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BOARD OF COUNTY COMMISSIONERS
PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

AGENDA

Revised

COVID-19 Public Discussion Item

Thursday, December 17, 2020 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2020-85

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

***** Wildfire Update**

***** COVID-19 Update**

COVID -19 PUBLIC DISCUSSION ITEM *(The following items will be individually presented by County staff or other appropriate individuals. Public wishing to comment on a discussion item will be prompted how to do that when the time is right.)*

1. *Approval of an Addendum No 6 to Resolution No. 2020-14 Declaring a Local State of Emergency Regarding the COVID-19 (Stephen Madkour, County Counsel)

I. HOUSING AUTHORITY CONSENT AGENDA

1. Approval to execute a Construction contract between the Housing Authority and Grace Point Contracting, LLC for Clackamas Height Skirting project
2. Approval to execute an Intergovernmental Agreement between the Housing Authority of Clackamas County and Behavioral Health to fund support services to residents impacted by COVID-19
3. Requesting approval to respond to Oregon Housing and Community Services Notice of Funding Availability for a loan of resources to support Publicly Supported Housing
4. Approval of Resolution No. 1951 Authorizing Metro Bond Funds Loan Financing, Project-Based Section 8 Vouchers and Related Matters, for the Fuller Road Station Project
5. Approval of Resolution No 1952 Authorizing the Execution, Acknowledgement and Delivery of Documents for the Webster Road Redevelopment Project
6. Approval to write off uncollectible rents, late charges and maintenance expenses for the second quarter of Fiscal Year 2021
7. Project Turnkey Purchase and Sale Agreement Approval

II. READING AND ADOPTION OF PREVIOUSLY APPROVED LAND USE ORDINANCE

(No public testimony on this item)

1. Adoption of previously approved zoning and development ordinance amendments ZDO-273 – Short-Term Rentals (Nate Boderman, County Counsel)

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

1. Second Reading on Ordinance and Board Order Temporarily Amending Clackamas County Code Section 2.05.160.2 to Allow for Vacation Accrual for Non-Represented Employees during Covid 19 Pandemic and Wildfire Emergency and Declaring an Emergency. (Stephen Madkour, County Counsel)
2. Approval of a Resolution for Exemption and Authorization to use the Request for Proposals Method to Obtain a Progressive Design Builder for the Tri-City WRRF Outfall Project - *Procurement*

IV. PUBLIC DISCUSSION ITEMS *(The following items will be individually presented by County staff or other appropriate individuals. Public wishing to comment on a discussion item will be prompted how to do that when the time is right.)*

1. Acceptance of Land Donation for Parks Purposes Made by John and Marilee Wetten and Delegation of Authority to County Counsel to Complete Real Property Transaction (Stephen Madkour, County Counsel)

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

A. Health, Housing & Human Services

1. Approval for a Revenue Agreement with Oregon Health Authority for the Alternative Payment Methodology and Advanced Care Model (APCM) Program – *Health Centers*
2. Approval to Execute an Intergovernmental Agreement with Housing Authority of Clackamas County to Fund Support Services for Residents Impacted by COVID-19 – *Behavioral Health*
3. Approval of a Sub-recipient Agreement with Clackamas Women’s Services (NHA) and the Community Development Division for the CDBG Children’s Programming FY20-21 – *Community Development*
4. Approval of a Personal Services Contract between Clackamas County and Henry Schein for the Dental Equipment for the New Sandy Health Center Project – *Community Development*
5. Approval of Amendment #2 to the Clackamas ASA Ambulance Service Contract – *Public Health*

6. Approval for Professional Services Agreements for temporary physician staff with CHG Companies, Inc., dba CompHealth, Fusion Healthcare Staffing, LLC, KPG Healthcare, LLC, and Maxim Healthcare Staffing Services, Inc. - *Procurement*

B. Department of Transportation & Development

1. Approval of Quitclaim Deed and Bill of Sale between Clackamas County and Water Environment Services Pertaining to the Utilities Building at 902 Abernethy Road
2. Approval of an Agreement with Confluence Environment Center for an Americorps Member
3. A Board Order Approving the Transfer of the Collection Service Franchise and Service Area Held by Bliss Sanitary Service, Inc. through a Change in Control
4. A Board Order Approving Waste Management Fee Adjustments for the Franchised Operations of the Clackamas County Garbage & Recycling Transfer Station
5. Approval of an Intergovernmental Agreement with Metro to Implement the FY 20-21 Annual Waste Reduction and Recycle at Work Program
6. Authorization to Purchase Quantity 11 Dodge vehicles for the Clackamas County Sheriff's Office - *Procurement*

C. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Request by the Clackamas County Sheriff's Office for approval of a 2nd Amendment to the Intergovernmental Agreement (IGA) with Tri-Met for Police Services– *Sheriff's Office*
3. Request by the Clackamas County Sheriff's Office to approve the 4th Amendment to the Intergovernmental Agreement (IGA) with the Oregon Marine Board– *Sheriff's Office*
4. Request by the Clackamas County Sheriff's Office to Accept a Grant from Oregon Impact for reimbursement related to Pedestrian Safety Enforcement – *Sheriff's Office*
5. Request by the Clackamas County Sheriff's Office to Accept a Grant from Oregon Impact for reimbursement related to Driving under the Influence of Intoxicants High Visibility Enforcement – *Sheriff's Office*
6. Approval of the Clackamas County Investment Policy – *County Treasurer*

D. Juvenile

1. Approval of Personal Services Contract Amendment #5 with Parrott Creek Child and Family Services to Provide Sex Offender Treatment to Youth – *Procurement*

E. County Counsel

1. Approval of an Amendment to an Intergovernmental Agreement between Clackamas and Multnomah Counties for HIPAA and Part 2 Officer
2. Approval of a Board Order Scheduling a Public Hearing regarding the Dissolution of the Shady Dell Water Control District

F. Business & Community Services

1. Approval of Local Grant Agreement Amendment #3 between Clackamas County and Micro Enterprise Services of Oregon (MESO) for MESO to provide a small grants program on behalf of Clackamas County in support of the local business community impacted by the COVID-19 pandemic
2. Approval of State of Oregon, Department of Administrative Services, Grant Agreement with Clackamas County to provide CARES Act funding for grants to the local small business community impacted by the COVID-19 pandemic

G. Technology Services

1. Authorization to Contract for the Microsoft Enterprise Agreement for Software and Licensing from Dell Marketing L.P. - *Procurement*

H. Disaster Management

1. Approval of FY20 State Homeland Security Grant Program Application to the State of Oregon for Six Projects
2. Approval of a Master Subscription Agreement with ESO for an electronic patient care records (ePCRs) software - *Procurement*

I. Department Human Resources

1. Deferred Compensation Plan Document Update

VI. WATER ENVIRONMENT SERVICES CONSENT AGENDA

1. Approval of Quitclaim Deed and Bill of Sale between Clackamas County and Water Environment Services Pertaining to the Utilities Building at 902 Abernethy Road
2. Approval of an Intergovernmental Agreement between the City of Gladstone and Water Environment Services Pertaining to Joint Collection System Work
3. Approval of an Intergovernmental Agreement with Clackamas County, Health, Housing and Human Services – Public Health
4. Approval of a Contract between Water Environment Services and Tribeca Transport, LLC. for the Supernatant Hauling at the Boring Sewage Treatment Plant – *Procurement*
5. Approval of Contract between Water Environment Services and Hach Company to provide Flow Meters – *Procurement*

VII. PUBLIC 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.)*

VIII. COUNTY ADMINISTRATOR UPDATE

IX. 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>

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

In the Matter of Declaring a Local
State of Emergency and Declaring
Emergency Measures



ADDENDUM No. 6 to
RESOLUTION No. 2020 - 14
Page 1 of 2

1. By way of Board Order 2020-09, Clackamas County formally declared a state of emergency for Clackamas County, effective on the 2nd day of March 2020, at 10:25 a.m., for the entire County. That declaration of emergency was continued by way of Resolution No 2020-14.
2. A First Addendum to Resolution No. 2020-14, was approved by the Board of County Commissioners on March 24, 2020 where the Board found that the conditions giving rise to the declaration of emergency remained in existence and it was necessary to extend the duration of the declaration of emergency until June 30, 2020.
3. A Second Addendum to Resolution No. 2020-14, was approved by the Board of County Commissioners on April 9, 2020, where the Board imposed additional emergency measures.
4. A Third Addendum to Resolution No. 2020-14, was approved by the Board of County Commissioners on June 11, 2020, where the Board extended the declaration of emergency to July 31, 2020.
5. A Fourth Addendum to Resolution No. 2020-14 was approved by the Board of County Commissioners on July 23, 2020, where the Board extended the declaration of emergency to September 12, 2020, and imposed additional emergency measures numbered 13 and 14.
6. A Fifth Addendum to Resolution No. 2020-14 was approved by the by the Board of County Commissioners on September 10, 2020, where the Board extended the declaration of emergency to January 8, 2021.
7. By way of this Sixth Addendum to Resolution No. 2020-14, the Board of County Commissioners finds that the conditions giving rise to the declaration of emergency remain in existence and it is therefore necessary to extend the duration of the declaration of emergency and all previously imposed emergency measures until February __, 2021.

Moreover, the Board of County Commissioners finds that there are now approved vaccines coming to Oregon and eventually to counties and limited resources for dispensing of the vaccines. Now that there are approved vaccines for COVID, which are critical to the economy, reopening of schools and recovery, Clackamas County will require resources for vaccination clinics for any populations that are expected by the State of Oregon. The resources include but are not limited to funding, vaccine, supplies, etc.

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IT IS FURTHER ORDERED BY WAY OF THIS FOURTH ADDENDUM that:

Any individual or entity that violates any provision of any emergency measures is subject to a \$500 fine for each offense.

All previously declared emergency measures (see attached) shall remain in effect for the duration of the declaration of emergency with the following additional terms and measures:

DATED this 17th day of December 2020.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

December 17, 2020

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval to execute a Construction contract between the Housing Authority and Grace Point Contracting, LLC for Clackamas Height Skirting project

Purpose/Outcomes	Approval to execute a Construction contract between the HACC and Grace Point Contracting, LLC for skirting project
Dollar Amount and Fiscal Impact	One-time expense not to exceed \$156,200.00
Funding Source(s)	HUD Federal Capital Grant Funds - No County General Funds are involved
Duration	180 days from date of notice to proceed
Previous Board Action	none
Strategic Plan Alignment	1. Sustainable and affordable housing 2. Ensure safe, healthy and secure communities
Counsel Review	Andrew Naylor, September 23, 2020
Procurement Review	Per Resolution No. 1936, HACC adopted the Local Contract Review Board rules for HACC Procurements. HACC conducts its own procurements following its procurement handbook
Contact Person	Jill Smith, HACC Executive Director (503) 742-5336
Contract Number	9972

BACKGROUND:

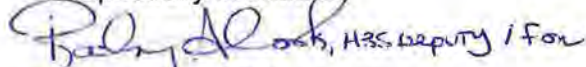
The Housing Authority of Clackamas County (HACC), a division of the Health, Housing and Human Services Department (H3S), requests approval to execute a construction contract between HACC and Grace Point Contracting, LLC for Clackamas Heights skirting project. HACC has budgeted to remove and replace the skirting on all units at Clackamas Heights. The project will bring the skirting condition up to current HUD standards. HACC publicly advertised for bids to repair and bring the foundation skirting back to its original condition with new materials. Bringing the foundation skirting back to original condition in a timely manner will allow HACC to maintain its High Performer status and prevent safety hazards.

Grace Point Contracting, LLC was selected through a competitive Invitation for Bids process. The scope of work includes removal of any rotten skirting materials, install new foundation skirting material, insulate as required and paint/seal.

RECOMMENDATION:

Staff recommends the Board approve the contract. Staff also recommends the Board authorize Richard Swift, H3S Director, to sign the contract on behalf of the Housing Authority Board of Commissioners.

Respectfully submitted,



Richard Swift, Director
Health, Housing and Human Services

Healthy Families. Strong Communities.

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

www.clackamas.us

FORM OF CONTRACT
PROJECT #20009
Contract #c022-20
H3S Contract #9972

THIS AGREEMENT made this 24 day of November in the year 2020 by and between **GRACE POINT CONTRACTING, LLC. (Contractor)**, a business entity authorized to do business in the State of Oregon, hereinafter called the "Contractor," and **the Housing Authority of Clackamas County** hereinafter call the "PHA."

WITNESSETH, that the Contractor and the PHA for the consideration stated herein mutually agreed as follows:

ARTICLE 1. Statement of Work. The Contractor shall furnish all labor, material, equipment and services, and perform and complete all work required for **CLACKAMAS HEIGHTS SKIRTING PROJECT**, a prevailing wage project, #20009, in strict accordance with the Scope of Work referred to herein, which said Scope of Work and any Addenda are incorporated herein by reference and made a part hereof.

ARTICLE 2. The Contract Price. The PHA shall pay the Contractor for the performance of the Contract, in current funds, subject to additions and deductions as provided in the Scope of Work, a sum not to exceed one hundred fifty six thousand two hundred dollars and zero cents. **(\$156,200.00).**

ARTICLE 3. Contract Dates. The following critical dates are hereby set for the CLACKAMAS HEIGHTS SKIRTING PROJECT. Time is of the essence.

- A. **START DATE: January 4, 2021**
- B. **SUBSTANTIAL COMPLETION DATE: N/A**
- C. **FINAL COMPLETION DATE: July 2, 2021**

ARTICLE 4. Contract Documents. The Contract shall consist of the following component parts:

- a. This Agreement
- b. Bid Documents
- c. HUD General Conditions
- d. Addendum(s), if any
- e. Special Conditions
- f. Scope of Work

This instrument, together with the other documents enumerated in this Article 4, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, form the Contract. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this Article 4 shall govern, except as otherwise specifically stated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Contract which each modifies.

ARTICLE 5. Responsibility for Damages/Indemnity. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under the Contract, or from any act, omission or neglect of the Contractor, its subcontractors, employees, guests, visitors, invitees and agents.

To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by PHA) and hold harmless the PHA and its elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay described in this Article 5; (b) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article 5.

In claims against any person or entity indemnified under this Article 5 by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 5 shall not be limited on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 6. No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as described in ORS 279C.100, the employee shall be paid at least time and a half pay for (1) all overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday or (2) all overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and all work the employee performs on Saturday and on any legal holiday specified in ORS 279C.540. All subject employers working under this contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. Contractor shall comply with the prohibition set forth in ORS 652.220, compliance of which is a material element of the Contract and a failure to comply is a breach entitling PHA to terminate the Contract for cause.

ARTICLE 7. 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 PHA 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.

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.

ARTICLE 8. The Contractor agrees to pay daily, weekly, weekend and holiday overtime as required by ORS 279C.520.

ARTICLE 9. The Contractor agrees that all employees/workers working on this project, whether employed by the Contractor or any subcontractor, shall be given written notice of the number of hours per day and days per week they may be required to work.

ARTICLE 10. The Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

ARTICLE 11. The Contractors agrees to pay no less than the applicable state or federal prevailing wage rate, whichever is higher per ORS 279C.830(1)(b).

ARTICLE 12. The Contractor agrees to have a performance bond and payment bond in place before starting any work on the project per ORS 279C.380. The Contractor agrees to have filed a public works bond with the Construction Contractors Board before starting any work on the project.

ARTICLE 13. The Contractor agrees that every subcontract shall include a provision requiring all subcontractors to have a public works bond filed with the Construction Contractors Board before starting any work on the project per ORS 279C.830.

ARTICLE 14. Contractor certifies that both it and any of its subcontractors are (1) Registered to conduct business in the state of Oregon; (2) are actively licensed with the Oregon Construction Contractors Board; (3) are bonded and insured in amounts that meet or exceed the county's minimal requirements.

ARTICLE 15. CONTRACTOR shall:

- (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.
- (2) Pay all contributions or amounts due the State Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.
- (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.
- (4) Pay to the Revenue Department all sums withheld from the employees pursuant to ORS 316.167.

ARTICLE 16. The Contractor shall include in each subcontract those provisions required under ORS 279C.580.

ARTICLE 17. For demolition tasks, if any, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

ARTICLE 18. Tax Laws.

18.1 The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Agreement, 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.

18.2 Contractor represents and warrants that, throughout the duration of this Agreement 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 Agreement. Further, any violation of Contractor's warranty in this Agreement 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 Agreement. Any violation shall entitle PHA to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this

Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

- a. Termination of this agreement, 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 PHA's setoff right, without penalty; and
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. PHA shall be entitled to recover any and all damages suffered as the result of PHA's breach of this Agreement, 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 PHA may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

ARTICLE 19 Liquidated damages

The Contractor acknowledges that PHA will sustain damages as a result of the Contractor's failure to substantially complete the work authorized under this Contract and in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the project, and costs associated with Contract administration and use of temporary facilities.

- 10.1 Liquidated Damages shall be as follows if the actual Final Completion exceeds the required date of Final Completion:
 - 10.1.1. \$500.00 per each Calendar day after the set Final Completion date.

ARTICLE 20. Additional Terms

- (1) **Execution and Counterparts.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.
- (2) **Integration.** The Contract Documents constitute the entire agreement between the Parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.
- (3) **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.
- (4) **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.
- (5) **No attorney fees.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel.
- (6) **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.
- (7) **No Third Party Beneficiaries.** PHA 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.
- (8) **Waiver.** The failure of PHA to enforce any provision of this Contract shall not constitute a waiver by PHA of that or any other provision.
- (9) **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.
- (10) **Responsibility for Taxes.** Contractor is solely responsible for payment of any federal, state, or local taxes required as a result of the Agreement or the Work including, but not limited, to payment of the corporate activity tax imposed under enrolled HB 3427 (2019 Oregon regular legislative session).

IN WITNESS WHEREOF, the parties hereto have caused this Instrument to be executed in **three** original counterparts as of the day and year first above written.

Grace Point Contracting, LLC.

(Contractor)


(Authorized Representative's Signature / Date)

Ulian Julian Erofeeff, Owner

(Authorized Representative's Name / Title - Print or Type)

47-2858317

(Federal I.D. Number)

375 N 1st Street, Woodburn, OR 97071

(Business Address - Street, City, State, Zip)

205401

(State of Oregon CCB License Number)

**HOUSING AUTHORITY OF
CLACKAMAS COUNTY BOARD**

Commissioner Jim Bernard, Chair

Commissioner Sonya Fischer

Commissioner Ken Humberston

Commissioner Paul Savas

Commissioner Martha Schrader

Resident Commissioner Ann Leenstra

Signing on Behalf of the Housing Authority Board

Richard Swift, Director

Health, Housing & Human Services Department

**HOUSING AUTHORITY OF CLACKAMAS
COUNTY**

CERTIFICATION

I Ulian Julian Erofeeff
certify that I am the Owner
at the corporation named as Contractor herein, that Ulian Julian Erofeeff
who signed this Contract on behalf of the Contractor, was then Owner
of said corporation; that said Contract was duly signed for and in behalf of said corporation by
authority of its governing body, and is within the scope of its corporate powers.

 11/24/20
(Authorized Representative's Signature / Date)

Ulian Julian Erofeeff, Owner

(Authorized Representative's Name / Title - Print or Type)

(Print or type the names underneath all signatures)

December 17, 2020

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval to execute an Intergovernmental Agreement between the Housing Authority of Clackamas County and Behavioral Health to fund support services to residents impacted by COVID-19

Purpose/Outcomes	Approval to execute an Intergovernmental Agreement between Housing Authority of Clackamas County and Health, Housing and Human Services to fund support services to residents impacted by COVID-19
Dollar Amount and Fiscal Impact	Not to exceed \$61,300.00 one-time funding
Funding Source	Oregon Health Authority (State funding)
Duration	December 17, 2020 – December 30, 2021
Previous Board Action	N/A
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Grow a vibrant community
Counsel Review	November 23, 2020; Andrew Naylor
Contact Person	Jill Smith, HACC Executive Director (503) 502-9278
Contract No.	Contract No. 9933

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department (H3S), requests approval to enter into an Intergovernmental Agreement (IGA) with Behavioral Health Division (BHD), to fund additional support services for HACC residents. Consistent with Oregon Health Authority (OHA) data made available to each county, the COVID-19 pandemic is having a disproportionate impact on communities of color (BIPOC) and vulnerable populations, including older adults (55 and older), in particular in terms of higher rates of COVID-19 illness and mortality. In addition to the physical health impacts, OHA and local counties anticipate and are seeing a surge in mental health and substance use treatment needs caused by the pandemic. This only further deepens the overall health and related economic health disparities for these communities across the state and within Clackamas County. OHA and local counties are also seeing a surge in individuals who may have never previously sought treatment for behavioral health concerns now seeking support for needs such as anxiety, depression and substance misuse.

As such, the Emergency Board approved \$25 million in one-time investments to enhance behavioral health services for individuals impacted by COVID-19, with a focus on communities of color, Oregon's federally recognized tribes and vulnerable populations, with a specific focus area on older adults. The investment will focus on crisis and recovery services, emotional support line capacity, outreach and engagement and access to treatment services.

\$11 million is being dispersed to Community Mental Health Programs (CMHPs) to help respond to COVID-19 specific behavioral health needs through culturally and linguistically appropriate services.

Clackamas County Behavioral Health Division (CCBHD) in their role as the Community Mental Health Program has received funding to serve BIPOC and Older Adults in our community. Through our partnership with BHD, HACC will receive \$61,300.00 to provide the following services:

Healthy Families. Strong Communities.

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

Clackamas.us/h3s

- I-pad's for our Resident Advisory Board, which will allow resident to participate in HACC activities as well as provide valuable input on HACC's policies and procedures
- Computers for common space at Hillside Manor, allowing residents access to supports and services due to COVID-19 social distancing restrictions
- Expand and improve garden access for seniors and disabled residents at our Clackamas Heights property, ensuring residents have access to grow their own food and work in the outdoors
- Transportation voucher for seniors transportation needs that are not covered by other resources
- I-pad's for HACC residents to use, utilizing the free Wi-Fi in the community and around our community centers
- Laptops for residents to access telehealth appointments, communication with family, friends and supports.

RECOMMENDATION:

Staff recommends the Board approve the Intergovernmental Agreement between Behavioral Health and Housing Authority of Clackamas County. Staff also recommends the Board authorize Jill Smith, HACC Executive Director, to sign the IGA on behalf of the Housing Authority Board of Commissioners, and Richard Swift to sign on behalf of the Clackamas County Board of County Commissioners.

Respectfully submitted,

 Gabriel Alarcon, HHS Deputy / for

Richard Swift, Director
Health, Housing and Human Services

INTERGOVERNMENTAL AGREEMENT

BETWEEN

**CLACKAMAS COUNTY,
HEALTH, HOUSING AND HUMAN SERVICES DEPARTMENT,
BEHAVIORAL HEALTH DIVISION**

AND

HOUSING AUTHORITY OF CLACKAMAS COUNTY

Agreement #9933

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and **Housing Authority of Clackamas County** ("Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

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

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

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or **December 30, 2020**, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as **Exhibit A** and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed **sixty-one thousand three hundred dollars (\$61,300.00)** for accomplishing the Work required by this Agreement.
4. **Payment.** Payment is a one-time payment as specified in Section 3.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
 - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
6. **Termination.**
 - A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
 - B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall

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

- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance prohibited.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. **Indemnification.** Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

- 8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
- 9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received two (2) hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.
 - A. Kim Whitely, Older Adult Behavioral Health Specialist, or their designee will act as liaison for the County.

Contact Information:

Phone: 503-742-5315

Email: kwhitely@clackamas.us

Elizabeth Miller or their designee will act as liaison for the Agency.

Contact Information:

Phone: 503-655-8279

Email: EMiller@clackamas.us

10. General Provisions.

- A. Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the District's Project Manager.

- F. Hazard Communication.** Agency shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- G. Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.

- N. Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.
- U. No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

This Agreement consists of ten (10) sections plus the following exhibits that by this reference are incorporated herein:

- Exhibit A – Scope of Work
- Exhibit B – CMHP Service Element
- Exhibit C – Compensation
- Exhibit D – CMHP Required Federal Terms and Conditions
- Exhibit E – CMHP Required Provider Contract Provisions
- Exhibit F – Additional Federal Terms and Conditions

[Signature page follows]

SIGNATURE PAGE

EXHIBIT A SCOPE OF WORK

Background

Consistent with Oregon Health Authority (OHA) data made available to each county, the COVID-19 pandemic is having a disproportionate impact on communities of color (BIPOC) and vulnerable population, including older adults (55 and older), in particular in terms of higher rates of COVID-19 illness and mortality. In addition to the physical health impacts, OHA and local counties anticipate and are seeing a surge in mental health and substance use treatment needs caused by the pandemic. This only further deepens the overall health and related economic health disparities for these communities across the state and within Clackamas County. OHA and local counties are also seeing a surge in individuals who may have never previously sought treatment for behavioral health concerns now seeking support for needs such as anxiety, depression and substance misuse.

As such, the Emergency Board approved \$25 million in one-time investments to enhance behavioral health services for individuals impacted by COVID-19, with a focus on communities of color, Oregon's federally recognized tribes and vulnerable populations, with a specific focus area on older adults. The investment will focus on crisis and recovery services, emotional support line capacity, outreach and engagement and access to treatment services.

\$11 million is being dispersed to Community Mental Health Programs (CMHPs) to help respond to COVID-19 specific behavioral health needs through culturally and linguistically appropriate services.

Clackamas County Behavioral Health Division (CCBHD) in their role as the Community Mental Health Program has received funding to serve BIPOC and Older Adults in our community.

Statement of Work

Housing Authority of Clackamas County (HACC) shall purchase the following:

1. iPads for the resident advisory board (to improve board members' ability to more actively engage in the work of the board). Board members are all vulnerable residents who do not have access to technology and due to COVID-19, in-person board meeting have not been held. The purchases of these iPads will allow these residents to participate in the role of representing the needs of all tenants and advising HACC: 15 iPads x \$500 = \$7,500
2. Computers for common space at Hillside Manor (for residents/seniors who do not have personal computer access) allowing them to connect to supports and services due to COVID-19 social distancing restrictions: 2 computers x \$2000 = \$4,000
3. Clackamas Heights Garden (replace fencing, rebuild garden beds to include ADA accessible beds, to improve access for seniors and disabled residents and to ensure the garden remains a safe outdoor space for residents to grow their own food and stay active while COVID-19 social distancing restrictions remain in place): 10 garden beds + fencing x \$1,580 = \$15,800
4. Transportation vouchers (for senior residents' current transportation needs that are not covered by other resources): 50 vouchers x \$40 = \$2,000
5. I-pads for HACC residents as a check-out program (to access telehealth appointments, communication with family, friends, support systems, etc.). These computers are in a general common space and will also be available for resident to check-out and use at home or in the community centers: 20 I-pads x \$500 = \$10,000
6. Purchase laptops/computers for HACC residents to be distributed to twenty-two households, to access telehealth appointments, communication with family, friends, support systems, etc.: 22 x \$1,000 = \$22,000

Reporting Requirements

HACC shall submit a final report to CCBHD using the Older Adult CARES funding Report Template. Template to be provided by CCBHD.

Report will be submitted by January 4, 2021 to BHContractReporting@clackamas.us and MaryRum@clackamas.us.

Report shall include the following information:

- Description of service and/or activity
- Total Count of number of individuals served as a result of this service/activity including:
 - Numbers served by ethnicity (to the extent practicable)
 - Numbers served whose primary language is not English
 - Number of seniors served
- Services provided due to referral / connection from contact tracing Yes/No
- Total amount expended
 - ✓ Amount spent on administrative expenses;
 - ✓ Amount spent on budgeted personnel and services diverted to a substantially different use;
 - ✓ Amount spent on medical expenses;

EXHIBIT B
CMHP SERVICE ELEMENT

MHS 20 – NON-RESIDENTIAL MENTAL HEALTH SERVICES FOR ADULTS

1. Service Description

a. Definition

DSM 5 means The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), incorporated by reference herein, and is the 2013 update to the American Psychiatric Association's (APA) classification and diagnostic tool. The DSM serves as a universal authority for psychiatric diagnosis.

b. MHS 20 Services are:

- i.** Services delivered to Individuals diagnosed with serious mental illness or other mental or emotional disturbance posing a danger to the health and safety of themselves or others.
- ii.** Community-based services that shall include one or more of the following:
 - 1.** Use of standardized protocols and tools to identify the level of service need and intensity of care and coordination, addressing salient characteristics such as age, culture, and language;
 - 2.** Apply OHA approved, standardized level of care tools for Individuals diagnosed with serious and persistent mental illness at intervals prescribed by OHA;
 - 3.** Condition management and whole person approach to single or multiple conditions based on goals and needs identified by the Individual;
 - 4.** General outpatient services including, but not limited to, care coordination and case management;
 - 5.** Medication and medication monitoring;
 - 6.** Meaningful Individual and family involvement;
 - 7.** Rehabilitation services including Individual, family, and group counseling;
 - 8.** Coordinate and facilitate access to appropriate housing services and community supports in the Individual's community of choice, including rent subsidy; and
 - 9.** Other services and supports as needed for Individuals at the sole discretion of OHA.
- iii.** Agency shall provide Services, including but not limited to:
 - 1.** Outreach: Partner with healthcare providers and other social service partners who provide screening for the presence of behavioral health conditions to facilitate access to appropriate services;
 - 2.** Early Identification and Screening: Conduct periodic and systematic methods that identify Individuals with behavioral health conditions and potential physical health consequences of behavioral health conditions which consider epidemiological and community factors, as identified in the most recently submitted and approved Local Plan; and
 - 3.** Initiation and Engagement: Promote initiation and engagement of Individuals receiving services and supports, which may include but are not limited to:
 - a.** Brief motivational counseling; and

- b. Supportive services to facilitate participation in ongoing treatment.

2. Performance Requirements

Agency shall:

- a. Provide coordination of care services for Individuals living in residential treatment programs. The coordination of care shall include participation in the residential Provider's treatment planning process and in planning for the Individual's transition to outpatient services;
- b. Comply with Outpatient Services, as described in OAR 309-019-0100 through 309-019-0220, and Community Treatment and Supports, as described in OAR 309-032-0301 through 309-032-0890, as such rules may be revised from time to time; and
- c. Maintain a Certificate of Approval for the delivery of clinical services in accordance with OAR 309-008-0100 through OAR 309-008-1600, as such rules may be revised from time to time.

3. Reporting Requirements

All Individuals receiving MHS 20 Services with funds provided through this Agreement must be enrolled and that Individual's record maintained in the Measures and Outcomes Tracking System (MOTS), as specified in OHA's MOTS Reference Manual, located at: <http://www.oregon.gov/OHA/amh/mots/Pages/resource.aspx> , and the Who Reports in MOTS Policy.

Agency shall provide timely and relevant information to County as needed to enable County to submit reports to the State of Oregon on the delivery of all Services supported with funds provided through this Agreement.

4. Confirmation of Performance and Reporting Requirements

Agency shall be required to demonstrate through the data properly reported in accordance with the "Reporting Requirements" section above and any reporting requirement contained in **Exhibit A**, Scope of Work, of this Agreement, how funds provided for MHS 20 Services were utilized consistent with the terms and limitations herein to meet the performance requirement of this Service Description, and that the Contractor may be subject to the monitoring and review of performance requirements and quality measures by OHA.

**EXHIBIT C
COMPENSATION**

1. Payment for all Work performed under this Agreement shall not exceed **\$61,300** to be paid in one lump sum upon execution of the Agreement.

2. Agency shall submit an invoice following full execution of this Agreement. The invoice shall:
 - a. Reference Agreement #9933
 - b. Total amount requested

3. Invoices to be submitted by email or mail to:

BHAP@clackamas.us

Clackamas County Behavioral Health Division
Accounts Payable
2051 Kaen Road, Suite #154
Oregon City, OR 97045

When submitting electronically, designate Agency name and Agreement #9933 in the subject line.

EXHIBIT D
CMHP REQUIRED FEDERAL TERMS AND CONDITIONS

Agency shall comply with the following federal requirements, when federal funding is being used to fund this Agreement. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. **Miscellaneous Federal Provisions.** Agencies shall comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Services. Without limiting the generality of the foregoing, Agency expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Services in violation of 42 U.S.C. 14402.
2. **Equal Employment Opportunity.** Agency shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations (41 CFR Part 60).
3. **Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$150,000 Agency shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C.1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Agencies shall include in all contracts with subcontractors receiving more than \$150,000, language requiring the subcontractor to comply with the federal laws identified in this section.
4. **Energy Efficiency.** Agencies shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et.seq. (Pub. L. 94-163).
5. **Truth in Lobbying.** By signing this Agreement, Agency certifies, to the best of the Agency's knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Agency, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative

contract, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative contract.

- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Agency shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. Agency shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- e. No part of any federal funds paid to Agency under this Agreement shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.
- f. No part of any federal funds paid to Agency under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h. No part of any federal funds paid to Agency under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

6. **Resource Conservation and Recovery.** Agency shall comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of

specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

7. **Audits.** Subrecipients, as defined in 45 CFR 75.2, shall comply with applicable Code of Federal Regulations (CFR) governing expenditure of federal funds. If a sub-recipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 45 CFR part 75, subpart F. Copies of all audits must be submitted to County within thirty (30) calendar days of completion. If a sub recipient expends less than \$750,000 in a fiscal year beginning on or after December 26, 2014, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials.
8. **Debarment and Suspension.** Agency shall not permit any person or entity to be a provider if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Providers with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
9. **Drug-Free Workplace.** Agency shall comply with the following provisions to maintain a drug-free workplace: (i) Agency certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Agency's workplace or while providing Services to OHA clients. Agency's notice shall specify the actions that will be taken by Agency against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Agency's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of Services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction; (v) Notify OHA within ten (10) calendar days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any provider to comply with subparagraphs through (vii) above; (ix) Neither Agency, or any of Agency's employees, officers, agents may provide any Service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Agency or Agency's employee, officer, agent has used a controlled substance, prescription or non-prescription medication that impairs the Agency or Agency's employee, officer, agent or Agency's performance of essential job function or creates a direct threat to OHA clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental

performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of this Contract.

10. **Pro-Children Act.** Agency shall comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
11. **Medicaid Services.** To the extent Agency provides any Service in which costs are paid in whole or in part by Medicaid, Agency shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
 - a. Keep such records as are necessary to fully disclose the extent of the services provided to Individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a (a)(27); 42 CFR Part 431.107(b)(1) & (2).
 - b. Comply with all disclosure requirements of 42 CFR Part 1002.4(a) and 42 CFR 455 Subpart (B).
 - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396 (a) (57) and (w), 42 CFR Part 431.107 (b) (4), and 42 CFR Part 489 subpart I.
 - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Agency shall acknowledge Agency's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
 - e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, providers, and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a (a) (68).
12. **ADA.** Agency shall comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 U.S.C. 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of Services.
13. **Agency-Based Voter Registration.** If applicable, Agency shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an Individual may apply for or receive an application for public assistance.
14. **Disclosure.**
 - a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an Individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the

entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (Individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.

- b. 42 CFR 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last ten (10) years.
- c. County or OHA reserves the right to take such action required by law, or where County or OHA has discretion, it deems appropriate, based on the information received (or the failure to receive) from the provider, fiscal agent or managed care entity.

15. Special Federal Requirements Applicable to Addiction Treatment, Recovery & Prevention Services for Agencies receiving Substance Abuse Prevention and Treatment (SAPT) Block Grant funds.

- a. **Order for Admissions:**
 - (i) Pregnant women who inject drugs;
 - (ii) Pregnant substance abusers;
 - (iii) Other Individuals who inject drugs; and
 - (iv) All others.
- b. **Women's or Parent's Services.** If Agency provides A&D 61 and A&D 62 Services, Contractor must:
 - (1) Treat the family as a unit and admit both women or parent and their children if appropriate.
 - (2) Provide or arrange for the following services to pregnant women and women with dependent children:
 - (a) Primary medical care, including referral for prenatal care;
 - (b) Pediatric care, including immunizations, for their children;
 - (c) Gender-specific treatment and other therapeutic interventions, e.g. sexual and physical abuse counseling, parenting training, and childcare;
 - (d) Therapeutic interventions for children in custody of women or parent in treatment, which address, but are not limited to, the children's developmental needs and issues of abuse and neglect; and
 - (e) Appropriate case management services and transportation to ensure that women or parents and their children have access to the services in 1 through 4 above.
- c. **Pregnant Women.** If Agency provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Agency must:

- (1) Within the priority categories, if any, set forth in a particular Service Description, give preference in admission to pregnant women in need of treatment, who seek or are referred for and would benefit from such Services, within forty-eight (48) hours;
 - (2) If Agency has insufficient capacity to provide treatment Services to a pregnant woman, Agency must refer the women to another Provider with capacity or if no available treatment capacity can be located, the outpatient Provider that the Individual is enrolled with will ensure that Interim Services are being offered. Counseling on the effects of alcohol and drug use on the fetus must be given within forty-eight (48) hours, including a referral for prenatal care; and
 - (3) Perform outreach to inform pregnant women of the availability of treatment Services targeted to them and the fact that pregnant women receive preference in admission to these programs.
- d. **Intravenous Drug Abusers.** If Agency provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Agency must:
- (1) Within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women described above, give preference in admission to intravenous drug abusers;
 - (2) Programs that receive funding under the grant and that treat Individuals for intravenous substance abuse, upon reaching ninety (90) percent of its capacity to admit Individuals to the program, must provide notification of that fact to the State within seven (7) calendar days;
 - (3) If Agency receives a request for admission to treatment from an intravenous drug abuse, Agency must, unless it succeeds in referring the Individual to another Provider with treatment capacity, admit the Individual to treatment not later than:
 - (a) Fourteen (14) calendar days after the request for admission to Agency is made;
 - (b) One hundred-twenty (120) after the date of such request if no Provider has the capacity to admit the Individual on the date of such request and, if Interim Services are made available not less than forty-eight (48) hours after such request; or
 - (c) If Agency has insufficient capacity to provide treatment Services to an intravenous drug abuser, refer the intravenous drug abuser to another Provider with capacity or if no available treatment capacity can be located, the outpatient provider that the Individual is enrolled with will ensure that interim services are being offered. If the Individual is not enrolled in outpatient treatment and is on a waitlist for residential treatment, the provider referring the Individual to residential services will make available counseling and education about human immunodeficiency virus (HIV) and tuberculosis (TB), risk of sharing needles, risks of transmission to sexual partners and infant, steps to ensure HIV and TB transmission does not occur, referral for HIV or TB treatment services, if necessary, within forty-eight (48) hours.
- e. **Infectious Diseases.** If Agency provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84, Problem Gambling, Client Finding Outreach Services, Agency must:
- (1) Complete a risk assessment for infectious disease including human immunodeficiency virus (HIV) and tuberculosis (TB), as well as sexually transmitted diseases, based on protocols established by OHA, for every Individual seeking Services from Agency; and
 - (2) Routinely make tuberculosis services available to each Individual receiving

Services for alcohol/drug abuse either directly or through other arrangements with public or non-profit entities and, if Agency denies an Individual admission on the bases of lack of capacity, refer the Individual to another provider of tuberculosis services.

- (3) For purposes of (ii) above, "tuberculosis services" means:
- (a) Counseling the Individual with respect to tuberculosis;
 - (b) Testing to determine whether the Individual has contracted such disease and testing to determine the form of treatment for the disease that is appropriate for the Individual; and
 - (c) Appropriate treatment services.

- f. **OHA Referrals.** If Agency provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Agency must, within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women and intravenous drug users described above, give preference in Addiction Treatment, Recovery & Prevention and Problem Gambling Service delivery to persons referred by OHA.
- g. **Barriers to Treatment.** Where there is a barrier to delivery of any Addiction Treatment, Recovery & Prevention and Problem Gambling Service due to culture, gender, language, illiteracy, or disability, Agency shall develop support services available to address or overcome the barrier, including:
- (1) Providing, if needed, hearing impaired or foreign language interpreters.
 - (2) Providing translation of written materials to appropriate language or method of communication.
 - (3) Providing devices that assist in minimizing the impact of the barrier.
 - (4) Not charging clients for the costs of measures, such as interpreters, that are required to provide nondiscriminatory treatment.
- h. **Misrepresentation.** Agency shall not knowingly or willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or Services for which payments may be made by County or OHA.
- i. **Oregon Residency.** Addiction Treatment, Recovery & Prevention and Problem Gambling Services funded through this Agreement, may only be provided to residents of Oregon. Residents of Oregon are Individuals who live in Oregon. There is no minimum amount of time an Individual must live in Oregon to qualify as a resident so long as the Individual intends to remain in Oregon. A child's residence is not dependent on the residence of his or her parents. A child living in Oregon may meet the residency requirement if the caretaker relative with whom the child is living is an Oregon resident.
- j. **Tobacco Use.** If Agency has Addiction Treatment, Recovery & Prevention Services treatment capacity that has been designated for children, adolescents, pregnant women, and women with dependent children, Agency must implement a policy to eliminate smoking and other use of tobacco at the facilities where the Services are delivered and on the grounds of such facilities.
- k. **Client Authorization.** Agency must comply with 42 CFR Part 2 when delivering an Addiction Treatment, Recovery & Prevention Service that includes disclosure of Client information for purposes of eligibility determination. Agency must obtain Client authorization for disclosure of billing information, to the extent and in the manner required by 42 CFR Part 2, before a Disbursement Claim is submitted with respect to delivery of an Addiction Treatment, Recovery & Prevention Service to that Individual.

16. **Special Federal Requirements Applicable To Addiction Treatment, Recovery & Prevention Services for Contractors Receiving Temporary Assistance for Needy Families (TANF) Grant Funds.**

Funding Requirements. TANF may only be used for families receiving TANF, and for families at-risk of receiving TANF, and for the purpose of providing housing services (room and board) for Individuals who are dependent children ages eighteen (18) years or younger whose parent is in adult addiction residential treatment, so that the children may reside with their parent in the same treatment facility. Families at-risk of receiving TANF must:

- a. Include a dependent child age eighteen (18) years of age or under, who is living with a parent or caretaker relative. "Caretaker relative" means a blood relative of the child; stepmother, stepfather, stepbrother, or stepsister, or an individual who has legally adopted the child.
- b. Be an Oregon resident.
- c. Have income at or below 25% of the Federal Poverty Level.

Use of TANF block grant funds and state expenditures counted towards TANF MOE must meet the requirements of 45 CFR 263. Only non-medical services may be provided with TANF Block Grant Funds.

17. **Community Mental Health Block Grant (CFDA 93.958).** All funds, if any, awarded under this Agreement for Community Mental Health Services are subject to the federal use restrictions and requirements set forth in Catalog of Federal Domestic Assistance Number 93.958 and to the federal statutory and regulatory restrictions imposed by or pursuant to the Community Mental Health Block Grant portion of the Public Health Services Act, 42 U.S.C. 300x-1 *et. seq.*, and Agency shall comply with those restrictions.
18. **Substance Abuse Prevention and Treatment (CFDA 93.959).** To the extent Agency provides any Service in which costs are paid in whole or in part by the Substance Abuse, Prevention, and Treatment Block Grant, Agency shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 U.S.C. 300x through 300x-66) and 45 CFR 96.130 regarding the sale of tobacco products. Regardless of funding source, to the extent Agency provides any substance abuse prevention or treatment services, Agency shall comply with the confidentiality requirements of 42 CFR Part 2. CMHP may not use the funds received under this Agreement for inherently religious activities, as described in 45 CFR Part 87.
19. **Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200.** All required data elements in accordance with 45 CFR 75.352 are available at: <http://www.oregon.gov/oha/hsd/amh/Pages/federal-reporting.aspx>.
20. **Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding agency in 2 CFR Subtitle B, including but not limited to the following:
 - a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
 - b. **Procurement Standards.** When procuring goods and services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B, and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
 - c. **Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR

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Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Agency.

EXHIBIT E
CMHP REQUIRED PROVIDER CONTRACT PROVISIONS

- 1. Expenditure of Funds.** Agency may expend the funds paid to Agency under this Agreement solely on the delivery of contracted services subject to the following limitations (in addition to any other restriction of limitations imposed by this Agreement):
 - a.** Agency may not expend on the delivery of Service any funds paid to Agency under this Agreement in excess of the amount reasonable and necessary to provide quality delivery of these Services.
 - b.** If this Agreement requires Agency to deliver more than one service, Agency may not expend funds paid to Agency under this Agreement for a particular service on the delivery of any other service.
 - c.** If this Agreement requires Agency to deliver Addiction Treatment, Recovery & Prevention, and Problem Gambling Services, Agency may not use the funds paid to Agency under this Agreement for such services to:
 - i.** Provide inpatient hospital services;
 - ii.** Make cash payment to intended recipients of health services;
 - iii.** Purchase or improve land, to purchase, construct or permanently improve (other than minor remodeling) any building or other facility or to purchase major medical equipment;
 - iv.** Satisfy any requirement for expenditure of non-federal funds as a condition for receipt of federal funds (whether the federal funds are received under this Agreement or otherwise);
 - v.** Carry out any program prohibited by section 245(b) of the Health Omnibus Programs Extension Act of 1988 (codified at 42 U.S.C. 300ee-5), which generally prohibits funds provided under this Contract from being used to provide Individuals with hypodermic needles or syringes so that such Individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse.
 - d.** Agency may expend funds paid to Agency under this Agreement only in accordance with OMB Circulars or 45 CFR Part 75, as applicable on Allowable Costs. If Agency expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 45 CFR Part 75, subpart F. If Agency expends less than \$750,000 in a fiscal year beginning on or after that date, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials. Agency, if subject to this requirement, shall at Agency's own expense submit to OHA a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted to OHA the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Agency responsible for the financial management of funds received under this Contract. Copies of all audits must be submitted to OHA within thirty (30) calendar days of completion. Audit costs for audits not required in accordance with the Single Audit Act are unallowable. Agency may not use the funds received under this Agreement for inherently religious activities, as described in 45 CFR Part 87.
- 2. Records Maintenance, Access and Confidentiality.**

- a. **Access to Records and Facilities.** County, the Oregon Health Authority, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of Agency that are directly related to this Agreement, the funds paid to Agency hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, copies and transcriptions. In addition, Agency shall permit authorized representatives of County and the Oregon Health Authority to perform site reviews of all services delivered by Agency hereunder.
- b. **Retention of Records.** Agency shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the funds paid to Agency hereunder or to any services delivered hereunder, for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the termination or expiration of this Agreement. If there are unresolved audit or other questions at the end of the six (6) year period, Agency shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Agency shall document the expenditure of all funds paid to Agency under this Agreement. Unless applicable federal law requires Agency to utilize a different accounting system, Agency shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit County and the Oregon Health Authority to verify how the funds paid to Agency under this Agreement were expended.
- d. **Client Records.** Unless otherwise specified in this Agreement, Agency shall create and maintain a client record for each client who receives services under this Agreement. The client record must contain:
 - i. Client identification;
 - ii. Problem assessment;
 - iii. Treatment, training and/or care plan;
 - iv. Medical information when appropriate; and
 - v. Progress notes including service termination summary and current assessment or evaluation instrument as designated by the Oregon Health Authority in administrative rules.

Agency shall retain client records in accordance with OAR 166-150-0005 through 166-150-0215 (State Archivist). Unless OAR 166-150-0005 through 166-150-0215 requires a longer retention period, client records must be retained for a minimum of six (6) years from termination or expiration of this Agreement.

- e. **Safeguarding of Client Information.** Agency shall maintain the confidentiality of client records as required by applicable state and federal law, including without limitation, ORS 179.945 to 179.507, 45 CRF Part 205, 45 CRF Part 2, any administrative rule adopted by the Oregon Health Authority, implementing the foregoing laws, and any written policies made available to Agency by County or by the Oregon Health Authority. Agency shall create and maintain written policies and procedures related to the disclosure of client information, and shall make such policies and procedures available to County and the Oregon Health Authority for review and inspection as reasonably requested by County or the Oregon Health Authority.
- f. **Date Reporting.** All Individuals receiving Services with funds provided under this Agreement must be enrolled and that Individual's record maintained in the Measures and Outcome Tracking System (MOTS) as specified in OHA's MOTS Reference Manual, located at: <http://www.oregon.gov/oha/amh/mots/Pages/resource.aspx>, and the "Who Reports in MOTS Policy", as stated follows:

Which Behavioral Health Providers are Required to Report in MOTS?

The data collection system for the Health Systems Division (HSD) is the Measures and Outcomes Tracking System or MOTS. In general, behavioral health providers who are either licensed or have a letter of approval from the HSD (or the former Addictions & Mental Health Division [AMH]), and receive public funds to provide treatment services are required to report to MOTS. In addition to the general rule above, there are four basic ways to classify who is required to submit data to MOTS:

- i. Providers with HSD Agreements that deliver treatment services (this includes Community Mental Health Programs [CMHP], Local Mental Health Authorities [LMHA] and other types of community behavioral health providers); these programs should all have a license or letter of approval from the HSD or AMH;
- ii. Providers that are subcontractors (can be a subcontractor of a CMHP or other entity that holds a contract with HSD or OHA, such as a Mental Health Organization [MHO], or a Coordinated Care Organization [CCO]);
- iii. Providers that HSD does not contract with but are required to submit data to MOTS by State/Federal statute or rule; these include DUII providers and methadone maintenance providers; and
- iv. Providers that contract with other governmental agencies (e.g., Oregon Youth Authority [OYA] or the Department of Corrections [DOC] to deliver mental health and/or substance abuse services).

NOTE: Primary care physicians that provide a single service on behalf of the CMHP are not required to report the MOTS status or service level data.

If there are any questions, contact MOTS Support at MOTS.Support@state.or.us.

3. Alternative Formats of Written Materials. In connection with the delivery of Services, Agency shall:

- a. Make available to a Client, without charge to the Client, upon the Client's, the County's or the Oregon Health Authority's request, an and all written materials in alternate, if appropriate, formats as required by the Oregon Health Authority's administrative rules or by the Oregon Health Authority's written policies made available to Agency.
- b. Make available to a Client, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, any and all written materials in the prevalent non-English languages in the area served by the Agency.
- c. Make available to a Client, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, oral interpretation services in all non-English languages in the area served by Agency.
- d. Make available to a Client with hearing impairments, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, sign language interpretation services and telephone communications access services.

For purposes of the foregoing, "written material" includes, without limitation, all written materials created or delivered in connection with the services and all Agency contracts related to this Agreement. The County may develop its own forms and materials and with such forms and materials the County shall be responsible for making them available to a Client, without charge

to the Client or OHA, in the prevalent non-English language. OHA shall be responsible for making it forms and materials available, without charge to the Client or CMHP, in the prevalent non-English language.

4. **Reporting Requirements.** Agency shall prepare and furnish the following information to County and the Oregon Health Authority when a service is delivered under this Agreement.
 - a. Client, service and financial information as specified in the applicable Service Description attached hereto and incorporated herein by this reference.
 - b. All additional information and reports that County or the Oregon Health Authority reasonably requests.
5. **Compliance with Law.** Agency shall comply with all state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the delivery of services hereunder. Without limiting the generality of the foregoing, Agency expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement:
 - a. all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations;
 - b. all state laws governing operation of community mental health programs, including without limitation all administrative rules adopted by the Oregon Health Authority related to community mental health programs or related to client rights, OAR 943-005-0000 through 943-005-0070, prohibiting discrimination against Individuals with disabilities;
 - c. all state laws requiring reporting of client abuse; and
 - d. ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of services under this Agreement.

The laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including Agency, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. In addition, Agency shall comply, as if it were County thereunder, with the federal requirements set forth in **Exhibit D, Required Federal Terms and Conditions**, to the certain 2019-2021 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services between County and the Oregon Health Authority dates as of July 1, 2019, which is incorporated herein by this reference. For purposes of the Agreement, all references in this Agreement to federal and state laws are references to federal and state laws as they may be amended from time to time.

6. Unless Agency is a State of Oregon governmental agency, Agency agrees that it is an independent contractor and not an agent of the State of Oregon, the Oregon Health Authority or County.
7. To the extent permitted by applicable law, Agency shall defend (in the case of the state of Oregon and the Oregon Health Authority, subject to ORS Chapter 180), save and hold harmless the State of Oregon and Clackamas County, and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the operations of the Agency, including but not limited to the activities of Agency or its officers, employees, subcontractors or agents under this Agreement.

8. Agency understands that Agency may be prosecuted under applicable federal and state criminal and civil laws for submitting false claims, concealing material facts, misrepresentation, falsifying data system input, other acts of misrepresentation, or conspiracy to engage therein.
9. Agency shall only conduct transactions that are authorized by the County for transactions with the Oregon Health Authority that involve County funds directly related to this Agreement.
10. Agencies that are not units of local government as defined in ORS 190.003 shall obtain, at Agency's expense, and maintain in effect with respect to all occurrences taking place during the term of the Agreement, insurance requirements as defined in the Agreement.
11. Agencies that are not units of local government as defined in ORS 190.003, shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (Indemnitee) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as not or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency or any of the officers, agents, employees or subcontractors of the contractor (Claims). If is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the Agency from and against any and all claims.
12. Agency shall include sections 1 through 11, in substantially the form set forth above, in all permitted Agency contracts under this Agreement.

13. Ownership of Intellectual Property.

- a. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA and the County will not own the right, title and interest in any intellectual property created or delivered by the Agency in connection with the Services. With respect to that portion of the intellectual property that the Agency owns, Agency grants to OHA and the County a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to: (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property; (2) authorize third parties to exercise the rights set forth in Section 13.a.(1) on OHA and the County's behalf; and (3) sublicense to third parties the rights set forth in Section 13.a.(1).
- b. If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then Agency shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property created or delivered by Agency in connection with the Services, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to Agency to use, copy distribute, display, build upon and improve the intellectual property.

EXHIBIT F
ADDITIONAL FEDERAL TERMS AND CONDITIONS

1. The County intends that all or a portion of the consideration paid to Agency will be eligible for reimbursement by one or more federal agencies including, but not limited to, the Federal Emergency Management Agency ("FEMA"). This Agreement is subject to the additional terms and conditions required by federal law for a federal award. All terms and conditions required under applicable federal law for a federal award including, but not limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein.
2. Termination. This Agreement may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Agency; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County.
3. By execution of this Agreement, Agency hereby certifies that it and all subcontractors will comply with (i) all Federal statutes relating nondiscrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis race, color or national origin; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; the Age Discrimination Act of 1975, as amended (29 U.S.C. §§6101 et seq.), which prohibits discrimination on the basis of age; the Rehabilitation Act of 1973, as amended (29 U.S.C. §§793 et seq.), which prohibits discrimination against requires affirmative action for qualified individuals with disabilities; the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. §§4541 et seq.), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VII of the Civil Rights Act of 1969 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; any other discrimination provisions in the specific statute(s) under which for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply; (ii) will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 et. seq.), and shall file the required certification if the award is \$100,000 or more; and (iii) will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
4. If this Agreement involves a federal award that meets the definition of a "funding agreement" under 37 CFR § 401.2 (a), and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
5. If this Agreement is in excess of \$150,000, Agency certifies that it and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C.

7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency. Agency shall include these requirements in all contracts with subcontractors receiving more than \$150,000.

