. General Liability Insurance

Partner Program must carry a Commercial General Liability insurance policy on an occurrence basis with a combined single limit of at least \$1,000,000 per occurrence and at least \$2,000,000 in the aggregate per project, for Bodily Injury, Property Damage, and Personal Injury, which protects the Awarding Agency, Pass-Through Entity (if applicable), CESD, Clackamas Workforce Partnership, Clackamas County and each of their respective officers, agents, and employees from claims for damages arising in whole or in part out of Partner Program's performance under this Agreement. The general liability insurance shall provide contractual liability coverage for the indemnity required under this contract.

B. Motor Vehicle Liability Insurance Partner Program must carry Automobile Liability insurance with a combined single limit of not less than \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage for Partner Program's vehicles, whether owned, hired, or non-owned, which includes coverage for CESD and their respective officers, agents, and employees.

C. Professional Liability Errors and Omissions Insurance Partner Program shall at all times carry a Professional Liability/Errors and Omissions type insurance policy with limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate.

D. Workers' Compensation Insurance The Partner Program must carry Workers' Compensation Insurance in compliance with ORS 656 covering all its employees as required by applicable workers' compensation laws including employers' liability with limits not less than \$500,000/ \$500,000/ \$500,000. If the Partner Program pays wages directly to C-TEC Youth Service's trainees under this Agreement, the Partner Program must also carry Workers' Compensation Insurance in compliance with ORS 656 covering any and all such trainees. No Workers' Compensation Insurance has been or will be obtained by CESD for the Partner Program or for the Partner Program's employees and subcontractors.

E. Bonding The Partner Program shall carry an Employee Fidelity Bond on every officer, director, agent, or employee authorized to receive or deposit funds under this contract or issue financial documents, checks, or other instruments of payment of program costs. Bond shall be in the amount of at least \$100,000. The bond shall be effective prior to any Contract payment and for at least twelve (12) months after this Agreement terminates.

F. Property and Equipment All property and equipment purchased by Partner Program with funds received under

this Agreement, or purchased on behalf of Partner Program for the program site(s) covered under this Agreement, shall be insured by Partner Program at replacement value against fire, theft, and destruction equal to the full replacement cost.

- G. **Certificates of Insurance** As evidence of the insurance coverage required by this Agreement, the Partner Program shall furnish acceptable insurance certificates to CESD at the time, or prior to the time, Partner Program executes this Agreement. Partner Program shall name CESD, Clackamas Workforce Partnership, Clackamas County and each of their respective officers, agents, and employees as additional insured with respect to the Partner Program's services to be provided under this Agreement. Insuring companies or entities are subject to CESD acceptance. If requested, complete copies of the insurance policy shall be provided to CESD.
- H. **Subcontractor Insurance** Partner Program shall require and verify that all of its subcontractors of any tier provide insurance coverage and limits identical to the insurance required of the Partner Program under this agreement, unless this requirement is expressly modified or waived by CESD in writing.
- I. **Sexual/Physical Abuse/Molestation Insurance** Partner Program must carry a Sexual or Physical Abuse or Molestation Liability insurance policy on an occurrence basis with a combined single limit of at least \$1,000,000 per occurrence and at least \$1,000,000 in the aggregate, which protects the Awarding Agency, Pass-Through Entity (if applicable), CESD, Clackamas Workforce Partnership, and each of their respective officers, agents, and employees from claims for damages arising in whole or in part out of Partner Program 's performance under this Agreement.
- J. To the extent permitted by the Oregon Constitution, Article XI, Sections 7 and 10, and to the extent permitted by the Oregon Tort Claims Act or provided for in private insurance contracts, Partner Program agrees to indemnify, defend, and hold CESD or Clackamas Workforce Partnership, harmless from all damages, losses, and expenses including (but not limited to) attorney fees, and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the other party's negligence in the performance of or failure to perform under this contract. Either party to this contract shall not be required to indemnify or defend the other party for any liability arising out of wrongful acts of its own officers, employees, or agents. (Indemnity Clause PL 105-220 Sec. 184; 20 CFR Subpart G.)
- K. **Additional Insured Clause:** The liability insurance coverage required for the performance of this Agreement shall be endorsed to name Clackamas Education Service District as additional insured with respect to the activities performed under this Agreement.
- L. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Partner Program's responsibility for payment of damages resulting from Partner Program's operation under this contract.

IV. Payments, Invoices and Program Costs

- A. The monthly invoice submitted by the Program Partner will be paid within 30 days of receipt. These funds may only be expended between July 1, 2017 and June 30, 2018. An invoice spreadsheet will be provided to the Partner Program. The Partner Program will submit the invoice to the C-TEC Coordinator, by the 8th of each month for the prior month's expenses. The Partner Program may add accruals to their invoice of actual and allocable costs incurred, but not yet paid. **Catalog of Federal Domestic Assistance (CFDA) Number: 17.259**
- B. Funding paid to the Partner Program is acquired through the WIOA grant. Therefore, all money must be used in the implementation of the grant, for WIOA eligible youth. This includes, but is not limited to staff pay, materials and supplies, support services, transportation, and expenses derived from implementing WIOA youth services.
- C. At least 5% of the funds must be budgeted for youth support services, to eliminate financial barriers experienced by participants. Support service costs may only be used when no other resources are available, and must follow the guidance provided in the C-TEC Youth Services Handbook.
- D. All funding is based on cost reimbursement. Only allocable and allowable costs paid out by the Partner Program, which are based on benefits received and associated with the activities and services described, will be reimbursed.
- E. Any act or omission by Partner Program which results in repayment of funds to the funding source will be the responsibility of Partner Program. Partner Program agrees to repay such funds.
- F. In the event the program generates any program income, the Partner Program shall report to CESD, the program income as a separate line item, by cost category, on the month following accrual. Program income is defined as "income received by the recipient or sub recipient directly generated by a grant or sub grant supported activity, or earned only as a result of the grant or sub grant". Such income is to be applied against the costs of the project.
- G. Unless otherwise specified, ownership and title of all non-expendable personal property and equipment purchased with WIOA funds is vested in the U.S. Department of Labor and/or State of Oregon. The CESD may take

possession of all such equipment and property at any time during or upon termination of this Agreement. All such property purchased under this Agreement shall be returned to the CESD within thirty (30) days after the Agreement has terminated.

- H. Any funds provided under this Agreement that remain unused at the end of the fiscal year or at Agreement end are not be obligated under this contract and will be returned to the CESD.
- I. Partner Program must comply with the standards in the most recent versions of appropriate Uniform Administrative Requirements and CESD policies and procedures.

V. Records Control

- A. The Partner Program will **establish, maintain, and safeguard all participant files, records, project records, and documents**. The Partner Program will ensure confidentiality of participant information as provided in State law and administrative rules. Records must be sufficient to justify all payments claimed and paid under this contract, and be compliance with C-TEC Youth Services Program Handbook. Federal record retention requirements applicable to this agreement are found at 2 CFR 200.333-337. The Program Partner shall retain all financial and other required records and supporting documents according to these requirements.
- B. **Social Security Number Use** Partner Program will not print a participant's full Social Security Number (SSN) on any document that will be sent through the mail (U.S. or electronic) without a written request from the person whose SSN will be printed on the document, except as required by law. Partner Program will use only the I-Trac Customer ID, the Jobseeker ID, or the last 4 digits of a SSN on documents unless there is a compelling business reason to use the entire SSN. If a document contains a full SSN, Partner Program will take steps to protect the document from unauthorized disclosure. Partner Program will not provide copies of a document containing a full SSN to anyone other than the person whose SSN is listed on the document, except as allowed by State or Federal law. Partner Program may provide a copy of a document to a third party with the SSN redacted if the document is otherwise allowed to be released. No Partner Program will publicly post or display a document containing a full SSN.
- C. **Data and Record Security** Partner Program must develop, implement and maintain reasonable safeguards to protect the security and confidentiality of participant personal information. Employees of Partner Program with access to personal information must take reasonable steps to prevent a breach of the information. Reasonable steps include locking file cabinets, monitoring access to areas containing personal information, locking computer workstations if leaving the area, and maintaining physical control over files, computer workstations, thumb drives, CDs or other media which contains personal information. Partner Program must also ensure the proper disposal of documents or other media which contains personal information. Contracting with a document shredding company will be considered proper disposal of paper documents. Partner Program will be responsible for properly disposing of or erasing electronically stored personal information on hard drives, CDs, thumb drives or other devices under their control.
- D. **Limitation of Public Access to Records** If disclosure of trainee records is requested by the public, current confidentiality or non-disclosure standards in ORS 192 and OAR 589-020-0330, pertaining to records of participants, shall apply. Personal information may be made available to other service providers on a selective basis consistent with the participant's signed "**Release of Information**" form. Trade secrets, or commercial or financial information, that is obtained from a person and privileged or confidential shall not be available to the public.
- E. **Breach Notification** Any Partner Program who becomes aware of any **potential breach of a document or electronic file** containing participant personal information will immediately notify CWP. A breach occurs when any unauthorized individual or entity gains access to personal information or when unintended disclosure of personal information is made, for example loss or theft of a electronic device containing personal information, loss or theft of a paper document containing personal information, unauthorized access to a network containing personal information, or a document containing personal information being sent to the wrong address.
- F. In the event the **Partner Program is unable to keep their records**, the Partner Program will notify the CESD who will take custody and be responsible for the maintenance and retention of the records.
- G. The Partner Program shall provide to the CESD upon request, sufficient staff time necessary to aid in the performance of contract related (a) project research, (b) project evaluation, (c) project monitoring, and (d) completion of project fiscal review and audits.
- H. **Disposal of Records** No records addressed in this Agreement will be disposed of without instruction from or approval of CESD. CESD will provide instructions and timelines for disposing of records.

VI. Responsibility for WIOA Cost Reduction/Coordination with Other Funding Sources

- A. For activities funded under this Agreement, the CONTRACTOR shall identify training costs supported by other Federal, State, or local programs in order to ensure that these federal funds are in addition to funds otherwise available

VII. Communications

- A. **Funding Acknowledgement** Whenever written, magnetic media, electronic, or verbal information related to the services provided pursuant to this Agreement is distributed to the media or directly to the general public, another agency or governmental audience, whether such information is solicited or unsolicited, the Partner Program shall acknowledge and name the Clackamas Workforce Partnership (CWP) and CESD as the sponsoring agencies for the services provided through this Agreement.
- B. All advertisements or recruitment materials must receive prior approval from C-TEC Youth Services and contain the following language: "An Equal Opportunity Employer/Program" and "auxiliary aids and services are available upon request to individuals with disabilities" in English **and Spanish**.
- C. **Patents and Copyrights** Partner Program must comply with the standards in 2 CFR Part 200 for the development, licensing, distribution, and use of product(s) and materials developed with this contract.

VIII. Nondiscrimination and Equal Opportunity Provisions

- A. The Partner Program assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA), all Federal, State, and local laws, regulations, executive orders, and ordinances regarding nondiscrimination and equal opportunity provisions including the Nontraditional Employment for Women Act of 1991; Title VI and VII of the Civil Rights Act of 1964, as amended; section 503 and 504 of the Rehabilitation Act of 1973, as amended; Americans with Disabilities Act of 1990, as amended; Section 188 of the Workforce Investment Act; the Age Discrimination in Employment Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; Drug Abuse Office and Treatment Act of 1972, as amended; Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended; Sections 523 and 527 of the Public Health Service Act of 1912, as amended; Health Insurance Portability and Accountability Act of 1996 (HIPPA) (42U.S.C. §§1320d et seq.); Title VIII of the Civil Rights Act of 1968, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR, Part 33 and 37. The United States has the right to seek judicial enforcement of this assurance. Partner Program will not exclude from participation, discriminate against, nor deny employment or services to any person including participant on the grounds of race, color, religion, sex, national origin, marital status, youth offender, age (except as provided by WIOA regulations), disability, citizenship, sexual orientation or perceived sexual orientation, gender identity, political affiliation or belief, or association with any person with, or perceived to have one or more of the above named characteristics, and for beneficiaries only, citizenship or participation in the program funded under this Agreement.
- B. Partner Program expressly agrees to comply with the Equal Employment Opportunity provisions in Executive Order (E.O.) 11246, as amended by E.O. 11375 and supplemented by the requirements of 41 CFR Part 60. Further, the Partner Program shall include brief wording in each orientation of potential applicants to describe the Equal Opportunity and Affirmative Action position of this Contract and the method of filing a complaint in regard to such. Partner Program will ensure that the language "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities" appear in publications, broadcasts and other communications as outlined in the applicable Uniform Administrative Requirements. Where such materials indicate the Partner Program may be reached by telephone, the materials must state the telephone number of the TDD/TTY or relay service used by the CONTRACTOR, as required.

IX. Compliance

- A. **Compliance with Applicable Law** the Partner Program will comply with the Workforce Innovation and Opportunity Act (WIOA) as amended and all subsequent amendments thereto and all implementing regulations.
- B. The Partner Program agrees to comply with all applicable Oregon State and Clackamas County laws, rules and regulations, as well as State, Clackamas Workforce Partnership policies, and CESD procedures, and regulations.
- C. **Veteran's Priority Provisions** Partner Program agrees to comply with Veteran's Priority Provisions. The Jobs for Veterans Act (Public Law 107-288) requires grantees to provide priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program

directly funded, in whole or in part, by DOL. The regulations implementing the priority of service can be found at 20 CFR 1010. In circumstances where a grant recipient must choose between two qualified candidates for a service, one of whom is a veteran or eligible spouse, the veterans priority of service provisions require that the grant recipient give the veteran or eligible spouse priority of service by first providing him or her that service. To obtain priority of service, a veteran or spouse must meet the program's eligibility requirements. Grantees must comply with DOL guidance on veterans' priority. ETA's Training and Employment Guidance Letter (TEGL) No. 10-09 (issued November 10, 2009) provides guidance on implementing priority of service for veterans and eligible spouses in all qualified job training programs funded in whole or in part by DOL. TEGL 10-09 is available at <http://wdr.doleta.gov/directives>.

