

AGENDA ^{*}Revised

Removed, Housing Authority Consent item.

Thursday, March 7, 2019 - 10:00 AM BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2019-13

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

*I. HOUSING AUTHORITY CONSENT AGENDA

1. **REMOVED** - Approval to Accept the Award for the Meyer Memorial Trust Rural Housing DEI Funding Opportunity: Diversity, Equity, and Inclusion Technical Assistance

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

III. 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 to request funds under HRSA 19-080 on or before the deadline of April 11th 2019 – *Health Centers*
2. Approval of Subrecipient Agreement Amendment #3 with the Friends of the Canby Adult Center to provide Social Services for Clackamas County Residents – *Social Services*
3. Approval of a Construction Contract with Gresham Roofing for the Re-roof Project at the Estacada Community Center – *Community Development*

B. Department of Transportation & Development

1. Approval of a Contract with Kittelson & Associates, Inc. for the Damascus Transportation System Plan Update - *Procurement*

C. Elected Officials

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

D. Department of Human Resources

1. Approval of the Deferred Compensation 457 Retirement Plan Document Changes to Include Other Acceptable Documentation

E. Technology Services

1. Approval of a Service Level Agreement between Clackamas Broadband eXchange and Cascade Access LLC.

IV. DEVELOPMENT AGENCY

1. Approval of a Commercial Lease with Milne Masonry, Inc.
2. Approval of a Commercial Lease with W.E. Given Contracting, Inc.
3. Approval of a Second Amendment to the Owner Participation Development Agreement with Hoodland Fire District

V. WATER ENVIRONMENT SERVICES

1. Approval of a Service Connection Mortgage in the North Clackamas Service Area for Water Environment Services
2. Approval of an Agreement for Release of Covenant Running with the Land

VI. COUNTY ADMINISTRATOR UPDATE

VII. COMMISSIONERS COMMUNICATION

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

COPY

March 7, 2019

REMOVED

Housing Authority Board of County Commissioners
Clackamas County

Members of the Board:

Approval to Accept the Award for the Meyer Memorial Trust Rural Housing DEI Funding
Opportunity: Diversity, Equity, and Inclusion Technical Assistance

Purpose/Outcomes	Approval to apply for a grant that provides H3S and Housing Authority funding for Diversity, Equity, and Inclusion Training.
Dollar Amount and Fiscal Impact	Grant award \$10,000. No County General Funds are involved. No matching funds required. Funds will be used to hire a 3 rd party consultant to provide training.
Funding Source	Meyer Memorial Trust will fund this grant
Safety Impact	N/A
Duration	January 1, 2019 – December 31, 2019
Previous Board Action	8/16/2018
Contact Person	Erin Schwartz 503-742-5950
Contract No.	N/A

Background

The Department of Health, Housing, and Human Services (H3S) requests the approval to accept a grant from the Meyer Memorial Trust, Rural Housing DEI Funding Opportunity: Diversity, Equity, and Inclusion Funding Opportunity.

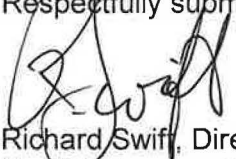
Meyer Memorial Trust has offered funding to organizations focused on affordable housing and that attended one of Meyer's Rural Housing Diversity, Equity, and Inclusion Workshops in 2018. This opportunity provides organizations with funding for up to 1 year to support affordable housing organizations' development, implementation, and advancement of diversity, equity, and inclusion work. Technical assistance will be focused on Diversity, Equity, and Inclusion training for Housing Authority staff as well as staff from Divisions and teams within H3S involved in affordable housing work.

We received the \$10,000 in funding. These funds will be used to hire a 3rd party consultant to provide technical assistance.

Recommendation

Staff recommends the Board approval to accept this grant funding and authorization for Richard Swift, H3S Director to sign all documents necessary to accomplish this action on behalf of the Board of County Commissioners.

Respectfully submitted,



Richard Swift, Director
Health, Housing & Human Services

March 7, 2019

Board of County Commissioners,
Clackamas County

Members of the Board:

Approval to request funds under HRSA 19-080 on or before the deadline of April 11th 2019

Purpose/Outcomes	To request HRSA funding of Clackamas Health Centers clinics in the city of Sandy.
Dollar Amount and Fiscal Impact	Up to \$650,000 annually.
Funding Source	Health Resources and Services Administration (HRSA)
Duration	9-1-2019 and ongoing
Previous Board Action	Approval of numerous HRSA funding opportunities
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.	Does not apply

BACKGROUND:

The Health Centers Division of the Health Housing & Human Services Department requests approval to request HRSA fiscal year (FY) 2019 Health Center Program New Access Points funding.

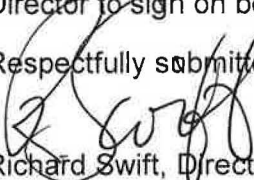
HRSA's stated purpose of this funding is to provide operational support for new service delivery sites under the Health Center Program to improve the health of the nation's underserved communities and vulnerable populations by expanding access to affordable, accessible, quality, and cost effective primary health care services

Clackamas Health Centers will achieve this purpose through expansion of our Primary Care operations, and enhancement of Behavioral Health Operations in the city of Sandy. This will involve purchase or lease of an appropriate clinic space to provide integrated primary care and behavioral health services to patients at least 40 hours each week. Currently primary care is limited to 3:00PM to 8:00PM; and provided in our Sandy High School Based Health Clinic.

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Director
Health, Housing & Human Services

Healthy Families. Strong Communities.

Grant Application Lifecycle Form

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

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

*** CONCEPTION ***

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

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

Lead Department: Health Centers Application for: Subrecipient funds Direct Grant
Grant Renewal? Yes No

Name of Funding Opportunity: HRSA 19-080
Funding Source: Federal State Local: _____
Requestor Information (Name of staff person initiating form): James Wilson
Requestor Contact Information: 503-655-8697
Department Fiscal Representative: Ed Johnson
Program Name or Number (please specify): FQHC Administration 08003
Brief Description of Project:

HRSA access point funding of health services in the city of Sandy and surrounding areas.

Name of Funding (Granting) Agency: Health Resources and Services Administration (HRSA)

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

<https://bphc.hrsa.gov/programopportunities/fundingopportunities/NAP/>

OR

Application Packet Attached: Yes No

Completed By: James Wilson Date: 2/25/2019

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

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

Competitive Grant Non-Competing Grant/Renewal Other Notification Date: 1/6/2019
CFDA(s), if applicable: 4/2/1900
Announcement Date: 1/6/2019 Announcement/Opportunity #: HRSA-19-080
Grant Category/Title: New Access Points Max Award Value: \$650,000
Allows Indirect/Rate: N/A Match Requirement: No
Application Deadline: 3/12/2019 Other Deadlines: Phase II Application 4/11/2019
Grant Start Date: 9/1/2019 Other Deadline Description: Site must be fully operational within 120 days of NOA
Grant End Date: 8/31/2021
Completed By: Jennifer Stone
Pre-Application Meeting Schedule: N/A

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

Mission/Purpose:

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

Expands health care to those in need.

2. How does the grant support the Division's Mission/Purpose/Goals? (If applicable)

Expands health care to those in need.

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

N/A

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

To improve the health of the nation's underserved communities and vulnerable populations by expanding access to affordable, accessible, quality, and cost effective primary health care services. NAP funding provides operational support for new service delivery sites for the provision of comprehensive primary health care services (i.e., new access points). Applicants must propose at least one full-time, permanent new access point site that has primary medical care as its main

5. Does the grant proposal fund an existing program? If yes, which program? If no, what should the program be called and what is its purpose?

Yes - Health Centers Primary Care, Dental and Behavioral Health

Organizational Capacity:

1. Does the organization have adequate and qualified staff? If yes, what types of staff are required? If no, can staff be hired within the grant timeframe?

Yes - Medical professionals

2. Is there partnership efforts required? If yes, who are we partnering with, what are their roles and responsibilities, and are they committed to the same goals?

N/A

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

N/A

4. If funding creates a new program, does the department intend that the program continue after initial funding is exhausted? If so, how will the department ensure funding (e.g. request new funding during the budget process, discontinue or supplant a different program, etc.)?

N/A

Collaboration

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

N/A

Reporting Requirements

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

HRSA FQHC reporting as currently done by Health Centers teams

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

Medical / Clinical performance measures - see Health Centers Quality Workplan for complete listing

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

HRSA Uniform Data System reporting as current doen by Health Centers teams

Fiscal

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

Yes

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

Fee for service and Alternative Payment Methodolgy for Health Services

3. Is there a match requirement? If yes, how much and what type of funding (CGF, Inkind, Local Grant, etc.)?

N/A

4. Is this continuous or one-time funding? If one-time funding, how will program funding be sustained?

Continuous

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

Program Approval:

Name (Typed/Printed)

Date

Signature

**** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR ****

Section IV: Approvals

DIVISION DIRECTOR OR ASSISTANT DIRECTOR (or designee, if applicable)		
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR		
Name (Typed/Printed)	Date	Signature

IF APPLICATION IS FOR FEDERAL FUNDS, PLEASE SEND COPY OF THIS DOCUMENT BY EMAIL TO FINANCE (FinanceGrants@clackamas.us). ROUTE ORIGINAL OR SCANNED VERSION TO COUNTY ADMIN.

Section V: Board of County Commissioners/County Administration

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

For applications less than \$150,000:

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

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

BCC Agenda item #: Date:

OR

Policy Session Date:

County Administration Attestation

**County Administration: re-route to department contact when fully approved.
Department: keep original with your grant file.**

March 7, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Subrecipient Agreement Amendment #3 with the Friends of the Canby Adult Center to provide Social Services for Clackamas County Residents

Purpose/Outcomes	Amendment No. 3 to the Subrecipient Agreement with the Friends of the Canby Adult Center to provide social services to Clackamas County residents age 60 and over. These services enable residents to remain engaged in their community
Dollar Amount and Fiscal Impact	The maximum contract value is increased by \$57,270 for a revised contract maximum of \$216,111 for FY18/19. The contract is funded through the Social Services Division Program agreement with the Oregon Department of Human Services.
Funding Source	The Older American Act (OAA), Oregon Project Independence (OPI) State Special Program Allocation funds, Ride Connection pass-through STF funds, and LIHEAP funds- no County General Funds are involved.
Duration	Effective July 1, 2018 and terminates on June 30, 2019
Previous Board Action	071317-A15, 020118-A1, 052418-A7
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	8347 / 18-003-003

Background

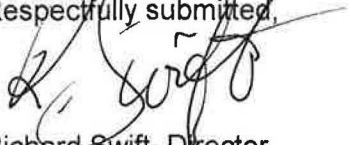
The Social Services Division of the Health, Housing & Human Services Department (H3S) requests the approval of a Subrecipient Agreement 18-003, Amendment #3 with the Friends of the Canby Adult Center. It is a budget adjustment that redistributes the nutrition program funding, adjusts funds for approved evidence-based Physical Activity/Falls Prevention programming, adds additional funding for Ride Connection transportation services and OPI Home Delivered Meals funding.

This amendment increases the agreement amount by \$57,270; for an amended agreement maximum of \$216,111 for FY18/19. This agreement is in the format approved by County Counsel as part of the contract standardization project. No County General Fund dollars are involved. This amendment is effective upon execution, retroactive to July 1, 2018 and continues through June 30, 2019.

Recommendation

We recommend the approval of this agreement and that Richard Swift be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Swift", is written over the text "Respectfully submitted,".

Richard Swift, Director
Health Housing & Human Services

Subrecipient Agreement Amendment
Health, Housing and Human Services

H3S Contract#: 8349 Subrecipient #: 18-003 Board Agenda #: 052418-A7

Division: Social Services

Amendment Number: 3

Contractor: Canby Adult Center, The Friends of the

Amendment Requested By: Brenda Durbin, CCSS Director

Changes: (X) Subrecipient Agreement Budget & Language

Justification for Amendment:

This is a budget adjustment that rebalances OAA and transportation funding and units of service for FY18-19. This includes the addition of the National Diabetes Prevention (DPP) program to the Centers slate of services. This results in a net decrease to the contract budget of \$57,270.

This Amendment #3, when signed by the The Friends of the Canby Adult Center ("SUBRECIPIENT") the Health, Housing and Human Services Department, Social Services Division on behalf of Clackamas County will become part of the contract documents, superseding the original to the applicable extent indicated. This Amendment complies with Local Contract Review Board Rules.

WHEREAS, the SUBRECIPIENT and COUNTY entered into those certain Subrecipient Agreement documents for the provision of services dated July 1, 2017 as may be amended ("agreement");

WHEREAS, the Contractor and County desire to amend the Agreement in its entirety as of July 1, 2018 and otherwise modify it as set forth herein;

NOW, THEREFORE, the County and Contractor hereby agree that the Agreement is amended as follows:

- I. **Amend:** The maximum not-to-exceed compensation payable to Subrecipient under this agreement for the period of July 1, 2018 through June 30, 2019 is:
4. **Grant Funds.** The maximum, not to exceed, agreement amount that the COUNTY will pay is **\$158,841**. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. (The split between funding sources is outlined in Exhibit 6 – Budget and Units of Services.)
 - a. **Grant Funds.** The COUNTY's funding of **\$127,467** in grant funds for this Agreement is the Older Americans Act (CFDA: 93.043, 93.044, 93.052, 93.053) issued to the COUNTY by the State of Oregon, Department of Human Services, State Unit on Aging and **\$2,000** from Federal

Transportation Administration funds (Federal Statute: 49 USC 5310; CFDA: 20.513) issued to the COUNTY by Ride Connection, Inc., an Oregon nonprofit corporation.

- a. **Other Funds.** The COUNTY's funding of **\$19,149** for transportation services outlined in this agreement are from Elderly and Disabled Transportation funds issued to the COUNTY by Ride Connection, Inc. and TriMet. The COUNTY's funding of **\$9,600** for Physical Activity/Falls Prevention outlined in this agreement are from State of Oregon, and **\$625** for Low Income Home Energy Assistance application assistance outlined in this Agreement are from HEAT Oregon, an Oregon nonprofit organization.

TO READ:

4. **Grant Funds.** The maximum, not to exceed, agreement amount that the COUNTY will pay is **\$216,111**. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. (The split between funding sources is outlined in Exhibit 6 – Budget and Units of Services.)

- a. **Grant Funds.** The COUNTY's funding of **\$161,480** in grant funds for this Agreement is the Older Americans Act (CFDA: 93.043, 93.044, 93.052, 93.053) issued to the COUNTY by the State of Oregon, Department of Human Services, State Unit on Aging and **\$4,800** from Federal Transportation Administration funds (Federal Statute: 49 USC 5310; CFDA: 20.513) issued to the COUNTY by Ride Connection, Inc., an Oregon nonprofit corporation.
- b. **Other Funds.** The COUNTY's funding of **\$33,690** for transportation services outlined in this agreement are from Elderly and Disabled Transportation funds issued to the COUNTY by Ride Connection, Inc. and TriMet. The COUNTY's funding of **\$9,600** for Physical Activity/Falls Prevention outlined in this agreement are from State of Oregon, the OPI HDM funding of **\$3,816** are from State of Oregon, Oregon Project Independence (OPI) and **\$625** for Low Income Home Energy Assistance application assistance outlined in this Agreement are from HEAT Oregon, an Oregon nonprofit organization.

II. AMEND: Exhibit 1, 2. DESCRIPTION OF SERVICES

- a. **CASE MANAGEMENT:** Is an in-depth interview with a client to provide access to an array of service options to assure appropriate levels of service and to maximize coordination in the service delivery system. Case management must include four general components: access, assessment, service implementation, and monitoring:
 - i. Access & Assessments:
 - (1) Informing clients of available services and, where appropriate, developing a goal-oriented service plan.
 - (2) Utilize an approved County-wide standardized assessment/intake form.

- (3) Assessment is re-done with a change in client life situation/condition - every six to twelve months.
 - (4) May be billed upon submission of assessment/intake form.
- ii. **Service Implementation & Monitoring:**
 - (1) Provide early identification of current or potential problem areas.
 - (2) Assess the need for changes/improvements in service.
 - (3) Identify any gaps/unmet needs.
 - (4) Review intervention results to determine if what was done achieved the desired result.
 - (5) Determine if services should be discontinued.
 - (6) Case monitoring services are available to frail but mobile elderly as well as homebound individuals.
- b. **REASSURANCE:** Regular friendly telephone calls and/or visits to physically, geographically or socially isolated registered clients that are receiving services to determine if they are safe and well, if they require assistance, and to provide reassurance. A unit is one contact
 - c. **INFORMATION & ASSISTANCE:** Consists of request for assistance locating resources to meet a specific need, or assistance prioritizing and locating resources to meet multiple needs. Inquiries require:
 - i. Informal assessment of the client's needs.
 - ii. Evaluation of appropriate resources.
 - iii. Assistance linking the client to the resources.
 - iv. Completion of an intake form to document background information on the client, the client's needs and what actions or referrals were made.
 - v. Follow up with the client or agency to see if the needs were met.
 - vi. Tallying the category of need for each inquiry.
 - vii. Documenting any unmet needs including recording the request, resources tried and the reason unable to help.
 - d. **TRANSPORTATION:** Is the service that provides one-way rides for older persons and younger persons with disabilities. The goal is to ensure that transportation needs are met for those who are unable to meet their transportation needs independently. OAA funded rides are scheduled for persons who are age 60 and older for trips to medical appointments, clinics, personal business and to senior center activities. Ride Connection funded rides are scheduled for individuals age 60 and older and for persons with disabilities age 18 and over for medical appointments, clinics, personal business, shopping, nutrition and recreation activities.
 - i. Canby Adult Center Transportation Consortium Goals:
 - (1) Increase replacement reserve fund with separate accounting.
 - (2) Assure all drivers meet Ride Connection training and eligibility requirements as defined in the Operations Manual for Transportation Coordinators.

- (3) Continue regular publicity/marketing efforts regarding transportation program
 - (4) Continue to explore ways to increase ridership, including contact with long term care facilities in the area.
 - (5) Attend all scheduled Transportation Consortium meetings.
- ii. Guidelines for Non-Medical Transportation for Waivered Medicaid Clients
- (1) This funding source is available for Medicaid clients who are receiving “waivered” services. Medicaid clients with a case manager who reside in all types of living situations except nursing facilities are waived Medicaid clients. All rides must be authorized in writing on a *NON MEDICAL RIDE REFERRAL FORM FOR WAIVERED MEDICAID CLIENT* form by an Aging and Disability Services case manager before reimbursement may be requested for them. SUBRECIPIENT must keep the client ride authorizations on file – faxed forms are adequate. Case Managers will authorize rides yearly, at a minimum and will note the need for non-medical transportation in the client’s signed case plan. COUNTY will coordinate completion and distribution of forms for SUBRECIPIENT and case managers through the Transportation Reaching People (TRP) program.
 - (2) Services shall be billed by SUBRECIPIENT according to the following rate scale:

One person, one-way ride: \$14.00 per ride
 - (3) Clients receiving the rides will not be asked or expected to contribute to the cost of the ride.
 - (4) Trips will be tracked daily by client and type of ride. This information will be sent monthly to COUNTY, and be available for State and Federal representatives for audit purposes.
- iii. SUBRECIPIENT will be responsible for:
- (1) recruitment of volunteer and/or paid drivers who will qualify for insurance coverage or who are willing to provide proof of coverage as drivers, and maintaining an adequate number of qualified volunteer and/or paid drivers to provide services.
 - (2) orientation of drivers to the transportation program and informing them of other specialized training opportunities required to maintain safety of operations.
 - (3) submission of criminal record check requests on all potential drivers and receiving satisfactory reports back prior to scheduling them to transport any client.
 - (4) drug and alcohol testing on all potential paid drivers prior to hiring them is recommended for all drivers of Center-owned mini vans and buses, including volunteers.
- e. **FOOD SERVICE**- Is the production of meals for the congregate and home delivered meal recipients of the Canby Adult Center. Each meal must contain at least one-third of the Recommended Dietary Allowance (RDA) as

established by the Food and Nutrition Board, National Research Council - National Academy of Science. A unit is one meal prepared and served, delivered, or a HDM "late-cancel."

- f. **MEAL SITE MANAGEMENT** - Meal Site Management includes such tasks as: supervising final on-site preparation and serving/delivery of meals to eligible congregate and home-delivered participants; recruiting, training, scheduling and monitoring program volunteers; determining eligibility of participants; collecting and accounting for participant donations; completing and submitting required budget and program reports, providing events and activities for meal site participants; meeting with meal site Advisory Committee; and publicizing meal site in the Estacada community to enhance visibility and encourage participation.

- g. **PHYSICAL ACTIVITY AND FALLS PREVENTION** – The provision of physical fitness programs that include a focus on strength, balance, and flexibility exercise to promote physical activity and/or prevent falls, which have been demonstrated through rigorous evaluation to be evidence-based and effective with older populations.

- h. **LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIEAP)**
Intakes: A service provided by SUBRECIPIENT staff to assist vulnerable, homebound, low income County residents in completing applications for LIHEAP funds. A unit of service is one correctly completed, accepted application submitted to COUNTY prior to the November 30, 2017 deadline.

TO READ: All the above with the addition of:

- i. **National Diabetes Prevention Program:** A structured lifestyle intervention that includes dietary coaching, lifestyle intervention, and moderate physical activity, all with the goal of preventing the onset of diabetes in individuals who are pre-diabetic. The primary goal of the intervention is at least 5 percent average weight loss among participants

III. **AMEND:** Exhibit 6 – Budget and Units of Services, Page 6 - Unit Cost Schedule

TO READ: Exhibit 6 – Budget and Units of Services, Page 7 – Unit Cost Schedule

The Friends of the Canby Adult Center
 Subrecipient Grant Agreement #18-003, Amendment 3

Amend

CANBY ADULT CENTER
 Fiscal Year 2018-19

	OAA III B Funds	OAA III C1 Funds	OAA III C2 Funds	OAA III D Funds	Required Match	NSIP Funds	State Funds	Ride Connection		TriMet STF Funds	MEDICAID Funds	LIEAP Funds	Program Income	NO. OF UNITS	TOTAL COST	Reimburse- ment Rate
								STF	5310 Funds							
Federal Award Numbers	16AAORT3SS	16AAORT3CM	16AAORT3HD	16AAORT3PH		16AAORNSIP	N/A	Funds	OR-65-012	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CFDA Number	93.044	93.045	93.045	93.043		93.053	N/A	N/A	20.513	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Service Category	(1)	(2)	(3)	(4)	(5)	(7)	(8)	(9)	(10)	(13)	(14)	(15)	(16)	(17)	(18)	(19)
Case Management	\$2,480				\$276									107.25 hrs	\$2,756	\$23.12/hr
Reassurance	\$1,810				\$201									87	\$2,011	\$20.86
Info. & Assistance	\$2,262				\$252									167	\$2,514	\$13.58
Public Outreach	\$350				\$39									7	\$389	\$50.00
Transportation - OAA	\$5,315				\$591								\$842	1,684	\$6,748	\$3.16
PHYSICAL ACTIVITY/ FALLS PREVENTION				\$6,000	\$0		\$9,600							208 Classes	\$15,600	\$75.00
Trans - Ride Con. Out of Dist					\$0			\$17,119					\$978	1,956	\$18,097	\$8.75
Non Medical T19 Transportation					\$0					617	1,413			145	\$2,030	\$14.00
Ride Connection Vehicle Maintenance					\$256.75				\$2,000.00					N/A	\$2,257	N/A
OAA Meal Site Management		\$16,890	\$26,810		\$4,859									38,000	\$48,559	\$1.15
Food Service - OAA & NSIP		\$16,082	\$25,528		\$4,627	\$23,940							\$36,480	38,000	\$106,657	\$1.05
LIEAP Intakes					\$0							\$625		96	\$625	\$25.00
TOTALS	\$12,217	\$32,972	\$52,338	\$6,000	\$11,102	\$23,940	\$9,600	\$17,119	\$2,000	\$617	\$1,413	\$625	\$38,300		\$208,243	

Source of OAA Match - Staff time

CFDA Number 20.513 & Federal Award Number only applies to Ride Connection Vehicle Maintenance funds only

Contracted Amount: \$158,841

Federal Award Totals 129,467

The Friends of the Canby Adult Center
 Subrecipient Grant Agreement #18-003, Amendment 3

To Read

CANBY ADULT CENTER
 Fiscal Year 2018-19

	OAA III B Funds	OAA III C1 Funds	OAA III C2 Funds	OAA III D Funds	Required Match	NSIP Funds	State Funds	Other Funds	Ride Connection		TriMet STF Funds	MEDICAID Funds	LIEAP Funds	Program Income	NO. OF UNITS	TOTAL COST	Reimburse- ment Rate
									STF	5310 Funds							
Federal Award Numbers	16AAORT3SS	16AAORT3CM	16AAORT3HD	16AAORT3PH		16AAORNSIP	N/A	N/A	Funds	OR-65-012	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CFDA Number	93,044	93,045	93,045	93,043		93,053	N/A	N/A	N/A	20,513	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Service Category	(1)	(2)	(3)	(4)	(5)	(7)	(8)	(9)	(10)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)
Case Management	\$2,035				\$226										107.25 hrs	\$2,261	\$23.12/hr
Reassurance	\$1,022				\$114										49	\$1,136	\$20.86
Info. & Assistance	\$9,010				\$1,002										663	\$10,012	\$13.58
Public Outreach	\$150				\$17										7	\$167	\$21.43
Transportation - OAA	\$0				\$0									\$842	1,684	\$842	\$0.00
PHYSICAL ACTIVITY/ FALLS PREVENTION				\$6,000	\$0		\$9,600								208 Classes	\$15,600	\$75.00
National Diabetes Prevention Program								\$2,100						\$0	28 Classes	\$2,100	\$75.00
Trans - Ride Con. Out of Dist					\$0				\$31,660					\$1,809	3,618	\$33,469	\$8.75
Non Medical T19 Transportation					\$0						617	1,413			145	\$2,030	\$14.00
Ride Connection Vehicle Maintenance					\$1,200					\$4,800.00					N/A	\$6,000	N/A
OAA Meal Site Management		\$23,410	\$40,465		\$7,103										36,500	\$70,978	\$1.75
Food Service - OAA & NSIP		\$20,601	\$35,609		\$6,251	\$23,178								\$35,040	36,500	\$120,678	\$2.18
OPI HDM							\$3,816								400	\$3,816	\$9.54
LIEAP Intakes					\$0								\$625		96	\$625	\$25.00
TOTALS	\$12,217	\$44,011	\$76,074	\$6,000	\$15,912	\$23,178	\$13,416	\$2,100	\$31,660	\$4,800	\$617	\$1,413	\$625	\$37,691		\$269,714	

Source of OAA Match - Staff time

CFDA Number 20.513 & Federal Award Number only applies to Ride Connection Vehicle Maintenance funds only

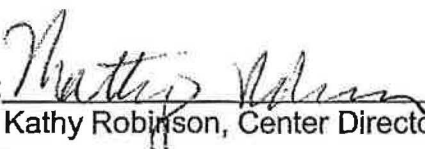
Contracted Amount: \$216,111

Federal Award Totals 166,280

The Friends of the Canby Adult Center
Subrecipient Grant Agreement #18-003, Amendment 3

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.