6. If this Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, Agency and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Contract Work Hours and Safety Standards Act 40 USC §§3701 et seq. as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. Agency shall include and require all providers to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.
7. Agency shall comply with 2 CFR 180.220 and 925. These regulations restrict sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs or activities. Agency is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Agency may access the Excluded Parties List System at <https://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Agency is required to verify that none of the Contractor's principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935). The Agency must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction that Agency enters into. This certification is a material representation of fact relied upon by the County. If it is later determined that the Agency did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
8. Record Retention. Agency will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by the federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337. Agency agrees to provide to the County, to the FEMA Administrator, to the Comptroller General of the United States, or to any of their authorized representatives, access to any books, documents, papers, and records of the Agency which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Agency agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Agency agrees to provide the FEMA Administrator or the Administrator's authorized representative's access to construction or other work sites pertaining to the Work being completed under the Agreement. In compliance with the Disaster Recovery Act of 2018, the Department of Resources Recycling and Recovery and the Agency acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

9. **DHS Seal, Logo, and Flags:** Agency shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
10. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance may be used to fund this Agreement only. Agency will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.
11. **No Obligation by Federal Government:** The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Agency, or any other party pertaining to any matter resulting from the contract.
12. **Program Fraud and False or Fraudulent Statements or Related Acts:** Agency acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Agency's actions pertaining to this Agreement.
13. **Agency will comply with all requirements of 2 CFR 200.321.**
14. **Procurement of Recovered Materials (Reference 2 CFR 200.322):** Agency must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
15. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).** Agencies who apply or bid for an award of \$100,000 or more shall file the required certification, set forth below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Agency hereby makes the following certification:

**Byrd Anti-Lobbying Amendment Certification
for Contracts, Grants, Loans, and Cooperative Agreements**

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

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

- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

The Contractor, Asian Health & Service Center certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Agency's Authorized Official

Name and Title of Agency's Authorized Official

Date

December 17, 2020

Housing Authority Board of Commissioners
 Clackamas County

Members of the Board:

Requesting approval to respond to Oregon Housing and Community Services Notice of Funding Availability for a loan of resources to support Publicly Supported Housing

Purpose/Outcomes	Requesting approval to respond to Oregon Housing and Community Services Notice of Funding Availability for a loan of resources to support Publicly Supported Housing
Dollar Amount and Fiscal Impact	\$63,735 total loan amount to be forgiven if rental arrearages are settled
Funding Source	Oregon Housing and Community Services
Duration	Arrearages from March 2020 – December 2020
Previous Board Action	No previous Board Action
Counsel Review	N/A
Strategic Plan Alignment	1. Sustainable and affordable housing 2. Ensure safe, healthy and secure communities
Contact Person	Jill Smith, Executive Director, Housing Authority 503-502-9278
Contract No.	N/A

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a division of the Health, Housing and Human Services Department (H3S), requests approval to respond to Oregon Housing and Community Services Department (“OHCS”) Notice of Funding Availability (“NOFA”) for the loan of resources to support the operations of Publicly Supported Housing project.

The intent of the NOFA is to ensure the ability for property to continue to operate as well as assisting with the stabilization of households living in OHCS funded Publicly Supported Housing. The primary source of funding under this NOFA comes from the Federal CARES Act allocation to Oregon, but may include additional state resources as necessary.

The objectives for the Portfolio Stabilization resources are two-fold:

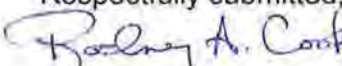
- 1- To stabilize households living in OHCS funded Publicly Supported Housing.
- 2- To ensure the ability for the property to continue to operate (pay to operate the property, pay salaries, and debt service etc.).

This will be accomplished by loaning resources to Easton Ridge Apartments for operational needs, and then allowing the loan to be satisfied in exchange for the settlement of outstanding rental arrearages of the same dollar value.

RECOMMENDATION:

Staff recommends the HACC Board’s approval to apply for the NOFA and if approved by OHCS to accept the loan terms. Additionally, staff recommends the Board authorize Jill Smith, HACC Executive Director, to sign all documents related to the Loan.

Respectfully submitted,


 Richard Swift, Director

December 17, 2020

Housing Authority Board of Commissioners
 Clackamas County

Members of the Board:

Approval of Resolution No. 1951 Authorizing Metro Bond Funds Loan Financing, Project-Based Section 8 Vouchers and Related Matters, for the Fuller Road Station Project

Purpose/Outcomes	Approval of Resolution No 1951 Authorizing Metro Bond Funds Loan Financing, Project-Based Section 8 Vouchers and Related Matters, for the Fuller Road Station Project
Dollar Amount	\$10,000,000
Funding Source	Metro Affordable Housing Bond funds
Duration	December 17, 2020 through the closing of the Fuller Station Project
Previous Board Action	7/23/20 – Approval of three project proposals in response to the 2020 Notice of Funding Availability for Metro Affordable Housing Bond Fund. Authorization to forward the three projects to Metro for concept endorsement
County Counsel	N/A
Strategic Plan Alignment	1. Sustainable and affordable housing 2. Individuals and families in need are healthy & safe 3. Ensure safe, healthy and secure communities
Contact Person	Jill Smith, Executive Director, Housing Authority 503-502-9278 Devin Ellin, Senior Housing Developer, Housing Authority 971-227-0472
Contract No.	N/A

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department (H3S) requests approval of Resolution 1951, authorizing the Metro Bond Funds Loan Financing, and related matters, for the Fuller Road Station Project.

On June 7, 2018, the Metro Council adopted Resolution No. 18-4898 “For the Purpose of Referring to the Metro Area Voters a Ballot Measure Authorizing General Obligation Bond Indebtedness in an Amount Not to Exceed \$652.8 Million to Fund Affordable Housing; and Setting Forth the Official Intent of the Metro Council To Reimburse Certain Expenditures Out of the Proceeds of said Bonds Upon Issuance” (the “Regional Housing Measure”).

On June 7, 2018, the Metro Council also passed Resolution No. 18-4895 “For the Purpose of Adopting the Metro Chief Operating Officer Recommendation Regarding Regional Investment Strategy: Affordable Homes for Greater Portland,” providing direction to Metro staff for the planning and implementation of the Regional Housing Measure with jurisdictional partners and the community.

Subsequent to the actions listed above, voters in Clackamas, Washington, and Multnomah Counties approved in November of 2018, the creation of a Metro Affordable Housing Bond in the amount of

\$652.8MM for the acquisition and new construction of affordable housing units throughout the Metro Urban Growth Boundaries of each jurisdiction (UGB).

Pursuant to the requirements of the Metro Affordable Housing Bond Framework, adopted by Resolution No. 19-4956 by Metro Council on January 31, 2019, the Local Implementation Strategy (LIS), in its final form, is identified as a necessary step to establish Clackamas County's strategy for implementing bond resources throughout the applicable boundary within our County.

On November 14th, 2019, the Local Implementation Strategy (LIS) and the Intergovernmental Agreement (IGA) between the Housing Authority of Clackamas County (HACC) and Metro for the Metro Affordable Housing Bond were approved and adopted by the Housing Authority of Clackamas County Board. The HACC IGA and LIS were formally approved by Metro Council on November 21st, 2019. Concurrent with final approval of these documents, Metro Housing Bond funds became eligible for release to HACC for the development of bond financed projects within our County's Urban Growth Boundary (UGB).

On January 22nd, 2020, HACC Development staff, in conjunction with our Housing Advisory Board (HAB), released a Notice of Funding Availability (NOFA) availing 35% of Clackamas County's total bond resources, or \$40.67MM, for projects sponsored by non-profit and for-profit developers throughout the eligible Metro boundary. In addition to the bond funds, HACC allocated 125 project-based Section 8 vouchers (PBVs) to support bond-funded projects. The NOFA was structured and delivered using our Local Implementation Strategy and Metro's Affordable Housing Bond Framework as the 'key' metrics for successful project award.

On April 20th, 2020, HACC received applications for five projects, proposing a total of 611 units seeking over \$69MM in bond-resources and a total of 221 PBVs. HACC's preliminary review committee and Housing Advisory Board (HAB) conducted a thorough review of each project and is recommending three of the projects for an award of funds.

On July 23rd, 2020, the Housing Authority Board approved HACC's request to conceptually award the three projects Metro Affordable Housing Bond funding and authorization to forward them to Metro for concept endorsement.

On August 6th, 2020, Metro provided HACC with Concept Endorsement for the three recommended projects, including \$10,000,000 in Metro Affordable Housing Bond funds and 25 Project Based Section 8 vouchers for the development of Fuller Road Station.

On December 3rd, 2020, Metro provided HACC with Final Approval for \$10,000,000 in Metro Affordable Housing Bond funds for the development of Fuller Road Station.

Fuller Road Station (FRS) is located at 9608 SE Fuller Road in unincorporated Clackamas County. It is a new construction, transit-oriented, 100% affordable multifamily housing development serving families and individuals with incomes between 30% and 80% of area median income. FRS will serve 25 families and individuals who are homeless or at risk of homelessness, including foster youth exiting or having exited the foster system.

FRS is sited at the TriMet Max Green Line Fuller Road Station Park & Ride. It is within walking distance to the MAX station and ¼ mile from several major bus lines. It will incorporate secure indoor bike parking and a bike wash station, two community rooms including one small shared kitchen, a community laundry room, community garden beds and a community computer lab. It also includes an open air/nature playground, secure package lockers/stalls for incoming deliveries, trash chutes and mixed recycling stations on each floor. FRS will have an electronic MAX train arrival board in the lobby and TriMet will provide low cost transportation passes for the residents.

FRS will be a 100-unit building with a mix of 1, 2- & 3-bedroom units. The total project site size is 2.08 acres. The building footprint will be 129,060 square feet in size and will consist of 6 floors serviced by 2 elevators.

The development team anticipates commencing construction of Fuller Road Station in first quarter 2021.

Some **key** components of the Resolution are as follows:

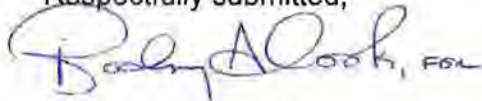
- Provides HACC authorization to:
 - Approve Metro Bond Funds Loan to the Partnership
 - Approve Award of 25 Project Based Vouchers

- Provides Delegation of Authority to the Director of Health, Housing and Human Services, the Executive Director of the Authority and the Director of Housing Development as an Authorized Representative, to act on behalf of the Authority in its own capacity as the Special Limited Partner, and as the sole member of the General Partner to finalize the terms of, execute, acknowledge, and deliver the actions and documents authorized.

RECOMMENDATION:

Staff recommends that the Board approve Resolution No. 1951, authorizing the execution and delivery of documents in connection with funding applications, predevelopment documents and signing authority for the Fuller Road Station project.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Richard Swift, FSL".

Richard Swift, Director
Health, Housing & Human Services

Attachments:

1. Resolutions Authorizing Loan of Metro Bond Funds and Project-Based Vouchers. Resolution No. 1951

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF THE HOUSING AUTHORITY OF CLACKAMAS COUNTY, OREGON**

In the Matter of Authorizing the Metro
Bond Funds Loan Financing and Related
Matters, for the Fuller Station Apartments
Project



Resolution No. 1951
Page 1 of 3

WHEREAS, the Housing Authority of Clackamas County ("Authority") works to provide affordable multifamily housing for persons and families of lower income pursuant to Oregon Revised Statutes ("ORS") 456.005 through 456.235; and,

WHEREAS, the Metro Housing Bond sponsored by Metro was approved by voters in the Metro Region in 2018 to provide funding within the Metro Region for Affordable Housing ("**Metro Bond Funds**"); and

WHEREAS, the Authority acting in behalf of Clackamas County, Oregon has been designated as the agency for the County to apply for such Metro Bond Funds and to loan such funds to developers of Affordable Housing; and

WHEREAS, Green Line Affordable Development Limited Partnership (the "**Partnership**") applied to the Authority for a loan of Metro Bond Funds in the amount of Ten Million Dollars (\$10,000,000) (the "**Metro Bonds Funds Loan**") to be used in connection with the development of Fuller Station Apartments, with a property address of 9608 S.E. Fuller Road, Happy Valley, Oregon (the "**Project**"); and

WHEREAS, the Authority has applied to Metro to be allocated Metro Bond Funds in the amount of Ten Million Dollars (\$10,000,000) to be loaned to the Partnership to use in connection with the development of the Project and has received final approval for the award of such Metro Bond Funds; and

WHEREAS, the United States Department of Housing and Urban Development (HUD) requires the approval of the Authority in connection with their consideration and approval of any award of Project Based Section 8 Vouchers; and

WHEREAS, the Authority will apply to HUD for such approval; and

WHEREAS, subject to the approval of HUD, the Authority desires to award 25 Project Based Section 8 Vouchers to the Partnership to be awarded to the Project on its completion; and

WHEREAS, upon receipt of HUD approval, the Authority desires to enter into an Agreement to Enter Into A Housing Assistance Payment Contract (the "**AHAP Contract**") which will provide that upon timely completion of the Project the 25 Section 8 Project Vouchers will be awarded pursuant to the Section 8 Project-Based Voucher Program Housing Assistance Payment Contract (the "**HAP Contract**");

NOW, THEREFORE, BE IT RESOLVED BY THE AUTHORITY

Section 1. Approve Metro Bond Funds Loan to the Partnership.

BE IT RESOLVED, that the Authority is authorized to negotiate, execute and deliver on behalf of the Authority the Metro Bond Funds Loan Documents listed on the attached ***Exhibit A*** (whether bearing the name listed or names to similar effect) and such other documents as reasonably may be required in connection with the loan of the Metro Bond Funds all in the form approved by any single Authorized Representative (such approval to be conclusively demonstrated by the signature of any single Authorized Representative on such documents).

Section 2. Approve Award of 25 Project Based Vouchers.

BE IT RESOLVED, that, subject to HUD approval, the Authority is authorized to award twenty-five (25) Section 8 Project Based Vouchers to the Partnership (the "***Project Based Vouchers***"); and

BE IT FURTHER RESOLVED, that the Authority is authorized to negotiate, execute and deliver on behalf of the Authority the AHAP Contract with the Partnership relating to the Project Based Vouchers listed on the attached ***Exhibit A*** (whether bearing the name listed or names to similar effect) and such other documents as reasonably may be required in connection with the award of the Project Based Vouchers all in the form approved by any single Authorized Representative (such approval to be conclusively demonstrated by the signature of any single Authorized Representative on such documents).

Section 3. Delegation.

BE IT RESOLVED, that the Executive Director of the Authority, the Director of Health, Housing and Human Services, and the Director of Housing Development is each an Authorized Representative, as that term is used in these Resolutions, and each may individually, on behalf of the Authority, and without further action by the Board, finalize the terms of, execute, acknowledge, and deliver the actions and documents authorized herein.

Section 4. General Resolutions Authorizing and Ratifying Other Actions.

BE IT RESOLVED, that any Authorized Representative is authorized to negotiate, execute and deliver on behalf of the Authority such other agreements, certificates, and documents, and to take or authorize to be taken all such other actions any Authorized Representative shall deem necessary or desirable to carry out the transactions contemplated by the foregoing resolutions (such determination to be conclusively demonstrated by the signature of any single Authorized Representative on such document); and

BE IT FURTHER RESOLVED, that to the extent any action, agreement, document or certification has heretofore been taken, executed, delivered or performed by an Authorized Representative named in these Resolutions on behalf of the Authority to carry out the transactions contemplated by the foregoing resolutions, the same is hereby ratified and affirmed.

NOW, THEREFORE, BE IT RESOLVED, that the Chair or one of the Directors may finalize negotiations, execute, acknowledge and deliver the Documents and any other documents and take any actions that are necessary or desirable to complete the Documents, this Resolution and Order.

DATED THIS 17th DAY OF DECEMBER, 2020

BOARD OF COMMISSIONERS FOR THE HOUSING
AUTHORITY OF CLACKAMAS COUNTY

Chair

Recording Secretary

December 17, 2020

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval of Resolution No 1952 Authorizing the Execution, Acknowledgement and Delivery of
Documents for the Webster Road Redevelopment Project

Purpose/Outcomes	Approve Resolution No. 1952 authorizing the execution and delivery of documents relating to the Webster Road Redevelopment for debt and equity financing and providing for related matters for the rehabilitation of the Webster Road Redevelopment
Dollar Amount	N/A
Funding Source	Funding sources include 4% Low Income Housing Tax Credits (LIHTC), PSH Capital Funds (OHCS), Metro Bond Funding, Perm Loan and County HOME Funds
Duration	December 17, 2020 through the closing of the Webster Redevelopment Project
Previous Board Action	7/16/20 – Approval of Resolution 1948 - Authorizing the execution and delivery of documents in connection with funding applications and predevelopment documents 6/6/19 – Approval of IGA with Metro to acquire the property 1/23/20 Approval of Resolution 1942 – Exemption from Competitive Bidding and approval of a CM/GC Solicitation
County Counsel	N/A
Strategic Plan Alignment	1. Sustainable and affordable housing 2. Ensure safe, healthy and secure communities
Contact Person	Jill Smith, Executive Director, Housing Authority 503-502-9278 Devin Ellin, Senior Housing Developer, Housing Authority 971-227-0472
Contract No.	N/A

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department requests approval of Resolution 1952, for debt and equity financing and providing for related matters for the rehabilitation of the Webster Road project.

This is a rehabilitation project for the Housing Authority of Clackamas County of a single-story wood-framed building originally constructed in the mid 1960's. It was previously used as a nursing facility and most recently as a teen rehabilitation facility. The building has been vacant since 2017 and will be converted into permanent supportive housing for low income residents age 55 and older. The program consists of a mix of studios and Single Room Occupancy (SRO) units, as well as shared kitchen and laundry facilities, offices and other support spaces. The site is currently developed with vehicle access, parking, sidewalks, and wooded surroundings. As much as possible, existing trees and asphalt paving areas shall be retained and protected.

Project scope includes full abatement of hazardous materials; building code and accessibility upgrades; new insulation, weatherproofing, windows, exterior doors, roofing membrane, and exterior cladding; interior renovation work consists of all new flooring, wall and ceiling finishes; and all new

plumbing fixtures, lighting, and HVAC systems; site work consists of demolition, earthwork, landscaping, and parking lot modifications. Work in the public right-of-way will include replacing the sidewalk and drive pans along the Webster Rd street frontage to comply with ADA requirements, and potential street lighting upgrades pending a photometric assessment of the existing conditions. The scope also includes any demolition that will be necessary for the extents of the building rehabilitation.

- Site area: 95,830 SF (2.2 acres)
- Gross floor area: 28,672 SF
- Zoning: R-7.2 – Low Density Residential
- Bicycle parking: 4 short-term spaces, 8 long-term spaces
- Vehicle parking: 26 spaces - 2 accessible, 16 standard, 7 compact, and 1 loading
- Units: 48
- OHCS Sustainability Path: Earth Advantage Multi-family Home (2012), Gold Certification

Some **key** components of the Resolution are as follows:

- Provides HACC authorization to enter into the following agreements:
 - Syndication documents;
 - Tax Credit Documents;
 - Bond Documents;
 - Construction and Permanent Loan Documents; and
- Provides Delegation of Authority to the Director of Health, Housing and Human Services, the Executive Director of the Authority and the Director of Housing Development as an Authorized Representative, to act on behalf of the Authority in its own capacity as the Special Limited Partner, and as the sole member of the General Partner to finalize the terms of, execute, acknowledge, and deliver the actions and documents authorized.

RECOMMENDATION:

Staff recommends that the HACC Board approve Resolution No. 1952 authorizing the execution and delivery of documents relating to the Webster Road Redevelopment for debt and equity financing and providing for related matters for the rehabilitation of the Webster Road Redevelopment.

Respectfully submitted,

Handwritten signature of Richard Swift in blue ink, with the text "HHS Director / for" written below it.

Richard Swift, Director
Health, Housing & Human Services

Attachments:

1. Webster Rd. Resolution No.1952

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF THE HOUSING AUTHORITY OF CLACKAMAS COUNTY, OREGON**

In the Matter of Authorizing the Execution,
Acknowledgement and Delivery of Documents
Relating to the Webster Road Apartments Project
for debt and equity financing and providing for
related matters



Resolution No. 1952
Page 1 of 3

WHEREAS, the Housing Authority of Clackamas County ("Authority") works to provide affordable multifamily housing for persons and families of lower income pursuant to Oregon Revised Statutes ("ORS") 456.005 through 456.235; and,

WHEREAS, on or about April 18, 2019, the Authority formed HACC Webster Road, LLC, an Oregon limited liability company ("HACC Webster Road") to act as the Developer for the development, financing, construction and operation of the Webster Road Apartments project (the "Project"); and,

WHEREAS, on or about June 10th, 2019, the Authority received funding from Metro, an Oregon municipal corporation, ("Metro") to acquire a 27,000 square foot building on a 2.2 acre site at 18000 Webster Road, Gladstone Oregon (the "Property") to renovate for the Project; and

WHEREAS, on June 13th, 2019 the Authority acquired the Property pursuant to a Board approved Intergovernmental Agreement ("IGA") with Metro; and

WHEREAS, on or about January 15, 2020, HACC Webster Road acting as the general partner formed Webster Road Housing Limited Partnership, an Oregon limited partnership ("WRH"); and

WHEREAS, the Project will consist of approximately 48 units of rental housing and related facilities that will be owned by WRH; and,

WHEREAS, the Project, except for staff units, will be rented to persons or families with incomes of 30% of area median or less, and operated as a "housing project" as defined in ORS 456.065; and,

WHEREAS, the Authority entered into a contract with Carleton Hart Architects to design the renovations for the Project; and

WHEREAS, HACC Webster Road acting as the general partner of WRH has applied to Clackamas County Community Development Division ("CCCDD") for a \$400,000.00 HOME loan; and

WHEREAS, the Authority has applied to the State of Oregon, Housing and Community Services Department ("OHCSA") for permanent supportive housing funds for the Project; and

WHEREAS, HACC Webster Road acting as the general partner of WRH has applied to Metro for a Housing Bond Fund loan; and

WHEREAS, HACC Webster Road acting as the general partner of WRH has applied to OHCS D for an allocation of private activity bond volume cap to enable the Project to benefit from federal low income tax credits; and

WHEREAS, HACC has received an Engagement Agreement dated November 20, 2020 from U.S. Bancorp Investments, Inc. and U.S. Bank Municipal Products Group, a division of U.S. Bank National Association (each individually and collectively referred to as "US Bancorp") to structure, market, price, and close tax exempt publicly offered housing bonds for the Project, during calendar year 2021 (the "Series 2021 Bonds"); and

WHEREAS, HACC has received a proposal from U.S. Bancorp Community Development Corporation or its affiliate ("USBCDC") to become an equity investor in the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE AUTHORITY

Section 1. Authorization to Execute, Acknowledge and Deliver the Agreements. The Authority is authorized in its own right or as the sole member of HACC Webster Road acting as the General Partner of WRH to execute, acknowledge and deliver the following:

- 1.1 The Engagement Agreement from US Bancorp to act as the underwriter for the Series 2021 Bonds, and all documents required to close the sale of tax exempt publicly traded housing bonds, including but not limited to those documents listed on Exhibit A;
- 1.2 The proposal from USBCDC for its admission and all documents required to close the admission of USBCDC as an investor limited partner in WRH including but not limited to an amended and restated agreement of limited partnership and those documents listed on Exhibit A;
- 1.3 Proposals for the Permanent Loan, including, but not limited to, executing a Permanent Lender Term Sheet, any document reasonably necessary to obtain a permanent loan commitment, and making the Permanent Lender Good Faith Deposit.

Section 2. Delegation. The Chair of the Board of the Housing Authority of Clackamas County or, if the Chair is not available, the Director of Health, Housing and Human Services, the Executive Director of the Authority or the Director of Housing Development (each of whom is referred to in this resolution as a "Director") may, on behalf of the Authority for itself or acting as the sole member of the General Partner of WRH and without further action by the Board:

Finalize the terms of, and execute, acknowledge and deliver the Agreements identified in sections 1.1, and 1.2 (collectively the "Documents"). Before executing and delivering the Documents, the Director may, after consulting with legal counsel, make changes to the Documents that are reasonable and necessary in the Director's discretion to facilitate the execution and delivery of the Documents. However, the changes authorized by the preceding sentence shall not materially change the Documents.

NOW, THEREFORE, BE IT RESOLVED, that the Chair or one of the Directors may finalize negotiations, execute, acknowledge and deliver the Documents and any other

documents and take any actions that are necessary or desirable to complete the Documents, this Resolution and Order.

DATED THIS 17th DAY OF DECEMBER, 2020

BOARD OF COMMISSIONERS FOR THE HOUSING
AUTHORITY OF CLACKAMAS COUNTY

Chair

Recording Secretary

December 17, 2020

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval to write off uncollectible rents, late charges and maintenance expenses for the
second quarter of Fiscal Year 2021

Purpose/Outcomes	Approval to write off uncollectible rents, late charges and maintenance expenses for the second quarter of fiscal year 2021
Dollar Amount and Fiscal Impact	\$938.38 in total collection losses
Funding Source	N/A
Duration	October 1, 2020 – December 31, 2020
Previous Board Action/Review	First quarter collection losses were approved by the Housing Authority Board of Commissioners on September 17, 2020
Counsel Review	N/A
Strategic Plan Alignment	1. Efficient & effective services 2. Build Public Trust through good government
Contact Person	Jill Smith, Executive Director, Housing Authority 503-742-5336
Contract Number	N/A

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department, requests the approval to write off uncollectible rents, late charges and maintenance expenses for the second quarter of fiscal year 2021 (10/1/2020-12/31/2020). The uncollectible amounts are detailed on the attached worksheets.

Uncollectible amounts for the second quarter of fiscal year 2021 are \$695.23 for Low Rent Public Housing and \$243.15 for Local Project Fund. Of the total second quarter write offs, \$113.16 was for uncollected rents and \$825.22 was for maintenance repairs charged to tenants for repairs required to units before HACC could lease them to a new tenant.

As a business practice, HACC writes off debts after 90 days of collection efforts. Former residents in Public Housing that have debts that are written off continue to be tracked and are reported to a Federal Government database that prohibits their participation in any other Public Housing program nationally until such debt is paid.

The total amount proposed for transfer from Accounts Receivable to Collection Loss for the second quarter of fiscal year 2021 is \$938.38.

RECOMMENDATION:

HACC recommends the HACC Board approve the second quarter write offs of uncollectible rents, late charges and maintenance expenses and authorize the Executive Director to approve the transfer of these accounts from Accounts Receivable to Collection Loss.

Respectfully submitted,


Richard Swift, Director

December 17, 2020

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

In alignment with Board direction to seek Project Turnkey funding from the State of Oregon, our Phase I application has been submitted and approved. We have been directed by Oregon Community Foundation (“OCF”) consultants to expedite purchase of a qualifying property. We are seeking approval to enter into a Purchase & Sale Agreement between the Housing Authority of Clackamas County and Dirgesh Patel (owner) for the EconoLodge property and approval to execute real estate documents related to the same

Purpose/Outcomes	Approval to enter into a Purchase & Sale agreement between the Housing Authority of Clackamas County and Dirgesh Patel (owner) for the EconoLodge property at 17330 SE McLaughlin Blvd, Clackamas County, Oregon 97267 and approval to execute real estate documents pertaining to the acquisition of the EconoLodge
Dollar Amount and Fiscal Impact	Not to exceed \$2.9M or appraised value whichever is lower
Funding Source(s)	All funds for the acquisition as well as rehabilitation for immediate shelter use will be provided by grant funding from the Oregon Community Foundation - Project Turnkey Wildfire Funding. Operational funding will come from Clackamas County Winter Shelter funding from date of purchase through June 30 th . All expenses for the ongoing use of the location as Transitional Supportive Shelter will be funded by the Supportive Housing Services Program beginning July 1 st
Previous Board Action	Board directed H3S to apply for Project Turnkey funding for acquisition of a motel property for use as shelter
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Sustainable and affordable housing 2. Individuals and families in need are healthy & safe 3. Ensure safe, healthy and secure communities
Counsel Review	December 9, 2020
Contact Person	Jill Smith, HACC Executive Director (503) 502-9278
Contract Number	N/A

BACKGROUND:

The HACC in partnership with Clackamas County Social Services submitted a Project Turnkey application for funding. The application outlined a partnership whereby the HACC would be the asset owner and Social Services would provide operational funding until Supportive Housing Services funding becomes available. Operations will be provided on a contract basis with a homeless services non-profit agency. HACC has been approved by OCF to identify and initiate a purchase and sale agreement with a motel property, identified in consultation with OCF’s consultants as the EconoLodge. Our application proposed to serve underserved populations of people experiencing homelessness in Clackamas County through this program.

The EconoLodge location was identified with the assistance of Tom Kemper, a consultant

provided by OCF to assist applicants, from an extensive list of hotels/motels that available in the Metro boundary. The following criteria were used to evaluate properties: location, zoning, number of units, unit size, ADA compliance, cost of purchase, the amount of funding likely to be allocated for Clackamas County out of the \$30 million, property condition, necessary rehab to use immediately as a shelter and how quickly the purchase process could proceed. In order to qualify for the Project Turnkey funds, the identified property must be able to be used within 75 days of funding with due diligence preferred to be completed in 30 days. From the available properties, the EconoLodge best met the criteria.

All units of the EconoLodge property are expected to be rented as part of the Clackamas County winter sheltering program. Purchase of the property will therefore allow shelter operations to continue year round at this location and for County funds dedicated to use of the property to be reallocated to leasing more winter sheltering units and expanding our winter shelter capacity this winter season. The EconoLodge has 27 units with the possibility to expand to 30 units of non-congregate shelter. This property will be an integral part of the Supportive Housing Services Program, operating as a transitional supportive shelter program that will shelter people immediately and providing them with the services they need to transition into permanent housing solutions that best meet their needs.

A draft purchase and sale agreement is attached hereto. County Counsel is reviewing and revising this purchase and sale agreement draft. HACC will present a final version, in substantially similar format, to the Board upon completion of review during the December 17th, 2020 HACC Board meeting.

Attached for your review

- Purchase and Sale Agreement draft and Property Broker Report

RECOMMENDATION:

Staff recommends the Board approve the Purchase and Sale Agreement between the Housing Authority of Clackamas County and Dirges Patel (owner) for the EconoLodge property at 17330 SE McLaughlin Blvd, Clackamas County, Oregon 97267.

Staff also recommends the Board authorize Jill Smith, HACC Executive Director, or Richard Swift, Director of H3S, to sign the PSA and all pertinent real estate documentation on behalf of the Housing Authority of Clackamas County Board.

Respectfully submitted,



Richard Swift, Director
Health, Housing and Human Services

COMMERCIAL ASSOCIATION OF BROKERS OREGON/SW WASHINGTON
PURCHASE AND SALE AGREEMENT AND RECEIPT FOR OPTION DEPOSIT
(Oregon Commercial Form)

AGENCY ACKNOWLEDGMENT

Buyer shall execute this Acknowledgment concurrent with the execution of the Agreement below and prior to delivery of that Agreement to Seller. Seller shall execute this Acknowledgment upon receipt of the Agreement by Seller, even if Seller intends to reject the Agreement or make a counter-offer. In no event shall Seller's execution of this Acknowledgment constitute acceptance of the Agreement or any terms contained therein.

Pursuant to the requirements of Oregon Administrative Rules (OAR 863-015-0215), both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and by execution below acknowledge and consent to the agency relationships in the following real estate purchase and sale transaction as follows:

(a) Seller Agent: **Skip Rotticci of Colliers International** firm (the "Selling Firm") is the agent of
(check one):
 Buyer exclusively; Seller exclusively; both Seller and Buyer ("Disclosed Limited Agency").

(b) Buyer Agent: **Skip Rotticci of Colliers International** firm (the "Buying Firm") is the agent of
(check one):
 Buyer exclusively; Seller exclusively; both Seller and Buyer ("Disclosed Limited Agency").

If the name of the same real estate firm appears in both Paragraphs (a) and (b) above, Buyer and Seller acknowledge that a principal broker of that real estate firm shall become the Disclosed Limited Agent for both Buyer and Seller, as more fully set forth in the Disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and the named real estate agent(s).

ACKNOWLEDGED

Buyer: **Housing Authority of Clackamas County**

(sign) _____ Date: _____

Seller: **Dirges LLC**

(sign) _____ Date: _____

OPTION OF PURCHASE AND SALE AGREEMENT AND RECEIPT FOR OPTION MONEY

This PURCHASE AND SALE AGREEMENT AND RECEIPT FOR OPTION DEPOSIT (this "Agreement") dated December ____, 2020, for reference purposes only, shall be effective on the date when this Agreement has been executed and delivered by Seller and Buyer (the "Execution Date"):

BETWEEN: Dirgesh LLC, an Oregon limited liability company ("Seller")
Address: 3801 N. Interstate Ave. Portland, Oregon 97227
Home Phone:
Office Phone:
Fax No.:
E-Mail: dirgesh@gmail.com

AND: Housing Authority of Clackamas County ("Buyer")
Address: 13930 Gain St. Oregon City, OR 97045
Home Phone:
Office Phone: (503) 655-8676
Fax No.:
E-Mail: vbrown@co.clackamas.or.us

1. Purchase and Sale.

1.1 Generally. In accordance with this Agreement, Buyer agrees to buy and acquire from Seller, and Seller agrees to sell to Buyer the following, all of which are collectively referred to in this Agreement as the "Property." (a) the real property and all improvements thereon generally described or located at 17330 SE McLoughlin Blvd. in the City of Milwaukie, County of Clackamas, Oregon legally described on Exhibit A, attached hereto (the "Real Estate") (if no legal description is attached, the legal description shall be based on the legal description provided in the Preliminary Report (described in Section 5), subject to the review and approval of both parties hereto), including all of Seller's right, title and interest in and to all fixtures, appurtenances, and easements thereon or related thereto; and (b) any and all personal property located on and used in connection with the operation of the Real Estate and owned by Seller, with the exception of personal property in the manager's unit, (the "Personal Property") that Buyer has agreed, in writing, to accept upon closing. If there are any Leases, see Section 21.1, below. The occupancies of the Property pursuant to any Leases are referred to as the "Tenancies" and the occupants thereunder are referred to as "Tenants." If there is any Personal Property, see Section 21.2, below.

1.2 Purchase Price. The purchase price for the Property shall be Two Million Nine Hundred Thousand dollars (\$2,900,000.00) (the "Purchase Price"), subject to the terms and conditions of Section 2.1 below. The Purchase Price shall be adjusted, as applicable, by the net amount of credits and debits to Seller's account at Closing (defined below) made by Escrow Holder pursuant to the terms of this Agreement. The Purchase Price shall be payable as follows:

1.2.1 Option Deposit.

(a) Within three (3) days of the Execution Date, Buyer shall deliver into Escrow (as defined herein), for the account of Buyer, \$ 25,000.00 as an Option deposit (the "Option Deposit") in the form of:

[] Promissory note (the "Note"); [X] Check; or [] Cash or other immediately available funds.

46 If the Option Deposit is being held by the Selling Firm Buying Firm, then the firm holding such Option Deposit
47 shall deposit the Option Deposit in the Escrow (as hereinafter defined) Selling Firm's Client Trust Account
48 Buying Firm's Clients' Trust Account, no later than 5:00 PM Pacific Time three (3) business days after such
49 firm's receipt, but in no event later than the date set forth in the first sentence of this Section 1.2.1(a).

50
51 (b) The purchase and sale of the Property shall be accomplished through an escrow (the
52 "Escrow") that Seller has established or will establish with **First American Title Company Portland, Oregon** (the
53 "Escrow Holder") within **three (3)** days after the Execution Date. Except as otherwise provided in this Agreement: (i)
54 any interest earned on the Option Deposit shall be considered to be part of the Option Deposit; (ii) the Option
55 Deposit shall be non-refundable upon satisfaction or waiver of all Conditions as defined in Section 2.1; and (iii) the
56 Option Deposit shall be applied to the Purchase Price at Closing.

57
58 1.2.2 Balance of Purchase Price. Buyer shall pay the balance of the Purchase Price at Closing
59 by cash or other immediately available funds; or Other: **Cash and the proceeds of a grant from the State**
60 **of Oregon.**

61
62 1.3 Section 1031 Like-Kind Exchange. Each party acknowledges that either party (as applicable, the
63 "Exchanging Party") may elect to engage in and affect a like-kind exchange under Section 1031 of the Internal
64 Revenue Code of 1986, as amended, involving the Property (or any legal lot thereof) (a "1031 Exchange"). The non-
65 exchanging party with respect to a 1031 Exchange is referred to herein as the "Cooperating Party." Buyer and Seller
66 each hereby agrees to reasonably cooperate with the other in completing each such 1031 Exchange; provided,
67 however, that such cooperation shall be at the Exchanging Party's sole expense and shall not delay the Closing for
68 the Property. Accordingly, the Exchanging Party may assign the Exchanging Party's rights with respect to the
69 Property (or any legal lot thereof) to a person or entity for the purpose of consummating a 1031 Exchange
70 ("Intermediary"), provided that such assignment does not delay the Closing for the Property (or applicable legal lot
71 thereof), or otherwise reduce or diminish the Exchanging Party's liabilities or obligations hereunder. Such
72 assignment by the Exchanging Party shall not release the Exchanging Party from the obligations of the Exchanging
73 Party under this Agreement. The Cooperating Party shall not suffer any costs, expenses or liabilities for cooperating
74 with the Exchanging Party and shall not be required to take title to the exchange property. The Exchanging Party
75 agrees to indemnify, defend and hold the Cooperating Party harmless from any liability, damages and costs arising
76 out of the 1031 Exchange.

77 78 2. Conditions to Purchase.

79
80 2.1 Buyer's obligation to purchase the Property is conditioned on the following:

81
82 This Agreement is contingent upon Buyer obtaining, at Buyer's sole expense, a written
83 appraisal from a licensed appraiser within 45 days of the Execution Date stating that the appraised
84 value of the Property is at least the Purchase Price. If the appraisal states that the appraised value
85 of the Property is less than the above value, Buyer shall deliver a copy of such appraisal to Seller
86 within 10 days after the above date and deliver written notice to Seller, either: a) terminating this
87 Agreement in which event the Option Deposit shall be refunded to Buyer, thereby releasing Buyer
88 and Seller from all further obligations under this Agreement; or b) negotiate a new purchase price
89 on terms acceptable to both parties. If Buyer fails to timely obtain an appraisal, or having timely
90 obtained such appraisal fails to timely deliver notice, this Agreement shall terminate and the
91 Option Deposit shall be refunded to Buyer;

92 **Within sixty (60) days of the Execution Date, Buyer's approval of the results of**
93 **(collectively, the "Feasibility Contingency"):** (a) the Property inspection described in
94 Section 3 below; (b) the document review described in Section 4 below; (c)
95 **Environmental Assessment and review; and (d) the other conditions described below:**

96 Within thirty (30) days of the expiration of the Feasibility Contingency period, Buyer's
97 receipt of confirmation of satisfactory financing (the "Financing Condition") and approval of
98 Release of Funds by the State of Oregon; and/or

99 Other **Notwithstanding any other provision of this Agreement, the closing
100 of this transaction will be contingent on final written approval by the Board of
101 Commissioners (the "Board") for the Housing Authority of Clackamas County to
102 proceed with closing of the sale, as determined by the Board in its sole
103 administrative discretion. Buyer shall have no obligation to purchase the
104 Property, and no transfer of title to the Buyer may occur, unless and until the
105 Board, as the responsible entity, has provided Buyer and/or Seller with a written
106 determination that purchase of the Property may proceed, or that the purchase
107 may proceed subject to any other conditions in this Agreement or only if certain
108 conditions to address issues in the environmental or other reviews and
109 inspections shall be satisfied before or after the purchase of the Property. The
110 closing of this transaction and purchase of the Property will also be contingent
111 upon the following:**

- 112 1. **Buyer's acceptance of the Title Report and all Exceptions identified**
113 **thereon, as set forth in Section 5, below.**
- 114 2. **Appropriation by the Board of sufficient funds, as determined by Buyer in**
115 **its sole discretion, to permit Buyer to proceed with closing of the sale and**
116 **purchase of the Property.**
- 117 3. **Receipt by Buyer of any and all funding necessary to proceed with closing**
118 **of the sale and purchase of the Property, as determined by the Buyer in its**
119 **sole administrative discretion, from any and all State or Federal funding**
120 **sources.**
- 121 4. **Completion of all inspections, environmental reviews, or other**
122 **assessments of the Property that Buyer determines, in its sole discretion,**
123 **to be necessary. Buyer shall use its best efforts to conclude the**
124 **inspections, environmental reviews, or other assessments of the Property**
125 **expeditiously. Buyer's inspections, environmental reviews, or other**
126 **assessments are subject to an approved request for release of federal or**
127 **state funds.**
- 128 5. **Acceptance by Buyer, in its sole discretion, of the results of any**
129 **inspections, environmental reviews, or other assessments performed on**
130 **the Property.**

131
132
133
134 The Feasibility Contingency, Financing Condition or any other conditions noted shall be defined as "Conditions."
135

136 2.2 If Buyer decides to proceed to Closing, Buyer will give written notice to Seller before the expiration
137 of the Feasibility Contingency indicating that Buyer waives the Conditions set forth in Section 2.1 or that the
138 Conditions set forth in Section 2.1 have been satisfied. If, for any reason Buyer fails to give written waiver of the
139 Conditions set forth in Section 2.1, or state in writing that such Conditions have been satisfied, by notice to Seller
140 before the expiration of the Feasibility Contingency, this Agreement shall be deemed automatically terminated, the
141 Option Deposit shall be promptly returned to Buyer, and thereafter, except as specifically provided to the contrary
142 herein, neither party shall have any further right or remedy hereunder. In addition, if Buyer is unable to receive a
143 release of funds from State or Federal funding sources necessary to purchase the Property, or if the Board does not
144 approve closing of the sale and purchase of the Property, this Agreement shall be deemed terminated and the

145 Option Deposit(s) shall be immediately returned to Buyer, and thereafter, except as specifically provided to the
146 contrary herein, neither party shall have any further right or remedy hereunder.

147
148 3. Property Inspection. Seller shall permit Buyer and its agents, at Buyer's sole expense and risk, to enter
149 the Property at reasonable times after reasonable prior notice to Seller and after prior notice by Seller to the Tenants
150 as required by the applicable Leases, if any, to conduct any and all inspections, tests, and surveys concerning the
151 structural condition of the improvements, all mechanical, electrical and plumbing systems, hazardous materials, pest
152 infestation, soils conditions, wetlands, Americans with Disabilities Act compliance, zoning, and all other matters
153 affecting the suitability of the Property for Buyer's intended use and/or otherwise reasonably related to the purchase
154 of the Property including the economic feasibility of such purchase. Subject to the limits of applicable law, Buyer
155 shall indemnify, hold harmless, and defend Seller from all liens, costs, and expenses, including reasonable
156 attorneys' fees and experts' fees, arising from or relating to Buyer's negligent acts or omissions during the
157 inspections, tests, and surveys authorized under this Section 3. This agreement to indemnify, hold harmless, and
158 defend Seller shall survive closing or any termination of the Agreement.

159
160 4. Seller's Documents. Within **ten (10)** business days after the Execution Date, Seller shall deliver to
161 Buyer or Buyer's designee, legible and complete copies of the following documents, including without limitation, a list
162 of the Personal Property, and other items relating to the ownership, operation, and maintenance of the Property to
163 the extent now in existence and to the extent such items are or come within Seller's possession or control: **Including
164 but not limited to business records as the pertain to the facility, plans, permits, and approvals, reports,
165 studies, assessments related to the Property, environmental assessments, soils assessments and
166 Geotechnical reports, correspondence from or to any governmental agency or regulatory agency regarding
167 the Property within the last 5 years, any recorded or unrecorded easement related to the Property.**

168
169 5. Title Insurance. Within **ten (10)** business days after the Execution Date, Seller shall cause to be
170 delivered to Buyer a preliminary title report from the title company (the "Title Company") selected by Seller (the
171 "Preliminary Report"), showing the status of Seller's title to the Property, together with complete and legible copies of
172 all documents shown therein as exceptions to title ("Exceptions"). Buyer shall have **thirty (30)** days after receipt of a
173 copy of the Preliminary Report and Exceptions within which to give notice in writing to Seller of any objection to such
174 title or to any liens or encumbrances affecting the Property. Within **five (5)** business days after receipt of such notice
175 from Buyer, Seller shall give Buyer written notice of whether it is willing and able to remove the objected-to
176 Exceptions. Without the need for objection by Buyer, Seller shall, with respect to liens and encumbrances that can
177 be satisfied and released by the payment of money, eliminate such exceptions to title on or before Closing. Within
178 **five (5)** business days after receipt of such notice from Seller (the "Title Contingency Date"), Buyer shall elect
179 whether to: (i) purchase the Property subject to those objected-to Exceptions which Seller is not willing or able to
180 remove; or (ii) terminate this Agreement. On or before the Closing Date (defined below), Seller shall remove all
181 Exceptions to which Buyer objects and which Seller agrees Seller is willing and able to remove. All remaining
182 Exceptions set forth in the Preliminary Report and those Exceptions caused by or agreed to by Buyer shall be
183 deemed "Permitted Exceptions."

184
185 6. Default; Remedies. Notwithstanding anything to the contrary contained in this Agreement, in the event
186 Buyer fails to deposit the Option Deposit(s) in Escrow strictly as and when contemplated under Section 1.2.1 or
187 Section 1.2 above, Seller shall have the right at any time thereafter, but prior to Buyer's deposit of the Option
188 Deposit to Escrow, to terminate this Agreement and all further rights and obligations hereunder by giving written
189 notice thereof to Buyer. If the conditions, if any, to Buyer's obligation to consummate this transaction are satisfied or
190 waived by Buyer and Buyer fails, through no fault of Seller, to close on the purchase of the Property, Seller's sole
191 remedy shall be to retain the Option Deposit(s) paid by Buyer. In the event Seller fails, through no fault of Buyer, to
192 close the sale of the Property, Buyer shall be entitled to pursue any remedies available at law or in equity, including
193 without limitation, the return of the Option Deposit(s) paid by Buyer or the remedy of specific performance. In no

194 event shall either party be entitled to punitive or consequential damages, if any, resulting from the other party's
195 failure to close the sale of the Property.

196
197 7. Closing of Sale.
198

199 7.1 Buyer and Seller agree the sale of the Property shall be consummated, in Escrow, on or before
200 or thirty (30) days after the conditions set forth in Sections 2.1, 3, 4 and 5 have been satisfied or waived in
201 writing by Buyer (the "Closing" or the "Closing Date"). The sale of the Property shall be deemed closed when the
202 document(s) conveying title to the Property is/are delivered and recorded and the Purchase Price is disbursed to
203 Seller.
204

205 7.2 At Closing, Buyer and Seller shall deposit with the Escrow Holder all documents and funds
206 required to close the transaction in accordance with the terms of this Agreement. At Closing, Seller shall
207 deliver a certification in a form provided by the Escrow Holder confirming whether Seller is or is not a "foreign
208 person" as such term is defined by applicable law and regulations.
209

210 7.3 At Closing, Seller shall convey fee simple title to the Property to Buyer by statutory warranty
211 deed or ___ (the "Deed"). At Closing, Seller shall cause the Title Company to deliver to Buyer a standard ALTA
212 form owner's policy of title insurance (the "Title Policy") in the amount of the Purchase Price insuring fee simple title
213 to the Property in Buyer subject only to the Permitted Exceptions and the standard preprinted exceptions contained
214 in the Title Policy. Seller shall reasonably cooperate in the issuance to Buyer of an ALTA extended form policy of
215 title insurance. Buyer shall pay any additional expense resulting from the ALTA extended coverage and any
216 endorsements required by Buyer.
217

218 8. Closing Costs; Prorations. Seller shall pay the premium for the Title Policy. If Buyer elects to obtain an
219 ALTA extended form policy of title insurance and/or any endorsements, Buyer shall pay the difference in the
220 premium relating to such election. Seller and Buyer shall each pay one-half (1/2) of the escrow fees charged by the
221 Escrow Holder. Any excise tax and/or transfer tax shall be paid in accordance with the local custom determined by
222 the Title Company and applicable law. Real property taxes for the tax year of the Closing, assessments (if a
223 Permitted Exception), personal property taxes, rents and other charges arising from existing Tenancies paid for the
224 month of Closing, interest on assumed obligations, and utilities shall be prorated as of the Closing Date. If
225 applicable, prepaid rents, security deposits, and other unearned refundable deposits relating to Tenancies shall
226 be assigned and delivered to Buyer at Closing. Seller Buyer N/A shall be responsible for payment of all
227 taxes, interest, and penalties, if any, upon removal of the Property from any special assessment or program.
228

229 9. Possession. Seller shall deliver exclusive possession of the Property, subject to the Tenancies (if any)
230 existing as of the Closing Date, to Buyer on the Closing Date or ___.
231

232 10. Condition of Property. Seller represents and warrants it is the sole owner of the Property and has authority to
233 convey fee simple title to the Property by statutory warranty deed. Seller represents that Seller has received no
234 written notices of violation of any laws, codes, rules, or regulations applicable to the Property ("Laws"). Seller
235 represents there are no suits, actions, arbitrations, judgments, legal, administrative or other proceedings, claims,
236 liens, or inquiries pending or threatened against the Property, or any portion thereof, which could affect Seller's right
237 or title to the Property, or any portion thereof, affect the value of the Property, or any portion thereof, or subject an
238 owner of the Property, or any portion thereof, to liability. Seller represents no work on the Property has been done or
239 will be done, or materials provided, giving rise to actual or impending mechanic's liens, private liens, or any other
240 liens, against the Property or any portion thereof. Seller represents that it has not entered into, and will not enter into,
241 any other contracts for the sale of the Property, nor do there exist nor will there be any rights of first refusal, options
242 to purchase the Property, leases, mortgages, licenses, easements, prescriptive rights, permits, or other rights or
243 agreement, written or oral, express or implied, which in any way affect or encumber the Property or any portion

{00045955;1}

244 thereof. Seller represents that, to the best of Seller's knowledge without specific inquiry, Seller is not aware of any
245 such violations or any concealed material defects in the Property. Unless caused by Buyer, Seller shall bear all risk
246 of loss and damage to the Property until Closing, and Buyer shall bear such risk at and after Closing. Except for
247 Seller's representations set forth in this Section 10 and the attached Exhibit E, Buyer shall acquire the Property "AS
248 IS" with all faults and Buyer shall rely on the results of its own inspection and investigation in Buyer's acquisition of
249 the Property. It shall be a condition of Buyer's Closing obligation that all of Seller's representations and warranties
250 stated in this Agreement are materially true and correct on the Closing Date. Subject to any limitation period under
251 applicable law, Seller's representations and warranties stated in this Agreement shall survive Closing of this
252 Agreement.

253
254 If Seller discovers any information or facts that would materially change the foregoing warranties and
255 representations or the transactions contemplated by this Agreement, Seller shall immediately give written notice to
256 Buyer of those facts and information. If any of the foregoing warranties and representations cease to be true before
257 the close of Escrow, Seller shall be obligated to use its best efforts to remedy the problem, at its sole expense,
258 before the close of Escrow. If the problem is not remedied before close of Escrow, Buyer may elect to either: (a)
259 terminate this Agreement in which case Buyer shall have no obligation to purchase the Property and all Escrow
260 payments, including the Option Deposit, shall be refunded to Buyer, or (b) defer the Closing Date for a period not to
261 exceed ninety (90) days or until such problem has been remedied, whichever occurs first. If the problem is not
262 remedied within that timeframe, Buyer may elect to terminate this Agreement and receive a refund of all Escrow
263 payments, including the Option Deposit. Buyer's election in this regard shall not constitute a waiver of Buyer's rights
264 in regard to any loss or liability suffered as a result of a representation or warranty not being true, nor shall it
265 constitute a waiver of any other remedies provided in this Agreement or by law or equity.

266
267
268 11. Operation of Property. Between the Execution Date and the Closing Date, Seller shall continue to
269 operate, maintain and insure the Property consistent with Seller's current operating practices. After Buyer has
270 satisfied or waived the conditions to Buyer's obligation to purchase the Property, and the Option Deposit is non-
271 refundable, Seller may not, enter into: (a) any new leases or occupancy agreements for the Property; (b) any
272 material amendments or modification agreements for any existing leases or occupancy agreements for the Property;
273 or (c) any service contracts or other agreements affecting the Property that are not terminable at the Closing.

274
275 12. Assignment. Assignment of this Agreement: is PROHIBITED; is PERMITTED, without consent
276 of Seller; is PERMITTED ONLY UPON Seller's written consent; is PERMITTED ONLY IF the assignee is an
277 entity owned and controlled by Buyer. **Assignment is PROHIBITED, if no box is checked.** If Seller's written
278 consent is required for assignment, such consent may be withheld in Seller's reasonable discretion. In the event of a
279 permitted assignment, Buyer shall remain liable for all Buyer's obligations under this Agreement.

280
281
282
283 13. Statutory Notice. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A
284 FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE
285 LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR
286 SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS
287 DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE
288 PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER
289 ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS
290 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8,
291 OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE
292 TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING
293 DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED

294 LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT
295 OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE
296 ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND
297 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND
298 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

299
300 14. Cautionary Notice About Liens. UNDER CERTAIN CIRCUMSTANCES, A PERSON WHO
301 PERFORMS CONSTRUCTION-RELATED ACTIVITIES MAY CLAIM A LIEN UPON REAL PROPERTY AFTER A
302 SALE TO THE PURCHASER FOR A TRANSACTION OR ACTIVITY THAT OCCURRED BEFORE THE SALE. A
303 VALID CLAIM MAY BE ASSERTED AGAINST THE PROPERTY THAT YOU ARE PURCHASING EVEN IF THE
304 CIRCUMSTANCES THAT GIVE RISE TO THAT CLAIM HAPPENED BEFORE YOUR PURCHASE OF THE
305 PROPERTY. THIS INCLUDES, BUT IS NOT LIMITED TO, CIRCUMSTANCES WHERE THE OWNER OF THE
306 PROPERTY CONTRACTED WITH A PERSON OR BUSINESS TO PROVIDE LABOR, MATERIAL, EQUIPMENT
307 OR SERVICES TO THE PROPERTY AND HAS NOT PAID THE PERSONS OR BUSINESS IN FULL.

308
309 15. Brokerage Agreement. For purposes of Section 15 of this Agreement, the Agency Acknowledgement
310 on page 1 this Agreement is incorporated into this Agreement as if fully set forth herein. Seller agrees to pay a
311 commission to Selling Firm in the amount of either: **three percent (3%)** of the Purchase Price or \$. Such
312 commission shall be divided between Selling Firm and Buying Firm such that Selling Firm receives **one hundred**
313 **percent (100%)** and Buying Firm receives **zero percent (0%)**. Seller shall cause the Escrow Holder to deliver to
314 Selling Firm and Buying Firm the real estate commission on the Closing Date or upon Seller's breach of this
315 Agreement, whichever occurs first.

316
317 16. Notices. Unless otherwise specified, any notice required or permitted in, or related to this Agreement
318 must be in writing and signed by the party to be bound. Any notice will be deemed delivered: (a) when personally
319 delivered; (b) when delivered by facsimile or electronic mail transmission (in either case, with confirmation of
320 delivery); (c) on the day following delivery of the notice by reputable overnight courier; or (d) on the day following
321 delivery of the notice by mailing by certified or registered U.S. mail, postage prepaid, return receipt requested; and in
322 any case shall be sent by the applicable party to the address of the other party shown at the beginning of this
323 Agreement, unless that day is a Saturday, Sunday, or federal or Oregon State legal holiday, in which event such
324 notice will be deemed delivered on the next following business day.