- D. **Limitations on Union or Anti-Union, Sectarian, Religious, Political or Lobbying Activities** No funds under this agreement shall be used in any way to assist, promote or deter union activities. No individual shall be required to join a union as a condition for enrollment in a program in which only institutional training is provided unless such training involves individuals employed under a collective bargaining agreement. No trainee may be placed into, or remain working in, any position which is affected by labor disputes involving a work stoppage. These funds may not be spent on the employment or training of participants in sectarian activities which include religious activities, political activities, and/or lobbying. The Partner Program agrees that the participants shall not be employed on the construction, operation or maintenance of any facility or portion of any facility which is used or may be used for sectarian instruction or as a place of religious worship.
- E. **Maintenance of Effort** No currently employed worker shall be displaced by any trainee, including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits. No program shall impair existing contracts for services or collective bargaining agreements. No program which would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned. No trainee shall be employed, or job opening filled when (a) any other individual is on layoff from the same or any substantially equivalent job, or (b) when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a trainee whose wages are subsidized under this Contract.
- F. **Fraud Notification Requirements** Partner Program must comply with CWP's requirement that all suspected incidents of fraud, abuse, or other criminal activity must be immediately reported on the same business day as the complaint was made or the incident discovered. Program Partner will conform to CWP's established policies and procedures for reporting and resolution.
- G. This Agreement, its Exhibits, Attachments, Endorsements, Changes, or References incorporated is authorized under the federal Workforce Innovation and Opportunity Act. The Partner Program understands and agrees that modifications to this agreement will be necessary throughout the Agreement period as federal, state or local laws, rules, regulations or local ordinances necessitate change under this implementation. The Partner Program is notified that such changes shall be bilaterally agreed upon or unilateral, as necessary (Public Law 105-220.)
- H. **Additionally the following special terms apply to this Agreement:**
- (i) **Nepotism.** No individual may be placed in a WIOA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.
- (ii) **Code of Conduct** Partner Program shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer or agent shall participate in the selection, award, or administration of a contract or contract supported by these funds if a real or apparent conflict of interest as defined by ORS Chapter 244 would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family (see Section 23 Nepotism) or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.
- The officers, employees, and agents of the Partner Program shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements. However, Partner Program may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Partner Program. No officer, employee or agent, any member of his or her immediate family, or an organization which employs or is about to employ any of the parties indicated herein, shall financially benefit from the activities of any program participant or applicant.
- (iii) **Governing Law, Venue, Consent to Jurisdiction** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. If any term or

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

Any claim, action, suit or proceeding (collectively, "Claim") between CWP and CONTRACTOR that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, by execution of this Contract, hereby consents to the jurisdiction of said courts.

- (iv) **Prohibited activities:** WIOA funds must not be spent on: (1) The wages of incumbent employees during their training if funded by WIOA; (2) Public service employment, except to provide disaster relief employment, as specifically authorized in WIOA and under a special Federal disaster relief assistance grant; (3) Expenses prohibited under any other Federal, State or local law or regulation, including foreign travel. (4) Drug testing except to facilitate the hiring process. (5) General economic development and related employment generating activities (6) Investment in revolving loan funds. (7) Investment in contract bidding Resource Centers. (8) Capitalization of businesses. (9) Business relocation services (10) Construction, purchase, and renovation of real property. (11) Employment or training of participants in sectarian activities.
- (v) **Employee displacement prohibitions** (a) A participant in a program or activity authorized under title I of WIOA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee. (b) A program or activity authorized under title I of WIOA must not impair existing contracts for services or collective bargaining agreements. When a program or activity would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins. (c) A participant in a program or activity may not be employed in or assigned to a job if: (1) Any other individual is on layoff from the same or any substantially equivalent job; (2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIOA participant; or (3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers. Partner Program certifies that this Agreement does not violate any collective bargaining agreements to which it is a party.
- (vi) WIOA funds shall only be used for activities that are in addition to those that would otherwise be available in the local area in the absence of such funds.
- (vii) **Charging of Fees to Participants** No person or organization may charge a fee to any individual for referral to or placement in training or employment programs

X. Certification Regarding Lobbying 31 U.S.C. Sec. 1352

- A. The Partner Program certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Partner Program, to any person for influencing or attempting to influence an officer or employee of an agency, a Member 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, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement or any other award covered by 31 U.S.C. Sec. 1352.
- B. If any funds other than Federal appropriated funds have been paid or will be paid 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 this Federal contract, grant, loan, or cooperative agreement, the Partner Program shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Partner Program 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. 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.

XI. Assurances

- A. The Partner Program through its duly authorized representative, hereby assures and certifies that throughout the period of the grant /Agreement award and at all times while this Agreement is in effect, it comply with (as they may be amended from time to time), all applicable federal, state and local laws, regulations, ordinances, executive orders, administrative rules and directives, including without limitation: the Title IB of the Workforce Innovation and Opportunity Act of 1998 (PL 105-220 29 USC Sec 2801 et seq) and corresponding WIOA Regulations (20 CFR 660.300) OMB Circulars A-87 and A-133; all regulations and administrative rules established pursuant to the foregoing, all applicable Oregon Revised Statutes; and all applicable Oregon Administrative Rules.
- B. By signing this agreement, the authorized representative assures and certifies that it:
1. **Financial Capability** Has the legal authority to apply for and receive funds, including federal and state funds, under the grants and programs covered by this Agreement, and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project cost) to ensure proper planning, management and completion of the projects, grants and programs covered by this Agreement.
 2. **Generally Accepted Accounting System** Will establish a proper accounting system in accordance with Generally Accepted Accounting Principles (GAAP) and CWP policies and procedures.
 3. Will give CWP, the Awarding Agency, and Pass-Through Entity (if applicable), the Governor (if applicable) and their duly authorized representatives; appropriate governmental authorities involved in the administration of these funds to extent necessary for its proper administration, authority to audit, examine, and make excerpts or transcripts from its books of accounts, correspondence, papers, records, files, forms, or other documents of the Partner Program including all contracts, invoices, materials, payrolls, personnel records, conditions of employment and other data relating to all matters covered by this Agreement which are necessary to evaluate whether the funds have been spent lawfully, and to determine compliance with all applicable rules and regulations, and the provisions of this Agreement, including the proper allocation of costs to this Agreement. Authorized representatives could include but are not limited to the Director - Office of Civil Rights, the Comptroller General of the United States and the Inspector General.
 4. Will not permit any person or entity to receive grant or program funds if the person or entity is listed on the non-procurement portion of the General Service Administration's list of parties excluded from federal procurement or non-procurement programs in accordance with Executive Order No. 12,549 and Executive Order No. 12,689 of the President of the United States.
 5. **Conflict of Interest** Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. Every reasonable course of action shall be taken by the Partner Program in order to maintain the integrity of this expenditure of CESD's funds and to avoid any favoritism or questionable or improper conduct.
 6. **Complete the Work** Shall initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
 7. **Political Activities** Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7326) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds. In addition, the Partner Program agrees to comply with, where applicable, Public Law 101-121, which prohibits influencing Federal financial transactions. Partner Program shall not use funds provided under this Contract for publicity or propaganda purposes, for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself. Nor shall grant funds be used to pay the salary or expenses of any Partner Program staff or agent, related to any activity designed to influence legislation or appropriations pending before the Congress.
 8. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction sub-agreements.
 9. **Debarment and Suspension** As required by Executive Orders 12549 and 12689 and 2 CFR.200.212 regarding Debarment and Suspension, the CONTRACTOR certifies to the best of its knowledge and belief, that neither it nor its principals:

- 1) Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
 - 2) Have within a three-year period preceding this proposal been convicted 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;
 - 3) Are presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(B) of this certification; and,
 - 4) Have within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
10. **Discrimination** Will comply with all Federal, state and local laws, regulations, executive orders and ordinances regarding nondiscrimination and equal opportunity provisions applicable to this Agreement.
11. **Audits** Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, Audits of States, Local Governments and Non-Profit Organizations.”

This Agreement shall continue in effect until June 30, 2018, unless cancelled by one of the parties giving thirty (30) days written notice of intent to cancel to the other. Notice of cancellation shall be sent to the contact person described herein. This intergovernmental agreement may be amended if mutually agreed upon, in writing, by both parties.

IN WITNESS THEREOF, the parties have duly executed this agreement as of the date written above.

Clackamas Education Service District
Agency

Clackamas County
Partner Program

Jada Rupley, Superintendent

Board of County Commissioners

Date: _____

Date: _____

Clackamas County Juvenile Department
Partner Program

Christina L. McMahan, Director

Date: _____



JUVENILE DEPARTMENT
JUVENILE INTAKE AND ASSESSMENT CENTER
2121 KAEN ROAD | OREGON CITY, OR 97045

June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Renewal No. 2 of Intergovernmental Agreement
With City of West Linn for Youth Offender Community Service Projects**

Purpose/ Outcomes	City of West Linn will provide opportunities for youth offenders to complete community service projects, including litter patrol, brush cutting, ivy removal and leaf pickup/removal within their city.
Dollar Amount and Fiscal Impact	West Linn, Oregon will provide up to \$10,200 through June 30, 2018. There are no general fund dollars required.
Funding Source	City of West Linn, Oregon
Duration	Effective through June 30, 2018.
Previous Board Action	July 9, 2015; Agenda Item G.2. June 9, 2016; Agenda Item C.1.
Strategic Plan Alignment	Ensure safe, healthy, and secure communities: The revenue received from this contract will provide funds for the youth that are working to receive a stipend which is in turn used to pay restitution to victims, court fines, and fees.
Contact Person	Lisa Krzmarzick, Senior Administrative Analyst, Juvenile Department, ext. 8788
Contract No.	N/A

BACKGROUND:

The City of West Linn and the Juvenile Department have worked collaboratively to provide community service work crew days for youth offenders to work within the City of West Linn. This Intergovernmental Agreement provides work for youth which then provides an avenue for the youth to earn funds to repay victims and pay their court fines and fees.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached Intergovernmental Agreement renewal.

Respectfully submitted,

Christina L. McMahan, Director
Juvenile Department

**Amendment No. 1/Renewal No 1 to the 2015-IGA
Between the County, through its Juvenile Department,
and the City of West Linn
For Community Service Work Crew Days**

This Renewal No. 1, when signed by each party, as authorized by the original Intergovernmental Agreement dated July 9, 2015, will become part of the contract documents, superseding the original to the applicable extent indicated.

AGREEMENT FORM


Extend the term of the 2015 Intergovernmental Agreement through June 30, 2017.

The following terms to the IGA have been added:

1. The value of this IGA is to be increased to \$10,200.
2. The scope of work will be expanded to include the options available on the attached Program Menu of Services.

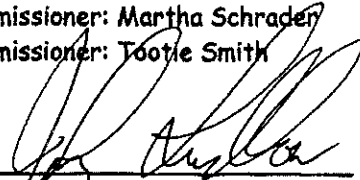
CITY OF WEST LINN

**CLACKAMAS COUNTY, OREGON
BOARD OF COUNTY**

By: 
Ken Worcester
Parks and Recreation Director
Approved by County Counsel

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

By /s/ STEPHEN MADKOUR
Date: 5-10-16


John Ludlow, Chair


Recording Secretary

10-9-16 C.L.
Date

2016-17 RATE PROPOSAL FOR PROJECT PAYBACK CREWS

	<u>Flex Crew</u>	<u>10-Week Crew</u>	<u>Next Step Crew</u>	<u>GREEN Corps</u>
Daily Rates	\$340	\$400	\$500	\$500
Number of crew members	5-8	5-8	3	5-8
Number of crew leaders	2	2	2	2
Number of hours worked	6	6	6	6
Availability	Saturdays & Sundays year-round, excluding holiday weekends	Saturdays & Sundays during 10-Week crew sessions, possible weekdays during summer months	Tuesdays - Fridays year-round	April - October
Description	<ul style="list-style-type: none"> * Less experienced crew * Crew members vary 	<ul style="list-style-type: none"> * Trained crew * Consistent crew within each session * Education / Vocational training 	<ul style="list-style-type: none"> * Skilled crew * Youth are employees * Consistent and reliable crew members * Education / Vocational training 	<ul style="list-style-type: none"> * Consistent crew * Education / Vocational training
Capabilities	Invasive species removal, light construction and restoration and clean up	Invasive species removal, planting, construction and restoration projects, and trail construction/maintenance	Same as the 10 -Week crew, but are capable of completing more complex projects	Event set up/take down, clean up

NOTE: Education and vocational training is an aspect of the 10-Week, Next Step and GREEN Corps programs. Youth receive environmental, resource management and conservation education. Additionally, GREEN Corps youth receive business/entrepreneurship education and training. All youth are provided meaningful opportunities to gain job readiness skills that can lead to successful future employment.

INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY, OREGON
AND THE CITY OF WEST LINN, OREGON
FOR THE PROVISION OF YOUTH WORK CREWS FOR THE
PROJECT PAYBACK PROGRAM

I. Purpose

This agreement is entered into between Clackamas County (COUNTY), by and through ~~its Juvenile Department and the City of West Linn (CITY)~~ for the cooperation of units of local government under the authority of ORS 190.010. This agreement provides the basis for the Juvenile Department, Project Payback Program to provide supervised Youth Offender Work Crews (Work Crew) to perform general labor at sites under the control of the CITY.

II. Scope of Work and Cooperation

A. CITY agrees to accomplish the following work under this agreement:

1. Identify Work Crew projects, such as litter patrol, brush cutting/clearing, painting, ivy removal and leaf pick up/removal in West Linn.
2. Schedule Work Crew projects on a mutually agreed upon schedule.
3. Provide needed materials.
4. Obtain right of entry for work done on property not owned or controlled by the CITY.

B. COUNTY agrees to:

1. Provide a Work Crew supervisor to supervise the Work Crews.
2. Provide a work crew to perform general labor on a mutually agreed upon schedule. Work crew size will average four youths. Total labor hours per crew will average twenty-four (24) labor hours.
3. Provide necessary equipment needed by the Work Crew.
4. Use best efforts to resolve any dispute with CITY should Work Crews not complete a project to CITY'S substantial satisfaction.

III. Compensation

A. Compensation. CITY agrees to pay COUNTY an amount not to exceed \$340.00 per day for up to 15 days, total amount not to exceed \$5,100.00 for the services set forth in this Agreement.

B. Payments. Interim payments shall be made on the basis of requests for payment submitted as follows:

1. COUNTY may bill quarterly, including itemized detail of hours worked.
2. All requests for payment are subject to the approval of CITY consistent with the terms of this Agreement.
3. CITY payments shall be mailed to:

Clackamas County Juvenile Department, 2121 Kaen Road, Oregon City
OR 97045; Attn. Crystal Wright

IV. Liaison Responsibility

Ken Worcester will act as liaison from CITY for this project. Wayne Curry will act as liaison from the COUNTY.

V. Special Requirements

- A. Hazardous Materials. No Work Crew provided under this agreement shall be required to clean up any work site when known or suspected hazardous materials are present.
- B. Conformance to Laws. COUNTY and CITY agree to comply with all applicable local, state and federal ordinances, statutes, laws and regulations. Specifically, COUNTY shall comply with Oregon Public Contracting Provisions pursuant to the requirements in ORS 279B.020 and 279B.220 through 249B.235.
- C. Indemnification. CITY agrees to indemnify, save harmless and defend the COUNTY, its officers, commissioners, and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault, or negligence of CITY or its employees. COUNTY agrees to indemnify, save harmless, and defend the CITY, its officers, commissioners, and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault, or negligence of COUNTY or its employees subject to the

limitations if applicable set forth in Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300.

D. Insurance. Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 through 30.274. COUNTY will provide liability insurance for those individuals on the work site for the purposes of all activities undertaken pursuant to this agreement and also provide adequate automobile insurance for any transport vehicle used to transport the Work Crews. If applicable, workers' compensation insurance shall also be provided. It is agreed to the extent permitted by law that COUNTY'S self insurance shall meet the obligations of this paragraph.

E. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this agreement shall be clearly identified and readily accessible. Such reports and documents should be retained for a period of three (3) years after receipt of final payment under this agreement, provided that any records and documents that are subject to audit findings shall be retained for a longer time until such audit findings are resolved.

F. Access to Records. The COUNTY shall have access to the books, documents, papers, and records of the CITY which are directly pertinent to the agreement for the purpose of making audit, examination, excerpts, and transcripts.

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

A. Effective date. This agreement becomes effective July 1, 2015 or upon final signature whichever is later, and continues until June 30, 2016, unless amended or terminated in accordance with this Agreement. This IGA can be renewed for up to two (2) additional one year terms with the written approval of both parties.

B. Termination. This agreement is subject to termination by either of the parties following thirty (30) days written notice to the other.

VIII. Debt Limitation of Oregon Counties

This Agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore.

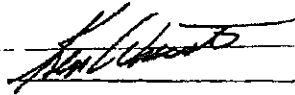
SIGNATURE PAGE FOLLOWS

WHEREAS, the aforementioned is hereby agreed upon by both parties and executed by the duly authorized signatures below.


CITY OF WEST LINN

**CLACKAMAS COUNTY, OREGON
BOARD OF COUNTY COMMISSIONERS**

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



Signing on Behalf on the Board:



Title: Parks & Recreation Dir.
Ken Worcester
Name (Typed)
06/25/2015
Date

Signature
7-9-15 G.2
Date

Approved as to form:

Kim Ybarra approved form by
email 4/16/2015
County Counsel

**Renewal No 2 to the 2015-IGA
Between the County, through its Juvenile Department,
and the City of West Linn
For Community Service Work Crew Days**

This Renewal No. 2, when signed by each party, as authorized by the original Intergovernmental Agreement dated July 9, 2015, will become part of the contract documents, superseding the original to the applicable extent indicated.

AGREEMENT FORM

Extend the term of the 2015 Intergovernmental Agreement through June 30, 2018.

The following terms were added through Amendment No 1/Renewal No 1 and remain in effect:

1. The value of the IGA increased to \$10,200.
2. The scope of work expanded to include the option available on the attached Program Menu of Services.

CITY OF WEST LINN

**CLACKAMAS COUNTY, OREGON
BOARD OF COUNTY COMMISSIONERS**

By: _____
Ken Worcester
Parks and Recreation Director

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

Approved by County Counsel

/s/ Stephen Madkour
Date: 5/23/2017

Jim Bernard, Chair

Recording Secretary

Date



Dave Cummings
Chief Information Officer

Technology Services

June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of ORMAP Intergovernmental Agreement Contract # 3625-17
with the Oregon Department of Revenue for
Digital GIS Tax Lot Conversion

Purpose/Outcomes	This IGA will provide funding to continue the conversion of paper survey documents and Assessment maps to a digital GIS database as required under ORS 306.135.
Dollar Amount and Fiscal Impact	This semi-annual IGA Contract is \$42,000 for this funding period. Amount varies with each ORMAP grant request due to funding availability. The County matches \$35,000 annually, typically 35% of the amount the State provides.
Funding Source	State of Oregon, Department of Revenue
Duration	Terminates June 30, 2018
Previous Board Action/Review	The County has participated in this program since 1999 with the BCC approval of IGA Contracts with the Dept. of Revenue twice a year in varying amounts.
Strategic Plan Alignment	1. Creation of a publicly available internet based data and document portal including all legally available data 2. Building public trust through good government
Contact Person	Eric Bohard, Tech. Services Mgr. – Technology Services 503-723-4814

BACKGROUND:

This program, legislated in 1999 as ORS 306.135, provides for the funding from the State Department of Revenue for GIS digital tax lot capture and the creation of digital Assessor's tax lot maps. The ORMAP program collects \$1.00 for each recorded land related document from all Oregon Counties. These funds go into a pool administered by the Oregon State Department of Revenue. Funds are distributed to Counties based on competitive grant applications twice a year. This contract represents our Spring 2017 award of our grant request for continuing work on the capture of tax lot lines and annotation from survey documents and converting that information to a digital GIS database as spelled out by Oregon Department of Revenue standards.

The product created by funds from this IGA contract benefits the County, the State, and most importantly, the public. Having an accurate ownership GIS layer allows uses of the data to make more informed decisions and provides a more accurate base map for other GIS map data.

This project is a collaborative effort between the Clackamas County's Assessor's Office and the GIS Division of the Technology Services Department. Also assisting in this effort is the County's Surveyor. County Counsel has reviewed these on-going ORMAP contracts and has approved as to form.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approves Intergovernmental Agreement Contract # 3625-17 with the State of Oregon Department of Revenue for the continued conversion of paper survey documents and Assessment maps to a digital GIS database.

Respectfully submitted,

David Cummings
Chief Information Officer

**DEPARTMENT OF REVENUE
ORMAP INTERGOVERNMENTAL AGREEMENT
CONTRACT #3625-17**

This Agreement is entered into by and between the State of Oregon, acting by and through the Department of Revenue ("Department") and Clackamas County ("County").

WHEREAS, under ORS 306.135 the Department is charged with developing a base map system to facilitate and improve the administration of the ad valorem property tax system;

WHEREAS, pursuant to ORS 190.110, the Department may cooperate, by agreement or otherwise, with a unit of local government in performing the duties imposed upon it by ORS 306.135.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Department and the County agree to the following:

I. EFFECTIVE DATE OF AGREEMENT; AWARD; PROJECT COMPLETION

- A. Effective Date of Agreement. This Agreement shall become effective on the date this Agreement has been signed by every party and all required approvals have been obtained.

- B. Award. The Department shall provide funds in the amount of **\$42,000.00** (the "Award") to the County to fund all or part of the activities set forth in Exhibit A ("Proposal") which is attached hereto and by this reference made a part hereof. The part of the activities set forth in the Proposal which is funded by the Award shall be called the "Project". All of the activities set forth in the Proposal, whether funded by the Department or by other sources, shall be referred to as the "Total Project". (If there are no other funders beside the Department for the activities described in the Proposal, the Total Project is the same as the Project.) The Department shall not be obligated to provide to the County, and the County shall not use the Award other than for costs for the Project.

- C. Project Completion. County agrees to complete the Total Project in accordance with the terms and specifications of the Proposal by **June 30, 2018** ("Project Completion Date"). Final billing for the Project shall be submitted to the Department on or before **July 31, 2018**.

II. DISBURSEMENTS.

- A. Disbursement of Funds by the Department. Subject to Section IV, upon receipt of the County's request for disbursement, the Department shall disburse the

Award to the County on a cost reimbursement basis. The Department may, in its sole discretion, impose a minimum or maximum dollar amount for each disbursement request or limit the frequency of disbursement requests.

- B. Overpayment. In the event that the aggregate amount of the Department's disbursements hereunder exceeds the costs of the County for the Project, the County agrees to refund to the Department the amount paid in excess of such costs within thirty (30) days of final billing by the County or the Project Completion Date, whichever is earlier.
- C. Disallowed Costs. The County agrees that payment(s) under this Agreement shall be subject to offset or reduction for amounts previously paid hereunder which are found by the Department not to constitute allowable costs under this Agreement. If such disallowed amount exceeds the payment(s); the County shall immediately upon demand pay the Department the amount of such excess.
- D. Cost Savings. Any cost savings realized on the Total Project shall be prorated between the funding sources based on the percentage of their respective cash contributions as set forth in the Proposal. In no event shall the Department pay for more than its pro rata share of the County's actual out-of-pocket cost of the Total Project.
- E. No Duplicate Payment. The County shall not be compensated for, or receive any other duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party.

III. REPRESENTATIONS AND WARRANTIES

County represents and warrants to the Department that (1) it has the power and authority to enter into and perform this Agreement, (2) this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms, (3) the Total Project shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, (4) those persons performing work on the Total Project shall, at all times during the term of this Agreement, be qualified, professionally competent and duly licensed to perform work on the Total Project, and (5) Exhibit A presents a good faith estimate of the costs of the Total Project and the Project and accurately states the amount of other funds, whether in cash or through binding commitment(s), available for payment of the costs of the Total Project.

IV. CONDITIONS TO DISBURSEMENT

- A. Conditions Precedent to Disbursement. The Department shall not be obligated to disburse any funds hereunder for Project costs unless (1) there exists no event of default or default which with notice or lapse of time or both will become an event of default hereunder, and (2) the Department has received from the County (i) a request for disbursement signed by a duly authorized representative of the County (which shall, among other things, state that the County has or will have sufficient funds to complete the Total Project by the Project Completion Date), (ii) an itemized invoice and (iii) such other documentation as the Department may require, all in form and substance satisfactory to the Department; further, the Department shall only be obligated to disburse Award funds to the extent that the portion of the Award represented by the aggregate amount of all disbursements made through the date of the disbursement request (including the amount of the disbursement request) does not exceed the percentage of the Project completed through the date of the disbursement request, as determined by the Department.
- B. Conditions Precedent to Final Disbursement. The Department shall not be obligated to make final disbursement hereunder until a final payment request and such documentation as may be required by the Department, all in form and substance satisfactory to the Department, shall be submitted by the County to the Department. Final payment will be made to the County within forty-five (45) days of approval by the Department.

V. COVENANTS

- A. Assignment. If the County hires a contractor(s) to do all or part of the Project, the County shall remain liable for compliance with the terms and conditions of this Agreement and shall not in any way be relieved of any of its obligations under this Agreement. The County shall be responsible for all cost overruns.
- B. Payments. To the extent required by state and federal law, the County agrees to:
1. Make payment promptly as due to all contractors, subcontractors, vendors and other persons supplying labor and/or materials for the Project; and
 2. All employers, including County, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). County shall require and ensure that each of its subcontractors complies with these requirements.

- C. Liabilities. County shall perform its obligations under this Agreement as an independent contractor. Each party shall be responsible exclusively with respect to its employees, for providing for employment-related benefits and deductions that are required by law, including but not limited to federal and state income tax deductions, workers' compensation coverage, and contributions to the Public Employees Retirement System.

Each party shall be responsible, to the extent required by law (including the Oregon Tort Claims Act, ORS 30.260-30.300), only for the acts, omissions or negligence of its own officers, employees or agents.