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

Friends of the Canby Adult Center	CLACKAMAS COUNTY
By: <u></u> Kathy Robinson, Center Director	Commissioner: Jim Bernard, Chair Commissioner: Sonya Fischer Commissioner: Ken Humberston Commissioner: Paul Savas Commissioner: Martha Schrader
Date: <u>February 22 2019</u>	Signing on Behalf of the Board:
	<u>Richard Swift, Director</u> Health, Housing & Human Services Dept
	<u>Date</u>

March 7, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Construction Contract with Gresham Roofing for the Re-roof Project at the
Estacada Community Center

Purpose/Outcomes	Approval of a construction contract for building improvements including a new roof and drainage improvements at the Estacada Community Center.
Dollar Amount and Fiscal Impact	\$170,756 total Gresham Roofing contract paid for with \$95,000 of Community Development Block Grant (CDBG) funds and \$75,756 of Friends of Estacada Community Center funds.
Funding Source	U.S. Department of Housing and Urban Development and private funds No County General Funds are involved.
Duration	Effective immediately through June 2019 (project completion).
Previous Board Action	2017 Action Plan and the 3-Year Funding Recommendations were approved by the BCC on May 11, 2017 - agenda item 051117-A1.
Strategic Plan Alignment	1. Build a strong infrastructure 2. Ensure safe, healthy and secure communities
Contact Person	Mark Sirois, Housing and Community Development - (503) 655-5664
Contract No.	9171

BACKGROUND:

The Community Development Division of the Health, Housing and Human Services Department requests the approval of this construction contract with Gresham Roofing to construct a new roof and drainage improvements at the Estacada Community/Senior Center. Gresham Roofing was the lowest responsive, responsible bidder substantially complying with the requirements of the solicitation documents at the February 13th bid opening. The Construction Contract determines the roles of Gresham Roofing and the County regarding contract administration, project management as well as the duties of the hired architect (Todd Iselin, Iselin Architects) during project construction. The Contract was reviewed and approved by County Counsel on January 22, 2019.

Healthy Families. Strong Communities.

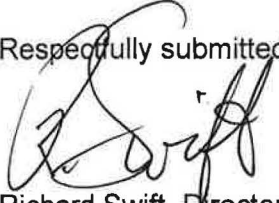
2051 Kaen Road, Oregon City, OR 97045 • Phone (503) 650-5697 • Fax (503) 655-8677

www.clackamas.us

RECOMMENDATION:

We recommend the approval of this Contract with Gresham Roofing and that Richard Swift H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,

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

Richard Swift, Director
Health, Housing & Human Services

**AGREEMENT FOR PUBLIC WORKS CONSTRUCTION WORK
BETWEEN CLACKAMAS COUNTY AND CONTRACTOR**

COUNTY

Clackamas County
Community Development Division
2051 Kaen Road, Suite 245
Oregon City, OR 97045

CONTRACTOR

Portland Painting and Construction
dba Gresham Roofing and Construction
20420 SE Hwy 212 Ste A PMB 172
Damascus, Oregon 97089

THIS AGREEMENT (the "Contract") is entered into by and between Clackamas County (hereinafter called the "COUNTY") and Gresham Roofing and Construction (hereinafter called CONTRACTOR), and is dated as of the date it is signed by the COUNTY.

This Contract, which expressly includes and is subject to the terms and conditions of the Contract Documents, defined below, is the complete and exclusive statement of the agreement between the parties relevant to the purpose described herein, and supersedes all prior agreements or proposals, oral or written, and all other communications between the parties relating to the subject matter of this Contract. This Contract, or any modification of this Contract, will not be binding on either party except as signed by authorized agents of both parties.

COUNTY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1: WORK

CONTRACTOR shall complete all Work.

As used herein, "Work" shall mean the construction improvement tasks, as set forth in detail in the Contract Documents, and generally described as: Demolition and Re-Roof of existing flat roof, including main roof of approximately 6000 square feet and entry canopy. Extension of existing roof parapet as required to install edge flashing. Installation of new scupper drains & modifications to downspouts at the Estacada Community Center in Estacada, Oregon.

ARTICLE 2: ARCHITECT

The Project has been designed by Todd Iselin with ISELIN ARCHITECTS, P.C. who is hereinafter called ARCHITECT and who is to act as COUNTY's representative, assume all duties and responsibilities and have the rights and authority assigned to ARCHITECT in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3: CONTRACT TIME

3.1. Time is of the essence in this Contract and the CONTRACTOR agrees that **all Work shall be substantially completed by April 25, 2019, 5pm with a final completion date by April 30, 2019, 5pm, for agreed punchlist item(s).** The Work is to commence per the date of the Notice

To Proceed issued by the COUNTY. If the Notice To Proceed is delayed, the time schedule will be adjusted accordingly. The total timeframe for this Work is **30 days** unless a time extension is approved by the ARCHITECT and COUNTY, via Change Order.

3.2. Liquidated Damages. COUNTY and CONTRACTOR recognize that time is of the essence of this Contract and that COUNTY will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by COUNTY if the Work is not completed on time. Accordingly, instead of requiring any such proof, COUNTY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay COUNTY **\$250** for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by COUNTY, CONTRACTOR shall pay COUNTY **\$250** for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

3.3 The Contractor will be held to the timeline of the Work, once the Work begins. Unforeseen conditions that may cause a delay will be reviewed and determined by the COUNTY and ARCHITECT. Additional work days may be granted to the CONTRACTOR.

ARTICLE 4: CONTRACT PRICE

4.1. COUNTY shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds as follows:

4.1.1 In consideration of the faithful performance of the work herein embraced, as set forth in these Contract Documents, and in accordance with the direction of the ARCHITECT and to his satisfaction to the extent provided in the Contract Documents, the COUNTY agrees to pay to the CONTRACTOR the amount bid, as adjusted in accordance with the Contract Documents, and based on the proposal made by the CONTRACTOR, to make such payments in the manner and times provided in the Contract Documents.

4.2 The Contract Price shall be the Contract Dollar Amounts of **One Hundred and Seventy Thousand, Seven Hundred and Fifty Six dollars (\$170, 756.00)** which are described in the Contract Documents and are hereby accepted by the COUNTY.

4.3 N/A (see Invitation to Bid): The CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work. In the performance of the work to be done under this contract, the CONTRACTOR shall use every reasonable and practicable means to avoid damage to property and injury to persons. The CONTRACTOR shall use no means or methods which will endanger, unnecessarily, either persons or property. The responsibility of the CONTRACTOR stated herein shall cease upon the work being accepted as complete by the COUNTY.

ARTICLE 5: PAYMENT PROCEDURES

5.1 CONTRACTOR shall submit Applications for Payment in accordance with Article 13 of the General Conditions of Construction ("General Conditions"). Applications for Payment will be processed by ARCHITECT as provided in the General Conditions.

5.2. Progress Payments. COUNTY shall make monthly progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ARCHITECT. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Conditions.

5.2.1. At least twenty-eight (28) days before each payment falls due (but not more than once a month), CONTRACTOR shall submit to ARCHITECT for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the application and accompanied by such supporting documentation as is required by the Contract Documents and also as ARCHITECT may reasonably require.

5.2.2 ARCHITECT will, within seven (7) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to COUNTY, or return the Application to CONTRACTOR indicating in writing ARCHITECT's reasons for refusing to recommend payment. In the latter case CONTRACTOR may make the necessary corrections and resubmit the Application. Within twenty-one (21) days after presentation of the Application for payment with ARCHITECT's recommendation of payment, the amount recommended will become due and when due, will be paid by COUNTY to CONTRACTOR.

5.2.3. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ARCHITECT shall determine, or COUNTY may withhold,

95% of Work completed and approved by the ARCHITECT.

95% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to COUNTY).

5.2.4. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ARCHITECT shall determine, or COUNTY may withhold. The COUNTY reserves the right to withhold 5% of the total project payment until all Work is completed and approved by the ARCHITECT.

5.3. Final Payment. Upon final completion and acceptance of the Work in accordance with Article 13 of the General Conditions, COUNTY shall pay the remainder of the Contract Price as recommended by ARCHITECT.

5.3.1 The Final Application for payment shall be accompanied by those documents required in Article 13 of the General Conditions including, but not limited to, the following: (a) CONTRACTOR's Affidavit of Release of Liens; (b) CONTRACTOR's Affidavit of Payment of Debts and Claims; and (c) Consent of Surety to Final Payment. Once all three documents (a, b, and c) have been delivered to the COUNTY for review and approval, the remaining 5% of the Project Construction Contract will be released to the CONTRACTOR.

5.4. Payments, Contributions and Liens:

5.4.1. The CONTRACTOR shall:

5.4.1.1. Make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract.

5.4.1.2. Pay all contributions or amounts due the State Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.

5.4.1.3. Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

5.4.1.4. Pay to the Revenue Department all sums withheld from the employees pursuant to ORS 316.167.

5.4.2. The CONTRACTOR shall demonstrate that an employee drug testing program is in place.

5.4.3. Under the provisions of ORS 279C.515, 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 the 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 the funds due or to become due the CONTRACTOR by reason of the contract. If the CONTRACTOR or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the CONTRACTOR or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

5.4.4. If the CONTRACTOR or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

5.4.5 CONTRACTOR shall include in each subcontract those provisions required under ORS 279C.580.

5.4.6 CONTRACTOR shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

ARTICLE 6: CONTRACTOR'S REPRESENTATIONS

In order to induce COUNTY to enter into this Agreement CONTRACTOR makes the following representations:

6.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 8) and the other related data identified in the Bidding Documents including "technical data."

6.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

6.3. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and regulations that may affect cost, progress, performance and furnishing of the Work.

6.4. CONTRACTOR has carefully studied all reports and all drawings of physical conditions of the project site. CONTRACTOR acknowledges that COUNTY and ARCHITECT do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to utilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

6.5. CONTRACTOR is aware of the general nature of work to be performed by COUNTY and others at the site that relates to the Work as indicated in the Contract Documents.

6.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

6.7. CONTRACTOR has given ARCHITECT written notice of all conflicts, errors, ambiguities or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ARCHITECT is acceptable to CONTRACTOR, and the Contract Documents are

generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6.8. CONTRACTOR shall be licensed by the State of Oregon Construction Contactors Board (CCB) or licensed by the State Landscaping Contractors Board (LCB) as required by ORS 671.530 as well as not limited to the same requirements of any and all subcontractors on this PROJECT. CONTRACTOR certifies that all subcontractors performing the Work will be registered with the CCB before the subcontractors commence Work. If the CONTRACTOR's CCB license is not current during any phase of construction, the COUNTY may consider the contract to be null and void immediately.

6.9. Prior to completion and final acceptance of work, the CONTRACTOR shall be held responsible for any injury or damage to the work or to any part thereof by action of the elements, or from any cause whatsoever, and the CONTRACTOR shall make good all injuries or damages to any portion of the work.

6.10. Except as otherwise provided in the Special Provisions of this contract, the ARCHITECT shall make final inspection of work done by the CONTRACTOR within 10 days after written notification to the ARCHITECT by the CONTRACTOR that the work is completed. If the work is not acceptable to the ARCHITECT, the ARCHITECT shall so advise the CONTRACTOR in writing as to the particular defects to be remedied before acceptance by the ARCHITECT can be made.

ARTICLE 7: INDEMNITY – INSURANCE – BONDS

7.1 Indemnity. The CONTRACTOR agrees to indemnify, save harmless and defend the COUNTY, its officers, commissioners and employees from and against all claims and action, 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.

7.2 Insurance.

7.2.1. The CONTRACTOR agrees to furnish the COUNTY evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for personal injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The general aggregate shall apply separately to this project/location. The COUNTY, at its option, may require a complete copy of the above policy. As evidence of the insurance coverage required by this contract, CONTRACTOR shall furnish a Certificate of Insurance to COUNTY. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

7.2.2. If the CONTRACTOR has assistance of other persons in the performance of this contract, the CONTRACTOR, if it is a subject employer, agrees to qualify and remain qualified for the term of this contract as an insured employer under ORS 656. CONTRACTORS shall maintain employer's liability insurance with limits of \$100,000 each accident, \$100,000 each employee, and \$500,000 each policy limit. CONTRACTOR is required to provide to COUNTY a Builders Risk Policy based on the award of the project.

7.2.3. 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, 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.

7.2.4. The CONTRACTOR agrees to furnish the COUNTY evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.

7.2.5. The certificate of insurance, other than the pollution liability insurance shall include the COUNTY as an expressly scheduled additional insured using form CG 20-10, CG 20-37, CG 32-61 or their equivalent. A blanket endorsement or automatic endorsement is not sufficient to meet this requirement. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured. Such insurance shall provide sixty (60) days written notice to the COUNTY in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under this insurance. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self insurance maintained by the COUNTY shall be excess and shall not contribute to it.

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

7.2.7. The Contractor shall obtain, at the Contractor's expense and keep in effect during the term of the Contract all other required insurance set forth in the General Conditions of Construction Contract.

7.3 Bonds. The CONTRACTOR agrees to furnish to the COUNTY bonds covering the performance of the Contract and the payment of obligations each in the amount equal to the full amount of the Contract as amended. Upon the request of any person or entity appearing to be a potential beneficiary of the bonds covering payment of obligations arising in the Contract, the CONTRACTOR shall promptly furnish a copy of the bonds or shall permit a copy to be made. The CONTRACTOR shall secure, include costs thereof in the bid, and pay for a performance bond and payments bond in compliance of ORS 279C.380 and other applicable revised statutes issued by a bonding company licensed to transact business in the State of Oregon in accordance with the bid and performance bonds forms provided or others acceptable to the COUNTY. The CONTRACTOR also agrees that the performance bond to be furnished as specified shall be such as to stay in force for a period of three hundred sixty-five days (365), after acceptance of the work by the COUNTY as a guarantee of repair or replacement of any item(s) of work found to be defective by reason of faulty workmanship or defective materials.

7.3.1. The CONTRACTOR shall have a public work bond filed with the Construction Contractors Board prior to starting work on the project, in accordance with ORS 279C.830. Additionally the CONTRACTOR shall include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work, in accordance with ORS 279C.830.

ARTICLE 8: CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between COUNTY and CONTRACTOR concerning the Work consist of the following:

- 8.1. This Agreement (pages 1 to 13, inclusive).
- 8.2. Exhibits (Reserved - Not used at this time).
- 8.3. Performance and Labor Material Payment Bonds, Public Works Bond consisting of 5 pages.
- 8.4. General Conditions of Construction Contract (pages 1-31, inclusive).
- 8.5. Supplementary Conditions, including:

Special Conditions (pages 1 to 12, inclusive).

HUD Labor Standards, HUD-4010 (pages 1 to 5, inclusive).

Federal Prevailing (Davis-Bacon)Wage Decision: OR190023 Type: Building,
dated: 1/25/2019 (pages 1 to 10 inclusive).

State of Oregon (BOLI) Wage Rates Decision: January 1, 2019 (pages 1 to 56 inclusive).

8.6. Drawings and Specifications bearing the title “Estacada Community Center Re-Roof and HVAC Replacement” (5 pages, dated 6/29/2018).

8.7. (Hold for future use).

8.8. County Signage (Hold for future use).

8.9. Addenda Number: 1

8.10. CONTRACTOR's Bid Proposal w/ First Tier List: (pages 1-8, inclusive).

8.11. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Article 3 of the General Conditions.

The documents listed in paragraphs 8.2 *et seq.* above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Article 3 of the General Conditions.

ARTICLE 9: FEDERAL (Davis-Bacon) AND STATE (BOLI) PREVAILING WAGE RATES

Each worker in each trade or occupation employed in the performance of the contract either by the CONTRACTOR, subcontractor, or other person(s) doing or contracting for the whole or any part of the work on this contract, shall be paid not less than the applicable prevailing wage rate, and will pay the higher rate of pay on an individual job classification of which shall be in effect for this contract pursuant to Davis-Bacon Act (40 U.S.C. 276a) and Bureau of Labor and Industries (a.k.a. BOLI) ORS 279C.800 through ORS 279C.870.

ARTICLE 10: DESCRIPTION OF CONTRACTOR

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

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

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

compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the CONTRACTOR is presently a member of the Public Employees Retirement System).

10.1.3. The CONTRACTOR certifies that at present, he or she, if an individual, is not a program, county, or federal employee.

ARTICLE 11: MISCELLANEOUS

11.1. Terms used in this Agreement which are defined in the General Conditions will have the meanings indicated in the General Conditions.

11.2 The COUNTY, through its AUTHORIZED REPRESENTATIVE or his designee shall at all times be allowed access to all parts of the operations and work locations of the CONTRACTOR, and shall be furnished such information and assistance by the CONTRACTOR, or the designated representative or representatives of the CONTRACTOR, as may be required to make a complete and detailed inspection.

11.3. . 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. COUNTY's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract

11.4. COUNTY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

11.5. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon COUNTY and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.6. **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.

ARTICLE 12: TAX LAWS

12.1. The CONTRACTOR shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work as described in Attachment A under this Contract. 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.

12.2. 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.

ARTICLE 13: DEBT LIMITATION

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.

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to COUNTY, CONTRACTOR and ARCHITECT. All portions of the Contract Documents have been signed or identified by COUNTY and CONTRACTOR or by ARCHITECT on their behalf.

This Agreement will be effective upon the date on which it is signed by the COUNTY.

CONTRACTOR

COUNTY

Portland Painting and Construction
dba Gresham Roofing and Construction
20420 SE Hwy 212 Ste A PMB 172
Damascus, Oregon 97089

Clackamas County, Oregon

By: Terry Burrows
Terry Burrows, Owner

By: _____
Richard Swift, Director
Health, Housing and Human Services
Department

2/26/19
Date Signed

Date Signed

Contractor's Federal Tax Identification No.
or Social Security No. (if individual)
46-1425142
Oregon Commercial Contractor's Board No.
198421

Approved as to Form

WJ 02/26/2019
County Counsel Date



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with Kittelson & Associates, Inc. for
Damascus Transportation System Plan Update**

Purpose/Outcomes	This contract will provide a Transportation System Plan (“TSP”) for a portion of the County area within the former City of Damascus.
Dollar Amount and Fiscal Impact	Total Contract value is \$477,612.88 \$339,219.48 for non-contingent items and \$138,393.40 for two contingent tasks.
Funding Source	215-7435-00059-481160-18080
Duration	Contract execution through June 30, 2020
Previous Board Action	
Strategic Plan Alignment	-Ensure safe, healthy and secure communities -Build a string infrastructure
Contact Person	Stephen Williams, Transportation Planner, 503-742-4696

Background:

Clackamas County intends to update its Transportation System Plan for a portion of the County area within the former City of Damascus. This is a limited update to the TSP that will focus only on the transportation system in the Damascus area. Little or no changes are anticipated to the Transportation System Vision, Goals, and Policies adopted in the 2013 update to the Clackamas County TSP. This TSP update will focus on the implementation in the Damascus area of the adopted transportation system vision and goals. The updated TSP will identify a system of transportation facilities and services adequate to meet community needs in a manner consistent with the adopted Vision and Goals while achieving compliance with the State Transportation Planning Rule (OAR 660, Division 12) and Metro’s 2018 Regional Transportation Plan. The updated TSP will supplement Chapter 5 of the adopted Clackamas County Comprehensive Plan, the Transportation System Plan.

Procurement Process:

This project advertised in accordance with ORS and LCRB Rules on October 10, 2018. Proposals were opened on October 31, 2018. The County received one (1) Proposal: Kittelson & Associates, Inc. Upon evaluation of the submitted proposal, the Evaluation Committee recommended a contract be awarded to Kittelson & Associates, Inc. Following award, the Project Manager entered into negotiations with Kittelson & Associates, Inc. and developed a final statement of work along with final billing rates and a contract total value.

This contract has been reviewed and approved by County Counsel.

Recommendation:

Staff respectfully recommends that the Board approves and signs this professional services contract with Kittelson & Associates, Inc. for the Damascus Transportation System Plan Update.

Sincerely,

Steve Williams

Placed on the BCC Agenda _____ by Procurement



CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between Kittelson & Associates, Inc. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of the Department of Transportation and Development.

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, 2020. 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: #2018-96 Damascus Transportation System Plan Update ("Work"), further described in Exhibit A.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed four hundred seventy-seven thousand six hundred twelve dollars and eighty-eight cents (\$477,612.88) for accomplishing the Work required by this Contract. Contract total includes \$339,219.48 for non-contingent items and \$138,393.40 for two (2) contingent tasks. If any interim payments to Contractor are made, such payments shall be made only 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, D, E, and F.

6. Contractor Data.

Kittelson & Associates, Inc.

Address: 851 SW 6th Avenue, Suite 600
Portland, Oregon 97204

Contractor Contract Administrator: Marc Butorac

Phone No.: 503-228-7419

Email: mbutorac@kittelson.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. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** To the extent the Contractor is negligent, 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 negligent act, omission, or neglect of Contractor, its subcontractors, agents, or employees. To the extent the Contractor is negligent, 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.
- 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; 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)
- 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 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 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.** 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 professional standards prevalent in the industry; 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.
- 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. 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.

Kittelson & Associates, Inc.

Clackamas County

 Authorized Signature Date

 Chair Date

 Name / Title (Printed)

 Recording Secretary

 Oregon Business Registry #

Approved as to Form:

 Entity Type / State of Formation

 County Counsel Date

EXHIBIT A
PERSONAL/PROFESSIONAL SERVICES CONTRACT

SCOPE OF WORK

Contractor shall provide master plan services for the Damascus Transportation System Plan Update as outlined in the Request for Proposal #2018-96 issued October 9, 2018, hereby attached as incorporated as **Exhibit D**; the Vendors Response and final negotiated Statement of Work hereby attached and incorporated as **Exhibit E**; and the Fee Schedule hereby attached and incorporated as **Exhibit F**.

The County Contract administrator for this Contract is: Stephen Williams.

CONSIDERATION

- a. Consideration Rates – Time and Material as detailed in **Exhibit F**.
- 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 \$477,612.88. Contract total includes \$339,219.48 for non-contingent items and \$138,393.40 for two (2) contingent tasks. Invoices shall be submitted to: Clackamas County Department of Transportation and Development, 150 Beaver Creek Road, Oregon City, Oregon 97045 or via email at swilliams@clackamas.us.
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. 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 procurement@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 _____

EXHIBIT D
RFP #2018-96
DAMASCUS TRANSPORTATION SYSTEM PLAN UPDATE
Issued October 9, 2018

EXHIBIT E
VENDOR RESPONSE AND NEGOTIATED STATEMENT OF WORK

**EXHIBIT F
FEE SCHEDULE**

FINAL NEGOTIATED STATEMENT OF WORK

DRAFT

Approval of Previous Business Meeting Minutes:
February 7, 2019

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

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

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

Thursday, February 7, 2019 – 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**

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

1. Presentation on Waste Reduction in Local Schools through Milk Dispensers
Eben Polk and Laurel Bateman from the Office of Stainability presented the staff report including a PowerPoint presentation. Laurel gave background of this program, and the success of this program. They introduce Galina Dobson, from Canby School District who spoke about the success of the milk dispensers in their school district.

~Board Discussion~

II. CITIZEN COMMUNICATION

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

1. Don Kingsborough, West Linn – Gave a Grange update.
2. Leonard Schaber, Tualatin – spoke in support of the Stafford Hamlet, 5 party IGA.
3. Les Poole, Gladstone – better ways for road funding – too much traffic.
4. Eugene Schoenheit, Milwaukie – spoke against the VRF.

~Board Discussion~

III. PUBLIC HEARING

1. First Reading of **Ordinance No. 01-2019** Adding Chapter 7.07, Vehicle Registration Fee, to the Clackamas County Code *second reading will be 2-21-19*
Dan Johnson and Mike Bezner, Department of Transportation & Development presented the staff report including a PowerPoint presentation.

~Board Discussion~

Chair Bernard opened the public hearing, he stated there are several folks here to speak.

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

1. Mayor Axelrod, City of West Linn – spoke in support.
2. Jim Meyers, Molalla – spoke in opposition.
3. Kate Greenfield, Wilsonville – spoke in support.
4. Bob Clark, Milwaukie – lots of folks are on a fixed income, opposes.
5. Bill Osburn, Gladstone – distribution not accurate, opposes.
6. Les Poole, Gladstone – should delay this, needs more public outreach.
7. Eugene Schoenhite, Milwaukie – it is overtaxing – opposes.
8. Greg Ernst, Eagle Creek – want a gas tax, not a VRF.
9. Jerry Paulson, Brightwood – spoke in opposition.

Chair Bernard closed the public hearing and took Board discussion.

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

Chair Bernard asked for a motion.

MOTION:

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

Commissioner Humberston: Second.

~Board Discussion~

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: No.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 4-1.

Chair Bernard announced the second reading will be on Thursday, Feb. 21, 2019 at 6 PM.

Please note Feb. 21st is an evening Business meeting.

IV. CONSENT AGENDA

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

MOTION:

Commissioner Humberston: I move we approve the consent agenda.

Commissioner Schrader: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

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

A. Health, Housing & Human Services

1. Approval of Amendment No. 1 to the Intergovernmental Agreement with Washington County for the Cities Readiness Initiative Program – *Public Health*

B. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Approval of the 2021 Convention Contract with Red Lion Hotel to Provide Services for the Sheriff's Office Child Abuse & Family Violence Summit' - *Procurement*
3. Approval of the 2022 Convention Contract with Red Lion Hotel to Provide Services for the Sheriff's Office Child Abuse & Family Violence Summit' - *Procurement*
4. Approval of the 2023 Convention Contract with Red Lion Hotel to Provide Services for the Sheriff's Office Child Abuse & Family Violence Summit' - *Procurement*

C. Administration

1. **Board Order No. 2019-06** Appointing the Clackamas County Planning Director

D. Business & Community Services

1. Approval of a Contract with Wayne Stone Logging, Inc. for the Boomer II Timber Sale: Harvest and Log Hauling - *Procurement*

E. Disaster Management

1. Approval of FY2018 Emergency Management Performance Grant between Clackamas County and the State of Oregon
2. Approval of FY 2019 State Homeland Security Grant Program Application to the State of Oregon for Six Projects

F. Community Corrections

1. Approval of Local Grant Agreement No. JR-17-003 between Clackamas County Community Corrections and Sub-Recipient Clackamas Indigent Defense Corporation for Pretrial and Early Resolution Docket

V. COUNTY ADMINISTRATOR UPDATE

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

VI. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED 8:25 PM

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



Evelyn Minor-Lawrence
Director

DEPARTMENT OF HUMAN RESOURCES

PUBLIC SERVICES BUILDING
2051 Kaen Road | Oregon City, OR 97045

March 7, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of the Deferred Compensation 457
Retirement Plan Document Changes

Purpose/Outcomes	Improved customer service, plan compliance and administration of the 3-year Special Catch-up.
Dollar Amount and Fiscal Impact	\$0.00
Funding Source	N/A
Duration	Implementation 1/1/2019
Previous Board Action	Policy Session 2/19/2019
Strategic Plan Alignment	<p>1. <i>How does this item align with your department's Strategic Business Plan goals?</i> Provide cost-effective, responsive and comprehensive benefit services to County departments, current and retired employees and their family members so they can better serve the residents of Clackamas County.</p> <p>2. <i>How does this item align with the County's Performance Clackamas goals?</i> Build public trust through good government.</p>
Contact Person	Kristi Durham, HR Benefits Manager 503-742-5470
Contract No.	N/A

BACKGROUND:

The County's practice to require W2s as the only acceptable source of underutilized contributions for the 3-Year Special Catch-up limits employee's ability to use this option.