325
326 17. Miscellaneous. Time is of the essence of this Agreement. If the deadline under this Agreement for
327 delivery of a notice or performance of any obligation is a Saturday, Sunday, or federal or Oregon State legal holiday,
328 such deadline will be deemed extended to the next following business day. The facsimile and/or electronic mail
329 transmission of any signed document including this Agreement in accordance with Section 16 shall be the same as
330 delivery of an original. At the request of either party, the party delivering a document by facsimile and/or electronic
331 mail will confirm such transmission by signing and delivering to the other party a duplicate original document. This
332 Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall
333 constitute one and the same Agreement. This Agreement contains the entire agreement and understanding of the
334 parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous
335 agreements between them. Without limiting the provisions of Section 12 of this Agreement, this Agreement shall be
336 binding upon and shall inure to the benefit of Buyer and Seller and their respective successors and assigns. Solely
337 with respect to Section 15, Selling Firm and Buying Firm are third party beneficiaries of this Agreement. The person
338 signing this Agreement on behalf of Buyer and the person signing this Agreement on behalf of Seller each
339 represents, covenants and warrants that such person has full right and authority to enter into this Agreement and to
340 bind the party for whom such person signs this Agreement to its terms and provisions. Neither this Agreement nor a
341 memorandum hereof shall be recorded unless the parties otherwise agree in writing.

343 18. Governing Law. This Agreement is made and executed under, and in all respects shall be governed and
344 construed by, the laws of the State of Oregon. Any claim, action, or suit that arises out of or relates to the
345 performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for
346 Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be
347 brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District
348 Court for the District of Oregon. In no event shall this section be construed as a waiver by Buyer of any form of
349 defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh
350 Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
351 All parties, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced
352 in this section.

353
354 19. Lease(s) and Personal Property.

355
356 19.1 Leases. Intentionally Omitted.

357
358 19.2 Personal Property. If applicable, and upon written consent by Buyer, Seller shall convey
359 all Personal Property to Buyer by executing and delivering to Buyer at Closing through Escrow (as defined below), a
360 Bill of Sale substantially in the form of Exhibit C attached hereto (the "Bill of Sale"). A list of such Personal Property
361 shall be attached to the Bill of Sale.

362
363 20. Residential Lead-Based Paint Disclosure. IF THE PROPERTY CONSISTS OF RESIDENTIAL
364 HOUSING BUILT PRIOR TO 1978, BUYER AND SELLER MUST COMPLETE THE LEAD-BASED PAINT
365 DISCLOSURE ADDENDUM ATTACHED HERETO AS EXHIBIT D.

366
367 21. Addenda: Exhibits. The following named addenda and exhibits are attached to this Agreement and
368 incorporated within this Agreement:

- 369 Exhibit A – Legal Description of Property **[REQUIRED]**
370 Exhibit B – Assignment of Lessor's Interest under Lease (if applicable)
371 Exhibit C – Bill of Sale (if applicable)
372 Exhibit D – Lead Paint Disclosure Addendum (if applicable)
373 Exhibit E – AS IS Exceptions (if applicable)
374
375

376 22. Time for Acceptance. If Seller does not return to Buyer a signed and dated version of this Agreement
377 on or before 5:00 PM Pacific Time on **December 17, 2020**, then the Option Deposit shall be promptly refunded to
378 Buyer and thereafter, neither party shall have any further right or obligation hereunder.
379

380 23. OFAC Certification. The Federal Government, Executive Order 13224, requires that business persons
381 of the United States not do business with any individual or entity on a list of "Specially Designated nationals and
382 Blocked Persons" - that is, individuals and entities identified as terrorists or other types of criminals. Buyer
383 hereinafter certifies that:
384

385 23.1 It is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation
386 named by any Executive Order or the United States Treasury Department as a terrorist, specially designated
387 national and/or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is
388 enforced or administered by the Office of Foreign Assets Control; and
389

390 23.2 It has not executed this Agreement, directly or indirectly on behalf of, or instigating or
391 facilitating this Agreement, directly or indirectly on behalf of, any such person, group, entity, or nation.
392

393 Subject to the limits of applicable law, Buyer hereby agrees to defend, indemnify, and hold harmless Seller from and
394 against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs)
395 arising from or related to any breach of the foregoing certification. This certification by Buyer and agreement to
396 indemnify, hold harmless, and defend Seller shall survive Closing or any termination of this Agreement.
397
398

399 24. Debt Limitation. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article
400 XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any
401 provisions herein which would conflict with law are deemed inoperative to that extent
402

403 25. Risk of Loss, Condemnation. Seller shall bear the risk of all loss or damage to the Property from all causes,
404 until the Property is Closed pursuant to Section 7. If, before the Property is Closed pursuant to Section 7, all or part
405 of the Property is damaged by fire or by any other cause of any nature or if all or any portion of the Property is taken
406 by condemnation, or if any such condemnation is threatened, Seller shall give Buyer written notice of such event.
407 Buyer may terminate this Agreement by giving written notice to Seller within fifteen (15) days following receipt by
408 Buyer of written notice from Seller of such casualty or condemnation and the Option Deposit will be returned to
409 Buyer.
410

411 CONSULT YOUR ATTORNEY. THIS DOCUMENT HAS BEEN PREPARED FOR SUBMISSION TO YOUR
412 ATTORNEY FOR REVIEW AND APPROVAL PRIOR TO SIGNING. NO REPRESENTATION OR
413 RECOMMENDATION IS MADE BY THE COMMERCIAL ASSOCIATION OF BROKERS OREGON/SW
414 WASHINGTON OR BY THE REAL ESTATE AGENTS INVOLVED WITH THIS DOCUMENT AS TO THE LEGAL
415 SUFFICIENCY OR TAX CONSEQUENCES OF THIS DOCUMENT.
416

417 THIS FORM SHOULD NOT BE MODIFIED WITHOUT SHOWING SUCH MODIFICATIONS BY REDLINING,
418 INSERTION MARKS, OR ADDENDA.
419

420 Buyer **HOUSING AUTHORITY OF CLACKAMAS COUNTY**

421 By: _____

422 Name: **Jill Smith**

423 Title: **Director**

424

425 Date: _____

426

427
428 Seller Acceptance. By execution of this Agreement, Seller agrees to sell the Property on the terms and conditions in
429 this Agreement.
430

431 Seller: **DIRGESH LLC**

432

433

434 By: _____

435 Name: **Dirgesh Patel**

436 Its Manager

437

438 Date: _____

439

440

441

442

443
444
445
446
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448
449

CRITICAL DATE LIST:

The last party to execute this Agreement shall complete the information below (the "Critical Date List"), initial where indicated, and return a copy of the same to the other party for such party's review. This Critical Date List is for reference purposes only and, in the event of a conflict between this Critical Date List and the Agreement, the terms of the Agreement shall prevail.

	DATE:
• Execution Date (Introductory paragraph):	
• Option Deposit due date (Section 1.2.1(a)):	
• Seller shall open Escrow with the Escrow Holder (Section 1.2.1(a)):	Before 3 days following execution of this Agreement
• Seller shall deliver Seller's documents to Buyer (Section 4):	Within <u>7</u> days after the Execution Date
• Seller shall deliver Preliminary Report to Buyer (Section 5):	Within <u>10</u> days after the Execution Date
• Buyer's title objection notice due to Seller (Section 5):	Within 5 days after receipt of the Preliminary Report
• Seller's title response due to Buyer (Section 5):	Within 5 days after receipt of Buyer's title objection notice
• Title Contingency Date (Section 5):	Within 5 days after receipt of Seller's title response
• Expiration date for satisfaction of Feasibility Contingency (Section 2.1):	Within 30 days of the Execution Date
• Expiration date for satisfaction of Financing Condition (Section 2.1):	Within 45 days of the expiration of Feasibility Contingency Period
• By this date, Buyer must deliver the notice to proceed contemplated in Section 2.2.	Within 45 days of the Execution Date
• Closing Date (Section 7.1):	<u>Within 15 days following expiration of the Financing Conditions Period</u>

450
451
452

Initials of Buyer: _____ Initials of Seller: _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

TO BE PROVIDED BY FIRST AMERICAN TITLE COMPANY

EXHIBIT C
BILL OF SALE

Dirges LLC an Oregon limited liability company ("Seller"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby bargain, transfer, convey and deliver to **Health, Housing, Human Services of Clackamas County**, an Oregon Public Agency ("Buyer"), its successors and/or assigns:

All of the personal property owned by Seller (collectively, "Personal Property") located in or on the real property located at **17330 SE McLoughlin Blvd** in the **City of Milwaukie**, County of **Clackamas**, State of **Oregon**, which Personal Property is more particularly described on Schedule 1 attached hereto and incorporated herein by reference.

Seller hereby covenants with Buyer that said Personal Property is free and clear of and from all encumbrances, security interests, liens, mortgages and claims whatsoever and that Seller is the owner of and has the right to sell same. Seller, on behalf of itself and its successors, does hereby warrant and agree to defend the title in and to said Personal Property unto Buyer, its successors or assigns against the lawful claims and demands of all persons claiming by or through Seller.

IT IS UNDERSTOOD AND AGREED THAT BUYER HAS EXAMINED THE PERSONAL PROPERTY HEREIN SOLD AND THAT THIS SALE IS MADE "AS IS, WHERE IS" AND SELLER DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OTHER THAN THE WARRANTY OF TITLE SET FORTH ABOVE, AS TO THE PERSONAL PROPERTY INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Buyer and Seller agree that this Bill of Sale shall be effective upon the delivery thereof by Seller to Buyer.

IN WITNESS WHEREOF, the parties have caused this Bill of Sale to be executed this _____ day of _____, _____.

SELLER: DIRGES LLC

BUYER: HOUSING AUTHORITY OF CLACKAMAS COUNTY

1 EXHIBIT D
2 LEAD-BASED PAINT DISCLOSURE ADDENDUM
3 (TO BE COMPLETED IF THE PROPERTY CONSISTS OF RESIDENTIAL HOUSING BUILT PRIOR TO 1978)
4

5 Seller and Buyer are parties to that certain Commercial Association of Brokers Oregon / SW Washington Purchase
6 and Sale Agreement and Receipt for Option Deposit (Oregon Commercial Form) dated ____, 20__ (the "Purchase
7 Agreement") for the sale of the Property described therein. Capitalized terms used in this addendum without
8 definition shall have the meanings given them in the Purchase Agreement. Except as expressly modified by this
9 addendum and any other addendum to the Purchase Agreement executed by Buyer and Seller, the Purchase
10 Agreement is unmodified. This addendum and the Purchase Agreement may not be modified except in a writing
11 signed by both Seller and Buyer.

12 LEAD WARNING STATEMENT

13 EVERY PURCHASER OF ANY INTEREST IN RESIDENTIAL REAL PROPERTY ON WHICH A RESIDENTIAL
14 DWELLING WAS BUILT PRIOR TO 1978 IS NOTIFIED THAT SUCH PROPERTY MAY PRESENT EXPOSURE TO
15 LEAD FROM LEAD-BASED PAINT THAT MAY PLACE YOUNG CHILDREN AT RISK OF DEVELOPING LEAD
16 POISONING. LEAD POISONING IN YOUNG CHILDREN MAY PRODUCE PERMANENT NEUROLOGICAL
17 DAMAGE, INCLUDING LEARNING DISABILITIES, REDUCED INTELLIGENCE QUOTIENT, BEHAVIORAL
18 PROBLEMS AND IMPAIRED MEMORY. LEAD POISONING ALSO POSES A PARTICULAR RISK TO PREGNANT
19 WOMEN. THE SELLER OF ANY INTEREST IN RESIDENTIAL REAL PROPERTY IS REQUIRED TO PROVIDE
20 THE BUYER WITH ANY INFORMATION ON LEAD-BASED PAINT HAZARDS FROM RISK ASSESSMENTS OR
21 INSPECTIONS IN THE SELLER'S POSSESSION AND NOTIFY THE BUYER OF ANY KNOWN LEAD-BASED
22 PAINT HAZARDS. A RISK ASSESSMENT OR INSPECTION FOR POSSIBLE LEAD-BASED PAINT HAZARDS IS
23 RECOMMENDED PRIOR TO PURCHASE.
24

25 AGENT'S ACKNOWLEDGMENT

26 Seller Agent has informed Seller of Seller's obligations under 42 U.S.C. 4852(d) and Agent is aware of
27 his/her responsibility to ensure compliance.
28

29 SELLER'S DISCLOSURE

30 .1 Presence of lead-based paint and/or lead-based paint hazards (check one below):
31

32 Seller has knowledge of lead-based paint and/or lead-based paint hazards in the housing (explain).
33
34 _____
35 _____

36 Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
37

38 .2 Records and reports available to Seller (check one below):
39

40 Seller has provided Buyer with all available records and reports relating to lead-based paint and/or lead-based
41 paint hazards in the housing (list documents below):
42
43 _____
44 _____

45 Seller has no reports or records relating to lead-based paint and/or lead-based paint hazards in the housing.
46
47

48 The following parties have reviewed the information above and certify, to the best of their knowledge, that the
49 information they provided is true and accurate. A photocopy of this completed LEAD-BASED PAINT DISCLOSURE
50 ADDENDUM, together with a copy of any documents listed in Section 2 of Seller's Disclosure above, may be treated
51 as an original.

Seller Agent _____ Date _____ ← Seller _____ Date _____ ←
Selling Firm _____ Seller _____ Date _____ ←

52
53 BEFORE BUYER IS OBLIGATED TO PURCHASE THIS PROPERTY UNDER ANY PURCHASE AND SALE
54 AGREEMENT, BUYER'S AND SELLER'S SIGNATURES ARE REQUIRED ON THE FORM BELOW.

55
56 BUYER'S ACKNOWLEDGMENT

57 .1 Buyer has received copies of all information listed above in Section 2 of Seller's Disclosure of
58 this form.

59
60 .2 Buyer has received the pamphlet "Protect Your Family from Lead in Your Home."

61
62 .3 Buyer has (check one below):

63 Elected a ten (10) day opportunity (or mutually agreed upon period) to conduct a risk assessment or
64 inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards, providing Buyer the
65 right to rescind the Purchase Agreement by written notice to Seller no later than the end of such agreed upon 10 day
66 period if Buyer is not satisfied in Buyer's sole discretion with the results of such risk assessments or inspection, as
67 applicable. Buyer and Seller hereby agree the ten (10) day period described in the preceding sentence shall begin
68 and end _____. Buyer's failure to provide written notice of Buyer's election to rescind the Purchase Agreement to
69 Seller on or before _____, 20__ shall be deemed a waiver of Buyer's right to rescind as provided in this addendum.
70 If Buyer timely elects to rescind the Purchase Agreement as provided herein, the Option Deposit shall be returned to
71 Buyer, together with any interest thereon.

72 Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or
73 lead-based paint hazards.

Buyer _____ Date _____ ←

Buyer _____ Date _____ ←

74
75 CERTIFICATION OF ACCURACY
76

77 This section must be signed by Buyer before Seller signs lines below. The following parties have reviewed
78 the information and certify, to the best of their knowledge, that the information they provided herein is true and
79 accurate.

Buyer _____ Date _____ ← Seller _____ Date _____ ←

Buyer _____ Date _____ ← Seller _____ Date _____ ←

Buyer Agent _____ Date _____ ← Seller Agent _____ Date _____ ←

Buying Firm _____ Seller Firm _____

80

LINES WITH THIS SYMBOL ← REQUIRE A SIGNATURE
--

EXHIBIT E
AS IS EXCEPTIONS

1
2
3
4
5
6
7
8

None

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

TO BE PROVIDED BY FIRST AMERICAN TITLE COMPANY

DRAFT

EXHIBIT C
BILL OF SALE

Dirges Patel an individual ("Seller"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby bargain, transfer, convey and deliver to **Health, Housing, Human Services of Clackamas County**, an Oregon Public Agency ("Buyer"), its successors and/or assigns:

All of the personal property owned by Seller (collectively, "Personal Property") located in or on the real property located at **17330 McLoughlin Blvd** in the **City of Milwaukie**, County of **Clackamas**, State of **Oregon**, which Personal Property is more particularly described on Schedule 1 attached hereto and incorporated herein by reference.

Seller hereby covenants with Buyer that said Personal Property is free and clear of and from all encumbrances, security interests, liens, mortgages and claims whatsoever and that Seller is the owner of and has the right to sell same. Seller, on behalf of itself and its successors, does hereby warrant and agree to defend the title in and to said Personal Property unto Buyer, its successors or assigns against the lawful claims and demands of all persons claiming by or through Seller.

IT IS UNDERSTOOD AND AGREED THAT BUYER HAS EXAMINED THE PERSONAL PROPERTY HEREIN SOLD AND THAT THIS SALE IS MADE "AS IS, WHERE IS" AND SELLER DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OTHER THAN THE WARRANTY OF TITLE SET FORTH ABOVE, AS TO THE PERSONAL PROPERTY INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Buyer and Seller agree that this Bill of Sale shall be effective upon the delivery thereof by Seller to Buyer.

IN WITNESS WHEREOF, the parties have caused this Bill of Sale to be executed this _____ day of _____.

SELLER: DIRGESH PATEL

BUYER: HOUSING AUTHORITY OF CLACKAMAS COUNTY

1 EXHIBIT D
2 LEAD-BASED PAINT DISCLOSURE ADDENDUM
3 (TO BE COMPLETED IF THE PROPERTY CONSISTS OF RESIDENTIAL HOUSING BUILT PRIOR TO 1978)
4

5 Seller and Buyer are parties to that certain Commercial Association of Brokers Oregon / SW Washington Purchase
6 and Sale Agreement and Receipt for Option Deposit (Oregon Commercial Form) dated ____, 20__ (the "Purchase
7 Agreement") for the sale of the Property described therein. Capitalized terms used in this addendum without
8 definition shall have the meanings given them in the Purchase Agreement. Except as expressly modified by this
9 addendum and any other addendum to the Purchase Agreement executed by Buyer and Seller, the Purchase
10 Agreement is unmodified. This addendum and the Purchase Agreement may not be modified except in a writing
11 signed by both Seller and Buyer.

12 LEAD WARNING STATEMENT

13 EVERY PURCHASER OF ANY INTEREST IN RESIDENTIAL REAL PROPERTY ON WHICH A RESIDENTIAL
14 DWELLING WAS BUILT PRIOR TO 1978 IS NOTIFIED THAT SUCH PROPERTY MAY PRESENT EXPOSURE TO
15 LEAD FROM LEAD-BASED PAINT THAT MAY PLACE YOUNG CHILDREN AT RISK OF DEVELOPING LEAD
16 POISONING. LEAD POISONING IN YOUNG CHILDREN MAY PRODUCE PERMANENT NEUROLOGICAL
17 DAMAGE, INCLUDING LEARNING DISABILITIES, REDUCED INTELLIGENCE QUOTIENT, BEHAVIORAL
18 PROBLEMS AND IMPAIRED MEMORY. LEAD POISONING ALSO POSES A PARTICULAR RISK TO PREGNANT
19 WOMEN. THE SELLER OF ANY INTEREST IN RESIDENTIAL REAL PROPERTY IS REQUIRED TO PROVIDE
20 THE BUYER WITH ANY INFORMATION ON LEAD-BASED PAINT HAZARDS FROM RISK ASSESSMENTS OR
21 INSPECTIONS IN THE SELLER'S POSSESSION AND NOTIFY THE BUYER OF ANY KNOWN LEAD-BASED
22 PAINT HAZARDS. A RISK ASSESSMENT OR INSPECTION FOR POSSIBLE LEAD-BASED PAINT HAZARDS IS
23 RECOMMENDED PRIOR TO PURCHASE.
24

25 AGENT'S ACKNOWLEDGMENT

26 Seller Agent has informed Seller of Seller's obligations under 42 U.S.C. 4852(d) and Agent is aware of
27 his/her responsibility to ensure compliance.
28

29 SELLER'S DISCLOSURE

30 .1 **Presence of lead-based paint and/or lead-based paint hazards (check one below):**

31 Seller has knowledge of lead-based paint and/or lead-based paint hazards in the housing (explain).
32 _____
33 _____
34

35 Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
36
37

38 .2 **Records and reports available to Seller (check one below):**

39 Seller has provided Buyer with all available records and reports relating to lead-based paint and/or lead-based
40 paint hazards in the housing (list documents below):
41 _____
42 _____
43

44 Seller has no reports or records relating to lead-based paint and/or lead-based paint hazards in the housing.
45
46
47

48 The following parties have reviewed the information above and certify, to the best of their knowledge, that the
49 information they provided is true and accurate. A photocopy of this completed LEAD-BASED PAINT DISCLOSURE
50 ADDENDUM, together with a copy of any documents listed in Section 2 of Seller's Disclosure above, may be treated
51 as an original.

Seller Agent _____ Date _____ ← Seller _____ Date _____ ←
Selling Firm _____ Seller _____ Date _____ ←

52
53 BEFORE BUYER IS OBLIGATED TO PURCHASE THIS PROPERTY UNDER ANY PURCHASE AND SALE
54 AGREEMENT, BUYER'S AND SELLER'S SIGNATURES ARE REQUIRED ON THE FORM BELOW.

55
56 BUYER'S ACKNOWLEDGMENT

57 .1 **Buyer has received copies of all information listed above in Section 2 of Seller's Disclosure of**
58 **this form.**

59
60 .2 **Buyer has received the pamphlet "Protect Your Family from Lead in Your Home."**

61
62 .3 **Buyer has (check one below):**

63 Elected a ten (10) day opportunity (or mutually agreed upon period) to conduct a risk assessment or
64 inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards, providing Buyer the
65 right to rescind the Purchase Agreement by written notice to Seller no later than the end of such agreed upon 10 day
66 period if Buyer is not satisfied in Buyer's sole discretion with the results of such risk assessments or inspection, as
67 applicable. Buyer and Seller hereby agree the ten (10) day period described in the preceding sentence shall begin
68 and end _____. Buyer's failure to provide written notice of Buyer's election to rescind the Purchase Agreement to
69 Seller on or before _____, 20__ shall be deemed a waiver of Buyer's right to rescind as provided in this addendum.
70 If Buyer timely elects to rescind the Purchase Agreement as provided herein, the Option Deposit shall be returned to
71 Buyer, together with any interest thereon.

72 Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or
73 lead-based paint hazards.

Buyer _____ Date _____ ←

Buyer _____ Date _____ ←

74
75 **CERTIFICATION OF ACCURACY**
76

77 This section must be signed by Buyer before Seller signs lines below. The following parties have reviewed
78 the information and certify, to the best of their knowledge, that the information they provided herein is true and
79 accurate.

Buyer _____ Date _____ ← Seller _____ Date _____ ←

Buyer _____ Date _____ ← Seller _____ Date _____ ←

Buyer Agent _____ Date _____ ← Seller Agent _____ Date _____ ←

Buying Firm _____ Seller Firm _____

80

LINES WITH THIS SYMBOL ← REQUIRE A SIGNATURE
--

EXHIBIT E
AS IS EXCEPTIONS

1
2
3
4
5
6
7
8

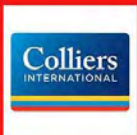
None

DRAFT

A photograph of the EconoLodge Gladstone building, a two-story structure with a prominent sign on the corner. The sign features the EconoLodge logo (a red circle with a white 'E') and the words 'Econo Lodge' in red. The building has a modern design with large windows and a red pillar near the entrance. The image is partially overlaid with a blue circular graphic on the left side.

ECONOLODGE GLADSTONE
17330 SOUTHEAST MCLOUGHLIN
MILWAUKIE, OR 97267

Price: \$2,900,000



SKIP ROTTICCI, CCIM
Vice President
(503) 499-0062
skip.rotticci@colliers.com
200204348

TABLE OF CONTENTS

SKIP ROTTICCI, CCIM

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Aerial Map	16
Business Map	17
Demographics	18



Property Summary

Available SF	0
Building Size	17118
# of Rooms	27 + Managers Apartment
Lot Size	22,216 Sq. Ft.
Property Type	Hospitality
Purchase Price	\$2,900,000
Rentable Sq. Ft.	17,118
Onsite amenities	Pool, spa, lobby office

Property Overview

The Econolodge Milwaukie is located at 17330 McLoughlin Blvd. Milwaukie, Oregon. The building is approximately 17,118 square feet sitting on slightly over 1/2 acre. The building was constructed in 1991 and is in very good condition. The owner has recently replaced some of the exterior wooden posts and beams and has repainted the structure. The guest rooms are large and include a sitting/living area, large designated area that can easily be modified to include a full kitchenette with a 24" range, microwave, kitchen sink, refrigerator, and upper and lower cabinets. All rooms are accessed via exterior entrances

Location Overview

The Econolodge Milwaukie is situated on the northeast corner of SE McLaughlin Blvd. and SE Ina Ave. The property has 22 onsite parking spaces, and plenty of adjacent street parking. The Econolodge is

PROPERTY PHOTOS

Econolodge Gladstone
17330 Southeast McLoughlin Boulevard | Milwaukie, OR 97267



Acquisition Costs

Purchase Price, Points and Closing Costs	\$2,936,850
Investment - Cash	\$1,051,850
First Loan (Balloon)	\$1,885,000

Investment Information

Purchase Price	\$2,900,000
Price per Sq. Ft.	\$169.41

Income, Expenses & Cash Flow

Gross Scheduled Income	\$912,600
Total Vacancy and Credits	(\$319,410)
Operating Expenses	(\$294,222)
Net Operating Income	\$298,968
Debt Service	(\$109,957)
Cash Flow Before Taxes	\$189,011
After Tax Results	
Total Interest (Debt Service)	(\$77,617)
Depreciation and Amortization	(\$59,612)
Taxable Income (Loss)	\$161,739
Tax Savings (Costs)	(\$67,930)
Cash Flow After Taxes	\$121,081

Financial Indicators

Cash-on-Cash Return Before Taxes	17.97%
Optimal Internal Rate of Return (yr 3)	27.59%
Debt Coverage Ratio	2.72
Capitalization Rate	10.31%
Gross Income / Square Feet	\$53.31
Gross Expenses / Square Feet	(\$17.19)
Operating Expense Ratio	49.60%

Property Summary

Hotels and motels valuations are very quality and location driven. That said we have looked at an income capitalization approach, a sales comparable approach using bot square footage values and a cost per key or room approach.

The average cost per key/room of the included sales comps is \$112,463. The median cost per key/room is \$99,302.

The low sales comp is \$79,005 per key. The high sales comp is \$206,667 per key/room.

Valuation Summary	Conservative	Average	Aggressive
Income Valuation	\$2,717,891	\$2,989,680	\$3,321,867
Sales Comparison Valuation	\$2,273,442	\$4,223,696	\$6,173,949
\$ per SF	Conservative	Average	Aggressive
Income Valuation	\$158.77	\$174.65	\$194.06
Sales Comparison Valuation	\$132.81	\$246.74	\$360.67

Stabilized Income	Amount	Percent	\$ per SF
Gross Scheduled Income	\$912,600	100%	\$53.31
- Vacancy	(\$319,410)	35.0%	\$18.66
Gross Operating Income	\$593,190	100%	\$34.65
- Total Operating Expenses	(\$294,222)	49.6%	\$17.19
- Management Fees	\$0	.0%	\$0.00
- Replacement Reserves	\$0	.0%	\$0.00
Net Operating Income	\$298,968		\$17.47

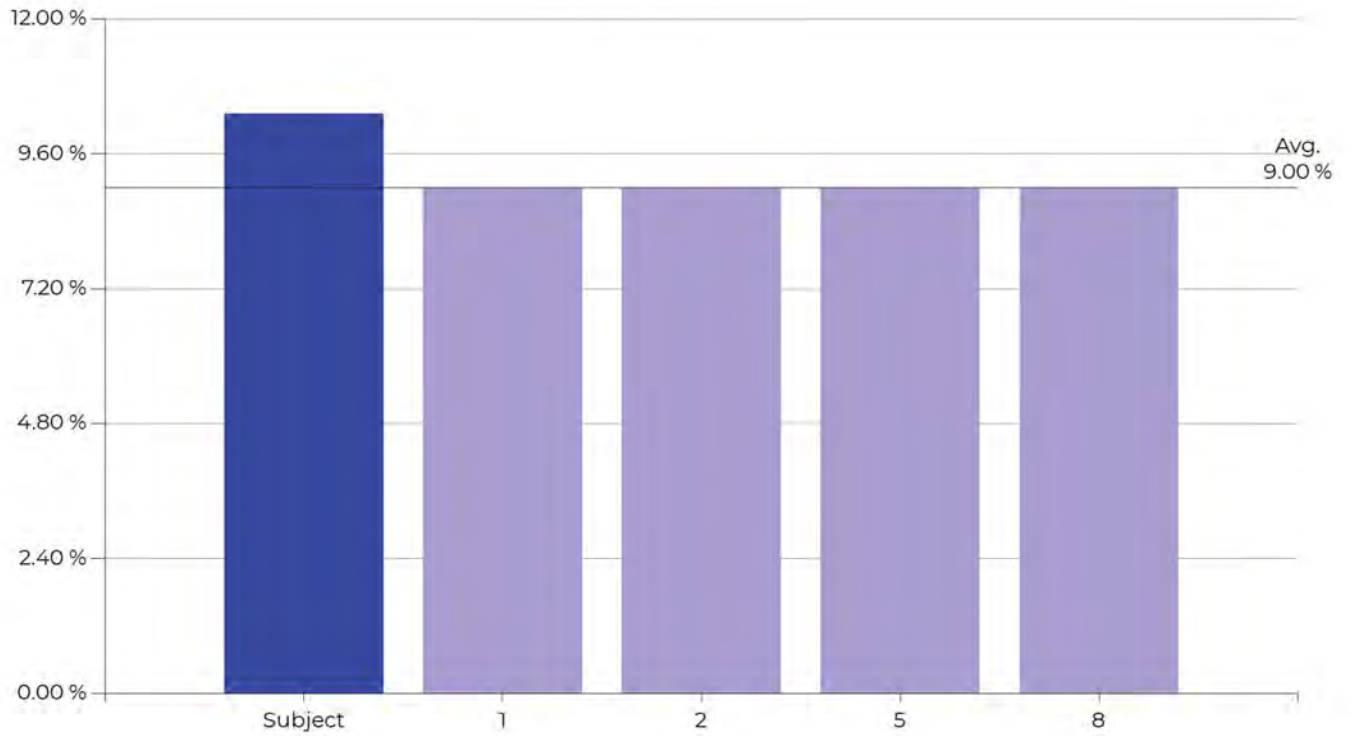
Income Valuation Analysis	Price	Cap Rate	\$ per SF
Conservative Cap Rate	\$2,717,891	11.00%	\$158.77
Average Cap Rate	\$2,989,680	10.00%	\$174.65
Aggressive Cap Rate	\$3,321,867	9.00%	\$194.06

Sales Comparison	Subject	1	2	3	4	5	6
Property Address	17330 Southeast McLoughlin Boulevard Milwaukie, OR	12712 SE 2nd Cir (Part of Portfolio) Vancouver, WA	15402 NW Cornell Rd (Part of Portfolio) Beaverton, OR	1477 Northeast 183rd Avenue Portland, OR	15520 Northwest Gateway Court Beaverton, OR	3333 Southwest 198th Avenue Aloha, OR	4714-4716 NE 94th Ave Vancouver, WA
Price	\$2,900,000	\$7,742,400	\$11,680,500	\$9,000,000	\$31,000,000	\$4,375,000	\$6,400,000
Price/SF	\$169.41	\$360.67	\$256.93	\$192.05	\$356.83	\$132.81	\$326.95
Sale Date	n/a	05-2018	05-2018	12-2019	12-2018	05-2019	04-2019
Cap Rate	10.31	9.0	9.0	0.0	0.0	9.0	0.0
RSF	17,118	21,467	45,462	46,864	86,876	32,941	19,575
Year Built	1991	1996	1998	2000	1999	1985	1990
Floors	2	3	3	n/a	n/a	n/a	2

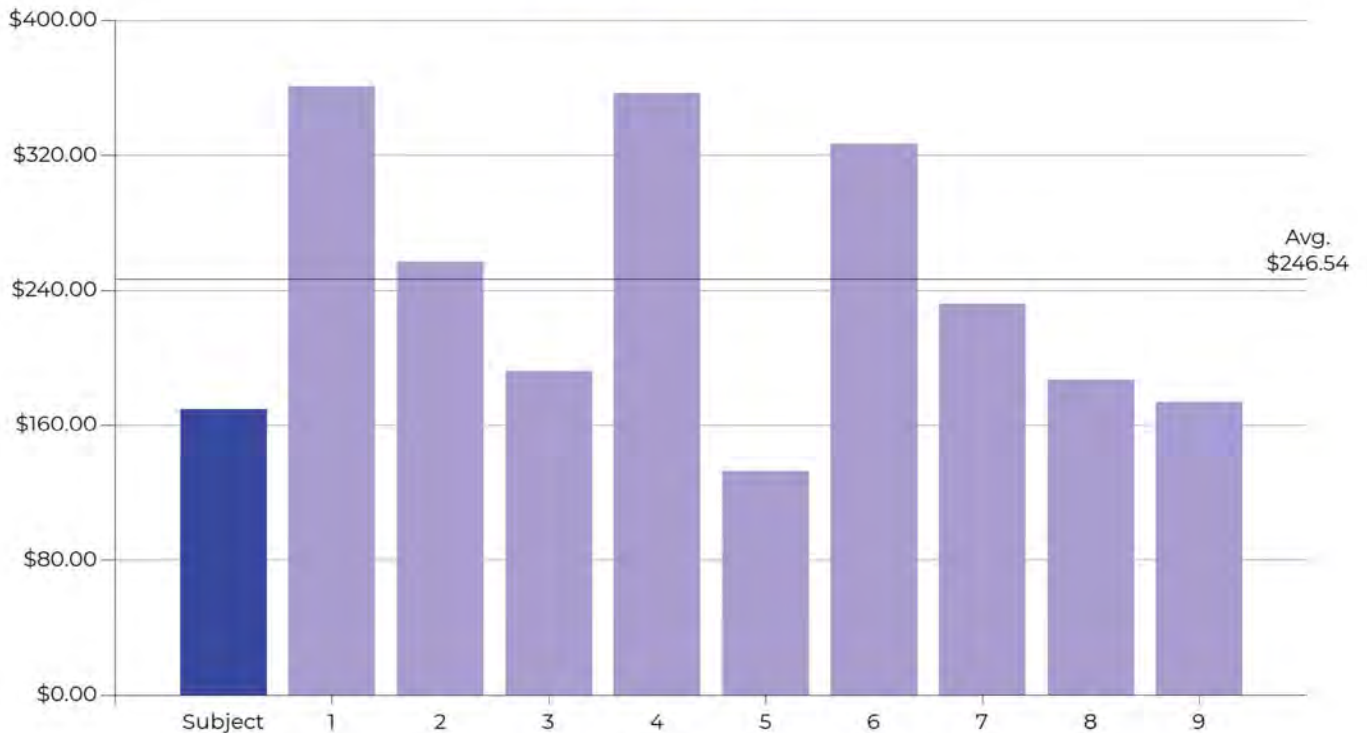
Adjustments	Subject	1	2	3	4	5	6
Sale Price	\$2,900,000	\$7,742,400	\$11,680,500	\$9,000,000	\$31,000,000	\$4,375,000	\$6,400,000
Adjustment Type		Average	Average	Average	Average	Average	Average
Adjustment Amount		0%	0%	0%	0%	0%	0%
Adjusted Price		\$7,742,400	\$11,680,500	\$9,000,000	\$31,000,000	\$4,375,000	\$6,400,000
Adjusted Price/SF		\$360.67	\$256.93	\$192.05	\$356.83	\$132.81	\$326.95

Adjusted Analysis	Adj. Sale Price	Adj. Price/SF
Conservative Value	\$2,273,442	\$132.81
Average Value	\$4,223,696	\$246.74
Aggressive Value	\$6,173,949	\$360.67

Cap Rate



Price per Sq. Ft.



S

Sale Price	\$2,900,000
Spaces	1
Rentable SqFt	17,118
Price/SqFt	\$169.41
Cap Rate	10.31%
Year Built	1991

Econolodge Gladstone

17330 Southeast McLoughlin Boulevard, Milwaukie, OR 97267

1



Sale Price	\$7,742,400
Spaces	98
Rentable SqFt	21,467
Price/SqFt	\$360.67
Lot Size	99,752
Cap Rate	9.0%
Year Built	1996
Sale Date	5/3/2018

DoubleTree

12712 SE 2nd Cir (Part of Portfolio), Vancouver, WA 98684

Notes

\$79,004 per key.

2



Sale Price	\$11,680,500
Spaces	98
Rentable SqFt	45,462
Price/SqFt	\$256.93
Lot Size	106,722
Cap Rate	9.0%
Year Built	1998
Sale Date	5/3/2018

DoubleTree by Hilton Hotel Portland - Beavert

15402 NW Cornell Rd (Part of Portfolio), Beaverton, OR 97006

Notes

Sold as Portfolio-\$119,188 per key

SALE COMPARABLES

Econolodge Gladstone
17330 Southeast McLoughlin Boulevard | Milwaukie, OR 97267

3



Sale Price	\$9,000,000
Spaces	83
Rentable SqFt	46,864
Price/SqFt	\$192.05
Acres	1.060
Year Built	2000
Sale Date	12/10/2019
Days-On-Mkt	215

Guest House Inn

1477 Northeast 183rd Avenue, Portland, OR 97230

Notes

\$108,433 per key

4



Sale Price	\$31,000,000
Spaces	150
Rentable SqFt	86,876
Price/SqFt	\$356.83
Year Built	1999
Sale Date	12/10/2018

Hilton Garden Inn

15520 Northwest Gateway Court, Beaverton, OR 97006

Notes

Avg Room Rate \$125 Avg. Occupancy 76%- \$206,667 per key.

5



Sale Price	\$4,375,000
Spaces	52
Rentable SqFt	32,941
Price/SqFt	\$132.81
Acres	2.090
Cap Rate	9.0%
Year Built	1985
Sale Date	5/14/2019

Quality Inn

3333 Southwest 198th Avenue, Aloha, OR 97006

Notes

\$84,135 per key.

SALE COMPARABLES

Econolodge Gladstone
17330 Southeast McLoughlin Boulevard | Milwaukie, OR 97267

6



Sale Price	\$6,400,000
Spaces	68
Rentable SqFt	19,575
Price/SqFt	\$326.95
Lot Size	71,002
Year Built	1990
Sale Date	4/9/2019

Comfort Inn

4714-4716 NE 94th Ave, Vancouver, WA 98662

Notes

3 star rating- \$94,118 per key

7



Sale Price	\$3,600,000
Spaces	24
Rentable SqFt	15,512
Price/SqFt	\$232.08
Lot Size	26,136
Year Built	1956
Sale Date	7/5/2018

Super Value Inn

5205 N Interstate Ave, Portland, OR 97217

Notes

2 star-\$150,000 per key

8



Sale Price	\$10,166,000
Spaces	101
Rentable SqFt	54,390
Price/SqFt	\$186.91
Lot Size	37,897
Cap Rate	9.0%
Year Built	1989
Sale Date	5/3/2018

DoubleTree by Hilton Hotel Portland - Tigard

9575 SW Locust St (Part of Portfolio), Tigard, OR 97223

Notes

2 star- Portfolio Sale- \$100,653 per key

9



Sale Price	\$9,795,000
Spaces	100
Rentable SqFt	56,410
Price/SqFt	\$173.64
Lot Size	84,506
Year Built	1990
Sale Date	12/2/2019

Pony Soldier Inn

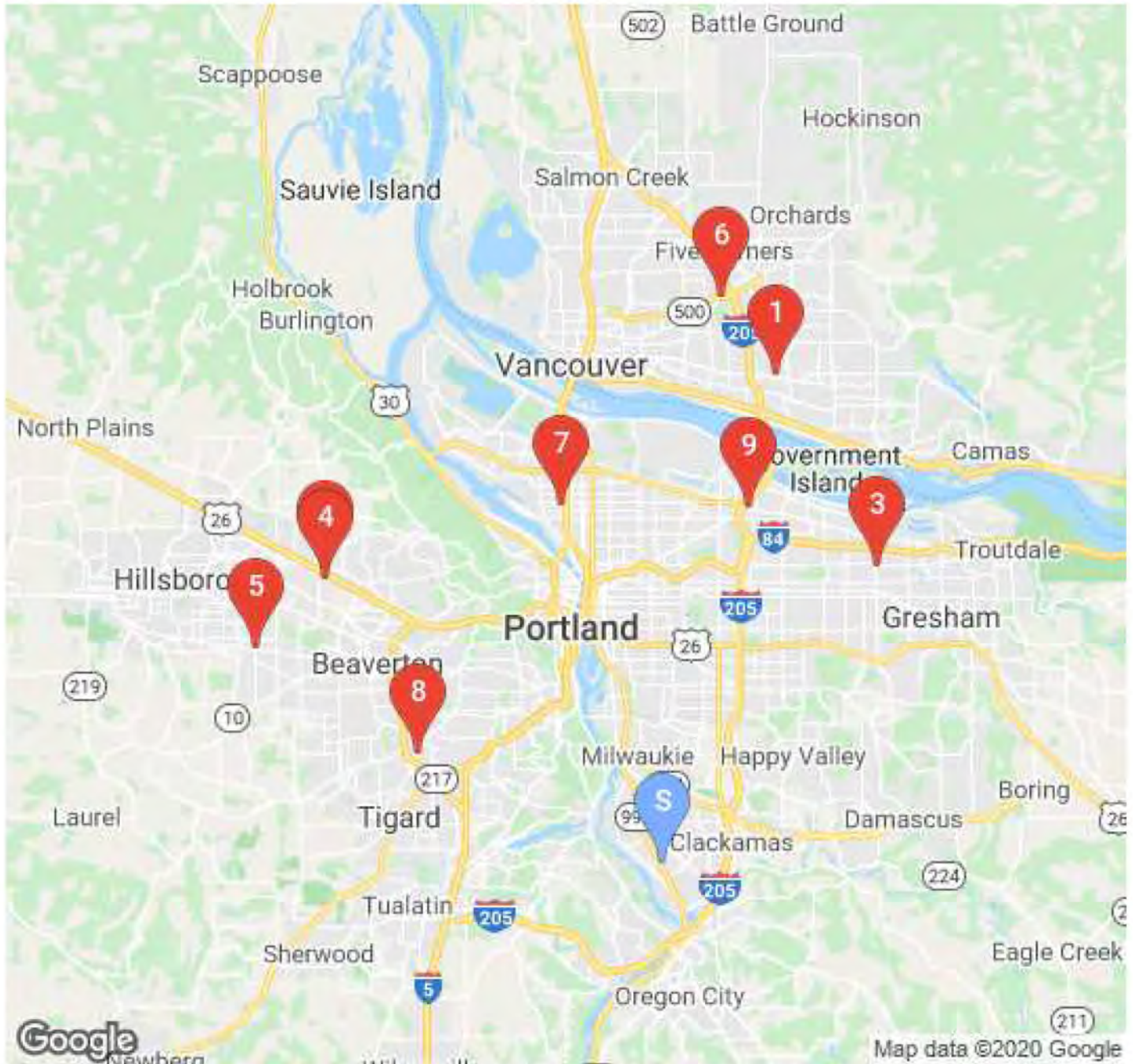
9901 NE Sandy Blvd, Portland, OR 97220

Notes

3 star- \$97,950 per key.

SALE COMPARABLES

Econolodge Gladstone
17330 Southeast McLoughlin Boulevard | Milwaukie, OR 97267



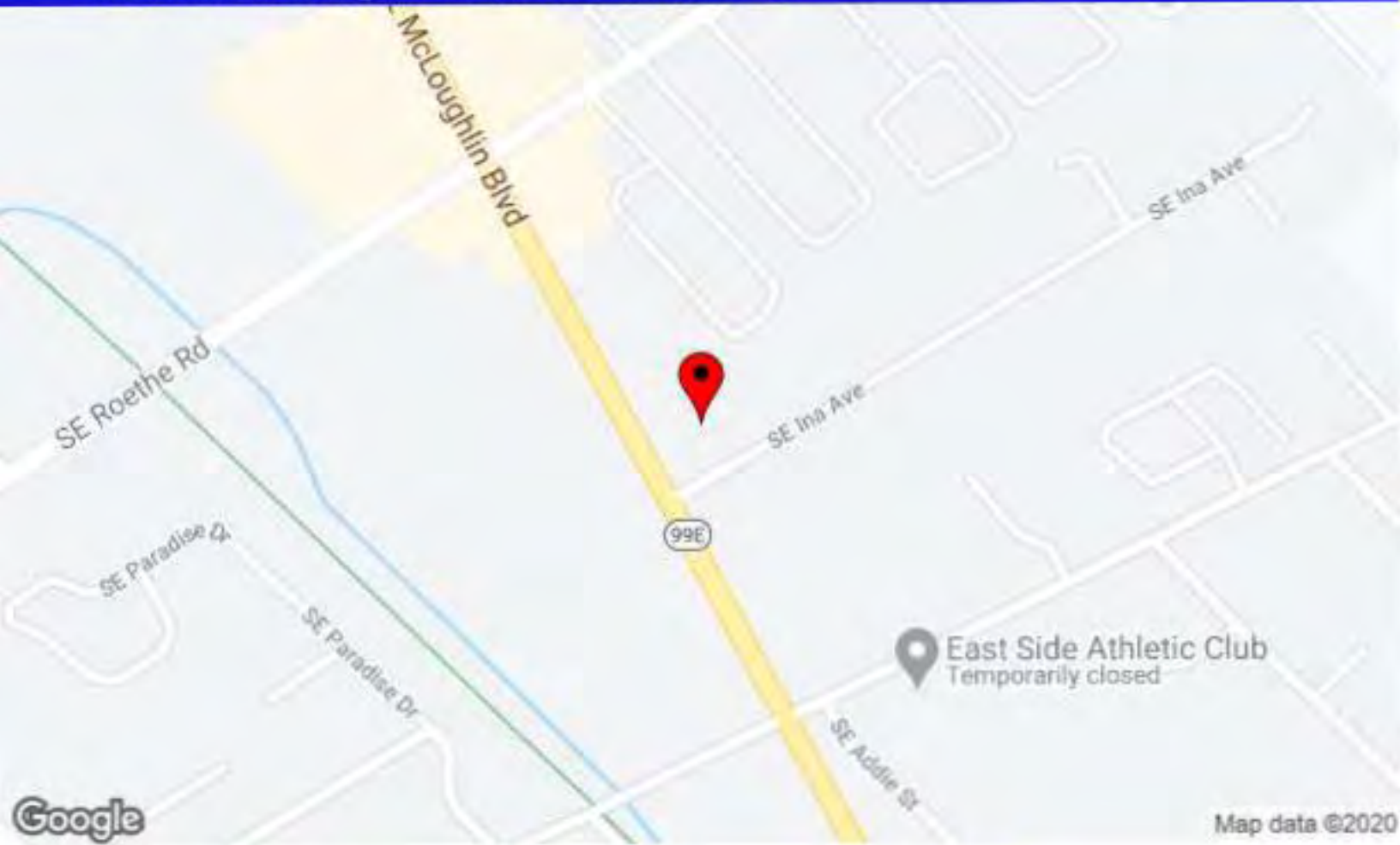
- S** 17330 Southeast McLoughlin Boulevard
Milwaukie, OR, 97267
\$2,900,000
- 1** 17712 SE 2nd Cir (Part of Portfolio)
Vancouver, WA, 98684
\$7,742,400
- 2** 15402 NW Cornell Rd (Part of Portfolio)
Beaverton, OR, 97006
\$11,680,500
- 3** 1477 Northeast 183rd Avenue
Portland, OR, 97230
\$9,000,000
- 4** 15520 Northwest Gateway Court
Beaverton, OR, 97006
\$31,000,000
- 5** 3333 Southwest 198th Avenue
Aloha, OR, 97006
\$4,375,000
- 6** 4714-4716 NE 94th Ave
Vancouver, WA, 98662
\$6,400,000
- 7** 5205 N Interstate Ave
Portland, OR, 97217
\$3,600,000
- 8** 9575 SW Locust St (Part of Portfolio)
Tigard, OR, 97223
\$10,166,000
- 9** 9901 NE Sandy Blvd
Portland, OR, 97220
\$9,795,000

The calculations and data presented are deemed to be accurate, but not guaranteed. They are intended for the purpose of illustrative projections and analysis. The information provided is not intended to replace or serve as substitute for any legal, accounting, investment, real estate, tax or other professional advice, consultation or service. The user of this software should consult with a professional in the respective legal, accounting, tax or other professional area before making any decisions.



LOCATION MAP

Econolodge Gladstone
7330 Southeast McLoughlin Boulevard | Milwaukie, OR 97267



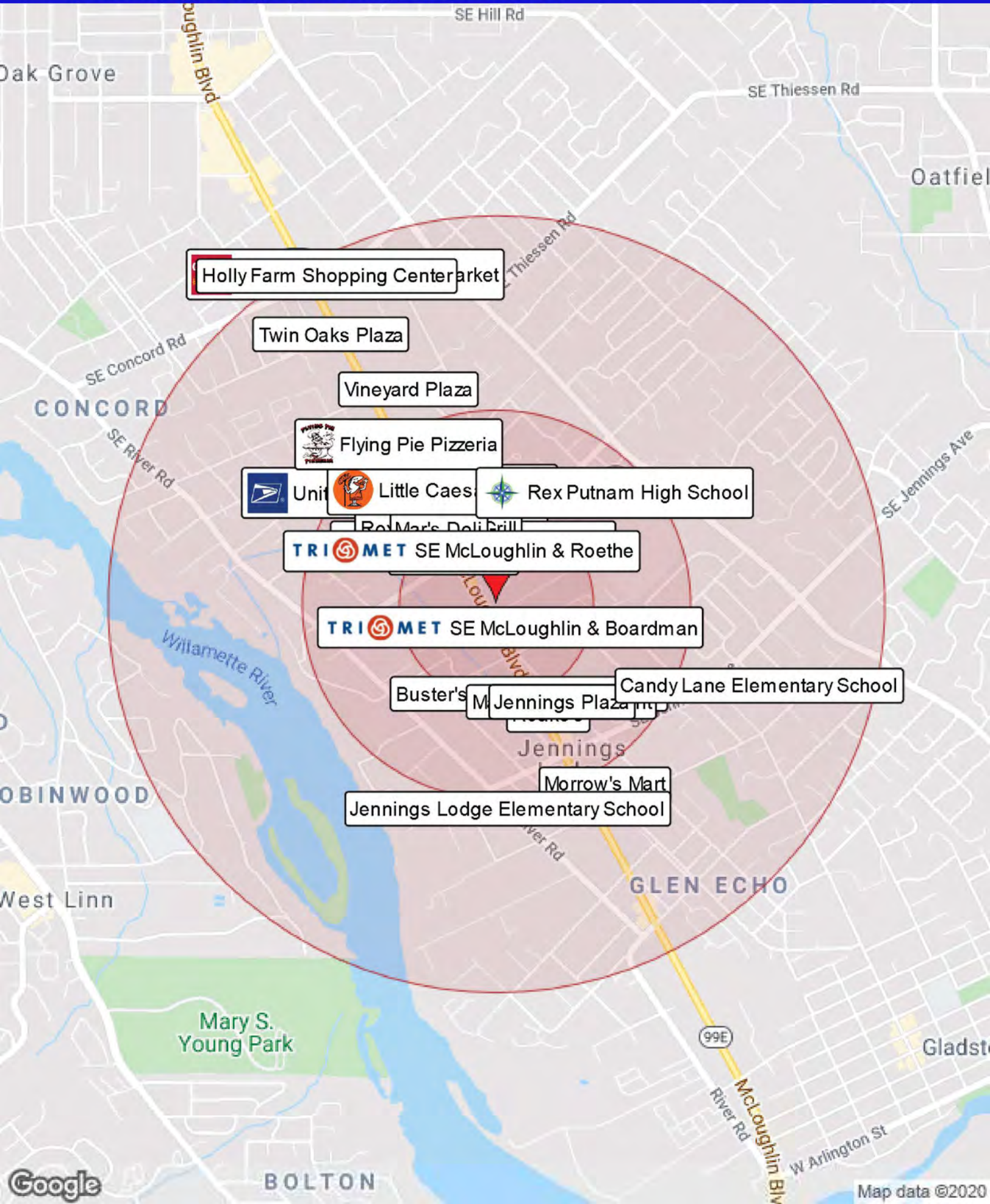
AERIAL MAP

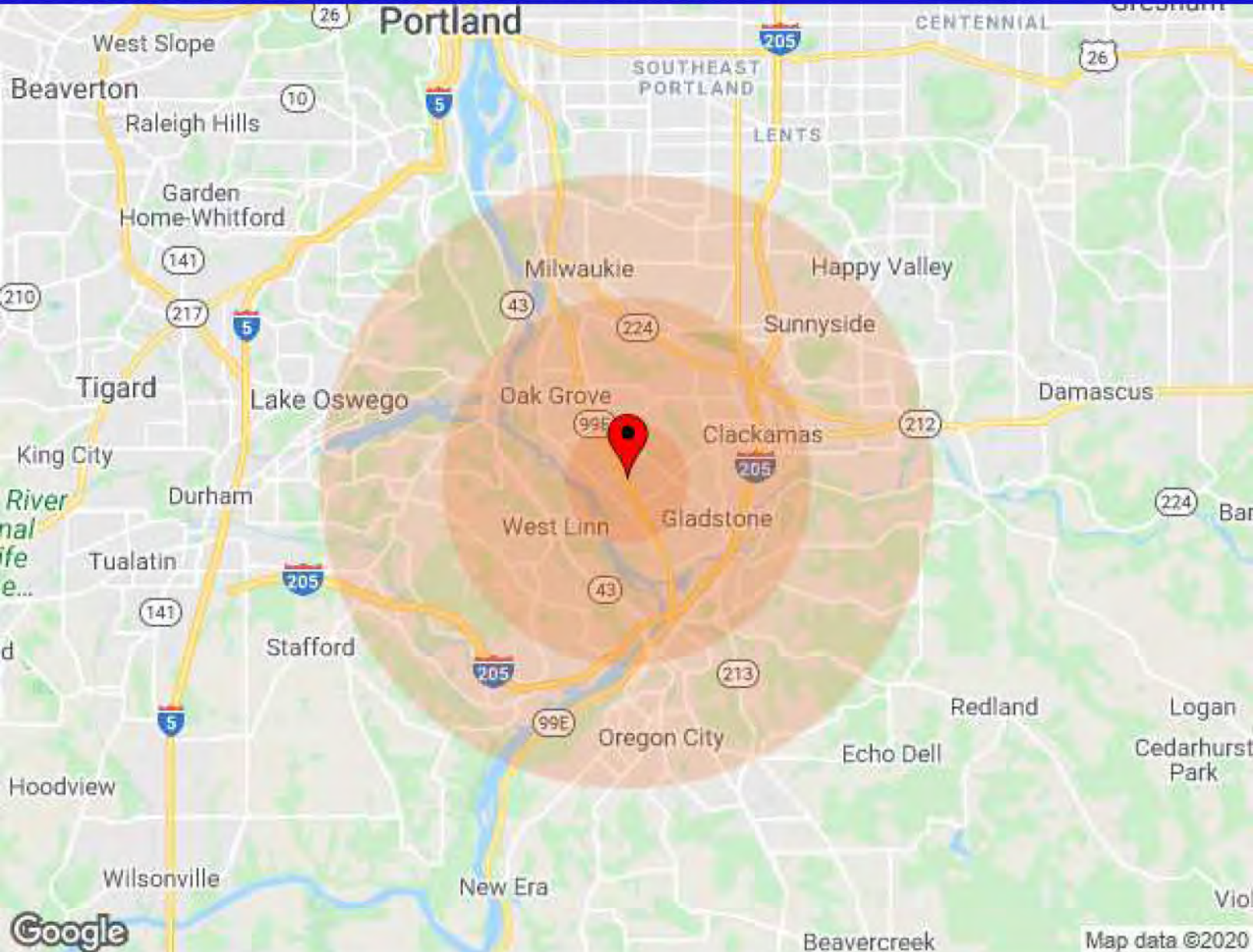
Econolodge Gladstone
17330 Southeast McLoughlin Boulevard | Milwaukie, OR 97267



BUSINESS MAP

Econolodge Gladstone
17330 Southeast McLoughlin Boulevard | Milwaukie, OR 97267





Population	1 Mile	3 Miles	5 Miles
Male	6,099	39,870	101,289
Female	6,344	41,712	105,022
Total Population	12,443	81,582	206,311
Age	1 Mile	3 Miles	5 Miles
Ages 0-14	2,088	13,132	34,312
Ages 15-24	1,603	10,660	27,461
Ages 55-64	1,600	11,662	29,038
Ages 65+	2,276	15,636	36,398
Race	1 Mile	3 Miles	5 Miles
White	11,321	75,425	186,335
Black	68	321	1,160
Am In/AK Nat	26	194	590
Hawaiian	7	31	118
Hispanic	1,280	5,810	14,527
Multi-Racial	1,756	8,838	22,862

Income	1 Mile	3 Miles	5 Miles
Median	\$46,871	\$54,939	\$58,992
< \$15,000	678	3,489	8,054
\$15,000-\$24,999	533	2,840	7,135
\$25,000-\$34,999	528	3,127	7,185
\$35,000-\$49,999	862	4,844	11,543
\$50,000-\$74,999	1,207	6,698	15,811
\$75,000-\$99,999	759	4,489	11,503
\$10,000-\$149,999	375	4,645	11,489
\$150,000-\$199,999	77	1,590	4,615
> \$200,000	81	1,315	4,769

Housing	1 Mile	3 Miles	5 Miles
Total Units	5,239	35,175	89,901
Occupied	4,945	33,399	84,754
Owner Occupied	2,944	22,162	55,151
Renter Occupied	2,001	11,237	29,603
Vacant	294	1,776	5,147

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OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
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Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

**Adoption of Previously Approved Zoning and Development
Ordinance Amendments
ZDO-273 – Short-Term Rentals**

Purpose/Outcomes	<i>Amend the Clackamas County Zoning and Development Ordinance</i>
Dollar Amount and Fiscal Impact	<i>N/A</i>
Funding Source	<i>N/A</i>
Duration	<i>Indefinitely</i>
Previous Board Action	<i>Board of County Commissioners held a public hearing on this matter on December 9, 2020.</i> <i>Prior Board actions related to short-term rentals:</i> <i>Policy Sessions - March 13, 2019; June 11, 2019; August 6, 2019; September 25, 2019; October 22, 2019; January 14, 2020; March 11, 2020; and October 13, 2020.</i> <i>Public Hearings - January 30, 2020; February 13, 2020; November 5, 2020 and November 25, 2020.</i>
Strategic Plan Alignment	<i>The item helps <u>build public trust through good government</u> by updating land use regulations to respond to community concerns; to provide clarity about allowed uses and to create certainty for property owners making investments in their property.</i>
Counsel Review	<i>December 9, 2020 - NB</i>
Procurement Review	<i>1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/></i> <i>2. If no, provide brief explanation:</i> <i>The item is an amendment of the zoning code and does not involve any procurement activities.</i>
Contact Person	<i>Nate Boderman, Assistant County Counsel; 503-655-8364</i>
Contract No.	<i>N/A</i>

BACKGROUND:

A short-term rental (STR), or vacation rental, is a dwelling unit, or portion of a dwelling unit, that is rented to any person or entity for a period of up to 30 consecutive nights.