- D. Compliance with Applicable Law. The County shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement. The Department's performance under this Agreement is conditioned upon the County's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230 and 279B.270, as amended from time to time, which are incorporated by reference herein. The parties shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg))
- E. Records Maintenance. The County shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles and the Oregon Local Budget Law, ORS 294.305 to 294.565.. In addition, the County shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the County's performance. The County's accounting procedures shall provide for an accurate and timely recording of receipt of funds by source, of expenditures made from such funds, and of unexpended balances. Controls shall be established which are adequate to ensure that all expenditures reimbursed under this Agreement are for allowable purposes and that documentation is readily available to verify that such charges are accurate.
- F. Access. The County acknowledges and agrees that the Department and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of the County that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts. The County shall retain and keep accessible all such fiscal records, books, documents, papers, plans and writings for a minimum of five (5) years, or such longer period as may be required by applicable law, following final payment under this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

- G. Project Ownership. The Department acknowledges and agrees that the Project is the exclusive property of the County. The County acknowledges and agrees that the Department is not responsible or liable in any manner for the completion or maintenance of the Project or Total Project.

VI. TERMINATION; REMEDIES

- A. Termination for Convenience. Either party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other party; provided, however, that the County shall, within thirty (30) days of such termination, reimburse the Department for all funds disbursed by the Department hereunder to the extent that the amount of funds disbursed exceeds the amount of the Award multiplied by the percentage of the Project completed to the satisfaction of the Department; provided further that until the County has fully reimbursed the Department for such funds, the County shall comply with the terms of this Agreement.
- B. Termination Because of Non-Appropriation or Project Ineligibility.
1. The Department, at any time upon prior written notice to the County, may terminate this Agreement if the Department fails to receive funding or appropriations, limitations, or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to pay for the allowable costs of the Project to be funded hereunder or any state law, regulation or guideline is modified, changed or interpreted in such a way that the Total Project, or any portion of the Total Project, is no longer eligible for Award funds.
 2. In the event insufficient funds are appropriated by the County for its share of the costs of the Total Project and the County has no other lawfully available funds, then the County may terminate this Agreement at the end of its current fiscal year, with no further liability to the Department. The County shall deliver to the Department written notice of such termination within thirty (30) days of its determination of such shortfall.
- C. Termination for Default. The Department may, at any time upon thirty (30) days prior written notice to the County, terminate this Agreement if:
1. The design and implementation of the Total Project is not pursued with due diligence; or
 2. The cadastral portions of the Total Project do not conform to the Department of Revenue Oregon Cadastral Map System; or

3. The County fails to receive funding for portions of the Total Project from outside sources as described in its Proposal; or
 4. The County, without the prior written approval of the Department, uses the funds provided by the Department hereunder in a way other than the Project described in the Proposal.
 5. The County violates any other provision of this Agreement.
- D. Rights and Remedies. The County shall, within thirty (30) days of its receipt of the notice described in Section VI.C above, reimburse the Department for all funds disbursed hereunder to the extent that the funds disbursed exceed the amount of the Award multiplied by the percentage of the Project completed to the satisfaction of the Department as of the date of County's receipt of the notice described in Section VI.C above. Further, the Department shall have any and all rights and remedies available at law or in equity.

VII. GENERAL PROVISIONS

- A. Force Majeure. Neither the Department nor the County shall be held responsible for delay or failure to perform when such delay or failure is due to fire, flood, epidemic, strike, public carrier, act of God, act of a public enemy or a public authority or a cause which cannot be reasonably foreseen or provided against.
- B. Persons Not to Benefit. No member of or delegate to Congress, resident commissioner, officer, agent or employee of the United States of America, member of the Oregon Legislative Assembly; elected official of the State of Oregon, or official, agent, or employee of the State of Oregon, or elected member, officer, agent, or employee of any political subdivision, municipality or municipal corporation of the State of Oregon shall derive any unfair knowledge or financial benefit from this Agreement that is not offered to others in a competitive process.
- C. No Third Party Beneficiaries. The Department and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- D. Successors and Assigns. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Department and County and their respective successors and assigns; provided however that the County may not

assign this Agreement or any interest therein without the prior written consent of the Department, which consent may be withheld for any reason.

- E. Severability. The Department and the County agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.
- F. Notice. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to the Department or the County at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
- G. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.
- H. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the Department and/or other agency or department of the State of Oregon and the County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. COUNTY, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- I. Merger Clause; Amendment; Waiver. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE DEPARTMENT AND THE COUNTY ON THE SUBJECT MATTER HEREOF. NO MODIFICATION OR

CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH THE DEPARTMENT AND THE COUNTY, AND NO CONSENT OR WAIVER SHALL BE EFFECTIVE UNLESS IN WRITING AND SIGNED BY THE PARTY AGAINST WHOM SUCH CONSENT OR WAIVER IS BEING ENFORCED. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE DELAY OR FAILURE OF THE DEPARTMENT TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT CONSTITUTE A WAIVER BY THE DEPARTMENT OF THAT PROVISION OR ANY OTHER PROVISION. THE COUNTY, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS.

DEPARTMENT:
State of Oregon, acting by and through its
Department of Revenue
Authorized Agency Signature

COUNTY:
Clackamas County

By: _____
Toni Payseno, Contracts & Procurement Manager

By: _____
Title: _____

Date: _____

Date: _____
Telephone: _____
Fax No: _____

EXHIBIT A

AWARD LETTER COUNTY GRANT PROPOSAL



Oregon

Kate Brown, Governor

Department of Revenue
Property Tax Division
955 Center St NE
PO Box 14380
Salem, OR 97309-5075
www.oregon.gov/dor

May 25, 2017

Eric Bohard, Technical Services Division Manager
Clackamas County Technical Services
121 Library Court
Oregon City, OR 97045

Dear Mr. Bohard

I am pleased to inform you that the Department of Revenue has approved your request for funding through the ORMAP program. You will soon receive a contract to formalize the ORMAP grant agreement with the Department of Revenue. The agreement will be effective from July 1, 2017 through June 30, 2018.

Listed below are the deliverables as outlined in your grant request. In order to expedite the payment process for you, please use the "ORMAP Invoice" form, you can download a copy from the ORMAP site. Please state the correct contract number on the chart and complete the information requested for each task or deliverable.

Contract Number:		
Task	Deliverable	Award Amount
1	1,500 Taxlots	\$ 42,000.00
2		
Total		\$ 42,000.00

If you have questions, please contact the ORMAP Coordinator, Philip McClellan (503-586-8128).

Best wishes for a successful project.

With regards,

Bram N. Ekstrand
Property Tax Assistance and Oversight Section Manager
Oregon Department of Revenue

cc: County Assessor
DOR Finance Department
File

ORMAP Grant Application

Section I. County and Grant Information			
A. County: Clackamas		B. Funding Cycle: Spring 2017	
C. Project will help meet ORMAP Goal(s): 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/>		D. Fund Request: \$42,000	
Section II. Summary of Project			Department Assessment
A. Brief Overview of the Request			<input type="checkbox"/> Pass <input type="checkbox"/> Fail
<p>This project is a continuation of Clackamas County's ORMAP tax lot re-mapping project. The funds requested for this period will be used to digitally capture, rectify, annotate, and prepare tax lots for map production using COGO techniques. With full funding, 1,500 rural and urban tax lots will be completed to ORMAP standards for this project period.</p>			
Scope and Deliverables			
Check	Deliverables	Brief description of the deliverables	
<input checked="" type="checkbox"/>	Tax Lot Conversion	Conversion of paper plats and surveys using COGO or digitizing techniques for rural tax lots to a GIS layer.	
<input type="checkbox"/>	Tax Map Conversion		
<input type="checkbox"/>	Control Points		
<input type="checkbox"/>	Development		
<input type="checkbox"/>	Other Assistance		
<input type="checkbox"/>	Other Deliverable		
<input type="checkbox"/>	Hardware/Software		
B. Projected Project Completion Date (projects should not exceed one year)			
June 30, 2018			
C. Total Costs of Project (add lines as necessary)			
Deliverable	Number of Items	Cost per Item	Total Cost
Tax Lot Conversion (COGO/ Annotate)	1500	\$28	\$42,000
County contribution (Detailed below)			\$45,000
Total for project			\$87,000
D. Partnerships and Contributions (add lines as necessary)			
Partner	Contribution		
Clackamas County Surveyor	\$5,000 – Control points		
Clackamas County Assessor's Office	\$15,000 - New plat maintenance, plat and deed research, quality control, cartographic QC.		
Clackamas County GIS	\$25,000 –QC/ prep for map production/rectify to control/project management/problem tax lot conversion		
A. Assessor's Signature & Date:	See file copy		
F. Fiscal Coordinator – Name & Contact Number:	Eric Bohard 503-723-4814		

G. Project Coordinator – Name & Title:	Eric Bohard, Technical Services Division Manager
E-mail address:	ericboh@clackamas.us
Phone Number:	503-723-4814
Mailing Address:	Clackamas County Technical Services 121 Library Court Oregon City, OR 97045

Section III. Detail Project Information – *Answer all questions*

A. Overview

1. Describe what the project is trying to accomplish.

Clackamas County is continuing to undergo a tax lot enhancement project to increase the relative precision of our current tax lot GIS data layer. Though Clackamas County has a complete digital GIS tax lot layer, some of the previous GIS mapping efforts are simply cartoon representations of ownership tax lots and have a wide level of accuracy confidence. Hence, the focus of this project is to complete re-mapping tax lots in the County to meet the accuracy levels described in ORMMap technical specifications.

2. What part(s) of the county does this project cover (Township, Range, and Sections, if applicable)?

The project will cover newly created urban and existing rural and resource tax lots in selected parts of the County where acceptable survey ground control exists. As new subdivisions are recorded within timeframe of this project, typically in the urban growth boundary (i.e. urban level tax lots), those tax lots are added to the GIS database.

3. What is the status/outcome of all previously funded ORMMap projects? (Please include funding cycles and a “status map” of your county.)

Prior to the Fall 2006 ORMMap contract, all efforts were to re-map urban tax lots. Since then, beginning with the Spring 2007 contract, the efforts have shifted to rural tax lots. As new urban or rural tax lots are created, they are immediately brought into the digital GIS database to ORMMap standards through our normal tax lot maintenance process and are not part of any ORMMap funding request. A breakdown of our status of the funded projects is as follows:

Urban/UGB Tax Lots: (\$270,500 approved funding - previous contracts since the inception of ORMMap not including the contracts below)

Total Urban Tax Lots:	111,789
Tax Lots Completed (COGO, rectified, and annotated)	111,789 (100%)

Rural Tax Lots: (\$468,215 approved funding, contracts 1801, 1849, 1922, 2295, 2351, 2421, 2467, 2507, 2876, 2966, 2995, 3036, 3064, 3107, 3150, 3374, 3436-15, 3536-16, 3574-16)

Total Rural Tax Lots:	45,669
Tax Lots Completed:	36,881 (81%)

Resource Tax Lots: (no funding specifically requested)

Total Resource Tax Lots:	913
Tax Lot Completed:	471 (52%)

4. Describe, in detail, your technical approach to the project (such as, mapping methodology).

We will use COGO tools to re-map those areas that have suitable data. Trying to re-map every rural tax lot using COGO tools is not practical since actual surveys and plats are widely scattered in the rural area. In those areas where COGO tax lot capture is practical, high quality surveyed ground control will be acquired. The process and criteria used to COGO capture rural plats is modeled on the urban tax lot capture design we developed. These captured platted areas will act as “anchors” or a foundation as areas with known accuracy. Next, deeds, surveys, orthophotography, and existing tax lot maps are used to “fill in” the areas in-between the anchors. As we build the rural tax lots between the anchors, ground control will be acquired

more sparsely to insure the non-platted rural tax lots are within ORMAP accuracy standards. COGO methods will be used whenever practical. The use of ESRI's Parcel Fabric also will be used whenever possible.

5. Describe the project deliverables.

This project will deliver 1500 additional re-mapped tax lots, fully annotated, using our technical approach and rectified to control meeting ORMAP rural tax lot standards. As new subdivisions are created, typically in the urban areas, those tax lots are mapped to ORMAP urban standards under our maintenance process.

6. Who will be doing the work (county staff, contractor, or DOR staff)? Please define their roles.

County staff will be used to complete 100% of this project. They will capture, annotate, and QC tax lots to ORMAP standards.

7. How will the county cartographer integrate the deliverables into the County's maintenance plan?

This project develops the base digital GIS base layer for tax lots. Once created, the County Cartographer will use various tools developed for tax lot maintenance to update any changes that might occur for the tax lots re-mapped in this project. The projects deliverables will be part of the overall countywide GIS tax lot layer. The deliverables from this project will be used to create the tax maps, directed exclusively by the County Cartographer.

8. Provide a project timeline with milestones or completion dates.

To date, all urban tax lots are completed. As urban tax lots are created during this project period, those are completed under daily maintenance. This project deals only with rural tax lots, of which 81% are completed. Based on current resources and anticipated ORMAP funding, we estimate completion of Goal 4 in December 2019. Thus far, we have remapped to ORMAP specifications 94.2% of the total. To date, 149,141 tax lots have been captured and annotated in our GIS, leaving approximately 9,230 tax lots comprising of rural and resource level tax lots to complete.

Milestones are defined as the completion of each of these tasks within each phase.