The Deferred Compensation Committee recommends amending the Deferred Compensation plan documents to include other sources of acceptable documentation in addition to W2s for calculating underutilized contributions for the 3-Year Special Catch-up.

Plan document language changes include:

ARTICLE 2 DEFINITIONS

2.1 3-Year Special Catch-up. The Plan may allow you to defer in the three years before reaching the plan's normal retirement age:

- (a) Twice the annual 457(b) limit, or
- (b) The annual 457(b) limit, plus amounts allowed in prior years that you did not contribute.

2.30 Underutilized Contributions. A Participant who was eligible to contribute to the plan but did not, or contributed less than the maximum for which they were eligible, shall be deemed to have an unused balance available for the 3-Year Special Catch-up described in Section 4.2.

ARTICLE 4 LIMITATIONS ON AMOUNT DEFERRED

4.2 3-Year Special Catch-Up Limit.

Acceptable proof of underutilized contributions for calculating a participant's 3-Year Special Catch-Up limit includes, but is not limited to, W2s, payroll records, and recordkeeper documentation.

RECOMMENDATION:

Staff recommends the Board approve the attached Deferred Compensation 457 Retirement plan documents.

Respectfully submitted,

Kristi Durham, HR Benefits Manager

Clackamas County

Deferred Compensation Plan

**Amended and Restated
Effective January 1, 2019**

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ARTICLE 1 INTRODUCTION

The County of Clackamas, Oregon (“Employer”) hereby amends and restates this Deferred Compensation Plan (“Plan”), which was originally adopted in 1977. The provisions of this Plan, as amended and restated, shall be effective January 1, 2019, pursuant to Section 457 of the Internal Revenue Code of 1986, as amended (“Code”). The primary purpose of the Plan is to enable the Employer’s employees to enhance their retirement security by permitting them to enter into agreements with the Employer to defer compensation (both on a pre-tax and after-tax basis), receive Employer contributions (if any) and receive benefits at retirement, death, termination of employment, and for financial hardships due to unforeseeable emergencies.

Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement for services between the Participant and the Employer, nor shall it be deemed to give a Participant any right to be retained in the employ of, or under contract to, the Employer. Nothing herein shall be construed to modify the terms of any employment contract or agreement for services between a Participant and the Employer.

ARTICLE 2 DEFINITIONS

2.1 3-Year Special Catch-up. The Plan may allow you to defer in the three years before reaching the plan’s normal retirement age:

(a) Twice the annual 457(b) limit, or

(b) The annual 457(b) limit, plus amounts allowed in prior years that you did not contribute.

2.2 Account. The Account (and subaccounts) established for each Participant pursuant to Section 5.1, which shall also include any Account maintained or established for a Beneficiary.

2.3 Alternate Payee. A Participant’s spouse, former spouse, child, or other dependent who acquires an interest in the Participant’s Account pursuant to a court decree of annulment or dissolution of marriage or of separation, or a court-approved settlement agreement incident to annulment or dissolution of marriage or of separation. Where the context so requires, reference to the “Participant” in this Plan shall be deemed to include an Alternate Payee.

- 2.4 Approved Institution.** Any organization that has been recommended by the Committee and approved by the Employer to provide services or Investment Product(s) to the Employer under the Plan.
- 2.5 Base Compensation.** The portion of Includible Compensation consisting of any regularly scheduled salary or hourly compensation, including vacation pay, sick pay, and such other amount as may be determined or utilized by the Committee, but excluding bonuses, overtime pay, longevity pay, bilingual pay, and other extra pay.
- 2.6 Beneficiary.** The person(s), trust(s) or estate(s) entitled to receive benefits under the Plan upon death of a Participant in accordance with a suitable designation of Beneficiary filed with the Employer (or its delegate) and subject to applicable law.
- 2.7 Code.** The Internal Revenue Code of 1986, as amended from time to time, and including all valid regulations adopted pursuant to the Code.
- 2.8 Committee.** The committee appointed by the Employer as provided in Article 11 below to administer the Plan and perform administrative functions for the Plan as specified by the Employer.
- 2.9 Compensation.** All cash compensation paid to an Employee for employment services rendered to the Employer including salary, wages, fees, commissions, bonuses and overtime pay that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b) or 457(b) (including an election under Article 3 to defer Compensation under this Plan).
- 2.10 Deferrals.** The amount of Base Compensation deferred by a Participant to the Plan, consisting of Elective Deferrals and, effective January 1, 2014, Roth 457(b) Contributions.
- 2.11 Designated Institution.** As designated by the Employer, any Approved Institution whose Investment Product is used for purposes of measuring the benefits due that Participant pursuant to the Plan.
- 2.12 Elective Deferral.** Deferrals of Base Compensation made by the Employer to the Plan on a voluntary pre-tax basis pursuant to a Participation Agreement entered into by a Participant.

- 2.13 Eligible Deferred Compensation Plan.** An Eligible Deferred Compensation Plan within the meaning of Code Section 457(b) and the regulations thereunder.
- 2.14 Eligible Employee.** An Employee who has been appointed to a budgeted, allocated position and who is regularly scheduled to work at least twenty (20) hours per week, or for at least eighteen and three-quarters (18.75) hours in a Job Share status, and is scheduled to be in a paid status for twelve (12) months per year.
- 2.15 Eligible Individual.** Any Eligible Employee, any elected official, and any individual performing services for the Employer pursuant to an Employment Agreement, who performs services for the Employer for which Compensation is paid and who meets the criteria set forth in Section 3.1.
- 2.16 Employee.** An individual who performs services for the Employer and is classified by the Employer as a common-law employee, without regard to whether the individual is subsequently determined to have been an employee of the Employer during such period for employment tax or other purposes.
- 2.17 Employer.** Clackamas County, a political subdivision of the state of Oregon.
- 2.18 Employment Agreement.** A written agreement between the Employer and an Employee pertaining to the Employee's performance of services for the Employer in exchange for remuneration.
- 2.19 Includible Compensation.** An Employee's actual wages as reported in box 1 of Form W-2 for the Employer, but increased (up to the dollar maximum) by any Compensation reduction election under Code section 125, 132(f), 402(g)(3) or 457(b). The amount of Includible Compensation is determined without regard to any community property laws.
- Pursuant to Section 1.457-4(d)(1) of the Income Tax Regulations, Includible Compensation will include any payments made to a Participants who has had a Severance from Employment, provided that the Includible Compensation is paid by the later of 2½ months after the Participant's Severance from Employment or the end of the calendar year that contains the date of such Participant's Severance from Employment.
- In addition, pursuant to Section 1.457-4(d)(1) of the Income Tax Regulations, Includible Compensation will include payments made to an individual who does not currently perform services for the Employer by reason of qualified military service (as defined in Code Section 414(u)(5)) to the extent those payments do not exceed the amount the individual

would have received if the individual had continued to perform services for the Employer rather than enter qualified military service.

Includible Compensation will not include any Employee pick-up contributions described in Code Section 414(h)(2).

Includible Compensation shall be subject to the maximum limit that may apply under Code section 401(a)(17).

2.20 In-Plan Roth Rollover. A rollover contribution to the Plan that consists of a distribution from an Elective Deferral Account, a 457(b) Rollover Account or a non-457(b) Rollover Account under the Plan that the Participant rolls over to the Participant's In-Plan Roth 457(b) Rollover Account in the Plan, in accordance with Code Section 402A(c)(4).

2.21 Investment Product. Any product issued by or obtained from an Approved Institution for the purpose of investing amounts deferred or contributed under the Plan.

2.22 Normal Retirement Age.

(a) The Normal Retirement Age shall be 70½, unless the Participant makes an election under Section 2.2(b) below.

(b) The Participant may, at any time prior to Severance from Employment or prior to the use of the Catch-up Limitation provision described in Section 4.2, elect in writing in the form established or approved by the Employer a Normal Retirement Age that is not earlier than the earlier of age 65 or the earliest age at which the Participant has the right to retire and receive unreduced retirement benefits from the Employer's basic pension plan and not later than the date the Participant attains age 70½.

2.23 Participant. Any Eligible Individual who fulfills the eligibility and enrollment requirements of Article 3, or has received Employer contributions, and who has not received a distribution of his or her entire benefit under the Plan.

2.24 Participation Agreement. A written agreement between the Employer and a Participant in a form satisfactory to the Employer setting forth certain provisions and elections relating to the Plan, establishing the amount of Base Compensation to be deferred, specifying whether the elected Deferral is an Elective Deferral or, effective January 1, 2014, a Roth 457(b) Contribution, incorporating the terms and conditions of the Plan, and establishing

the Participant's participation in the Plan. Enrollments and enrollment changes made through electronic means, such as the Employer's employee self-service portal, or a contracted third party administrator's web site shall be deemed to meet the definition of this section.

2.25 Payout Request. A written agreement between the Employer and a Participant in a form satisfactory to the Employer setting forth the manner and method of paying benefits under the Plan.

2.26 Plan. The Clackamas County Deferred Compensation Plan effective December 15, 1977, as amended. The effective date of this amended and restated Plan is January 1, 2019.

2.27 Plan Year. The twelve (12) month period beginning January 1 and ending December 31.

2.28 Roth 457(b) Contributions. Deferrals that are: (1) made by the Employer to the Plan pursuant to a Participation Agreement entered into by a Participant, which qualifies as a "designated Roth Contribution" within the meaning of Code section 402A; (2) irrevocably designated by the Participant at the time of the cash or deferred election as a Roth 457(b) Contribution that is being made in lieu of all or a portion of the Elective Deferrals the Participant is otherwise eligible to make under the Plan; and (3) treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a "cash or deferred" election.

2.29 Severance from Employment. The Participant ceases to be employed by the Employer that maintains the Plan. A Participant whose employment is interrupted by qualified military service under Code section 414(u) shall be deemed to be severed from employment until such time as the Participant is reemployed following the term of duty.

2.30 Underutilized Contributions. A Participant who was eligible to contribute to the plan but did not, or contributed less than the maximum for which they were eligible, shall be deemed to have an unused balance available for the 3-Year Special Catch-up described in Section 4.2.

ARTICLE 3
PARTICIPATION IN THE PLAN

3.1 Eligibility. Any Eligible Individual to whom Compensation is paid and who executes a Participation Agreement, or is deemed to have executed a Participation Agreement pursuant to the automatic enrollment provisions, is eligible to participate in the Plan.

3.2 Enrollment/Deferrals.

- (a) An Eligible Individual may become a Participant and agree to make Deferrals by entering into a Participation Agreement. Effective January 1, 2014, any such election to defer Base Compensation shall specify whether such Deferrals are to be Elective Deferrals or Roth 457(b) Contributions or a combination thereof; in the absence of any such specification, the Participant's Deferrals shall be deemed to be Elective Deferrals. The effective date of participation in the Plan shall be no sooner than the first day of the calendar month immediately following the latest of the date (i) an individual becomes an Eligible Individual; (ii) the execution and processing, or deemed processing pursuant to the automatic enrollment provisions under Section 3.5, of a Participation Agreement with respect to that individual; or (iii) the execution and processing of any required agreements with the Designated Institution(s) selected by the Participant for investment of the Participant's Account.
- (b) At the time of entering into or modifying the Participation Agreement hereunder to make Deferrals or at the time of reentry following a withdrawal under Article 7, a Participant must agree to defer a minimum amount of \$338 annually.
- (c) All Deferrals made under the Plan are fully vested and nonforfeitable at all times.
- (d) A Participant who elects to make Deferrals may modify the Participation Agreement to change the amount deferred only for a subsequent calendar month and only if the new Participation Agreement has been executed and processed prior to the first day of the month during which it is to be effective. The effective date of the modified Participation Agreement shall be the later of: (i) the first day of the calendar month immediately following the execution and processing of the modified Participation Agreement; (ii) the date specified in the Participation

Agreement; or (iii) the last day of the waiting period described in Section 7.3, if applicable.

- (e) A Participant may suspend further Deferrals with respect to Base Compensation not yet earned by submitting a revised Participation Agreement. The revocation of a Deferral election will be effective on the first day of the calendar month immediately following the execution and processing of the written revocation of participation. Amounts previously deferred shall be paid only as provided in this Plan. Any Employer-provided contributions made under the Plan may not be revoked by the Participant.
- (f) A Participant who is subject to the limitation on Deferrals under Section 7.3, has revoked his or her Participation Agreement as set forth in Section 3.2(d), or who returns to perform services for the Employer after a Severance from Employment, may again become a Participant in the Plan and agree to make Deferrals of Base Compensation not yet earned by submitting a new Participation Agreement as provided in Section 3.2(a).
- (g) Participant Deferrals shall be transferred to the Plan within a period that is not longer than is reasonable for the proper administration of the Participant's Account. For this purpose, Deferrals shall be treated as contributed within a period that is not longer than is reasonable if the contribution is made to the Plan within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

3.3 Employer Contributions.

- (a) Subject to the limitations set forth in Article 4, the Employer shall contribute to the Plan on behalf of active Participants the amounts set forth in Attachment A. Subject to the limitations set forth in Article 4, the Employer shall contribute to the Plan on behalf of active Participants the amounts set forth in Attachment A, except that if Attachment A conflicts with the express provisions of a written contract in effect between the Employer and the Participant (or the Participant's bargaining representative), such express provisions shall control.
- (b) Employer contributions shall be made to the Plan each payday for the pay period in which the services to which the contribution relates were performed.

Participants on whose behalf an Employer contribution is made to the Plan are not permitted to receive the Employer contribution as current Compensation.

- (c) Employer contributions are fully vested and nonforfeitable immediately upon payment to the Plan.
- (d) In the event that a Participant who is both making Deferrals under Section 3.2 and receiving an Employer contribution under Section 3.3 or an Employer matching contribution under Section 3.6 exceeds the limits set forth in Article 4, the amount in excess of the limit will be refunded to the Participant as soon as administratively practicable. The refund shall be made first from amounts contributed by the Participant as non-matched Deferrals under Section 3.2 in the amount necessary to comply with the limits set forth in Article 4. If the contributions made on behalf of the Participant still exceed the limits set forth in Article 4, then the matched Deferrals and associated Employer matching contribution under Section 3.6 will be reduced until the contributions to the Plan on behalf of the Participant comply with the limits set forth in Article 4. If the contributions made on behalf of the Participant still exceed the limits set forth in Article 4, then the Employer contribution will be reduced until the contributions to the Plan on behalf of the Participant comply with the limits set forth in Article 4.

3.4 Transfers from Eligible Deferred Compensation Plans. The Plan will accept incoming transfer of amounts previously deferred under another Eligible Deferred Compensation Plan if (1) the transferor plan provides for the transfer of such amounts, and (2) the Participant has a benefit equal to the amount immediately after the transfer at least equal to the amount under the Plan immediately before the transfer. The Employer may require such documentation from the transferor plan as it deems necessary to effectuate the transfer in accordance with Treasury Regulations Section 1.457-10(b) and to confirm that the transferor plan is an Eligible Deferred Compensation Plan within the meaning of Treasury Regulations Section 1.457-2(f). The amount so transferred will be credited to the appropriate sub-account under the Participant's Account and will be held, accounted for, administered and otherwise treated in the same manner as amounts held in the transferor plan, except that the transferred amounts will not be taken into consideration for purposes of Code Section 457 (b)(2) for the year of transfer.

3.5 Automatic Enrollment in the Plan.

- (a) If the County and a labor organization representing a unit of County employees agree in collective bargaining, new Eligible Employees of that unit will be deemed automatically to have executed a Participation Agreement with an effective date of the first of the month following two (2) full months of employment. Collectively bargained units that have agreed to automatic enrollment are listed in Attachment A.
- (b) An Eligible Employee will be provided the required advance notice of automatic enrollment pursuant to Code Section 414(w), including the amount of contributions that will be made, the employee's right to change the amount of contributions, the employee's right not to have automatic contributions made, a description of how the contributions will be invested, and when such contributions may be distributed. The notice shall be provided within a reasonable period before such time when the automatic provision will become first applicable to an Eligible Employee.
- (c) A Participant may opt out of automatic enrollment at any time by completing a Participation Agreement or by providing written notice of the election not to have any amount withheld from his or her Compensation.
- (d) A Participant may elect the return of automatic deferrals if the request is made in writing within 90 days from the date of the first deduction.
- (e) The amount deferred from an Eligible Employee's Base Compensation shall be the amount specified in the applicable collective bargaining agreement, provided that the requirements of Code Section 414(w) are satisfied, including the requirement that the percentage of pay deferred will be uniform for employees with the same years of employment.

3.6 Employer Matching Contributions.

- (a) Subject to the limitations set forth in Article 4, the Employer shall match Participant Deferrals up the percentage of Base Compensation listed for the particular employee group in Attachment A, and shall contribute such matching contributions to the Plan on behalf of each Participant.
- (b) Employer matching contributions shall be made to the Plan each payday for the pay period in which the services to which the contribution relates were performed.

Participants on whose behalf an Employer matching contribution is made to the Plan are not permitted to receive the Employer matching contribution as current Compensation.

- (c) Employer matching contributions are fully vested and nonforfeitable immediately upon payment to the Plan.

ARTICLE 4 LIMITATIONS ON AMOUNT DEFERRED

4.1 Annual Maximum. The maximum amount of Compensation that may be deferred under this Plan (the “Normal Limit”) for a Participant’s taxable year (except as provided in Sections 4.2 and 4.3) is the lesser of the applicable dollar amount within the meaning of Code Sections 457(b)(2)(A) and 457(e)(15)(A), as adjusted for the cost-of-living in accordance with Code Section 457(e)(15)(B), or 100% of the Participant’s Includible Compensation.

4.2 3-Year Special Catch-Up Limit. For each one or more of the Participant’s last three (3) taxable years ending prior to but not including the year of such Participant’s Normal Retirement Age, as elected by the Participant pursuant to or otherwise defined in Section 2.22, the limitation set forth in Section 4.1 shall be increased to the lesser of:

- (a) two (2) times the applicable dollar amount described in Section 4.1; or
- (b) The sum of:
 - (1) The aggregate Normal Limit set forth in Section 4.1 for the current taxable year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus
 - (2) The aggregate limit referred to in section 457(b)(2) of the Code for any prior taxable year or years since January 1, 1979 and before January 1, 2002 during which the Participant was an Employee (determined without regard to Sections 4.2 and 4.3), less the aggregate contributions to Pre-2002 Coordination Plans for such prior taxable year or years.

For purposes of the preceding paragraph, “contributions to Pre-2002 Coordination Plans” means any employer contribution, salary reduction, or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract, and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code section 501(c)(18), including plans, arrangements, or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of the preceding paragraph to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code section 457(b)(2) for that year.

For purposes of this Section 4.2, a prior taxable year can be taken into account only if:

- (i) The Participant was eligible to participate in the Plan during any portion of any prior taxable year since January 1, 1979; and
- (ii) The Compensation deferred, if any, under the Plan during such prior taxable years was subject to a maximum deferral limitation as required by Code Section 457.

A Participant may elect to utilize the 3-Year Special Catch-Up Limitation with respect to only one (1) Normal Retirement Age (as defined in Section 2.22) in this Plan or any other Eligible Deferred Compensation Plan notwithstanding the fact that the Participant utilizes the 3-Year Special Catch-Up Limitation in less than all of the three (3) eligible years. This Section 4.2 shall not apply in any Plan Year in which Section 4.3 applies because the maximum deferral limit under Section 4.1, when combined with the limit under Section 4.3, is higher than the limit under this Section 4.2.

Acceptable proof of underutilized contributions for calculating a participant's 3-Year Special Catch-Up limit includes, but is not limited to, W2s, payroll records, and recordkeeper documentation.

4.3 Age 50 Catch-Up Limit. A Participant who will have attained the age of 50 before the close of the Plan Year, and with respect to whom no other Deferrals may be made to the Plan for the Plan Year by reason of the limitation of Section 4.1, may enter into a Participation Agreement to make Deferrals in addition to those permitted by Section 4.1 in an amount not to exceed the lesser of (1) the applicable dollar amount as defined in Code Section 414(v)(2)(B), as adjusted for the cost-of-living in accordance with Code Section 414(v)(2)(C), or (2) the excess (if any) of (i) the Participant's Includible Compensation for the year, over (ii) any other elective deferrals of the Participant for such year which are made without regard to this Section 4.3.

An additional contribution made pursuant to this Section 4.3 shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Code Section 402(g), or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 4.3 shall not apply in any Plan Year in which Section 4.2 applies because the maximum deferral limit under Section 4.2 is higher than the maximum deferral limit under Section 4.1, when combined with the limit under this Section 4.3.

4.4 Another Eligible Deferred Compensation Plan. If the Participant is or has been a participant in one or more other Eligible Deferred Compensation Plans, then this Plan and all such other plans shall be considered one plan for purposes of applying the foregoing limitations of this Article 4. For this purpose, the Employer shall take into account any other such Eligible Deferred Compensation Plan maintained by the Employer and shall also take into account any other such Eligible Deferred Compensation Plan for which the Employer receives from the Participant sufficient information concerning his or her participation in such other plan.

4.5 Cash Method of Accounting. For purposes of applying the limitations in Sections 4.1, 4.2 and 4.3, Base Compensation deferred under the Plan for a pay period shall be treated as deferred as of the pay day for that pay period.

ARTICLE 5 ACCOUNTS

5.1 Participants' Accounts. A separate bookkeeping Account shall be maintained for each Participant. Within each Account, one or more sub-accounts may be established including

(1) an Elective Deferral Account, (2) a Roth 457(b) Contributions Account, (3) a 457(b) Rollover Account, (4) a non-457(b) Rollover Account, (5) a Roth 457(b) Rollover Account, (6) a Roth non-457(b) Rollover Account, (7) a Rollover of In-Plan Roth non-457(b) Rollover Account, and/or (8) In-Plan Roth 457(b) Rollover Account.

- (a) Each Account shall be credited with the amount of the Participant's Base Compensation deferred under Section 3.2 and with any amount transferred to this Plan with respect to the Participant as provided in Sections 14.1 or 14.3.
- (b) Each Participant's Account shall be debited with the amount of any payment to the Participant under this Plan, with any amount transferred to a separate account for an Alternate Payee with respect to the Participant as needed, and with any amount of the Participant's Account transferred to another plan as provided in Section 14.2.
- (c) At such dates and frequency as are reasonably determined by the Employer, a Participant's Account also shall be credited with the amount of income and gain allocable to the Account and also shall be debited with the amount of loss, expenses, and charges allocable to the Account.
- (d) A written report of the status of each Participant's Account shall be furnished to the Participant at least annually.

5.2 Investments. A written report of the status of each Participant's Account shall be furnished to the Participant at least annually. Each Account shall be invested as directed by the Participant or Alternate Payee in such one or more Investment Products as are determined and approved by the Committee and allowed by Oregon law.

- (a) The amount of each Account shall be invested in such one or more of those approved Investment Products as are designated by the Participant or Alternate Payee in a manner approved by the Employer.
 - (1) A Participant's or Alternate Payee's investment designation shall apply to the amount of the Participant's or Alternate Payee's Account after the Participant's or Alternate Payee's death until the Beneficiary makes an investment designation in a manner approved by the Employer.
 - (2) A Participant's investment designation with respect to any portion of the amount of the Participant's Account transferred to an Alternate Payee's Account shall apply to the amount of the Alternate Payee's Account until

the Alternate Payee makes an investment designation in a manner approved by the Employer.

- (b) Investment designations shall be implemented as soon as administratively feasible, subject to any restrictions imposed by the Designated Institution.
- (c) Neither the Employer nor the Committee shall be liable to any Participant, Beneficiary, Alternate Payee, or other person for any loss due to the Employer's determination and approval of Investment Products, due to the Employer's failure to monitor the performance of those approved Investment Products, or due to the investment performance of amounts invested in those approved Investment Products, unless committed in bad faith, intentionally, or with reckless indifference to the interest of the Participant, Beneficiary, Alternate Payee, or other person.

5.3 Expenses and Charges. The Committee shall determine the reasonable expenses of the Employer and the Committee that are associated with the deferral of Compensation under this Plan, investing the amount of Accounts, or administering this Plan, and also shall determine the expenses and charges associated with the Investment Products designated by the Participant, Beneficiary, or Alternate Payee. The Employer may charge such expenses and charges to and among Participants', Beneficiaries', and Alternate Payees' Accounts in such manner as the Employer determines equitable. However, general expenses of the Employer may not be charged to this Plan or to Accounts.

ARTICLE 6 BENEFITS

6.1 General Benefit Terms.

- (a) Benefit payments to a Participant or Beneficiary shall be made according to the manner and method of payment as elected in the Payout Request, which election may be changed by a Participant or a Beneficiary as appropriate and as allowed by the Plan at any time.
- (b) Subject to the restrictions on choice of benefit contained in paragraphs 6.1(c) and (d), 6.4 and 6.5, the options available for selection by the Participant or Beneficiary as the manner and method of payment are:
 - (1) Lump sum(s);

- (2) Periodic payments for a designated period;
- (3) Periodic payments for life;
- (4) Periodic payments for life with a guaranteed minimum number of payments;
- (5) Periodic payments for the life of the Participant with continuation of the payments or a percentage of the payments for the lifetime of the Participant's spouse;
- (6) Such other options as a Designated Institution may, in its sole discretion, offer to the Participant prior to the commencement of benefits.

Periodic payments may be monthly, quarterly, semiannually, or annually. For life annuity contracts, the amount of each payment may be fixed or may fluctuate with the performance of the Investment Products.

- (c) If participant's account balance is less than \$5,000, a distribution may be made in a lump sum to the participant within sixty-one (61) days after the close of the year in which the participant has separated from service.
- (d) In determining the amount of benefit payments, the minimum incidental death benefit rule of Code Section 401(a)(9)(G) must be satisfied. To the extent that the payment required under this rule is greater than the amount determined under 6.1(c), the greater amount must be paid.
- (e) All distributions under the Plan must comply with Code Section 401(a)(9). Benefit distributions under the Plan must commence by April 1 of the calendar year following the later of (1) the calendar year in which the Participant attains age 70½, or (2) the calendar year in which the Participant incurs a Severance from Employment.

Any method or form of distribution selected by the Participant must be designed to pay the Participant the value of his or her benefits under the Plan over a period not to exceed the Participant's life or life expectancy or the joint lives or life expectancy of the Participant and the Participant's designated Beneficiary. The life expectancy of a Participant and the joint life expectancy of a Participant and the Participant's designated Beneficiary shall be determined in accordance with applicable law and

regulations, provided that the life expectancy of a Participant or the Participant's spouse (if the designated Beneficiary) may from time to time be re-determined, but not more frequently than annually.

6.2 Benefits upon Retirement. Following the Participant's Severance from Employment on or after attainment of Normal Retirement Age, the custodian shall begin payments to the Participant in accordance with the Participant's elections made in the Payout Request; provided, however, that payments shall begin no later than April 1 of the calendar year following the later of (1) the calendar year in which the Participant attains age 70½, or (2) the calendar year in which the Participant incurs a Severance from Employment.