In early 2019, the Board directed staff to look into the most effective ways to potentially allow and regulate STRs. After nearly two years of work and public outreach to consider the regulation of homes being used as STRs, the Board of County Commissioners (BCC) adopted a STR registration and regulation program on November 25, 2020, with an effective date of July 1, 2021.

To support the adopted STR program, it is necessary to make some amendments to the County's Zoning & Development Ordinance (ZDO) to eliminate conflicts between the ZDO and the County Code and to clarify that a dwelling and guest house may be used as a short-term rental.

ZDO-273 includes amendments to the ZDO which would amend the definition of "dwelling unit" in Section 202 to make it clear that the rental of a dwelling unit on a short-term basis is allowed, and would amend text in Section 833 to make it clear that the rental of a guest house on a short-term basis is also allowed. Specific facilities allowed and not allowed in guest houses would also be clarified in that section.

A public hearing was held on November 23, 2020, for Planning Commission consideration of the proposed ZDO amendments. Following the public hearing, the Planning Commission voted to recommend to the Board of County Commissioners (BCC) that ZDO-273 be approved.

A public hearing was held on December 9, 2020, for the BCC's consideration of this recommendation. Following the public hearing, the BCC voted 5 - 0 to approve ZDO-273 as recommended by the Planning Commission and staff.

The attached Exhibit A reflects the amendments, as approved by the BCC.

RECOMMENDATION:

Staff respectfully requests that the BCC adopt the proposed ordinance.

Respectfully submitted,



Nate Boderman
Assistant County Counsel

Attachments:
Proposed Ordinance with Exhibit A

ORDINANCE NO. ZDO-273

An Ordinance Amending Sections 202 and 833 of the Clackamas County Zoning and Development Ordinance (ZDO)

WHEREAS, in 2019, the Board of County Commissioners directed Planning staff to look into the most effective ways to potentially allow and regulate short-term rentals, which are defined as dwelling units or portions of dwelling units that are rented to a person or entity for a period of up to 30 days, in the unincorporated areas of the county; and

WHEREAS, on November 25, 2020, the Board of County Commissioners adopted a new section into the County Code, *Section 8.10, Short-Term Rentals*, which will take effect on July 1, 2021 and contains a registration program for short-term rentals, including all the regulations specific to short-term rentals; the short-term rental application processes and requirements; and enforcement processes and actions for short-term rentals, and it specifically allows short-term rentals in legal dwellings and guest houses in unincorporated Clackamas County; and

WHEREAS, the county's Zoning & Development Ordinance (ZDO) does not clearly identify short-term rentals as allowed in any dwellings and it specifically prohibits the use of a guest house as a source of rental income, and therefore to fully implement the adopted short-term rental program, amendments need to be made to the ZDO to specifically allow short-term rentals; and

WHEREAS, the county finds that, except under certain specific circumstances that require land use approvals, such as temporary dwellings for care or farmworker dwellings, there is nothing in state or county regulations that limit dwellings to owner-occupancy or specifies a minimum time for rental; and

WHEREAS, the proposed ZDO amendments are consistent with the Clackamas County Comprehensive Plan, the Statewide Planning Goals and Guidelines, and the Metro Urban Growth Management Functional Plan; and

WHEREAS, after a duly-noticed public hearing on November 23, 2020, the Planning Commission recommended approval of the amendments to the ZDO, by a vote of 7-1; and

WHEREAS, after a duly-noticed public hearing on December 9, 2020, the Board of County Commissioners orally approved the amendments to the ZDO, as drafted, by a vote of 5 - 0; now therefore

The Board of Commissioners of Clackamas County ordains as follows:

- Section 1:** This Board adopts as its findings and conclusions the “STAFF REPORT” document addressed to the Clackamas County Planning Commission dated November 16, 2020.
- Section 2:** Sections 202 and 833 of the Clackamas County Zoning and Development Ordinance (ZDO) are hereby amended, as shown in Exhibit A, hereto attached.
- Section 3:** This ordinance shall be effective upon execution by the Chair of the Board of County Commissioners.

ADOPTED this 17th day of December, 2020.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Exhibit A
Ordinance ZDO-273
Zoning and Development Ordinance Amendments

Text to be added is underlined. Text to be deleted is ~~struck through~~.

202 **DEFINITIONS**

ACCESSORY BUILDING OR USE: A subordinate building or use, the function of which is clearly incidental to that of the main building or use on the same lot.

ACCESSWAY: A public right-of-way, a portion of which is hard surfaced, for use by pedestrians and bicyclists providing a direct route where public roads require significant out of direction travel.

ACCESS DRIVE: A private way, with a travel surface generally no more than 12 feet in width, created by deed or easement to provide vehicular ingress to, or egress from not more than two lots or parcels.

ACTIVE RECREATIONAL AREA: An area such as a park, sports field, or golf course, where turf lawn provides a playing surface that is dedicated to active play.

ADJOINING: Contiguous or abutting exclusive of street width. It shall include the terms adjacent, abutting or contiguous.

AIRPORT, PERSONAL-USE: An airstrip restricted, except for aircraft emergencies, to use by the owner and, on an infrequent and occasional basis, by his invited guests, and to commercial activities in connection with agricultural operations only.

AIRPORT, PRIVATE USE: An airport restricted, except for aircraft emergencies, to use by the owner and his invited guests. The determination as to whether an airport is private or public-use is made by the Oregon Department of Aviation.

AIRPORT, PUBLIC-USE: An airport that is open to use by the flying public, with or without a request to use the airport.

ALLEY: A travel way that is used primarily for vehicular service access to the back or side of properties otherwise abutting on a street.

ALTERATION, CULTURAL RESOURCE: Any exterior change or modification, through public or private action, of any cultural resource or of any property located within an historic district including, but not limited to, exterior changes to or modification of structure, architectural details or visual characteristics such as paint color and surface texture, grading, surface paving, new structures, cutting or removal of trees and other natural features, disturbance of archaeological sites or areas, and the placement or removal of any exterior objects such as signs, plaques, light fixtures,

street furniture, walls, fences, steps, plantings and landscape accessories affecting the exterior visual qualities of the property.

ANTIQUES: Goods that, by virtue of their age or unusual quality, are generally considered to be of historical and/or artistic interest, ordinarily such items are in good state of preservation or are restorable to their original conditions.

AQUIFER: A layer of rock or alluvial deposit which holds water.

ARCHITECTURAL FEATURES: Features include, but are not limited to cornices, canopies, sunshades, gutters, chimneys, fireplaces, flues and eaves. Architectural features shall not include any portion of a structure built for the support, occupancy, shelter or enclosure of persons or property of any kind.

ARCHITECTURAL FEATURES, CULTURAL RESOURCE: The architectural elements embodying style, design, general arrangement and components of all of the outer surfaces of an improvement, including, but not limited to, the kind, color, texture of the building materials and type and style of all windows, doors, lights, signs and other fixtures appurtenant to such improvements.

AUTOMATIC IRRIGATION CONTROLLER: An automatic timing device used to remotely control valves that operate an irrigation system. Automatic irrigation controllers schedule irrigation events using either evapotranspiration (weather-based) or soil moisture sensor data.

BABYSITTER: A person who goes into the home of a child to give care during the temporary absence of the parent or legal guardian or custodian.

BASEMENT: A portion of a building which has less than one-half of its height measured from finished floor to finished ceiling above the average elevation of the adjoining ground, but not an "underground structure" as defined in this ordinance.

BEACON: Any light with one or more beams directed into the atmosphere or directed at one or more points not on the same site as the light source; also, any light with one or more beams that rotate or move.

BED AND BREAKFAST HOMESTAY: A use that is conducted in an owner-occupied single-family dwelling, provides rooms for rent on a daily or weekly basis to the public, and includes breakfast as part of the cost of the room. A maximum of two guest rooms and a maximum of five guests at one time are permitted.

BED AND BREAKFAST INN: A use that is conducted in an operator- or owner-occupied single-family dwelling, provides rooms for rent on a daily or weekly basis to the public, and includes breakfast as part of the cost of the room. A bed and breakfast inn may include a restaurant offering meals to the general public as well as to overnight guests.

BED AND BREAKFAST RESIDENCE: A use that is conducted in an operator- or owner-occupied single-family dwelling, provides rooms for rent on a daily or weekly basis to the public, and includes breakfast as part of the cost of the room. In addition to the required breakfast, other occasional family-style meals may be provided for overnight guests.

BICYCLE RACK: An apparatus designed to support the central frame of a bicycle and allow locking of both wheels, without the removal of wheels.

BIKEWAY: A paved facility provided for use by cyclists. There are five types of bikeways.

Shared Roadway: A type of bikeway where motorists and cyclists occupy the same roadway area. Shared roadways are allowed on neighborhood streets and on rural roads and highways.

Shoulder Bikeway: A bikeway which accommodates cyclists on paved roadway shoulder.

Bike Lane: A section of roadway designated for exclusive bicycle use, at the same grade as the adjacent roadway.

Bike Path: A bike lane constructed entirely separate from the roadway.

Cycle Track: An exclusive “grade-separated” bike facility elevated above the street level using a low-profile curb and a distinctive pavement material.

BLANKETING: The visual blocking of one sign by another as seen by a motorist traveling a street or highway.

BLOCK: A parcel of land bounded by streets, railroad rights-of-way, waterways, parks, unsubdivided acreage, or a combination thereof.

BUILDING: Any structure used or intended for supporting or sheltering any use or occupancy.

BUILDING ENVELOPE: The three dimensional space which is to be occupied by a building.

BUILDING LINE: A straight line that is parallel and adjacent to the front side of the main building and parallel to the front lot line.

BUILDING OR STRUCTURE HEIGHT: The term "height of building" shall be calculated by the methods identified in the State of Oregon Structural Specialty Code or the State of Oregon One and the Two Family Dwelling Specialty Code, as applicable.

BULK PLANT: Hazardous substances at the bulk plant level are manufactured, collected, repackaged, stored, or distributed, but are generally not used on the site.

The primary emphasis of uses at the bulk plant level is on hazardous substances. Materials are stored in large permanent tanks. Bulk plant quantities are larger than amounts transported in or out in any single shipment. Processors of hazardous substances will generally be at this level. Uses which produce hazardous substances as a by-product or accessory to another product are not in this category.

CANNABINOID: Any of the chemical compounds that are the active constituents of marijuana.

CANNABINOID CONCENTRATE: A substance obtained by separating cannabinoids from marijuana by a mechanical extraction process; a chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol, or ethanol; a chemical extraction process using the solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure; or any other process identified by the Oregon Liquor Control Commission, in consultation with the Oregon Health Authority, by rule.

CANNABINOID EDIBLE: Food or potable liquid into which a cannabinoid concentrate, cannabinoid extract, or dried marijuana leaves or flowers have been incorporated.

CANNABINOID EXTRACT: A substance obtained by separating cannabinoids from marijuana by a chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane; a chemical extraction process using the solvent carbon dioxide, if the process uses high heat or pressure; or any other process identified by the Oregon Liquor Control Commission, in consultation with the Oregon Health Authority, by rule.

CANNABINOID PRODUCT: A cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers. Cannabinoid product does not include usable marijuana by itself, a cannabinoid concentrate by itself, a cannabinoid extract by itself, or industrial hemp as defined in Oregon Revised Statutes 571.300.

CARE: The provision of room and board and other services as needed to assist in activities of daily living, such as assistance with bathing, grooming, eating, medication management, money management, or recreation.

CHILD CARE FACILITY: As defined in Oregon Revised Statutes 329A.250 but excluding a family child care home.

CLACKAMAS REGIONAL CENTER: The regional center identified on Comprehensive Plan Map X-CRC-1, *Regional Center, Corridors, and Station Community*, excluding the portion in the City of Happy Valley.

CLACKAMAS REGIONAL CENTER AREA: The Clackamas Regional Center Area identified on Comprehensive Plan Map X-CRC-1, *Regional Center, Corridors, and Station Community*, excluding the portion in the City of Happy Valley.

COGENERATION FACILITY: A facility that produces, through the sequential use of energy, electric energy and useful thermal energy including but not limited to heat or steam, used for industrial, commercial, heating, or cooling purposes; and is more than 50 percent owned by a person who is not an electric utility, an electric holding company, an affiliated interest, or any combination thereof.

COMMERCIAL USE: The use of land and/or structures for the conduct of retail, service, office, artisan, restaurant, lodging, child care, adult daycare, entertainment, private recreational, professional, and similar uses.

COMMON OWNERSHIP: Land commonly owned to include open space lands dedicated in planned unit developments and lands dedicated for open space which are owned by homeowners associations.

COMMUNITY GARDEN: A site where any kind of plant, except marijuana, is grown, and several individuals or households cultivate the site. The site may be divided into individual allotments, or gardeners may work together to cultivate the entire property. The land may be publicly or privately owned. The plants are grown for personal use by the gardeners, or for donation, and sales are prohibited.

COMPOSTING: The managed process of controlled biological decomposition of green feedstocks. It does not include composting for the purposes of soil remediation.

COMPOSTING FACILITY: A site or facility, excluding home composting and agricultural composting conducted as a farm use, which utilizes green feedstocks to produce a useful product through a managed process of controlled biological decomposition. Composting may include amendments beneficial to the composting process. Vermiculture and vermicomposting are considered composting facilities.

CONGREGATE HOUSING FACILITY: A building that contains more than one dwelling unit and provides common facilities and services for residents who require or desire a more supportive living environment than typically afforded to residents in multifamily, three-family, two-family, or single-family dwellings. Regular on-premise supervision by a registered physician, registered nurse, or other health care provider may be included.

CULTURAL RESOURCE: Improvements, buildings, structures, signs, features, sites, places, areas or other objects of scientific, aesthetic, educational, cultural, architectural, or historical significance to the citizens of the county.

CULTURAL RESOURCE INVENTORY: The official list of designated cultural features, sites, districts subject to the provisions of Section 707, Cultural Resources.

CULTURAL RESOURCES OBJECT: A material thing of functional, aesthetic, cultural, symbolic or scientific value, usually by design or nature movable.

DEDICATION: The designation of land by its owner for any general or public use.

DESIGNATED SITE (historic site, cultural resource site, landmark site): A parcel or part thereof on which a cultural resource is situated, and any abutting parcel or part thereof constituting part of the premises on which the cultural resource is situated, and which has been designated pursuant to this Ordinance.

DESIGNATED STRUCTURE (landmark, cultural resource, historic structure): Any improvement that has special historical, cultural, aesthetic or architectural character, interest or value as part of the development, heritage or history of the county, the State of Oregon, or the nation and that has been designated pursuant to this ordinance.

DIMENSIONAL STANDARD: A numerical measurement for a distance or area standard of this Ordinance, such as building height, lot size, or yard depth; or a percentage of a distance or area measurement of this Ordinance, such as lot coverage or landscaped area.

DIRECT ROUTE: The shortest reasonable route between two points. A route is considered direct if it does not involve significant out of direction travel that could be avoided. Out of direction travel is significant if it is more than 50 percent longer than the straight line between two points.

DISTINCTIVE URBAN FOREST: Forested or woodland areas which are visually prominent or contain unique or rare tree and plant communities. These areas are usually found in association with other open space resources within the urban area.

DRIP LINE, TREE: The outermost edge of a tree's canopy; when delineating the tree drip line on the ground, it will appear as an irregularly shaped circle defining the canopy's perimeter.

DROUGHT-TOLERANT PLANTS: Plants that will survive in the typical or somewhat less than typical amount of rainfall in the Willamette Valley, and therefore require very little or no supplemental water once established.

DWELLING: A building, or portion thereof, which contains one or more dwelling units. A dwelling may be a residential trailer or a manufactured dwelling but not a recreational vehicle.

DWELLING, ACCESSORY HISTORIC: A detached single-family dwelling legally constructed between 1850 and 1945 that was converted from a primary dwelling to an accessory dwelling, pursuant to Section 843, *Accessory Historic Dwellings*.

DWELLING, ATTACHED SINGLE-FAMILY: A building, or portion thereof, that contains only one dwelling unit; shares at least one wall, or portion thereof, with another attached single-family dwelling; and is located on a separate lot of record

from any other dwelling, except where otherwise permitted for an accessory dwelling unit. A manufactured dwelling or residential trailer is not an attached single-family dwelling.

DWELLING, DETACHED SINGLE-FAMILY: A building, or portion thereof, that contains only one dwelling unit and is detached from any other dwelling, except where otherwise permitted for an accessory dwelling unit. A manufactured dwelling or residential trailer is not a detached single-family dwelling.

DWELLING, MULTIFAMILY: A building, or portion thereof, that contains four or more dwelling units.

DWELLING, THREE-FAMILY: A building, or portion thereof, that contains three dwelling units.

DWELLING, TWO-FAMILY: A building, or portion thereof, that contains two dwelling units, both of which are located on the same lot of record. If one of the two dwelling units is an accessory dwelling unit, the building, or portion thereof, is not a two-family dwelling.

DWELLING UNIT: A building, or portion thereof, with one or more rooms designed for residential occupancy by one family. A dwelling unit may be occupied by one family or, except as otherwise provided in this Ordinance, may be used for residential occupancy by no more than 15 persons for a period that does not exceed 30 consecutive nights by any one person.

DWELLING UNIT, ACCESSORY: A dwelling unit located on the same lot of record as a primary dwelling. The primary dwelling may be an attached or detached single-family dwelling, or a manufactured dwelling, as specified in the underlying zoning district provisions.

EASEMENT: A right of usage of real property granted by an owner to the public or to specific persons, firms, and corporations.

EDIBLE GARDEN: A garden that contains plants that produce food for human consumption.

ELECTRIC VEHICLE CHARGING STATION: A location where a vehicle can plug into an electrical source to re-charge its batteries.

EQUINE FACILITY: Premises that are used for the stabling or training of equines, including, but not limited to, providing riding lessons, training clinics, and schooling shows.

FAMILY: Any individual or group of persons, regardless of relationship but not exceeding 15 persons, living together as a single housekeeping unit within a dwelling unit.

FAMILY CHILD CARE HOME: A child care provider who provides child care to 16 or fewer children, including children of the provider, regardless of full-time or part-time status, in the home of the provider. Child and child care are as defined in Oregon Revised Statutes 329A.250.

FARMERS' MARKET: An organized seasonal outdoor market dedicated to the direct sales by growers of agricultural goods, including plants, produce, meats, and other animal products (e.g., eggs, cheese, honey), but excluding marijuana.

FLAG: Any fabric, banner, or bunting containing distinctive colors, patterns, or symbols.

FLOOR AREA: The area included within the surrounding exterior walls of a building or portion thereof, exclusive of porches and exterior stairs, multiplied by the number of stories or portion thereof. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. Floor area shall not include portions of buildings used for parking of vehicles, except the square footage of commercial uses in parking structures can be counted as part of the total floor area.

FLOOR AREA RATIO (FAR): A measurement of density expressed as the ratio of floor area (in square feet) to net site area (in square feet). The greater the ratio, the greater the density. For example, a building occupying one-fourth of the net site area has a FAR of .25:1, or .25; adding a second floor of equal area to the same building increases the FAR to .5:1, or .5.

GOVERNMENT CAMP: The unincorporated community of Government Camp, as identified on Comprehensive Plan Map X-MH-4, *Government Camp Village Plan, Land Use Plan & Boundary*.

GRADE: The line of the street or ground surface deviation from the horizontal.

GREEN FEEDSTOCKS: Yard debris, non-treated wood waste, vegetative food waste, produce waste, vegetative restaurant waste, vegetative food processor by-products, crop waste, and livestock manure. Non-treated wood waste excludes wood waste treated with paint, varnish, or other chemicals or preservatives.

GREEN ROOF: A vegetated roof designed to treat storm runoff.

GROUNDWATER: Any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir, or other body of surface water, whatever may be the geological formation or structure in which such water stands, flows, percolates, or otherwise moves.

GUEST HOUSE: An accessory building, or portion thereof, that includes at least one bedroom and is—with the exception of bathrooms, closets, and halls—constructed as habitable space under the Oregon Residential Specialty Code.

HARDSCAPES: In the practice of landscaping, refers to the inanimate, manmade, non-planted, outdoor areas where the soil is no longer exposed and that are surfaced with pervious or non-pervious durable materials such as masonry, wood, stone, paving, tile, or similar material to create patios, walkways, water fountains, benches, gazebos, etc.

HAZARDOUS SUBSTANCE, MATERIAL, OR WASTE: Any hazardous substance, material, or waste listed in the following federal regulations:

1. Superfund Amendments and Reauthorization Act (SARA) of 1986, Section 302 Extremely Hazardous Substances List (40 C.F.R 355, App. A and B);
2. Comprehensive Environmental Response Compensation & Liability Act Superfund (CERCLA) of 1980, Hazardous Substances List (40 C.F.R 302, Table 302.4);
3. SARA of 1986, Section 313, Toxic Chemicals List (40 C.F.R Section 372.65);
4. Resource Conservation and Recovery Act (RCRA) of 1976 and 1984 Amendments, Hazardous Wastes List (P & U Categories) (40 C.F.R Section 261.33(e) and (f)); and
5. DOT Hazardous Materials Table (49 C.F.R Part 172.101).

HISTORIC AREA: Any area containing improvements which have a special character, historical interest or aesthetic value or which represent one or more architectural periods or styles typical of the history of the County and which improvements constitute a distinct section of the County that has been designated a cultural resource district pursuant to this ordinance.

HOME COMPOSTING: A composting area operated and controlled by the owner or person in control of a single-family dwelling and used to dispose of vegetative waste, garden wastes, weeds, lawn cuttings, leaves, and prunings generated from that property.

HOME OCCUPATION: An occupation or business activity that results in a product or service and is conducted, in whole or in part, in a dwelling unit, an accessory building normally associated with primary uses allowed in the subject zoning district, or both. Home occupations do not include garage sales, yard sales, holiday bazaars, or home parties which are held for the purpose of the sale or distribution of goods or services unless such sales and parties are held more than six times in a calendar year or operate in excess of 24 total days in a calendar year.

HOMEOWNERS ASSOCIATION: The grouping or uniting of persons residing within a defined area, such as a subdivision, into an incorporated entity for the prosecution of a common enterprise.

HOSPITAL, ANIMAL: A building or premises for the medical or surgical treatment

of domestic animals or pets, including dog, cat, and veterinary hospitals.

HOTEL: A building which is designed or used to offer short-term lodging for compensation, with or without meals, for six or more people. A facility that is operated for the purpose of providing care beyond that of room and board is not a "hotel".

HOUSEKEEPING UNIT: A living arrangement within a dwelling unit in which the kitchen, living and dining rooms, and other general living areas of the dwelling unit are shared in common, and the duties, rights, and obligations associated with the performance of domestic tasks and management of household affairs, are shared by the residents by virtue of legal relationship or mutual agreement. Such a living arrangement also may include the provision of food, shelter, personal services, care, and when appropriate, a planned treatment or training program of counseling, therapy, or other rehabilitative social service, for persons of similar or compatible conditions or circumstances who are members of the resident family.

HYDROELECTRIC FACILITY: Any facility relating to the production of electricity by waterpower, including, but not limited to the power generating plant, associated dams, diversions, penstocks, navigation locks, fish ladders, fish screens, reservoirs and detention areas, recreation facilities, interconnecting transmission lines, substations, access roads, offices or commercial and industrial structures proposed to be built in connection with the energy facility; and activities involved in their construction and operation.

IMPROVEMENT: Any building structure, parking facility, fence, gate, wall, work of art or other object constituting a physical betterment of real property, or any part of such betterment.

INDIRECT ILLUMINATION: A nonelectric sign illuminated by an indirect or separate light source.

INDUSTRIAL USE: The use of land and/or structures for the manufacturing or processing of primary, secondary, or recycled materials into a product; warehousing and associated trucking operations; wholesale trade; and related development.

INSTITUTIONAL USE: The use of land and/or structures for activities such as child care, adult daycare and pre-school facilities, public and private schools, colleges, universities, art, music, trade and other educational and training facilities, convalescent care facilities, nursing homes, hospitals, places of worship, fraternal lodges, municipal and civic buildings, transit centers and park-and-ride facilities, parks, swimming pools and other recreational facilities open to the public or a membership group, senior and community centers, libraries, museums, cemeteries and mausoleums, utility facilities, and similar public and private uses.

INVASIVE NON-NATIVE OR NOXIOUS VEGETATION: Plant species that are listed in the Oregon Department of Agriculture's Noxious Weed Policy and Classification System.

KENNEL: Any lot or premises on which four or more dogs, more than six months of age or with permanent canine teeth, are kept for purposes other than a veterinary clinic.

KIOSK: A small structure used as a newsstand, information booth, refreshment stand, bandstand, or display of goods, etc.

KITCHEN, ACCESSORY: A kitchen that complies with all of the following standards:

1. It shall be incidental to a primary dwelling.
2. It shall be located in a room that is approved for residential occupancy and used for a purpose in addition to that of a kitchen (e.g., a recreation room, a bedroom).
3. It shall not be located in a detached accessory building.
4. Any of the following features shall be located within a contiguous area that is no more than 30 inches deep and 10 feet long: cooking appliances, sinks, refrigerators, dishwashers, counters, and cabinets.

LANDSCAPING: Areas of land planted with groundcover, grasses, shrubs, annuals, perennials, or trees.

LIMITED USE: A use allowed in a district on a limited basis and subject to conditions specified therein which are generally more restrictive than the conditions placed on primary or accessory uses within the same district.

LIVESTOCK: One or more domesticated animals raised to produce commodities, such as food, fiber, and labor. Livestock includes, but is not limited to, miniature livestock, fowl, and farmed fish.

LOT: A single unit of land that is created by a subdivision of land. For the purposes of this Ordinance, lot includes parcel and lot of record unless otherwise specified in the context of the specific provisions.

LOT AREA OR LOT SIZE: The total surface area (measured horizontally) within the lot lines of a lot.

LOT, CORNER: A lot with street frontage on two streets intersecting at a corner of the lot. A lot within the radius curve of a single street is not a corner lot. A lot may be both a corner lot and a through lot.

LOT COVERAGE: The area of a lot covered by a building or buildings expressed as

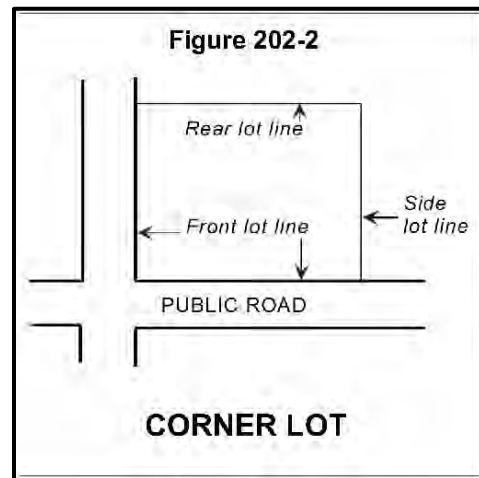
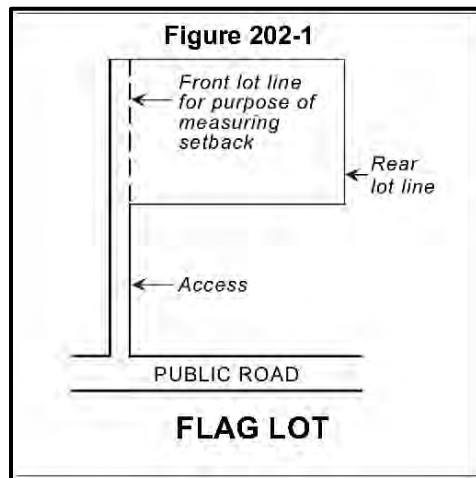
a percentage of the total lot area. Swimming pools are not considered buildings for the purpose of this definition.

LOT DEPTH: The mean horizontal distance between the front lot line and the rear lot line of a lot.

LOT, FLAG: A lot that has access to a road by means of a narrow strip of lot or easement.

LOT LINE, FRONT: Any boundary line separating a lot from a County, public, state, or private road, or from an access drive. Exceptions are:

1. Except as otherwise provided in Subsection 903.08, the front lot line of a flag lot shall be within the boundaries of the lot by a distance equal to the width of the narrow strip of lot or easement providing access to the lot. The front lot line shall be parallel to the lot line extending from the road to the lot line opposite and most distant from the road. (See Figure 202-1.)
2. A corner lot has at least two front lot lines, except where one of the lot lines that would otherwise be a front lot line abuts a private road or access drive and motor vehicle access from the lot is not taken to that private road or access drive. In that case, the lot line where motor vehicle access is not taken is a side lot line.
3. A through lot has at least two front lot lines except where one of the lot lines that would otherwise be a front lot line abuts a collector, arterial, expressway, interstate, or other feature that precludes motor vehicle access. In that case, the lot line where access is precluded is the rear lot line.



LOT LINE, REAR: Any boundary line opposite and most distant from the front lot line and not intersecting a front lot line. Exceptions are:

1. For a corner lot, the rear lot line is any one of the boundary lines opposite the front lot lines. Any other opposite boundary line is a side lot line. (See Figure 202-2.)

2. A triangular-shaped lot has no rear lot line.
3. A through lot has no rear lot line except where one of the lot lines that would otherwise be a front lot line abuts a collector, arterial, expressway, interstate, or other feature that precludes motor vehicle access. In that case, the lot line where access is precluded is a rear lot line.

LOT LINE, SIDE: Any boundary line that is not a front or rear lot line.

LOT OF RECORD: A lot, parcel, other unit of land, or combination thereof, that conformed to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed or contract creating the lot, parcel or unit of land was signed by the parties to the deed or contract; except:

1. Contiguous lots under the same ownership when initially zoned shall be combined when any of these lots, parcels or units of land did not satisfy the lot size requirements of the initial zoning district, excluding lots in a recorded plat.
2. A unit of land created solely to establish a separate tax account, or for mortgage purposes, that does not conform to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed, tax account or contract creating it was signed by the parties to the deed or contract, unless it is sold under the foreclosure provisions of Chapter 88 of the Oregon Revised Statutes.

LOT, THROUGH: A lot that has street frontage on two or more non-intersecting streets. A lot may be both a corner lot and a through lot.

LOT WIDTH: The mean horizontal distance between the side lot lines of a lot.

LOT, ZONING: A "zoning lot or lots" is a single tract of land located within a single block, which (at the time of filing for a building permit) is designated by its owner or developer as a tract to be used, developed, or built upon as a unit under single ownership or control. Therefore, a "zoning lot or lots" may or may not coincide with a lot of record.

LOW VOLUME IRRIGATION: The application of irrigation water at low pressure through a system of tubing or lateral lines and low-volume emitters such as drip, drip lines, and bubblers. Low volume irrigation systems are specifically designed to apply small volumes of water slowly at or near the root zone of plants.

MAJOR TRANSIT STOP: A transit center, major bus stop, or light rail stop, as identified on Comprehensive Plan Map 5-8a, *Transit, Urban*.

MAJOR TRANSIT STREET: A street with a Frequent Service Bus Line, as identified on Comprehensive Plan Map 5-8a, *Transit, Urban*; existing or planned High Capacity Transit, as identified on Comprehensive Plan Map 5-8c, *High*

Capacity Transit (HCT) System Plan; or both.

MANUFACTURED DWELLING: A mobile home or manufactured home but not a residential trailer or recreational vehicle.

MANUFACTURED DWELLING PARK: Any place where four or more manufactured dwellings are located within 500 feet of one another on a lot, tract, or parcel of land under the same ownership, the primary purpose of which is to rent or lease space or keep space for rent or lease to any person for a charge or fee paid or to be paid for rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of such person. Manufactured dwelling park does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot.

MANUFACTURED HOME: A structure constructed on or after June 15, 1976, for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy by one family, that is being used for residential purposes, and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

MARIJUANA: The plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae, and the seeds of the plant Cannabis family Cannabaceae. Marijuana does not include industrial hemp as defined in Oregon Revised Statutes 571.300.

MARIJUANA ITEMS: Marijuana, cannabinoid products, cannabinoid concentrates, and cannabinoid extracts.

MARIJUANA PROCESSING: The processing, compounding, or conversion of marijuana into cannabinoid products, cannabinoid concentrates, or cannabinoid extracts, provided that the marijuana processor is licensed by the Oregon Liquor Control Commission (OLCC), a holder of a research certificate issued by the OLCC, or registered with the Oregon Health Authority.

MARIJUANA PRODUCTION: The manufacture, planting, cultivation, growing, trimming, harvesting, or drying of marijuana, provided that the marijuana producer is licensed by the Oregon Liquor Control Commission (OLCC), a holder of a research certificate issued by the OLCC, or registered with the Oregon Health Authority and a “person designated to produce marijuana by a registry identification cardholder.”

MARIJUANA RETAILING: The sale of marijuana items to a consumer, provided that the marijuana retailer is licensed by the Oregon Liquor Control Commission or registered with the Oregon Health Authority.

MARIJUANA WHOLESALING: The purchase of marijuana items for resale to a person other than a consumer, provided that the marijuana wholesaler is licensed by the Oregon Liquor Control Commission.

MASTER PLAN: A sketch or other presentation showing the ultimate development layout of a parcel of property that is to be developed in successive stages or subdivisions. The plan need not be completely engineered but shall be of sufficient detail to illustrate the property's inherent features and probable development pattern.

MILL SITE, ABANDONED OR DIMINISHED: A mill, plant, or other facility engaged in the processing or manufacturing of wood products, including sawmills and facilities for the production of plywood, veneer, hardboard, panel products, pulp, and paper, that is located outside of urban growth boundaries; was closed after January 1, 1980, or has been operating at less than 25 percent of capacity since January 1, 2003; and contains or contained permanent buildings used in the production or manufacturing of wood products.

MIXED USE: A mix of uses located within a single building, such as retail on the first floor and residential or office uses on the upper floors.

MOBILE HOME: A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy by one family, that is being used for residential purposes, and that was constructed between January 1, 1962, and June 15, 1976 and met the construction requirements of Oregon mobile home law in effect at the time of construction.

MOBILE VENDING UNIT: A vehicle that is used in selling and dispensing goods or services to the customer. Notwithstanding this definition, a mobile vending unit shall not be used in selling and dispensing marijuana items. As used in this definition, a vehicle is motorized or non-motorized transportation equipment containing an axle and intended for use on public roads, including, but not limited to, a car, van, pickup, motorcycle, recreational vehicle, bus, truck, detached trailer, or a truck tractor with no more than one trailer.

MOTEL: A building or series of buildings in which lodging only is offered for compensation and which may have more than five sleeping rooms or units for this purpose and which is distinguished from a hotel primarily by reason of providing direct independent access to and adjoining parking for each rental unit designed primarily for automobile tourists and transient persons. The term includes auto courts, tourist courts, tourist homes, and motor lodges.

NATIVE PLANTS: Any indigenous or resident species currently or historically found in the Willamette Valley.

NATURAL AREA: An area of land or water that has substantially retained its character and functions as an important habitat for plant and animal life.

NONCONFORMING DEVELOPMENT: An element of development, such as landscaping, parking, height, signage, or setbacks that was created in conformance with development regulations which, due to a change in the zone or zoning regulations, is no longer in conformance with the current applicable regulations.

NONCONFORMING USE: A use of any building, structure or land allowed by right when established or that obtained a required land use approval when established but, due to a change in the zone or zoning regulations, is now prohibited in the zone.

NURSERY: The propagation of trees, shrubs, vines or flowering plants for transplanting, sale, or for grafting or budding; planting of seeds or cuttings; grafting and budding one variety on another; spraying and dusting of plants to control insects and diseases, and buying and selling the above plant stock at wholesale or retail. Help and seasonal labor may be employed. The term "nursery" contemplates the sale of a product of such nursery. The conduct of a nursery business presumes parking places for customers, the keeping of sales records, and quarters for these functions. However, the use does not include the business of reselling goods purchased off the premises, except plant stock, or the establishment of a roadside stand.

NURSING HOME: A nursing, convalescent, or rest home facility licensed by the State under ORS chapters 441 and 442, or an assisting living facility licensed under ORS 443, which provides, for a period exceeding 24 hours, the continuous services of licensed nursing personnel to care for chronically ill or infirm patients, exclusive of those patients related to the owner or facility administrator by blood or marriage. Such nursing, convalescent, or rest home must provide nursing services to those patients who, in the judgment of a physician, registered nurse, or facility administrator, require remedial, restorative, supportive, or preventive nursing measures.

OPEN SPACE: Land within a development which has been dedicated in common to the ownership within the development or to the public specifically for the purpose of providing places for recreational uses or for scenic purposes. Open space shall be used as such in perpetuity.

OVERBURDEN: Earth that lies above a natural deposit of a mineral.

OVERHEAD SPRINKLER IRRIGATION: The application of irrigation water from spray heads, rotors, or other above-ground emitters that send water through the air.

OWNER: Person or persons holding fee title to a parcel, lot or tract of land, except in those instances when the land is being sold on contract, the contract purchaser shall be deemed the owner.

PARCEL: A single unit of land that is created by a partition of land. For the purposes of this Ordinance, parcel includes lot and lot of record unless otherwise specified in the context of the specific provisions.

PARKING STRUCTURE: A building having at least two levels that are designed and used for parking vehicles, or a building having one level of covered parking area under an open space or recreational use. A one-level surface parking area, garage, or carport is not a parking structure.

PARTITION: To divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. "Partition" does not include divisions of land resulting from lien foreclosures, divisions of land resulting from foreclosure of recorded contracts for the sale of real property and divisions of land resulting from the creation of cemetery lots; and "partition" does not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created. "Partition" does not include the sale of a lot in a recorded subdivision, even though the lot may have been acquired prior to the sale with other contiguous lots or property by a single owner.

PEDESTRIAN AMENITIES: Outdoor improvements directly visible and accessible to pedestrians that promote and facilitate pedestrian use, including plazas, pocket parks, courtyards, awnings or other weather protection, kiosks, gazebos, water features, drinking fountains, sculpture, outside seating areas, planters, trellises, and street furniture.

PEDESTRIAN PATHWAY: A hard-surfaced or permeable hard-surfaced pedestrian facility adjacent to a public roadway where there is no curb, but is protected from vehicular traffic or set back behind a planting strip.

PEDESTRIAN-SCALE LIGHTING: Street lights designed to illuminate sidewalks to provide security for nighttime use by pedestrians. Pedestrian scale lighting includes ornamental lighting with a 14- to 25-foot mounting height and which meets the Illumination Society guidelines for Commercial Collector roadways.

PENNANT: Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended, usually in series, from a rope, wire, or string, and designed to move in the wind.

PERSON DESIGNATED TO PRODUCE MARIJUANA BY A REGISTRY IDENTIFICATION CARDHOLDER: A person designated to produce marijuana by a registry identification cardholder under Oregon Revised Statutes 475B.420 who produces marijuana for a registry identification cardholder at an address other than the address where the registry identification cardholder resides or at an address where more than 12 mature marijuana plants are produced.

PERVIOUS: Any surface or material that allows the passage of water through the material and into the underlying soil.

PLAT, FINAL: A final map and other writing containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a partition or subdivision and recorded as required by Oregon Revised Statutes Chapter 92.

PLAT, PRELIMINARY: A clearly legible and approximate drawing of the proposed layout of streets, blocks, lots and other elements of a subdivision or partition which shall help furnish a basis for the approval or disapproval of the general layout of a partition or subdivision. As used in this Ordinance, preliminary plat shall be synonymous with tentative plan as used in Oregon Revised Statutes Chapter 92.

POROUS PAVEMENT: Surface to walk, drive or park on that may reduce stormwater runoff by allowing water to soak into the ground. Examples are permeable pavers, pervious concrete, porous asphalt, and gravel.

PREMISES: A lot, building, or portion of a lot or building, occupied by a use with its appurtenances.

PRESERVATION, CULTURAL RESOURCES: The identification, study, protection, restoration, rehabilitation or enhancement of cultural resources.

PRIMARY BUILDING WALL: Exterior building wall which contains a public entrance to the occupant's premises and faces either a street or a parking area.

PRODUCE STAND: A table, bench, cart, or structure, any of which may be covered, that is located or erected for the purpose of direct sales by growers of agricultural goods, including vegetables, fruits, flowers, bulbs, herbs, plants, honey, and similar products, but not including marijuana or processed foods such as jams or jellies, that are produced on the same tract on which the produce stand is located.

PROFESSIONAL SERVICES: Activities such as those offered by a physician, surgeon, dentist, lawyer, architect, engineer, accountant, artist, teacher, real estate agent, and insurance agent.

PROPERTY LINE ADJUSTMENT: A relocation of a common property line between two abutting lots of record that does not create an additional lot of record. As used in this definition, a property line is a boundary between two abutting lots of record.

PUBLIC OWNERSHIP: Land owned by federal, state, regional, or local government, or governmental agency.

PUBLIC UTILITY: A utility regulated by the Public Utility Commission under ORS 757 or any other utility that provides electrical energy directly to consumers within the State of Oregon, including, but not limited to, municipalities, cooperatives and people's utility districts.

PUBLIC WATER SYSTEM: A system for the provision to the public of piped water for human consumption, if such system has more than three service connections and is a facility licensed by the State of Oregon Health Division.

RAINWATER COLLECTION SYSTEM: A system of pipes, container (rain barrel, rainwater tank, pond, or rainwater reservoir), valves and associated apparatus for collecting and storing harvested rainwater runoff, typically from rooftops via rain gutters, but also from ground catchment systems.

RECREATIONAL VEHICLE: A vehicle licensed by the State of Oregon, with or without motive power, that is designed for human occupancy and to be used temporarily for recreational, seasonal, or emergency purposes, and has a gross floor area not exceeding 400 square feet in the set-up mode. These shall include but are not limited to park trailers, travel trailers, pickup campers, motor homes, fifth wheel trailers, camping and tent trailers.

RECYCLABLE DROP-OFF SITE: A convenient location not within a public right-of-way where mobile depots or drop boxes may be sited as a recyclable material collection point for nearby residents prior to delivery to a broker or user of such materials.

RECYCLE/RECYCLING: A process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity. It shall also include the collection, transportation, or storage of products by other than the original user or consumer, giving rise to the product's being in the stream of commerce for collection, disposal, recycling, reuse, resource recovery, or utilization.

RECYCLING CENTER: A facility that primarily purchases for recycling or reuse principal recyclable materials which have been source-separated by type, such as vegetative yard debris, paper, glass, and metal, by the person who last used the unseparated solid wastes, but not a salvage or junkyard. Principal recyclable materials are those items defined as such by the Oregon Department of Environmental Quality.

RELATIVE: A parent, child, brother, sister, grandparent, or grandchild of a person or person's spouse.

REPLAT: The act of platting the lots, parcels, tracts, or easements in a final plat to achieve a reconfiguration of the existing final plat or to increase or decrease the number of lots or parcels.

RESERVE STRIP: A strip of land, usually one foot in width, across the end of a street or alley which shall be under the ownership of the County to insure street extensions where needed.

RESIDENTIAL TRAILER: A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy by one family, that is being used for residential purposes, and that was constructed before January 1, 1962, in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction and is greater than 400 square feet and less than 700 square feet.

RESOURCE RECOVERY FACILITY: Any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse, but not a salvage or junkyard.

RHODODENDRON: The unincorporated community of Rhododendron, as identified on Comprehensive Plan Map IV-7, *Non-Urban Area Land Use Plan, Mt. Hood Corridor Land Use Plan*.

RIGHT-OF-WAY: A passageway conveyed for a specific purpose.

ROAD: A public or private way created to provide ingress to, or egress from, one or more lots, parcels, areas or tracts of land, or that provides for travel between places by vehicles. A private way created exclusively to provide ingress and egress to land in conjunction with a forest, farm or mining use is not a "road:". The terms "street", "access drive" and "highway" for the purposes of this Ordinance shall be synonymous with the term "road".

ROAD, COUNTY: A public way under County jurisdiction which has been accepted into the County road maintenance system by order of the Board of County Commissioners.

ROAD, PRIVATE: A private way created by deed or easement to provide vehicular ingress to, or egress from, three or more lots or parcels.

ROAD, PUBLIC: A public way dedicated or deeded for public use but not accepted into the County road maintenance system, intended primarily for vehicular circulation and access to abutting properties.

ROADWAY: That portion of a road or alley that has been improved for vehicular and pedestrian traffic.

SALVAGE: Separating, collecting, or retrieving reusable solid waste for resale.

SALVAGE, JUNKYARD: A location at which solid wastes are separated, collected, and/or stored pending resale.

SCHOOL, COMMERCIAL: A building where instruction is given to pupils in arts, crafts, or trades, and operated as a commercial enterprise as distinguished from schools endowed or supported by taxation.

SENSITIVE GROUNDWATER AREA: Any area classified by the State of Oregon as a groundwater limited area, critical groundwater area, or other area where new groundwater appropriations are restricted by the State of Oregon.

SERVICE STATION: A commercial establishment with sales and services limited to the sale of motor fuels and supplying goods and service generally required in the operation and maintenance of automotive vehicles and fulfilling a motorist's needs. These may include sale of petroleum products; sale and servicing of tires, batteries, automotive accessories and replacement items; washing and lubricating services; the performance of minor automotive maintenance and repair, and the supplying of other incidental customer services and products. Major automotive repairs, painting and fender work are excluded. An electric vehicle charging station is not a service station.

SETBACK: The shortest horizontal distance between a structure and the lot line.

SETBACK, FRONT: The shortest horizontal distance between a structure and the front lot line.

SETBACK, REAR: The shortest horizontal distance between a structure and the rear lot line.

SETBACK, SIDE: The shortest horizontal distance between a structure and the side lot line.

SHARED PARKING: Parking spaces used jointly by two or more uses within the same development, or separate adjacent developments, which either have peak hours of operation that do not overlap, or typically provide services to many of the same patrons (e.g., restaurant in an office complex or hotel providing lodging for convention participants within the same development), provided satisfactory legal evidence is presented in the form of deeds, leases, or contracts securing full access to such parking spaces for all parties jointly using them.

SIDEWALK: A concrete pedestrian facility adjacent to a curb along a public road or setback from the curb behind a planting strip.

SIGN: A presentation or representation, other than a house number, by words, letters, figures, designs, pictures or colors displayed out of doors in view of the general public so as to give notice relative to a person, a business, an article of merchandise, a service, an assemblage, a solicitation, or a request for aid or other type of identification. This definition specifically includes billboards, ground signs, freestanding signs, wall signs, roof signs, logo signs, and signs on the following: marquees, awnings, canopies, street clocks and furniture and includes the surface upon which the presentation or representation is displayed.

SIGN, ANIMATED: Any sign that uses movement or change of lighting to depict action or create a special effect or scene.

SIGN AREA, OR SURFACE AREA: The area, on the largest single face of a sign, within a perimeter which forms the outside shape of a sign. If the sign consists of more than one module, the total area of all modules will constitute the sign area. The area of a sign having no such perimeter or border shall be computed by enclosing the entire copy area within the outline of either a parallelogram, triangle, circle or any other easily recognized geometric shape and then computing the area. Where a sign is of a three-dimensional, round or irregular shape, the largest cross section shall be used in flat projection for the purpose of computing sign area.

SIGN, BUILDING: Any sign attached to any part of a building, as contrasted to a freestanding sign.

SIGN, CHANGEABLE COPY: A sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign. A sign on which the message changes more than eight times per day shall be considered an animated sign and not a changeable copy sign for purposes of this ordinance.

SIGN, COMMERCIAL: Any sign associated with a commercial activity.

SIGN, DIRECTORY: An onsite sign that identifies and directs traffic to a number of tenants, uses, or buildings within a development.

SIGN, ELECTRONIC MESSAGE CENTER: A sign, display or device, or portion thereof, whose message may be changed by electronic process or remote control, and includes electronic time and temperature displays and the device known in the advertising industry as a commercial electronic variable message sign.

SIGN, FREESTANDING: A sign not attached to a building.

SIGN, INCIDENTAL: A sign, generally informational, that has a purpose secondary to the use of the site on which it is located, such as "no parking," "entrance," "loading only," "telephone," and other similar directives.

SIGN, INTEGRAL ROOF: Any sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design, such that no part of the sign extends vertically above the highest portion of the roof and such that no part of the sign is separated from the rest of the roof by a space of more than six inches.

SIGN, LOGO: A sign consisting of a trademark or symbol.

SIGN, MESSAGE: Anything displayed on an electronic message center sign, including copy and graphics.

SIGN, MONUMENT: A sign which extends from the ground or which has a support which places the bottom thereof less than two feet from the ground.

SIGN, OFF-PREMISES: A sign which advertises goods, products or services which are not sold, manufactured, or distributed on or from the premises or facilities on which the sign is located.

SIGN, POLE: A sign erected and maintained on a freestanding frame, mast or pole and not attached to any building but does not include ground-mounted signs.

SIGN, PORTABLE: Any sign not permanently attached to the ground or other permanent structure, and/or designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to A- or T-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used as other than a sign in the normal day-to-day operations of the business for transportation of goods and/or personnel.

SIGN, PROJECTING: Any sign affixed to a building or wall in such a manner that its leading edge extends more than six inches beyond the surface of such building or wall.

SIGN, PUBLIC SERVICE INFORMATION: Any sign, or message on an electronic message center sign, which provides the time, date, temperature, weather, or information concerning civic, charitable or other noncommercial activities.

SIGN, RESIDENTIAL: Any sign associated with a dwelling.

SIGN, ROOF: Any sign erected and constructed wholly on and on top of the roof of a building, supported by the roof structure.

SIGN, SEGMENTED MESSAGE: Any message or distinct subunit of a message presented by means of at least one display change on an electronic message center sign.

SIGN, TEMPORARY: Any sign that is normally considered to be of temporary duration and is not permanently mounted. Examples include, but are not limited to: commercial signs for limited term events, election signs, real estate signs, etc.

SIGN, TRAVELING MESSAGE: A message which appears to move across an electronic message center sign.

SIGN, WALL: Any sign parallel to, and attached within six inches of a wall, painted on the wall surface, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface.

SIGN, WINDOW: Any sign, pictures, symbol, or combination thereof, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window.

SIGNIFICANT NATURAL AREAS: Natural areas as defined in "Oregon National Areas - Clackamas County Data Summary" published by The Nature Conservancy. This list of natural areas may be amended by the County as additional areas are identified.

SMALL POWER PRODUCTION FACILITY: A facility that produces energy primarily by use of biomass, waste, solar energy, wind power, water power, geothermal energy, or any combination thereof; is more than 50 percent owned by a person who is not an electric utility, an electric utility holding company, an affiliated interest, or any combination thereof; and has a power production capacity that, together with any other small power production facility located at the same site and owned by the same person, is not greater than 80 megawatts.

SNOW SLIDE AREA: The area around a building that may be subject to snow buildup as a result of snow sliding from the sloped roof of the building.

SOIL MOISTURE SENSOR: A device that measures the amount of water in the soil. The device also suspends and initiates irrigation events.

SOLAR ENERGY SYSTEM: Any solar collector, or other solar energy device, the primary purpose of which is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, water heating, or electricity.

1. The power generating capacity of a roof-mounted solar energy system that is located on a primary use, conditional use, or limited use structure is limited only by the size of the system that can fit within the confines of the roof surface to which it is mounted.
2. The power generating capacity of a ground-mounted solar energy system, or of a roof-mounted solar energy system that is located on an accessory structure, is limited to power consumed by the development to which the system is accessory, or—if the system feeds power into the grid of a public utility company—to an amount equivalent to no more than the annual usage of the development to which the system is accessory.

SOLID WASTE: As defined in Chapter 10.03, *Solid Waste and Wastes Management*, of the Clackamas County Code.

STORY: A portion of a building included between a floor and the ceiling next above it, exclusive of a basement.

STREAM: A body of perennial running water, together with the channel occupied by such running water.

STREAM CORRIDOR AREA: An area including the streambed and a required strip or buffer of land on each side of the streambed necessary to maintain streamside amenities and existing water quality. The width of the stream corridor area varies with the site conditions and shall be determined by on-the-ground investigation, as provided under Subsection 1002.04(B). The intent of the stream corridor area shall be to preserve natural environmental qualities and the function of land to purify water before it reaches the stream but not to prohibit timber management activities pursuant to the State Forest Practices Act.