- Plats are gathered from source County offices
- Capture plats and surveys with the most appropriate method (COGO or digitizing)
- Plats and surveys are quality controlled
- Work with the County Surveyor to acquire ground control
- Tie plats and surveys to ground control
- Annotation
- Final quality control

9. Does this project have any partnerships? If yes, please identify them.

Yes. The deliverables from this project are used by many agencies as a base to map infrastructure and other details. Typical agencies outside the County who have entered into partnership agreements include cities, water districts, utilities providers, school districts, community planning organizations, and a variety of state and federal agencies. Additionally, Clackamas County has developed boundary agreements with all our County neighbors. We have agreements covering 100% of the area that bounds our county.

10. Describe any innovations utilized by this project.

We use the tools developed by the ORMAP tools group and have participated in that group from its inception either to be part of the application development team or as a test group. We are also using the latest tools developed by ESRI to stay current with ArcGIS releases. Finally, the deliverables from this project are allowing the Assessor's Cartographers to retire the old mylar tax maps and completely replace them with a digital product. Recently, we started utilizing ESRI's Parcel Fabric schema.

11. Detail Costs (who is paying for what).

Approximately 48% of this project is funded by ORMAP. The remaining will come from County resources. The County's Survey Office is providing ground control at county expense. The County Assessor's Office

provides labor to input new plats for the maintenance portion of the over-all ORMAP project plus QC. Direct staff time on the ORMAP project will comprise the bulk of expenses for this project and will be evenly split between the County and ORMAP.

B. Quality Control

1. Who will be responsible for quality control (QC)?

All Quality Control is the responsibility of Clackamas County’s Departments of Assessment and Taxation and Technology Services, GIS Division.

2. Will county cartography staff review the deliverables?

Yes. The cartography staff in the Assessor’s Office performs the final QC. They insure all components are present and correct for map production to DOR and Clackamas County standards.

3. Will there be a review by Department of Revenue’s cartography staff?

That is arranged by A&T cartographers. DOR Cartography staff has come to the county to review our technique and process and are always welcome to see what we are doing with tax lot capture.

4. Describe QC procedures.

The quality control process is very extensive. A quality control checklist was developed for those entering COGO information and for those checking it. Ground control is evaluated as to its level of survey accuracy for the plat rectification process. If customary ground control is not available, rectified orthophotos are used. Plats controlled in this manor will be revisited when better ground control is obtained. Plats are never rubber sheeted. The County Surveyor resolves any errors that occur when rectifying to ground control (i.e. gaps and overlaps). In summary, all quality control efforts will meet or exceed ORMAP Technical Specifications.

C. Project Detail

1. Is this project an “edge matching project”? If so, how much of the county boundary will be completed?

No. 100% of edge matching has been completed with surrounding counties with prior projects and we have agreements with all our neighbors.

2. Is this project part of an ongoing or multi-phased remapping project?

Yes, this project is a continuation of our on-going re-mapping project as outlined in our Business Plan.

3. What percentage of the county tax lots and tax maps meet the ORMAP technical specifications?

	Total Countywide	Meet Tech Specs	Percent Complete
Tax Lots	158,371	149,141	94.2
Tax Maps	3374	1961	58.1

4. Upon completion of this project will your county meet goal 6 (100% of tax maps meeting technical specification)?

No, our anticipated completion date is December 2019, perhaps sooner.

5. Is this project part of a multi-county effort? If so, please explain.

No

6. Will the project cost be affected if it is not fully funding this cycle?

Yes. It will delay our overall completion time.

D. Data Availability

1. Does the county have a data sharing agreement with the State?

Yes

2. Identify any data restrictions or licensing issues.

All data produced under the ORMMap program is freely available through a Data Sharing Agreement to other government agencies. Clackamas County has entered into an IGA with the State for data sharing. All publication of this data, particularly via the Internet, must comply with all Clackamas County policies and disclaimers as adopted by County Administration or the Board of County Commissioners. All data is governed by a data licensing agreement.

E. Background Information

Any other information that you feel may help support the project.

F. Other Issues - Please identify.

Submit completed forms to:

Mail	Contact Information
ORMMap Project Coordinator Oregon Department of Revenue Property Tax Division 955 Center St. NE Salem OR 97301-2555	Tel: 503-586-8128 Fax: 503-945-8737 or.map@state.or.us

G. Racial and Ethnic Impact Statement

RACIAL AND ETHNIC IMPACT STATEMENT

This form is used for informational purposes only and must be included with the grant application.

Chapter 600 of the 2013 Oregon Laws require applicants to include with each grant application a racial and ethnic impact statement. The statement provides information as to the disproportionate or unique impact the proposed policies or programs may have on minority persons¹ in the State of Oregon if the grant is awarded to a corporation or other legal entity other than natural persons.

1. The proposed grant project policies or programs could have a disproportionate or unique positive impact on the following minority persons:

Indicate all that apply:

- Women
- Persons with Disabilities
- African-Americans
- Hispanics
- Asians or Pacific Islanders
- American Indians
- Alaskan Natives

2. The proposed grant project policies or programs could have a disproportionate or unique negative impact on the following minority persons:

Indicate all that apply:

- Women
- Persons with Disabilities
- African-Americans
- Hispanics
- Asians or Pacific Islanders
- American Indians
- Alaskan Natives

3. The proposed grant project policies or programs will have no disproportionate or unique impact on minority persons.

If you checked numbers 1 or 2 above, on a separate sheet of paper, provide the rationale for the existence of policies or programs having a disproportionate or unique impact on minority persons in this state. Further provide evidence of consultation with representative(s) of the affected minority persons.

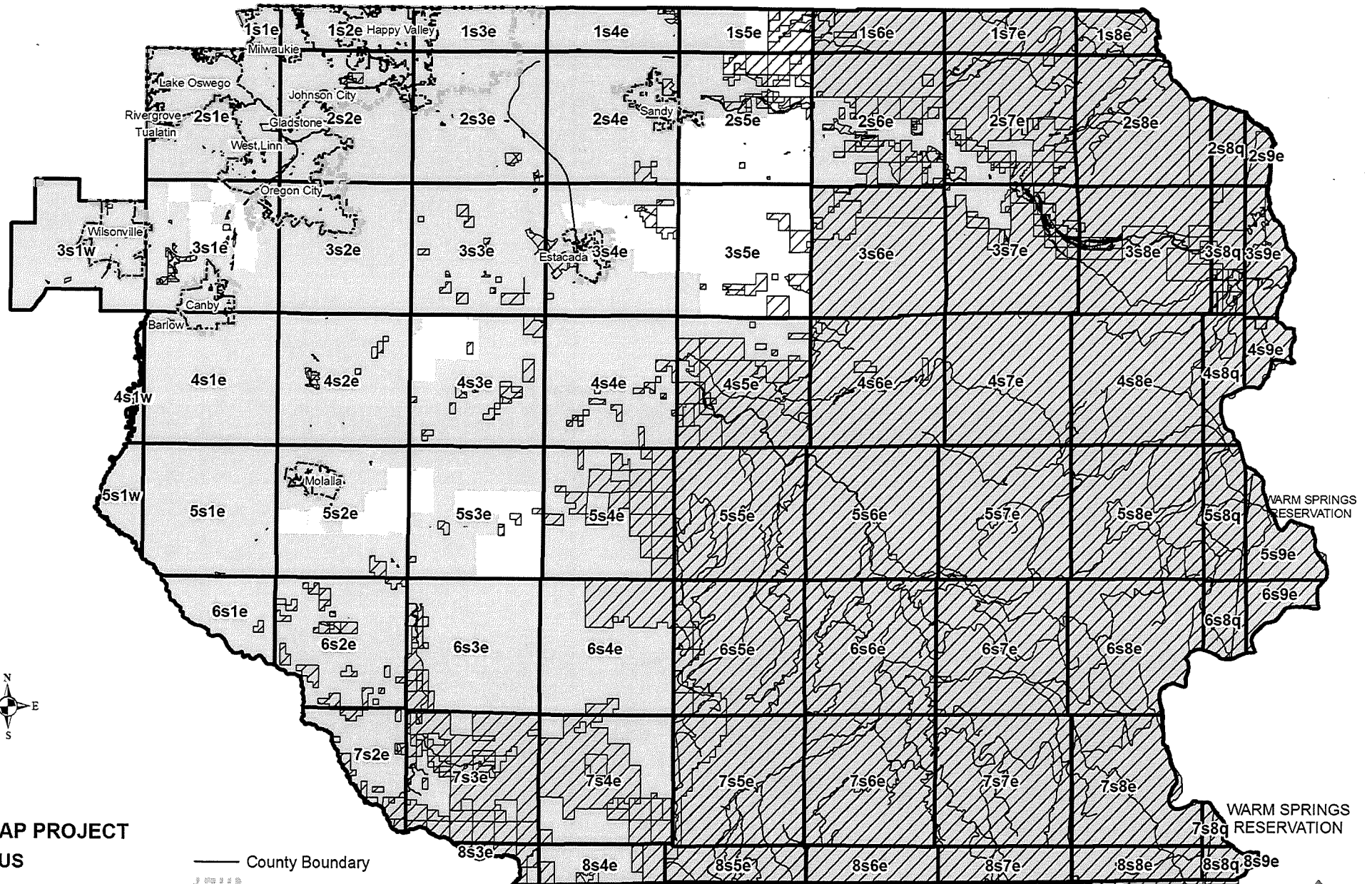
I HEREBY CERTIFY on this 22 day of March, 2017, the information contained on this form and any attachment is complete and accurate to the best of my knowledge.

Signature: see file copy

Printed Name: Eric Bohard Title: Technical Services Manager

¹“Minority persons” are defined in SB 463 (2013 Regular Session) as women, persons with disabilities (as defined in ORS 174.107), African-Americans, Hispanics, Asians or Pacific Islanders, American Indians and Alaskan Natives.

ATTACHMENT 1 ORMAP PROJECT STATUS MARCH 2017



ORMAP PROJECT

STATUS

- Completed or In Progress
- Not Started
- County Boundary
- Metro Urban Growth Boundary
- USFS, BLM, and ODF Resource Lands



EVELYN MINOR-LAWRENCE
DIRECTOR

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

June 22, 2017

Board of County Commissioners

Clackamas County

Members of the Board:

Approval of a Workplace Violence Prevention Resolution and Plan

Purpose/Outcomes	To support a County-wide Workplace Violence Prevention Plan which includes the adoption of a Resolution for workplace violence prevention and the phased development and implementation of the Workplace Violence Prevention Plan.
Dollar Amount and Fiscal Impact	N/A
Funding Source	Operating budgets of County departments
Duration	Effective June 22, 2017 until further amended
Previous Board Action	Policy session May 9, 2017
Strategic Plan Alignment	Building public trust through good government. Also aligns with departmental risk and safety goals including creating a workplace culture committed to practices that eliminate risk, and sustain a healthy and productive workforce.
Contact Person	Dwayne Kroening, 503-655-8576

BACKGROUND:

Efforts around workplace violence prevention began in 1999 with the adoption of Employment Policy and Practice (EPP) #34 – Violence in the Workplace Policy. The policy was focused on individual responsibility and the reporting of workplace violence incidents. Because of an increase in serious incidents across the nation with widely publicized media attention, a renewed emphasis began in late 2013 to encourage and assist departments with creating individualized plans to address their workplace violence exposure.

In 2016 a Leadership Academy work group took on the challenge of analyzing the needs around workplace violence prevention and creating a plan to address these needs. Jeff Jorgensen, Facilities Manager and Dwayne Kroening, Risk Manager, sponsored the project and Don Krupp, County Administrator was the project champion.

One of the components of the Plan was to create a Workplace Violence Prevention Team (WVPT). This Team has been meeting during the past couple months. Part of their work has been to review and refine the BCC Resolution and Plan which is before you today.

RECOMMENDATION:

Staff respectfully recommends the Board approve the attached Workplace Violence Prevention Resolution and Plan.

Respectfully submitted,

Dwayne Kroening, Risk Manager
Human Resources Department

In the Matter of Approving a
Workplace Violence Prevention
Resolution and Plan

Resolution No.

Page 1 of 2

WHEREAS, violence in the workplace is a growing concern at all levels of Clackamas County government; and

WHEREAS, violence against Clackamas County employees and members of the public visiting Clackamas County facilities can take many forms including harassment, threats, and physical acts of violence; and

WHEREAS, Clackamas County, in accordance with Employment Policy and Practice 34 - Violence in the Workplace Policy, recognizes its obligation to provide a safe work environment and strives to also provide a respectful and harmonious work environment for each of its employees; and

WHEREAS, Clackamas County strives to provide an environment for members of the public that is free from violence and threats of violence; and

WHEREAS, because of the unique nature of their work, some public sector employees may be at higher risk of violence in the workplace.

NOW, THEREFORE, the Clackamas County Board of Commissioners do hereby resolve the following:

1. The policy of Clackamas County shall be that threats and acts of violence that include conduct against persons and property that is sufficiently severe, offensive, or intimidating to alter the employment conditions at Clackamas County or to create a hostile, abusive, or intimidating work environment shall not be tolerated.
2. All threats to employee and public safety from any source, including violence that occurs outside of work but affects the employee or workplace, will be taken seriously and addressed appropriately.
3. The Board supports the County Administrator acting on their behalf to implement this Resolution and the Workplace Violence Prevention Team (WVPT) charge as outlined below. To the extent that funds and resources are required to implement this Resolution, they shall be subject to the oversight of the County Administrator and the Board's budgetary discretion.
4. The Workplace Violence Prevention Team shall be formed under the direction of the County Administrator and will recommend strategies for prevention, action and reaction to incidents of workplace violence and threats of violence and provide each department, office, division or agency of the County with technical assistance and/or consultative services in order to implement this policy and the Workplace Violence Prevention and Response Plan.