6.3 Benefits upon Severance from Employment. If Severance from Employment occurs prior to attainment of the Normal Retirement Age determined under Section 2.22, the custodian shall begin benefit payments as soon as administratively practicable following the Participant's Severance from Employment and his or her subsequent submission of a Payout Request; provided, however, that in lieu of requesting a distribution under this Section 6.3, a Participant instead may request a plan-to-plan transfer under Section 14.3 below. The custodian shall begin payments to the Participant in accordance with the Participant's elections made in the Payout Request; provided, however, that payments shall begin no later than April 1 of the calendar year following the later of (1) the calendar year in which the Participant attains age 70½, or (2) the calendar year in which the Participant incurs a Severance from Employment.

6.4 Elective Distributions. Regardless of whether he or she has experienced a Severance from Employment, a Participant may choose to receive a distribution from his or her 457(b) Rollover Account, Non-457(b) Rollover Account, Roth 457(b) Rollover Account, Rollover of In-Plan Roth non-457(b) Rollover Account and Roth non-457(b) Rollover Account at any time by submitting a Payout Request.

6.5 Payment of Benefits upon Participant's Death.

- (a) Upon the death of a Participant, the deceased Participant's Account will be distributed to the Beneficiary in accordance with the provisions of this section.
- (b) The designation of a Beneficiary will be made in a form satisfactory to the Employer. A Participant or Beneficiary may at any time revoke his or her designation of a Beneficiary or change his or her Beneficiary by filing written notice of such revocation or change. In the event no valid designation of Beneficiary

exists at the time of the Participant's or Beneficiary's death, the death benefit will be payable to the Participant's or Beneficiary's estate.

- (c) The Employer may require such proper proof of death and such evidence of the right of any person to receive payment of the value of an Account of a deceased Participant as it deems appropriate. The Employer's determination of death and of the right of any person to receive payment will be conclusive and binding on all interested parties.
- (d) If minimum payments under Code Section 401(a)(9) have not begun upon the death of a Participant and if the Beneficiary is not the Participant's surviving spouse, death benefits payments under the Plan must, in accordance with the Beneficiary's election or, if an election is not made, in accordance with the relevant provisions in the Plan:
 - (1) Begin to be distributed to the Beneficiary no later than December 31 of the calendar year immediately following the calendar year of the Participant's death, payable over a period not to exceed the life expectancy of the Beneficiary; or
 - (2) Be distributed no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (e) If the Beneficiary is the Participant's surviving spouse and minimum payments under Code Section 401(a)(9) have not begun upon the death of the Participant, minimum payments to the surviving spouse must begin by the later of:
 - (1) December 31 of the calendar year immediately following the calendar year in which the Participant dies; or
 - (2) December 31 of the year in which the Participant would have attained age 70½.
- (f) Payments to the surviving spouse under Section 6.5(e) above must be made over a period not to exceed the surviving spouse's life expectancy. However, a surviving spouse may elect to receive the death benefit payments no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (g) If minimum payments under Code Section 401(a)(9) have begun prior to the Participant's death, the remaining portion of the Account shall be distributed to the Beneficiary at least as rapidly as under the method of distribution in effect prior to the death of the Participant.

6.6 In-Service Distributions. While still employed by the Employer, a Participant may request, and upon approval of the Employer, receive an in-service distribution from the Participant's Account, provided that:

- (a) The Participant's Account balance is \$5,000 or less (or such amount as may be designated in Code Section 457(e)(9)); and
 - (1) The Participant has made no deferrals during the two-year period ending on the date of the distribution; and
 - (2) The Participant has not received any prior in-service distribution as described in this Section 6.6 (a); or
- (b) The Participant has been approved by a tax qualified governmental defined benefit plan (as defined in Code Section 414(d)) to purchase service credits with a direct transfer from this Plan, and such in service distribution does not exceed the total amount required to purchase such service credits.

ARTICLE 7 HARDSHIP WITHDRAWALS

7.1 Application for Withdrawal. In the case of an Unforeseeable Emergency prior or subsequent to the commencement of benefit payments, a Participant may apply for a withdrawal of an amount reasonably necessary to satisfy the emergency need. If the Committee (or its delegate) reviews the application and determines that the applicable standards are satisfied, the withdrawal will be effective at the later of the date specified in the Participant's application or the date of approval by the Committee (or its delegate). The approved amount shall be payable in a lump sum within thirty (30) days of such effective date or in some other manner consistent with the emergency need as determined by the Committee (or its delegate). If the Participant's request is denied, a request for review of the determination may be made in writing to the Committee (or its delegate). If the review of the determination fails to confirm a claim of Unforeseeable Emergency, a

written appeal may be made to the Committee (or its delegate). Unforeseeable Emergency withdrawals will be made in accordance with procedures established by the Designated Institution and/or Investment Product.

7.2 Unforeseeable Emergency. For the purposes of this Plan, the term “Unforeseeable Emergency” means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or his or her spouse, or of a dependent (as defined in Code Section 152(a)) of the Participant, or of a Primary Beneficiary of the Participant, loss of the Participant’s property due to casualty, or other similar, extraordinary, and unforeseeable circumstances arising as a result of events beyond the control of the Participant. Withdrawals for foreseeable expenditures normally budgetable, such as a down payment on or purchase of a home, purchase of an automobile, or college expenses, will not be permitted. The Committee (or its delegate) shall not permit withdrawal for an Unforeseeable Emergency to the extent that such hardship is or may be relieved:

- (a) Through reimbursement or compensation by insurance or otherwise;
- (b) By liquidation of the Participant’s assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- (c) By cessation of deferrals under the Plan.

For purposes of this Section 7.2, a “Primary Beneficiary” of a Participant is an individual who is named as a Beneficiary of the Participant under the Plan, and who has an unconditional right to all, or a portion of, the Participant’s Account balance under the Plan upon the death of the Participant.

7.3 Limits on Withdrawals and Future Contributions. In no event shall the amount of a withdrawal for an Unforeseeable Emergency exceed the balance in the Participant’s Account at the time of withdrawal. Notwithstanding any other provision of this Plan, if a Participant makes a withdrawal hereunder, the Participant’s Account shall be appropriately reduced to reflect such withdrawal, and the remainder of any benefits shall be payable in accordance with otherwise applicable provisions of the Plan. In the event a Participant’s application for a distribution under Article 7 is approved by the Committee (or its delegate), the Participant will be barred from making further Deferrals under the Plan for a period of six (6) months following the date on which such distribution is made.

ARTICLE 8 BENEFICIARIES

- 8.1 Designation.** A Participant shall have the right to designate a Beneficiary, and to amend or revoke such designation at any time by designating one or more Beneficiaries in a manner approved by the Employer. Such designation, amendment or revocation shall be effective upon receipt by the Employer. Notwithstanding the foregoing, a Participant who elects a joint and survivor annuity form of payment may not elect a non-spouse joint annuitant, and may not change his or her joint annuitant after payments commence. Further, if, at the time the designation of Beneficiary was made, the Participant named a current spouse as Beneficiary, but the Participant was not married to that same spouse at the time of the Participant's death, such designation shall be void, subject to the Participant later filing a new designation naming the former spouse as Beneficiary.
- 8.2 Failure to Designate a Beneficiary.** If a Participant fails to elect a Beneficiary or no designated Beneficiary survives the Participant, and benefits are payable following death, such benefits will be payable to the Participant's estate.

ARTICLE 9 LEAVE OF ABSENCE

- 9.1 Approved Leave of Absence.** A Participant on an approved leave of absence (whether paid or unpaid) may continue to participate in the Plan subject to all the terms and conditions of the Plan. Subject to a different instruction from the Participant, Base Compensation shall be deferred for such Participant if such Base Compensation (or a portion thereof) continues while the Participant is on an approved leave of absence.
- 9.2 Uniformed Services Leaves.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

ARTICLE 10 ASSIGNMENT AND ALIENATION

- 10.1 Participant's Rights Not Assignable.** Neither the Participant nor any other person shall have any right to commute, sell, assign, pledge, transfer, or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights thereto are

expressly declared to be unassignable and nontransferable. Except as otherwise provided under Article 12, no unpaid benefits shall be subject to attachment, garnishment, or execution for the payment of any debts, judgments, alimony, or separate maintenance owed by the Participant or any other person or be transferable by operation of law in the event of bankruptcy or insolvency of the Participant or any other person.

10.2 No Loans Permitted. Participant loans are not permitted under the Plan.

10.3 IRS Levy. Notwithstanding Section 10.1, the Plan may pay from a Participant's or Beneficiary's Account the amount that the Committee finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

ARTICLE 11 ADMINISTRATION

11.1 Plan Administrator. This Plan shall be administered by the Employer. The Employer may appoint a Committee of one or more individuals in the employment of the Employer for the purpose of discharging the administrative responsibilities of the Employer under the Plan. The Committee will represent the Employer in matters concerning the administration of this Plan; provided, however, that the final authority for all administrative and operational decisions relating to the Plan remains with the Employer.

11.2 Powers of the Committee. The Committee shall have full power and authority to:

- (a) Present recommendations to the Employer for consideration in order to adopt rules and regulations for the administration of the Plan, provided they are not inconsistent with the provisions of this Plan or Code Section 457 and any Treasury regulations promulgated thereunder, and to interpret, alter, amend, or revoke any rules and regulations so adopted;
- (b) To recommend to the Employer to enter into contracts with respect to this Plan and in accordance with the Employer's purchasing policy;
- (c) To make discretionary decisions under this Plan, including decisions under Article 7 (Hardship Withdrawals) and under Section 11.5 (Claims Procedure); and

- (d) To demand satisfactory proof of the occurrence of any event that is a condition precedent to the commencement of any payment or discharge of any obligation under the Plan.

11.3 Disqualification of Committee Members. If otherwise eligible, a Committee member shall be eligible to participate in the Plan, but such person shall not be entitled to participate in discretionary decisions relating to such person's own participation in or benefits under the Plan.

11.4 Selection of Approved Institutions. The Committee shall screen and recommend to the Employer for approval any insurance company or other entity seeking to sell an Investment Product or otherwise operate as an Approved Institution under this Plan. The Employer may contract with an Approved Institution (a) to issue to the Employer an Investment Product as described in Article 5 of the Plan, or (b) to provide services under the Plan for the convenience of the Employer including, but not limited to, the enrollment of Eligible Individuals as Participants on behalf of the Employer; the maintenance of individual or other accounts and other records; the making of periodic reports; and the disbursement of benefits to Participants, Alternate Payees, and Beneficiaries.

11.5 Claims Procedure.

- (a) Upon the request of a Participant, Beneficiary, or Alternate Payee, the Employer shall provide claim forms to any Participant, Beneficiary, or Alternate Payee who is or may be entitled to benefits hereunder. Such claim form shall be completed and submitted to the Employer no later than thirty (30) days after it is received by said claimant. Upon receipt of the claim form, the Employer shall review the claim and, if the Employer determines that the claim should not be allowed, shall respond within thirty (30) days of receipt of the claim. Such response shall be in writing and shall include the specific reason or reasons for the denial, specific references to pertinent Plan provisions on which the denial is based, a description of whatever additional material or information, if any, must be supplied by the claimant to perfect the claim, and an explanation of the Plan's review procedure. If notice of the denial of a claim is not furnished within thirty (30) days of receipt by the Committee, the claim shall be deemed denied.
- (b) Within sixty (60) days after receipt of notice of denial of the claim or when the claim is deemed to have been denied, the claimant (or his or her representative) may

respond to the denial by requesting, in writing, a review of the decision and a review of pertinent documents. If the claimant responds and seeks a review of the decision to deny benefits, issues and comments must be submitted in writing to the Employer. Such issues and comments shall specify the reasons that the decision of the Employer is claimed to be erroneous. The Employer shall review the contentions regarding the denial of the claim and shall, within sixty (60) days from the Employer's receipt of the request for review, respond to said request. If the Employer, in its sole discretion, determines that special circumstances warrant the holding of a hearing, it shall promptly be held and a decision shall be rendered within one hundred twenty (120) days from the date the Plan received the request for review. Any decision on review shall be in writing and shall state the specific reasons for the decision, and shall make specific references to the Plan provisions on which the decision is based.

- (c) The Committee or an Approved Institution shall make all reasonable attempts to determine the identity and address of a Participant or Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt may include the mailing by certified mail of a notice to the last known address shown on the Employer's or Approved Institution's records.

If the Committee or the Approved Institution is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Plan shall continue to hold the benefits due such person until, in the Employer's sole discretion, the Plan is required to take other action under applicable law. Such action may include the forfeiture of the Participant's or Beneficiary's Accounts. Such forfeitures will be applied toward the payment of expenses of the Plan. If so forfeited, and if a person subsequently files a valid claim for such benefit, then such forfeited amount shall be restored to the Participant's or Beneficiary's Account (without interest) and thereupon distributed in accordance with the Plan. Such restored amounts shall be provided from the earnings of the Plan or from such other appropriate source.

ARTICLE 12 QUALIFIED DOMESTIC RELATIONS ORDERS

- 12.1 Payment to Alternate Payee.** To the extent required by and subject to the restrictions of ORS 243.507 or Code section 414(p), the amount of a Participant's Account shall be paid, in whole or in part, to an Alternate Payee if and to the extent expressly provided for in the terms of any court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation.
- 12.2 Required Information and Documentation.** No benefit under this Plan may be paid to an Alternate Payee under the terms of a court decree or order or court-approved property settlement agreement ("Order") until after the date the Employer receives a copy of the Order and such additional information and documentation as satisfies the Employer:
- (a) That the copy is a true copy of the Order.
 - (b) That the Order is, within the meaning of ORS 243.507, a court decree of annulment or dissolution of marriage or of separation, or a court order or court-approved property settlement agreement incident to such a decree.
 - (c) Of the extent to which the terms of the Order expressly provide for payment of a benefit under this Plan to an Alternate Payee.
 - (d) Of any other fact or matter required for the Employer to:
 - (1) Determine the application of ORS 243.507 to the Order or the extent to which the Order applies to this Plan.
 - (2) Comply with the Order or with ORS 243.507.
 - (3) Administer this Plan under the terms of the Order.
- 12.3 Coordination with Other Provisions of This Plan.** With respect to amounts payable to an Alternate Payee, the custodian shall begin benefit payments to the Alternate Payee as soon as administratively practicable after the requirements of Section 12.2 have been satisfied, in accordance with the Alternate Payee's elections made in a Payout Request made in accordance with the distribution requirements provided in Article 6.

**ARTICLE 13
AMENDMENT OR TERMINATION OF PLAN**

- 13.1 Employer's Authority.** The Employer may terminate or amend the provisions of this Plan at any time; provided, however, that no termination or amendment shall affect the rights of a Participant, Alternate Payee, or a Beneficiary to the receipt of payment of benefits with respect to any Base Compensation deferred before the time of the termination or amendment, as adjusted for investment experience of the Investment Product of the Designated Institution prior to or subsequent to the termination or amendment, except as may be permitted or required by law.
- 13.2 Procedure upon Termination of Plan.** Upon termination of the Plan, the Participants in the Plan will be deemed to have withdrawn from the Plan as of the date of such termination. Participants will resume receipt of their full Compensation without any further deferrals pursuant to Section 3.2 of the Plan. The Employer shall not distribute Plan benefits at the time of such termination; rather, the custodian shall retain all Participant Accounts and shall pay or dispose of Participant Accounts only as otherwise provided in the Plan and according to the terms and conditions of the Plan.

**ARTICLE 14
ROLLOVERS**

- 14.1 Rollover Contributions.** An Eligible Individual (whether or not he or she is a current Participant) may roll over amounts that are considered "eligible rollover distributions" within the meaning of Code Section 402(c)(4) from an "eligible retirement plan" within the meaning of Code Section 402(c)(8)(B).
- (a) Amounts (other than designated Roth contributions as defined in Code Section 402A) rolled over from another Eligible Deferred Compensation Plan will be allocated to the Participant's 457(b) Rollover Account. Amounts (other than designated Roth contributions as defined in Code Section 402A) rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant's non-457(b) Rollover Account.
 - (b) Designated Roth contributions as defined in Code Section 402A rolled over from another Eligible Deferred Compensation Plan will be allocated to the Participant's Roth 457(b) Rollover Account. Designated Roth contributions as defined in Code

Section 402A rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant's Roth non-457(b) Rollover Account.

- (c) Designated Roth contributions relating to in-plan rollovers under Code Section 402A(c)(4) rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant's Rollover of In-Plan Roth non-457(b) Rollover Account.
- (d) Amounts attributable to In-Plan Rollovers will be allocated to an In-Plan Roth 457(b) Rollover Account. In-Plan Roth Rollover Contributions will be subject to the Plan rules related to Roth 457(b) Contributions.

All rollovers into this Plan are subject to the approval of the Employer and the applicable Designated Institution(s). Rollovers received by the Plan shall not be applied against the deferral limitation described in Article 4, and shall be fully vested. If the Plan accepts an amount as a rollover contribution based on the reasonable conclusion of the Employer or its delegate that the contribution is a valid rollover contribution, but it is later determined that the rollover contribution did not satisfy the statutory or regulatory rollover rules, a distribution shall be made to the affected Participant in an amount equal to such invalid rollover contribution, plus any earnings attributable thereto.

14.2 Direct Rollovers of Plan Distributions. The Plan will make direct rollovers of Plan distributions at the request of the Participant, subject to the provisions of Article 6 and Article 12, to:

- (a) an Eligible Deferred Compensation Plan;
- (b) a qualified plan described in Code Section 401(a), 401(k) or 403(a);
- (c) an annuity contract described in Code Section 403(b);
- (d) an individual retirement account or annuity described in Code Section 408(a) or 408(b);
- (e) a Roth individual retirement account described under Code Section 408A.

Notwithstanding any provisions of the Plan to the contrary that would otherwise limit an election under this section, the surviving spouse of a Participant (or the Participant's former spouse who is an Alternate Payee under a Qualified Domestic Relations Order, as defined in Code section 414(p)) may elect, at the time and in the manner prescribed by

the Plan, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover.

Effective for Plan Years beginning on or after January 1, 2010, a non-spouse Beneficiary may elect to make a direct rollover to an inherited individual retirement account or annuity described in Code Section 408(a) or Section 408(b), or a Roth individual retirement account described in Code Section 408A(a), that is established on behalf of the Beneficiary. Such rollover shall be made in a manner consistent with Code Section 402(c)(11) and any other applicable guidance.

14.3 Plan to Plan Transfers. If a Participant incurs a Severance from Service and subsequently performs services for another employer described in Code Section 457(e)(1)(A) which maintains an Eligible Deferred Compensation Plan, the amounts deferred under the Plan shall, at the Participant's election, be transferred to such other Eligible Deferred Compensation Plan, provided:

- (a) The Eligible Deferred Compensation Plan to which the Participant's benefit is being transferred provides for the acceptance of such amounts; and
- (b) The Participant has a benefit amount immediately after the transfer which at least equals the benefit amount under this Plan immediately before the transfer.

Upon the transfer of amounts under this Section 14.3, the Plan's liability to pay benefits to the Participant or Beneficiary will be discharged to the extent of the amount so transferred on behalf of the Participant or Beneficiary. The Employer may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 14.3 or effectuate the transfer pursuant to Treasury Regulations Section 1.457-10(b). If Roth 457(b) contributions are transferred, the receiving plan must permit designated Roth contributions as defined in Code Section 402A.

14.4 Transfer of Entire Plan. Subject to this Section 14.4, the Employer may direct the transfer of all assets of the Plan to another Eligible Deferred Compensation Plan that is located in the State of Oregon, provided that the requirements of Code Section 457(b) and Treasury Regulations Section 1.457(b)-10(b)(3) are satisfied. If Roth 457(b) Contributions are transferred, the receiving plan must permit designated Roth contributions as defined in Code Section 402A.

ARTICLE 15 PLAN ASSETS

- 15.1 Funding Medium for Plan Assets.** All assets of the Plan, including all amounts deferred pursuant to Sections 3.2 and 3.3 (except those that have been transferred out pursuant to Section 14.2, 14.3 or 14.4), all amounts transferred to the Plan pursuant to Section 14.1, all property and rights purchased with Deferrals, Employer contributions and transferred amounts, and all income attributable to such amounts, property, or rights shall (until made available to a Participant, Alternate Payee, or Beneficiary pursuant to the distribution provisions of Article 6) be held in a trust, custodial account, or annuity contract described in Code Section 457(g) for the exclusive benefit of Participants and their Beneficiaries.
- 15.2 No Reversion.** Except as otherwise provided in the Plan or permitted by the Code, no part of the Plan assets shall be paid over or revert to the Employer or be used for any purpose other than for the exclusive benefit of Participants, Alternate Payees and their Beneficiaries, and for reasonable expenses of administration of the Plan.

ARTICLE 16 MISCELLANEOUS

- 16.1 Governing Law.** The Plan shall be construed under the laws of the state of Oregon, except to the extent superseded by federal law, including the Code.
- 16.2 Severability.** If any provision of this Plan shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining parts of this Plan, but this Plan shall be construed and enforced as if said illegal or invalid provision had never been included herein.
- 16.3 Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Committee, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Committee, to the Employer.

IN WITNESS WHEREOF, the Employer has caused this Plan to be signed and attested by its duly authorized officers on the _____ day of _____, 2019.

Board of County Commissioners:

Chair

Recording Secretary

ATTACHMENT A

Pursuant to Section 3.3 of the Plan, the Employer shall make contributions to the Plan for the following employee groups and in the amounts set forth below, expressed as a percentage of the Eligible Employee's Base Compensation:

<u>Classification of Employees</u>	<u>Contribution Amount</u>
Peace Officers Association	Four percent (4%)
Federation of Parole and Probation Officers	One percent (1%)
Nonrepresented Group 1	Six and twenty-seven one hundredths percent (6.27%)

Pursuant to Section 3.5 of the Plan, the Employer shall automatically enroll new Eligible Employees from the following employee groups in the Deferral amounts set forth below, expressed as a percentage of the Eligible Employee's Base Compensation:

<u>Classification of Employees</u>	<u>Deferral Amount</u>
AFSCME - DTD	Five percent (5%)
AFSCME-WES	Five percent (5%)
Employees Association	Five percent (5%)
Housing Authority Employees Association	Five percent (5%)

Pursuant to Section 3.6 of the Plan, the Employer shall match Deferrals by Eligible Employees from the following employee groups, up to the amounts set forth below, expressed as a percentage of the Eligible Employee's Base Compensation:

<u>Classification of Employees</u>	<u>Matching Contribution Amount</u>
AFSCME – 911 Dispatch	Up to three percent (3%), effective March 1, 2017
C-COM Managers (portion of Nonrepresented Group 2)	Up to three percent (3%), effective August 1, 2017



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

March 03, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for a Service Level Agreement with
Cascade Access LLC for a connection to the Pittock

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval for a Service Level Agreement (SLA) with the Cascade Access LLC for a connection to the Pittock.
Dollar Amount and Fiscal Impact	Cascade Access LLC will pay an annual fee of \$12,120.00 for the use of the connection to the Pittock.
Funding Source	The fiber and DWDM equipment currently exist for this connection.
Duration	Effective upon signature by the board the SLA is effective for two (2) years and then renewing for additional years.
Previous Board Action	Board has previously approved a similar SLA with Sunbreak Electronics LLC.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Build public trust through good government.
Contact Person	Dave Devore (503)723-4996

BACKGROUND:

CBX is requesting a new SLA with Cascade Access LLC for a lease agreement that provides connectivity to the Pittock on the CBX network. Cascade Access LLC requested a link to provide connectivity to their operation center in Estacada Oregon.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this new agreement with the Cascade Access LLC. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

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

Sincerely,

Dave Cummings
CIO Technology Services

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

Cascade Access, LLC d/b/a Reliance Connects
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to Cascade Access, LLC d/b/a Reliance Connects (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

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

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

2. Fiber Optic Network Description

County will provide Customer with point-to-point fiber optic connectivity from the Pittock Building located at 921 SW Washington St, Portland OR 97205 and cross connect with Cascade Access, LLC at an aerial splice case located at the intersection of SE Main St and Clackamas Highway 224 in Estacada OR 97022 on a path designated by the County. This connection will be a combination of single mode fiber optic cable and Dense Wavelength Division Multiplexing (DWDM) (collectively hereinafter "Fiber"). County reserves the right, in its sole administrative discretion, to relocate the Fiber at any time provided such relocation does not materially change the service provided under this Agreement.

3. Service Description

The service provided to Customer by County is the physical connectivity of Fiber between sites specifically identified in Appendix A for the use of the Customer's communication needs.

4. Construction and Installation Requirements

- a. County, when installing the Fiber on the property of Customer, shall do so in a neat and professional manner.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the Fiber from

the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.

- c. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the Fiber in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- d. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- e. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

5. Term of Agreement

At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use and Customer shall accept or reject the Fiber in accordance with the procedures in subsection 4(i) above. The date of Customer's acceptance of the Fiber under subsection 4(i) shall be called the "Service Start Date." Unless otherwise terminated, this Agreement shall continue for a period of two years following the Service Start Date, and shall be automatically renewed for successive one-year renewal terms, at the County's then-current rate schedule.

6. Rates

In return for County providing the services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for services as specified in Appendix A as it shall be amended from time to time.

7. Payment Options

a. Semi - Annual Payments

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

8. Fiber Maintenance

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

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

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

9. Confidentiality

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

10. Content Control and Privacy

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

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

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

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

13. Force Majeure

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

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

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

16. Non-Appropriation or Change in Law

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that if County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that County is prohibited from performing under this

Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

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

18. Taxes and Assessments

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

19. Termination

- a. Either party may terminate this Agreement for convenience following 90 day's written notice to the other party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or

b. Failure to pay any sums due under this Agreement.

2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

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

22. No recourse Against the Grantor

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

23. Notice

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

Notice to the County

Manager, Clackamas Broadband eXchange
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

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

Notice to the Customer

Cascade Access, LLC d/b/a Reliance Connects
PO Box 189
Estacada, OR 97023
503-630-8934

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

24. Debt Limitations

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

25. No Attorney Fees

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

26. Governing Law

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

Whole Contract

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name (print): _____

Title: _____

Date: _____

Customer

Cascade Access, LLC d/b/a Reliance Connects
(Customer Name)

By (signature): Brenda Crosby

Name (print): Brenda Crosby

Title: President

Date: 2/26/19

APPENDIX A

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

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

2. Construction, Installation and Activation

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

3. Service Changes and Conversions

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

4. Annual Recurring Charges

	From (Connecting Point A: Site Name & Address)	To (Connecting Point B: Site Name & Address)	Service	Monthly Rate (\$)
1	Pittock Building 921 SW Washington St Portland, OR 97205	WES Hub 15941 S Agnes Ave Oregon City, OR 97045	DWDM Wavelength	\$400.00
2	WES Hub 15941 S Agnes Ave Oregon City, OR 97045	Sandy City Hall 39250 Pioneer Blvd Sandy, OR 97055	DWDM Wavelength	\$255.00
3	Sandy City Hall 39250 Pioneer Blvd Sandy, OR 97055	Aerial Splice Case Intersection of SE Main St & Clackamas HWY 224 Estacada, OR 97022	One Pair (two) dark fibers	\$255.00
4	Pittock Building 921 SW Washington St Portland, OR 97205	Pittock Building 921 SW Washington St Portland, OR 97205	Optical Cross- Connect	\$100.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1 Pittock Building 921 SW Washington St Portland, OR 97205	Aerial Splice Case Intersection of SE Main St & Clackamas HWY 224 Estacada, OR 97022	Construction	\$0.00

6. Late Payment Interest

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

7. Annual Consumer Price Index (CPI) Adjustments

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

Remainder of this page intentionally left blank.

APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

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

2. General

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

3. Fiber Optic Network

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

4. Restoration

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

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

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

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

b. **Field Splice Standards**

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

c. **Span Loss**

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

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

A = Attenuation per KM at 1550 nm

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

N = Number of splices in a span

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

Remainder of this page intentionally left blank.



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

March 7, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Commercial Lease with Milne Masonry, Inc.

Purpose/Outcome	Execute a lease with Milne Masonry, Inc. for Agency owned property located 14489 SE Highway 212
Dollar Amount and Fiscal Impact	Monthly rent payment of \$1,502.00
Funding Source	N/A.
Duration	Lease will expire on December 31, 2019 with the option to extend for a period of 12 months
Previous Board Action/Review	None
Strategic Plan Alignment	Build public trust through good government
Contact Person	David Queener, Development Agency Program Supervisor, 503-742-4322

The Agency owns property located at 14489 SE Highway 212, which has been leased by Milne Masonry since January 2005. Per the terms of the previous lease, Milne has the option to renew the lease for a term of 12 months.

Milne has requested the renewal, therefore this new lease will expire on December 31, 2019. Terms of the lease include monthly rent in the amount of \$1,502.00. Property taxes are paid as a component of rent. The lease requires a six (6) month notification by the Agency of its intent to terminate the lease in the event the property is needed for another use.

County Counsel has reviewed and approved the proposed lease.

RECOMMENDATION

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, execute this lease with Milne Masonry, Inc.

Respectfully submitted,

David Queener, Program Supervisor
Development Agency

COMMERCIAL LEASE

Date: March _____, 2019

Between: Clackamas County Development Agency (“Lessor”)

And: Milne Masonry, Inc. (“Lessee”)

As to Property: 14489 SE Highway 212
Clackamas, Oregon

RECITALS

The Clackamas County Development Agency, as Lessor ("Lessor") has continuously leased to Milne Masonry, Inc. as Lessee ("Lessee") premises located at 14489 SE Highway 212 in Clackamas, Oregon from January 1, 2005 to the present. Lessor and Lessee now undertake to sign a new lease under the same or similar terms for the period from January 1, 2019 through December 31, 2019, with an option to renew so long as Lessee is not in default, for one (1) additional term of twelve (12) months.

NOW, THEREFORE, Lessor leases to Lessee and Lessee leases from Lessor the following described property (the “Premises”) on the terms and conditions stated below:

See the attached Exhibit A, which is incorporated by this reference.
AKA: 14489 SE Hwy 212, Clackamas, Oregon 97015

Section 1. Occupancy

1.1 Original Term. The term of this Lease shall commence January 1, 2019 and continue through December 31, 2019, unless sooner terminated as hereinafter provided.

1.2 Possession. At the time of this Lease Lessee, by virtue of its existing tenancy, is already in possession of the Premises.

1.3 Renewal Option. Subject to Lessor’s termination rights under Section 18, if the Lease is not in default when the option is exercised or when the renewal term is to commence and Lessor has not provided the notice to terminate set forth in Section 18, Lessee shall have the option to renew this Lease for one (1) term of twelve (12) months, as follows:

1.3.1. The first day of the renewal term shall commence on the day following expiration of the preceding term.

1.3.2. The terms and conditions of the Lease for the renewal term shall be identical with the original term except for rent, term, and renewal option.

1.3.3. The option to renew may be exercised by written notice to Lessor given not less than sixty (60) days prior to the last day of the expiring term. Giving such

notice shall be sufficient to make the Lease binding for the renewal term without further act of the parties.

1.3.4. Rent during the renewal period shall be the greater of (a) the rental during the preceding original term or (b) a reasonable rental for the ensuing renewal term. If Lessor and Lessee do not agree on the rent within thirty (30) days after notice of election to renew, an independent real property appraiser familiar with commercial rental values in the area shall determine the rent. Lessee shall choose the appraiser from a list of not fewer than three such persons submitted by Lessor. If Lessee does not make the choice within five days after submission of the list, Lessor may do so. If Lessor does not submit such a list within 10 days after written request from Lessee to do so, Lessee may name as an appraiser any individual with such qualifications. Within 30 days after his or her appointment, the appraiser shall return his or her decision, which shall be final and binding on both parties. The cost of the appraiser's determination shall be borne equally by both parties.

Section 2. Rent

2.1 Base Rent. During the original term Lessee shall pay to Lessor as Base Rent the sum of one thousand five hundred and two dollars (\$1,502.00) per month, calculated as one twelfth of the ad valorem taxes, insurance policy premium and the Lessor's staff overhead for administering this Lease. Rent shall be payable on the first day of each month in advance at such place as may be designated by Lessor.

2.2 Security Deposit. To secure Lessee's compliance with all terms of this Lease, Lessee has paid Lessor the sum of one thousand forty-three dollars (\$1043.00) as a deposit, at the start of the initial lease term. The deposit shall be held for all subsequent terms of the Lease. The deposit shall be a debt from Lessor to Lessee, refundable within 30 (thirty) days after expiration of the final lease term or other termination not caused by Lessee's default. Lessor may commingle the deposit with its funds and Lessee shall not be entitled to interest on the deposit. Lessor shall have the right to offset against the deposit any sums owing from Lessee to Lessor and not paid when due, any damages caused by Lessee's default, the cost of curing any default by Lessee should Lessor elect to do so, and the cost of performing any repair or cleanup that is Lessee's responsibility under this Lease. Offset against the deposit shall not be an exclusive remedy in any of the above cases, but may be invoked by Lessor, at its option, in addition to any other remedy provided by law or this Lease for Lessee's nonperformance. Lessor shall give notice to Lessee each time an offset is claimed against the deposit and, unless the Lease is terminated, Lessee shall within ten (10) days after such notice deposit with Lessor a sum equal to the amount of the offset so that the total deposit amount, net of offset, shall remain constant throughout the Lease term.

2.3 Additional Rent. All additional taxes, insurance costs, utility charges incurred for the operation of the Premises and any other sum that Lessee is required to pay to Lessor or third parties shall be additional rent.

Section 3. Retention Incentive. Lessee acknowledges in section 18 of this Lease that it may receive notice to quit the Premises. After Lessee receives the notice, if Lessee relocates its business within Clackamas County, Lessor shall return any rent

paid between the date of the notice and the date Lessee quits the Premises. However, if Lessee moves out of Clackamas County, Lessor shall retain the rent.

Section 4. Use and Condition of the Premises

4.1 Permitted Use. The Premises shall be used for the current operations of Lessee's business and for no other purpose without the consent of Lessor, which consent shall not be withheld unreasonably. Lessee's use is the storage of materials (e.g. brick and mortar) and equipment used in its masonry business and general office use. If law or governmental regulation prohibits this use, this Lease shall terminate.

4.2 Restrictions on Use. In connection with the use of the Premises, Lessee shall:

4.2.1 Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use.

4.2.2 Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Lessor from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Lessor to obtain reduced premium rates for long-term fire insurance policies, unless Lessee pays the additional cost of the insurance.

4.2.3 Refrain from any use that would be reasonably offensive to other Lessees or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

4.2.4 Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Lessor.

4.2.5 Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of Lessor.

4.3 Hazardous Substances. Lessee shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Lessee may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 4.1. Lessee may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. On the expiration or termination of this Lease, Lessee shall remove all Hazardous Substances from the Premises. The term *Environmental Law* shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment. The term *Hazardous Substance* shall mean any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

4.4 Asbestos. Lessee has delivered to Lessor a copy of the asbestos survey of the Premises that identifies the presence, location, and quantity of asbestos-

containing material (ACM) and presumed asbestos-containing material (PACM) in the Premises. ACM is any material containing more than 1% asbestos. PACM is thermal insulation and surfacing material found in buildings constructed no later than 1980. Lessee shall notify its employees and its agents or contractors whose employees can reasonably be expected to work in or adjacent to areas containing ACM or PACM of the presence, location, and quantity of ACM and PACM. Lessee has posted signs outside mechanical rooms that contain ACM or PACM. These signs identify the presence of the material, its locations, and the work practices necessary to ensure that it will not be disturbed. Lessee has also affixed labels or posted signs notifying visitors of the presence of ACM or PACM in other areas of the Premises. Lessee shall cause its employees, agents, and contractors to conform to the work practices described on these signs. Lessee shall provide asbestos-awareness training as required by law to all employees who perform custodial work. Lessee shall provide asbestos training as required by law to all employees who perform asbestos-related work. Lessee shall make copies of Occupational Safety and Health Administration ACM rules and an asbestos material safety data sheet available to all employees who work in the Premises. Lessee shall provide information relating to self-help smoking cessation programs to employees as required by law.

4.5 “As-Is.” Lessee accepts the Premises in its “as is” condition without any warranty or representation by Lessor as to the condition, fitness for any particular purpose, or habitability of the Premises. Lessee acknowledges that Lessor has no obligation to make any change or improvement to the Premises or to pay any cost, expend any funds or suffer any liability to make any change or improvement. All work done by Lessee within, on, under or adjacent to the Premises will be performed in a good and workmanlike manner in compliance with all governmental requirements. It is Lessee’s sole and exclusive responsibility to perform all work necessary or required by any governmental entity, to permit Lessee to occupy the Premises. Lessee agrees to indemnify, defend and hold Lessor harmless against any loss, liability, claim or damage resulting from work on the Premises.

Section 5. Repairs and Maintenance

5.1 Lessor’s Obligations. Lessor shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements on the Premises.

5.2 Lessee’s Obligations. Lessee, at its expense, shall keep the Premises in safe and working order, and in good and tenantable repair and condition.

5.3 Lessor’s Interference with Lessee. In the event Landlord performs any repairs, replacements, alterations, or other work on or around the Premises, Lessor shall not cause unreasonable interference with use of the Premises by Lessee. Lessee shall have no right to an abatement of rent or any claim against Lessor for any inconvenience or disturbance resulting from Lessor’s activities performed in conformance with the requirement of this provision.

5.4 Reimbursement for Repairs Assumed. If Lessee fails or refuses to make repairs that are required by this Section 5, Lessor may make the repairs and charge the actual costs of repairs to Lessee. Lessee shall reimburse such expenditures by Lessor on demand together with interest at the rate of nine percent (9%) per annum from the date of expenditure by Lessor. Except in an emergency creating an immediate

risk of personal injury or property damage, Lessor may not perform repairs that are the obligation of the Lessee and charge the Lessee for the resulting expense unless at least ten (10) days before work is commenced, the Lessee is given notice in writing outlining with reasonable particularity the repairs required, and Lessee fails within that time to initiate such repairs in good faith and pursue the repairs to completion with all due diligence.

5.5 Inspection of Premises. Lessor shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Lessor to make repairs shall not mature until a reasonable time after Lessee has given Lessor written notice of the repairs that are required.

Section 6. Alterations

6.1 Alterations Prohibited. Lessee shall make no improvements or alterations on the Premises of any kind without first obtaining Lessor's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. *Alterations* include the installation of computer and telecommunications wiring, cables, and conduit.

6.2 Alterations Required. Lessee shall perform no improvements or alterations to the Premises without identifying the improvements or alterations and securing Lessor's approval. Completing the Work Sheet set out as Exhibit B to this Lease shall do this. The improvements and alterations delineated on the Work Sheet shall be performed by the party designated and within the time stated in the work sheet.

6.3 Ownership and Removal of Alterations. All improvements and alterations performed on the Premises by either Lessor or Lessee shall be the property of Lessor when installed unless the applicable Lessor's consent or work sheet specifically provides otherwise. Lessee shall at Lessor's option, remove improvements and alterations installed by Lessee and restore the Premises to a commercially reasonable state unless the applicable Lessor's consent or work sheet specifically provides otherwise.

6.4 Waiver. Lessor may condition its consent to installation of "a work of visual art" in the premises, as defined in the Visual Artists Rights Act of 1990 (VARA) at 17 USC §101, on Lessee's delivery to Lessor of a written waiver of moral rights under the VARA executed by the artist and to be executed by Lessor acknowledging that the work may be subject to destruction on removal.

Section 7. Insurance

7.1 Insurance Required. Lessee, as set out in Section 2.1, shall pay as a component of its monthly rent the costs of keeping the Premises insured at Lessee's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Lessee shall bear the expense of any insurance insuring the property of Lessee on the Premises against such risks. Lessee shall deliver to Lessor a copy of the insurance policy with an endorsement evidencing the Lessor is an additional insured.

7.2 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the

risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

Section 8. Taxes; Utilities

8.1 Property Taxes. Lessee shall pay as due all taxes on its personal property located on the Premises. Lessee, as set out in Section 2.1, shall pay as a component of its monthly rent all real property taxes and special assessments levied against the Premises. As used herein, real property taxes include any fee or charge relating to the ownership, use, or rental of the Premises.

8.2 Special Assessments. If an assessment for a public improvement is made against the Premises, Lessor may elect to cause such assessment to be paid in installments, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of Section 8.1.

8.3 Contest of Taxes. Lessee shall not be permitted to contest the amount of any tax or assessment.

8.4 Proration of Taxes. Lessee shall pay its proportionate share of real property taxes and assessments for the years in which this Lease commences or terminates.

8.5 New Charges or Fees. If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Lessee shall pay such charge or fee.

8.6 Payment of Utilities Charges. Lessee shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises, including charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning, telephone, and janitorial services. If any utility services are provided by or through Lessor, charges to Lessee shall be comparable with prevailing rates for comparable services. If the charges are not separately metered or stated, Lessor shall apportion the charges on an equitable basis, and Lessee shall pay its apportioned share on demand.

Section 9. Damage and Destruction

9.1 Partial Damage. If the Premises are partly damaged and Section 9.2 does not apply, the Premises shall be repaired by Lessee at Lessee's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Lessee and shall be performed in accordance with the provisions of Section 5.

9.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds fifty percent (50%) of the value of the structure before the damage, either party may elect to terminate the Lease as of the date of the damage or destruction by notice given to the other in writing not more than ten (10) days following

the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination. If neither party elects to terminate, Lessee shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Lessee's reasonable control.

9.3 Rent Abatement. Rent shall not be abated during the repair of any damage to the extent the premises are untenable.

9.4. Sunrise Corridor. If at the time the Premises are partially damaged or destroyed at a time when construction of the Sunrise Corridor Transportation Project is scheduled to begin within the following twelve (12) months, either party may elect to terminate the Lease according to the terms of Section 9.2

Section 10. Eminent Domain

10.1 Partial Taking. If a portion of the Premises is condemned and Section 10.2 does not apply, the Lease shall continue on the following terms:

10.1.1 Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

10.1.2 Lessor shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

10.1.3 After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Lessor to restore the balance of the Premises in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking.

10.1.4 If a portion of Lessor's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation to which Sections 10.1.1 and 10.1.3 apply, and the rent shall be reduced to the extent of reduction in rental value of the Premises as though a portion had been physically taken.

10.2 Total Taking. If a condemning authority takes all of the Premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use that Lessee was then making of the premises, the Lease shall terminate as of the date the title vests in the condemning authorities. Such termination shall have the same effect as a termination by Lessor under Section 9.2. Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

10.3 Sale in Lieu of Condemnation. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 10 as a taking by condemnation.

Section 11. Liability and Indemnity

11.1 Liens. Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens.

11.1.1 If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by Lessor and shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy that Lessor may have on account of Lessee's default.

11.1.2 Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or sufficient corporate surety bond or other surety satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

11.2 Indemnification. Lessee shall indemnify and defend Lessor from, and reimburse Lessor for, any cost, claim, loss, or liability suffered directly or from a third-party claim arising out of or related to any activity of Lessee on the Premises or any condition of the Premises in the possession or under the control of Lessee including any such cost, claim, loss, or liability that may be caused or contributed to in whole or in part by Lessor's own negligence or failure to effect any repair or maintenance required by this Lease including any cost, claim, loss, or liability suffered directly or from a third-party claim for damage to the Premises or any other persons or property arising out of or related to Lessee's failure to comply with Section 4.3. Lessor shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Premises. Lessor shall have no liability for the failure or interruption of utilities.

11.3 Liability Insurance. Before going into possession of the Premises, Lessee shall procure and thereafter during the term of the Lease shall continue to carry the following insurance at Lessee's cost: commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability, and medical payment with a general aggregate limit of not less than \$3,000,000 and a per occurrence limit of not less than \$1,000,000. Such insurance shall cover all risks arising directly or indirectly out of Lessee's activities on or any condition of the Premises whether or not related to an occurrence caused or contributed to by Lessor's negligence. Such insurance shall protect Lessee against the claims of Lessor on account of the obligations assumed by Lessee under Section 11.2, and shall name Lessor as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) days' written notice to Lessor before any change or cancellation shall be furnished to Lessor before Lessee's occupancy of the Premises.

Section 12. Quiet Enjoyment; Mortgage Priority

12.1 Lessor's Warranty. Lessor warrants that it is the owner of the Premises and has the right to lease them free of all encumbrances except those set forth on the attached schedule entitled "Exceptions to Title". Subject to these exceptions Lessor will defend Lessee's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

12.2 Estoppel Certificate. Either party will, within twenty (20) days after notice from the other, execute and deliver to the other party a certificate stating whether or not this Lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive on the party from whom the certificate was requested that the Lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

Section 13. Assignment and Subletting. No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conferred on any third person by any other means, without the prior written consent of Lessor. This provision shall apply to all transfers by operation of law. If Lessee is a corporation, limited liability company, or partnership, this provision shall apply to any transfer of a majority voting interest in stock, membership or partnership interest of Lessee. No consent in one instance shall prevent the provision from applying to a subsequent instance. Lessor may withhold or condition such consent in its sole and arbitrary discretion.

Section 14. Default. The following shall be events of default:

14.1 Default in Rent. Failure of Lessee to pay any rent or other charge within ten (10) days after it is due.

14.2 Default in Other Covenants. Lessee fails to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within twenty (20) days after the date of written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the twenty (20) day period, this provision shall be complied with if Lessee begins correction of the default within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

14.3 Insolvency. Insolvency of Lessee; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If Lessee consists of two or more individuals or business entities, the events of default specified in this Section 14.3 shall apply to each individual unless within ten

(10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Lessor that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Lessee under the Lease.

14.4 Abandonment. Failure of Lessee for ten (10) days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

Section 15. Remedies on Default

15.1 Termination. In the event of a default the Lease may be terminated at the option of Lessor by written notice to Lessee. Whether or not the Lease is terminated by the election of Lessor or otherwise, Lessor shall be entitled to recover damages from Lessee for the default, and Lessor may reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

15.2 Reletting. Following reentry or abandonment, Lessor may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Lessor shall not be required to relet for any use or purpose other than that specified in the Lease or which Lessor may reasonably consider injurious to the Premises, or to any Lessee that Lessor may reasonably consider objectionable. Lessor may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, on any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

15.3 Damages. In the event of termination or retaking of possession following default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

15.3.1 The loss of rental from the date of default until a new Lessee is, or with the exercise of reasonable efforts could have been, secured and paying rent.

15.3.2 The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Lessee's property and fixtures, costs incurred under Section 15.5, or any other expense occasioned by Lessee's default including any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

15.3.3 Any excess of the value of the rent and all of Lessee's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the Premises are relet, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the average prime loan rate of three largest Oregon banks based on total deposits in effect on the date of trial.

15.4 Right to Sue More than Once. Lessor may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

15.5 Lessor's Right to Cure Defaults. If Lessee fails to perform any obligation under this Lease, Lessor shall have the option to do so after ten (10) days' written notice to Lessee. All of Lessor's expenditures to correct the default shall be reimbursed by Lessee on demand with interest at the rate of nine percent (9%) per annum from the date of expenditure by Lessor. Such action by Lessor shall not waive any other remedies available to Lessor because of the default.

15.6 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessor under applicable law.

Section 16. Surrender at Expiration

16.1 Condition of Premises. On expiration of the lease term or earlier termination on account of default, Lessee shall deliver all keys to Lessor and surrender the Premises in first-class condition and broom clean. Alterations constructed by Lessee with permission from Lessor shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Lessee is responsible shall be completed to the latest practical date before such surrender. Lessee's obligations under this section shall be subordinate to the provisions of Section 9 relating to destruction.

16.2 Fixtures

All fixtures placed on the Premises during the term, shall remain the property of Lessee. Before expiration or other termination of the lease term, Lessee shall remove all furnishings, furniture, and trade fixtures. If Lessee fails to do so, this failure shall be an abandonment of the property, and Lessor may retain the property and all rights of Lessee with respect to it shall cease or, by notice in writing given to Lessee within twenty (20) days after removal was required, Lessor may elect to hold Lessee to its obligation of removal. If Lessor elects to require Lessee to remove, Lessor may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to Lessor for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Lessor.

16.3 Holdover

16.3.1 If Lessee does not vacate the Premises at the time required, Lessor shall have the option to treat Lessee as a Lessee from month to month, subject to all of the provisions of this Lease except the provisions for term and renewal and at a rental rate equal to 110% of the highest monthly rent payable by Tenant to Landlord during the term of this Lease, or any extension thereof, or to eject Lessee from the Premises and recover damages caused by wrongful holdover. Failure of Lessee to remove fixtures, furniture, furnishings, or trade fixtures that Lessee is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another Lessee or with occupancy by Lessor for any purpose including preparation for a new Lessee.

16.3.2 If a month-to-month tenancy results from a holdover by Lessee under this Section 16.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Lessor given not less than ten (10) days before the

termination date which shall be specified in the notice. Lessee waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 17. Miscellaneous

17.1 Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. The acceptance of a late payment of rent shall not waive the failure to perform an obligation under this Lease except for the failure to pay the rent so accepted when due and shall not affect Lessor's remedies for failure to perform such other obligations.

17.2 Notices. Any notice required or permitted under this Lease shall be given when actually delivered or forty eight (48) hours after deposited in United States mail as certified mail return receipt requested addressed to the address set out below or to such other address as may be specified from time to time by either of the parties in writing.

Lessor: David Queener
Clackamas County Development Agency
Development Services Bldg.
150 Beavercreek Rd.
Oregon City, OR 97045

Lessee: George T. Milne
Milne Masonry
14489 SE Highway 212
Clackamas, OR 97015

17.3 Succession. Subject to the above-stated limitations on transfer of Lessee's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

17.4 Recordation. This Lease shall not be recorded without the written consent of Lessor.

17.5 Entry for Inspection. Lessor shall have the right to enter on the Premises at any time to determine Lessee's compliance with this Lease; to make necessary repairs to the building or to the Premises; to show the Premises to any prospective Lessee or purchaser; to conduct surveys, inspections, tests and analysis necessary for the proposed Sunrise Corridor Transportation Project and in addition shall have the right, at any time during the last two months of the term of this Lease, to place and maintain on the Premises notices for leasing or selling of the Premises.

17.6 Interest on Rent and Other Charges. Any rent or other payment required of Lessee by this Lease shall, if not paid within ten (10) days after it is due, bear interest at the rate of nine percent (9%) per annum from the due date until paid. In addition, if Lessee fails to make any rent or other payment required by this Lease to be paid to Lessor within five (5) days after it is due, Lessor may elect to impose a late charge of five cents per dollar (\$0.05/\$1.00) of the overdue payment to reimburse Lessor for the costs of collecting the overdue payment. Lessee shall pay the late charge on demand by Lessor. Lessor may levy and collect a late charge in addition to all other

remedies available for Lessee's default, and collection of a late charge shall not waive the breach caused by the late payment.

17.7 Proration of Rent. In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Lessee or paid on its account.

17.8 Time of Essence. Time is of the essence of the performance of each of Lessee's obligations under this Lease.

Section 18. Termination and Relocation. Lessee understands that the Premises are available for lease only for a limited period of time and that the improvements on the Premises will be completely removed at such time as Lessor desires to regain possession of the Premises.

This Lease may be terminated by Lessor prior to December 31, 2019 according to the following terms and conditions:

(1) Lessor agrees to give Lessee six (6) months prior written notice of Lessor's intent to take possession of the Premises. The date set forth in Lessor's notice shall be the effective date of any termination pursuant to this section. Lessee's sole and exclusive remedy for Lessor's failure to provide the notice under either scenario is the abatement or reimbursement of Rent for the period of time the notice was delayed. (e.g. If the notice is one month late the Lessee receives one month free rent).

(2) Termination under this section shall have the same effect as if the Lease had expired pursuant to its original term.

(3) Lessee will be required to relocate. Lessee acknowledges that it does not have any federal, state or local relocation benefits and if it acquires any relocation benefits for any reason, they are waived, released and forgiven.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the date and year written above. The persons signing below each represent and warrant that each has the full right and authority to enter into this Lease and to bind the party for whom such person signs to the terms and provisions of this Lease.

Lessor:

Clackamas County Development Agency

By: _____
Jim Bernard, Chair

Lessee:

Milne Masonry, Inc.

By: _____
George T. Milne, President

Exhibit A
IDENTIFICATION OF THE PREMISES

“WORK SHEET

The following work is to be done on the Premises by _____ at the _____'s expense:

The work shall be commenced promptly by _____, 20____.
In all instances where Lessor is not doing the work on the Premises, Lessee consents to Lessor's posting of a sign, consistent with ORS 87.030, giving notice that Lessor will not be responsible for construction liens under ORS 87.001 to 87.060 and 87.075 to 87.093.

Lessee shall be required on termination of the Lease to remove the alterations and improvements effected by the above work and to restore the premises to the condition that existed before the work was done.

Lessor: _____

Lessee: _____



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

March 7, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Commercial Lease with W.E. Given Contracting, Inc.

Purpose/Outcome	Execute a lease with W.E. Given Contracting, Inc. for Agency owned property located 13621 SE Ambler Road
Dollar Amount and Fiscal Impact	Monthly rent payment of \$100.00
Funding Source	N/A.
Duration	Lease will expire on December 31, 2019 with an option to extend for a period of 12 months
Previous Board Action/Review	None
Strategic Plan Alignment	Build public trust through good government
Contact Person	David Queener, Development Agency Program Supervisor, 503-742-4322

The Agency owns property located at 13621 SE Ambler Road, which has been leased by W.E. Given Contracting since March 2007. Given uses the gravel lot for parking of equipment for their business, which is located on the adjacent property. Per the terms of the previous lease, Given has the option to renew the lease for a term of 12 months.

Given has requested the renewal, therefore this new lease will expire on December 31, 2019. Terms of the lease include monthly rent in the amount of \$100.00. Property taxes are paid as a component of rent. The lease requires a six (6) month notification by the Agency of its intent to terminate the lease in the event the property is needed for another use.

County Counsel has reviewed and approved the proposed lease.

RECOMMENDATION

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, execute this lease with W.E. Given Contracting, Inc.