STREET FRONTAGE: The entire linear distance of a lot abutting a street. Toe strips or flair strips shall not be used to satisfy the minimum street frontage requirements of the Ordinance.

STREET: See “ROAD”.

STREET FURNITURE: Any structural element other than residential, industrial or commercial buildings, streets, sidewalks and curbs shall be considered street furniture including, but not limited to, benches, bus shelters, newsstands, bulletin boards, kiosks, drinking fountains, bicycle stalls, etc.

STRUCTURE: Anything constructed or erected, which requires location on the ground or attached to something having a location on the ground.

SUBDIVIDE: To divide an area or tract of land into four or more lots within a calendar year when such area or tract exists as a unit or contiguous units, under a single ownership at the beginning of such year, whether or not that area or tract of land is divided by a water course or a road right-of-way.

SUBDIVISION: A division of property creating four or more lots in the same calendar year.

SUBDIVISION, MAJOR: A subdivision creating 11 or more lots in the same calendar year.

SUBDIVISION, MINOR: A subdivision creating four to 10 lots in the same calendar year.

SUNNYSIDE VILLAGE: The Sunnyside Village community plan area, as identified on Comprehensive Plan Map X-SV-1, *Sunnyside Village Plan, Land Use Plan Map*.

SURFACE MINING: Includes the mining of minerals by removing overburden and extracting a natural mineral deposit thereby exposed, or simply such extraction. Surface mining includes open-pit mining, auger mining, production of surface mining waste, prospecting and exploring that extracts minerals or affects land, processing to include rock crushing and batch plant operations, and excavation of adjacent offsite borrow pits other than those excavated for building access roads. Surface mining does not mean operations within a road right-of-way or other easement for the purpose of construction, reconstruction, or maintenance; excavations of sand, gravel, clay, rock, or other similar materials by a landowner or tenant for the purpose of construction, reconstruction, or maintenance of access roads; excavation or grading in the process of farming, forestry, or cemetery operations, or other onsite construction, unless more than 5,000 cubic yards of such materials are removed from the property for compensation, except that more than 5,000 cubic yards of such materials may be removed from the property for compensation when the construction activities are authorized by a building permit.

SURFACE MINING, MINERALS: Soil, clay, stone, sand, gravel, and any other inorganic solid excavated from a natural deposit in the earth for commercial, industrial, or construction use.

SURFACE MINING, NONAGGREGATE MINERALS: Coal and metal-bearing ores, including, but not limited to, ores that contain nickel, cobalt, lead, zinc, gold, molybdenum, uranium, silver, aluminum, chrome, copper, or mercury.

SURFACE MINING, OPERATOR: A legal entity engaged in surface mining or in an activity at a surface mining site preliminary to surface mining.

SURFACE MINING, RECLAMATION: Procedures designed to minimize the disturbance from surface mining and to provide for the rehabilitation of surface resources through the use of plant cover, soil stabilization, and other procedures to protect the surface and subsurface water resources, and other measures appropriate to the subsequent beneficial use of mined lands.

SURFACE WATER MANAGEMENT REGULATORY AUTHORITY: The surface water management district in which the subject property is located, or, if there is no such district, the County.

TRACT: One or more contiguous lots of record under the same ownership. Notwithstanding the preceding definition, as used in Sections 706, *Habitat Conservation Area District*, 709, *Water Quality Resource Area District*, 1012, *Lot Size and Density*, 1013, *Planned Unit Developments*, and 1105, *Subdivisions, Partitions, Replats, Condominium Plats, and Vacations of Recorded Plats*, a tract is a unit of land (other than a lot or parcel) created by a subdivision, partition, or replat.

TRAIL: A hard- or soft-surfaced facility for pedestrians, bicyclists, or equestrians that is separate from vehicular traffic. Trails often go through natural areas and are designed to have a minimal impact on the natural environment.

TRANSFER STATION: A fixed or mobile facility used as part of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site, including, but not limited to, drop boxes made available for general public use. Solid waste collection vehicles are not transfer stations.

TRANSIT STOP: Any posted bus or light rail stop.

TURF LAWN: A ground-cover surface made up of thick, closely mowed, cultivated grass.

UNDERGROUND STRUCTURE: A structure in which more than 50 percent of the cubic footage of the enclosed, covered space is (1) constructed below the highest elevation of the ground adjoining the structure site prior to excavation; and (2) covered over by ground materials, such as soil, sod, sand or exterior paving, which are continuous on at least one side of the structure with contiguous surface ground materials. Conventional roofing materials may be used to cover any portion of the structure which extends above ground elevation.

UNINCORPORATED COMMUNITY: A settlement that conforms to the definition set forth in Chapter 660, Division 22 of the Oregon Administrative Rules. The County's unincorporated communities are identified in Chapter 4 of the Comprehensive Plan and shown on Map IV-7 of the Comprehensive Plan.

USE: The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied.

UTILITY CARRIER CABINETS: A small enclosure used to house utility equipment intended for off-site service, such as electrical transformer boxes, telephone cable boxes, cable television boxes, fire alarm boxes, police call boxes, traffic signal control boxes, and other similar apparatus.

VEHICLE, COMMERCIAL: A commercially licensed and operated vehicle exceeding the capacity of one ton.

VISUALLY SENSITIVE AREAS: Prominent natural landscape features such as hillsides, forests, and waterways; historic district; visual corridors along major highways and rivers. Natural landscapes that occur within the urban area and along traffic corridors are of higher visual significance.

WALKWAY: A hard-surfaced facility for pedestrians, within a development or between developments, distinct from surfaces used by motor vehicles. A walkway is distinguished from a sidewalk by its location on private property.

WELL, EXEMPT-USE: A well from which groundwater is used as defined in ORS 537.545(1) as amended.

WELL, PERMITTED: A well from which the intended use of water requires a registration, certificate of registration, application for a permit, permit, certificate of completion, or groundwater right certificate under ORS 537.505 to 537.795 and 537.992.

WEMME/WELCHES: The unincorporated community of Wemme/Welches, as identified on Comprehensive Plan Map IV-7, *Non-Urban Area Land Use Plan, Mt. Hood Corridor Land Use Plan*.

WETLANDS: Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

WILDWOOD/TIMBERLINE: The unincorporated community of Wildwood/Timberline, as identified on Comprehensive Plan Map IV-7, *Non-Urban Area Land Use Plan, Mt. Hood Corridor Land Use Plan*.

ZIGZAG VILLAGE: The unincorporated community of Zigzag Village, as identified on Comprehensive Plan Map IV-7, *Non-Urban Area Land Use Plan, Mt. Hood Corridor Land Use Plan*.

ZONING DISTRICT, COMMERCIAL: A zoning district regulated by Section 500, *Commercial Districts*.

ZONING DISTRICT, INDUSTRIAL: A zoning district regulated by Section 600, *Industrial Districts*.

ZONING DISTRICT, NATURAL RESOURCE: A zoning district regulated by Section 400, *Natural Resource Districts*.

ZONING DISTRICT, RESIDENTIAL: A zoning district regulated by Section 300, *Urban and Rural Residential Districts*.

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-231, 1/31/12; Amended by Ord. ZDO-232, 3/12/12; Amended by Ord. ZDO-234, 6/7/12; Amended by Ord. ZDO-243, 9/9/13; Amended by Ord. ZDO-246, 3/1/14; Amended by Ord. ZDO-249, 10/13/14; Amended by Ord. ZDO-248, 10/13/14; Amended by Ord. ZDO-252, 6/1/15; Amended by Ord. ZDO-253, 6/1/15; Amended by Ord. ZDO-254, 1/4/16 and 3/1/16; Amended by Ord. ZDO-258, 1/18/17; Amended by Ord. ZDO-263, 5/23/17; Amended by Ord. ZDO-267, 8/28/17; Amended by Ord. ZDO-266, 5/23/18; Amended by Ord. ZDO-269, 9/6/18; Amended by Ord. ZDO-268, 10/2/18; Amended by automatic repeal of Ord. ZDO-267, 8/28/19]

833 GUEST HOUSES

833.01 STANDARDS

Guest houses shall comply with the following standards:

- A. Use: A guest house shall be used only by members of the family residing in the primary dwelling, their nonpaying guests, or their nonpaying employees who work on the premises. ~~A guest house shall not be a source of rental income or for residential occupancy by one or more paying guests for a period that does not exceed 30 consecutive nights by any one person. Residential occupancy by paying guests plus occupants of the primary dwelling shall not exceed 15 persons.~~
- B. Number: Only one guest house shall be allowed per lot of record.
- C. Maximum Floor Area: The maximum floor area shall be 600 square feet.
- D. Maximum Separation Distance: The guest house shall be located within 100 feet of the primary dwelling to which it is accessory. This distance shall be measured from the closest portion of each structure.
- E. Facilities: ~~Occupants of the guest house and the primary dwelling shall live together as one housekeeping unit, sharing the kitchen and laundry facilities in the primary dwelling.~~ The guest house may contain include one bathroom plus one additional sink, ~~but shall not include laundry facilities,~~ a stove, oven, or other cooking appliances.
- F. Utilities: All public water, electric, natural gas, and sanitary sewer service for the guest house shall be extended from the primary dwelling services. No separate meters for the guest house shall be allowed.
- G. On-Site Wastewater Treatment Systems: A guest house shall use the same on-site wastewater treatment system as the primary dwelling except when a separate system is required by the County due to site constraints, failure of the existing system, or where the size or condition of the existing system precludes its use.

[Amended by Ord. ZDO-268, 10/2/18]



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

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December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Second Reading on Ordinance and Board Order Temporarily Amending Clackamas County Code Section 2.05.160.2 to Allow for Vacation Accrual for Non-Represented Employees During Covid 19 Pandemic and Wildfire Emergency and Declaring an Emergency

Purpose/Outcomes	<i>Temporary amendment of the County Code to allow for vacation accrual above 280 hour limit.</i>
Dollar Amount and Fiscal Impact	<i>Fiscal impacts should be negligible and included in annual budgets of affected departments</i>
Funding Source	<i>County General Fund</i>
Duration	<i>Temporary until December 31, 2021.</i>
Previous Board Action	<i>The Board of County Commissioners discussed this item on November 17, 2020 and a first reading took place on December 3, 2020.</i>
Strategic Plan Alignment	<i>1. How does this item align with your department's Strategic Business Plan goals? This item is generally applicable throughout County operations and is not specific to County Counsel 2. How does this item align with the County's Performance Clackamas goals? Build public trust through good government</i>
Counsel Review	<i>If item is a contract, including IGAs, leases, or other binding agreements, please put in the date of County Counsel Review and the initials of the attorney performing the review) 1. Date of Counsel review: November 30, 2020 Initials of County Counsel performing review. SLM</i>
Procurement Review	<i>1. Was the item processed through Procurement? Yes___ No <u>X</u> 2. If no, provide brief explanation. No procurement required</i>
Contact Person	<i>Stephen L. Madkour, County Counsel</i>

Background:

Clackamas County employs over 2,000 full-time employees, the majority of which are represented by various bargaining units. Approximately 450 employees are Non-represented.

With the beginning of the Covid 19 pandemic in early 2020, the County work force transitioned to remote working situations. The pandemic in conjunction with the Governor's Executive Orders hindered the opportunity of all residents, including those employed by the County, from travelling and taking regular vacations. An addition basis for employees failing to use vacation was the need for workforce resiliency within the County operations. Some critical county functions were unable to allow employees their regular vacation schedules because of uncertainty and lack of back-up in their workforce. Lastly, in addition to a Covid 19 pandemic, the County, its residents and its employees were also confronted with a Wildfire emergency.

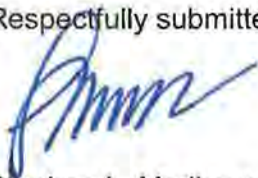
For those non-represented employees who are unable to take vacation and use their accrued vacation hours, those employees face the possibility of forfeiting the use and value of those accrued hours.

County Administration has already agreed to eliminate the cap on accrued vacation hours for all represented employees and allow that policy to exist until December 31, 2021. In order to accommodate non-represented employees who continue to work but cannot take vacation due to Covid-related travel restrictions, and not to penalize those employees and risk them losing the use and value of their accrued vacation hours, the Board of County Commissioners would have to temporarily amend the portion of the County Code to allow for the accrual of vacation hours above the 280 hours through December 31, 2021.

Recommendation:

Staff respectfully recommends reading Ordinance temporarily amending Code Chapter 2.05.160.2 by title only and if passed to be effective immediately.

Respectfully submitted,



Stephen L. Madkour
County Counsel

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

In the Matter of Temporarily
Amending Clackamas County
Code Section 2.05.160.2 to allow
for Vacation Accrual for Non-
represented County Employees
during a Covid19 Pandemic and
Wildfire Emergency and Declaring
an Emergency



Ordinance and Board Order No.
2020-79
Page 1 of 3

Whereas, Clackamas County employs over 2,000 full-time employees. The majority of County employees are represented by various bargaining units. Approximately 450 employees are Non-represented employees; and

Whereas, with the beginning of the Covid 19 pandemic in early 2020, the County work force transitioned to remote working situations. The pandemic in conjunction with the Governor's Executive Orders hindered the opportunity of all residents, including those employed by the County, from travelling and taking regular vacations; and

Whereas, an additional reason employees failing to use vacation was the need for workforce resiliency within County operations and the inability to allow some employees to use vacation leave because of uncertainty and lack of back-up in their workforce; and

Whereas, in addition to a Covid 19 pandemic, the County, its residents and its employees were also confronted with a Wildfire emergency; and

Whereas, Section 2.05.160.2 of the Clackamas County Code provides for Vacation Leave for non-represented county employees. The specific language of the Code section provides:

- B. Non-represented employees hired on or after January 1, 2001, and employees hired prior to that date who elected to enroll in the vacation sellback program when that program was first made available, accrue vacation leave, and may sellback vacation leave, as follows:
1. Vacation leave shall be accrued at the rate of sixteen (16) hours vacation leave per full month of service, regardless of years of service.
 2. Such employees who have used at least forty (40) hours of vacation time in a calendar year may elect to sell back 40 hours vacation during that same calendar year. To receive compensation in lieu of time off, the employee must submit a completed "request to sell vacation" form to the payroll office no later than December 31st of that calendar year.

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

In the Matter of Temporarily
Amending Clackamas County
Code Section 2.05.160.2 to allow
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Page 2 of 3

- C. The maximum vacation accrual shall be 280 hours. Vacation accrual may be accumulated beyond 280 hours during the calendar year (January 1 through December 31) but will be reduced to 280 hours as of January 1. Vacation accrual exceeding 280 hours on January 1 will not be compensated.

Whereas, for those non-represented employees who are unable to take vacation and use their accrued vacation hours, those employees face the possibility of forfeiting the use and value of those accrued hours; and

Whereas, County Administration has already agreed to eliminate the cap on accrued vacation hours for all represented employees and allow that policy to exist until December 31, 2021; and

Whereas, in order to accommodate non-represented employees who continue to work but cannot take vacation due to Covid-related travel restrictions, and not to penalize those employees and risk them losing the use and value of their accrued vacation hours, the Board of County Commissioners would have to temporarily amend the portion of the County Code to allow for the accrual of vacation hours above the 280 hours through December 31, 2021;

NOW THEREFORE, IT IS HEREBY ORDERED That the Clackamas County Board of County Commissioners Orders as follows:

1. The Board finds that a compelling public interest exists based on the facts recited herein to temporarily amend Section 2.05.160.2(B) and (C) of the Clackamas County Code to provide for the accrual of Vacation Leave for non-represented county employees in excess of 280 hours.

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

In the Matter of Temporarily
Amending Clackamas County
Code Section 2.05.160.2 to allow
for Vacation Accrual for Non-
represented County Employees
during a Covid19 Pandemic and
Wildfire Emergency and Declaring
an Emergency



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Page 3 of 3

2. This amendment is temporary and shall expire on December 31, 2021, at which time the amendment will expire and the existing Code language will continue to apply.
3. The Board declares an emergency and this Code amendment shall become effective immediately upon passage.

DATED this 17th day of December, 2020

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



Gregory L. Geist
Director

Public Hearing and Approval of a Resolution for Exemption and Authorization to use the Request for Proposals Method to Obtain a Progressive Design Builder for the Tri-City WRRF Outfall Project

Purpose/Outcomes	Public Hearing before the Board of County Commissioners, acting as the governing body of Water Environment Services, for the Proposed Exemption and Authorization to use the Request for Proposals procurement method to obtain a Progressive Design Builder for the Tri-City WRRF Outfall Project.
Dollar Amount and Fiscal Impact	This action does not have a financial impact; however, the total construction cost is estimated to be between \$21-\$25 million.
Funding Source	WES capital funds. No general funds involved.
Duration	If the Resolution is approved, WES will proceed with procurement of a contract with an Owners Representative in early Spring 2021 and a Progressive Design Builder in the Summer of 2021. The Project is expected to be complete by the end of 2024.
Previous Board Action	The Board has previously approved a contract with Jacobs Engineer Contract for preliminary design work (BCC Agenda Item 051619 VI 1), and an amendment to that contract in April 2020.
Strategic Plan Alignment	<ul style="list-style-type: none"> • This project supports the WES Strategic Plan goal to provide properly functioning infrastructure that supports healthy streams and reduces flooding. • This project supports the County's Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invests in our natural resources.
Counsel Review	Amanda Keller, 12/8/2020
Contact Person	Jeff Stallard, Project Manager 503-742-4694 Lynne Chicoine, Capital Program Manager 503-742-4559 George Marlton, County Procurement Officer 503-742-5442

BACKGROUND

Water Environment Services (“WES”) is requesting an exemption from the traditional competitive procurement process and authorization to use the Request for Proposals procurement method to obtain a Progressive Design Builder (“PDB”) for the Tri-City Water Resource Recovery Facility Outfall Project (“Project”).

Oregon law requires all public improvement projects to be procured by competitive bid, with the default project delivery method being design-bid-build, unless the Local Contract Review Board

("LCRB"), which in this case is Clackamas County Board of County Commissioners, acting in its capacity as the governing body of Water Environment Services ("Board"), grants an exemption. In order to grant an exemption, the Board must hold a hearing, with notice published 14 days prior, and adopt a resolution making certain findings about the exemption as required by ORS 279C.335 and the Clackamas County Local Contract Review Board Rules ("LCRB Rules") Section C-049-0600.

Clackamas County Procurement placed a Public Notice and copy of the draft findings on the Oregon Procurement Information Network ("ORPIN") on December 1, 2020, and with the Business Tribune online edition on December 2, 2020 and its print version on December 4, 2020, which included the date and time of a Public Hearing to take place before the Board.

The Project

The Tri-City Water Resource Recovery Facility ("WRRF"), which is owned and operated by WES, discharges treated effluent from the facility through an existing 72-inch to 84-inch diameter outfall pipeline to the Willamette River. The peak flow into the Tri-City WRRF is approaching the outfall's rated hydraulic capacity of 75 million gallons per day ("mgd"). In January of 2019, WES completed the Sanitary Sewer Master Plan for which a dynamic model was developed to evaluate the current and future capacity needs for the system. The model identified a need to increase the outfall capacity at the Tri City WRRF to 180 mgd to meet build-out conditions.

Following an evaluation of alternatives, a 90-inch diameter outfall pipe is proposed to convey treated flow from the Tri City WRRF along Old Agnes Avenue and the I-205 right-of-way. Trenchless construction will be utilized to construct the outfall from a pit at the I-205 interchange with Hwy 99E to the Willamette River and back toward the main street round-a-bout.

Selection of the Progressive Design Build ("PDB") contractor is anticipated in 2021, with scheduled project completion in 2024. The construction cost is estimated to be between \$21- 25 million. This estimate does not include design or permitting, and is fully funded as part of the WES Capital Improvement Plan.

Under the PDB project delivery method, the PDB contractor performs both design and construction using an integrated team, usually with a consulting engineer. For the Tri-City Outfall project, the team, in close coordination with the WES project team, will develop the project approach, design, construction plan, schedule, staffing and pricing to successfully deliver the project. This model will bring the builder into the project at a relatively early point in the design process to lend their expertise in the design phase and mitigate risk associated with construction challenges. Having these activities occur during the design phase can benefit the Owner through lower construction costs, faster project completion, better project understanding, and closer relationships between Owner and PDB contractor.

Under the PDB process, rather than selecting a general contractor solely on a cost competitive basis, the PDB contractor is retained using a Request for Proposals ("RFP") process, which is based on a number of criteria, including qualifications and experience. Once a PDB contractor is selected, an initial project budget is established, which includes both the value of the technical scope of work using the construction contractor's real-time pricing data, and the value of the project risk profile, as mutually agreed with the Owner. The open book nature of the pricing process allows the project contingencies to be visible throughout the design and construction process, providing an opportunity for eliminating unrealized risk-related contingencies as the work moves forward.

As the project design progresses, the PDB contractor is expected to provide a guaranteed maximum price ("GMP"), which is negotiated at a predetermined point during design. This GMP provides the upper limit of the project construction costs, and allows the Owner to budget the value of the expected maximum construction cost. If the GMP is accepted by the Owner, the PDB contractor is then awarded the project and acts as the general contractor to perform the work. If the GMP is not accepted by the Owner, the PDB process includes an "off-ramp," in which the Owner could direct the PDB contractor to complete the construction documents and then competitively bid the project's construction phase, similar to the traditional DBB approach.

For WES to use this alternative project delivery method, the Board must first grant an exemption from standard requirements.

Grant of Exemption

In accordance with ORS Chapter 279.335 and LCRB Rules Section C-049-0600, an exemption generally requires the Board to adopt a resolution making the following two findings ("Findings"):

1. That the exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public improvement contracts.
2. That the exemption will result in substantial cost savings and other substantial benefits to the agency.

The resolution and Findings developed by WES staff addressing these two factors are attached hereto, and demonstrate that the exemption is not likely to encourage favoritism or diminish competition for public improvement contracts, and will result in substantial cost savings and other substantial benefits to the agency and the public.

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners, acting as the governing body of Water Environment Services, take the following actions:

Approve the Resolution Granting Exemption from Competitive Bidding for the Tri-City Outfall Project By Means of a Progressive Design Builder and Authorizing Selection by Request for Proposals.

Respectfully submitted,

Greg Geist
Director, WES

Placed on the _____ Agenda by the Procurement Division.

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

A RESOLUTION GRANTING EXEMPTION FROM
COMPETITIVE BIDDING FOR THE TRI-CITY OUTFALL
PROJECT BY MEANS OF A PROGRESSIVE DESIGN BUILDER
AND AUTHORIZING SELECTION BY REQUEST FOR
PROPOSALS

RESOLUTION NO.

WHEREAS, the Clackamas County Board of County Commissioners (“Board”), acting as the governing body of Water Environment Services (“WES”), is the local contract review board for WES pursuant to ORS 279A.060;

WHEREAS, the Board has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C; and

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

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

WHEREAS, the Findings also highlight the public benefits of using the Progressive Design Build method of contracting for the Project;

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

NOW THEREFORE, BE IT RESOLVED BY BOARD OF WATER ENVIRONMENT SERVICES THAT:

1. The Board adopts the Findings, as set forth in Exhibit A to this Resolution, and makes the following additional findings:
 - a. The exemption from competitive bidding will promote competition and will not encourage favoritism, because the contractor will be chosen by a competitive RFP process and a significant portion of the construction work may be performed by subcontractors chosen by competitive bidding.
 - b. The exemption from competitive bidding is likely to result in substantial cost savings and other substantial benefits to WES and to the public, for the reasons set forth in the adopted Findings.
2. The Board authorizes Water Environment Services staff to proceed with the procurement of Progressive Design Builder services for the Project using the Request for Proposals process in accordance with the Attorney General Model Rules under ORS 279A.065(3).

ADOPTED this 17 day of December, 2020.

WATER ENVIRONMENT SERVICES:

Chair

Recording Secretary

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

**EXHIBIT A
TRI-CITY WRRF OUTFALL PROJECT
FINDINGS IN SUPPORT OF USE OF REQUEST FOR PROPOSALS
AND ALTERNATIVE CONTRACTING METHODS**

These Findings are for the approval of the use of an alternative contracting method so that Water Environment Services (“WES”) may utilize the request for proposals (“RFP”) competitive process to retain a construction contractor to use the Progressive Design-Build project delivery method for the Tri City Water Resource Recovery Facility Outfall Project (“Project”).

A. Alternative Contracting Exemption under Oregon Law

Oregon law requires all public improvement projects to be procured by competitive bid, with the default project delivery method being design-bid-build, unless the Local Contract Review Board (“LCRB”), which in this case is Clackamas County Board of County Commissioners, acting as the governing body of Water Environment Services (“Board”), grants an exemption. In accordance with the Clackamas County Local Contract Review Board Rules (“LCRB Rules”) Section C-049-0600 and ORS 279C.335, an exemption generally requires the Board make two findings:

1. That the exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public improvement contracts.
2. That the exemption will result in substantial cost savings and other substantial benefits to the agency.

For public improvement projects, ORS 279C.335 provides that the agency desiring an exemption from competitive bidding must justify through a findings report information concerning the following fourteen items:

- a. How many persons are available to bid;
- b. The construction budget and the projected operating costs for the completed public improvement;
- c. Public benefits that may result from granting the exemption;
- d. Whether value engineering techniques may decrease the cost of the public improvement;
- e. The cost and availability of specialized expertise that is necessary for the public improvement;
- f. Any likely increases in public safety;
- g. Whether granting the exemption may reduce risks to the contracting agency, the state agency, or the public that are related to the public improvement;
- h. Whether granting the exemption will affect the sources of funding for the public improvement;
- i. Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
- j. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;
- k. Whether the public improvement involves new construction or renovates or remodels an existing structure;
- l. Whether the public improvement will be occupied or unoccupied during construction;
- m. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
- n. Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

As described in this findings report, it is recommended that the Tri City Water Resource Recovery Facility Outfall Project be delivered through the Progressive Design-Build method, subject to the LCRB Rules and the County’s procurement process.

B. Background Information

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

The Tri-City Water Resource Recovery Facility (“WRRF”), which is owned and operated by WES, discharges treated effluent from the facility through an existing 72-inch to 84-inch diameter outfall pipeline to the Willamette River. The outfall is currently approaching its rated hydraulic capacity of 75 million gallons per day (“mgd”). In January of 2019, WES completed the Sanitary Sewer Master Plan for which a dynamic model was developed to evaluate the current and future capacity needs for the system. The model identified a need to increase the wet weather outfall capacity at the Tri City WRRF to 180 mgd to meet build-out conditions.

Following an evaluation of alternatives, a 90-inch diameter outfall pipe is proposed to convey treated flow from the Tri City WRRF along Old Agnes Avenue and the I-205 right-of-way, to a receiving pit near Hwy 99E in Oregon City. Trenchless construction will be utilized to construct the outfall from the receiving pit at the I-205 interchange to the Willamette River and back toward the main street round-a-bout. See Figure 1 for the proposed outfall alignment.

Selection of the Progressive Design Build contractor is anticipated in 2021, with scheduled project completion in 2024. The total construction cost is estimated to be between \$21- 25 million. This estimate does not include design or permitting, and is fully funded as part of the WES Capital Improvement Plan.



Figure 1. Proposed TC WRRF Outfall Route

C. Progressive Design-Build

The traditional project delivery method that public agencies use for municipal improvements is Design-Bid-Build (“DBB”). Under this approach, an Owner contracts separately with a consulting engineer and a contractor. The consulting engineer would develop a fully detailed package of contract documents that are issued for competitive bidding by prospective contractors. The agency would then contract with the lowest cost, responsible bidder for construction of the project.

Over the last twenty years, municipal organizations have begun to successfully deliver alternative methods of project construction to the DBB model. One alternative that has become more widely used in the water/wastewater sector is the Progressive Design-Build (“PDB”) approach, which integrates design and construction services into a single contract.

Under the PDB project deliver method, the PDB contractor performs both design and construction functions as an integrated team, usually with a consulting engineer. The team, in close coordination with the WES project team, develops the project approach, design, construction plan, schedule, staffing and pricing to deliver the project. This model brings the builder into the project at a relatively early point in the design process to lend their expertise in the design phase to mitigate risk associated with construction challenges.

Having these activities occur during the design phase can benefit the Owner through lower construction costs, faster project completion, better project understanding, and closer relationships between Owner and PDB contractor. Under the PDB process, rather than selecting a general contractor solely on a cost competitive basis, the PDB contractor is retained using a Request for Proposals (“RFP”) process, which is based on a number of criteria, including qualifications and experience.

Once a PDB contractor is selected using the RFP process, the initial project budget is established, which includes both the value of the technical scope of work using the construction contractor’s real-time pricing data, and the value of the project risk profile, as mutually agreed with the Owner. The open book nature of the pricing process allows the project contingencies to be visible throughout the design and construction process, providing an opportunity for eliminating unrealized risk-related contingencies as the work moves forward.

As the project design progresses, the PDB contractor is expected to provide a guaranteed maximum price (“GMP”), which is negotiated at a predetermined point during design. This GMP provides the upper limit of the project construction costs, and allows the Owner to budget the value of the expected maximum construction cost. If the GMP is accepted by the Owner, the PDB contractor is then awarded the project and acts as the general contractor to perform the work. If the GMP is not accepted by the Owner, the PDB process includes an “off-ramp,” in which the Owner could direct the PDB contractor to complete the construction documents and then competitively bid the project’s construction phase, similar to the traditional DBB approach.

For WES to use this alternative project delivery method, the Board must first grant an exemption from standard requirements in accordance with LCRB Rules Section C-049-0620 and ORS 279C.335.

D. Findings

1. No favoritism or diminished competition.

The exemption is sought only to authorize a different competitive process to the standard low-bid procurement process. The PDB contractor will still be selected through the competitive RFP process. To ensure the exemption requested does not encourage favoritism or substantially diminish competition, a well-defined competitive procedure will be followed to select the contractor for this public improvement contract.

The RFP solicitation will be broadly advertised in a manner consistent with other public improvements and all qualified firms will be encouraged to apply. Procurement will include advertisements in the Portland Tribune and will post the opportunity on the State of Oregon Procurement Website (“ORPIN”). Further steps include direct notification to qualified PDB contractors, scheduling a pre-proposal conference, and appointment of an evaluation committee that will consider proposals received utilizing the comprehensive criteria identified in the RFP.

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

The qualifications-based RFP process for selecting a PDB contractor for this Project does not result in favoritism or diminished competition, because the process will remain competitive and contractors will be selected based on skills, experience and project approach. The qualifications-based RFP approach is widely recognized as one of the preferred alternative procurement methods for more complex projects. RFP responses allow contractors to compete based on their skills and experience. In this Project, some complexities will require a combination of skills that cannot be evaluated in a standard low-bid process, such as time constraints, budget constraints, and specialty construction methods. Overall, the ability to use the RFP process to select a PDB contractor fosters competition amongst the proposers similar to that of the traditional low-bid approach, while at the same time ensuring WES has the opportunity to evaluate non-monetary factors that will impact the quality and performance of the Project.

2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the public agency.

The benefits of using PDB for project delivery are greatest for larger, more complex projects; especially those that present high risk; those that are governed by schedule constraints; or those that would experience cost savings from the kind of value-engineering/design-evaluation that a construction contractor could provide during the design process. The Project will be a complex project to design, permit and construct. The Project will include risks associated with tunneling and work in the Willamette River. Preliminary geotechnical information collected during the conceptual design will inform the tunneling technology to be used, and has more closely defined the depth most suitable for the pipeline to be installed. Having an experienced tunneling contractor included during the design phase to lend their expertise will be beneficial. The construction schedule will be impacted by the in-water work windows set forth by the Oregon Department of Fish and Wildlife for work in the Willamette River. The requirement that portions of the tunneling be performed during this in-water work window will influence the construction schedule and sequence. An experienced contractor can advise on minimizing cost associated with construction scheduling.

Using a traditional DBB method of project delivery on a complex project has the potential to result in costly change orders that occur during the construction phase, such as when conditions on the ground may not match those anticipated. This is a particular risk for a project that is heavily geotechnical, since soil conditions can vary from what was revealed in exploration. By utilizing a project delivery method that involves the contractor in the early stages of design, the project team can identify the complexities and mitigate them before they get to a point where they will result in costly changes.

Overall, the complexity of this Project lends itself to the PDB delivery method, with substantial cost savings and other substantial benefits coming from the ability to anticipate design issues earlier in the process, including those related to tunneling and in-water work, in addition to scheduling efficiencies.

a. *How many persons are available to bid?*

Regionally, there are a number of contractors with the capabilities and expertise to construct the Tri City WRRF Outfall Project. The large diameter pipeline and tunnel construction techniques do require specialized capabilities and typically a similar project utilizing the DBB process would yield between 3-5 bids. To date, multiple prospective contractors have expressed preliminary interest in participating in the PDB process for this Project. It is anticipated that WES will receive between 3-5 responses, which is comparable to what would be expected for a DBB project.

b. *What are the construction budget and projected operating costs for the complete public improvement?*

At the conceptual design level, the construction cost is estimated to be between \$21 and \$25 million. An RFP process will allow the selection of an experienced PDB Contractor to advance the project through final design and construction, lending their large diameter tunneling expertise. Their early involvement may shorten the construction duration and potentially reduce the impact to Jon Storm Park. Because the outfall is a gravity pipe, there are no operating costs either associated with, or arising out of, its construction.

c. *What are the public benefits that may result from granting the exemption?*

As a member of the Project team, the PDB contractor has a significant influence on impacts to the public. Throughout construction, the Project may disrupt the local community and will require strategic scheduling to minimize traffic disturbances and impact to Jon Storm Park. Under the DBB process, the typical project is completed with primary consideration toward maximizing profit and minimizing interruption for the contractor. By selecting a PDB contractor early in the process, the project team will be able to identify construction activities that will impact the public and incorporate mitigation approaches into the project planning.

The selected PDB contractor must construct the project to meet the requirements of the many required permits in a way that best represents WES to the public. By having the PDB contractor on the team through the permitting process, the project team (WES and PDB contractor) will be able to effectively communicate with stakeholders. Having the PDB contractor available for involvement throughout the permitting process helps the contractor evaluate mitigation strategies to reduce disruption to the community.

Granting the exemption maximizes public benefits by ensuring the selection of a contractor that has demonstrated qualifications to effectively manage the public impact aspects of the work, and provide a long lasting, high-value product.

d. *Is it possible that value-engineering techniques may decrease the cost of the public improvement?*

To achieve greater effects, value-engineering is best accomplished early in the project design. In a traditional DBB project, the contractor is typically not involved during value-engineering assessments. The DBB model only provides a finalized set of construction contract documents and the contractor has limited to no involvement with design considerations and value engineering.

In a PDB delivery model, the contractor provides a cost estimates relatively early in the design process, which provides an early warning if the project's estimated cost is at risk of exceeding the budget established at project kickoff. In this case, WES and the contractor may initiate value engineering at a point in the project where changes can be made to recover the budget. In the case of this technically complex Project, identifying tunneling methods and creative ideas around scheduling within permitting constraints will be key to mitigating risk and minimizing cost. Only contractors with large-diameter tunneling experience can bring the specialized knowledge required to identify value-engineering opportunities during design. This will be accomplished by ongoing design evaluation and constructability reviews by the construction contractor member of a PDB team. The evaluations and reviews will increase the

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
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opportunities for project success and reduce construction costs by defining or removing uncertainty so to reduce risk-based pricing that DBB contractors would bring to this type of project.

Granting the exemption will allow WES to select a contractor with demonstrated successful experience working with an owner to incorporate continuous value-engineering concepts and details into the design phase of the project to maximize cost savings for WES.

e. What is the cost and availability of specialized expertise that is necessary for the public improvement?

Design and construction of a large diameter pipeline, shaft, tunnel, and a diffuser under a riverbed requires specialized design and construction. The specialized techniques will be best implemented by contractors with demonstrated successful experience on similar projects. The selection of a contractor with such specialized expertise to construct the Project will result in a substantially lower risk to WES, because it increases the likelihood of the Project being completed on or ahead of schedule, resulting in lower costs with minimal disruption to the area.

As part of the RFP procurement and selection process, PDB contractors will be evaluated on the basis of experience of the firm and qualification of key staff to deliver the Project. Particular emphasis will be placed on PDB contractors with specific demonstrated experience in successful construction of large diameter gravity pipelines with a tunnel component and in-river construction.

The ability to factor expertise and experience into contractor selection is inherent in the RFP process, but is not normally part of the standard low-bid process. The standard process does not ensure a contractor will possess the needed special expertise because prospective bidders only need to meet a limited criterion. The ability to consider each proposer's degree of expertise in these areas is an integral component of the proposal evaluation process on a project with this degree of complexity and inherent risk.

f. Are there any likely increases in public safety?

Large scale construction requires considerable attention to on-site and off-site safety. The conceptual design of the Project contemplates a large, deep excavation in the clover leaf at southbound I205 and OR-99/McLoughlin Boulevard and some level of disruption in Jon Storm Park near the parking lot and boat dock. Deep and large excavation, additional traffic, and large construction equipment operation demand proper safety controls be in place at all times in order to minimize risk. Construction-generated staging, delivery, and parking activity will need to be considered in a comprehensive construction traffic safety and mitigation plan. Constant attention to traffic control, needs of park visitors and access to the Oregon City Shopping Center is crucial to maintaining a safe working and living environment for workers and the public.

The PDB delivery method will allow the contractor to work with the project team during the design to understand, plan for, and minimize safety hazards and conflicts between the project and the public. The contractor will provide input into issues of project phasing, construction staging areas, construction access corridors, and scheduling to reduce impacts. The close teamwork provides maximum flexibility to address both anticipated issues and concerns that may arise unexpectedly. Ultimately, this input will increase the public safety of the Project and reduce the risk of delays and claims.

g. Will granting the exemption reduce risks to the contracting agency or the public that are related to the public improvement?

Granting the exemption will allow for reduced project cost and schedule risk by mitigating unforeseen conditions and misinterpretations through collaboration between designers and those constructing the improvements. Since it is not possible to entirely eliminate risk from a project, the use of a PDB delivery will provide an opportunity to actively manage the cost, schedule, and quality risks during the design process through the negotiated sharing of those risks with the PDB Contractor.

h. Will granting the exemption affect the sources of funding for the public improvement?

No, the method of project delivery will not impact the source of funding. The project will be funded by rates and is budgeted for in the WES Capital Improvement Plan, regardless of project delivery method. WES finance will make a decision as to whether the project will be paid for in cash, through bonds or through the DEQ-administered State Revolving Loan Fund.

i. Will granting the exemption better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement?

Market conditions for heavy and civil construction costs are currently volatile, due to the recent downturn in the economy throughout the nation and the Pacific Northwest related to the COVID-19 pandemic. WES needs to balance the ability to obtain a long-term, high-value facility while accounting for the pricing conditions of the current construction market. To ensure that WES is receiving value for its money, an independent consultant will be retained to act as its Owner's Representative ("OR") during the GMP negotiation process.

During the development of the GMP, solicitations of subcontractors for lower tier work will be required. In obtaining these bids, WES and the OR will be involved in the review and acceptance of the subcontractor firms that are solicited for bidding, and the bids will be openly reviewed with the contractor. Requiring a portion of the work to be let to subcontractors through a competitive bid process will allow WES to take advantage of the competitive bid market. As a result, the PDB method of delivery allows flexibility for WES to best react to the current market conditions.

In addition to managing contractor costs, having the contractor on board early provides the ability to facilitate early procurement of materials, which can provide a longer window for procurement of long lead items, and can also lock-in product costs to the benefit of WES.

After the GMP has been negotiated, the exemption will also allow for better control of increases to project costs and schedules by reducing unforeseen conditions and associated change orders through continuous coordination of the design and construction tasks being performed by the PDB contractor. Finally, WES will retain the ability to procure construction services through competitive bidding should continuing the relationship with the PDB contractor prove undesirable.

Overall, granting the exemption allows WES to balance quality-based selection with changing market conditions and to minimize material cost increases by leveraging contractor involvement early in the design process.

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

j. Will granting the exemption better enable the contracting agency to address the size and technical complexity of the public improvement?

While the size of the Project in terms of construction cost is not outside the capability of many area contractors, the Project includes installing approximately a mile of very large diameter pipe. Approximately half of the length will be open cut, which except for the size of the pipe, is relatively straightforward, but about half a mile will require tunneling adjacent to a large shopping center and under a highly traveled state highway and a public park. The pipeline will terminate under the Willamette River bed at a depth of approximately 40 feet. Not all utility contractors are qualified to perform the work on a project of this type and complexity.

The large diameter pipeline, tunneling, and construction in the Willamette River require experienced construction crews that understand the impact geology can have on tunneling, know how to work around existing high traffic facilities and to ensure attention to details. Involvement by the PDB contractor during the design phase will also allow the contractor to more fully understand the project issues before providing a final price. For example, some geotechnical data is available, but the PDB contractor may elect to do additional exploration to better define risk and inform his approach. The technical complexity also impacts other project elements such as schedule, operations, and construction sequence which might be missed by a contractor submitting a low bid under a DBB process.

The technical complexity of this Project requires a contractor that is familiar with complex construction materials and techniques. The competitive Request for Proposals for PDB procurement allows WES to evaluate contractors' technical experience and staff that have conducted similar work to that required for the Project.

k. Will the public improvement involve new construction, or renovation or remodeling of an existing structure?

The Project is primarily new construction of a gravity pipeline and diffuser. The new construction will require connecting the new pipe to the existing one, which is an in-service outfall. Accordingly, the connections will need to be carefully planned and scheduled during the design phase of the Project.

The PDB process will allow WES to select a contractor who has a history of successfully completing pipeline projects while limiting unplanned impacts to existing facilities.

l. Will the public improvement be occupied or unoccupied during construction?

With the exception of Jon Storm Park, the majority of the Project construction will take place in an existing right-of-way that will be unoccupied during construction. The proposed tunneling techniques will minimize disruptions to Jon Storm Park, Oregon City Shopping Center, I-205 and OR99/McLoughlin Boulevard. For the in-river portion of the work, the contractor will adhere to the Oregon Department of Fish and Wildlife's Willamette River in-water work window and any other permit requirements. Coordination will be required for tie-in to the Tri City WRRF, which is an occupied facility that must remain operational during construction.

While most of the rights of way will be unoccupied during construction, the PDB process will allow the Contractor to fully understand and mitigate the impacts to the park and adjacent highways and commercial areas.

m. Will the public improvement require a single phase of construction work or multiple phases of construction work to address specific project conditions?

At this point, it is anticipated that this Project will be constructed in a single phase. The tunneling portion of the project will be scheduled to minimize the time the tunneling machine is on site and coordinated with the in-water work window for the Willamette River.

However, an advantage of PDB delivery is flexible adaptation to changing project conditions and the open book GMP process allows for the preparation of multiple negotiated design packages for the release for construction if that proves to be advantageous to WES. Possible advantages include commencing construction of the open cut portion of the pipeline as early as is practical, or advanced procurement of pipe material if market conditions are favorable.

While construction of the Project is anticipated to occur in one phase, the PDB delivery process could allow for phasing for potential scheduling advantages or to accommodate permitting requirements.

n. Does the contracting agency have, or has it retained under contract, contracting agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract?

WES has experience in implementing and completing projects utilizing alternative delivery methods, including the use of Construction Manager/General Contractor ("CM/GC") contracting method for the recent \$18M Kellogg Creek WRRF Improvements Project. County Counsel and County Procurement have additional experience working on CM/GC project delivery for the Housing Authority of Clackamas County and North Clackamas Parks and Recreation District, including development of necessary documentation and negotiation of contract terms.

For this Project, a team has been established that includes staff from WES, County Counsel, and County Procurement that will actively participate in the project from inception to completion. WES will retain the services of an Owner's Representative to assist with the procurement and contracting phase and services during construction administration. County Counsel and County Procurement will contract with additional outside entities or obtain additional required expertise as necessary throughout the development of this Project.

The combination of staff and consultants have experience completing similar projects using PDB delivery and have the necessary qualifications and expertise to negotiate, administer, and enforce the terms of the public improvement contract.

E. Contract Terms and Conditions

The technical complexities and uncertainties of the Project make it critical for the contract to contain specific terms and conditions that will increase efficiency and result in reduced costs. The Project team and WES' OR will provide a contract that includes industry best practices, mitigates WES and the project's risk exposure, and ensures fees that are fair and reasonable for the Project. County Counsel will also ensure that the contract includes all legally required public procurement terms.

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

F. Reservation of Rights

ORS 279C.335(6) provides that the representations in and the accuracy of these findings are the bases for a contract-specific exemption if adopted by a LCRB resolution. These findings also describe, to some extent, anticipated features of the RFP and resulting public improvement contract, but the final parameters of the contract are those characteristics that will be announced in the solicitation document, and WES specifically reserves all of its rights in this regard.

G. Recommendation for Proposed Project Delivery Approach

A competitive RFP process to procure a PDB contractor is the preferred option for the Project. The RFP process will ensure that the selected contractors have the experience, expertise, and past performance to position the Project for success. Further, the RFP process ensures that meaningful competition occurs and that favoritism is not an element of the selection process. These factors will assist WES in achieving fair and equitable selection of a contractor that will deliver both quality design and successful completion while minimizing public impacts, controlling construction costs, and meeting an agreed-upon schedule.

The industry-accepted benefits of the PDB delivery include:

- Integrated design process results in a superior, more constructible design
- Shortened project schedules
- Reduced likelihood of change orders for unforeseen conditions
- Presence of “off-ramp” for contractual flexibility
- QBS selection
- Single contract for design and construction

WES staff therefore recommends adoption of a resolution approving a contract-specific exemption for the Project that permits use of the PDB delivery method, and to permit use of the competitive RFP process to select a PDB contractor.



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
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 Assistants

December 17, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Acceptance of Land Donation for Parks Purposes Made by John and Marilee Wetten
 and Delegation of Authority to County Counsel
to Complete Real Property Transaction.

Purpose/Outcomes	Acceptance of approximately 12 acres of land donated by County residents John and Marilee Wetten to be used for parks purposes and delegation of authority to County Counsel to act on behalf of the County.
Dollar Amount and Fiscal Impact	The property is a charitable contribution to the County. The County will assume holding and maintenance costs
Funding Source	County General Fund
Duration	Indefinitely
Previous Board Action	The Board was briefed on this matter during two previous executive sessions: November 24, and December 1, 2020
Strategic Plan Alignment	<p>1. <i>How does this item align with your department's Strategic Business Plan goals?</i> County Counsel is facilitating this transaction.</p> <p>2. <i>How does this item align with the County's Performance Clackamas goals?</i> This donation of real property and the use as a public park space touches on all aspects of the County's performance measures: Building public trust through good government; Growing a vibrant economy; Building a strong infrastructure; Ensuring safe, healthy and secure communities; and Honor, utilize, promote and invest in our natural resources</p>

Counsel Review	<i>If item is a contract, including IGAs, leases, or other binding agreements, please put in the date of County Counsel Review and the initials of the attorney performing the review)</i> 1. Date of Counsel review: December 2020 Initials of County Counsel performing review. SLM, NB, ARN
Procurement Review	1. Was the item processed through Procurement? Yes ___ No <u>X</u> 2. If no, provide brief explanation. Not a procurement item
Contact Person	Stephen L. Madkour, County Counsel at 503/655-8362

Background:

Clackamas residents John and Marilee Wetten own an undeveloped 12.86 acre parcel of property off of May Road in unincorporated Clackamas County. They had previously lived at a farm property nearby where they raised their family. John Wetten was a long time educator and later a principal in Gladstone at what is now known as John Wetten Elementary School.

In late 2020, the Wettens approached Clackamas County and inquired about the County's interest in receiving the property to be used in perpetuity for parks purposes. County staff and Commissioner Savas toured the property with John Wetten on November 18, 2020. Tom Riggs from BCS/Parks prepared a site assessment. Presently, the Wettens allow a neighbor to pasture his horses on the open area of the parcel and to use the trails.

The Wettens request that the park be named after them. Additionally, they request that for the time being the neighbor be allowed to continue to pasture his horses on the property.

Tasks to be performed before the end of the year include obtaining a title report, completion and negotiation of a bargain and sale deed from John and Marilee Wetten to Clackamas County, and a License Agreement.

The deed would contain a restriction limiting the use of the property for park purposes in perpetuity. The County would also enter into a License Agreement with the neighbors Jason and Kristie Boyd to allow them to continue to access the property and pasture their horses on the property. These documents are in draft form attached to this staff report and will be substantially the same in their final format but additional details need to be discussed with the donor and the licensee. Time is of the essence in this transaction.

Recommendation:

Staff recommends that the Board of County Commissioners accept the donation of real property from John and Marilee Wetten and delegate authority to County Counsel to negotiate all documents necessary to complete this transaction by the close of 2020 and to effectuate the intent of the donors.

Page 3

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'S. Madkour', written over the text 'Respectfully submitted,'.

Stephen L. Madkour
County Counsel

Attachments:

Bargain and Sale Deed
License Agreement

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

In the Matter of Acceptance of
Land Donation for Parks Purposes
Made by John and Marilee Wetten
and Delegation of Authority to
County Counsel to Complete the
Transaction

Resolution No. _____
Page 1 of 1



WHEREAS, John and Marilee Wetten are residents of Clackamas County who own a 12.86 parcel of undeveloped land on South May Road in unincorporated Clackamas County; and

WHEREAS, the John and Marilee Wetten desire to donate that parcel of land to Clackamas County to be used as a park for the use and enjoyment of the public; and

WHEREAS, the property has many characteristics that lends themselves to a natural park setting: a spring-fed pond, a wetland area, established cedar, fir, cottonwood, and cherry trees, an active beaver colony, and walking trails;

NOW THEREFORE, the Clackamas County Board of County Commissioners resolves as follows:

1. That Clackamas County accept the generous donation of property by John and Marilee Wetten;
2. That Clackamas County will enter into an agreement to allow the existing neighbors to continue to pasture their pack horses on the portions of the property;
3. That Clackamas County commits to having the property preserved as a park or natural area for educational or conservation purposes do future generations can explore and enjoy the woods, springs and creek on the property;
4. That the area be named to commemorate the donors John and Marilee Wetten; and
5. That County Counsel is delegated authority to complete this transaction on behalf of the County.

DATED this 17th day of December 2020.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

December 17, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval for a Revenue Agreement with Oregon Health Authority for the Alternative Payment Methodology and Advanced Care Model (APCM) Program

Purpose/Outcomes	Provides Clackamas County Health Centers Division (CCHCD) funding for providing patient-centered health care focused on improvement in patient's health outcomes.
Dollar Amount and Fiscal Impact	This is a no maximum agreement. Revenue based on number of patients reported and engaged during the reporting period.
Funding Source	No General County Funds are involved. Oregon Health Authority revenue agreement.
Duration	July 1, 2019 – December 31, 2024
Previous Board Action	No previous board action
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
Counsel Review	1. March 19, 2020 2. AN
Procurement Review	1. Was the item process through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 2. This is a revenue agreement
Contact Person	Deborah Cockrell, Health Center Director – 503-742-5495
Contract No.	9673

BACKGROUND:

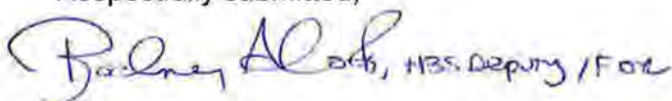
Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of contract #9673, a revenue agreement with Oregon Health Authority for the Alternative Payment Methodology and Advanced Care Model (APCM) Program.

Oregon Health Authority offers payments to organizations that have been qualified as a Federally Qualified Health Center to incentivize high-value services in patient-centered health care. There is no way to determine the amount of revenue to be received as this is determined based on the number of members assigned to CCHCD. CCHCD is eligible for revenue generated per member per month at the Beaver Creek, Sunnyside, Gladstone, Sandy, and School Based Health clinics. Due to these factors we are processing this as a no maximum agreement.

RECOMMENDATION:

Staff recommends approval of this amendment.

Respectfully submitted,



Richard Swift, Director
 Health, Housing & Human Services Department

Healthy Families. Strong Communities.

PARTICIPATION AGREEMENT

OREGON'S ALTERNATIVE PAYMENT METHODOLOGY AND ADVANCED CARE MODEL (APCM) PROGRAM

#9673

Parties:

Clackamas County, by and through its Health, Housing, and Human Services Department,
Health Centers Division

(“Health Center”)

Oregon Health Authority

(“OHA” or the “Authority”)

January 1, 2020

(“Effective Date”)

This Participation Agreement (“Agreement”) describes the terms of participation in Oregon’s Alternative Payment Methodology and Advanced Care Model (“APCM”) program (the “Program” or the “APCM Program”) for Federally Qualified Health Centers (“FQHCs”) and Rural Health Clinics (“RHCs”) and the respective obligations of the FQHCs and RHCs and OHA. (The FQHCs and RHCs are sometimes referred to collectively as the “Health Centers”.) The Program parameters are guided by the Oregon State Plan Amendment (“SPA”) Transmittal # 12-08, Attachment 4.19-B; Methods and Standards for Establishing Payment Rates: Alternate Payment Methodology, approved on 9/12/12 by CMS and OAR 410-147-0360 (attached as **Exhibit 1**).

The intent of the APCM Program is to align payment for Health Centers with high quality, efficient provision of patient-centered health care in order to incentivize high-value services over a volume of visits. The parties understand that the Program is intended to incent a significant transition in patient-centered care and that it will likely result in a reduction in traditional, billable patient visits. At the same time, the Program will likely result in an increase in non-billable engagement with the patient known as Care STEPs (Services that Engage Patients). Further, both parties agree to work together to address unanticipated challenges and concerns on the part of either party in order to reach mutually acceptable solutions.

ATTACHMENTS

This Agreement includes and incorporates the following:

Attachment A Oregon APCM Program Accountability Plan

Attachment A-1 Oregon APCM Accountability Plan Risk Guidelines

Attachment A-2 Patient Experience Reporting for APCM

Attachment B APCM Rate Methodology Worksheet

Attachment C APCM Care STEPs

Attachment D Reconciliation Template

Attachment E Attribution Policy

Attachment F APCM Exclusion Agreement for Wrap Cap Reimbursement

Attachment G Change-in-Scope Methodology for APCM

Exhibit 1 Oregon State Plan Amendment Transmittal #122-08, Attachment 4-19-B: Methods and Standards for Establishing Payment Rates: Alternative Payment Methodology

Exhibit 2 OARs 410-120-0000, 410-147-0120, 410-147-0140

Exhibit 3 Eligible Patient Flow-Chart (illustration)

AGREEMENT

Section 1. Definitions. Capitalized terms used in this Agreement have the following meanings unless the context requires otherwise.

"3131 Patient List" means the comma delimited spreadsheet (.CSV) by which new APCM enrollments are identified and uploaded to OHA through the MMIS Provider Web Portal, sent as frequently as determined by Health Center.

"820 Report" means the weekly report, in standard Electronic Data Interchange format approved by the Accredited Standards Committee (ASC) X12, received by Health Center from OHA that outlines all charges and payments for Health Center's APCM-enrolled patients.

"OHP" means one of the following Oregon Health Plan benefit packages: (1) BMH: OHP Plus; (2) BMM: Qualified Medicare Beneficiary and OHP with Limited Drug; (3) BMD: OHP with Limited Drug; and (4) CWX: Prenatal Expansion for CAWEM clients., and (5) any other OHP benefit package that OHA may create that results in a PMPM Payment.