In the Matter of Approving a
Workplace Violence Prevention
Resolution and Plan

Resolution No.

Page 2 of 2

5. Each County department, no later than September 30, 2017, shall formulate protocols and procedures for implementing the Plan. These protocols and procedures must adhere to the guidelines of the Plan, and must be approved by the WVPT prior to their implementation.
6. In formulating its protocols and procedures, each County department shall give due regard to the importance of increasing awareness of and education about workplace violence, including domestic violence affecting the workplace, and informing employees of available resources for assistance. Each department shall provide to the WVPT a training implementation plan for awareness and prevention training for all employees, supervisors, and managers.

IT IS FURTHER RESOLVED, in order to implement this Resolution the Workplace Violence Prevention Team shall:

1. Use the Workplace Violence Prevention Program Plan to oversee the creation of department-specific violence in the workplace protocols and procedures that address prevention, response, mitigation and training as well as conduct an annual review.
2. Provide consultation and technical assistance to each County department in the development and implementation of its protocols and procedures, either upon the department's request or at the initiative of WVPT upon review of the plan as submitted by the department;
3. Receive, approve, and maintain copies of the protocols and procedures as issued and modified by the various departments; and
4. Prepare and submit to the County Administrator, on an annual basis beginning on January 15, 2018, a report regarding the implementation of this Resolution.
5. Copies of this Resolution shall be distributed to all County departments, and a summary of the Resolution shall be displayed in prominent locations in department offices and facilities.

DATED this 22nd day of June, 2017.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Intergovernmental Agreement Regarding
Exchange of Library Services
(“Metropolitan Interlibrary Exchange”)**

Purpose/Outcome	Exchange public library services offered by each party (Clackamas County, Washington County, Multnomah County Library District, Hood River County Library District, Fort Vancouver Regional Library, and the City of Camas, Washington) to the residents of the areas served by the other parties.
Dollar Amount and Fiscal Impact	None.
Funding Source	Not applicable.
Duration	Upon execution through June 30, 2022.
Previous Board Action	Intergovernmental Agreement Regarding Exchange of Library Services, dated July 12, 2012.
Strategic Plan Alignment	Build Public Trust Through Good Government (efficient use of available County resources).
Contact Person	Greg Williams, Library Network Manager Laura Zentner, BCS Deputy Director

Background:

Clackamas County has historically participated in the Metropolitan Interlibrary Exchange (MIX) agreement with other regional library service providers. The MIX agreement allows residents of an area served by one of the agreement’s parties to obtain a library card and access public library services at libraries within the service areas of all other parties. Services are provided upon the same terms and conditions applicable to the residents of each participant’s individual service area.

The current MIX agreement expires on June 30, 2017. The member libraries of the Clackamas County Library District would like to renew the MIX Agreement between Clackamas County, Washington County, Multnomah County Library District, Hood River County Library District, Fort Vancouver Regional Library, and the City of Camas, Washington for another 5-year term.

The intergovernmental agreement has been reviewed and approved by County Counsel.

Recommendation:

Staff recommends the Board of County Commissioners approve the Intergovernmental Agreement Regarding Exchange of Library Services (“Metropolitan Interlibrary Exchange”) between Clackamas County, Washington County, Multnomah County Library District, Hood River County Library District, Fort

Vancouver Regional Library, and the City of Camas, Washington and authorize Gary Barth BCS Director or Laura Zentner, BCS Deputy Director, to sign the agreement.

Attachments:

- Intergovernmental Agreement Regarding Exchange of Library Services (“Metropolitan Interlibrary Exchange”) between Clackamas County, Washington County, Multnomah County Library District, Hood River County Library District, Fort Vancouver Regional Library, and the City of Camas, Washington

Respectfully Submitted,

Laura Zentner, Deputy Director
Business and Community Services

INTERGOVERNMENTAL AGREEMENT

AGREEMENT REGARDING EXCHANGE OF LIBRARY SERVICES “Metropolitan Interlibrary Exchange”

This is an Agreement regarding library services among Clackamas County, Washington County, the Multnomah County Library District, and the Hood River County Library District pursuant to authority granted in ORS Chapter 190, and the Fort Vancouver Regional Library, a Washington inter-county rural library district, pursuant to authority granted in RCW Chapter 27.12, and the City of Camas, Washington, pursuant to authority granted in RCW Chapter 35A.27.010, herein referred to as “Party or Parties.”

PURPOSE:

The purpose of this Agreement is to exchange public library services offered by each Party to the residents of the areas served by the other Parties.

WHEREAS, the Parties desire to enter into an agreement for the exchange of library services which continues the program on the terms set forth below;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **EXCHANGE OF SERVICES.** The Parties shall each offer to residents of the other Parties, all library services provided to residents of their respective service areas upon the same terms and conditions applicable to the residents of their individual service areas, unless exceptions are agreed upon by all Parties. Each Party shall not be required to extend library services to residents of the other Parties who have had library privileges canceled for any reason.
2. **TERM.** The term of this Agreement shall be from execution through and including June 30, 2022. It is the intent of the Parties that this Agreement becomes effective on July 1, 2017.
3. **REVIEW.** The Manager of the Library Information Network of Clackamas County, the Director of Hood River County Library District, the Director of Multnomah County Library District, the Manager of the Washington County Cooperative Library Services, the Executive Director of Fort Vancouver Regional Library, and the Director of the City of Camas Library shall meet as needed to review library use covered by this Agreement, and to consider other cooperative efforts or ventures that might further services to residents.
4. **WITHDRAWAL AND TERMINATION.** This Agreement may be terminated upon the mutual agreement of all signatories or by the remaining Parties if other Parties have previously withdrawn. Any Party may withdraw from further participation in this Agreement for any reason upon ninety (90) days written notice to the other participating Parties.

5. **INDEMNIFICATION** Subject to the limitations and conditions of the Oregon Constitution and the monetary limits of the Oregon Tort Claims Act, ORS 30.260 through 30.300 and the limitations and conditions of the Washington Constitution, RCW Chapter 4.96, RCW 4.08.120, and RCW 4.24.470, each Party shall indemnify, defend and hold harmless all other Parties from and against all liability, loss and costs arising out of or resulting from the acts of that Party, its officers, elected officials, employees and agents in the performance of this Agreement.
6. **INSURANCE.** Each Party shall be responsible for providing worker's compensation insurance as required by law. The Parties shall not be required to provide or show proof of any other insurance coverage.
7. **ADHERENCE TO LAW.** Each Party in the State of Oregon shall comply with all federal, State of Oregon and Oregon local governmental laws and ordinances applicable to this Agreement. Each Party in the State of Washington shall comply with all federal, State of Washington, and Washington local governmental laws and ordinances applicable to this Agreement.
8. **NON-DISCRIMINATION.** Each Party in the State of Oregon shall comply with all requirements of federal and State of Oregon civil rights and rehabilitation statutes, and Oregon local governmental non-discrimination ordinances. Each Party in the State of Washington shall comply with all requirements of federal and State of Washington civil rights and rehabilitation statutes, and Washington local governmental non-discrimination ordinances.
9. **ACCESS TO RECORDS.** Each Party shall have access to the books, documents and other records of the other Parties which are related to this agreement for the purpose of examination, copying and audit, unless otherwise limited by law. Additionally, each Party may share information regarding patrons that have been convicted of crimes involving the use of their facilities or have been officially excluded from or trespassed on their facilities unless otherwise limited by law.
10. **SUBCONTRACTS AND ASSIGNMENTS.** None of the Parties will subcontract or assign any part of this Agreement without the written consent of the other Parties to this Agreement.
11. **THIS IS THE ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement among each Party. This Agreement may be modified or amended only by written agreement of the Parties.
12. **GOVERNING LAW.** Except as otherwise provided in Paragraphs 5, 7 and 8 herein, the provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof.
13. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, including by signature pages delivered in electronic format, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

FOR CLACKAMAS COUNTY

Approved as to form:

By _____

By _____

Title _____

County Counsel,
Clackamas County

Date _____

FOR MULTNOMAH COUNTY LIBRARY DISTRICT

Reviewed:

By _____

By _____

Vailey Oehlke
Director of Libraries

Multnomah County Attorney

Date _____

FOR WASHINGTON COUNTY

Approved as to form:

By _____

By _____

Title _____

County Counsel,
Washington County

Date _____

FOR FORT VANCOUVER REGIONAL LIBRARY

By _____

Amelia Shelley
Executive Director

Date _____

FOR HOOD RIVER COUNTY LIBRARY DISTRICT

Approved as to form:

By _____

By _____

Title _____

Hood River County Library District

Date _____

FOR CITY OF CAMAS

Approved as to form:

By _____

By _____

Title _____

City Counsel, City of Camas

Date _____



June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement between
North Clackamas Parks and Recreation District and Clackamas Community College for
Educational & Enrichment Services**

Purpose/ Outcomes	Allows NCPRD to partner with Clackamas Community College (CCC) for provision of program instruction from Summer 2017 through Spring 2018 terms classes to be held at the Milwaukie Center.
Dollar Amount and Fiscal Impact	This IGA represents an additional \$48,538.50 of revenue.
Funding Source	N/A
Duration	June 26, 2017 through June 16, 2018.
Previous Board Action	<ul style="list-style-type: none"> • This is an IGA that is renewed annually. • 08/04/2016 Business Meeting: Approved 2016-17 renewal.
Strategic Plan Alignment	This IGA supports Performance Clackamas through: <ul style="list-style-type: none"> • Building public trust through good government • Ensuring safe, healthy and secure communities
Contact Person	Scott Archer, <i>Director</i> , 503-742-4421 Kandi Ho, <i>Recreation Services Manager</i> , 503-794-8001

BACKGROUND:

The North Clackamas Parks and Recreation District requests the approval of an Intergovernmental Agreement with Clackamas Community College for Educational & Enrichment Services at the Milwaukie Center through the 2017-18 academic year.

The renewal of this IGA allows NCPRD to partner with Clackamas Community College (CCC) for the provision of program instructors for classes to be held at the Milwaukie Center. CCC will provide up to 2,343.25 hours of instruction, with a maximum value of \$48,538.50.

RECOMMENDATION:

Staff recommends the Board approve the renewal of this IGA and authorizes Gary Barth BCS Director, or Laura Zentner BCS Deputy Director to sign on behalf of North Clackamas Parks and Recreation District.

ATTACHMENT:

1. Educational Services Contract Community Education

Respectfully submitted,

Scott Archer, Director
North Clackamas Parks and Recreation District



EDUCATIONAL SERVICES CONTRACT COMMUNITY EDUCATION

This Community Education Educational Services Contract ("Agreement") is made effective as of the ____ day of _____, 2017 ("Effective Date"), by and between Clackamas Community College, 19600 Molalla Avenue, Oregon City, Oregon 97045, hereinafter referred to as the "College" and North Clackamas Parks and Recreation District's Milwaukie Center hereinafter referred to as the "Facility".

Whereas, both the College and the Facility desire to jointly plan, promote, and sponsor programs for adults and, whereas, the Facility desires to engage the College to render specific educational services to Facility's patrons. Therefore, in consideration of the sum of **\$48,538.50**, to be paid by the Facility as provided herein ("Fees"), the College agrees to offer 2,343.25 instructional hours during the period **June 26, 2017, through June 16, 2018** ("Term"). Proposed Class Schedule is attached as **Exhibit A** and hereby incorporated by reference.

In addition, the College and the Facility agree as follows:

- A. **The College will provide the following (collectively "Services"):** 1. Recruit and hire qualified instructors to teach the classes listed in Exhibit A, attached hereto and made a part hereof ("Class(es)"). 2. Provide liability and Worker's Compensation insurance coverage for instructors in limits less than or equal to the fees listed above, to be carried throughout the Term, certificates of which shall be provided to Facility concurrent with the execution of this Agreement and upon request. 3. Provide tuition waivers to all Facility residents 62 years of age and older participating in Classes. 4. Confirm with Facility the Class schedule prior to the start of each College term. 5. Appoint a liaison to work with Facility on implementing and coordinating the Services.
- B. College agrees to indemnify, defend, and hold harmless Facility from and against any and all claims, liabilities, and expenses brought against or incurred by Facility as a result of the negligent acts, willful misconduct, and performance of the Services under this Agreement, or any breach of this Agreement, by College, its agents, and employees. College's duties under this Section B shall survive the termination of this Agreement by expiration, termination, or otherwise.
- C. The College will bill the Facility an amount equal to one-quarter of the Fees for each College term on or about July 24, 2017, October 23, 2017, February 5, 2018 and May 7, 2018. Each payment to the College will be due within thirty (30) days of Facility's receipt of invoice. Undisputed accounts unpaid over 30 days will incur a \$15 service charge.
- D. The College is subject to Americans with Disabilities Act ("ADA"). Facility agrees to work with the College, as may be necessary, in addressing any accommodation requirements made by program participants as required under ADA.
- E. Clackamas Community College prohibits unlawful discrimination based on race, color, religion, ethnicity, use of native language, national origin, sex, sexual orientation,

marital status, disability, veteran status, age, genetic information, or any other status protected under applicable federal, state or local laws.