Respectfully submitted,

David Queener, Program Supervisor
Development Agency

COMMERCIAL LEASE

Date: March_____, 2019

Between: Clackamas County Development Agency (“Lessor”)

And: W.E. Given Contracting, Inc. (“Lessee”)

As to Property: 13621 SE Ambler Road
Clackamas, Oregon 97015

RECITALS

- A. On March 1, 2007 the Clackamas County Development Agency, as Lessor (“Lessor”) leased to W.E. Given Contracting, Inc. as Lessee (“Lessee”) premises located at 13621 SE Ambler Road, Clackamas, Oregon (the “Premises”) for a term ending December 31, 2007.
- B. Among other terms, the March 1, 2007 Lease contained a renewal option at Section 1.3. The renewal option was for one (1) twelve (12) month period.
- C. Lessor and Lessee agreed to renew the Lease according to Section 1.3 for the period from January 1, 2008 through December 31, 2008.
- D. Lessor and Lessee agreed to renew the Lease according to Section 1.3 for the period from January 1, 2009 through December 31, 2009, and from January 1, 2010 through December 31, 2010.
- E. Lessor and Lessee agreed to renew the Lease according to Section 1.3 for the period from January 1, 2011 through December 31, 2011; from January 1, 2012 through December 31, 2012; from January 1, 2013 through December 31, 2013; January 1, 2014 through Dec. 31, 2014; from January 1, 2015 through December 31 2015; from January 1, 2016 through December 31, 2016; from January 1, 2017 through December 31, 2017, and again from January 1, 2018 through December 31, 2018.
- F. Lessor and Lessee now undertake to sign a new lease under the same or similar terms for the period from January 1, 2019 through December 31, 2019, with an option to renew, so long as Lessee is not in default, for one (1) additional term of twelve (12) months.

NOW, THEREFORE, Lessor leases to Lessee and Lessee leases from Lessor the property located at 13621 SE Ambler Road, Clackamas Oregon, 97015 (the “Premises”) on the terms and conditions stated below:

Section 1. Occupancy

1.1 Original Term. The term of this Lease shall commence January 1, 2019 and continue through December 31, 2019, unless sooner terminated as hereinafter provided.

1.2 Possession. At the time of this Lease Lessee, by virtue of its existing tenancy, is already in possession of the Premises.

1.3 Renewal Option. If the Lease is not in default when the option is exercised or when the renewal term is to commence, Lessee shall have the option to renew this Lease for one (12) month term, as follows:

1.3.1. The first day of the renewal term shall commence on the day following expiration of the preceding term.

1.3.2. The terms and conditions of the Lease for the renewal term shall be identical with the original term except for rent, term, and renewal option.

1.3.3. The option to renew may be exercised by written notice to Lessor given not less than sixty (60) days prior to the last day of the expiring term. Giving such notice shall be sufficient to make the Lease binding for the renewal term without further act of the parties.

1.3.4. Rent during the renewal period shall be Rent the greater of (a) the rental during the preceding original or renewal term or (b) a reasonable rental for the ensuing term.

Section 2. Rent

2.1 Base Rent. During the original term Lessee shall pay to Lessor as Base Rent the sum of one hundred dollars (\$100.00) per month, calculated as one twelfth of the ad valorem taxes, insurance policy premium and the Lessor's staff overhead for administering this Lease. Rent shall be payable on the first day of each month in advance at such place as may be designated by Lessor.

2.2 Additional Rent. All additional taxes, insurance costs, utility charges incurred for the operation of the Premises and any other sum that Lessee is required to pay to Lessor or third parties shall be additional rent.

2.3 Rocking. Tenant shall, as additional rent, gravel the portion of the site to be used for parking to a depth of six (6) inches, and otherwise maintain the property in first class condition.

Section 3. Condition of the Premises

3.1 "As-Is." Lessee accepts the Premises in its "as is" condition without any warranty or representation by Lessor as to the condition, fitness for any particular purpose, or habitability of the Premises. Lessee acknowledges that Lessor has no obligation to make any change or improvement to the Premises or to pay any cost, expend any funds or suffer any liability to make any change or improvement. All work done by Lessee within, on, under or adjacent to the Premises will be performed in a good and workman-like manner in compliance with all governmental requirements. It is Lessee's sole and exclusive responsibility to perform all work necessary or required by any governmental entity, to permit Lessee to occupy the Premises. Lessee agrees to

indemnify, defend and hold Landlord harmless against any loss, liability, claim or damage resulting from work on the Premises.

3.2 Improvements Constructed by Tenant. The work to be performed in connection with Lessee's improvements on the Premises by Lessee or Lessee's contractor shall proceed only after satisfaction of the following:

3.2.1 Lessor's written approval of each of the following items: (a) Lessor's contractor; (b) public liability and property damage insurance carried by Lessee or its contractor; and (c) schematic plans and specifications for such work. Lessee shall prepare the detailed construction plans and specifications at Lessee's expense. All such work shall be done in strict conformity with such final plans and specifications subject to field change orders prepared and approved by Landlord.

3.2.2 All work shall be done in conformity with a valid building permit (Lessee to pay the actual fee charged by Clackamas County and the balance of any cost to be Lessee's expense) when required, a copy of which shall be furnished to Lessor before such work is commenced, and in any case, all such work shall be performed in accordance with all applicable government regulations at Lessee's sole expense. Notwithstanding any failure by Lessor to object to any such work, Lessor shall have no responsibility for Lessee's failure to meet all applicable regulations.

3.2.3 Lessee or Lessee's contractor shall arrange for necessary utility service and shall pay such reasonable charges for such service.

3.2.4 Lessee shall promptly reimburse Lessor upon demand for any extra expense incurred by the Lessor by reason of faulty work done by Tenant or its contractors.

Section 4. Use and Condition of the Premises

4.1 Permitted Use. The Premises shall be used for the current operations of Lessee's business and for no other purpose without the consent of Lessor, which consent shall not be withheld unreasonably. Lessee's use is the storage of vehicles, materials and equipment used in its contracting business. If law or governmental regulation prohibits this use, this Lease shall terminate.

4.2 Restrictions on Use. In connection with the use of the Premises, Lessee shall:

4.2.1 Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use.

4.2.2 Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Lessor from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Lessor to obtain reduced premium rates for long-term fire insurance policies, unless Lessee pays the additional cost of the insurance.

4.2.3 Refrain from any use that would be reasonably offensive to other Lessees or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

4.3 Hazardous Substances. Lessee shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Lessee may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the

business specified in Section 4.1. Lessee may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. On the expiration or termination of this Lease, Lessee shall remove all Hazardous Substances from the Premises. The term *Environmental Law* shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment. The term *Hazardous Substance* shall mean any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

Section 5. Repairs and Maintenance

5.1 Lessor's Obligations. Lessor shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements on the Premises.

5.2 Lessee's Obligations. Lessee, at its expense, shall keep the Premises in first-class repair, operating condition, working order, and appearance.

5.3 Lessor's Interference with Lessee. In the event Landlord performs any repairs, replacements, alterations, or other work on or around the Premises, Lessor shall not cause unreasonable interference with use of the Premises by Lessee. Lessee shall have no right to an abatement of rent or any claim against Lessor for any inconvenience or disturbance resulting from Lessor's activities performed in conformance with the requirement of this provision.

5.4 Reimbursement for Repairs Assumed. If Lessee fails or refuses to make repairs that are required by this Section 5, Lessor may make the repairs and charge the actual costs of repairs to Lessee. Lessee shall reimburse such expenditures by Lessor on demand together with interest at the rate of nine percent (9%) per annum from the date of expenditure by Lessor. Except in an emergency creating an immediate risk of personal injury or property damage, Lessor may not perform repairs that are the obligation of the Lessee and charge the Lessee for the resulting expense unless at least ten (10) days before work is commenced, the Lessee is given notice in writing outlining with reasonable particularity the repairs required, and Lessee fails within that time to initiate such repairs in good faith and pursue the repairs to completion with all due diligence.

5.5 Inspection of Premises. Lessor shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Lessor to make repairs shall not mature until a reasonable time after Lessee has given Lessor written notice of the repairs that are required.

Section 6. Alterations

6.1 Alterations Prohibited. Lessee shall make no improvements or alterations on the Premises of any kind without first obtaining Lessor's written consent.

All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. *Alterations* include the installation of computer and telecommunications wiring, cables, and conduit.

6.2 Alterations Required. Lessee shall perform no improvements or alterations to the Premises without identifying the improvements or alterations and securing Lessor's approval. Completing the Work Sheet set out as Exhibit B to this Lease shall do this. The improvements and alterations delineated on the Work Sheet shall be performed by the party designated and within the time stated in the work sheet.

6.3 Ownership and Removal of Alterations. All improvements and alterations performed on the Premises by either Lessor or Lessee shall be the property of Lessor when installed unless the applicable Lessor's consent or work sheet specifically provides otherwise. Lessee shall at Lessor's option, remove improvements and alterations installed by Lessee and restore the Premises to a commercially reasonable state unless the applicable Lessor's consent or work sheet specifically provides otherwise.

6.4 Waiver. Lessor may condition its consent to installation of "a work of visual art" in the premises, as defined in the Visual Artists Rights Act of 1990 (VARA) at 17 USC §101, on Lessee's delivery to Lessor of a written waiver of moral rights under the VARA executed by the artist and to be executed by Lessor acknowledging that the work may be subject to destruction on removal.

Section 7. Taxes; Utilities

7.1 Property Taxes. Lessee shall pay as due all taxes on its personal property located on the Premises. Lessee, as set out in Section 2.1, shall pay as a component of its monthly rent all real property taxes and special assessments levied against the Premises. As used herein, real property taxes include any fee or charge relating to the ownership, use, or rental of the Premises.

7.2 Special Assessments. If an assessment for a public improvement is made against the Premises, Lessor may elect to cause such assessment to be paid in installments, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of Section 7.1.

7.3 Contest of Taxes. Lessee shall not be permitted to contest the amount of any tax or assessment.

7.4 Proration of Taxes. Lessee shall pay its proportionate share of real property taxes and assessments for the years in which this Lease commences or terminates.

7.5 New Charges or Fees. If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Lessee shall pay such charge or fee.

7.5 Payment of Utilities Charges. Tenant shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises,

Section 8. Damage and Destruction

8.1 Partial Damage. If the Premises are partly damaged and Section 8.2 does not apply, the Premises shall be repaired by Lessee at Lessee's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Lessee and shall be performed in accordance with the provisions of Section 5.3.

8.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds fifty percent (50%) of the value of the structure before the damage, either party may elect to terminate the Lease as of the date of the damage or destruction by notice given to the other in writing not more than ten (10) days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination. If neither party elects to terminate, Lessee shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Lessee's reasonable control.

8.3 Rent Abatement. Rent shall not be abated during the repair of any damage to the extent the premises are untenable.

Section 9. Eminent Domain

9.1 Partial Taking. If a portion of the Premises is condemned and Section 10.2 does not apply, the Lease shall continue on the following terms:

9.1.1 Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

9.1.2 Lessor shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

9.1.3 After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Lessor to restore the balance of the Premises in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking.

9.1.4 If a portion of Lessor's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation to which Sections 9.1.1 and 9.1.3 apply, and the rent shall be reduced to the extent of reduction in rental value of the Premises as though a portion had been physically taken.

9.2 Total Taking. If a condemning authority takes all of the Premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use that Lessee was then making of the premises, the Lease shall terminate as of the date the title vests in the condemning authorities. Such termination shall have the same effect as a termination by Lessor under Section 8.2. Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

9.3 Sale in Lieu of Condemnation. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 9 as a taking by condemnation.

Section 10. Liability and Indemnity

10.1 Liens. Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens.

10.1.1 If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by Lessor and shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy that Lessor may have on account of Lessee's default.

10.1.2 Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or sufficient corporate surety bond or other surety satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

10.2 Indemnification. Lessee shall indemnify and defend Lessor from, and reimburse Lessor for, any cost, claim, loss, or liability suffered directly or from a third-party claim arising out of or related to any activity of Lessee on the Premises or any condition of the Premises in the possession or under the control of Lessee including any such cost, claim, loss, or liability that may be caused or contributed to in whole or in part by Lessor's own negligence or failure to effect any repair or maintenance required by this Lease including any cost, claim, loss, or liability suffered directly or from a third-party claim for damage to the Premises or any other persons or property arising out of or related to Lessee's failure to comply with Section 4.1. Lessor shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Premises. Lessor shall have no liability for the failure or interruption of utilities.

10.3 Liability Insurance. Before going into possession of the Premises, Lessee shall procure and thereafter during the term of the Lease shall continue to carry the following insurance at Lessee's cost: commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability, and medical payment with a general aggregate limit of not less than \$3,000,000 and a per occurrence limit of not less than \$1,000,000. Such insurance shall cover all risks arising directly or indirectly out of Lessee's activities on or any condition of the Premises whether or not related to an occurrence caused or contributed to by Lessor's negligence. Such insurance shall protect Lessee against the claims of Lessor on account of the obligations assumed by Lessee under Section 10.2, and shall name Lessor as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) days' written notice to Lessor before any change or cancellation shall be furnished to Lessor before Lessee's occupancy of the Premises.

Section 11. Quiet Enjoyment; Mortgage Priority

11.1 Lessor's Warranty. Lessor warrants that it is the owner of the Premises and has the right to lease them free of all encumbrances except those set forth on the attached schedule entitled "Exceptions to Title". Subject to these exceptions Lessor will defend Lessee's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

11.2 Estoppel Certificate. Either party will, within twenty (20) days after notice from the other, execute and deliver to the other party a certificate stating whether or not this Lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive on the party from whom the certificate was requested that the Lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

Section 12. Assignment and Subletting. No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conferred on any third person by any other means, without the prior written consent of Lessor. This provision shall apply to all transfers by operation of law. If Lessee is a corporation, limited liability company, or partnership, this provision shall apply to any transfer of a majority voting interest in stock, membership or partnership interest of Lessee. No consent in one instance shall prevent the provision from applying to a subsequent instance. Lessor may withhold or condition such consent in its sole and arbitrary discretion.

Section 13. Default. The following shall be events of default:

13.1 Default in Rent. Failure of Lessee to pay any rent or other charge within ten (10) days after it is due.

13.2 Default in Other Covenants. Lessee fails to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within twenty (20) days after the date of written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the twenty (20) day period, this provision shall be complied with if Lessee begins correction of the default within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

13.3 Insolvency. Insolvency of Lessee; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute

a default. If Lessee consists of two or more individuals or business entities, the events of default specified in this Section 14.3 shall apply to each individual unless within ten (10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Lessor that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Lessee under the Lease.

13.4 Abandonment. Failure of Lessee for ten (10) days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

Section 14. Remedies on Default

14.1 Termination. In the event of a default the Lease may be terminated at the option of Lessor by written notice to Lessee. Whether or not the Lease is terminated by the election of Lessor or otherwise, Lessor shall be entitled to recover damages from Lessee for the default, and Lessor may reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

14.2 Reletting. Following reentry or abandonment, Lessor may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Lessor shall not be required to relet for any use or purpose other than that specified in the Lease or which Lessor may reasonably consider injurious to the Premises, or to any Lessee that Lessor may reasonably consider objectionable. Lessor may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, on any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

14.3 Damages. In the event of termination or retaking of possession following default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

14.3.1 The loss of rental from the date of default until a new Lessee is, or with the exercise of reasonable efforts could have been, secured and paying rent.

14.3.2 The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Lessee's property and fixtures, costs incurred under Section 14.5, or any other expense occasioned by Lessee's default including any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

14.3.3 Any excess of the value of the rent and all of Lessee's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the Premises are relet, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the average prime loan rate of three largest Oregon banks based on total deposits in effect on the date of trial.

14.4 Right to Sue More than Once. Lessor may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

14.5 Lessor's Right to Cure Defaults. If Lessee fails to perform any obligation under this Lease, Lessor shall have the option to do so after ten (10) days' written notice to Lessee. All of Lessor's expenditures to correct the default shall be reimbursed by Lessee on demand with interest at the rate of nine percent (9%) per annum from the date of expenditure by Lessor. Such action by Lessor shall not waive any other remedies available to Lessor because of the default.

14.6 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessor under applicable law.

Section 15. Surrender at Expiration

15.1 Condition of Premises. On expiration of the lease term or earlier termination on account of default, Lessee shall surrender the Premises in first-class condition. Alterations constructed by Lessee with permission from Lessor shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Lessee is responsible shall be completed to the latest practical date before such surrender. Lessee's obligations under this section shall be subordinate to the provisions of Section 8 relating to destruction.

15.2 Fixtures

All fixtures placed on the Premises during the term shall remain the property of Lessee. Before expiration or other termination of the lease term, Lessee shall remove all furnishings, furniture, and trade fixtures. If Lessee fails to do so, this failure shall be an abandonment of the property, and Lessor may retain the property and all rights of Lessee with respect to it shall cease or, by notice in writing given to Lessee within twenty (20) days after removal was required, Lessor may elect to hold Lessee to its obligation of removal. If Lessor elects to require Lessee to remove, Lessor may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to Lessor for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Lessor.

15.3 Holdover

15.3.1 If Lessee does not vacate the Premises at the time required, Lessor shall have the option to treat Lessee as a Lessee from month to month, subject to all of the provisions of this Lease except the provisions for term and renewal and at a rental rate equal to 110% of the highest monthly rent payable by Tenant to Landlord during the term of this Lease, or any extension thereof, or to eject Lessee from the Premises and recover damages caused by wrongful holdover. Failure of Lessee to remove fixtures, furniture, furnishings, or trade fixtures that Lessee is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another Lessee or with occupancy by Lessor for any purpose including preparation for a new Lessee.

15.3.2 If a month-to-month tenancy results from a holdover by Lessee under this Section 15.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Lessor given not less than ten (10) days before the termination date which shall be specified in the notice. Lessee waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 16. Miscellaneous

16.1 Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. The acceptance of a late payment of rent shall not waive the failure to perform an obligation under this Lease except for the failure to pay the rent so accepted when due and shall not affect Lessor's remedies for failure to perform such other obligations.

16.2 Notices. Any notice required or permitted under this Lease shall be given when actually delivered or forty eight (48) hours after deposited in United States mail as certified mail return receipt requested addressed to the address set out below or to such other address as may be specified from time to time by either of the parties in writing.

Lessor: David Queener
Clackamas County Development Agency
Development Services Building
150 Beaver Creek Rd.
Oregon City, OR 97045

Lessee: W.E. Given
W.E. Given Contracting, Inc.
13651 SE Ambler Road
Clackamas, Oregon 97015

16.3 Succession. Subject to the above-stated limitations on transfer of Lessee's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

16.4 Recordation. This Lease shall not be recorded without the written consent of Lessor.

16.5 Entry for Inspection. Lessor shall have the right to enter on the Premises at any time to determine Lessee's compliance with this Lease; to make necessary repairs to the building or to the Premises; to show the Premises to any prospective Lessee or purchaser; to conduct surveys, inspections, tests and analysis necessary for the proposed Sunrise Corridor Transportation Project and in addition shall have the right, at any time during the last two months of the term of this Lease, to place and maintain on the Premises notices for leasing or selling of the Premises.

16.6 Interest on Rent and Other Charges. Any rent or other payment required of Lessee by this Lease shall, if not paid within ten (10) days after it is due, bear interest at the rate of nine percent (9%) per annum from the due date until paid. In addition, if Lessee fails to make any rent or other payment required by this Lease to be

paid to Lessor within five (5) days after it is due, Lessor may elect to impose a late charge of five cents per dollar (\$0.05/\$1.00) of the overdue payment to reimburse Lessor for the costs of collecting the overdue payment. Lessee shall pay the late charge on demand by Lessor. Lessor may levy and collect a late charge in addition to all other remedies available for Lessee's default, and collection of a late charge shall not waive the breach caused by the late payment.

16.7 Proration of Rent. In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Lessee or paid on its account.

16.8 Time of Essence. Time is of the essence of the performance of each of Lessee's obligations under this Lease.

Section 17. Termination and Relocation. Lessor acquired the Premises to provide right of way for the Sunrise Corridor Transportation Project (the "Project"). The Premises are available for lease only for a limited period of time and the improvements on the Premises will be completely removed when the Project is built. This Lease will be terminated by construction of the Project according to the following terms and conditions:

(1) Once construction of the Project begins, this Lease may be terminated at Lessor's discretion.

(2) Lessee will be required to relocate. Lessee acknowledges that it does not have any federal, state or local relocation benefits and if it acquires any relocation benefits associated with the Project, they are waived, released and for given. In consideration of this waiver and release, Lessor agrees to give Lessee six (6) months prior written notice of Lessor's intent to take possession of the Premises for the initiation of the Project. Lessee's sole and exclusive remedy for Lessor's failure to provide the notice is the abatement or reimbursement of Rent for the period of time the notice was delayed. (e.g. If the notice is one month late the Lessee receives one month free rent).

///

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the date and year written above. The persons signing below each represent and warrant that each has the full right and authority to enter into this Lease and to bind the party for whom such person signs to the terms and provisions of this Lease.

Lessor:

Lessee:

Clackamas County Development Agency

W.E. Given Contracting, Inc.

By: _____
Jim Bernard, Chair

By: _____
W.E. Given

EXHIBIT B
“WORK SHEET”

The following work is to be done on the Premises by _____ at the _____'s expense:

The work shall be commenced promptly by _____, 20____.
In all instances where Lessor is not doing the work on the Premises, Lessee consents to Lessor's posting of a sign, consistent with ORS 87.030, giving notice that Lessor will not be responsible for construction liens under ORS 87.001 to 87.060 and 87.075 to 87.093.

Lessee shall be required on termination of the Lease to remove the alterations and improvements effected by the above work and to restore the premises to the condition that existed before the work was done.

Lessor: _____

Lessee: _____”



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

March 7, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Second Amendment to the Owner Participation Development Agreement
with Hoodland Fire District**

Purpose/Outcome	To amend the existing Owner Participation Development Agreement with Hoodland Fire District
Dollar Amount and Fiscal Impact	No change
Funding Source	N/A.
Duration	This amendment will extend the date that Hoodland Fire District must complete construction of improvements to the Government Camp station by 18 months.
Previous Board Action/Review	Discussed at a Policy Session on January 8, 2019
Strategic Plan Alignment	Build public trust through good government
Contact Person	David Queener, Development Agency Program Supervisor, 503-742-4322

The Agency entered into an Owner Participation and Development Agreement (OPDA) with the Hoodland Fire District on January 29, 2015. As part of the agreement, the Agency provided \$600,000 to the District to be used toward design and construction of a remodel to the existing station in Government Camp. The agreement stipulates that they must commence design within 2 years and complete construction within 4 years.

Since the agreement was signed, the District has been working on a design that meets their needs and can be constructed with the funds available. As design progressed, they obtained construction cost estimates, which came in much higher than anticipated. In order to stay within their budget, the design was modified and subsequent cost estimates are now feasible.

The construction documents are nearing completion and the district is prepared to solicit bids this spring, once the winter weather subsides. Construction would begin this summer and be completed in early 2020.

The agreement currently required construction to be completed by January 29, 2019. This requirement cannot be met so the District requested an amendment to the OPDA to allow completion of construction by July 29, 2020, an extension 18 months.

County Counsel has reviewed and approved the proposed this amendment.

RECOMMENDATION

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, execute this second amendment to the Owner Participation Development Agreement with the Hoodland Fire District.

Respectfully submitted,

David Queener, Program Supervisor
Development Agency

**SECOND AMENDMENT TO THE
OWNER PARTICIPANT AND DEVELOPMENT AGREEMENT**

This Second Amendment to the Owner Participation and Development Agreement is entered into and is effective as of this ____ day of _____, 2019 by and between Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County, Oregon (the "Agency"), and Hoodland Fire District No. 74 (the "Owner Participant").

RECITALS:

A. The Agency is undertaking to carry out the Government Camp Village Revitalization Plan & Report (the "Plan") pursuant to ORS Chapter 457. The Plan was duly adopted and approved by the Board of County Commissioners by Board Order No. 89-1143 on November 14, 1989.

B. On January 29, 2015, the Board of County Commissioners acting as the governing body of the Clackamas County Development Agency approved an Owner Participation Development Agreement (the "OPDA") whereby the Agency provided \$570,000 to the Owner Participant for the purposes of designing and constructing improvements to the Government Camp Fire Station.

C. On June 29 2016, the Board of County Commissioners acting as the governing body of the Clackamas County Development Agency approved the first amendment to the Owner Participation Development Agreement (the "OPDA") whereby the Agency provided an additional \$30,000 to the Owner Participant for the purposes of designing and constructing improvements to the Government Camp Fire Station.

The Agency and Owner Participant, having presented the preceding recitals as true and correct, now agree as follows:

1. That the OPDA is now amended at Section 1(B) to reflect that the Owner Participant agrees to develop, construct, maintain and operate the Project substantially as provided in the Project Description, Exhibit "C," within five (5) years and six (6) months.
2. The OPDA is otherwise unchanged.

IN WITNESS WHEREOF, the Agency and the Owner Participant have executed this Agreement as of the date first above written.

[Signatures and Acknowledgements on Following Page]

“AGENCY”

BOARD OF COUNTY COMMISSIONERS acting as
the governing body of the Clackamas County
Development Agency

By: _____
Jim Bernard
Chair

By: _____
Mary Raethke
Recording Secretary

“OWNER PARTICIPANT”

Hoodland Fire District No. 74

By: _____
John Ingrao
Fire Chief

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 2019 by Jim Bernard as Chair of the Clackamas County Development Agency

Notary Public for Oregon

My Commission expires _____

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 2019 by John Ingrao as Fire Chief of Hoodland Fire District No. 74

Notary Public for Oregon

My Commission expires _____



Gregory L. Geist
Director

March 7, 2019

Board of Directors
Water Environment Services

Members of the Board:

Approval of a Service Connection Mortgage in the North Clackamas Service Area for
Water Environment Services

Purpose/Outcomes	To place a Connection Mortgage on the tax lot 22E02CB04000 in order for the property to connect to the public sewerage system.
Dollar Amount and Fiscal Impact	Contract maximum value is \$159,915.00
Funding Source	Not applicable
Duration	Effective February 20, 2019 and terminates when paid in Full, Estimate date of January 1, 2029.
Previous Board Action/Review	None
Strategic Plan Alignment	1. WES Customers will continue to benefit from a well-managed utility. 2. Build public trust through good government.
Contact Person	Craig Anderson, WES Accountant – 503-742-4583

BACKGROUND:

The property owner listed on the attached service connection mortgage has applied to Water Environment Services for payment of systems development charges by semi-annual installment payments secured by a mortgage on the property owned by Western Properties, LLC: Map and Tax Lot: 22E02CB04000. The mortgage is in the amount of \$159,915.00 with final payment due by January 1, 2029.

Approved as to form by District Counsel.

RECOMMENDATION:

We respectfully recommend that the Board of County Commissioners, acting as the governing body of Water Environment Services, approve and accept the attached service connection mortgage.

Respectfully submitted,

Greg Geist, WES Director

No Change in Tax Statements
After recording, return to:
Water Environment Services
Clackamas County Service District No.1
150 Beaver Creek Road
Oregon City, OR 97045

WATER ENVIRONMENT SERVICES
SERVICE CONNECTION MORTGAGE

THIS MORTGAGE ("Mortgage") is made this 20th day of February, 2019 by and between Western Properties, LLC (herein called "Mortgagor") and Water Environment Services, an intergovernmental entity formed pursuant to ORS Chapter 190 (hereinafter called "District").

RECITAL

Mortgagor has voluntarily applied to District to connect to the public sewerage system. By its duly adopted Rules and Regulations, District has imposed system development and collection sewer charges of \$159,915.00 for the privilege of connecting the property described on Exhibit A, attached hereto and incorporated by reference ("Land"), to the District's sewerage system.