"APCM Establishing Visit" means a face-to-face interaction with the patient (including a traditional office visit, home visit, group visit, virtual, or Telemedicine Visit) that includes, at minimum, a medical history, problem list review, and medication and allergy review or any other medical encounter as defined in OAR 410-147-0120 that constitutes a carved-in APCM service. In the case of a virtual or Telemedicine Visit, the visit must be a "synchronous (live two-way interactive) video transmission resulting in real time communication." Telemedicine Visits must be in accordance with OAR 410-130-0610 "Telemedicine". An Establishing Visit shall be provided by a Health Care Professional acting within the scope of his/her practice, certification, or licensure as defined in OAR 410-120-0000 (100) (**Exhibit 2**). To accurately track and report Establishing Visits that are non-billable, Health Center must document such visits in the medical record and include them in their next quarterly Care STEPs report sent to OHA; or be able to produce and report them to OHA within 30 calendar days, upon a request from OHA. APCM Establishing Visits must be provided in compliance with OAR 410-147-0140(6) and (7) (**Exhibit 2**), which prohibits Health Centers from "unbundling" services that are normally rendered during a single visit to generate multiple encounters.

"APCM Enrollment Change Report" has the meaning given in Section 5(C).

"APCM Enrollment Report" means the report sent to the Health Center by OHA to confirm initial enrollment (e.g., the Day-One List) in the Health Center's APCM Program and provided after each additional patient list upload by Health Center.

"APCM Leadership Committee" has the meaning given in Section 3(A).

"APCM Learning Community" has the meaning given in Section 3(A).

"APCM Program" has the meaning given in paragraph 1 of this Agreement.

"Care STEPS" means the activities described in **Attachment C**.

"Change-in-Scope" has the meaning given in Section 4(A1).

"Day-One List" has the meaning given Section 5(A).

"Disqualifying Visit" has the meaning given in Section 5(E)(6)(a).

"Eligible Patient" has the meaning given in Section 5(B).

"Eligible PMPM Patient" has the meaning given in Section 5(C).

"Engagement Period" has the meaning given in Section 5(C).

"ER Utilization" means per patient utilization rates of the emergency room.

"FQHC" means a federally qualified health center.

"Health Care Professional" means an individual defined in OAR 410-120-0000(100).

"Health Center" means a FQHC or RHC that is Program participant and party to this Agreement.

"Leaked Patient" has the meaning given in Section 5(E)(6)(a).

"Non-Engaged Closure Report" has the meaning given in Section 5(D)(5).

"Non-Engaged Patient" has the meaning given in Section 5(E)(4).

"OPCA" means the Oregon Primary Care Association.

"PDR" means the Patient Data Report, a monthly report received by Health Center from OHA, which includes (among other individuals) the list of patients currently receiving the PMPM payment.

"PIP" or "Performance Improvement Plan" has the meaning given in Section 7.

"PMPM" means per member per month.

"PPS" means Prospective Payment System.

"Primary Care Visit" means a visit in which a patient receives carved-in APCM services (e.g., non-obstetrical medical visit), which visit may or may not constitute an APCM Establishing Visit. If the provider is eligible for PPS payments, a Primary Care Visit would result in a PPS payment.

"RHC" means a rural health clinic.

"Term" has the meaning given in Section 2(A).

"Total Cost of Care" is described in **Attachment A, Cost**.

Section 2. Term and Termination.

- A. Term. This term of this Agreement shall align with CCO 2.0 and last five years and six months (the "Term") commencing July 1st, 2019 and ending December 31st, 2024. The Agreement may be terminated prior to the end of the Term as described in Sections B and C. Upon expiration of the Term or earlier termination as the case may be, Health Center shall be entitled to payment under the APCM Program for all services satisfactorily rendered through the termination date.
- B. Termination by the Health Center. Health Center may terminate this Agreement upon 30 days prior written notice to OHA.

Termination by the Authority. OHA may terminate this Agreement if Health Center fails to meet the expectations of a Performance Improvement Plan, as described in Section 7, or upon 30 days prior written notice to the Health Center if OHA determines that Health Center or Health Center staff, affiliates, or subcontractors commit actions that could result in a mandatory or discretionary sanction by OHA, as outlined in OAR 410-120-1400(3) and (4).

Section 3. Program Participation and Accountability.

- A. Minimum Participation Requirements. Health Center agrees to (a) include all Health Center sites and all its Eligible Patients in the APCM Program, (b) to maintain sufficient capacity to meet all its reporting requirements described in this Agreement, and (c) to participate in the APCM Learning Community. The "APCM Learning Community" is comprised of OHA, OPCA, staff and management of Health Centers who volunteer to be involved in the further development and operationalization of the APCM Program. The "APCM Leadership

Committee" consists of executive leadership from FQHCs who volunteer to make collective decisions. In addition, the APCM Leadership Committee and OPCA provide guidance, leadership and strategic counsel to OHA on policy issues and practice transformation strategies impacting the Program in accordance with the most recently approved APCM Leadership Committee charter.

- B. Accountability for Program Participation. By participating in the APCM Program, Health Center agrees to the requirements outlined in the APCM Program Accountability Plan, **Attachment A**. The Accountability Plan reflects the mutual agreement of Health Center, OHA and OPCA on Program requirements with respect to quality, access, cost and utilization, and population health equity. In order to track and review FQHC participation, the FQHCs agree to produce and submit quarterly data to OPCA and OHA in accordance with **Attachment A**. No FQHC shall transmit any personally identifying information, personal health information, or other information subject to HIPAA or the HITECH Act to OPCA in complying with this Section 3(B) or otherwise.
- C. APCM Program Development. The APCM Leadership Committee, in partnership with OHA and OPCA, will have the opportunity to further develop APCM Program methodology, consider programmatic expansion, and evaluate program effectiveness. Program changes identified or recommended by the APCM Leadership Committee or other Health Centers will not amend or alter the Program or this Agreement unless agreed to in writing by OHA. In addition, Health Center has the option to work directly with OHA regarding unique circumstances that may warrant an exception to program methodology. OHA will respond to Health Center in writing within 90 days indicating the result of Health Center's proposal and rationale behind the decision, if applicable. Health Center may appeal the decision in accordance with Oregon Administrative Rule (OAR) 410-120-1560.
- D. OPCA Role and Notice. OHA and Health Centers acknowledge that OPCA is involved in the APCM Program to help maintain programmatic consistency, identify issues with and improve implementation of Program objectives, avoid unintended consequences, and support the APCM Leadership Committee. The APCM Leadership Committee and Health Center agree to work collectively with OHA and OPCA to address unintended consequences of program implementation, adjusting details of this Agreement as needed.

Section 4. APCM Program Rates and Payment.

- A. APCM Rate Calculation. Health Center, with the help of OPCA, will work with OHA to complete a financial and patient member month analysis to compute Health Center's APCM rates in accordance with the methodology outlined in **Attachment B**. There will be a "wrap cap" APCM rate paid for all managed care patients, as well as an "open card" rate paid for fee-for-service (FFS) Patients for whom OHA would historically pay the full PPS rate directly to the Health Center.
- A1. APCM Rate Adjustment. The APCM rates, once established, will be adjusted annually by the Medicare Economic Index (MEI) in compliance with Federal statute governing the Prospective Payment System (PPS). When a participating health center that is already on the APCM has an Authority approved PPS change-in-scope, in accordance with OAR 410-147-0362 (Change in Scope of Services), the Authority shall initiate a corresponding rate change to the health center's APCM rates to be effective at the same date as the PPS rate change. The methodology is outlined in detail in **Attachment G**. Nothing in this Agreement is intended to prevent a Health Center from pursuing a change in scope of services as described in OAR 410-147-0362.
- B. Payment Methodology. The Authority agrees to pay Health Center its PMPM payments each month. OHA shall pay a prorated daily PMPM amount for individuals added or deleted from Health Center's APCM Program during the month.
- C. Included and Excluded Services. The APCM rates are PMPM rates paid to Health Center for patients established through a Primary Care Visit, as defined in Health Center's established PPS rate calculation. School Based Health Center (SBHC) patients and services are also included in the Program and payment calculations. Behavioral health, dental and obstetrical services (prenatal and deliveries) are excluded initially from the APCM Rate and Program, but, as described in Section 3(C), Health Centers may work through the Leadership Committee on feasibility and methodologies for including these initially carved out (excluded) services in the future. See **Attachment F** for included and excluded service codes.

- D. Open Card. Open Card Patients also referred to as FFS Patients are included in the APCM program, and a unique Open Card rate is established.
- E. Quarterly and Annual Reconciliation with Annual Adjustment. Health center will complete the quarterly reconciliation comparing revenue earned under the APCM Program with revenue it would have earned under traditional PPS, in accordance with the SPA guidance, **Attachment D**, and OARs 410-147-0360 and 410-147-0460. This reconciliation is intended to assure that the APCM payment is at least as much as the PPS payments would have provided for the same time period. OHA will complete an Annual Payment Reconciliation for the calendar year of Health Center's program participation where quarterly reports show APCM payments at a lesser amount than what PPS would have provided. Health Center is not required to return dollars in excess of PPS payments, as determined by the calculation. However, Health Center will be reimbursed on or before December 31st of the subsequent calendar year by OHA for any amount below the PPS payment level based on the Annual Payment Reconciliation completed by OHA. Health Center is required to report all payments of amounts reflected on an EOB and received for the provision of health services to Oregon Health Plan members, including capitation and any and all payments received by the FQHC/RHC from private insurance or any other coverage, as well as including Medicare MCO supplemental payments, Medicare Advantage Managed Care Organizations (MCO), any Third Party Resource(s) (TPR), total payments for all services submitted to the Prepaid Health Plans (PHP), including laboratory, radiology, nuclear medicine, and diagnostic ultrasound, and excluding any bonus or incentive payments.

Section 5. APCM Program Eligible Patients.

- A. Day-One List. Health Center shall prepare and upload a "Day One" patient list, which is the list of patients for which the Health Center is eligible to be reimbursed an APCM Rate effective the first month of Health Center's participation in the Program (the "Day-One List") if the patients are eligible for the Oregon Health Plan and not enrolled with a separate participating Health Center. Health Center may load its Day-One List through the MMIS Provider Web Portal.
- B. Eligible Patient. In order to be an Eligible Patient included on the Day-One List, or confirmed thereafter on the APCM Enrollment Report and added to Health Center's APCM Program (each an "Eligible Patient"), a patient must:
 1. Have a valid OHP ID number; and
 2. Have been provided a face-to-face medical encounter (office visit) in the prior 18 months at the Health Center (or, in the period following the creation of the Day One List, have been provided an APCM Establishing Visit within a 12-month look back period). Health Center is prohibited from using an 18 month look back for an APCM Establishing Visit after the "Day-One" patient list is loaded through the MMIS Provider Web Portal.
 3. After the "Day-One" list, Health Center shall use a 12-month look back for an APCM Establishing Visit.
 4. Be attributed to Health Center after adjusting for attribution and leakage (e.g., patients overlapping with other FQHCs, RHCs, or primary care providers). See "Leakage", Section 5(E)(6) below.
 5. Leaked Patients, as described in Section 5(E)(6) below, may only be re-enrolled into Health Center's APCM Program as an Eligible Patient after the final leakage date of service indicated on the APCM Enrollment Change Report, and effective the date that Health Center provides a face-to-face visit, as described in Section 5(B)(2).
- C. Patient Engagement. A patient who is included on Health Center's APCM Enrollment Report as successfully enrolled remains an Eligible Patient for which Health Center receives a PMPM payment (an "Eligible PMPM Patient") so long as (a) the patient is covered by OHP, (b) the Health Center provides the patient with at least one visit or Care STEP every 8 quarters (such 8-quarter period referred to as the "Engagement Period"), and (c) patient has not become a "Leaked Patient" (as defined in Section 5(E)(6)(a) below).
- D. OHA Reports. OHA will provide the following reports to Health Center until such time that OHA notifies Health Center in writing that a particular report will no longer be provided:
 1. a monthly Patient Data Report (PDR), which includes (among other data) the list of patients currently APCM enrolled with the Health Center.

2. an APCM "Enrollment Report" following OHA's receipt of the Day-One List and each subsequent list of Eligible Patients thereafter showing the result of the 3131 Patient List upload and reason codes for individual patient enrollment or lack of enrollment;
3. an 820 report, which lists all the charges and payment details for Health Center's APCM patients. OHA does not have the ability to produce alternative payment reports to the 820 in the long-term, but agrees to work with Health Centers to provide payment information in an alternative format up until April 1st, 2020.
4. a monthly APCM "Enrollment Change Report", which indicates patients who were served by other primary care providers in a 6-month look back period (as outlined in Section 5(E)(6)(b)),
5. a quarterly "Non-Engaged Closure Report" notifying Health Center of closing enrollments due to lack of engagement in the prior 8 quarters from the last quarterly Care STEP report submitted.

All enrollment closures will be documented on an APCM Enrollment Change Report or a Non-Engaged Closure Report and provided to Health Center prior to being finalized.

E. PMPM Payment Stops: Adding and Removing Patients.

1. Adding Patients. After the date of the "Day One" List, Health Center may add new patients to its APCM Program using a 3131 Patient List after providing the patient an APCM Establishing Visit (which includes a billable medical encounter). New patients become Eligible PMPM Patients if they obtain OHP and are APCM enrolled in the MMIS within 12 months of receiving the APCM Establishing Visit (which includes a billable medical encounter) and are attributed to the Health Center. New Eligible PMPM Patients will be confirmed by OHA on the APCM Enrollment Report and added to the Health Center's PDR.
2. Losing or Obtaining OHP Coverage. Patients who have been provided with an APCM Establishing Visit (which includes a billable medical encounter) in the last 12 months at the Health Center, but who were previously not covered by OHP, may be added to the APCM patient list report (the 3131 Patient List) effective the date of the APCM Establishing Visit. Once on the APCM patient list, PMPM payments will begin on the first day the patient obtains OHP and only be issued for timeframes that the APCM-enrolled patient is an Eligible Patient (e.g., has OHP coverage).
3. List Management. Health Center shall maintain changes to its APCM patient list, which includes but is not limited to removing people who Health Center knows have died, moved out of area, or who have been dismissed by Health Center.
4. Non-Engaged Patient. If an otherwise Eligible PMPM Patient does not receive at least one visit or Care STEP during an Engagement Period, the PMPM payment with respect to such patient will stop as of the day after the end of the 8th quarter. After a patient is dis-enrolled through the Non-Engaged Closure Report, Health Center must provide an APCM Establishing Visit to re-enroll a patient in the APCM Program. OHA will only run the Non-Engaged Closure Report for Eligible PMPM Patients each quarter. Patients who are not covered by OHP will not be included in the Non-Engaged Closure Report. The non-engaged patient removal process is outlined more fully in **Attachment E**.
5. Request for Review. OHA will consider a "Request for Review" when the Health Center provides evidence that an Establishing Visit, office visit, or Care STEP occurred within the prior eight quarters. (See **Attachment E**)
6. Leakage.
 - a) A "Leaked Patient" is a patient who is included in Health Center's APCM Program but whose APCM enrollment ends due to the patient receiving one Primary Care Visit by another Oregon Medicaid enrolled provider that qualifies for PPS payments or at least two Primary Care Visits by another provider that does not qualify for PPS payments (in all cases, a "Disqualifying Visit"). PMPM payments to Health Center with respect to a Leaked Patient stop as of the date of the earliest Disqualifying Visit for each of the two scenarios.
 - b) Each month, OHA runs a claims algorithm that looks back six months at all primary care claims billed for APCM enrolled patients to identify Leaked Patients and provide Health Center with notice of disenrollment as a result of leakage on the monthly APCM Enrollment Change Report. The Enrollment Change Report shall include the Leaked Patient's Recipient ID, APCM start date and "new" end date

(that will be input to stop PMPM payments effective the day before the Disqualifying Visit), and date of service of the Disqualifying Visit, and leakage type (e.g. FQHC, RHC, tribal organization or other). OHA shall recoup from Health Center any PMPM payments received on account of Leaked Patients after the disenrollment date. PMPM payment adjustments will be indicated on the Health Center's 820 Report. OHA shall collect such repayments from future payments to Health Center. This reattribution process is outlined more fully in **Attachment E**.

- c) Health Center may only add a Leaked Patient back onto its APCM list as a newly Eligible Patient in accordance with subsection B above, but in no event shall the restart date be sooner than the "Final Leakage DOS" on the APCM Enrollment Change Report.
- d) OHA shall not make any enrollment changes to Health Center's APCM Program for the first three months of Health Center's participation in the APCM Program.
- e) Health Center may request a review of an enrollment change due to leakage to indicate that the Disqualifying Visit was the result of Health Center's referral to the other primary care provider or relates to a specialty service. Such review request must be made within 30 days of the date that the triggering APCM Enrollment Change Report was sent, be in an Excel format, and include the following information:
 - i. Recipient ID of the referred patient
 - ii. Service or condition that caused referral
 - iii. Provider's specialty or type that saw the referred patient
 - iv. Name of provider/organization that saw the referred patientOHA will notify Health Center of its decision on reconsideration within 60 days of the request.

Section 6. Quality.

- A. Health Center agrees to report CCO measures for Health Center's APCM Eligible OHP patients. Failure to submit the list of required measures and improvement targets by the agreed upon deadline may trigger a Performance Improvement Plan (PIP) as described in Section 7. (See **Attachment A** for the full list of required measures and improvement target values.)
- B. The CCO aggregate performance average (CCO average), when available, will serve as the target value for each quality metric. OPCA will communicate and update target values each July to reflect annual averages in the prior calendar year, which are published annually in OHA's CCO Metrics Report.
- C. If Health Center does not meet the CCO averages as described on **Attachment A** and **Attachment A-1**, as applicable (as may be amended from time to time), OHA and Health Center, with the assistance of OPCA in Health Center's discretion, will agree on a Performance Improvement Plan, as described in Section 7.
- D. Health Centers must also report their performance on two Patient Experience measures as described in **Attachment A** and **Attachment A-2**.

Section 7. APCM Accountability Plan Risk Guidelines

- A. If Health Center does not meet CCO averages as required, OHA and Health Center agree to begin a Performance Improvement Plan ("PIP"). Health centers are encouraged, though not required, to inform OPCA of the activation of a PIP.
- B. The PIP will require the selection of focus measures for improvement, which will be selected through a collaborative process between the involved parties. Targets for improvement are also selected via a collaborative discussion between OHA and Health Center. The "Minnesota Method" will be utilized to establish target values.
- C. The PIP may include process requirements such as documentation of clinic QI process, and analysis of patient complexity to identify barriers to improvement. If Health Center enters a PIP, it will have an additional 4 quarters to meet improvement targets set therein. If Health Center does not meet the minimum requirements for access

or quality improvement as agreed to under a PIP, Health Center will be at risk for a PMPM rate reduction or, in some cases, termination from the APCM Program as described in **Attachment A** and **Attachment A-1**.

This Agreement may only be amended by a writing identified as an amendment and signed by both parties on signature lines intended for that purpose. An exchange of emails or other informal communication will not act to amend the terms and conditions of this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement (together with Attachments and Exhibits) constitutes the entire agreement and understanding between the parties with respect to its subject matter and supersedes any prior agreement or understanding. This Agreement shall be effective as of the Effective Date.

Clackamas County, signing on behalf of the Board of Commissioners, as Health Center Signature

By: _____
Name: Richard Swift
Title: Director - H3S

Date: _____

Oregon Health Authority Signature

By: _____
Name: Nathan Roberts
Title: Medicaid Programs Unit Manager

Date: _____

December 17, 2020

Board of Commissioners
Clackamas County

Members of the Board:

Approval to Execute an Intergovernmental Agreement with Housing Authority of Clackamas County to Fund Support Services for Residents Impacted by COVID-19

Purpose/Outcomes	Approval to execute an Intergovernmental Agreement with Housing Authority of Clackamas County to fund support services to residents impacted by COVID-19.
Dollar Amount and Fiscal Impact	Not to exceed \$61,300.00 one-time funding
Funding Source	No County General Funds involved. Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Funds.
Duration	Effective December 17, 2020 and terminates December 30, 2020.
Previous Board Action	N/A
Counsel Review	Reviewed and approved November 11, 2020 (KR)
Procurement Review	Was this item reviewed by Procurement? No Procurement not required for intergovernmental agreements.
EOC Review	Reviewed and approved November 18, 2020
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305
Contract No.	9933

BACKGROUND:

The Behavioral Health Division (BHD) of the Health, Housing and Human Services Department, requests approval to execute an Intergovernmental Agreement (IGA) with Housing Authority of Clackamas County (HACC) to fund additional support services for HACC residents in response to the COVID-19 pandemic.

Consistent with Oregon Health Authority (OHA) data made available to each county, the COVID-19 pandemic is having a disproportionate impact on communities of color (BIPOC) and vulnerable population, including older adults (55 and older), in particular in terms of higher rates of COVID-19 illness and mortality. In addition to the physical health impacts, OHA and local counties anticipate and are seeing a surge in mental health and substance use treatment needs caused by the pandemic. This only further deepens the overall health and related economic health disparities for these communities across the state and within Clackamas County. OHA and local counties are also seeing a surge in individuals who may have never previously sought treatment for behavioral health concerns now seeking support for needs such as anxiety, depression and substance misuse.

As such, the Emergency Board approved \$25 million in one-time investments to enhance behavioral health services for individuals impacted by COVID-19, with a focus on communities of color, Oregon's federally recognized tribes and vulnerable populations, with a specific focus area on older adults. The investment will focus on crisis and recovery services, emotional support line capacity, outreach and engagement and access to treatment services.

\$11 million was dispersed to Community Mental Health Programs (CMHPs) to help respond to COVID-19 specific behavioral health needs through culturally and linguistically appropriate services.

BHD in the role of the Community Mental Health Program has received funding to serve BIPOC and Older Adults in our community. This IGA will authorize BHD to provide HACC funds to purchase the following equipment, materials and supplies:

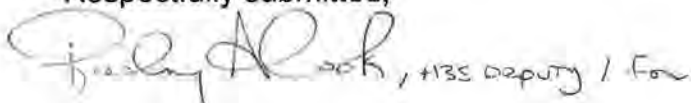
- iPads for HACC Resident Advisory Board, which will allow resident to participate in HACC activities as well as provide valuable input on HACC's policies and procedures.
- Computers for common space at Hillside Manor, allowing residents access to supports and services due to COVID-19 social distancing restrictions.
- Expand and improve garden access for seniors and disabled residents at HACC's Clackamas Heights property, ensuring residents have access to grow their own food and work in the outdoors while following social distancing COVID-19 protocols.
- Transportation vouchers for seniors' to address transportation needs that are not covered by other resources.
- iPads for HACC residents to use, utilizing the free Wi-Fi in the community and at the community centers
- Laptops/computers for residents to access telehealth appointments, communication with family, friends and supports.

This IGA, effective December 17, 2020 through December 30, 2020, has a maximum value of \$61,300.

RECOMMENDATION:

Staff recommends Board approval of this Intergovernmental Agreement and authorization for Richard Swift to sign on behalf of the Clackamas County.

Respectfully submitted,

Handwritten signature of Richard Swift, with the text "HHS Deputy / For" written below it.

Richard Swift, Director
Health, Housing and Human Services

INTERGOVERNMENTAL AGREEMENT

BETWEEN

**CLACKAMAS COUNTY,
HEALTH, HOUSING AND HUMAN SERVICES DEPARTMENT,
BEHAVIORAL HEALTH DIVISION**

AND

HOUSING AUTHORITY OF CLACKAMAS COUNTY

Agreement #9933

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and **Housing Authority of Clackamas County** ("Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

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

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

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or **December 30, 2020**, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as **Exhibit A** and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed **sixty-one thousand three hundred dollars (\$61,300.00)** for accomplishing the Work required by this Agreement.
4. **Payment.** Payment is a one-time payment as specified in Section 3.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
 - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
6. **Termination.**
 - A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
 - B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall

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

- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. **Indemnification.** Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

- 8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
- 9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received two (2) hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.
 - A. Kim Whitely, Older Adult Behavioral Health Specialist, or their designee will act as liaison for the County.

Contact Information:

Phone: 503-742-5315

Email: kwhitely@clackamas.us

Elizabeth Miller or their designee will act as liaison for the Agency.

Contact Information:

Phone: 503-655-8279

Email: EMiller@clackamas.us

10. General Provisions.

- A. Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in

connection with this Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the District's Project Manager.

- F. Hazard Communication.** Agency shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- G. Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted

or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.

- N. Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.
- U. No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

This Agreement consists of ten (10) sections plus the following exhibits that by this reference are incorporated herein:

- Exhibit A – Scope of Work
- Exhibit B – CMHP Service Element
- Exhibit C – Compensation
- Exhibit D – CMHP Required Federal Terms and Conditions
- Exhibit E – CMHP Required Provider Contract Provisions
- Exhibit F – Additional Federal Terms and Conditions

[Signature page follows]

SIGNATURE PAGE

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

**HOUSING AUTHORITY OF CLACKAMAS
COUNTY BOARD**

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

Signing on behalf of the Housing Authority Board:

Jill Smith, Executive Director Date
Housing Authority of Clackamas County


**COUNTY OF CLACKAMAS
BOARD OF COMMISSIONERS**

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

Signing on behalf of the Board:

Richard Swift, Director Date
Health, Housing and Human Services

Approved as to form:



County Counsel Date
11/12/20

EXHIBIT A SCOPE OF WORK

Background

Consistent with Oregon Health Authority (OHA) data made available to each county, the COVID-19 pandemic is having a disproportionate impact on communities of color (BIPOC) and vulnerable population, including older adults (55 and older), in particular in terms of higher rates of COVID-19 illness and mortality. In addition to the physical health impacts, OHA and local counties anticipate and are seeing a surge in mental health and substance use treatment needs caused by the pandemic. This only further deepens the overall health and related economic health disparities for these communities across the state and within Clackamas County. OHA and local counties are also seeing a surge in individuals who may have never previously sought treatment for behavioral health concerns now seeking support for needs such as anxiety, depression and substance misuse.

As such, the Emergency Board approved \$25 million in one-time investments to enhance behavioral health services for individuals impacted by COVID-19, with a focus on communities of color, Oregon's federally recognized tribes and vulnerable populations, with a specific focus area on older adults. The investment will focus on crisis and recovery services, emotional support line capacity, outreach and engagement and access to treatment services.

\$11 million is being dispersed to Community Mental Health Programs (CMHPs) to help respond to COVID-19 specific behavioral health needs through culturally and linguistically appropriate services.

Clackamas County Behavioral Health Division (CCBHD) in their role as the Community Mental Health Program has received funding to serve BIPOC and Older Adults in our community.

Statement of Work

Housing Authority of Clackamas County (HACC) shall purchase the following:

1. iPads for the resident advisory board (to improve board members' ability to more actively engage in the work of the board). Board members are all vulnerable residents who do not have access to technology and due to COVID-19, in-person board meeting have not been held. The purchases of these iPads will allow these residents to participate in the role of representing the needs of all tenants and advising HACC: 15 iPads x \$500 = \$7,500
2. Computers for common space at Hillside Manor (for residents/seniors who do not have personal computer access) allowing them to connect to supports and services due to COVID-19 social distancing restrictions.: 2 computers x \$2000 = \$4,000
3. Clackamas Heights Garden (replace fencing, rebuild garden beds to include ADA accessible beds, to improve access for seniors and disabled residents and to ensure the garden remains a safe outdoor space for residents to grow their own food and stay active while COVID-19 social distancing restrictions remain in place): 10 garden beds x \$1,580 = \$15,800
4. Transportation vouchers (for senior residents' current transportation needs that are not covered by other resources): 50 vouchers x \$40 = \$2,000
5. iPads for HACC residents for a check-out program (to access telehealth appointments, communication with family, friends, support systems, etc.). These iPads are in a general common space and will also be available for residents to check-out and use at home or in the community centers: 20 iPads x \$500 = \$10,000
6. Laptops/computers for HACC residents to be distributed to twenty-two households (to access telehealth appointments, communication with family, friends, support systems, etc.): 22 laptops/computers x \$1,000 = \$22,000

Reporting Requirements

HACC shall submit a final report to CCBHD using the Older Adult CARES funding Report Template. Template to be provided by CCBHD.

Report will be submitted by January 4, 2021 to BHContractReporting@clackamas.us and MaryRum@clackamas.us.

Report shall include the following information:

- Description of service and/or activity
- Total Count of number of individuals served as a result of this service/activity including:
 - Numbers served by ethnicity (to the extent practicable)
 - Numbers served whose primary language is not English
 - Number of seniors served
- Services provided due to referral / connection from contact tracing Yes/No
- Total amount expended
 - ✓ Amount spent on administrative expenses;
 - ✓ Amount spent on budgeted personnel and services diverted to a substantially different use;
 - ✓ Amount spent on medical expenses;

EXHIBIT B
CMHP SERVICE ELEMENT

MHS 20 – NON-RESIDENTIAL MENTAL HEALTH SERVICES FOR ADULTS

1. Service Description

a. Definition

DSM 5 means The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), incorporated by reference herein, and is the 2013 update to the American Psychiatric Association's (APA) classification and diagnostic tool. The DSM serves as a universal authority for psychiatric diagnosis.

b. MHS 20 Services are:

- i.** Services delivered to Individuals diagnosed with serious mental illness or other mental or emotional disturbance posing a danger to the health and safety of themselves or others.
- ii.** Community-based services that shall include one or more of the following:
 - 1.** Use of standardized protocols and tools to identify the level of service need and intensity of care and coordination, addressing salient characteristics such as age, culture, and language;
 - 2.** Apply OHA approved, standardized level of care tools for Individuals diagnosed with serious and persistent mental illness at intervals prescribed by OHA;
 - 3.** Condition management and whole person approach to single or multiple conditions based on goals and needs identified by the Individual;
 - 4.** General outpatient services including, but not limited to, care coordination and case management;
 - 5.** Medication and medication monitoring;
 - 6.** Meaningful Individual and family involvement;
 - 7.** Rehabilitation services including Individual, family, and group counseling;
 - 8.** Coordinate and facilitate access to appropriate housing services and community supports in the Individual's community of choice, including rent subsidy; and
 - 9.** Other services and supports as needed for Individuals at the sole discretion of OHA.
- iii.** Agency shall provide Services, including but not limited to:
 - 1.** Outreach: Partner with healthcare providers and other social service partners who provide screening for the presence of behavioral health conditions to facilitate access to appropriate services;
 - 2.** Early Identification and Screening: Conduct periodic and systematic methods that identify Individuals with behavioral health conditions and potential physical health consequences of behavioral health conditions which consider epidemiological and community factors, as identified in the most recently submitted and approved Local Plan; and
 - 3.** Initiation and Engagement: Promote initiation and engagement of Individuals receiving services and supports, which may include but are not limited to:
 - a.** Brief motivational counseling; and

- b. Supportive services to facilitate participation in ongoing treatment.

2. Performance Requirements

Agency shall:

- a. Provide coordination of care services for Individuals living in residential treatment programs. The coordination of care shall include participation in the residential Provider's treatment planning process and in planning for the Individual's transition to outpatient services;
- b. Comply with Outpatient Services, as described in OAR 309-019-0100 through 309-019-0220, and Community Treatment and Supports, as described in OAR 309-032-0301 through 309-032-0890, as such rules may be revised from time to time; and
- c. Maintain a Certificate of Approval for the delivery of clinical services in accordance with OAR 309-008-0100 through OAR 309-008-1600, as such rules may be revised from time to time.

3. Reporting Requirements

All Individuals receiving MHS 20 Services with funds provided through this Agreement must be enrolled and that Individual's record maintained in the Measures and Outcomes Tracking System (MOTS), as specified in OHA's MOTS Reference Manual, located at: <http://www.oregon.gov/OHA/amh/mots/Pages/resource.aspx> , and the Who Reports in MOTS Policy.

Agency shall provide timely and relevant information to County as needed to enable County to submit reports to the State of Oregon on the delivery of all Services supported with funds provided through this Agreement.

4. Confirmation of Performance and Reporting Requirements

Agency shall be required to demonstrate through the data properly reported in accordance with the "Reporting Requirements" section above and any reporting requirement contained in **Exhibit A**, Scope of Work, of this Agreement, how funds provided for MHS 20 Services were utilized consistent with the terms and limitations herein to meet the performance requirement of this Service Description, and that the Contractor may be subject to the monitoring and review of performance requirements and quality measures by OHA.

**EXHIBIT C
COMPENSATION**

1. Payment for all Work performed under this Agreement shall not exceed **\$61,300** to be paid in one lump sum upon execution of the Agreement.

2. Agency shall submit an invoice following full execution of this Agreement. The invoice shall:
 - a. Reference Agreement #9933
 - b. Total amount requested

3. Invoices to be submitted by email or mail to:

BHAP@clackamas.us

Clackamas County Behavioral Health Division
Accounts Payable
2051 Kaen Road, Suite #154
Oregon City, OR 97045

When submitting electronically, designate Agency name and Agreement #9933 in the subject line.

EXHIBIT D
CMHP REQUIRED FEDERAL TERMS AND CONDITIONS

Agency shall comply with the following federal requirements, when federal funding is being used to fund this Agreement. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

- 1. Miscellaneous Federal Provisions.** Agencies shall comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Services. Without limiting the generality of the foregoing, Agency expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Services in violation of 42 U.S.C. 14402.
- 2. Equal Employment Opportunity.** Agency shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations (41 CFR Part 60).
- 3. Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$150,000 Agency shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C.1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Agencies shall include in all contracts with subcontractors receiving more than \$150,000, language requiring the subcontractor to comply with the federal laws identified in this section.
- 4. Energy Efficiency.** Agencies shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et.seq. (Pub. L. 94-163).
- 5. Truth in Lobbying.** By signing this Agreement, Agency certifies, to the best of the Agency's knowledge and belief that:

 - a.** No federal appropriated funds have been paid or will be paid, by or on behalf of Agency, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative

contract, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative contract.

- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Agency shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - c. Agency shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
 - d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - e. No part of any federal funds paid to Agency under this Agreement shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.
 - f. No part of any federal funds paid to Agency under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
 - g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
 - h. No part of any federal funds paid to Agency under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
6. **Resource Conservation and Recovery.** Agency shall comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of

specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

7. **Audits.** Subrecipients, as defined in 45 CFR 75.2, shall comply with applicable Code of Federal Regulations (CFR) governing expenditure of federal funds. If a sub-recipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 45 CFR part 75, subpart F. Copies of all audits must be submitted to County within thirty (30) calendar days of completion. If a sub recipient expends less than \$750,000 in a fiscal year beginning on or after December 26, 2014, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials.
8. **Debarment and Suspension.** Agency shall not permit any person or entity to be a provider if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Providers with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
9. **Drug-Free Workplace.** Agency shall comply with the following provisions to maintain a drug-free workplace: (i) Agency certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Agency's workplace or while providing Services to OHA clients. Agency's notice shall specify the actions that will be taken by Agency against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Agency's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of Services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction; (v) Notify OHA within ten (10) calendar days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any provider to comply with subparagraphs through (vii) above; (ix) Neither Agency, or any of Agency's employees, officers, agents may provide any Service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Agency or Agency's employee, officer, agent has used a controlled substance, prescription or non-prescription medication that impairs the Agency or Agency's employee, officer, agent or Agency's performance of essential job function or creates a direct threat to OHA clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental

performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of this Contract.

10. **Pro-Children Act.** Agency shall comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
11. **Medicaid Services.** To the extent Agency provides any Service in which costs are paid in whole or in part by Medicaid, Agency shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
 - a. Keep such records as are necessary to fully disclose the extent of the services provided to Individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a (a)(27); 42 CFR Part 431.107(b)(1) & (2).
 - b. Comply with all disclosure requirements of 42 CFR Part 1002.4(a) and 42 CFR 455 Subpart (B).
 - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396 (a) (57) and (w), 42 CFR Part 431.107 (b) (4), and 42 CFR Part 489 subpart I.
 - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Agency shall acknowledge Agency's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
 - e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, providers, and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a (a) (68).
12. **ADA.** Agency shall comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 U.S.C. 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of Services.
13. **Agency-Based Voter Registration.** If applicable, Agency shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an Individual may apply for or receive an application for public assistance.
14. **Disclosure.**
 - a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an Individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the

entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (Individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.

- b. 42 CFR 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last ten (10) years.
- c. County or OHA reserves the right to take such action required by law, or where County or OHA has discretion, it deems appropriate, based on the information received (or the failure to receive) from the provider, fiscal agent or managed care entity.

15. Special Federal Requirements Applicable to Addiction Treatment, Recovery & Prevention Services for Agencies receiving Substance Abuse Prevention and Treatment (SAPT) Block Grant funds.

- a. **Order for Admissions:**
 - (i) Pregnant women who inject drugs;
 - (ii) Pregnant substance abusers;
 - (iii) Other Individuals who inject drugs; and
 - (iv) All others.
- b. **Women's or Parent's Services.** If Agency provides A&D 61 and A&D 62 Services, Contractor must:
 - (1) Treat the family as a unit and admit both women or parent and their children if appropriate.
 - (2) Provide or arrange for the following services to pregnant women and women with dependent children:
 - (a) Primary medical care, including referral for prenatal care;
 - (b) Pediatric care, including immunizations, for their children;
 - (c) Gender-specific treatment and other therapeutic interventions, e.g. sexual and physical abuse counseling, parenting training, and childcare;
 - (d) Therapeutic interventions for children in custody of women or parent in treatment, which address, but are not limited to, the children's developmental needs and issues of abuse and neglect; and
 - (e) Appropriate case management services and transportation to ensure that women or parents and their children have access to the services in 1 through 4 above.
- c. **Pregnant Women.** If Agency provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Agency must:

- (1) Within the priority categories, if any, set forth in a particular Service Description, give preference in admission to pregnant women in need of treatment, who seek or are referred for and would benefit from such Services, within forty-eight (48) hours;
 - (2) If Agency has insufficient capacity to provide treatment Services to a pregnant woman, Agency must refer the women to another Provider with capacity or if no available treatment capacity can be located, the outpatient Provider that the Individual is enrolled with will ensure that Interim Services are being offered. Counseling on the effects of alcohol and drug use on the fetus must be given within forty-eight (48) hours, including a referral for prenatal care; and
 - (3) Perform outreach to inform pregnant women of the availability of treatment Services targeted to them and the fact that pregnant women receive preference in admission to these programs.
- d. **Intravenous Drug Abusers.** If Agency provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Agency must:
- (1) Within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women described above, give preference in admission to intravenous drug abusers;
 - (2) Programs that receive funding under the grant and that treat Individuals for intravenous substance abuse, upon reaching ninety (90) percent of its capacity to admit Individuals to the program, must provide notification of that fact to the State within seven (7) calendar days;
 - (3) If Agency receives a request for admission to treatment from an intravenous drug abuse, Agency must, unless it succeeds in referring the Individual to another Provider with treatment capacity, admit the Individual to treatment not later than:
 - (a) Fourteen (14) calendar days after the request for admission to Agency is made;
 - (b) One hundred-twenty (120) after the date of such request if no Provider has the capacity to admit the Individual on the date of such request and, if Interim Services are made available not less than forty-eight (48) hours after such request; or
 - (c) If Agency has insufficient capacity to provide treatment Services to an intravenous drug abuser, refer the intravenous drug abuser to another Provider with capacity or if no available treatment capacity can be located, the outpatient provider that the Individual is enrolled with will ensure that interim services are being offered. If the Individual is not enrolled in outpatient treatment and is on a waitlist for residential treatment, the provider referring the Individual to residential services will make available counseling and education about human immunodeficiency virus (HIV) and tuberculosis (TB), risk of sharing needles, risks of transmission to sexual partners and infant, steps to ensure HIV and TB transmission does not occur, referral for HIV or TB treatment services, if necessary, within forty-eight (48) hours.
- e. **Infectious Diseases.** If Agency provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84, Problem Gambling, Client Finding Outreach Services, Agency must:
- (1) Complete a risk assessment for infectious disease including human immunodeficiency virus (HIV) and tuberculosis (TB), as well as sexually transmitted diseases, based on protocols established by OHA, for every Individual seeking Services from Agency; and
 - (2) Routinely make tuberculosis services available to each Individual receiving

Services for alcohol/drug abuse either directly or through other arrangements with public or non-profit entities and, if Agency denies an Individual admission on the bases of lack of capacity, refer the Individual to another provider of tuberculosis services.

- (3) For purposes of (ii) above, "tuberculosis services" means:
- (a) Counseling the Individual with respect to tuberculosis;
 - (b) Testing to determine whether the Individual has contracted such disease and testing to determine the form of treatment for the disease that is appropriate for the Individual; and
 - (c) Appropriate treatment services.

- f. **OHA Referrals.** If Agency provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Agency must, within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women and intravenous drug users described above, give preference in Addiction Treatment, Recovery & Prevention and Problem Gambling Service delivery to persons referred by OHA.
- g. **Barriers to Treatment.** Where there is a barrier to delivery of any Addiction Treatment, Recovery & Prevention and Problem Gambling Service due to culture, gender, language, illiteracy, or disability, Agency shall develop support services available to address or overcome the barrier, including:
- (1) Providing, if needed, hearing impaired or foreign language interpreters.
 - (2) Providing translation of written materials to appropriate language or method of communication.
 - (3) Providing devices that assist in minimizing the impact of the barrier.
 - (4) Not charging clients for the costs of measures, such as interpreters, that are required to provide nondiscriminatory treatment.
- h. **Misrepresentation.** Agency shall not knowingly or willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or Services for which payments may be made by County or OHA.
- i. **Oregon Residency.** Addiction Treatment, Recovery & Prevention and Problem Gambling Services funded through this Agreement, may only be provided to residents of Oregon. Residents of Oregon are Individuals who live in Oregon. There is no minimum amount of time an Individual must live in Oregon to qualify as a resident so long as the Individual intends to remain in Oregon. A child's residence is not dependent on the residence of his or her parents. A child living in Oregon may meet the residency requirement if the caretaker relative with whom the child is living is an Oregon resident.
- j. **Tobacco Use.** If Agency has Addiction Treatment, Recovery & Prevention Services treatment capacity that has been designated for children, adolescents, pregnant women, and women with dependent children, Agency must implement a policy to eliminate smoking and other use of tobacco at the facilities where the Services are delivered and on the grounds of such facilities.
- k. **Client Authorization.** Agency must comply with 42 CFR Part 2 when delivering an Addiction Treatment, Recovery & Prevention Service that includes disclosure of Client information for purposes of eligibility determination. Agency must obtain Client authorization for disclosure of billing information, to the extent and in the manner required by 42 CFR Part 2, before a Disbursement Claim is submitted with respect to delivery of an Addiction Treatment, Recovery & Prevention Service to that Individual.

16. **Special Federal Requirements Applicable To Addiction Treatment, Recovery & Prevention Services for Contractors Receiving Temporary Assistance for Needy Families (TANF) Grant Funds.**

Funding Requirements. TANF may only be used for families receiving TANF, and for families at-risk of receiving TANF, and for the purpose of providing housing services (room and board) for Individuals who are dependent children ages eighteen (18) years or younger whose parent is in adult addiction residential treatment, so that the children may reside with their parent in the same treatment facility. Families at-risk of receiving TANF must:

- a. Include a dependent child age eighteen (18) years of age or under, who is living with a parent or caretaker relative. "Caretaker relative" means a blood relative of the child; stepmother, stepfather, stepbrother, or stepsister, or an individual who has legally adopted the child.
- b. Be an Oregon resident.
- c. Have income at or below 25% of the Federal Poverty Level.

Use of TANF block grant funds and state expenditures counted towards TANF MOE must meet the requirements of 45 CFR 263. Only non-medical services may be provided with TANF Block Grant Funds.

17. **Community Mental Health Block Grant (CFDA 93.958).** All funds, if any, awarded under this Agreement for Community Mental Health Services are subject to the federal use restrictions and requirements set forth in Catalog of Federal Domestic Assistance Number 93.958 and to the federal statutory and regulatory restrictions imposed by or pursuant to the Community Mental Health Block Grant portion of the Public Health Services Act, 42 U.S.C. 300x-1 *et. seq.*, and Agency shall comply with those restrictions.
18. **Substance Abuse Prevention and Treatment (CFDA 93.959).** To the extent Agency provides any Service in which costs are paid in whole or in part by the Substance Abuse, Prevention, and Treatment Block Grant, Agency shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 U.S.C. 300x through 300x-66) and 45 CFR 96.130 regarding the sale of tobacco products. Regardless of funding source, to the extent Agency provides any substance abuse prevention or treatment services, Agency shall comply with the confidentiality requirements of 42 CFR Part 2. CMHP may not use the funds received under this Agreement for inherently religious activities, as described in 45 CFR Part 87.
19. **Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200.** All required data elements in accordance with 45 CFR 75.352 are available at:
<http://www.oregon.gov/oha/hsd/amh/Pages/federal-reporting.aspx>.
20. **Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding agency in 2 CFR Subtitle B, including but not limited to the following:
 - a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
 - b. **Procurement Standards.** When procuring goods and services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B, and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
 - c. **Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR

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Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Agency.

EXHIBIT E
CMHP REQUIRED PROVIDER CONTRACT PROVISIONS

1. **Expenditure of Funds.** Agency may expend the funds paid to Agency under this Agreement solely on the delivery of contracted services subject to the following limitations (in addition to any other restriction of limitations imposed by this Agreement):
 - a. Agency may not expend on the delivery of Service any funds paid to Agency under this Agreement in excess of the amount reasonable and necessary to provide quality delivery of these Services.
 - b. If this Agreement requires Agency to deliver more than one service, Agency may not expend funds paid to Agency under this Agreement for a particular service on the delivery of any other service.
 - c. If this Agreement requires Agency to deliver Addiction Treatment, Recovery & Prevention, and Problem Gambling Services, Agency may not use the funds paid to Agency under this Agreement for such services to:
 - i. Provide inpatient hospital services;
 - ii. Make cash payment to intended recipients of health services;
 - iii. Purchase or improve land, to purchase, construct or permanently improve (other than minor remodeling) any building or other facility or to purchase major medical equipment;
 - iv. Satisfy any requirement for expenditure of non-federal funds as a condition for receipt of federal funds (whether the federal funds are received under this Agreement or otherwise);
 - v. Carry out any program prohibited by section 245(b) of the Health Omnibus Programs Extension Act of 1988 (codified at 42 U.S.C. 300ee-5), which generally prohibits funds provided under this Contract from being used to provide Individuals with hypodermic needles or syringes so that such Individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse.
 - d. Agency may expend funds paid to Agency under this Agreement only in accordance with OMB Circulars or 45 CFR Part 75, as applicable on Allowable Costs. If Agency expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 45 CFR Part 75, subpart F. If Agency expends less than \$750,000 in a fiscal year beginning on or after that date, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials. Agency, if subject to this requirement, shall at Agency's own expense submit to OHA a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted to OHA the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Agency responsible for the financial management of funds received under this Contract. Copies of all audits must be submitted to OHA within thirty (30) calendar days of completion. Audit costs for audits not required in accordance with the Single Audit Act are unallowable. Agency may not use the funds received under this Agreement for inherently religious activities, as described in 45 CFR Part 87.
2. **Records Maintenance, Access and Confidentiality.**

- a. **Access to Records and Facilities.** County, the Oregon Health Authority, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of Agency that are directly related to this Agreement, the funds paid to Agency hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, copies and transcriptions. In addition, Agency shall permit authorized representatives of County and the Oregon Health Authority to perform site reviews of all services delivered by Agency hereunder.
- b. **Retention of Records.** Agency shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the funds paid to Agency hereunder or to any services delivered hereunder, for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the termination or expiration of this Agreement. If there are unresolved audit or other questions at the end of the six (6) year period, Agency shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Agency shall document the expenditure of all funds paid to Agency under this Agreement. Unless applicable federal law requires Agency to utilize a different accounting system, Agency shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit County and the Oregon Health Authority to verify how the funds paid to Agency under this Agreement were expended.
- d. **Client Records.** Unless otherwise specified in this Agreement, Agency shall create and maintain a client record for each client who receives services under this Agreement. The client record must contain:
 - i. Client identification;
 - ii. Problem assessment;
 - iii. Treatment, training and/or care plan;
 - iv. Medical information when appropriate; and
 - v. Progress notes including service termination summary and current assessment or evaluation instrument as designated by the Oregon Health Authority in administrative rules.

Agency shall retain client records in accordance with OAR 166-150-0005 through 166-150-0215 (State Archivist). Unless OAR 166-150-0005 through 166-150-0215 requires a longer retention period, client records must be retained for a minimum of six (6) years from termination or expiration of this Agreement.

- e. **Safeguarding of Client Information.** Agency shall maintain the confidentiality of client records as required by applicable state and federal law, including without limitation, ORS 179.945 to 179.507, 45 CRF Part 205, 45 CRF Part 2, any administrative rule adopted by the Oregon Health Authority, implementing the foregoing laws, and any written policies made available to Agency by County or by the Oregon Health Authority. Agency shall create and maintain written policies and procedures related to the disclosure of client information, and shall make such policies and procedures available to County and the Oregon Health Authority for review and inspection as reasonably requested by County or the Oregon Health Authority.
- f. **Date Reporting.** All Individuals receiving Services with funds provided under this Agreement must be enrolled and that Individual's record maintained in the Measures and Outcome Tracking System (MOTS) as specified in OHA's MOTS Reference Manual, located at: <http://www.oregon.gov/oha/amh/mots/Pages/resource.aspx>, and the "Who Reports in MOTS Policy", as stated follows:

Which Behavioral Health Providers are Required to Report in MOTS?

The data collection system for the Health Systems Division (HSD) is the Measures and Outcomes Tracking System or MOTS. In general, behavioral health providers who are either licensed or have a letter of approval from the HSD (or the former Addictions & Mental Health Division [AMH]), and receive public funds to provide treatment services are required to report to MOTS. In addition to the general rule above, there are four basic ways to classify who is required to submit data to MOTS:

- i. Providers with HSD Agreements that deliver treatment services (this includes Community Mental Health Programs [CMHP], Local Mental Health Authorities [LMHA] and other types of community behavioral health providers); these programs should all have a license or letter of approval from the HSD or AMH;
- ii. Providers that are subcontractors (can be a subcontractor of a CMHP or other entity that holds a contract with HSD or OHA, such as a Mental Health Organization [MHO], or a Coordinated Care Organization [CCO]);
- iii. Providers that HSD does not contract with but are required to submit data to MOTS by State/Federal statute or rule; these include DUII providers and methadone maintenance providers; and
- iv. Providers that contract with other governmental agencies (e.g., Oregon Youth Authority [OYA] or the Department of Corrections [DOC] to deliver mental health and/or substance abuse services).

NOTE: Primary care physicians that provide a single service on behalf of the CMHP are not required to report the MOTS status or service level data.

If there are any questions, contact MOTS Support at MOTS.Support@state.or.us.

3. Alternative Formats of Written Materials. In connection with the delivery of Services, Agency shall:

- a. Make available to a Client, without charge to the Client, upon the Client's, the County's or the Oregon Health Authority's request, an and all written materials in alternate, if appropriate, formats as required by the Oregon Health Authority's administrative rules or by the Oregon Health Authority's written policies made available to Agency.
- b. Make available to a Client, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, any and all written materials in the prevalent non-English languages in the area served by the Agency.
- c. Make available to a Client, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, oral interpretation services in all non-English languages in the area served by Agency.
- d. Make available to a Client with hearing impairments, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, sign language interpretation services and telephone communications access services.

For purposes of the foregoing, "written material" includes, without limitation, all written materials created or delivered in connection with the services and all Agency contracts related to this Agreement. The County may develop its own forms and materials and with such forms and materials the County shall be responsible for making them available to a Client, without charge

to the Client or OHA, in the prevalent non-English language. OHA shall be responsible for making it forms and materials available, without charge to the Client or CMHP, in the prevalent non-English language.

4. **Reporting Requirements.** Agency shall prepare and furnish the following information to County and the Oregon Health Authority when a service is delivered under this Agreement.
 - a. Client, service and financial information as specified in the applicable Service Description attached hereto and incorporated herein by this reference.
 - b. All additional information and reports that County or the Oregon Health Authority reasonably requests.
5. **Compliance with Law.** Agency shall comply with all state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the delivery of services hereunder. Without limiting the generality of the foregoing, Agency expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement:
 - a. all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations;
 - b. all state laws governing operation of community mental health programs, including without limitation all administrative rules adopted by the Oregon Health Authority related to community mental health programs or related to client rights, OAR 943-005-0000 through 943-005-0070, prohibiting discrimination against Individuals with disabilities;
 - c. all state laws requiring reporting of client abuse; and
 - d. ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of services under this Agreement.

The laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including Agency, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. In addition, Agency shall comply, as if it were County thereunder, with the federal requirements set forth in **Exhibit D, Required Federal Terms and Conditions**, to the certain 2019-2021 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services between County and the Oregon Health Authority dates as of July 1, 2019, which is incorporated herein by this reference. For purposes of the Agreement, all references in this Agreement to federal and state laws are references to federal and state laws as they may be amended from time to time.

6. Unless Agency is a State of Oregon governmental agency, Agency agrees that it is an independent contractor and not an agent of the State of Oregon, the Oregon Health Authority or County.
7. To the extent permitted by applicable law, Agency shall defend (in the case of the state of Oregon and the Oregon Health Authority, subject to ORS Chapter 180), save and hold harmless the State of Oregon and Clackamas County, and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the operations of the Agency, including but not limited to the activities of Agency or its officers, employees, subcontractors or agents under this Agreement.

8. Agency understands that Agency may be prosecuted under applicable federal and state criminal and civil laws for submitting false claims, concealing material facts, misrepresentation, falsifying data system input, other acts of misrepresentation, or conspiracy to engage therein.
9. Agency shall only conduct transactions that are authorized by the County for transactions with the Oregon Health Authority that involve County funds directly related to this Agreement.
10. Agencies that are not units of local government as defined in ORS 190.003 shall obtain, at Agency's expense, and maintain in effect with respect to all occurrences taking place during the term of the Agreement, insurance requirements as defined in the Agreement.
11. Agencies that are not units of local government as defined in ORS 190.003, shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (Indemnitee) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as not or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency or any of the officers, agents, employees or subcontractors of the contractor (Claims). If is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the Agency from and against any and all claims.
12. Agency shall include sections 1 through 11, in substantially the form set forth above, in all permitted Agency contracts under this Agreement.
13. **Ownership of Intellectual Property.**
 - a. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA and the County will not own the right, title and interest in any intellectual property created or delivered by the Agency in connection with the Services. With respect to that portion of the intellectual property that the Agency owns, Agency grants to OHA and the County a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to: (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property; (2) authorize third parties to exercise the rights set forth in Section 13.a.(1) on OHA and the County's behalf; and (3) sublicense to third parties the rights set forth in Section 13.a.(1).
 - b. If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then Agency shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property created or delivered by Agency in connection with the Services, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to Agency to use, copy distribute, display, build upon and improve the intellectual property.

EXHIBIT F
ADDITIONAL FEDERAL TERMS AND CONDITIONS

1. The County intends that all or a portion of the consideration paid to Agency will be eligible for reimbursement by one or more federal agencies including, but not limited to, the Federal Emergency Management Agency ("FEMA"). This Agreement is subject to the additional terms and conditions required by federal law for a federal award. All terms and conditions required under applicable federal law for a federal award including, but not limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein.
2. Termination. This Agreement may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Agency; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County.
3. By execution of this Agreement, Agency hereby certifies that it and all subcontractors will comply with (i) all Federal statutes relating nondiscrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis race, color or national origin; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; the Age Discrimination Act of 1975, as amended (29 U.S.C. §§6101 et seq.), which prohibits discrimination on the basis of age; the Rehabilitation Act of 1973, as amended (29 U.S.C. §§793 et seq.), which prohibits discrimination against requires affirmative action for qualified individuals with disabilities; the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. §§4541 et seq.), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VII of the Civil Rights Act of 1969 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; any other discrimination provisions in the specific statute(s) under which for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply; (ii) will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 et. seq.), and shall file the required certification if the award is \$100,000 or more; and (iii) will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
4. If this Agreement involves a federal award that meets the definition of a "funding agreement" under 37 CFR § 401.2 (a), and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
5. If this Agreement is in excess of \$150,000, Agency certifies that it and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C.