- F. **The Facility will:** 1. Provide appropriate classroom facilities for classes to be held. 2. Appoint a liaison to work with the College on implementing and coordinating the Services. 3. Notify the College, in a timely manner, of any changes or conflicts with regularly scheduled classes, including holidays and snow days, and any make up dates scheduled. 4. Assist with participant registration for classes according to College policies and procedures and be sensitive to meeting calendar deadlines 5. Maintain liability waivers for all patrons who attend classes within the program.
- G. If the Facility wishes to terminate this Agreement for any or no reason, it may do so upon written notice to College. Upon such termination, Facility shall pay for undisputed Fees incurred up to the termination date.
- H. To the extent permitted by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300), the parties each agree to indemnify, defend, and hold harmless the other party from and against any and all claims, liabilities, and expenses brought against or incurred by the other party as a result of the negligent acts, willful misconduct, performance of the Services under this Agreement, or any breach of this Agreement, by either party or their agents, and employees. The duties under this Section H shall survive the termination of this Agreement by expiration, termination, or otherwise.
- I. This Agreement represents the entire agreement between the parties with regard to its subject matter and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be executed in one or more counterparts, each of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail shall be equally as effective as delivery of an originally executed counterpart of this Agreement.
- J. This Agreement shall be governed by the laws of the State of Oregon ("State"). All claims, disputes and other matters in question which arise out of or relate to this Agreement (including any breach thereof) shall be decided by a court of competent jurisdiction in the state or federal courts in the State. Should any provision of this Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other provision hereof. No waiver of any term or condition of this Agreement on the part of either party shall be effective for any purpose whatsoever unless such waiver is in writing and signed by such waiving party. Modifications or amendments to this Agreement must be in writing and executed by duly authorized representatives of each party.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

Clackamas Community College
19600 Molalla Ave.
Oregon City OR 97045

Clackamas County Board of County
Commissioners on Behalf of North Clackamas
Parks and Recreation District:

Community Education & Harmony
Campus Director

Chair

Date

Recording Secretary

Vice President and CFO, College Services

Date

Date

Approved as to Form:

County Counsel

Date

**EXHIBIT A
PROPOSED CLASS SCHEDULE**

Exhibit A

Milwaukie Center 2017-18 Annual Schedule

Terms Offered				Class Title	Start/End Time	Day(s)	Number of Weeks	Total Hours Per Term	Total Hours Per Year	Instructor's Name
SU	FA	WI	SP							
X	X	X	X	Circuit Training	12:30-1:30	T	Su, Wi, Sp: 11 Fa: 13	Su, Wi, Sp: 11 Fa: 13	46	T. Hall
X	X	X	X	Complete Conditioning	9:25-10 :10	T	Su, Wi, Sp: 11 Fa: 13	Su, Wi, Sp: 8.25 Fa: 9.75	34.5	T. Hall
X	X	X	X	Complete Conditioning	9:25-10 :10	TH	Su, Wi, Sp: 11 Fa: 13	Su, Wi, Sp: 8.25 Fa: 9.75	34.5	T. Hall
X	X	X	X	EZ Does It	8:30-9:15	M	11	8.25	34.5	Stauss
X	X	X	X	EZ Does It	8:30-9:15	W	11	8.25	34.5	Stauss
X	X	X	X	EZ Does It	8:30-9:15	F	11	8.25	34.5	Stauss
X	X	X	X	Functional Fitness	10:20-11 :05	T	Su, Wi, Sp: 11 Fa: 13	Su, Wi, Sp: 8.25 Fa: 9.75	34.5	T. Hall
X	X	X	X	Functional Fitness	10:20-11 :05	TH	Su, Wi, Sp: 11 Fa: 13	Su, Wi, Sp: 8.25 Fa: 9.75	34.5	T. Hall
X	X	X	X	Innergystics	12:15-1:15	M	10	10	40	Blosser
X	X	X	X	Innergystics	11:15-12:15	TH	10	10	40	Blosser
X	X	X	X	Gold Toning	12:15-1:15	W/F	10	20	70	Su: Bezerra Fa-Sp: Bezerra
X	X	X	X	Sit N Fit	11:05-11 :50	M	FA: 13 Wi: 12 Su, Sp: 11	Fa: 9.75 Wi: 9 Su & Sp: 8.25	35.25	Stauss
X	X	X	X	Sit N Fit	11:05-11 :50	W	FA: 13 Su, Wi, Sp: 11	Fa: 9.75 Wi: 9 Su & Sp: 8.25	35.25	Stauss

X	X	X	X	Sit N Fit	11:05-11 :50	F	FA: 13 Su, Wi, Sp: 11	Fa: 9.75 Wi: 9 Su & Sp: 8.25	35.25	Stauss
X	X	X	X	Stretch N Flex	8:30-9:15	T	Su, Wi, Sp: 11 Fa: 13	Su, Wi, Sp: 8.25 Fa: 9.75	34.5	Hall
X	X	X	X	Stretch N Flex	8:30-9:15	TH	Su, Wi, Sp: 11 Fa: 13	Su, Wi, Sp: 8.25 Fa: 9.75	34.5	Hall
X	X	X	X	Tai Chi Beginner	4-5	M/W	11	22	88	Lusk
X	X	X	X	Tai Chi Beg & Int.	10:10-10:55	M/W/F	11	24.75	99	Lusk
X	X	X	X	Tai Chi Beg & Int.	6:35-7:35p	M/W	11	22	88	Lusk
X	X	X	X	Tai Chi: Martial Art Form/Swords	9:20-10:05	M/W/F	11	24.75	99	Lusk
X	X	X	X	Tai Chi: Martial Art Form/Swords	5:30-6:30p	M/W	11	22	88	Lusk
	X	X	X	Hula Dance for Fitness	6:30-7:30	TH	9	9	27	TBD
X	X	X	X	Chair Yoga	1:30-2:30p	M	10	10	40	Jones
X	X	X	X	Strength & Relax Yoga	2:40-3:40p	M	10	10	40	Jones
X	X	X	X	Strength & Relax Yoga	2:45-3:45p	M/TH	10	10	40	Delancey
X	X	X	X	Strength & Relax Yoga	2:15-3:15p	W	10	10	40	Watson
X	X	X	X	Zumba	6:30-7:30p	T/TH	11	20	82	Miratsky
X	X	X	X	Zumba Gold	2:30-3:30p	W	10	10	70	Su: Bezerra Fa- Sp:Bezerra
	X	X	X	Fitness Class	TBD	TBD	10	10	30	TBD
	X	X	X	Fitness Class	TBD	TBD	10	10	30	TBD
	X		X	Spanish Immersion	TBD	TBD	1	10	20	Torres
X	X	X	X	Spanish I	1-2:30	M	8	12	48	Torres

X	X	X	X	Spanish II	12:15-2:00 p	M	8	14	56	Torres
X	X	X	X	Spanish Conversation	12:15-2 p	M	8	12	48	Torres
X	X	X	X	Spanish Conversation II	9-10:30	M	8	12	48	Torres
	X	X	X	L.A.S.T.	4:30-5:15 p	TH	10	20	80	McClenahan
	X	X	X	Intervelocity	5:30-6:30 p	TH	10	10	40	McClenahan

Total hours per year @ \$18/hr: 1813.25

Terms Offered				Class Title	Start/End Time	Day(s)	Number of Weeks	Total Hours Per Term	Total Hours Per Year	Instructor's Name
SU	FA	WI	SP							
X	X	X	X	Creative Writing	1-2:45p	W	8	14	56	Arnold
X	X	X	X	Your Story	1-2:45p	TH	8	14	56	Arnold
X	X	X	X	Line Dance Beg	11:20-12:20p	T	10	10	40	Weisenberg
X	X	X	X	Line Dance Beg	12:30-1:30p	TH	10	10	40	Weisenberg
X	X	X	X	Line Dance Int	1:35-2:35p	TH	10	10	40	Mattson
	X	X	X	Landscape and Seascapes	TBD	TBD	8	16	48	TBD
X	X	X	X	Oil Painting	9:30-12 pm	TH	10	25	100	Wilson
X	X	X	X	Oil Painting	1-3:30 pm	TH	10	25	100	Wilson
	X	X	X	Milwaukie Center Singers	1:30-3pm	M	10	16.5	50	Rice

Total hours per year @ \$30/hr: 530

Total Cost at \$18/hr	\$32,638.50
Total Cost at \$30/hr	\$15,900.00
Grand Total	\$48,538.50

Total Contract Hours	2343.25
----------------------	----------------



Laura Zentner, CPA
Business Operations Director
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
Development Services Building
150 Beaver Creek Road
Oregon City, OR 97045

June 22, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Resolution for North Clackamas Parks & Recreation District for
Transfer of Appropriations for Fiscal Year 2016-2017**

Purpose/Outcome	Approval of a resolution for a transfer of appropriations for North Clackamas Parks & Recreation District FY 2016-2017.
Dollar Amount and fiscal Impact	No fiscal impact. Transfer of existing appropriations between categories.
Funding Source	N/A
Duration	July 1, 2016 through June 30, 2017.
Previous Board Action/Review	Original Adopted Budget June 29, 2016. Supplemental Budget December 8, 2016.
Strategic Plan Alignment	Build public trust through good government.
Contact Person	Laura Zentner, BCS Deputy Director 503.742.4351

BACKGROUND: Periodically during the fiscal year, it is necessary to transfer appropriations between the major categories (Administration, Parks Maintenance, Recreation, Sports, Milwaukie Center, Aquatic Park, Marketing and Communications, Planning, Natural Resources, Nutrition, Transportation, Transfers, Contingency, Special Payments, Materials & Service, Capital Outlay, and Debt Service) to more accurately reflect the changing requirements of the operating departments.

Transfers are a method of moving budgeted appropriations during the fiscal year as required by state budget law per ORS 294.463. There is no financial impact incurred as a result of transfers as appropriations for these amounts have been accomplished through the initial budget process.

The attached resolution reflects the above-mentioned changes as requested by the District in keeping with a legally accurate budget.

The **SDC Zone 2 Fund** - is transferring from the *Capital Outlay* category to the *Materials and Service* category in the amount of \$8,000 to pay for additional expenditures related to the accounting and collection of System Development Charges.

RECOMMENDATION:

Staff respectfully recommends adoption of the attached resolution and Exhibit A in keeping with a legally accurate budget.

Sincerely,

Laura L. Zentner, CPA
BCS Deputy Director

A RESOLUTION OF THE CLACKAMAS
COUNTY BOARD OF COMMISSIONERS
ACTING AS THE GOVERNING BODY OF
THE NORTH CLACKAMAS PARKS AND
RECREATION DISTRICT AND PROVIDING
AUTHORIZATION TO TRANSFER
APPROPRIATIONS WITHIN THE NORTH
CLACKAMAS PARKS & RECREATION
DISTRICT FOR FISCAL YEAR 2016-17

Resolution No. _____

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased or transferred from one appropriation category to another;

WHEREAS, transfer of appropriations for the period of July 1, 2016 through June 30, 2017, inclusive, is necessary to continue to prudently manage the distribution of those expenditures for the needs of District residents;

WHEREAS; the funds being adjusted are:

- North Clackamas Parks & Recreation District – SDC Fund 2

It further appearing that it is in the best interest of the District to approve this transfer of appropriation for the period of July 1, 2016 through June 30, 2017.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Pursuant to its authority under OR 294.463, the transfer of appropriations within the fiscal year budget is authorized as shown in the attached Exhibit A which by this reference is made a part of this Resolution.

DATED this 22nd day of June, 2017

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

TRANSFER REQUESTS

Exhibit A

June 22, 2017

NORTH CLACKAMAS PARKS & RECREATION DISTRICT – SDC Zone 2 Fund

Increase:

Materials and Services

\$ 8,000

Total

\$ 8,000

Decrease:

Capital Outlay

\$ 8,000

Total

\$ 8,000

The SDC Zone 2 Fund is transferring from the *Capital Outlay* category to the *Materials and Service* category in the amount of \$8,000 to pay for additional expenditures related to the accounting and collection of SDC fees.



June 22, 2017

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of an Amendment to the Strategic Partnership Purchase and Sale Agreement between the North Clackamas Parks and Recreation District (NCPRD) and the North Clackamas School District #12 (School District)

Purpose/ Outcomes	Amends the original Purchase and Sale Agreement to extend the closing date to October 31, 2017.
Dollar Amount and Fiscal Impact	No impact.
Funding Source	N/A
Duration	Extends the Purchase and Sale Agreement closing date to October 31, 2017.
Previous Board Action	<ul style="list-style-type: none"> • Purchase and Sale Agreement discussed at the BCC Policy Session on 2/7/17. • Purchase and Sale Agreement approved at BCC Business Meeting on 3/9/17.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure • Ensure safe, healthy and secure communities
Contact Person	Scott Archer, <i>NCPRD Director</i> , 503-742-4421 Kathryn Krygier, <i>Planning & Development Manager</i> , 503-742-4358

BACKGROUND:

North Clackamas Parks and Recreation District (NCPRD) is seeking approval of Amendment #1 (“Amendment”) to the Strategic Partnership Purchase and Sale Agreement (“Agreement”) with North Clackamas School District #12 (“School District”). This Amendment would extend the due diligence period for up to 90 days from the date of execution and the closing date of the Agreement to be no later than October 31, 2017.