Mortgagor desires to defer payment of the system development and collection sewer charges and the District has agreed to such deferral. Therefore the parties agree as follows:

1. **Definitions.** As used herein the following terms shall have the following meanings.

1.1 **Event of Default.** Any of the happenings and occurrences described in paragraph 4.

1.2 **Fixtures.** To the extent of Mortgagor's interest therein, all fixtures now, or to any time hereafter, attached to or used in any way in connection with the operation, use or occupation of the Real Property (defined below), including, without limitation, all machinery and equipment, furniture and furnishings, screens, awnings, storm windows and doors, window shades, floor coverings, shrubbery, plants, boilers, tanks, furnaces, radiators, fire prevention and extinguishing apparatus, security and access control apparatus, communications apparatus, all heating, lighting, plumbing, gas, electric, ventilation, refrigerating, air conditioning and incinerating equipment of whatever kind and nature, all of which are hereby declared and shall be deemed to be fixtures and accessory to the fee and part of the Real Property as between the parties hereto, their heirs, legal representatives, successors and assigns and all persons claiming by, through or under them.

1.3 Improvements. All buildings and other improvements and all additions thereto and alterations thereof now, or at any time hereafter, located upon the Land or any part thereof.

1.4 Indebtedness. The promissory note made by Mortgagor, payable to District, dated this date, in the amount of \$159,915.00, the final payment of which, if not sooner paid is due January 1st 2029, as may be extended, renewed, modified, or amended, and including any adjustments and interest, principal and payment terms.

1.5 Land. The property described on attached Exhibit A.

1.6 Obligations. The covenants, promises and other obligations (other than the Indebtedness) made or owing by Mortgagor to or due District under this Mortgage.

1.7 Real Property. The Land, the Improvements and the Fixtures together with all rights; privileges, permits, licenses, tenements, hereditaments, rights-of-way, easements and appurtenances of the Land, and all right, title and interest of Mortgagor in and to any streets, ways, alleys or strips adjoining the Land or any part thereof are collectively referred to as "Real Property."

2. Grant. To secure payment of the Indebtedness and performance and discharge of the Obligations, Mortgagor hereby grants, bargains, sells and conveys and assigns to Mortgagor, a mortgage on the Real Property.

3. Covenants. Until the entire Indebtedness has been paid in full, Mortgagor covenants and agrees as follows:

3.1 Repayment of Indebtedness. Mortgagor agrees to pay to the District system development and collection sewer charges of \$159,915.00 in not less than twenty equal installments of \$7,995.75 on the first day of January and July of each year, together with and in addition to each said installment, interest on the unpaid principal balance, as of the principal payment date, at the prime rate of interest being charged on that date by the bank doing business in Oregon and having the largest deposits. Payments received shall be applied first to accrued interest and then to principal.

3.2 Future Advances. The parties hereto agree that if there is a change in class of service requiring the payment of additional system development and collection sewer charges, District, at its option and if the owner qualifies pursuant to the criteria in the Rules and Regulations, may allow those additional system development and collection sewer charges to be financed and secured by this Mortgage without loss of priority.

3.3 Compliance with Laws. Mortgagor will promptly and faithfully comply with, conform to, and obey all present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental authority or agency which may be applicable to it or to the Real Property, or any part thereof, or to the use or manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Real Property, or any part

thereof, whether or not such law, ordinance, rule, order, regulation or requirement necessitates structural changes or improvements or interferes with the use or enjoyment of the Real Property.

3.4 Payment of Taxes and Other Government Charges. Mortgagor will promptly pay and discharge, or cause to be paid and discharged, before delinquency, all real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and other governmental charges and any interest or costs for penalties with respect thereto, and charges for any easement or agreement maintained for the benefit of the Real Property which at any time prior to or after the execution of this Mortgage may be assessed, levied or imposed upon the Real Property, or the rent or income received therefrom, or any use of occupancy thereof, and any other taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against Mortgagor or any of Mortgagor's properties.

3.5 Repair. Mortgagor will keep the Real Property in good order and condition and make all necessary or appropriate repairs, replacements and renewals thereof, and will use Mortgagor's best efforts to prevent any act or thing which might impair the value or usefulness of the Real Property. Mortgagor shall not make any alterations or additions to the Improvements or remove any of the Improvements if such alternations, additions or removal would impair the value of the Real Property.

3.6 Inspection. District shall have the right, individually or through agents, at all reasonable times to inspect the Real Property.

3.7 Indemnification. Mortgagor shall indemnify and hold District and District's elected officials, agents, legal representatives, heirs, successors and assigns harmless against any and all claims, demands, losses, liabilities, costs and expenses arising out of or in any way related to or affecting the Real Property or Mortgagor's use thereof.

3.8 Construction Liens. Mortgagor shall not permit or suffer any construction or similar lien on any of the Real Property, except as such liens may be filed in the normal course by contractors, suppliers and the like. Mortgagor shall remove or cause the removal of all such liens by payment of amounts due on account thereof. If Mortgagor desires to contest any such lien, immediately upon the commencement of any litigation concerning the same, Mortgagor may contest the lien by posting a bond necessary for its removal.

4. **Events of Default.** Each of the following shall be an Event of Default.

4.1 **Failure to Pay.** The failure of the Mortgagor to pay any portion of the Indebtedness when it is due.

4.2 **Other Defaults.** The failure of Mortgagor to observe or perform any of the Obligations, other than as specified in this paragraph 4, within 10 days after notice from District specifying the nature of the deficiency. No notice of default and opportunity to cure shall be required if during the prior 12 months District has already sent a notice to Mortgagor concerning a deficiency in performance of the same obligation.

4.3 **Insolvency.** The insolvency of Mortgagor; abandonment of the Real Property, or any parcel or portion thereof; an assignment by Mortgagor for the benefit of creditors; the filing by Mortgagor of a voluntary petition in bankruptcy or an adjudication that Mortgagor is bankrupt; the appointment of a receiver for the property of Mortgagor; or the filing of an involuntary petition in bankruptcy and the failure of Mortgagor to secure the dismissal of the petition within 30 days after filing. Any Event of Default under this paragraph 4 shall apply and refer to Mortgagor, any guarantor of the Indebtedness, and to each of the individuals or entities which are collectively referred to as "Mortgagor."

4.4 **Transfer.** The sale, conveyance, transfer or other disposition of the Real Property, or any part thereof, or any interest therein, including the transfer of possessory rights therein, directly or indirectly, either voluntarily, involuntarily or by operation of law, by contract, deed or otherwise, without District's prior written consent, which consent shall not be unreasonably withheld. The District may attach such conditions to its consent as District may determine in its sole discretion, including without limitation, an increase in the interest rate or the payment of transfer of assumption fees and the payment of administrative and legal fees and costs incurred by District.

4.5 The default under any superior encumbrance to this Mortgage.

5. **Remedies.** Upon the occurrence of any Event of Default, District may exercise any one or more of the following remedies:

5.1 **Acceleration.** Declare the unpaid portion of the Indebtedness to be immediately due and payable.

5.2 **Foreclosure.** Foreclose this Mortgage in the manner provided by law for mortgage foreclosures.

5.3 **Receiver.** District shall be entitled, as a matter of right, without notice and ex parte, and without regard to the value or occupancy of the security, or the solvency of Mortgagor or the adequacy of the Real Property as security, to have a receiver appointed to enter upon and take possession of the Real Property, collect the rents therefrom, and apply the same as the court

may direct. Any receiver appointed may serve without bond. District shall not be disqualified to serve as receiver. The expense of the receivership shall be secured by this Mortgage.

5.4 Remedies Cumulative and Concurrent. The rights and remedies of District as provided in the Indebtedness and this Mortgage shall be cumulative and concurrent and may be pursued separately, successively, or together against Mortgagor or against other obligors, or against the Real Property, or any one or more of them, at the sole discretion of District, and may be exercised as often as occasion therefore shall arise.

5.5 Nonwaiver. The election of District not to exercise any option or remedy which they may have under this Mortgage with respect to any Event of Default shall not be deemed a waiver of District's right to exercise such rights or options as to any proceeding or subsequent Event of Default, nor shall it be deemed a waiver with respect to that Event of Default or any other remedy available to District under this Mortgage, the Note or applicable law.

5.6 Termination of Services. Mortgagor agrees that sanitary sewer service is necessary and vital for the continued use and functioning of the subject real property. If a default occurs under the terms of this Trust Deed, which default is not cured thirty days following written notice to Mortgagor, the beneficiary, in addition to any other remedies, may terminate sewer service to the subject property. Mortgagor, or its successors or assigns, shall be responsible for all costs associated with disconnection of service and reconnection to the public sewerage system.

6. Miscellaneous.

6.1 District's Right to Act. Upon an Event of Default, District may, at District's option and without waiver of the default, perform the same on behalf of Mortgagor. Expenditures made or charges incurred by District for the foregoing purposes shall be paid by Mortgagor to District immediately upon demand and shall be secured by this Mortgage. Nothing herein shall require District to advance monies for any purpose or to do any other act, and District shall not incur any personal liability because of District's action or inaction under this paragraph.

6.2 Time of Essence. Time is of the essence in the payment of the Indebtedness and the Performance of the Obligations under and secured by this Mortgage.

6.3 Applicable Law. This Mortgage shall be governed by and construed according to the laws of the State of Oregon.

6.4 Interpretation. In interpreting this Mortgage, the singular shall include the plural. If Mortgagor consists of more than one person or entity, each such person and entity shall be jointly and severally liable to pay the Indebtedness and perform the Obligations.

6.5 Severability. In case any one or more of the Obligations shall be invalid, illegal or unenforceable in any respect, the validity of the Indebtedness and remaining Obligation shall be in no way effected, prejudiced or disturbed thereby.

6.6 Modification. This Mortgage may only be modified by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

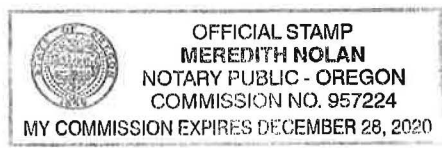
IN WITNESS WHEREOF, the Mortgagor has set his/her/their hand on the day and year first herein above written.

[Signature]
WESTERN PROPERTIES LLC.

(Legal owner) (Legal owner)
SILVIO BUMB - MEMBER MANAGER
6215 SE HAZEL, PORTLAND OR 97206.
Mailing Address Mailing Address

STATE OF OREGON)
County of Clackamas) ss.

This instrument was acknowledged before me on this 20 day of FEB., 2019 by SILVIO BUMB.



Meredith Nolan
Notary Public for Oregon
My Commission Expires: December 28, 2020

EXHIBIT "A"

All of that portion described in deed reference Clackamas County Official Record 2018-027423

(Tax Lot 22E02CB04000)



Gregory L. Geist
Director

March 7, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Agreement for
Release of Covenant Running with the Land

Purpose/Outcomes	To acknowledge the satisfactory completion of the requirements in the covenant.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Permanent
Previous Board Action/Review	None
Strategic Plan Alignment	This Action: 1. Aligns with WES' strategic plan in that customers will continue to benefit from a well-managed utility. 2. Aligns with the Board's goal to build public trust through good government.
Contact Person	Don Kemp, WES Permitting Supervisor – 503-742-4577
Contract No.	N/A

BACKGROUND:

Clackamas County Service District No. 1 (CCSD1), which is part of the Water Environment Services (WES) Partnership, has an assessment district within a portion of its service zone. This assessment district levies fees and additional land parcel-specific obligations for the connection of wastewater service. Property owners enter into an agreement with WES, (and historically CCSD1), called a "Covenant Running with the Land" to officially outline the requirements of the assessment district on the property in question.

In 2003, the Cascade Pacific Council Boy Scouts of America ("Boy Scouts") entered into an agreement with CCSD1 regarding two parcels of property that they owned. The Boy Scouts have since transferred the two parcels to Scouter's Mountain, LLC. All required conditions under the covenants have been satisfied, and CCSD1/WES and Scouter's Mountain, LLC now desire to release the covenants from the properties.

This Agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

District Staff respectfully recommends that the Board of County Commissioners, acting as the governing body of Water Environment Services, approve the Release of Covenant Running with the Land.

Respectfully submitted,

A handwritten signature in blue ink that reads "Greg Geist". The signature is written in a cursive style with a long horizontal stroke at the end.

Greg Geist, WES Director

o change in Tax Statements	I
	I
After recording, return to:	I
Clackamas County Service District No. 1	I
150 Beavercreek Road, Suite 430	I
Oregon City, OR 97045	I
	I
Clackamas County Deed Ref. Numbers.:	I
2003-148632, 466-519, 2017-030854	I
	I

Reserve this area for recording stamp

RELEASE OF COVENANT RUNNING WITH THE LAND

Recitals

In 2003, the Cascade Pacific Council Boy Scouts of America (“Boy Scouts”) entered into an agreement (“Covenant Running With The Land”) with Clackamas County Service District No. 1 (“CCSD1”) to include two parcels of property it into CCSD1’s assessment district that would result in the properties receiving wastewater service in return for the payment of assessment fees and other obligations outlined therein. The Boy Scouts eventually transferred the two parcels to Scouter’s Mountain, LCC. All required conditions under the covenants have been satisfied, and CCSD1 and Scouter’s Mountain, LLC now desire to release the covenants from the properties.

Agreement

Clackamas County Service District No. 1, a political subdivision of the State of Oregon (“CCSD1”) and Scouter’s Mountain, LLC, an Oregon limited liability company (“Scouter’s Mountain”), hereby release all rights and obligations granted in the covenant, recorded as document 2003-148632 in the Real Property Records of Clackamas County and attached hereto as **Exhibit A** (“Covenant”), on the real property described as Deed Reference 466-519 in the Clackamas County Real Property Records (“Property”).

The Property was conveyed to Scouter’s Mountain, LLC from the Cascade Pacific Council Boy Scouts of America pursuant to the statutory warranty deed recorded as 2017-030854 in the Real Property Records of Clackamas County, attached hereto as **Exhibit B**.

The true consideration for this conveyance is the sum of \$0 dollars and other such good and valuable consideration. The covenants have been satisfied and are no longer necessary for either party.

[Signature Page Follows]

In witness whereof, this instrument is executed by the parties this _____ day of _____, 2019.

Clackamas County Service District No. 1

BY: _____

Chair

NAME: _____

STATE OF OREGON)

)

County of Clackamas)

This instrument was acknowledged before me on _____, 2019 by .

_____ as the Chair of the governing body of Clackamas
County Service District No. 1.

Notary for Oregon

My Commission expires: _____

Scouter's Mountain, LLC

BY (signature): _____

TITLE: Manager

PRINT NAME: Greg Kubicek

^{WASHINGTON}
STATE OF OREGON)

)

County of ~~Clackamas~~ Clark)

This instrument was acknowledged before me on February 22, 2019 by
Greg Kubicek as the Manager of Scouter's Mountain, LLC.

Notary Public
State of Washington
KRISTA A HARVILL-SORTER
MY COMMISSION EXPIRES
APRIL 15, 2021

Krista A. Harvill-Sorter
Notary for ~~Oregon~~ Washington

My Commission expires: 4-15-21

EXHIBIT A

2/2

After recording, return to:
 Clackamas County Service District No. 1
 8101 SE Sunnybrook Blvd., Suite 441
 Clackamas, OR 97015

Clackamas County Official Records 2003-148632
 Sherry Hall, County Clerk



\$31.00

11/06/2003 03:31:10 PM

D-00 Cnt=1 Stn=5 LYNN
 \$10.00 \$11.00 \$10.00

COVENANT RUNNING WITH THE LAND

This Covenant is made this 16th day of October, 2003 by and between Cascade Pacific Council Boy Scouts of America - (the "Owners"), and Clackamas County Service District No. 1, a County service district (District). The Owners represent that they are the legal owners of Tax Lot 12E36B 00300, located at 11300 SE 147TH AVENUE which is recorded in the Clackamas County Deed Records as Deed Reference 466-519 (the "Property").

RECITAL

The Owners are requesting the above-described Property be included in Assessment District 2001-1, formed by the Board of County Commissioners on May 3, 2001 by Order 2001-88. The above Property was not located within the UGB, the District and the City of Happy Valley at the time of this formation. Said Property is currently under a WPCF permit with the DEQ, which requires connection to public sewers as soon as available. Assessment District 2001-1 now provides that necessary service. The Owners wish to acquire sanitary sewer service, to the Property by joining Assessment District 2001-1. The described property will be annexed to the City of Happy Valley and to the District.

The Property will be assessed for its fair and proportionate share of the costs of the improvements which are financed by Assessment District 2001-1, and the Owners will have the opportunity to pay the assessment in semiannual installments over a period of twenty years, with interest. The final assessment is based on the actual cost of constructing the sanitary sewer system improvements. The assessment will be levied upon completion of the Assessment District 2001-1 sanitary sewer system improvements. The final assessment for the costs of the sanitary sewer system improvements against the above Property, based upon the approved Method of Assessment Formula, is as follows:

Final Assessment

◆ Area Benefit 5.04 acres @ \$1,000.00 per acre =	\$ 5,040.00
Exempting 20 acres as Scouter's Mountain wilderness area, subject to charge should development occur	
◆ Proximity to Service 22,500 sq. ft @ \$ 0.5512646 =	\$ 12,403.45
◆ Service Connection Lateral 0 @ \$1,200.00 =	\$ 0.00
◆ Total Final Assessment =	\$ 17,443.45

The District agrees:

- (a) The above described Property will be included in Assessment District 2001-1, and
- (b) The District will annex described Property to CCSD#1 following City annexation, and
- (c) The Owners will be given the opportunity to pay the final assessment in semi-annual installments, with interest, over a period of twenty years, and
- (d) The District agrees to apply an exemption of the remaining 20 acres as long as Property remains wilderness for use as the Boy Scout Camp, with the understanding that the \$1,000.00 per acre Area Benefit will be applied to the exempt 20 acres in the amount of \$20,000.00, should development occur in the future, and
- (e) The District will charge a System Development Charge (SDC) in the amount of \$2,200.00, which is based upon current facilities being one single family dwelling, prior to connection, and
- (f) The monthly usage will be considered 1 Equivalent Dwelling Unit (EDU), currently at \$22.00 per month, and
- (g) Following annexation proceedings, standard Surface Water Management fees will be determined and billed accordingly.

The Owners agree, on behalf of themselves and all future owners of the Property, that:

- (a) The Property shall be included in Assessment District 2001-1 and assessed for its share of the costs of the sanitary sewer system Improvements on the same basis as all other parcels which are included in Assessment District 2001-1, excepting \$20,000.00 of Area Benefit, which will become due and payable as a Collection Sewer Charge should this Property convert from wilderness and camp office of one single family dwelling to development property, and

- (b) The Owners will not oppose the levying of final assessment of the Property for its proportionate share of the costs of the sanitary sewer system improvements within Assessment District 2001-1, and
- (c) The Owners and all future owners of the Property shall pay the charges imposed by the District for sanitary sewer service and surface water management, in addition to the assessment, and shall be subject to the Rules and Regulations of the District, and
- (d) The Owners acknowledge that they were not notified at the time of the formation of Assessment District 2001-1 and that they were not given an opportunity to remonstrate against the formation of Assessment District 2001-1 and it is only at their request for the Property benefit that they now be included in the Assessment District 2001-1, and
- (e) Owners agree to annex to both the City of Happy Valley and Clackamas County Service District No. 1.

To induce the District to include the Property in Assessment District 2001-1, the Owners, on behalf of themselves and all future owners of the Property, hereby waive the right to contest or object to:

- ◆ the lack of notice of formation, and
- ◆ the lack of opportunity to remonstrate, and
- ◆ any and all remonstrances;

Further, the Owners request inclusion of the Property in Assessment District 2001-1, the District and the assessment of the Property for the costs of the sanitary sewer system improvements, including any and all defects in the procedures for including the Property in the District and imposing the assessment against the Property.

NOTICE TO OWNERS AND SUBSEQUENT PURCHASERS

FINAL ASSESSMENT SHALL BE RECORDED IN THE CLACKAMAS COUNTY DEED RECORDS AND SHALL BIND ALL OWNERS OF ANY INTEREST IN THE PROPERTY, INCLUDING SUBSEQUENT PURCHASERS. ACQUISITION OF AN INTEREST IN THE PROPERTY AFTER THIS COVENANT IS SIGNED CONSTITUTES CONSENT TO THIS COVENANT, AND ALL PERSONS WHO OWN INTERESTS IN THE PROPERTY AFTER THE FINAL ASSESSMENT IS RECORDED SHALL BE BOUND BY THIS COVENANT.

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

Ronald W. Garland _____

Ronald W. Garland Scout Executive _____
 Print Name Title Print Name Title

STATE OF OREGON)
) ss.
 County of Clackamas)

Personally appearing the above named Ronald W. Garland, as Scout Executive of Cascade Pacific Council Boy Scouts of America and acknowledged the foregoing instrument to be _____ voluntary act and deed on this 16th day of October, 2003.



Annette M. Mason
 Notary Public for Oregon
 My Commission Expires: 03/11/07
 Commission # 366505

R. Kent Squires
 R. Kent Squires, Director
 Clackamas County Service District No. 1

STATE OF OREGON)
) ss.
 County of Clackamas)

Personally appearing the above named R. Kent Squires, as Director of Clackamas County Service District No. 1 and acknowledged the foregoing instrument to be _____ his _____ voluntary act and deed on this 22 day of October, 2003.



Kathy E. Frasier
 Notary Public for Oregon
 My Commission Expires: 9/18/07

(2)

After Recording Return to:
Clackamas County Service District No. 1
9101 SE Sunnybrook Blvd., Suite 441
Clackamas, OR 97015

Clackamas County Official Records
Sherry Hall, County Clerk

2003-162735



\$16.00

12/16/2003 12:43:55 PM

L-ASMTL Cnt=1 Stn=5 LYNN
\$5.00 \$11.00

NOTICE OF FINAL ASSESSMENT
Sanitary Sewer Assessment

Assessment District 2001-1
North Clackamas Service Area
Clackamas County Service District No. 1

Legal Owners: **CASCADE PACIFIC COUNCIL BOY SCOUTS AMERICA**
ATTN: DIRECTOR OF CAMPING

Mailing Address: **2145 SW NAITO PARKWAY**
PORTLAND, OR 97201

Property Site Address: **11300 SE 147TH AVE**

Tax Lot #: **12E36B 00300**

Deed Reference #

2002 Assessed Value: **\$395,914**
2002 Real Market Value **\$527,101**

Area Benefit:

5.0400 Benefited Acres @ \$1,000.00 per Acre = **\$5,040.00**

Proximity to Service: Minimum = 15,000 Sq Ft

22,500 Square Feet @ \$0.5512646 per Sq Ft = **\$12,403.45**

Service Connections:

 Each @ \$1,200.00 per lateral = **\$0.00**

Total Assessment = \$17,443.45

CLACKAMAS COUNTY
SATISFACTION OF LIEN

PROPERTY DESCRIPTION 12E36B 00300

ORDER NUMBER AND DATE 2003-237, NOVEMBER 26, 2003

DATE PAID 04/08/2004

PROJECT DESCRIPTION ASSESSMENT DISTRICT 2001-1

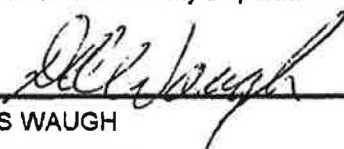
NAME ON ORIGINAL LIEN CASCADE PACIFIC COUNCIL BOY SCOUTS AMERICA

CURRENT NAME CASCADE PACIFIC COUNCIL BOY SCOUTS AMERICA

WATER ENVIRONMENT SERVICES ACCT. # 90450

The assessment for the above described property is fully paid, satisfied and discharged.

WATER ENVIRONMENT SERVICES
formerly Clackamas County Department of Utilities


DOUGLAS WAUGH
FINANCE MANAGER

RECORDING NUMBER 2003-162735

RECORDING DATE 12-16-03

After recording, return to:

Water Environment Services
PO Box 280
Oregon City, OR 97045

Clackamas County Official Records
Sherry Hall, County Clerk

2004-034194



\$16.00

00667624200400341940010019

04/20/2004 03:29:26 PM

L-ASMTLS Cnt=1 Stn=5 LYNN
\$5.00 \$11.00

EXHIBIT B

CHICAGO TITLE 47251350 & 494EE-CM

AFTER RECORDING RETURN TO:

Scouter's Mountain, LLC, an Oregon limited liability company
Po Box 61426
Vancouver, WA 98666

SEND TAX STATEMENTS TO:

SAME AS ABOVE

11282 SE 147th Avenue, Happy Valley, OR 97086

Clackamas County Official Records		2017-030854
Sherry Hall, County Clerk		
		05/08/2017 03:28:01 PM
D-D	Cnt=1 Stn=0 STEPHEN	
\$30.00	\$16.00 \$10.00 \$22.00	\$78.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SPECIAL WARRANTY DEED - STATUTORY FORM
(INDIVIDUAL or CORPORATION)

Cascade Pacific Council, Boy Scouts of America, an Oregon nonprofit corporation, Grantor, conveys and specially warrants to Scouter's Mountain, LLC, an Oregon limited liability company, Grantee, the following described real property free and clear of encumbrances created or suffered by the grantor except as specifically set forth below:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

The true consideration for this conveyance is Nine Million One Hundred Thirty-Nine Thousand Nine Hundred Fifty-Eight And 70/100 Dollars (\$9,139,958.70).

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

SPECIAL WARRANTY DEED - STATUTORY FORM

(continued)

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated 5/6/17; if a corporate grantor, it has caused its name to be signed by order of its board of directors.