7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency. Agency shall include these requirements in all contracts with subcontractors receiving more than \$150,000.

6. If this Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, Agency and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Contract Work Hours and Safety Standards Act 40 USC §§3701 et seq. as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. Agency shall include and require all providers to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.
7. Agency shall comply with 2 CFR 180.220 and 925. These regulations restrict sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs or activities. Agency is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Agency may access the Excluded Parties List System at <https://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Agency is required to verify that none of the Contractor's principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935). The Agency must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction that Agency enters into. This certification is a material representation of fact relied upon by the County. If it is later determined that the Agency did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
8. Record Retention. Agency will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by the federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337. Agency agrees to provide to the County, to the FEMA Administrator, to the Comptroller General of the United States, or to any of their authorized representatives, access to any books, documents, papers, and records of the Agency which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Agency agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Agency agrees to provide the FEMA Administrator or the Administrator's authorized representative's access to construction or other work sites pertaining to the Work being completed under the Agreement. In compliance with the Disaster Recovery Act of 2018, the Department of Resources Recycling and Recovery and the Agency acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

9. **DHS Seal, Logo, and Flags:** Agency shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
10. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance may be used to fund this Agreement only. Agency will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.
11. **No Obligation by Federal Government:** The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Agency, or any other party pertaining to any matter resulting from the contract.
12. **Program Fraud and False or Fraudulent Statements or Related Acts:** Agency acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Agency's actions pertaining to this Agreement.
13. Agency will comply with all requirements of 2 CFR 200.321.
14. **Procurement of Recovered Materials (Reference 2 CFR 200.322):** Agency must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
15. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).** Agencies who apply or bid for an award of \$100,000 or more shall file the required certification, set forth below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Agency hereby makes the following certification:

**Byrd Anti-Lobbying Amendment Certification
for Contracts, Grants, Loans, and Cooperative Agreements**

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

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

The Contractor, Asian Health & Service Center certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Agency's Authorized Official

Name and Title of Agency's Authorized Official

Date

December 17, 2020
 Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of a Sub-recipient Agreement with
 Clackamas Women’s Services (NHA) and the Community Development Division
for the CDBG Children’s Programming FY20-21

Purpose/ Outcome	This funding is for the education and services to be provided to children in a homeless shelter who are also overcoming sexual and domestic violence trauma.
Dollar Amount and Fiscal Impact	Community Development Block Grant (CDBG) FY20 funds of \$15,000 as a grant. No County General Funds are included in this Agreement
Funding Source	U.S. Department of Housing and Urban Development ESG program funds
Duration	July 1, 2020 to June 30, 2021
Previous Board Action/ Review	This project was approved with the 2020 Action Plan approval on April 30, 2020.
Strategic Plan Alignment	Increase self-sufficiency for our clients. Ensure safe, healthy and secure communities.
County Review	The Subrecipient agreement was reviewed and approved by County Counsel 1. November 25, 2020 2. AN
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. Item is a Subrecipient that was processed through Finance Grant Management
Contact Person	Mark Sirois, Manager - Community Development: 503-655-8359
Contract No.	H3S 9971

BACKGROUND: The Community Development Division of the Health, Housing and Human Services Department requests the approval of a Sub-recipient Agreement for the purpose to provide education and services to children recovering from sexual and domestic violence who are housed in a domestic violence shelter located in Oregon City, OR, 97045. In 2019 Clackamas Women’s Services (CWS) applied for Community Development Block Grant (CDBG) funding to provide homelessness prevention and shelter services among individuals and families who are homeless or receiving homelessness assistance.

PROJECT OVERVIEW: The CWS shelter will provide children’s education and awareness services to individuals and families as related to overcoming trauma.

It is expected that the funding under this CDBG contract will assist approximately 60 homeless families with shelter services during the program year.

RECOMMENDATION: We recommend the approval of this Sub-recipient Agreement and that Richard Swift H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,



Gregory A. Cook, H3S Deputy / for

Richard Swift, Director
Health, Housing Human Services

**CLACKAMAS COUNTY, OREGON
SUBRECIPIENT GRANT AGREEMENT 21-010**

Project Name: **CDBG FY2020 CWS – Children's Programming 05615**

Project Number: **53750**

This Agreement is between Clackamas County, Oregon, acting by and through its
Health, Housing and Human Services Department,
Community Development Division ("COUNTY")
and Clackamas Women's Services, ("SUBRECIPIENT"), an Oregon Nonprofit Organization.

Clackamas County Data

Grant Accountant: **Ke'ala Adolpho**

Program Manager: **Amy Council**

Clackamas County – Finance

Clackamas County – Community Development

2051 Kaen Road

2051 Kaen Road, Suite 245

Oregon City, OR 97045

Oregon City, OR 97045

Phone: 503-742-5410

Phone: 971-349-2949

Email: kadolpho@clackamas.us

Email: acouncil@clackamas.us

Subrecipient Data

Finance/Fiscal Representative: **Carla Batcheller**

Program Representative: **Angie Drake**

Clackamas Women's Services

Clackam24 as Women's Services

256 Warner Milne Road

256 Warner Milne Road

Oregon City, OR 97045

Oregon City, OR 97045

Phone: 503-655-8600

Phone: 503-654-2807

Email: carlab@cwsor.org

Email: angied@cwsor.org

DUNS: 959059759

RECITALS

1. This Agreement is entered into between COUNTY and SUBRECIPIENT to provide a basis for a cooperative working relationship for the purpose of implementing the Federal Community Development Block Grant program ("CDBG") contained in U.S. Department of Housing and Urban Development ("HUD"), and regulations adopted under this Act at Subchapter C, 24 CFR Part 570, dated 1974, as amended, and Public Law 93-383 as amended. The program is designed to provide Community Development Block Grant ("CDBG") funds to Clackamas Women's Services to support homelessness prevention by securing funds to provide for staffing and operation expenses at a local domestic violence shelter.
2. COUNTY has applied for and expects to receive CDBG funds from HUD under Title I of the Housing and Community Development Act of 1974, Public Law 93-383 ("ACT").
3. Funds provided by COUNTY shall be used for expenditures for program funding that provides education and services that help children overcome the trauma of domestic and sexual violence provided by the **CWS Homeless Shelter** in Clackamas County, OR.

4. In response to a Congressional directive, HUD has required all recipients to use funds provided pursuant to this Agreement for eligible activities as described in 24 CFR 570.201 (e), and agrees not to use such funds for any ineligible activity described in 24 CFR 570.207.
5. SUBRECIPIENT shall expend CDBG funds to support the staffing and operations of a homeless shelter benefiting homeless persons. Documentation shall be provided through submission of quarterly reports on all Annie Ross House activities and persons served. The report is included as Attachment A and shall be submitted to the COUNTY with each quarterly invoice.

NOW THEREFORE, according to the terms of this Subrecipient Grant Agreement (this "Agreement") the COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement becomes effective upon execution. The program period for eligible expenditures under this Agreement is **July 1, 2020 and expires June 30, 2021**, a total of twelve (12) months.
2. **Program.** The Program is described in the attached Exhibit A: Subrecipient Scope of Work. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations, including Subpart C of Title I of the Housing and Community Act of 1974. Furthermore, SUBRECIPIENT shall comply with the requirements of CDBG award number B20-UC-41-0001 that is the source of the grant funding, in addition to compliance with requirements of Title I of the *Code of Federal Regulations* ("CFR"), Part 24, Sub-Part 570. A copy of that grant award has been provided to SUBRECIPIENT by COUNTY, which is attached to and made a part of this Agreement by this reference. SUBRECIPIENT shall further comply with any requirements, terms, conditions, and other obligations as may be required by the applicable local, State or Federal agencies providing funding for performance under this Agreement, whether or not specifically referenced herein. SUBRECIPIENT agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement including, but not limited to, executing all additional documentation necessary to comply with applicable State or Federal funding requirements.
4. **Grant Funds.** COUNTY's funding for this Agreement is the Community Development Block Grant (Catalogue of Federal Domestic Assistance [CFDA] #: 14.218) issued to COUNTY by the U.S. Department of Housing and Urban Development, Office of Community Planning and Development (Federal Award Identification #B20-UC-41-0001). The maximum, not to exceed, grant amount COUNTY will pay is **\$15,000**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request. Failure to comply with the terms of this Agreement may result in withholding of payment.
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.
6. **Termination.** This Agreement may be suspended or terminated prior to the expiration of its term by:
 - a. Written notice provided by COUNTY resulting from material failure by SUBRECIPIENT to comply with any term of this Agreement, or;

- b. Mutual agreement by COUNTY and SUBRECIPIENT.
- c. Written notice provided by COUNTY that HUD has determined CDBG funds are no longer available for this purpose.
- d. Written notice provided by COUNTY that it lacks sufficient funds, as determined by COUNTY in its sole discretion, to continue to perform under this Agreement.

Upon completion of improvements or upon termination of this Agreement, any unexpended balances of CDBG funds shall remain with COUNTY.

7. **Effect of Termination.** The expiration or termination of this Agreement, for any reason, shall not release SUBRECIPIENT from any obligation or liability to COUNTY, or any requirement or obligation that:
- a. Has already accrued hereunder;
 - b. Comes into effect due to the expiration or termination of the Agreement; or
 - c. Otherwise survives the expiration or termination of this Agreement.

Following the termination of this Agreement, SUBRECIPIENT shall promptly identify all unexpended funds and return all unexpended funds to COUNTY. Unexpended funds are those funds received by SUBRECIPIENT under this Agreement that (i) have not been spent or expended in accordance with the terms of this Agreement; and (ii) are not required to pay allowable costs or expenses that will become due and payable as a result of the termination of this Agreement.

8. **Funds Available and Authorized.** COUNTY certifies that it has received an award sufficient to pay for this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
9. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 7.
10. **Nonprofit status.** SUBRECIPIENT warrants that it is, and shall remain during the performance of this Agreement, a private nonprofit Organization as defined in the Regulations, including:
- a. That it is described in Section 501(c) of the Internal Revenue Code of 1954;
 - b. That it is exempt from taxation under Subtitle A of the Internal Revenue Code of 1954;
 - c. That it has an accounting system and a voluntary board; and
 - d. That it practices nondiscrimination in the provision of assistance to the homeless.
11. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:

- a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
- b) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
- c) **Cost Principles.** SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of SUBRECIPIENT.

Additionally, SUBRECIPIENT agrees to use funds provided only for eligible activities as described in 24 CFR 570 Subpart C.

- d) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
- e) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.
- f) **Indirect Cost Recovery.** SUBRECIPIENT claims a portion of its provisional negotiated indirect cost rate (27.8% of salary/fringe) negotiated with the Department of Justice Office on Violence Against Women, dated May 1, 2019.
- g) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
- h) **Payment.** SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in Exhibit D: Required Financial Reporting and Reimbursement Request.
- i) **Performance Reporting.** HMIS reporting is not a requirement of this agreement.
- j) **Evaluation.** SUBRECIPIENT agrees to participate with COUNTY in any evaluation project or performance report, as designed by COUNTY or HUD, and to make available all information required by any such evaluation process.
- k) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by COUNTY or SUBRECIPIENT, in accordance with Treasurer regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed Exhibit D: Required Financial Reporting and Reimbursement Request on a monthly basis.
- l) **Specific Conditions.** None.
- m) **Grantor Recognition.** SUBRECIPIENT shall ensure recognition of the role of COUNTY in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, SUBRECIPIENT will include reference to the support provided herein in all publications made possible with funds available under this Agreement.
- n) **Supplanting.** The funding made available under this Agreement shall not be utilized by SUBRECIPIENT to reduce substantially (i.e. supplant) the amount of local financial support for shelter and assistance activities below the level of such support prior to the availability of funds under this Agreement.
- o) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (Exhibits F, G & H), performance, and other reports as required by the terms and conditions of the Federal award and/or COUNTY, no later than 90 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for all residual supplies valued over \$5,000 in the aggregate that were purchased with Federal

funds authorized by this Agreement. Compensation to the Federal Agency may be required for equipment or residual supplies valued over \$5,000 per 2 CFR 200.313 & 314.

- p) **Universal Identifier and Contract Status.** SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System (DUNS) as required for receipt of funding. In addition, SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <https://www.sam.gov>.
- q) **Suspension and Debarment.** SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- r) **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Lobbying) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (4) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- s) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse ("FAC") within 9 months from SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, SUBRECIPIENT will also submit a copy of the audit to COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- t) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. COUNTY, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.

COUNTY will monitor the performance of the SUBRECIPIENT against goals and performance standards required herein. Substandard performance as determined by COUNTY will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by

SUBRECIPIENT within ten (10) days after being notified by COUNTY, Agreement termination and all funding will end. SUBRECIPIENT must return any unused funds promptly.

- u) **Records to be Maintained.** SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR Part 576.500 that are pertinent to the activities to be funded under this Agreement. Such records shall include but are not limited to:
1. Client Eligibility Determinations and documentation;
 2. Rental Assistance Agreements;
 3. Service and assistance provided;
 4. Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with CDBG funds; Financial records as required by 24 CFR Part 576 Subpart F.
 5. Client Data. SUBRECIPIENT shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but is not limited to: client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to COUNTY monitors or their designees for review upon request.
 6. Disclosure. SUBRECIPIENT understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with administration of COUNTY's or SUBRECIPIENT's responsibilities with respect to services provided under this Agreement, is prohibited unless consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
 7. Property Records. SUBRECIPIENT shall maintain real property inventory records which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(7), as applicable.
- v) **Record Retention.** SUBRECIPIENT shall retain all records pertinent to expenditures incurred under this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.
- w) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for the CDBG, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as COUNTY, under those grant documents.
- x) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met, terminate this Agreement and all associated amendments, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, require repayment of any funds used by SUBRECIPIENT in violation of this Agreement, to terminate this Agreement, and to pursue any right or remedy available to COUNTY at law, in equity, or under this Agreement.

- y) **Program Income.** SUBRECIPIENT shall report monthly all program income as defined at 2 CFR 200.307 generated by activities carried out with CDBG funds made available under this Agreement. By way of further limitations, SUBRECIPIENT may use such income during the Agreement period for activities permitted under this Agreement and shall reduce request for additional funds by the amount of any such program income balances on hand. All unused program income shall be returned to COUNTY at the end of the Agreement period.

12. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT. See Exhibit A for requirements.
- b) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency.
- c) **Lead-Based Paint.** SUBRECIPIENT agrees to comply with the Lead-Based Paint Poisoning Prevention Act and implementing regulations at 24 CFR Part 35.
- d) **Drug-Free Workplace Act of 1988.** SUBRECIPIENT agrees to comply with the requirements of 24 CFR Part 24 concerning the Drug-Free Workplace Act of 1988 by administering in good faith a policy designed to ensure that its facilities are free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.
- e) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- f) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request County to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. COUNTY shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by COUNTY shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- g) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.

- h) **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of COUNTY, mileage must be paid at the rate established by SUBRECIPIENT's written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.

13. Federal and State Procurement Standards

- a) All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements must receive prior written approval from COUNTY in addition to any other approvals required by law applicable to SUBRECIPIENT. Justification for sole-source procurement should include a description of the project and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision. SUBRECIPIENT shall comply with the procurement standards applying to subrecipients under this Federal award contained in 2 CFR 200.318-326.
- b) COUNTY's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public contracts under the Oregon Public Contracting Code and applicable Local Contract Review Board rules, which are incorporated by reference herein.
- c) SUBRECIPIENT must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. If SUBRECIPIENT has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals ("RFP") for a proposed procurement must be excluded by SUBRECIPIENT from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.
- d) SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

14. General Agreement Provisions

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into COUNTY's next fiscal year, COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its commissioners, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:

- 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
- 2) **Commercial Automobile Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.
- 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish COUNTY evidence of Professional Liability Insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.
- 4) **Abuse and Molestation Insurance.** Abuse and molestation insurance as part of the Commercial General Liability policy in a form and with coverage that are satisfactory to the County covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Contractor is responsible including but not limited to Contractor and Contractor's employees and volunteers. Policy endorsement's definition of an insured shall include the Contractor, and the Contractor's employees and volunteers. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit shall not be less than \$3,000,000.
- 5) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, commissioners, officers, and employees" as an additional insured.
- 6) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days' notice of cancellation provision shall be physically endorsed on to the policy.
- 7) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 8) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. COUNTY and its officers must be named as an additional insured on the Certificate of Insurance. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY.

The certificate will specify that all insurance-related provisions within the Agreement have been complied with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

- 9) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss.
- 10) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the Agreement.
- d) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- e) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.
- f) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- g) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.

15. Other Federal Requirements

- a) The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135 apply.
- b) **Hatch Act.** SUBRECIPIENT agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of the Title V United States Code.
- c) **Affirmative outreach.** SUBRECIPIENT must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. If it is unlikely that the procedures that the recipient or subrecipient intends to use to make known the availability of the facilities, assistance, and services will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the recipient or subrecipient must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services. SUBRECIPIENT must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Consistent with Title VI and Executive Order 13166, SUBRECIPIENT is also required to take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency ("LEP") persons.
- d) **Uniform Administrative Requirements.** The requirements of 2 CFR 200 apply to SUBRECIPIENT and program income is to be used as the nonfederal share. These regulations include allowable costs and non-Federal audit requirements.
- e) **Religious Organization.** SUBRECIPIENT agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200 (j)(3)
- f) **Environmental review responsibilities.**

- 1) Activities under this part are subject to environmental review by HUD under 24 CFR Part 50. SUBRECIPIENT shall supply all available, relevant information necessary for COUNTY to perform for each property any environmental review required by 24 CFR part 50. At the instruction of COUNTY SUBRECIPIENT may be required to carry out mitigating measures required by COUNTY or select alternate eligible property. COUNTY may eliminate from consideration any application that would require an Environmental Impact Statement ("EIS").
 - 2) SUBRECIPIENT, or any contractor of SUBRECIPIENT, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for eligible activities under this part, until COUNTY has performed an environmental review under 24 CFR part 50 and SUBRECIPIENT has received COUNTY approval of the property.
- g) **Davis-Bacon Act.** The provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-5) do not apply to these public services in the CDBG program.
- h) **Procurement of Recovered Materials.** SUBRECIPIENT and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency ("EPA") at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- i) **Displacement, Relocation, and Acquisition.** Consistent with the other goals and objectives of CDBG, SUBRECIPIENT must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under CDBG.
- j) **Temporary relocation not permitted.** No tenant-occupant of housing (a dwelling unit) that is converted into an emergency shelter may be required to relocate temporarily for a project assisted with CDBG funds, or be required to move to another unit in the same building/complex. When a tenant moves for a project assisted with CDBG funds under conditions that trigger the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"), 42 U.S.C. 4601-4655, as described in paragraph (c) of this section, the tenant should be treated as permanently displaced and offered relocation assistance and payments consistent with that paragraph.
- k) **Non-displacement.** SUBRECIPIENT agrees to minimize displacement and comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and (b) the requirements of 24 CFR 570.606 governing the CDBG program. SUBRECIPIENT shall provide relocation assistance to persons (families, individuals, businesses, nonprofit organizations, and farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. SUBRECIPIENT also agrees to comply with applicable COUNTY ordinances, resolutions, and policies concerning the displacement of persons from their residences. Any activity which may result in a displaced person (defined in paragraph l. of this section) must be reported to COUNTY prior to the commencement of the activity. COUNTY shall determine the relocation assistance as provided in 24 CFR 570.606 and such assistance shall be subtracted from the CDBG funds provided to SUBRECIPIENT.
- l) **Displaced Person.** For purposes of paragraph k. of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm, including any corporation, partnership, or association) that moves from real property, or moves personal property from real

property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under the CDBG program. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property.

- m) **Real property acquisition requirements.** The acquisition of real property, whether funded privately or publicly, for a project assisted with CDBG funds is subject to the URA and Federal government wide regulations at 49 CFR Part 24, subpart B.
- n) **Appeals.** A person who disagrees with COUNTY's (or SUBRECIPIENT's, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the recipient under 49 CFR 24.10. A low-income person who disagrees with the recipient's determination may submit a written request for review of that determination by the appropriate HUD field office.

16. Civil Rights

- a) **Compliance.** SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.
- b) **Nondiscrimination.** SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, nation origin, sex, disability, or other handicap, age, marital/familial status, or status with regard to public assistance. SUBRECIPIENT will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscrimination clause.
- c) **Section 504.** SUBRECIPIENT agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1974, which prohibits discrimination against the handicapped in any Federally-assisted program. COUNTY shall provide SUBRECIPIENT with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

17. Affirmative Action

- a) **Plan.** SUBRECIPIENT agrees that it shall be committed to carry out pursuant to COUNTY's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.
- b) **Women and Minority Business Enterprises.** SUBRECIPIENT will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. SUBRECIPIENT may rely on written representation by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

- c) **Access to Records.** SUBRECIPIENT shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by COUNTY, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.
- d) **Notifications.** SUBRECIPIENT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other Agreement or understandings, a notice, provided by the agency officer, advising the labor union or worker's representative of SUBRECIPIENT's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e) **EEO/AA Statement.** SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of SUBRECIPIENT, state that it is an Equal Opportunity or Affirmative Action employer.
- f) **Subcontracting Provisions.** SUBRECIPIENT will include the provisions of Paragraph 23, Civil Rights, and 24, Affirmative Action, in every subcontract or purchase orders, specifically or by reference, so that such provisions will be binding upon each of its subrecipients or subcontractors.

18. Employment Restrictions

- a) **Prohibited Activity.** SUBRECIPIENT is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.
- b) **Labor Standards.** SUBRECIPIENT agrees to comply with the requirements of the Secretary of Labor in accordance with Davis-Bacon Act as amended, the provisions of Agreement: Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. SUBRECIPIENT shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to COUNTY for review upon request. SUBRECIPIENT agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all Agreements engaged under Agreements in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by COUNTY pertaining to such Agreements and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeyworkers; provide, that if wage rates higher than those required under the regulations are imposed by state or local laws, nothing hereunder is intended to relieve SUBRECIPIENT of its obligation, if any, to require payment of the higher wage. SUBRECIPIENT will cause or require to be inserted in full, in all Agreements subject to such regulations, provisions meeting the requirements of this paragraph.
- c) **Job Training and Employment for Low-income Residents -Section 3**
 - i. **Compliance.** Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon COUNTY, SUBRECIPIENT, and any of SUBRECIPIENT's subrecipients and subcontractors. Failure to fulfill these requirements shall subject COUNTY, SUBRECIPIENT, and any of SUBRECIPIENT's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. SUBRECIPIENT certifies and agrees that no agreements or other

disability exist which would prevent compliance with these requirements.

- ii. SUBRECIPIENT further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Community Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area and Agreements for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

- iii. SUBRECIPIENT further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation, housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award Agreements for work undertaken in connection to housing rehabilitation, housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which CDBG-funded project is located; where feasible, priority should be given to business concerns which provide economic opportunities to low- and very low-income residents within the service area or neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.
- iv. SUBRECIPIENT certifies and agrees that no agreement or other legal incapacity exists which would prevent compliance with these requirements.
- v. **Notifications.** SUBRECIPIENT agrees to send to each labor organization or representative of worker with which it has a collective bargaining agreement or other Agreement or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- vi. **Subcontracts.** SUBRECIPIENT will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontract is in violation of regulations issued by the grantor agency. SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

19. **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of COUNTY.
20. **Independent Status.** SUBRECIPIENT is independent of COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of COUNTY and undertakes this work independent from the control and direction of COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind COUNTY in any transaction or activity.
21. **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered

personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.

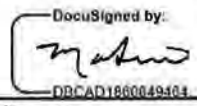
22. **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
23. **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
24. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same Agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
25. **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.

(Signature Page Follows)

SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

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

CLACKAMAS WOMEN'S SERVICES

By: 
Melissa Erlbaum
Executive Director

Melissa Erlbaum
11/27/2020
Printed Name Date

256 Warner Milne Road
Street Address
Oregon City, OR 97045
City / State / Zip

CLACKAMAS COUNTY

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

Signing on Behalf of the Board:

Rod Cook, Assistant Director
Health, Housing & Human Service Department

Date

Approved to Form:

Andrew Naylor
County Counsel
11/25/2020
Date

- Exhibit A: SUBRECIPIENT Scope of Work
- Exhibit B: SUBRECIPIENT Program Budget
- Exhibit C: Lobbying Certificate
- Exhibit D: Required Financial Reporting and Reimbursement Request
- Exhibit E: Final Financial Report

EXHIBIT A

SUBRECIPIENT SCOPE OF WORK

1. Scope of Work for: Clackamas Women's Services – Children's Programming FY2020

These CDBG funds are to be used to support staffing and services at the Clackamas Women's Services homeless shelter. SUBRECIPIENT agrees to accomplish the following work under this contract:

- A. Provide emergency shelter services to homeless families by paying for staff and other operational expenses.
 - B. It is expected that the funding under this CDBG contract will assist approximately 60 homeless families with shelter services during the program year.
2. SUBRECIPIENT agrees to use funds provided pursuant to this Agreement for eligible activities as described in 24 CFR 570.201 (e), and agrees not to use such funds for any ineligible activity described in 24 CFR 570.207.
 3. SUBRECIPIENT shall expend CDBG funds to support the education of homeless or low-moderate income households of children. This funding will support administrative and services provided to the 'Children's Programming for Victims of Domestic and Sexual Violence and Child Abuse'.
 4. COUNTY will monitor the performance of SUBRECIPIENT against goals and performance standards required herein. Substandard performance as determined by COUNTY will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by SUBRECIPIENT within ten (10) days after being notified by COUNTY, Agreement termination and all funding will end. SUBRECIPIENT must return any unused funds promptly.
 5. COUNTY agrees to apply for and administer CDBG funds received under the ACT, and to provide funds to SUBRECIPIENT pursuant to this Agreement.

EXHIBIT B

SUBRECIPIENT PROGRAM BUDGET

- A. The total compensation under this contract shall not exceed \$15,000 for the fiscal year with payments to be made as outlined in the body of this Agreement.
- B. Adjustments to the budget may only be made with the approval of both Parties.

Budget Category	Maximum Expenditure FY20
Personnel	\$9,937
Program Supplies	\$3,700
Indirect Costs*	\$1,363
TOTAL	\$15,000

*SUBRECIPIENT claims a portion of their federally-negotiated indirect cost rate of 27.8% of salary/fringe, negotiated with the DOJ Office on Violence Against Women (provisional rate; date May 1, 2019).

EXHIBIT C: CONGRESSIONAL LOBBYING CERTIFICATE

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

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

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

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

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

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

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

Organization Name

Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

**Exhibit D
REQUEST FOR REIMBURSEMENT**

**Note: This form derives from the approved budget in your grant Agreement.
Please follow instructions for completing this form as outlined in Exhibit D.1.**

Subrecipient <u>Clackamas Women's Services</u>	Grant Number: <u>21-010</u>
Address: _____	Report Period: _____
	Contract #: _____
Contact Person: _____	Federal Award #: <u>B20-UC-41-0001</u>
Phone Number: _____	CFDA(s): <u>14.218</u>
E-mail: _____	

Budget Category	Budget	Current Draw Request	Previously Requested	Balance
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
Total Grant Funds Requested	\$ -	\$ -	\$ -	\$ -

ATTACH ALL RECEIPTS AND REQUIRED CLIENT DOCUMENTATION.

Clackamas County and the Federal government retain the right to inspect all financial records and other books, documents, papers, plans, records of shipments and payments and writings of Recipient that are pertinent to this Agreement.

CERTIFICATION

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Prepared by: _____

Authorized Signer: _____

Date: _____

Department Review
Project Officer Name: _____
Department: _____

Signature: _____ Date: _____

EXHIBIT D.1: REIMBURSEMENT INSTRUCTIONS

Reimbursement by COUNTY will be within 30 days of receipt of acceptable countersigned itemized invoices or billings reflecting the actual cost to SUBRECIPIENT of eligible expenses. Each invoice shall be accompanied with a detailed Request for Reimbursement (Exhibit D) which shall include appropriate documentation. This documentation shall include signed and approved timecards for personnel expenses and itemized invoices or billings for materials and services.

- COUNTY must provide HUD with specific household demographic information for each household served by CDBG funds. The household information will be collected from SUBRECIPIENT and must accompany the first SUBRECIPIENT invoice for each household.
- The request for reimbursement shall also include a summary of expenses incurred for each household along with source documentation. In addition, an HMIS report documenting the type and amount of financial assistance for each household shall accompany the invoice.
- Information on the request for reimbursement form, the household demographics, the source documentation and the summary of expenses incurred for each specific household from the HMIS reports must all correlate. See Attachment A.

Project Name: CDBG 2020 Children's Programming	Agreement #: 21-010
Federal Award #: B20-UC-41-0001	Date of Submission: XX/XX/XX
Subrecipient: CLACKAMAS WOMEN'S SERVICES	
Has Subrecipient submitted all requests for reimbursement? Y/N	
Has Subrecipient met all programmatic closeout requirements? Y/N	

EXHIBIT E: Final Financial Report

Report of Funds received, expended, and reported as match (if applicable) under this agreement

Total Federal Funds authorized on this agreement:	
Year-to-Date Federal Funds requested for reimbursement on this agreement:	
Total Federal Funds received on this agreement:	
Balance of unexpended Federal Funds (Line 1 minus Line 3):	

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Subrecipient's Certifying Official (printed): _____

Subrecipient's Certifying Official (signature): _____

Subrecipient's Certifying Official's title: _____

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Personal Services Contract between Clackamas County and
Henry Schein for the
Dental Equipment for the New Sandy Health Center Project**

Purpose/ Outcome	The Personal Services Contract with Henry Schein for the purchase, delivery and installation of dental equipment for the New Sandy Health Center Project.
Dollar Amount and Fiscal Impact	The Health Centers Division will pay this Contract in the amount of \$278,297 dollars. No County General Funds will be used for this project.
Funding Source	Care Oregon Funds Health Balance Funds
Duration	TBD 2021 through Fall 2021, Henry Schein will work with the future hired General Contractor for this project.
Previous Board Action/ Review	Demolition Contract to remove existing vacant building: June 15, 2020 Construction Contract with 3 Kings Environmental, Inc.
Strategic Plan Alignment	1. Ensure safe, healthy and sustainable communities. 2. Improved community safety and health.
Counsel Review	This Personal Services Contract was reviewed: 1. Date of Counsel review: August 24, 2020 2. A.N.
Procurement Review	Was the item processed through Procurement? Partially. Henry Schein was selected for this Personal Services Contract through the Request for Proposal process with assistance from County Procurement. Community Development is managing all other aspects of this site project.
Contact Person(s)	Deborah Cockrell – Health Centers Director: 503-756-9674
Contract No.	H3S 9976

BACKGROUND: The Health Centers Division of the Health, Housing and Human Services Department requests the approval of this Personal Services Contract with Henry Schein for Dental Equipment for the New Sandy Health Centers Project. The Personal Services Contract determines the roles of Henry Schein and the County regarding: 1) contract administration, 2) project management, and 3) Henry Schein's delivery and coordination of dental equipment products on-site with the General Contractor for this future construction project. Health Centers Division and their hired Architect, Ankrom Moisan, will work together to facilitate a seamless bidding process to control costs, by having the Henry Schein information available in the Construction Bid Documents once the City of Sandy releases the Building Permit (expected December 2020). Henry Schein was selected for this Personal Services Contract through the Request for Proposal process with assistance from County Procurement and County Counsel. The project address is 39740 Pleasant Street, Sandy, Oregon 97055.

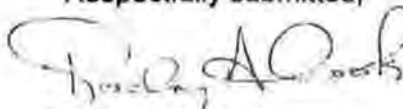
Healthy Families. Strong Communities.

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 Personal Services Contract with Henry Schein, and that Richard Swift H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,



Richard Swift, H3S Director / for

Richard Swift, Director
Health, Housing and Human Services



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
H3S Contract #9976**

This Personal Services Contract (this "Contract") is entered into between Henry Schein ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of Health, Housing and Human Services Department, Health Services Division.

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 November 30, 2021.
- 2. SCOPE OF WORK.** Contractor shall provide the following personal services: provide dental equipment together with design, consultation, installation, and training services related to the same for the new Sandy Health Center ("Work"), further described in Exhibits A, B, and Exhibit C.
- 3. CONSIDERATION.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed Two Hundred Seventy Eight Thousand Two Hundred Ninety Seven dollars and no cents (\$278,297.00), for accomplishing the Work required by this Contract. Consideration rates are on a fixed fee basis in accordance with the rates and costs specified in Exhibit B. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit B.
- 4. INVOICES AND PAYMENTS.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. 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 invoices shall include the total amount billed to date by Contractor prior to the current invoice. 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 in accordance with ORS 293.462 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 be obligated to 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.

Invoices shall reference the above Contract Number and be submitted to: Steve Kelly, Project Coordinator

- 5. TRAVEL AND OTHER EXPENSE.** Authorized: Yes 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: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. 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, Exhibit A, (Scope of Work & Dental Equipment List), Exhibit B (Fee Schedule), Exhibit C (Drawing of Dental Space), Exhibit D (County's RFP), and Exhibit E (Contractor's Response to RFP).
- 7. CONTRACTOR AND COUNTY CONTACTS.**

Contractor	County
Administrator: Trent Crollard Phone: 503-896-6606 Email: Trent.Crollard@henryschein.com	Administrator: Steve Kelly Phone: 503-650-5665 Email: stevekkel@clackamas.us

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 will subject Contractor payments to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted 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. Contractor shall maintain such books and records for a minimum of six (6) 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 FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
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 applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County 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. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** 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 or willful act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.
- 8. 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; and (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.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Health Centers Division, 2051 Kaen Road, Suite 245 Oregon City, OR 97045 or stevekel@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required - Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required - Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required - Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The 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. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** 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. Except for liability arising under or related to Article II, Section 13 or Section 20 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.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article I, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. 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. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. 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) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided. Contractor also makes the following warranties as to the Work:
- a) Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
 - b) Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and County's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

14. **DELIVERY.** All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the County except as to latent defects, fraud and Contractor's warranty obligations.
15. **INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.
16. **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, Sections 1, 6, 7, 10, 13, 17, 22, 21, and 27 and all other rights and obligations which by their context are intended to survive. 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.
17. **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.
18. **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, which shall be granted or denied in the County's sole discretion. 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, Sections 1, 7, 8, 13, 16 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.
19. **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.
20. **TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and 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 or applicable law.

21. TERMINATIONS. This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, 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. REMEDIES. If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.

23. 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.

24. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance this Contract.

25. 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.

26. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

27. 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.

28. PUBLIC CONTRACTING REQUIREMENTS. Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.

- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

27. NO ATTORNEY FEES. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

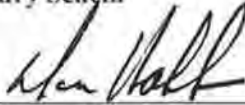
28. KEY PERSONS. Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.

29. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

[Signatures to Follow]

Henry Schein



Authorized Signature

11/10/2020

Date

Don Hobbs, Vice President

Name / Title (Printed)

083473-95

Oregon Business Registry #

Corporation/Delaware

Entity Type / State of Formation

11-3136595

Federal Tax Identification Number

Clackamas County

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

Richard Swift, Director
Health Housing and Human
Services Department

Date

Approved as to Form:

Andrew Naylor

August 24, 2020

County Counsel

Date



Richard Swift
Director

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #2 to the Clackamas ASA Ambulance Service Contract

Purpose/Outcomes	Approval to an amendment to the Clackamas ASA ambulance service contract that signifies the intent to develop a performance based contract amendment.
Dollar Amount and Fiscal Impact	\$6 million annually
Funding Source	Clackamas County residents who pay transport fees as set by ambulance services contract.
Duration	Ongoing
Strategic Plan Alignment	1. This presentation aligns with the County's Performance Clackamas goal to ensure safe, healthy and secure communities. 2. Monthly contract compliance for emergency medical services is a key performance measure incorporated into the County's annual budgeting process.
Previous Board Action	None
County Counsel Review	A.N. December 9, 2020
Procurement Review	No. Item is a Franchise Agreement.
Contact Person	Philip Mason-Joyner, Public Health Director, 503-742-5956

BACKGROUND:

On December 8th, 2020 the Clackamas County Board of Commissioners directed staff to work on drafting a contract amendment, which signifies the intent for the County, AMR, and EMS stakeholders to work on a performance-based extension process. This amendment will provide the time to develop a performance based contract amendment that ensures the continued advancement, enhancement, and innovation across the EMS system in Clackamas County.

RECOMMENDATION:

Staff recommends the board approve this Amendment.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "R. Swift".

Richard Swift, Director
Health, Housing, and Human Services

Healthy Families. Strong Communities.

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

www.clackamas.us

AMENDMENT #2

TO THE AMBULANCE CONTRACT BETWEEN CLACKAMAS COUNTY AND AMERICAN MEDICAL RESPONSE NORTHWEST, INC.

This Amendment #2 is entered into by and between Clackamas County, a political subdivision of the State of Oregon (“County”), and American Medical Response Northwest, Inc. (“Contractor”) and shall become part of the Contract entered into between both parties on May 1, 2014 (“Contract”).

Recitals

County desires to amend the Contract’s Service and Term provisions to incorporate a performance-based structure. Under this structure, the Contract term shall be extended for additional periods of time provided Contractor meets or exceeds specific criteria and performance metrics. Response times will no longer be the primary metric by which Contractor’s performance is evaluated.

The criteria and performance metrics to be used in evaluating Contractor under the amended performance-based structure are currently being developed by the County, with assistance and input from the Clackamas County Emergency Medical Services Council (“EMS”) and other County partners, such as local fire agencies and Contractor.

The parties desire to enter into this Amendment #2 to identify the framework in which negotiations will occur with the goal of ultimately amending the Contract to provide for a new performance-based structure, as well as to identify the key elements the parties anticipate will be included in a performance-based contract.

Now, therefore, for good and valuable consideration, the parties agree as follows:

Terms

1. The parties will negotiate, in good faith, to amend Section 1, Service and Term, to remove the existing Contract term and replace it with a performance-based ongoing Contract term. The parties expect key elements of this structure may include the following:
 - a. Term. A new Contract termination date will be established that may be extended based upon the criteria described below.
 - b. Evaluation and Extensions. Contractor’s performance under the Agreement shall be reviewed and audited in a time frame agreed to by parties, which is expected to be between 18-24 months. If Contractor’s performance meets or exceeds the metrics, standards, and other criteria established by the County, in coordination with the EMS and other partners, the Contract termination date will automatically be extended. The following is an example of how performance metrics will govern extension periods:

Rating	Score	Renewal Amount
Exceptions	95-100%	Extension periods TBD
Very Good	92-94%	
Good	90-93%	
Fair	80-89%	

Poor	79% or below	No extension and corrective action required/possible termination
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- c. Evaluation Criteria. The performance criteria established by the County may include existing performance metrics under the Contract (e.g. Section 5, Response Time Requirements) as well as additional metrics and criteria the County is currently developing (collectively, the “Performance Measures”). County anticipates the following additional criteria may be included in the Performance Measures:
- i. Clinical performance elements focusing on patient needs and evidence-based clinical outcomes;
 - ii. Operational performance elements to ensure continued operational readiness, reliability and efficiency;
 - iii. Revised response time criteria to ensure more equitable access to service throughout service area;
 - iv. Identification and tracking of use of 911 systems for non-emergency transport purposes;
 - v. Other criteria as may be agreed upon by the parties.
- d. Remediation and Termination. The parties will negotiate, in good faith, to establish remedies in the event Contractor falls to meet or exceed the Performance Measures. Such remedies will include limiting the number of years in which the Contract may be extended and requiring immediate corrective action and a remediation plan demonstrating what steps Contractor is or will be taking to address the failures. Continued failure to meet the Performance Measures shall constitute grounds for termination of the Contract.
- e. Renegotiation Events. The parties will negotiate, in good faith, to identify certain events that shall be grounds for renegotiation of the Contract. These events are ones that require reassessment of the Contract and its Performance Measures in light of changes in the law, the County’s strategic plans and goals, and innovations in the emergency medical and ambulance industry. The County anticipates the following events will be grounds to renegotiate the Contract:
- i. *Ambulance Service Plan Amendments.* Upon notice by the County to the Contractor of proposed or actual Ambulance Service Plan Amendments under ORS Chapter 682;
 - ii. *Strategic Plan.* Upon notice by the County to the Contractor of a proposed or actual change to the County’s Emergency Medical Services Strategic Plan;
 - iii. *Change in Law.* Upon notice by the County to the Contractor of any change in applicable law including, but not limited to ORS Chapter 682 and Clackamas County Code Title 10.1, that County determines, in its reasonable discretion, will have a substantial impact on the Contract. As used herein, “substantial impact” includes, but is not limited to, standards of performance, provider selection criteria, and related matters.
- f. Termination for Convenience. The parties will negotiate, in good faith, to include a termination for convenience clause. The clause will permit either party to terminate the Contract with or without cause. County anticipates the clause will contain the following elements:

- i. In the event of termination, Contractor shall continue to provide services and otherwise perform under the Contract during the time period between receipt of County’s termination for convenience notice and the termination of the Agreement (the “Lame Duck Period”) pursuant to Section 27 of the Contract;
 - ii. Contractor shall cooperate with the County in effectuating a safe and orderly transition to a new ambulance service provider, if applicable;
 - iii. Contractor shall cease performing emergency ambulance business in the ASA after the end of the Lame Duck Period and assert no claim of right to emergency ambulance business in the ASA, nor assert any claim of compensation owed relative to the loss of such business.
 - iv. Contractor shall take all necessary steps, and execute and deliver any and all necessary written instruments, reasonably requested by County to assist in the orderly termination of the Contract.
- g. Additional Terms and Conditions. The parties will negotiate, in good faith, to amend any terms and conditions of the Contract as mutually agreed upon which may include but is not limited to the following:
- i. Establish daily unit hour utilization minimum requirements
 - ii. Develop a surge plan to address situations where Contractor is unable to respond to emergencies, utilizing metrics developed by the County in coordination with the EMS;
 - iii. Establish a process for equipment standardization and future modifications and upgrades;
 - iv. Establish interoperability software platforms between County, Contractor, and local partners to support quality patient care.
 - v. Establish detailed Contractor reporting requirements in substantially the manner detailed in the EMS November 25, 2020 correspondence as attachment B, a copy of which is attached hereto as Exhibit A and incorporated by this reference herein.
 - vi. Any other agreed upon addition or amendment to the Contract.

2. Negotiation Term. The obligation to negotiate, in good faith, pursuant to the terms of this Amendment #2 shall terminate on January 1, 2022. Nothing herein shall be construed as changing the current Contract termination date of May 1, 2024.

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect. By signature below, the parties agree to this Amendment #2, effective upon the date of the last signature below.

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS	AMERICAN MEDICAL RESPONSE NORTHWEST, INC.
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James Bernard, Chair

Edward B. Van Horne, President & CEO

Date

Date

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

County Counsel

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

In the Matter of Establishing a
Performance-Based Ambulance
Service Contract Pursuant to
Clackamas County Code Title 10.1



Resolution No. _____

Whereas, on or about May 1, 2014, Clackamas County, a political subdivision of the State of Oregon (“County”), and American Medical Response Northwest, Inc. (“AMS”) entered into a contract to provide ambulance services, pursuant to Clackamas County Code Title 10.1 (“Contract”);

Whereas, the County desires to amend the Contract’s service and term provisions to incorporate a performance-based structure. Under this structure, the Contract term shall be extended for additional periods of time provided Contractor meets or exceeds specific criteria and performance metrics. The County expects the new structure to provide more efficient, effective, and consistent service to the County while adopting innovative improvements to ambulance and emergency medical services currently provided under the Contract;

Whereas, the criteria and performance metrics to be used in evaluating Contractor under the amended performance-based structure would be developed by the County, with assistance and input from the Clackamas County Emergency Medical Services Council (“EMS”) and other County partners, such as local fire agencies;

Whereas the County and AMR anticipate entering into an amendment to the Contract that provides a framework in which negotiations will occur with the goal of ultimately amending the Contract to provide for a new performance-based structure, as well as to identify the key elements the parties anticipate will be included in a performance-based contract.

NOW, THEREFORE IT IS HEREBY RESOLVED, the Board of County Commissions does hereby:

1. Intend to pursue, in good faith, to adopt a performance-based structure for ambulance service contracts under Clackamas County Code Title 10.1; and

2. Intend to negotiate, in good faith, with Contractor towards a potential amendment to the Contract to adopt a performance-based structure.

DATED this ____ day of December, 2020.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for Professional Services Agreements for temporary physician staff with
CHG Companies, Inc., dba CompHealth, Fusion Healthcare Staffing, LLC, KPG Healthcare, LLC,
and Maxim Healthcare Staffing Services, Inc.

Purpose/Outcomes	These agreements are to provide temporary physician staffing for Clackamas County Health Centers Division (CCHCD) clinics that serve community members.
Dollar Amount and Fiscal Impact	Contracts resulting from RFP totaling \$1,800,000.00 as follows 1. CHG Companies, Inc., dba CompHealth = \$900,000.00 2. Fusion Healthcare Staffing, LLC = \$350,000.00 3. KPG Healthcare, LLC = \$350,000.00 4. Maxim Healthcare Staffing Services, Inc. = \$200,000.00
Funding Source	Health Centers fee for services. No County general funds are involved.
Duration	All effective upon signature and terminates June 30, 2025
Previous Board Action	No previous Board action
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities by being able to have provider coverage for vacant positions.
Counsel Review	1. Date of Counsel Review: 12-8-2020 2. Initials of County Counsel performing review: ARN
Procurement Review	1. Was the item process through Procurement? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> 2. These contracts are a result of an RFP process
Contact Person	Deborah Cockrell, Health Center Director – 503-742-5495
Contract No.	1. CHG Companies Inc., dba CompHealth #9941 / #3428 2. Fusion Healthcare Staffing, LLC #9942 / #3429 3. KPG Healthcare, LLC #9943 / #3430 4. Maxim Healthcare Staffing Services Inc. #9944 / #3431

BACKGROUND:

Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of these Professional Service Contracts with the above listed companies for temporary physician staffing services (Locum Tenens). These services are used to supplement coverage at the CCHCD clinics when there is a provider vacancy and are critical to ensure adequate patient care.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS and LCRB Rules on August 11, 2020. Proposals were opened on September 1, 2020. The evaluation committee comprised of Erin De Armond-Reid, Oliver Soltani, and Andrew Suchocki evaluated the proposals received in response to RFP #2020-52 for

Healthy Families. Strong Communities.

Medical Staffing Services (Locum Tenens). The County received a total of 21 proposals from Alumni Staffing, LLC, Aya Healthcare, Inc., Cell Staff, LLC, CHG Companies, Inc., dba CompHealth, Delta Locum Tenens, Dr. Wanted.com, LLC, Floyd Lee Locums, Inc., Fusion Healthcare Staffing, LLC, Health Pros Northwest, Inc., Imperial Locum Services, KPG Healthcare, LLC, Locum, Inc., dba Medstaff National Medical Staffing, Locum Tenen Partners, LLC, Locums, Inc., Locum Tenens.com, LLC, Maxim Healthcare Staffing Services, Inc., Medical Doctors Association dba Cross County Locums, Orbit Health Practice Management, Inc. Staff Today, Inc., Vidhwan Inc. dba E-Solutions, and WSi Healthcare Personnel, Inc.

The Committee made the recommendation that four (4) proposers be awarded a contract to complete this project. The four recommended proposers were: KPG Healthcare, LLC, CHG Companies, Inc., dba CompHealth, Maxim Healthcare Staffing Services, Inc., and Fusion Healthcare Staffing, LLC.

RECOMMENDATION:

Staff recommends approval of these agreements.

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services Department

Placed on the _____ agenda by Procurement.



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #3428 / H3S # 9941**

This Personal Services Contract (this “Contract”) is entered into between **CHG Companies, Inc. dba CompHealth** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of Health and Human Services.

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, 2025**.
- 2. Scope of Work.** Contractor shall provide the following personal services: Medical Staffing Services – Locum Tenens, as further described in County’s (RFP 2020-52) (“Work”), attached hereto as **Exhibit A** and incorporated by this reference herein. Notwithstanding anything contained in this Contract or the RFP 2020-52 to the contrary, Contractor will be providing the clinical services requested via independent contractor locum tenens physicians (“Locum Tenens”).
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed nine hundred thousand dollars (**\$900,000.00**) over the life of this Contract for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in **Exhibit B**, Contractors Proposal, attached and hereby incorporated. County agrees that \$135,000.00 of the total Contract value may be spent on travel and housing costs. Any amounts incurred by the Contractor in excess of the \$135,000.00 are Contractor’s sole responsibility. 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. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. 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 invoices shall include the total amount billed to date by Contractor prior to the current invoice. 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 in accordance with ORS 293.462 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 be obligated to 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.

Invoices shall reference the above Contract Number and be **emailed** to: healthcenterap@clackamas.us

- 5. Travel and Other Expense.** Authorized: Yes 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: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. 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, Exhibit A, and Exhibit B.

7. Contractor and County Contacts.

Contractor	County
Administrator: Kristian Wang Phone: 801-930-3639 Email: Kristian.wang@chghealthcare.com	Administrator: Erin De Armond-Reid Phone: 503-723-4954 Email: ereid@clackamas.us

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 will subject Contractor payments to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted 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. Contractor shall maintain such books and records for a minimum of six (6) 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 FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 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 applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County 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. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

7. RESPONSIBILITY FOR DAMAGES; INDEMNITY. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor or its employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office, which consent will not be unreasonably withheld. County may, at its election and expense, assume its own defense and settlement. In the event, the County elects to its own defense and settlement, the Contractor indemnity pursuant to this section shall not apply.

For the avoidance of doubt, Contractor will not indemnify the County for the actions, errors or omissions of the independently contracted Locum Tenens.

8. 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; and (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.

Each locum tenens physician is an independent contractor of Contractor. Contractor shall be responsible for compensating physicians directly. As independent contractors, Contractor does not withhold or pay employment taxes for physicians or furnish worker's compensation, unemployment insurance, retirement benefits, health and accident insurance or any other employee type benefit for physicians. Contractor's interest is in furnishing physician locum tenens staffing services. Contractor does not make clinical decisions for physicians and does not otherwise direct or control the clinical services furnished by physicians.

1. INSURANCE. Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below for each Locum Tenens while on assignment with the County to cover all incidents which may occur during an assignment, regardless of when a claim is made. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on its General Liability policy of insurance only. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor, for its employees only, shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The 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. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** 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. 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.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. 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. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. 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) Contractor shall at all times during the term of this Contract, be

qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- 14. 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, Sections 1, 6, 7, 11, 13, 14, 16, 21, and 27 and all other rights and obligations which by their context are intended to survive. 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. The obligation to pay monies due under this Contract shall survive expiration or termination of the Contract.
- 15. 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.
- 16. 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, which shall be granted or denied in the County's sole discretion. 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, Sections 1, 7, 8, 13, 16 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.
- 17. 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.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and 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 or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties, by Contractor with thirty (30) days prior written notice to County or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, 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.

- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. 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.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. 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.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. 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.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall, to the extent applicable:
 - a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
 - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

27. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

28. CONFIDENTIALITY. Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, except as necessary to perform its obligations under this Contract and permitted by applicable law, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's locum tenens physicians who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

- 29. CRIMINAL BACKGROUND CHECK REQUIREMENTS.** Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all Locum Tenens that perform services under this Contract. Only those Locum Tenens that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.
- 30. COOPERATIVE CONTRACTING.** Pursuant to ORS 279A.200 to 279A.225, other public agencies may use this Contract resulting from a competitive procurement process unless the Contractor expressly noted in their proposal/quote that the prices and services are available to the County only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with Contractor; the County accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the County consents to such use by any other public agency.
- 31. 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.

SIGNATURE PAGE FOLLOWS

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

CHG Companies, Inc.
 Dba CompHealth

Clackamas County

Authorized Signature

Date

Chair

Name / Title (Printed)

Recording Secretary

1314644-97 FBC / Delaware

 Oregon Business Registry #

Date

Approved as to Form:

County Counsel

Date

EXHIBIT A
RFP 2020-52 MEDICAL STAFFING SERVICES (LOCUM TENENS)
ISSUED: AUGUST 11, 2020

EXHIBIT B
CONTRACTOR'S PROPOSAL



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #3429 / H3S # 9942**

This Personal Services Contract (this “Contract”) is entered into between **Fusion Healthcare Staffing, LLC** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of Health and Human Services.

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, 2025**.
- 2. Scope of Work.** Contractor shall provide the following personal services: Medical Staffing Services – Locum Tenens, as further described in County’s (RFP 2020-52) (“Work”), attached hereto as **Exhibit A** and incorporated by this reference herein (“Locum Tenens”).
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed three hundred and fifty thousand dollars (**\$350,000.00**) over the life of this Contract for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in **Exhibit B**, Contractors Proposal, attached and hereby incorporated. County agrees that \$52,500.00 of the total Contract value may be spent on travel and housing costs. Any amounts incurred by the Contractor in excess of the \$52,500.00 are Contractor’s sole responsibility. 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. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. 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 invoices shall include the total amount billed to date by Contractor prior to the current invoice. 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 in accordance with ORS 293.462 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 be obligated to 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.

Invoices shall reference the above Contract Number and be **emailed** to: healthcenterap@clackamas.us

- 5. Travel and Other Expense.** Authorized: Yes 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: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. 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, Exhibit A, and Exhibit B.

7. Contractor and County Contacts.

Contractor	County
Administrator: Brandon Horoba Phone: 385-800-3207 Email: Brandon.horoba@fusionhcs.com	Administrator: Erin De Armond-Reid Phone: 503-723-4954 Email: ereid@clackamas.us

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 will subject Contractor payments to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted 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. Contractor shall maintain such books and records for a minimum of six (6) 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 FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 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 applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County 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. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

7. RESPONSIBILITY FOR DAMAGES; INDEMNITY. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor or its employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office, which consent will not be unreasonably withheld. County may, at its election and expense, assume its own defense and settlement. In the event, the County elects to its own defense and settlement, the Contractor indemnity pursuant to this section shall not apply.

For the avoidance of doubt, Contractor will not indemnify the County for the actions, errors or omissions of the independently contracted Locum Tenens. Contractor shall require its Locum Tenens 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 Locum Tenens.

8. 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; and (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. The County understands that Contractor's relationship to the Locum Tenens is that of an independent contractor. Furthermore, the Contractor is not licensed to practice medicine and shall have no control as to the means or the quality of medical services furnished by any Locum Tenens, nor shall Contractor have any right or responsibility for making any determinations regarding a Locum Tenens' professional service assignments, schedule or practice.

9. INSURANCE. Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us. *In addition to the below requirements, physicians subcontracted with Contractor are required to carry medical malpractice insurance. Proof of insurance will be required at time of assignment.*

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The 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. Any obligation that County agree to a waiver of subrogation is hereby stricken.

10. LIMITATION OF LIABILITIES. 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. Except for liability arising under or related to Article II, Section 13 or Section 20 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.

11. NOTICES. Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.

12. 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. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.