This Agreement with the School District was approved at the Board’s March 9th Business Meeting. Under the Agreement, NCPRD would sell Hood View Park and in return purchase Concord Elementary School, a significant historic property in an underserved area of the District, the School District’s former Administration Building, and cash considerations.

Discussions between NCPRD and School District staff have continued after the Purchase and Sale Agreement was approved by both Boards. In these conversations, NCPRD staff has learned more about the School District’s real property portfolio and have identified potential assets that would better meet the needs of District residents. Therefore, NCPRD and School District staff have been exploring the possibility of acquiring other School District assets in lieu of the former

Administration Building. This amendment allows staff additional time to explore these opportunities and complete due diligence.

County Counsel developed and has approved the language of the Amendment to the original Purchase and Sale Agreement.

RECOMMENDATION:

Staff recommend the Board approve the Strategic Partnership Purchase and Sale Agreement with the School District and authorize the Director or Deputy Director of Business and Community Services to execute all documents necessary to effectuate the same.

ATTACHMENT:

1. Amendment #1 to the Strategic Partnership Purchase and Sale Agreement

Respectfully submitted,

Scott Archer, Director
North Clackamas Parks and Recreation District

**AMENDMENT #1 TO THE STRATEGIC PARTNERSHIP
PURCHASE AND SALE AGREEMENT**

This Amendment #1 to the Strategic Partnership Purchase and Sale Agreement (“Amendment”), when signed by the North Clackamas School District (“District”) and North Clackamas Parks and Recreation District (“NCPRD”) will become part of the agreement documents, superseding the original to the applicable extent indicated.

WHEREAS, the District and NCPRD entered into that Strategic Partnership Purchase and Sale Agreement Effective as of March 9th, 2017 as may be amended (“Agreement”); and

WHEREAS, the District and NCPRD desire to amend the Agreement pursuant to this Amendment;

NOW, THEREFORE, the District and NCPRD hereby agree that the Agreement is amended as follows:

1. Section 4 Closing Date is amended to read in its entirety:

Closing Date. This transaction shall close no later than October 31st, 2017, unless otherwise extended as set forth herein.

2. Section 5, Conditions Precedent to Closing is amended as necessary to extend all due diligence and related deadlines for ninety (90) days from the date of this Amendment.

Except as set forth herein, the County and the Contractor ratify the remainder of the Contract and affirm that no other changes are made hereby.

North Clackamas School District

North Clackamas Parks and Recreation District

Matthew Utterback
Superintendent

Gary Barth
Director of Business and Community Services

Date

Date

Approved as to form

Approved as to form

District Counsel

County Counsel



M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Acting as the Board for the Clackamas County Service District #5
Clackamas County

Members of the Board:

Approval of a Contract with Harper Houf Peterson Righellis, Inc. (HHPR) to Provide Design and
Engineering Services for SE McLoughlin Boulevard Phase 2 Street Lighting Improvements

Purpose/Outcomes	Approval to proceed with a contract for Phase 2 design and engineering services for street lighting improvements on the east side of McLoughlin Boulevard.
Dollar Amount and Fiscal Impact	The current contract value is \$299,804.35.
Funding Source	Service District No. 5 (CCSD#5) and Oregon Department of Transportation (ODOT)
Duration	June 30, 2018
Previous Board Action	November 16, 2016 Policy Session
Strategic Plan Alignment	Ensure Safe, Healthy and Secure Communities Build a Strong Infrastructure
Contact Person	Wendi Coryell, Service District Specialist, Clackamas County Service District No. 5 - 503-742-4657
Contract No.	N/A

BACKGROUND:

Service District No. 5 allows the installation for street lighting through the District's petitioning process. On November 25, 2015, the McLoughlin Boulevard street lighting petition was approved by the Board. In response to this approved petition request, the Board authorized district revenues, majority of which are from the sale of district assets, to be directed towards a capital improvement project to light McLoughlin Boulevard in an effort to enhance the safety for the traveling public.

The project, as proposed, will provide lighting on the east and west side of McLoughlin Boulevard between the cities of Milwaukie and Gladstone and is being constructed in two phases. Phase 1 consists of Portland General Electric installing new fixtures on the existing

wood poles on the west side of McLoughlin Boulevard. This work began May 5, 2017 and is expected to be completed by August 2017.

Phase 2 consists of the placement of new aluminum poles, where feasible, along the entirety of the eastern section of the road way. To do so requires a significant amount of boring along this major arterial.

Due to the complicated nature of Phase 2 a Request for Proposal was solicited and HHPR was the only bid received at the time of closing on February 27, 2017. The District negotiated the proposal and fee of \$299,804.35 with HHPR. The scope of work will include, but is not limited to, survey and plan design that meets ODOT and Portland General Electric standards for the installation of new poles and fixtures.

County Counsel has reviewed and approved this contract.

RECOMMENDATION:

Staff respectfully recommends the District Board authorize execution of the contract with Harper Houf Peterson Righellis, Inc. to provide Phase 2 design and engineering services.

Respectfully submitted,

Wendi Coryell, Service District Specialist
Department of Transportation and Development

Placed on the _____ Agenda by the Purchasing Division



CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between Harper Houf Peterson Righellis, Inc. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County").

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on June 30, 2018. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: Consulting Engineering Services for McLoughlin Blvd. Street Lighting Project ("Work"), further described in Attachment A.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed \$299,804.35 for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Attachment B.

4. Travel and Other Expense. Authorized: [] Yes [X] No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html. Travel expense reimbursement is not in excess of the not to exceed consideration.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibits A, B, and C.

6. Contractor Data.

Address: 205 SE Spokane St. Suite 200, Portland, OR 97202

Contractor Contract Administrator: Neil Waibel

Phone No.: 503.221.1131

Email: neil@hhpr.com

MWESB Certification: [] DBE # [] MBE # [] WBE # [] ESB #

Payment information will be reported to the Internal Revenue Service ("IRS") under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

8. **A. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

B. PROFESSIONAL LIABILITY CLAIMS. To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless and defend the county, and it's officers, elected officials, agents and employees from and against liabilities, damages and costs to the extent caused by the negligence of the Consultant in the performance of services under this Agreement. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by an applicable statute of repose or statute of limitations. Nothing in this section shall apply to indemnification of general insurance liability claims, which is addressed in a separate provision in Section 8.A of this agreement.

9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, 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); and (C) 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 ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. **INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.

- 11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or Section 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. 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.
- 12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us, or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** The Contractor under this Contract shall perform services in a manner consistent with that degree of skill and care exercised by practicing design professionals performing similar services under the same or similar circumstances and conditions and locality.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATIONS. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any

excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

- 22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 27. COMPLIANCE.** 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:
- (A) Contractor shall: (i) 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; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- (B) 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 to the Contractor by reason of this Contract.
- (C) 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.

(D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of 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.

28. KEY PERSONS. Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.

29. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

EXHIBIT A
PERSONAL/PROFESSIONAL SERVICES CONTRACT

SCOPE OF WORK

Contractor shall perform all Work as detailed in Attachment A: “*Project Statement of Work*” which includes Contractor’s Proposal submitted in response to Request for Qualifications No. 2017-20.

The County Contract administrator for this Contract is: **Terry Mungenast**

CONSIDERATION

- a. Consideration Rates: Fixed Fee as detailed in Attachment B: “*Harper Houf Peterson Righellis, Inc. - Project Fee*”.
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$299, 804.35**. Invoices shall be submitted to: **Terry Mungenast** terrymun@clackamas.us
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

**EXHIBIT B
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.

Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

2. Required by County Not required by County

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

3. Required by County Not required by County

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

4. Required by County Not required by County

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

5. Certificates of Insurance. Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to County acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

6. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or purchasing@clackamas.us.

EXHIBIT C
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- _____ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- _____ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- _____ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- _____ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- _____ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature _____ Date _____



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Goods and Service Contract between Clackamas County Service District No. 1
and Braun Construction & Design LLC
For Detention Pond Maintenance and Restoration Services

Purpose/Outcomes	Provide detention pond maintenance and restoration at three surface water facilities in Clackamas County Service District No. 1.
Dollar Amount and Fiscal Impact	Clackamas County Service District No. 1 budgeted funds of \$165,875 for FY 2017-2018
Funding Source	Clackamas County Service District No.1 Operating Fund. No General Funds are impacted.
Duration	July 2017 to December 2017
Previous Board Action/Review	None
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Supports CCSD1's strategic plan that residents of service district will benefit from properly functioning infrastructure that supports healthy streams and reduces flooding. 2. This project supports the County Strategic Plan of building a strong infrastructure that delivers services to customers.
Contact Person	Ron Wierenga, WES Surface Water Program Manager, 503-742-4581

BACKGROUND:

Water Environment Services, on behalf of Clackamas County Service District No. 1 (CCSD1) owns and maintains hundreds of stormwater detention pond facilities in North Clackamas County and Happy Valley. Along with routine maintenance of vegetation and trash removal, occasional sediment and vegetation removal are necessary to ensure their proper function and reduce risks of flooding. Since the original installation of these facilities they have become overgrown with vegetation and have trapped literally tons of sediment, thus are less effective for pollutant removal and runoff control. The purpose of this project is to clean out the three detention ponds and return them to their original design function.

On April 19th, 2017 CCSD1 publicly advertised for bids, through County Procurement, for Detention Pond Maintenance and Restoration services.

On May 17th, 2017 three bids were received and evaluated. It was determined that Braun Construction & Design LLC was the lowest responsive bidder and is eligible to perform work in the State of Oregon.

The contract was reviewed by County Counsel.

RECOMMENDATION:

Staff recommends the Board of County Commissioners, acting as the Governing Body for Clackamas County Service District No. 1, approve the Goods and Services Contract between Clackamas County Service District No. 1 and Braun Construction & Design LLC for Detention Pond Maintenance and Restoration Services.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the _____ agenda by Procurement.



GOODS AND SERVICES CONTRACT

This Goods and Services Contract (this "Contract") is entered into between Braun Construction & Design LLC ("Contractor"), and Clackamas County Service District No. 1 ("District") for the purposes of providing Detention Pond Maintenance.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until August 15, 2017. 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 acting as the Governing Body for the District. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in Invitation to Bid #2017-27: Detention Pond Maintenance and Restoration issued April 18, 2017 and all addenda, attached and hereby incorporated by reference as Attachment "A." This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Attachment "A", and the Contractor's Bid attached and hereby incorporated by reference as Attachment "B." Work shall be performed in accordance with a schedule approved by the District. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representative for this contract is: Leah Johanson.

III. COMPENSATION

1. **PAYMENT.** The District agrees to compensate the Contractor on a fixed fee basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed \$165,875.00 and the total Contract compensation shall not exceed \$165,875.00
2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent District contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Attachment A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. Invoices shall be submitted to the District's Representative at: Water Environment Services, 150 Beaver Creek Rd., Oregon City, OR 97045

IV. CONTRACT PROVISIONS

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and its duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years,

or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. AVAILABILITY OF FUNDS. District certify that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.

3. CAPTIONS. The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

4. COMPLIANCE WITH APPLICABLE LAW. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

5. EXECUTION AND COUNTERPARTS. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

6. GOVERNING LAW. This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. HAZARD COMMUNICATION. Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

8. INDEMNITY, RESPONSIBILITY FOR DAMAGES. Contractor shall be responsible for all damage to property, injury to persons, and lose, expense, inconvenience, and delay which may be caused by, or

result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

9. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserve the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the District employees, including, but not limited to, 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); and (C) 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.

At present, the Contractor certifies that he or she, if an individual is not a program, Clackamas County, District or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. INSURANCE. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the District evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, 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 District, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

The Contractor agrees to furnish the District evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, 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 District, at its option, may require a complete copy of the above policy.

C. Contractor shall provide District a certificate of insurance naming the District and Clackamas County, and their officers, elected officials, agents, and employees additional insureds. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include the District and Clackamas County and their agents, officers, and employees as expressly

scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the District 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 District under this insurance. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

D. 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.

E. 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.

F. 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 District. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

G. 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 District.

11. LIMITATION OF LIABILITIES. Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. 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.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or District at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against District, such facsimile transmission must be confirmed by telephone notice to District's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. OWNERSHIP OF WORK PRODUCT. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in the District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any

other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to District that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

A. Performance Warranty. Contractor warrants that the goods provided to the District shall consistently perform according to the performance characteristics described in the Scope of Work.

B. Service Warranty. Contractor warrants that the services provided herein to the District, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and District's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the District to Contractor. The District agree to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in the following Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

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

17. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract, by operation of law or otherwise, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. District may assign all or part of this Contract at any time without further permission required to the Contractor. District may assign all or part of this Contract at any time without further permission required to the Contractor.

18. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to

pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATION. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the District are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work

been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research or objects or other tangible things needed to complete the work.

22. NO THIRD PARTY BENEFICIARIES. District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

23. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

24. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. FORCE MAJEURE. Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

26. WAIVER. The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.

27. COMPLIANCE. 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: (A) Contractor shall: (i) 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; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished. (B) 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 District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) 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. (D) 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.

28. DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the District except as to latent defects, fraud and Contractor's warranty obligations.

29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the District at times and places determined by the District. If the District finds goods and services furnished to be incomplete or not in compliance with the District, the District, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the District at a reduced price, whichever the District deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the District, the District may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the District's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

30. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

[SIGNATURE PAGE FOLLOWS]

ATTACHMENT A

[INVITATION TO BID #2017-27 AND ADDENDA FOLLOWS]

ATTACHMENT B

[CONTRACTOR'S BID FOLLOWS]