Cascade Pacific Council, Boy Scouts of America, an Oregon nonprofit corporation

BY: Matthew Devore
Matthew Devore,
Scout Executive/CEO

State of OR
County of Clackamas

This instrument was acknowledged before me on May 6th, 2017 by Matthew S. Devore, Scout Executive/CEO of Cascade Pacific Council, Boy Scouts of America, an Oregon nonprofit corporation

[Signature]
Notary Public - State of Oregon

My Commission Expires: 7-7-2019

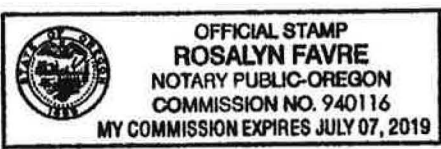


EXHIBIT "A"

Legal Description

A tract of land located in the Northeast One-Quarter and the Northwest One-Quarter of Section 36, Township 1 South, Range 2 East, Willamette Meridian, City of Happy Valley, Clackamas County, Oregon and being more particularly described as follows:

Beginning at the North One-Quarter corner of said Section 36, thence along the north line of the Northeast One-Quarter of said Section 36, South 87°26'47" East 1057.11 feet to a 3/4 inch iron pipe; thence continuing along said north line, South 87°31'10" East 82.28 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "COMSTOCK NW" at the northwesterly corner of Parcel 2 of Partition Plat Number 1995-060; thence along the northerly west line of said Parcel 2, South 01°51'15" West 341.33 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." and the True Point of Beginning; thence continuing along said west line, South 01°51'15" West 196.47 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 88°36'45" West 175.54 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 25°30'46" West 154.37 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 10°27'17" West 568.61 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 00°19'37" West 203.09 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 08°26'41" West 142.90 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 45°21'04" West 342.51 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 01°08'02" East 318.96 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 43°26'31" West 214.01 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 86°17'54" West 133.14 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 56°24'20" West 201.55 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 39°39'59" West 333.45 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 82°52'20" West 158.44 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 08°00'19" West 101.98 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 01°16'18" East 277.20 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 83°14'44" East 327.89 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 18°36'10" East 212.55 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 87°05'09" East 491.39 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 43°08'19" East 602.82 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." on the westerly line of Exhibit B of Document Number 2015-074476; thence along said westerly line, South 01°49'16" West 480.35 feet to a 1 inch iron pipe on the southerly line of the Northeast-One Quarter of said Section 36; thence along said southerly line North 87°05'09" West 1058.71 feet to a 5/8 inch iron rod at the Center One-Quarter corner of said Section 36; thence along the south line of the Northwest One-Quarter of said Section 36,

EXHIBIT "A"

Legal Description

North 88°46'59" West 835.58 feet to a 5/8 inch iron rod at the southeast corner of Parcel 2 of Partition Plat Number 1997-082; thence along the east line of said Plat, North 02°31'43" East 459.88 feet to a 5/8 inch iron rod at the northeast corner of Parcel 1 of said Plat; thence along the north line of said Parcel 1, North 88°46'40" West 443.18 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." on the easterly right-of-way line of SE 147th Avenue (30.00 feet from centerline); thence along said easterly right-of-way line, North 02°31'01" East 201.54 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." on the northeasterly right-of-way line of SE 145th Avenue (30.00 feet from centerline); thence along said northeasterly right-of-way line, North 59°51'56" West 32.89 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." on the easterly line of Document Number 96-05954; thence along said easterly line, North 01°40'43" East 418.86 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." on the southerly line of Document Number 2011-026955; thence along the southerly line of said Deed, North 80°02'47" East 607.91 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS"; thence continuing along said southerly line and the southerly easterly line thereof along the following courses: along a non-tangential curve to the left with a Radius of 402.17 feet, Delta of 18°06'20", Length of 127.09 feet, and a Chord of North 73°16'21" East 126.56 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence North 64°13'11" East 114.89 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence along a non-tangential curve to the right with a Radius of 1506.13 feet, Delta of 07°41'37", Length of 202.24 feet, and a Chord of North 72°56'21" East 202.09 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence along a curve to the left with a Radius of 1336.04 feet, Delta of 07°31'19", Length of 175.40 feet, and a Chord of North 73°01'30" East 175.27 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence along a curve to the right with a Radius of 1654.89 feet, Delta of 09°03'40", Length of 261.71 feet, and a Chord of North 73°47'41" East 261.44 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence along a curve to the left with a Radius of 196.38 feet, Delta of 27°50'13", Length of 95.41 feet, and a Chord of North 64°24'24" East 94.47 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence along a curve to the right with a Radius of 217.76 feet, Delta of 21°11'36", Length of 80.55 feet, and a Chord of North 61°05'06" East 80.09 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence North 71°40'54" East 149.90 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence along a non-tangential curve to the left with a Radius of 145.66 feet, Delta of 41°48'16", Length of 106.28 feet, and a Chord of North 45°44'13" East 103.94 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence North 24°50'05" East 160.89 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence North 11°17'16" East 40.42 feet; thence North 01°07'22"

EXHIBIT "A"

Legal Description

West 148.45 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence North 06°32'29" East 91.48 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence North 01°54'47" West 61.64 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence leaving said southeasterly line North 90°00'00" East 144.35 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence along a non-tangential curve to the right with a Radius of 325.50 feet, Delta of 04°29'09", Length of 25.48 feet, and a Chord of North 50°27'50" East 25.48 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence along a curve to the left with a Radius of 14.50 feet, Delta of 82°04'45", Length of 20.77 feet, and a Chord of North 11°40'02" East 19.04 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 29°22'20" West 16.08 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 60°37'40" East 49.00 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 29°22'20" East 14.26 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence along a curve to the left with a Radius of 14.50 feet, Delta of 84°44'38", Length of 21.45 feet, and a Chord of South 71°44'39" East 19.54 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence along a curve to the right with a Radius of 325.50 feet, Delta of 24°06'58", Length of 137.01 feet, and a Chord of North 77°56'31" East 136.00 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 90°00'00" East 61.38 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence along a curve to the right with a Radius of 325.50 feet, Delta of 26°51'40", Length of 152.60 feet, and a Chord of South 76°34'10" East 151.21 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence along a curve to the left with a Radius of 14.50 feet, Delta of 82°29'47", Length of 20.88 feet, and a Chord of North 75°36'47" East 19.12 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 34°21'53" East 4.10 feet to the True Point of Beginning.

The above described tract of land contains 59.82 acres, more or less.

Permitted Exceptions:

Regulations, levies, liens, assessments, rights of way and easements of Clackamas County Service District No. 1.

Easement for the purpose shown below and rights incidental thereto as set forth in a document:

Purpose: To take water and maintain water system

Recording Date: September 5, 1957

Book: 530

Page: 210

Right-of-Way Declaration, including the terms and provisions thereof;

Recording Date: January 14, 1966

Book: 668

Page: 18

Easement Agreement, including the terms and provisions thereof;

Recording Date: February 5, 1980

Recording No: 80-004237

Easement for the purpose shown below and rights incidental thereto as set forth in a document:

In favor of: Mt. Scott Water District

Purpose: Water pipelines

Recording Date: May 22, 1998

Recording No: 98-045283

Covenant Running With the Land, including the terms and provisions thereof;

Recording Date: November 6, 2003

Recording No.: 2003-148631

Covenant Running With the Land, including the terms and provisions thereof;

Recording Date: November 6, 2003

Recording No.: 2003-148632

Easement for the purpose shown below and rights incidental thereto as set forth in a document:

In favor of: Sunrise Water Authority

Purpose: Waterline

Recording Date: March 17, 2004

Recording No: 2004-022006

Declaration of Covenants, Conditions and Restrictions For Transfer of Excess Development Rights, including the terms and provisions thereof;

Recording Date: May 3, 2011

Recording No.: 2011-026434

Easement for the purpose shown below and rights incidental thereto as set forth in a document:

In favor of: Adjacent property owner

Purpose: Vehicular and Pedestrian Access

Recording Date: May 5, 2011

Recording No: 2011-026956

Replacement Sewer Line Easement and Joint Maintenance Agreement, including the terms and provisions thereof;

Recording Date: May 5, 2011

Recording No.: 2011-026957

No change in Tax Statements

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After recording, return to:

Clackamas County Service District No. 1
150 Beavercreek Road, Suite 430
Oregon City, OR 97045

Clackamas County Deed Ref. Numbers.:
2003-148632, 466-519, 2017-030854

Reserve this area for recording stamp

RELEASE OF COVENANT RUNNING WITH THE LAND

Recitals

In 2003, the Cascade Pacific Council Boy Scouts of America (“Boy Scouts”) entered into an agreement (“Covenant Running With The Land”) with Clackamas County Service District No. 1 (“CCSD1”) to include two parcels of property it into CCSD1’s assessment district that would result in the properties receiving wastewater service in return for the payment of assessment fees and other obligations outlined therein. The Boy Scouts eventually transferred the two parcels to Scouter’s Mountain, LCC. All required conditions under the covenants have been satisfied, and CCSD1 and Scouter’s Mountain, LLC now desire to release the covenants from the properties.

Agreement

Clackamas County Service District No. 1, a political subdivision of the State of Oregon (“CCSD1”) and Scouter’s Mountain, LLC, an Oregon limited liability company (“Scouter’s Mountain”), hereby release all rights and obligations granted in the covenant, recorded as document 2003-148631 in the Real Property Records of Clackamas County and attached hereto as **Exhibit A** (“Covenant”), on the real property described as Deed Reference 85-425 in the Clackamas County Real Property Records (“Property”).

The Property was conveyed to Scouter’s Mountain, LLC from the Cascade Pacific Council Boy Scouts of America pursuant to the statutory warranty deed recorded as 2017-030854 in the Real Property Records of Clackamas County, attached hereto as **Exhibit B**.

The true consideration for this conveyance is the sum of \$0 dollars and other such good and valuable consideration. The covenants have been satisfied and are no longer necessary for the Grantor.

[Signature Page Follows]

In witness whereof, this instrument is executed by the parties this _____ day of _____, 2019.

Clackamas County Service District No. 1

BY: _____
Chair

NAME: _____

STATE OF OREGON)
)
County of Clackamas)

This instrument was acknowledged before me on _____, 2019 by .

_____ as the Chair of the governing body of Clackamas
County Service District No. 1.

Notary for Oregon

My Commission expires: _____

Scouter's Mountain, LLC

BY (signature): _____

TITLE: Manager

PRINT NAME: Greg Kubicek

WASHINGTON
STATE OF OREGON)
)
County of Clackamas Clark)

This instrument was acknowledged before me on February 22, 2019 by
Greg Kubicek as the Manager of Scouter's Mountain, LLC.

Notary Public
State of Washington
KRISTA A HARVILL-SORTER
MY COMMISSION EXPIRES
APRIL 15, 2021

Krista Harvill-Sorter
Notary for Oregon Washington

My Commission expires: 4-15-21

EXHIBIT A

2/2

After recording, return to:
Clackamas County Service District No. 1
9101 SE Sunnybrook Blvd., Suite 441
Clackamas, OR 97015

Clackamas County Official Records 2003-148631
Sherry Hall, County Clerk



\$31.00

11/06/2003 03:31:10 PM

D-OD Cnt=1 Sin=5 LYNN
\$10.00 \$11.00 \$10.00

COVENANT RUNNING WITH THE LAND

This Covenant is made this 16th day of October, 2003 by and between Cascade Pacific Council Boy Scouts of America - (the "Owners"), and Clackamas County Service District No. 1, a County service district (District). The Owners represent that they are the legal owners of Tax Lot 12E36B 00100, located at 11282 SE 147TH AVENUE which is recorded in the Clackamas County Deed Records as Deed Reference 85-425 (the "Property").

RECITAL

The Owners are requesting the above-described Property be included in Assessment District 2001-1, formed by the Board of County Commissioners on May 3, 2001 by Order 2001-88. The above Property was not located within the UGB, the District and the City of Happy Valley at the time of this formation. Said Property is currently under a WPCF permit with the DEQ, which requires connection to public sewers as soon as available. Assessment District 2001-1 now provides that necessary service. The Owners wish to acquire sanitary sewer service, to the Property by joining Assessment District 2001-1. The described property will be annexed to the City of Happy Valley and to the District.

The Property will be assessed for its fair and proportionate share of the costs of the improvements which are financed by Assessment District 2001-1, and the Owners will have the opportunity to pay the assessment in semiannual installments over a period of twenty years, with interest. The final assessment is based on the actual cost of constructing the sanitary sewer system improvements. The assessment will be levied upon completion of the Assessment District 2001-1 sanitary sewer system improvements. The final assessment for the costs of the sanitary sewer system improvements against the above Property, based upon the approved Method of Assessment Formula, is as follows:

Final Assessment

◆ Area Benefit 3.45 acres @ \$1,000.00 per acre =	\$ 3,450.00
Exempting 40 acres as Scouter's Mountain wilderness area, subject to charge should development occur	
◆ Proximity to Service 15,000 sq. ft @ \$ 0.5512646 =	\$ 8,268.97
◆ Service Connection Lateral (1-8" ext.) @ \$1,200.00 =	\$ 1,200.00
◆ Total Final Assessment =	\$ 12,918.97

The District agrees:

- (a) The above described Property will be included in Assessment District 2001-1, and
- (b) The District will annex described Property to CCSD#1 following City annexation, and
- (c) The Owners will be given the opportunity to pay the final assessment in semi-annual installments, with interest, over a period of twenty years, and
- (d) The District agrees to apply an exemption of the remaining 40 acres as long as Property remains wilderness for use as the Boy Scout Camp, with the understanding that the \$1,000.00 per acre Area Benefit will be applied to the exempt 40 acres in the amount of \$40,000.00, should development occur in the future, and
- (e) The District will charge a System Development Charge (SDC) prior to connection, in the amount of \$22,000.00, which is based upon history of water usage with current facilities, and
- (f) The monthly usage will be considered 10 Equivalent Dwelling Units (EDU), currently at \$22.00 per month, for a total monthly charge of \$220.00, and
- (g) Following annexation proceedings, standard Surface Water Management fees will be determined and billed accordingly.

The Owners agree, on behalf of themselves and all future owners of the Property, that:

- (a) The Property shall be included in Assessment District 2001-1 and assessed for its share of the costs of the sanitary sewer system improvements on the same basis as all other parcels which are included in Assessment District 2001-1, excepting \$40,000.00 of Area Benefit, which will become due and payable as a Collection Sewer Charge should this Property convert from wilderness, to development property, and

- (b) The Owners will not oppose the levying of final assessment of the Property for its proportionate share of the costs of the sanitary sewer system improvements within Assessment District 2001-1, and
- (c) The Owners and all future owners of the Property shall pay the charges imposed by the District for sanitary sewer service and surface water management, in addition to the assessment, and shall be subject to the Rules and Regulations of the District, and
- (d) The Owners acknowledge that they were not notified at the time of the formation of Assessment District 2001-1 and that they were not given an opportunity to remonstrate against the formation of Assessment District 2001-1 and it is only at their request for the Property benefit that they now be included in the Assessment District 2001-1, and
- (e) Owners agree to annex to both the City of Happy Valley and Clackamas County Service District No. 1.

To induce the District to include the Property in Assessment District 2001-1, the Owners, on behalf of themselves and all future owners of the Property, hereby waive the right to contest or object to:

- ◆ the lack of notice of formation, and
- ◆ the lack of opportunity to remonstrate, and
- ◆ any and all remonstrances;

Further, the Owners request inclusion of the Property in Assessment District 2001-1, the District and the assessment of the Property for the costs of the sanitary sewer system improvements, including any and all defects in the procedures for including the Property in the District and imposing the assessment against the Property.

NOTICE TO OWNERS AND SUBSEQUENT PURCHASERS

FINAL ASSESSMENT SHALL BE RECORDED IN THE CLACKAMAS COUNTY DEED RECORDS AND SHALL BIND ALL OWNERS OF ANY INTEREST IN THE PROPERTY, INCLUDING SUBSEQUENT PURCHASERS. ACQUISITION OF AN INTEREST IN THE PROPERTY AFTER THIS COVENANT IS SIGNED CONSTITUTES CONSENT TO THIS COVENANT, AND ALL PERSONS WHO OWN INTERESTS IN THE PROPERTY AFTER THE FINAL ASSESSMENT IS RECORDED SHALL BE BOUND BY THIS COVENANT.

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

Ronald W. Garland _____

Ronald W. Garland Scout Executive
 Print Name Title Print Name Title

STATE OF OREGON)
) ss.
 County of Clackamas)

Personally appearing the above named Ronald W. Garland, as Scout Executive of Cascade Pacific Council Boy Scouts of America and acknowledged the foregoing instrument to be _____ voluntary act and deed on this 16th day of October, 2003.



Annette M. Mason
 Notary Public for Oregon
 My Commission Expires: 03/11/07

STATE OF OREGON)
) ss.
 County of Clackamas)

R. Kent Squires
 R. Kent Squires, Director
 Clackamas County Service District No. 1

Personally appearing the above named R. Kent Squires, as Director of Clackamas County Service District No. 1 and acknowledged the foregoing instrument to be _____ his _____ voluntary act and deed on this 22 day of October, 2003.



Kathy E. Frasier
 Notary Public for Oregon
 My Commission Expires: 9/18/07

(2)

After Recording Return to:
Clackamas County Service District No. 1
9101 SE Sunnybrook Blvd., Suite 441
Clackamas, OR 97015

Clackamas County Official Records
Sherry Hall, County Clerk

2003-162734



\$16.00

L-ASMTL Cnt=1 Stn=5 LYNN
\$5.00 \$11.00

12/16/2003 12:43:55 PM

NOTICE OF FINAL ASSESSMENT
Sanitary Sewer Assessment

Assessment District 2001-1
North Clackamas Service Area
Clackamas County Service District No. 1

Legal Owners: CASCADE PACIFIC COUNCIL BOY SCOUTS AMERICA
ATTN: DIRECTOR OF CAMPING

Mailing Address: 2145 SW NAITO PARKWAY
PORTLAND, OR 97201

Property Site Address: 11282 SE 147TH AVE

Tax Lot #: 12E36B 00100

Deed Reference #

2002 Assessed Value: \$1,288,171
2002 Real Market Value \$1,463,216

Area Benefit:

3.4500 Benefited Acres @ \$1,000.00 per Acre = \$3,450.00

Proximity to Service: Minimum = 15,000 Sq Ft

15,000 Square Feet @ \$0.5512646 per Sq Ft = \$8,268.97

Service Connections:

1 Each @ \$1,200.00 per lateral = \$1,200.00

Total Assessment = \$12,918.97

**CLACKAMAS COUNTY
SATISFACTION OF LIEN**

PROPERTY DESCRIPTION 12E36B 00100

ORDER NUMBER AND DATE 2003-237, NOVEMBER 26, 2003

DATE PAID 04/08/2004

PROJECT DESCRIPTION ASSESSMENT DISTRICT 2001-1

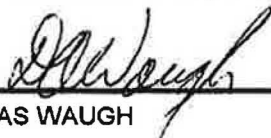
NAME ON ORIGINAL LIEN CASCADE PACIFIC COUNCIL BOY SCOUTS AMERICA

CURRENT NAME CASCADE PACIFIC COUNCIL BOY SCOUTS AMERICA

WATER ENVIRONMENT SERVICES ACCT. # 90444

The assessment for the above described property is fully paid, satisfied and discharged.

WATER ENVIRONMENT SERVICES
formerly Clackamas County Department of Utilities



DOUGLAS WAUGH
FINANCE MANAGER

RECORDING NUMBER 2003-162734

RECORDING DATE 12-16-03

After recording, return to:

Water Environment Services
PO Box 280
Oregon City, OR 97045

Clackamas County Official Records
Sherry Hall, County Clerk

2004-034193



\$16.00

L-ASMTLS Cnt=1 Stn=5 LYNN
\$5.00 \$11.00

04/20/2004 03:29:26 PM

EXHIBIT B

CHICAGO TITLE 472513508494EE-CM

AFTER RECORDING RETURN TO:

Scouter's Mountain, LLC, an Oregon limited liability company
Po Box 61426
Vancouver, WA 98666

SEND TAX STATEMENTS TO:

SAME AS ABOVE

Clackamas County Official Records Sherry Hall, County Clerk	2017-030854
	05/08/2017 03:28:01 PM
D-D Cnt=1 Stn=0 STEPHEN	
\$30.00 \$16.00 \$10.00 \$22.00	\$78.00

11282 SE 147th Avenue, Happy Valley, OR 97086

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SPECIAL WARRANTY DEED - STATUTORY FORM
(INDIVIDUAL or CORPORATION)

Cascade Pacific Council, Boy Scouts of America, an Oregon nonprofit corporation, Grantor, conveys and specially warrants to Scouter's Mountain, LLC, an Oregon limited liability company, Grantee, the following described real property free and clear of encumbrances created or suffered by the grantor except as specifically set forth below:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

The true consideration for this conveyance is Nine Million One Hundred Thirty-Nine Thousand Nine Hundred Fifty-Eight And 70/100 Dollars (**\$9,139,958.70**).

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

SPECIAL WARRANTY DEED - STATUTORY FORM

(continued)

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated 5/6/17; if a corporate grantor, it has caused its name to be signed by order of its board of directors.

Cascade Pacific Council, Boy Scouts of America, an Oregon nonprofit corporation

BY: Matthew Devore
Matthew Devore,
Scout Executive/CEO

State of OR
County of Clatsop

This instrument was acknowledged before me on May 6th, 2017 by Matthew S. Devore, Scout Executive/CEO of Cascade Pacific Council, Boy Scouts of America, an Oregon nonprofit corporation

[Signature]
Notary Public - State of Oregon

My Commission Expires: 7-7-2019



EXHIBIT "A"

Legal Description

A tract of land located in the Northeast One-Quarter and the Northwest One-Quarter of Section 36, Township 1 South, Range 2 East, Willamette Meridian, City of Happy Valley, Clackamas County, Oregon and being more particularly described as follows:

Beginning at the North One-Quarter corner of said Section 36, thence along the north line of the Northeast One-Quarter of said Section 36, South 87°26'47" East 1057.11 feet to a 3/4 inch iron pipe; thence continuing along said north line, South 87°31'10" East 82.28 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "COMSTOCK NW" at the northwesterly corner of Parcel 2 of Partition Plat Number 1995-060; thence along the northerly west line of said Parcel 2, South 01°51'15" West 341.33 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." and the True Point of Beginning; thence continuing along said west line, South 01°51'15" West 196.47 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 88°36'45" West 175.54 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 25°30'46" West 154.37 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 10°27'17" West 568.61 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 00°19'37" West 203.09 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 08°26'41" West 142.90 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 45°21'04" West 342.51 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 01°08'02" East 318.96 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 43°26'31" West 214.01 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 86°17'54" West 133.14 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 56°24'20" West 201.55 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 39°39'59" West 333.45 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 82°52'20" West 158.44 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 08°00'19" West 101.98 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 01°16'18" East 277.20 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 83°14'44" East 327.89 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 18°36'10" East 212.55 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 87°05'09" East 491.39 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 43°08'19" East 602.82 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." on the westerly line of Exhibit B of Document Number 2015-074476; thence along said westerly line, South 01°49'16" West 480.35 feet to a 1 inch iron pipe on the southerly line of the Northeast-One Quarter of said Section 36; thence along said southerly line North 87°05'09" West 1058.71 feet to a 5/8 inch iron rod at the Center One-Quarter corner of said Section 36; thence along the south line of the Northwest One-Quarter of said Section 36,

EXHIBIT "A"

Legal Description

North 88°46'59" West 835.58 feet to a 5/8 inch iron rod at the southeast corner of Parcel 2 of Partition Plat Number 1997-082; thence along the east line of said Plat, North 02°31'43" East 459.88 feet to a 5/8 inch iron rod at the northeast corner of Parcel 1 of said Plat; thence along the north line of said Parcel 1, North 88°46'40" West 443.18 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." on the easterly right-of-way line of SE 147th Avenue (30.00 feet from centerline); thence along said easterly right-of-way line, North 02°31'01" East 201.54 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." on the northeasterly right-of-way line of SE 145th Avenue (30.00 feet from centerline); thence along said northeasterly right-of-way line, North 59°51'56" West 32.89 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." on the easterly line of Document Number 96-05954; thence along said easterly line, North 01°40'43" East 418.86 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." on the southerly line of Document Number 2011-026955; thence along the southerly line of said Deed, North 80°02'47" East 607.91 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS"; thence continuing along said southerly line and the southerly easterly line thereof along the following courses: along a non-tangential curve to the left with a Radius of 402.17 feet, Delta of 18°06'20", Length of 127.09 feet, and a Chord of North 73°16'21" East 126.56 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence North 64°13'11" East 114.89 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence along a non-tangential curve to the right with a Radius of 1506.13 feet, Delta of 07°41'37", Length of 202.24 feet, and a Chord of North 72°56'21" East 202.09 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence along a curve to the left with a Radius of 1336.04 feet, Delta of 07°31'19", Length of 175.40 feet, and a Chord of North 73°01'30" East 175.27 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence along a curve to the right with a Radius of 1654.89 feet, Delta of 09°03'40", Length of 261.71 feet, and a Chord of North 73°47'41" East 261.44 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence along a curve to the left with a Radius of 196.38 feet, Delta of 27°50'13", Length of 95.41 feet, and a Chord of North 64°24'24" East 94.47 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence along a curve to the right with a Radius of 217.76 feet, Delta of 21°11'36", Length of 80.55 feet, and a Chord of North 61°05'06" East 80.09 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence North 71°40'54" East 149.90 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence along a non-tangential curve to the left with a Radius of 145.66 feet, Delta of 41°48'16", Length of 106.28 feet, and a Chord of North 45°44'13" East 103.94 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence North 24°50'05" East 160.89 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence North 11°17'16" East 40.42 feet; thence North 01°07'22"

EXHIBIT "A"

Legal Description

West 148.45 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence North 06°32'29" East 91.48 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "MCGRATH 79419PLS", thence North 01°54'47" West 61.64 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence leaving said southeasterly line North 90°00'00" East 144.35 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence along a non-tangential curve to the right with a Radius of 325.50 feet, Delta of 04°29'09", Length of 25.48 feet, and a Chord of North 50°27'50" East 25.48 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence along a curve to the left with a Radius of 14.50 feet, Delta of 82°04'45", Length of 20.77 feet, and a Chord of North 11°40'02" East 19.04 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 29°22'20" West 16.08 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 60°37'40" East 49.00 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence South 29°22'20" East 14.26 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence along a curve to the left with a Radius of 14.50 feet, Delta of 84°44'38", Length of 21.45 feet, and a Chord of South 71°44'39" East 19.54 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence along a curve to the right with a Radius of 325.50 feet, Delta of 24°06'58", Length of 137.01 feet, and a Chord of North 77°56'31" East 136.00 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 90°00'00" East 61.38 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence along a curve to the right with a Radius of 325.50 feet, Delta of 26°51'40", Length of 152.60 feet, and a Chord of South 76°34'10" East 151.21 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence along a curve to the left with a Radius of 14.50 feet, Delta of 82°29'47", Length of 20.88 feet, and a Chord of North 75°36'47" East 19.12 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR."; thence North 34°21'53" East 4.10 feet to the True Point of Beginning.

The above described tract of land contains 59.82 acres, more or less.

Permitted Exceptions:

Regulations, levies, liens, assessments, rights of way and easements of Clackamas County Service District No. 1.

Easement for the purpose shown below and rights incidental thereto as set forth in a document:

Purpose: To take water and maintain water system

Recording Date: September 5, 1957

Book: 530

Page: 210

Right-of-Way Declaration, including the terms and provisions thereof;

Recording Date: January 14, 1966

Book: 668

Page: 18

Easement Agreement, including the terms and provisions thereof;

Recording Date: February 5, 1980

Recording No.: 80-004237

Easement for the purpose shown below and rights incidental thereto as set forth in a document:

In favor of: Mt. Scott Water District

Purpose: Water pipelines

Recording Date: May 22, 1998

Recording No.: 98-045283

Covenant Running With the Land, including the terms and provisions thereof;

Recording Date: November 6, 2003

Recording No.: 2003-148631

Covenant Running With the Land, including the terms and provisions thereof;

Recording Date: November 6, 2003

Recording No.: 2003-148632

Easement for the purpose shown below and rights incidental thereto as set forth in a document:

In favor of: Sunrise Water Authority

Purpose: Waterline

Recording Date: March 17, 2004

Recording No.: 2004-022006

Declaration of Covenants, Conditions and Restrictions For Transfer of Excess Development Rights, including the terms and provisions thereof;

Recording Date: May 3, 2011

Recording No.: 2011-026434

Easement for the purpose shown below and rights incidental thereto as set forth in a document:

In favor of: Adjacent property owner

Purpose: Vehicular and Pedestrian Access

Recording Date: May 5, 2011

Recording No.: 2011-026956

Replacement Sewer Line Easement and Joint Maintenance Agreement, including the terms and provisions thereof;

Recording Date: May 5, 2011

Recording No.: 2011-026957