13. 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) Contractor shall at all times during the term of this Contract, be

qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- 14. 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, Sections 1, 6, 7, 11, 13, 14, 16, 21, and 27 and all other rights and obligations which by their context are intended to survive. 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.
- 15. 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.
- 16. 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, which shall be granted or denied in the County's sole discretion. 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, Sections 1, 7, 8, 13, 16 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.
- 17. 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.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and 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 or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, 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.

- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. 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.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. 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.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. 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.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
 - a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or employees incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
 - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

27. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

28. CONFIDENTIALITY. Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

29. CRIMINAL BACKGROUND CHECK REQUIREMENTS. Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.

30. COOPERATIVE CONTRACTING. Pursuant to ORS 279A.200 to 279A.225, other public agencies may use this Contract resulting from a competitive procurement process unless the Contractor expressly noted in their proposal/quote that the prices and services are available to the County only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with Contractor; the County accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the County consents to such use by any other public agency.

31. 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.

SIGNATURE PAGE FOLLOWS

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Fusion Healthcare Staffing, LLC

Clackamas County

Authorized Signature Date

Chair

Name / Title (Printed)

Recording Secretary

1381473-92 FLLC/ Utah
Oregon Business Registry #

Date

Approved as to Form:

County Counsel Date

EXHIBIT A
RFP 2020-52 MEDICAL STAFFING SERVICES (LOCUM TENENS)
ISSUED: AUGUST 11, 2020

EXHIBIT B
CONTRACTOR'S PROPOSAL



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #3430 / H3S # 9943**

This Personal Services Contract (this “Contract”) is entered into between **KPG Healthcare, LLC dba KPG Provider Services** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of Health and Human Services.

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, 2025**.
- 2. Scope of Work.** Contractor shall provide the following personal services: Medical Staffing Services – Locum Tenens, as further described in County’s (RFP 2020-52) (“Work”), attached hereto as **Exhibit A** and incorporated by this reference herein.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed three hundred and fifty thousand dollars (**\$350,000.00**) over the life of this Contract for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in **Exhibit B**, Contractors Proposal, attached and hereby incorporated. County agrees that \$52,500.00 of the total Contract value may be spent on travel and housing costs. Any amounts incurred by the Contractor in excess of the \$52,500.00 are Contractor’s sole responsibility. 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. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. 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 invoices shall include the total amount billed to date by Contractor prior to the current invoice. 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 in accordance with ORS 293.462 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 be obligated to 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.

Invoices shall reference the above Contract Number and be **emailed** to: healthcenterap@clackamas.us

- 5. Travel and Other Expense.** Authorized: Yes 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: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. 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, Exhibit A, and Exhibit B.

7. Contractor and County Contacts.

Contractor	County
Administrator: Samantha Chessman Phone: 424-352-3385 Email: sam@kpgproviders.com	Administrator: Erin De Armond-Reid Phone: 503-723-4954 Email: ereid@clackamas.us

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 will subject Contractor payments to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted 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. Contractor shall maintain such books and records for a minimum of six (6) 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 FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 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 applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County 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. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.
- 8. 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; and (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.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us. *In addition to the below requirements, physicians subcontracted with Contractor are required to carry medical malpractice insurance. Proof of insurance will be required at time of assignment.*

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The 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. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** 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. Except for liability arising under or related to Article II, Section 13 or Section 20 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.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. 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. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. 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) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. 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, Sections 1, 6, 7, 11, 13, 14, 16, 21, and 27 and all other rights and obligations which by their context are intended to survive. 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.
- 15. 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.

16. 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, which shall be granted or denied in the County's sole discretion. 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, Sections 1, 7, 8, 13, 16 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.

17. 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.

18. TAX COMPLIANCE CERTIFICATION. The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and 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 or applicable law.

19. TERMINATIONS. This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, 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.

20. REMEDIES. If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.

21. 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.

22. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance this Contract.

- 23. 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.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. 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.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
 - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
- 27. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
- 28. CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever

(other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

29. CRIMINAL BACKGROUND CHECK REQUIREMENTS. Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.

30. COOPERATIVE CONTRACTING. Pursuant to ORS 279A.200 to 279A.225, other public agencies may use this Contract resulting from a competitive procurement process unless the Contractor expressly noted in their proposal/quote that the prices and services are available to the County only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with Contractor; the County accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the County consents to such use by any other public agency.

31. 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.

**KPG Healthcare LLC
Dba KPG Provider Services**

Clackamas County

Authorized Signature

Date

Chair

Name / Title (Printed)

Recording Secretary

1503152-90 FLLC / California
Oregon Business Registry #

Date

Approved as to Form:

County Counsel

Date

EXHIBIT A
RFP 2020-52 MEDICAL STAFFING SERVICES (LOCUM TENENS)
ISSUED: AUGUST 11, 2020

EXHIBIT B
CONTRACTOR'S PROPOSAL



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #3431 / H3S # 9944**

This Personal Services Contract (this “Contract”) is entered into between **Maxim Healthcare Staffing Services, Inc.** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of Health and Human Services.

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, 2025**.
- 2. Scope of Work.** Contractor shall provide the following personal services: Medical Staffing Services – Locum Tenens, as further described in County’s (RFP 2020-52) (“Work”), attached hereto as **Exhibit A** and incorporated by this reference herein.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed two hundred thousand dollars (**\$200,000.00**) over the life of this Contract for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in **Exhibit B**, Contractors Proposal, attached and hereby incorporated. County agrees that \$30,000.00 of the total Contract value may be spent on travel and housing costs. Any amounts incurred by the Contractor in excess of the \$30,000 are Contractor’s sole responsibility. 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. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. 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 invoices shall include the total amount billed to date by Contractor prior to the current invoice. 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 in accordance with ORS 293.462 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 be obligated to 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.

Invoices shall reference the above Contract Number and be **emailed** to: healthcenterap@clackamas.us

- 5. Travel and Other Expense.** Authorized: Yes 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: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. 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, Exhibit A, and Exhibit B.

7. Contractor and County Contacts.

Contractor	County
Administrator: Andrea Torres Phone: 410-910-4714 Email: jutorres@maxhealth.com	Administrator: Erin De Armond-Reid Phone: 503-723-4954 Email: ereid@clackamas.us

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 will subject Contractor payments to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted 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. Contractor shall maintain such books and records for a minimum of six (6) 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 FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 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 applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County 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. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.
- 8. 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; and (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.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us. *In addition to the below requirements, physicians subcontracted with Contractor are required to carry medical malpractice insurance. Proof of insurance will be required at time of assignment.*

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The 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. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** 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. Except for liability arising under or related to Article II, Section 13 or Section 20 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.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. 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. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. 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) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. 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, Sections 1, 6, 7, 11, 13, 14, 16, 21, and 27 and all other rights and obligations which by their context are intended to survive. 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.

15. 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.

16. 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, which shall be granted or denied in the County's sole discretion. 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, Sections 1, 7, 8, 13, 16 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.

17. 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.

18. TAX COMPLIANCE CERTIFICATION. The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and 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 or applicable law.

19. TERMINATIONS. This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, 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.

20. REMEDIES. If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.

21. 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.

22. **TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
23. **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.
24. **FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
25. **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.
26. **PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
 - a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
 - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
27. **NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
28. **CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

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EXHIBIT A
RFP 2020-52 MEDICAL STAFFING SERVICES (LOCUM TENENS)
ISSUED: AUGUST 11, 2020

EXHIBIT B
CONTRACTORS PROPOSAL



DAN JOHNSON
DIRECTOR

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

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Quitclaim Deed and Bill of Sale Between
Clackamas County and Water Environment Services
Pertaining to the Utilities Building at 902 Abernethy Road**

Purpose/Outcome	Agreements authorizing the transfer of the Utilities Building located on the site of the Abernethy Transportation Maintenance facility.
Dollar Amount and Fiscal Impact	\$0 – Supported by Appraisal
Funding Source	Not applicable
Duration	In perpetuity.
Previous Board Action/Review	None
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure • Ensure safe, healthy and secure communities
County Counsel	Nate Boderman – 503-655-8364
Contact Person	Dan Johnson, Transportation and Development – Director 503-742-4325

BACKGROUND:

Since the devastating flooding in February 1996 of the County’s property at 902 Abernethy Road in Oregon City, Clackamas County has been working to relocate all operations housed at that facility. At one time the site was the primary location for Water Environment Services (formerly the Utilities Department) and the Department of Transportation Development Services / Transportation Maintenance; currently the site houses a dilapidated office building, Clackamas County Fleet Services, Vector Control, Sheriff’s Office Fleet Operations and the Transportation Maintenance Division. The dilapidated office building, commonly referred to as the Utilities Building, was constructed and owned by Clackamas County Service District #1 (CCSD #1), and subsequently transferred to Water Environment Services (WES), although the County retained

title to the real property on which the building was situated. The Utilities Building has not been used by CCSD #1 or WES for over a decade.

County Administration had made it a goal to prioritize the relocation of Transportation Maintenance from the current site for the following reasons.

- Existing facilities on the site are located within a Federal Emergency Management Agency (FEMA)-designated 100-year flood plain. The risk of flooding was most recently and dramatically demonstrated in 1996 when the property was overwhelmed by floodwater. Abernethy Creek, which is adjacent to the site, has crested above the floor heights of the existing facilities eight times since 1923. When the public needs the vital operations of the Transportation Maintenance Division most, it is essential that its facilities are not underwater.
- The Transportation Maintenance Division is forced to spend money and time every year to move critical equipment in and out of the flood zone during potential flooding events to try to mitigate the risk of operational disruptions in the event of flooding.
- The Transportation Maintenance Division has outgrown existing facilities and the existing facilities are inefficient, for the following reasons:
 - Many years of growth in the County's Department of Transportation and Development resulting in additional staff and equipment;
 - The shape of the site – long and narrow – does not support efficient and safe movement of equipment
 - The limited size of the site does not allow for proper vehicle circulation.
- There are cost and safety issues stemming from unauthorized camping and property use along the Abernethy Creek on the Subject Property.
- The property is underdeveloped compared to its highest and best use. Redevelopment would create additional assessed value for the County and the City of Oregon City.

With this direction, the County entered into an agreement with The Blue at Abernethy Creek, LLC, on an opportunity to acquire a turnkey facility and to liquidate the Abernethy Road facility to foster more compatible redevelopment opportunities benefitting the local community and the City of Oregon City. To facilitate this transfer, the County is required to obtain any remaining interest that WES may have in the Utilities Building in order to transfer complete fee title to the buyer.

As part of an independent appraisal establishing a value for the overall site, the appraiser assigned a negative value specifically to the Utilities Building. This is based on the appraiser's conclusion that the best use of the site would be a total redevelopment since the industrial uses are no longer allowed under the updated zoning designation, that the uses previously housed in the building have likely lost their nonconforming use status, and that it is likely cost-prohibitive to rehab and repurpose the existing structure. There is value attributable to the land underneath the building, but that is owned by the County. Accordingly, the County will pay no money to WES as part of the transfer. The County will, however, release WES from any liability associated with the building moving forward, except to the extent the liability arises specifically out of the actions or omissions of WES or CCSD #1.

County Counsel has reviewed and approved this quitclaim deed and bill of sale.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioners authorize the Chair to execute the attached quitclaim deed and bill of sale.

Sincerely,

Dan Johnson

Dan Johnson – Director
Transportation and Development

Attachments: Quitclaim Deed
Bill of Sale

MAIL TAX STATEMENTS TO:

Clackamas County
2051 Kaen Rd.
Oregon City, OR 97045

AFTER RECORDING RETURN TO:

Clackamas County
2051 Kaen Rd.
Oregon City, OR 97045

GRANTOR'S ADDRESS:

Water Environment Services
150 Beaver Creek Rd.
Oregon City, Oregon 97045

GRANTEE'S ADDRESS:

Clackamas County
2051 Kaen Rd.
Oregon City, OR 97045

STATUTORY QUITCLAIM DEED

Water Environment Services, an intergovernmental entity formed pursuant to ORS Chapter 190, the "**Grantor**", releases and quitclaims to Clackamas County, a political subdivision of the state of Oregon, "**Grantee**", all right, title, and interest in the real property described in **Exhibit "A"**, which is attached hereto and incorporated herein.

Grantor acquired rights to the personal property located on the real property subject to this release from Clackamas County Service District No. 1 through a Bill of Sale recorded on July 3, 2018 in the Clackamas County Records as document #2018-041421.

The true and actual consideration paid for this conveyance is Zero Dollars (\$0), but other valuable consideration which includes all liability and demolition costs associated with the existing structure currently located on the property. Grantor is transferring any personal property rights it might have to the Grantee in any personal property located on the real property subject to this release through a separate Bill of Sale that the parties hereto executed on the same date as this release. Additionally, to the fullest extent permitted by law, Grantee shall indemnify, defend, save and hold harmless the Grantor and its elected officials, officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 *et. seq.* (hereinafter, referred to individually and collectively as "Claims"), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Grantee. It is the specific intention of the Parties that Grantor shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of Grantor or Clackamas County Service

District No. 1, be indemnified for all other Claims arising out of the use or possession of the real property described in *Exhibit "A"*.

The following is the notice as required by Oregon law: "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."

Dated this _____ day of _____, 2020.

GRANTOR
Water Environment Services
An intergovernmental entity formed pursuant to ORS Chapter 190

Chair, Water Environment Services

State of Oregon)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 20____, by _____,
Chair of Water Environment Services, an intergovernmental entity formed pursuant to ORS Chapter 190.

Before me:

Notary Public for Oregon
My Commission Expires: _____

GRANTEE
Clackamas County

Chair, Board of County Commissioners

State of Oregon)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 20____, by _____,
Chair of the Clackamas County Board of County Commissioners.

Before me:

Notary Public for Oregon
My Commission Expires: _____

Exhibit "A"

Real property in the County of Clackamas , State of Oregon, described as follows:

Parcel I: (22E29CD00100)

TRACT A:

Beginning at a point on the South boundary of the George Abernethy and wife Donation Land Claim in Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, at a point North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West 326 feet to the center of Abernethy Creek; thence along the center of said creek upstream to the above mentioned South boundary of George Abernethy Donation Land Claim; thence North 83 degrees 15' West tracing said Donation Land Claim boundary 372 feet to the place of beginning.

TRACT B:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, more particularly described as beginning at the Northwest corner of a tract of land conveyed to Ernst Steen and wife, by Deed recorded in Book 293, Page 345, Deed Records, said point being on the South boundary of the George Abernethy Donation Land Claim, North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West on the West line of said Steen Tract, 326.0 feet to the center of Abernethy Creek; thence along the center of said creek, downstream to the Southeast corner of a tract of land conveyed to J.H. Kuper by Deed recorded in Book 168, Page 513, Deed Records; thence North 6 degrees 15' East on the East line of said Kuper Tract to the South line of said Abernethy Donation Land Claim; thence South 83 degrees 15' East on said South line, 334.95 feet to the place of beginning;

EXCEPT the West 10 feet thereof.

TRACT C:

A part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe driven in the South boundary of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, at a point that is North 83 degrees 15' West 889.5 feet from the Northwest corner of the Ezra Fisher Donation Land Claim in said township and range; thence continuing on said line North 83 degrees 15' West 50 feet; thence South 6 degrees 42' West to the center of Abernethy Creek; thence along the center of Abernethy Creek upstream 66 feet to the Southeast corner of land conveyed to J.H. Kuper and wife by Deed recorded in Book 168, Page 513; thence North 6 degrees 42' East along the East line of said tract 142 feet to the place of beginning, being a strip 50 feet wide from the Easterly side of the said J.H. Kuper and wife Tract described in Book 168, at Page 513, Record of Deeds of Clackamas County, Oregon situated in Clackamas County, State of Oregon;

TOGETHER WITH a strip of land 10 feet in width off the entire Westerly boundary of Tax Lot 150 of the Oregon City Claim, which said tax lot adjoins the tract herein above described on the East, said 10 foot strip being more particularly described as follows:

The West 10 feet of the following described tract:

Part of the Oregon City Donation Land Claim in Section 29, in Township 2 South, Range 2 East, of the Willamette Meridian, more particularly described as beginning at the Northwest corner of a tract of land conveyed to Ernst Steen and wife, by Deed recorded in Book 293, Page 345, Deed Records, said point being on the South boundary of the George Abernethy Donation Land Claim, North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West on the West line of said Steen Tract 326.0 feet to the center of Abernethy Creek; thence along the center of said creek, downstream to the Southeast corner of a tract of land conveyed to J.H. Kuper by Deed recorded in Book 168, Page 513, Deed Records; thence North 6 degrees 15' East on the East line of said Kuper Tract to the South line of said Abernethy Donation Land Claim; thence South 83 degrees 15' East on said South line 334.95 feet to the place of beginning.

TRACT D:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning in the South line of the George Abernethy Donation Land Claim, North 83 degrees 15' West 939.55 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence continuing on said South Donation Land Claim line North 83 degrees 15' West 100 feet; thence South 6 degrees 45' West 271.25 feet to a point in the center of Abernethy Creek from which an iron pipe on the Northerly creek bank bears North 6 degrees 45' East 45.4 feet; thence upstream North 56 degrees East along said center creek line 132 feet, more or less, to a point South 6 degrees 42' West from the place of beginning; thence North 6 degrees 42' East to the place of beginning.

TRACT E:

Being a part of the Oregon City Donation Land Claim in Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, bounded and described as follows, to-wit:

Beginning at an iron pipe driven in the South boundary of the Donation Land Claim of George Abernethy and wife, in Township 2 South, Range 2 East, of the Willamette Meridian, at a point that is North 83 degrees 15' West 1039.55 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim in said township and range; running thence South 6 degrees 45' West 271.0 feet to the center of the Abernethy Creek; thence along the center of the said Abernethy Creek downstream South 56 degrees West 100 feet, more or less, to a point; thence North 6 degrees 45' East 100 feet distant and parallel to the West boundary of property described in Deed Records of Clackamas County, Oregon, in Book 168, Page 513, to the South boundary of the George Abernethy Donation Land Claim, aforesaid; thence tracing the South boundary of the said Donation Land Claim, 100 feet to the place of beginning.

TRACT F:

Beginning at a point in the South boundary of the George Abernethy Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, that is North 83 degrees 15' West 1139.55 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim and being the Northwest corner of the tract of land described in Deed from Gustave and Anna M. Engebrecht, his wife, to J. Blair and Helen M. Miller and recorded in Volume 233, on Pages 85 and 86, Record of Deeds for Clackamas County, Oregon; thence South 6 degrees 45' West following the West boundary of the above Miller Tract to the center of Abernethy Creek; thence downstream following the center of Abernethy Creek to the Southeast corner of the tract of land described in Deed from Gustave and Anna M. Engebrecht to Clackamas County and recorded in Volume 165, on Pages 108 and 109, Records of Deeds for Clackamas County, Oregon; thence

North 6 degrees 45' East 294.00 feet, more or less, following the Easterly boundary of the Clackamas County Tract herein last mentioned to the South boundary of the George Abernethy Donation Land Claim; thence South 83 degrees 15' East 234.25 feet, more or less, tracing the South boundary of the George Abernethy Donation Land Claim to the place of beginning, and all being located in the Oregon City Donation Land Claim in the Southwest one-quarter of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian.

TRACT G:

A part of the Oregon City Donation Land Claim in the Southwest one-quarter of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning on the South boundary of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, at an iron pipe driven at a point that is North 83 degrees 15' West 1373.8 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence at right angles to said line South 6 degrees 45' West 294.00 feet to the center of Abernethy Creek; thence with the meanders of the center of Abernethy Creek downstream North 71 degrees 10' West 160.8 feet; thence North 6 degrees 45' East 260 feet to an iron pipe in the South boundary of said George Abernethy Donation Land Claim; thence tracing said claim line South 82 degrees 15' East 167.3 feet to the place of beginning.

TRACT H:

A part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1531.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence South 6 degrees 45' West 250 feet to the right bank of Abernethy Creek; thence along the right bank North 83 degrees 15' West 50 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the said South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 50 feet to the place of beginning.

TRACT I:

Being a part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, bounded and described as follows, to-wit: Beginning at an iron pipe set on the South boundary line of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, said pipe being North 83 degrees 15' West 1581.1 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence tracing the Easterly boundary of the land of the grantor herein South 6 degrees 45' East 250 feet to the right bank of the Abernethy Creek; thence along the right bank of the Abernethy Creek North 83 degrees 15' West 45 feet; thence North 6 degrees 45' East and parallel to the Easterly boundary of the land of the grantor herein a distance of 250 feet to a point on the South boundary of the George Abernethy Donation Land Claim; thence tracing the Southerly boundary of the Abernethy Donation Land Claim South 83 degrees 15' East a distance of 45 feet to the place of beginning.

TRACT J:

The Westerly 55 feet of the following described property:

The Eastern one-half of part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 38 degrees 15' West 1581.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 45' West 250 feet to the right bank of Abernethy Creek;

thence along the right bank North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100 feet to the place of beginning.

TRACT K:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

The East one-half of the following described property to-wit: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1681.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; said iron pipe being the Northwest corner of a tract conveyed to Gertrude Bartlett by Deed recorded June 27, 1951 in Book 446, Page 7, Deed Records; thence South 6 degrees 45' West along the West line of said Barlett Tract 250 feet to the right bank of the Abernethy Creek; thence along the right bank of said creek North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250.00 feet to an iron pipe on the said South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100.00 feet to the place of beginning.

TRACT L:

The West one-half of the following described property, being a part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1681.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 45' West 250 feet to the right bank of the Abernethy Creek; thence along the right bank of said creek North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the said South line of said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100 feet to the place of beginning.

TRACT M:

That part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1781.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim, said iron being the Northwest corner of a tract conveyed to Henry Boguslasko, et ux, by Deed recorded in Book 130, Page 222, Deed Records; thence South 6 degrees 45' West along the West line of said Boguslasko Tract, 250 feet, more or less, to the center of Abernethy Creek; thence along the center of said creek, North 83 degrees 15' West 50 feet to the Southeast corner of a tract conveyed to Carl and Bertha Meiritz by Deed recorded in Book 152, Page 462, Deed Records; thence North 6 degrees 45' East along the East line of said Meiritz Tract, 250 feet, more or less, to an iron pipe on the South boundary of said Abernethy Claim; thence South 83 degrees 15' East, tracing said claim line, 50 feet to the point of beginning.

TRACT N:

That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654 being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of

the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows, to-wit:

Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT O:

Beginning at a point in the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, where the Easterly line of Van Buren Street, extended intersects said avenue; thence North 34 degrees 55' East 400 feet on the Easterly line of Van Buren Street extended; thence North 51 degrees 38' West to the center of Abernethy Creek; thence tracing the center of said creek North 87 degrees 20' West 261 feet to a point where the Easterly line of Jackson Street produced intersects the center of said creek; thence South 34 degrees 55' West 351.6 feet along said Easterly line of Jackson Street extended to the Northerly line of said McLoughlin Avenue; thence North 78 degrees 09' East 101.2 feet along the Northerly line of said McLoughlin Avenue; thence South 54 degrees 38' East to the place of beginning;

EXCEPTING THEREFROM that portion lying South of the North line of that parcel described in Deed to Clackamas County, recorded June 16, 1961 in Book 588, page 183, described as follows:

That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654 being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows:

Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT P:

Beginning at a point in the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, where the Easterly line of Jackson Street produced intersects the same; thence North 34 degrees 55' East 351.6 feet to the center line of Abernethy Creek; thence North 35 degrees 14' West 148.4 feet along the center line of said Abernethy Creek; thence South 34 degrees 55' West 479.7 feet to the Northerly line of McLoughlin Avenue; thence South 74 degrees 59' East 107.7 feet along said North line; thence North 78 degrees 09' East 57 feet along said North line of McLoughlin Avenue to the place of beginning:

EXCEPTING THEREFROM that portion lying South of the North line of that parcel described in Deed to Clackamas County, recorded June 16, 1961 in Book 588, page 183, described as follows: That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654

being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows, to-wit: Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT Q:

Beginning at a point on the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, that is North 79 degrees 24' East 201.00 feet from the intersection of the Easterly line of Madison Street and said Northerly boundary of McLoughlin Avenue; and running thence North 79 degrees 24' East 55.30 feet along the Northerly line of McLoughlin Avenue; thence South 74 degrees 59' East, 533.90 feet along said Northerly line; thence North 34 degrees 55' East 479.7 feet to the center of Abernethy Creek; thence North 35 degrees 14' West along the center of said creek 98.2 feet; thence South 57 degrees West 327 feet along the center of said creek; thence North 74 degrees 54' West 332.7 feet along the center of said creek; thence South 34 degrees 58' West 335 feet to the place of beginning.

Parcel II (22E29CA02400)

Part of the George Abernathy D.L.C. in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point North 83° 15' West 1538.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C., said point marks the Southwesterly corner of a tract conveyed to Antone Klootwyk, et ux, by Correction Deed recorded May 28, 1953 in Book 489, Page 449, Deed Records; thence North 83° 15' West along the North line of Redland Road 72.4 feet; thence North 6° 45' East 62.0 feet; thence North 41° 47' East 46.4 feet; thence South 83° 15' East 45.76 feet to the Northwesterly corner of the aforementioned Klootwyk tract; thence South 6° 45' West along the West line of said Klootwyk tract 100 feet to the point of beginning.

Parcel III: (22E29CA02500)

Tract A:

A tract of land in the George Abernethy D.L.C, in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron bolt in the Northerly boundary of Abernethy Road, said point being North 83° 15' West 1338.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C; thence following the Northerly boundary of said road North 83° 15' West 200.0 feet to an iron pipe; thence North 6° 45' East 100.0 feet to an iron pipe; thence South 83° 15' East 200.0 feet to an iron pipe; thence South 6° 45' West 100.0 feet to the place of beginning.

Tract B:

A parcel of land in the George Abernethy D.L.C., Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron bolt in the Northerly boundary of Abernethy Road, said point being North 83° 15'

West 1338.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; thence North 6° 45' East 100.0 feet to an iron pipe, said point being the true point of beginning; thence North 6° 45' East, 20 feet; thence North 83° 15' West, 231.74 feet; thence South 41°47' West, 24.43 feet; thence South 83° 15' East, 245.76 feet to an iron pipe and the true point of beginning.

Parcel IV: (22029CA02700)

A parcel of land in the County of Clackamas, Oregon; situated in the George Abernathy Donation Land Claim, Section 29, Township 2 South, Range 2 East of the Willamette Meridian, County of Clackamas and State of Oregon, described as follows:

Beginning at the Northwest Corner of the Ezra Fisher Donation Land Claim; thence North 83° 15' West, 1338.0 feet; thence, North 6° 45' East, 43.87 feet to the North Right-of-way Line of County Road No. 354 and the Southeast corner of that certain tract of land conveyed to Clackamas County, recorded June 29, 1968, by Recorder's Fee No. 68-14160, Film Records; thence, North 6° 45' East, 100.00 feet to the Northeast corner thereof; thence, North 6° 45' East, 20.00 feet to the True Point of Beginning and the Northeast corner of a second tract of land conveyed to said Clackamas County, recorded July 25, 1968 by Recorder's Fee No. 68-14034; thence, North 83° 15' West along the North line of said tract 231.74 feet to the Northwesterly corner thereof; thence South 41° 47' West, 24.43 feet to the most Westerly corner thereof; thence South 41° 47' West, 46.40 feet; thence South 6° 45' West, 62.00 feet to the intersection with the North Right-of-way Line of County Road No. 354; thence North 83° 15' West along said road line 30.00 feet, more or less, to the most Southerly Southeast corner of the tract of land described in that certain conveyance from Gustav and Anna Engebrecht to Oregon City and recorded June 4, 1936, in Book 232, on Page 245, Record of Deeds, Clackamas County, Oregon, said Southeast corner being located in the Northerly boundary of Market Road No. 20; thence North 6° 45' East, 62.00 feet; thence North 41° 47' East, 526.78 feet; thence South 6° 45' West, 373.34 feet to the True Point of Beginning.

Parcel V: (22E29DB00900)

Part of the George Abernathy D.L.C. in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of Geo. Abernathy and wife, which is the Northwest corner of the Ezra Fisher D.L.C.; Thence South 81° 15' East 97.2 feet to the land conveyed by J. M. Robertson to Gustav Engebrecht by deed recorded in Book 148, Page 485, Clackamas county Deed Records; thence tracing said Engebrecht's Westerly line North 7° 26' West 438.85 feet to a pipe driven in the center of county road; thence along county road South 61° 56' West 728.7 feet to a stone on the South boundary of the said George Abernathy D.L.C.; thence tracing said claim line South 82° 38' East 604 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within county roads.

Parcel VI: (22E29CC01400)

A part of the Oregon City D.L.C., in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of Geo. Abernathy and wife, which bears North 83° 15' west 1831.1 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; running thence South 6°45' West 250 feet, more or less, to the center of the Abernathy Creek; thence along the center line of said creek North 83° 15' west 50 feet; thence North 6° 45' east 250 feet, more or less, to an iron pipe on the said South line of said Abernathy Claim; thence tracing said line South 83° 15' East 50 feet to the place of beginning;

EXCEPTING THEREFROM that portion lying within Abernathy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel VII: (22E29CC01500)

A part of the Oregon City D.L.C., in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of George Abernethy and wife, which bears North 83°15' West 1916.1 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; running thence South 6°45' West 250.00 feet, more or less, to the right bank of Abernethy Creek; thence along the right bank South 83°15' East 35-00 feet to the Southwest corner of the Keller tract described in Book 465, page 266, Deed Records; thence along the Westerly line of said Keller tract North 6°45' East 250.00 feet, more or less, to an iron pipe on the South boundary of said Abernethy claim; thence North 83° 15' West 35.00 feet to the place of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel VIII: (22E29CC01600)

Part of Section 29, in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of George Abernethy and wife, which bears North 83° 15' West 1916.1 feet distant from the Northwest corner of the-Ezra Fisher D.L.C.; running thence South 6° 45' West 250 feet, more or less, to the right bank of Abernethy Creek; thence along the right bank North 83° 15' West 45 feet; thence North 6° 45' East 250 feet, more or less, to an iron pipe on the said south line of said Abernethy claim; thence tracing said line, South 83° 15' East 45 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel IX: (22E29CC01700)

That portion of the Southwest quarter of the Southwest quarter of Section 29, Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary line of the George Abernethy Donation Land Claim which bears North 83° 15' West 1961.1 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6° 45' West 250 feet more or less to the right bank of Abernethy Creek; thence along said right bank North 83° 15' West 65 feet to the Southwest corner of a tract conveyed to Henry Bogeslaski and wife, by deed recorded in Book 186, Page 344, Deed Records; thence North 6° 45' East along the West line of said Bogeslaski tract 250 feet more or less to an iron pipe on the South line of said Abernethy Donation Land Claim; thence along said South line South 83° 15' East 65 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

**WATER ENVIRONMENT SERVICES and CLACKAMAS COUNTY
BILL OF SALE**

This Bill of Sale (“Agreement”) is made and entered into on this ____ day of _____, 2020 between Water Environment Services, an intergovernmental entity formed pursuant to ORS Chapter 190, (the “Seller”), and Clackamas County, a political subdivision of the state of Oregon (the “Buyer”), collectively referred to as the “Parties.”

Agreement

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged, the Parties agree as follows:

- 1. Property.** The Seller desires to transfer to the Buyer, and the Buyer desires to acquire, all of the Seller’s right, title, and interest in and to any buildings, improvements and personal property located on land commonly known as 902 Abernethy Road, Oregon City, OR 97045, and more particularly described in Exhibit “A” which is attached hereto and incorporated herein (the “Property”). Seller acquired rights to the Property from Clackamas County Service District No. 1 through a Bill of Sale recorded on July 3, 2018 in the Clackamas County Records as document #2018-041421.
- 2. Consideration.** The true and actual consideration paid for this conveyance is Zero Dollars (\$0), but other valuable consideration, which includes all liability and demolition costs associated with the existing structure currently located on the Property. Additionally, to the fullest extent permitted by law, Buyer shall indemnify, defend, save and hold harmless the Seller and its elected officials, officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys’ fees, arising from a tort, as now or hereafter defined in ORS 30.260 *et seq.* (hereinafter, referred to individually and collectively as “Claims”), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Buyer. It is the specific intention of the Parties that Seller shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of Seller or Clackamas County Service District No. 1, be indemnified for all other Claims arising out of the use or possession of the Property.
- 3. Transfer of Ownership.** The Buyer will take ownership of the Property immediately upon the full execution of this Agreement.
- 4. Warranty.** Except as otherwise expressly stated above, the Seller makes no warranties or representations with respect to the Property. The Buyer accepts the Property AS IS, WHERE IS, in its present condition, including all defects and with all faults, and there are no warranties of merchantability or of fitness for a particular purpose with respect to the Property.
- 5. Counterparts.** This Agreement may be executed in multiple originals or counterparts, each of which will be deemed original for all purposes, together constituting one and the same instrument. Copies of the parties’ signatures to this Agreement transmitted by facsimile, e-mail or other electronic means shall be considered originals for all purposes.

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

Seller:

Water Environment Services
An intergovernmental entity formed pursuant to ORS Chapter 190

Chair, Water Environment Services

Buyer:

Clackamas County

Chair, Board of County Commissioners

Exhibit "A"

Real property in the County of Clackamas , State of Oregon, described as follows:

Parcel I: (22E29CD00100)

TRACT A:

Beginning at a point on the South boundary of the George Abernethy and wife Donation Land Claim in Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, at a point North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West 326 feet to the center of Abernethy Creek; thence along the center of said creek upstream to the above mentioned South boundary of George Abernethy Donation Land Claim; thence North 83 degrees 15' West tracing said Donation Land Claim boundary 372 feet to the place of beginning.

TRACT B:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, more particularly described as beginning at the Northwest corner of a tract of land conveyed to Ernst Steen and wife, by Deed recorded in Book 293, Page 345, Deed Records, said point being on the South boundary of the George Abernethy Donation Land Claim, North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West on the West line of said Steen Tract, 326.0 feet to the center of Abernethy Creek; thence along the center of said creek, downstream to the Southeast corner of a tract of land conveyed to J.H. Kuper by Deed recorded in Book 168, Page 513, Deed Records; thence North 6 degrees 15' East on the East line of said Kuper Tract to the South line of said Abernethy Donation Land Claim; thence South 83 degrees 15' East on said South line, 334.95 feet to the place of beginning;

EXCEPT the West 10 feet thereof.

TRACT C:

A part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe driven in the South boundary of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, at a point that is North 83 degrees 15' West 889.5 feet from the Northwest corner of the Ezra Fisher Donation Land Claim in said township and range; thence continuing on said line North 83 degrees 15' West 50 feet; thence South 6 degrees 42' West to the center of Abernethy Creek; thence along the center of Abernethy Creek upstream 66 feet to the Southeast corner of land conveyed to J.H. Kuper and wife by Deed recorded in Book 168, Page 513; thence North 6 degrees 42' East along the East line of said tract 142 feet to the place of beginning, being a strip 50 feet wide from the Easterly side of the said J.H. Kuper and wife Tract described in Book 168, at Page 513, Record of Deeds of Clackamas County, Oregon situated in Clackamas County, State of Oregon;

TOGETHER WITH a strip of land 10 feet in width off the entire Westerly boundary of Tax Lot 150 of the Oregon City Claim, which said tax lot adjoins the tract herein above described on the East, said 10 foot strip being more particularly described as follows:

The West 10 feet of the following described tract:

Part of the Oregon City Donation Land Claim in Section 29, in Township 2 South, Range 2 East, of the Willamette Meridian, more particularly described as beginning at the Northwest corner of a tract of land conveyed to Ernst Steen and wife, by Deed recorded in Book 293, Page 345, Deed Records, said point being on the South boundary of the George Abernethy Donation Land Claim, North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West on the West line of said Steen Tract 326.0 feet to the center of Abernethy Creek; thence along the center of said creek, downstream to the Southeast corner of a tract of land conveyed to J.H. Kuper by Deed recorded in Book 168, Page 513, Deed Records; thence North 6 degrees 15' East on the East line of said Kuper Tract to the South line of said Abernethy Donation Land Claim; thence South 83 degrees 15' East on said South line 334.95 feet to the place of beginning.

TRACT D:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning in the South line of the George Abernethy Donation Land Claim, North 83 degrees 15' West 939.55 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence continuing on said South Donation Land Claim line North 83 degrees 15' West 100 feet; thence South 6 degrees 45' West 271.25 feet to a point in the center of Abernethy Creek from which an iron pipe on the Northerly creek bank bears North 6 degrees 45' East 45.4 feet; thence upstream North 56 degrees East along said center creek line 132 feet, more or less, to a point South 6 degrees 42' West from the place of beginning; thence North 6 degrees 42' East to the place of beginning.

TRACT E:

Being a part of the Oregon City Donation Land Claim in Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, bounded and described as follows, to-wit:

Beginning at an iron pipe driven in the South boundary of the Donation Land Claim of George Abernethy and wife, in Township 2 South, Range 2 East, of the Willamette Meridian, at a point that is North 83 degrees 15' West 1039.55 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim in said township and range; running thence South 6 degrees 45' West 271.0 feet to the center of the Abernethy Creek; thence along the center of the said Abernethy Creek downstream South 56 degrees West 100 feet, more or less, to a point; thence North 6 degrees 45' East 100 feet distant and parallel to the West boundary of property described in Deed Records of Clackamas County, Oregon, in Book 168, Page 513, to the South boundary of the George Abernethy Donation Land Claim, aforesaid; thence tracing the South boundary of the said Donation Land Claim, 100 feet to the place of beginning.

TRACT F:

Beginning at a point in the South boundary of the George Abernethy Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, that is North 83 degrees 15' West 1139.55 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim and being the Northwest corner of the tract of land described in Deed from Gustave and Anna M. Engebrecht, his wife, to J. Blair and Helen M. Miller and recorded in Volume 233, on Pages 85 and 86, Record of Deeds for Clackamas County, Oregon; thence South 6 degrees 45' West following the West boundary of the above Miller Tract to the center of Abernethy Creek; thence downstream following the center of Abernethy Creek to the Southeast corner of the tract of land described in Deed from Gustave and Anna M. Engebrecht to Clackamas County and recorded in Volume 165, on Pages 108 and 109, Records of Deeds for Clackamas County, Oregon; thence

North 6 degrees 45' East 294.00 feet, more or less, following the Easterly boundary of the Clackamas County Tract herein last mentioned to the South boundary of the George Abernethy Donation Land Claim; thence South 83 degrees 15' East 234.25 feet, more or less, tracing the South boundary of the George Abernethy Donation Land Claim to the place of beginning, and all being located in the Oregon City Donation Land Claim in the Southwest one-quarter of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian.

TRACT G:

A part of the Oregon City Donation Land Claim in the Southwest one-quarter of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning on the South boundary of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, at an iron pipe driven at a point that is North 83 degrees 15' West 1373.8 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence at right angles to said line South 6 degrees 45' West 294.00 feet to the center of Abernethy Creek; thence with the meanders of the center of Abernethy Creek downstream North 71 degrees 10' West 160.8 feet; thence North 6 degrees 45' East 260 feet to an iron pipe in the South boundary of said George Abernethy Donation Land Claim; thence tracing said claim line South 82 degrees 15' East 167.3 feet to the place of beginning.

TRACT H:

A part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1531.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence South 6 degrees 45' West 250 feet to the right bank of Abernethy Creek; thence along the right bank North 83 degrees 15' West 50 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the said South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 50 feet to the place of beginning.

TRACT I:

Being a part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, bounded and described as follows, to-wit: Beginning at an iron pipe set on the South boundary line of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, said pipe being North 83 degrees 15' West 1581.1 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence tracing the Easterly boundary of the land of the grantor herein South 6 degrees 45' East 250 feet to the right bank of the Abernethy Creek; thence along the right bank of the Abernethy Creek North 83 degrees 15' West 45 feet; thence North 6 degrees 45' East and parallel to the Easterly boundary of the land of the grantor herein a distance of 250 feet to a point on the South boundary of the George Abernethy Donation Land Claim; thence tracing the Southerly boundary of the Abernethy Donation Land Claim South 83 degrees 15' East a distance of 45 feet to the place of beginning.

TRACT J:

The Westerly 55 feet of the following described property:

The Eastern one-half of part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 38 degrees 15' West 1581.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 45' West 250 feet to the right bank of Abernethy Creek;

thence along the right bank North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100 feet to the place of beginning.

TRACT K:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

The East one-half of the following described property to-wit: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1681.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; said iron pipe being the Northwest corner of a tract conveyed to Gertrude Bartlett by Deed recorded June 27, 1951 in Book 446, Page 7, Deed Records; thence South 6 degrees 45' West along the West line of said Barlett Tract 250 feet to the right bank of the Abernethy Creek; thence along the right bank of said creek North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250.00 feet to an iron pipe on the said South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100.00 feet to the place of beginning.

TRACT L:

The West one-half of the following described property, being a part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1681.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 45' West 250 feet to the right bank of the Abernethy Creek; thence along the right bank of said creek North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the said South line of said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100 feet to the place of beginning.

TRACT M:

That part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1781.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim, said iron being the Northwest corner of a tract conveyed to Henry Boguslasko, et ux, by Deed recorded in Book 130, Page 222, Deed Records; thence South 6 degrees 45' West along the West line of said Boguslasko Tract, 250 feet, more or less, to the center of Abernethy Creek; thence along the center of said creek, North 83 degrees 15' West 50 feet to the Southeast corner of a tract conveyed to Carl and Bertha Meiritz by Deed recorded in Book 152, Page 462, Deed Records; thence North 6 degrees 45' East along the East line of said Meiritz Tract, 250 feet, more or less, to an iron pipe on the South boundary of said Abernethy Claim; thence South 83 degrees 15' East, tracing said claim line, 50 feet to the point of beginning.

TRACT N:

That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654 being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of

the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows, to-wit:

Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT O:

Beginning at a point in the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, where the Easterly line of Van Buren Street, extended intersects said avenue; thence North 34 degrees 55' East 400 feet on the Easterly line of Van Buren Street extended; thence North 51 degrees 38' West to the center of Abernethy Creek; thence tracing the center of said creek North 87 degrees 20' West 261 feet to a point where the Easterly line of Jackson Street produced intersects the center of said creek; thence South 34 degrees 55' West 351.6 feet along said Easterly line of Jackson Street extended to the Northerly line of said McLoughlin Avenue; thence North 78 degrees 09' East 101.2 feet along the Northerly line of said McLoughlin Avenue; thence South 54 degrees 38' East to the place of beginning;

EXCEPTING THEREFROM that portion lying South of the North line of that parcel described in Deed to Clackamas County, recorded June 16, 1961 in Book 588, page 183, described as follows:

That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654 being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows:

Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT P:

Beginning at a point in the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, where the Easterly line of Jackson Street produced intersects the same; thence North 34 degrees 55' East 351.6 feet to the center line of Abernethy Creek; thence North 35 degrees 14' West 148.4 feet along the center line of said Abernethy Creek; thence South 34 degrees 55' West 479.7 feet to the Northerly line of McLoughlin Avenue; thence South 74 degrees 59' East 107.7 feet along said North line; thence North 78 degrees 09' East 57 feet along said North line of McLoughlin Avenue to the place of beginning:

EXCEPTING THEREFROM that portion lying South of the North line of that parcel described in Deed to Clackamas County, recorded June 16, 1961 in Book 588, page 183, described as follows: That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654

being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows, to-wit: Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT Q:

Beginning at a point on the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, that is North 79 degrees 24' East 201.00 feet from the intersection of the Easterly line of Madison Street and said Northerly boundary of McLoughlin Avenue; and running thence North 79 degrees 24' East 55.30 feet along the Northerly line of McLoughlin Avenue; thence South 74 degrees 59' East, 533.90 feet along said Northerly line; thence North 34 degrees 55' East 479.7 feet to the center of Abernethy Creek; thence North 35 degrees 14' West along the center of said creek 98.2 feet; thence South 57 degrees West 327 feet along the center of said creek; thence North 74 degrees 54' West 332.7 feet along the center of said creek; thence South 34 degrees 58' West 335 feet to the place of beginning.

Parcel II (22E29CA02400)

Part of the George Abernathy D.L.C. in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point North 83° 15' West 1538.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C., said point marks the Southwesterly corner of a tract conveyed to Antone Klootwyk, et ux, by Correction Deed recorded May 28, 1953 in Book 489, Page 449, Deed Records; thence North 83° 15' West along the North line of Redland Road 72.4 feet; thence North 6° 45' East 62.0 feet; thence North 41° 47' East 46.4 feet; thence South 83° 15' East 45.76 feet to the Northwesterly corner of the aforementioned Klootwyk tract; thence South 6° 45' West along the West line of said Klootwyk tract 100 feet to the point of beginning.

Parcel III: (22E29CA02500)

Tract A:

A tract of land in the George Abernethy D.L.C, in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron bolt in the Northerly boundary of Abernethy Road, said point being North 83° 15' West 1338.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C; thence following the Northerly boundary of said road North 83° 15' West 200.0 feet to an iron pipe; thence North 6° 45' East 100.0 feet to an iron pipe; thence South 83° 15' East 200.0 feet to an iron pipe; thence South 6° 45' West 100.0 feet to the place of beginning.

Tract B:

A parcel of land in the George Abernethy D.L.C., Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron bolt in the Northerly boundary of Abernethy Road, said point being North 83° 15'

West 1338.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; thence North 6° 45' East 100.0 feet to an iron pipe, said point being the true point of beginning; thence North 6° 45' East, 20 feet; thence North 83° 15' West, 231.74 feet; thence South 41°47' West, 24.43 feet; thence South 83° 15' East, 245.76 feet to an iron pipe and the true point of beginning.

Parcel IV: (22029CA02700)

A parcel of land in the County of Clackamas, Oregon; situated in the George Abernathy Donation Land Claim, Section 29, Township 2 South, Range 2 East of the Willamette Meridian, County of Clackamas and State of Oregon, described as follows:

Beginning at the Northwest Corner of the Ezra Fisher Donation Land Claim; thence North 83° 15' West, 1338.0 feet; thence, North 6° 45' East, 43.87 feet to the North Right-of-way Line of County Road No. 354 and the Southeast corner of that certain tract of land conveyed to Clackamas County, recorded June 29, 1968, by Recorder's Fee No. 68-14160, Film Records; thence, North 6° 45' East, 100.00 feet to the Northeast corner thereof; thence, North 6° 45' East, 20.00 feet to the True Point of Beginning and the Northeast corner of a second tract of land conveyed to said Clackamas County, recorded July 25, 1968 by Recorder's Fee No. 68-14034; thence, North 83° 15' West along the North line of said tract 231.74 feet to the Northwesterly corner thereof; thence South 41° 47' West, 24.43 feet to the most Westerly corner thereof; thence South 41° 47' West, 46.40 feet; thence South 6° 45' West, 62.00 feet to the intersection with the North Right-of-way Line of County Road No. 354; thence North 83° 15' West along said road line 30.00 feet, more or less, to the most Southerly Southeast corner of the tract of land described in that certain conveyance from Gustav and Anna Engebrecht to Oregon City and recorded June 4, 1936, in Book 232, on Page 245, Record of Deeds, Clackamas County, Oregon, said Southeast corner being located in the Northerly boundary of Market Road No. 20; thence North 6° 45' East, 62.00 feet; thence North 41° 47' East, 526.78 feet; thence South 6° 45' West, 373.34 feet to the True Point of Beginning.

Parcel V: (22E29DB00900)

Part of the George Abernathy D.L.C. in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of Geo. Abernathy and wife, which is the Northwest corner of the Ezra Fisher D.L.C.; Thence South 81° 15' East 97.2 feet to the land conveyed by J. M. Robertson to Gustav Engebrecht by deed recorded in Book 148, Page 485, Clackamas county Deed Records; thence tracing said Engebrecht's Westerly line North 7° 26' West 438.85 feet to a pipe driven in the center of county road; thence along county road South 61° 56' West 728.7 feet to a stone on the South boundary of the said George Abernathy D.L.C.; thence tracing said claim line South 82° 38' East 604 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within county roads.

Parcel VI: (22E29CC01400)

A part of the Oregon City D.L.C., in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of Geo. Abernathy and wife, which bears North 83° 15' west 1831.1 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; running thence South 6°45' West 250 feet, more or less, to the center of the Abernathy Creek; thence along the center line of said creek North 83° 15' west 50 feet; thence North 6° 45' east 250 feet, more or less, to an iron pipe on the said South line of said Abernathy Claim; thence tracing said line South 83° 15' East 50 feet to the place of beginning;

EXCEPTING THEREFROM that portion lying within Abernathy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel VII: (22E29CC01500)

A part of the Oregon City D.L.C., in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of George Abernethy and wife, which bears North 83°15' West 1916.1 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; running thence South 6°45' West 250.00 feet, more or less, to the right bank of Abernethy Creek; thence along the right bank South 83°15' East 35-00 feet to the Southwest corner of the Keller tract described in Book 465, page 266, Deed Records; thence along the Westerly line of said Keller tract North 6°45' East 250.00 feet, more or less, to an iron pipe on the South boundary of said Abernethy claim; thence North 83° 15' West 35.00 feet to the place of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel VIII: (22E29CC01600)

Part of Section 29, in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of George Abernethy and wife, which bears North 83° 15' West 1916.1 feet distant from the Northwest corner of the-Ezra Fisher D.L.C.; running thence South 6° 45' West 250 feet, more or less, to the right bank of Abernethy Creek; thence along the right bank North 83° 15' West 45 feet; thence North 6° 45' East 250 feet, more or less, to an iron pipe on the said south line of said Abernethy claim; thence tracing said line, South 83° 15' East 45 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel IX: (22E29CC01700)

That portion of the Southwest quarter of the Southwest quarter of Section 29, Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary line of the George Abernethy Donation Land Claim which bears North 83° 15' West 1961.1 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6° 45' West 250 feet more or less to the right bank of Abernethy Creek; thence along said right bank North 83° 15' West 65 feet to the Southwest corner of a tract conveyed to Henry Bogeslaski and wife, by deed recorded in Book 186, Page 344, Deed Records; thence North 6° 45' East along the West line of said Bogeslaski tract 250 feet more or less to an iron pipe on the South line of said Abernethy Donation Land Claim; thence along said South line South 83° 15' East 65 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.



December 17, 2020

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Agreement with
Confluence Environment Center for an Americorps Member

Purpose/Outcome	Embedding an AmeriCorps member from the Confluence Environment Center's Americorps program with Clackamas County
Dollar Amount and Fiscal Impact	\$13,800
Funding Source	Sustainability & Solid Waste program revenue. No General Fund Resources.
Duration	10 months, terminating July 30, 2021
Previous Board Action / Review	Included in FY 20-21 budget. A Confluence AmeriCorps member was also tasked in FY 19-20 to support multifamily and school-based recycling and waste reduction education and outreach
Strategic Plan Alignment	<p>1. <i>How does this item align with your department's Strategic Business Plan goals?</i> Our program provides a lead role in meeting the County's obligations to support waste reduction and recycling throughout the county through technical assistance, outreach and education.</p> <p>2. <i>How does this item align with the County's Performance Clackamas goals?</i> In addition to fulfilling state and regional requirements, waste reduction and recycling outreach and technical assistance align with the Performance Clackamas goal to Honor, Utilize, Promote and Invest in our Natural Resources. These activities also support the policy perspective of carbon neutrality.</p>
Counsel Review	This agreement was reviewed by County Counsel (AN) and approved on 10/20/2020.
Procurement Review	<p>1. Was the item processed through Procurement? No</p> <p>2. If no, provide brief explanation: Item is effectively an internship placed through a non-profit Americorps partner; subject to Board approval but not procurement process.</p>
Contact Person	Eben Polk, Supervisor, DTD-Sustainability & Solid Waste - 742-4470
Contract No.	Confluence Americorps Service Agreement No. CEC-AC-2021-04

BACKGROUND:

This agreement with the Confluence Environment Center, a 501(c)3 non-profit sponsor of AmeriCorps members, confirms the County as host of an AmeriCorps member during Fiscal Year 20-21, to work with the Sustainability & Solid Waste program on waste reduction and recycling education and outreach initiatives focused on Clackamas County schools and multi-family communities.

This effort is funded in the budget process for FY 20-21. The agreement was not available until after the program was underway and is effective September 8, 2020, through July 30, 2021.

RECOMMENDATION:

Staff recommends the Board approve this agreement and authorize Dan Johnson, DTD Director, to sign on behalf of Clackamas County.

Respectfully submitted,

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

Eben Polk, Supervisor
Department of Transportation & Development
Sustainability & Solid Waste Program



CONFLUENCE AMERICORPS PROGRAM SERVICE AGREEMENT
Between
Confluence Environmental Center and Clackamas County
#CEC-AC-2021-04

RECITALS

- A.** Confluence Environmental Center (CEC) is a non-profit organization located in Portland, Oregon. CEC oversees a program named the Confluence AmeriCorps Program, (“the AmeriCorps Program”) in technical partnership with Palouse-Clearwater Environmental Institute (PCEI) in Moscow, ID. The AmeriCorps Program engages volunteers to serve on community-based projects to preserve and restore the natural environment in racially, ethnically and socioeconomically diverse communities in the Portland region.
- B.** CEC was awarded formula funding, via Oregon Volunteers, from the Corporation for National and Community Service to implement the AmeriCorps Program. Confluence operates the AmeriCorps Program by enrolling AmeriCorps Members (“Members”), and placing the Members with community organizations, government agencies or school/educational districts.
- C.** The Project Partner (“Partner”) is a community organization, government agency or school/educational district that has a significant unmet community need. CEC will address the community need by placing Members to serve on a service project proposed by the Partner and described in Exhibit C.
- D.** The “Supervisor” is a designated employee or representative the Project Partner who provides day-to-day supervision in the execution of the service project.
- E.** This AmeriCorps Service Agreement (“Agreement”) addresses the obligations owed by CEC and the Supervisor regarding Members that CEC places with the Partner.

AGREEMENT

1.0. PURPOSE: CEC and the Partner are entering this Agreement to provide Confluence AmeriCorps Members to the Partner. The Partner’s project shall be implemented in accordance with and subject to the terms and conditions in this Agreement.

2.0. TERM: The term of this Agreement is from **September 8, 2020 to July 30, 2021** unless the Agreement is terminated in accordance with Section 6.

3.0. RESPONSIBILITIES OF CEC: CEC shall, through its own activities and/or through its technical partnership with PCEI:

- 3.1.** Perform all duties set forth in Exhibit C.
- 3.2.** Provide Members with AmeriCorps Pre-Service Orientation.
- 3.3.** Provide a contact person, specified in Exhibit C, to facilitate and support the Partner in matters relating to the service project, including but not limited to overseeing the completion of Confluence duties, general supervision, recognition, discipline of Members that are placed with the Partner, coordination of invoices, and monthly communications.
- 3.4.** Provide Members a living allowance and health insurance if the Member is eligible for health benefits.
- 3.5.** Provide workers’ compensation coverage for Members while the Member conducts approved service

activities.

3.6. Provide Members with appropriate AmeriCorps identifiers, uniforms and necessary protective equipment to wear during service hours.

3.7. Provide all forms the Partner is required to complete, including but not limited to in-kind donation forms and Member evaluation forms.

3.8. Provide a directive to Members requiring them to: review job hazard analysis, observe any required dress codes, use necessary safety equipment, follow all CEC safety procedures and comply with all Partner's administrative procedures, policies, rules and regulations.

3.9. Invoice the Partner for its financial obligations in accordance with Exhibit C.

3.10. Conduct criminal history background checks on all Members. Until final results of the fingerprint background check are confirmed, Members must be accompanied by an authorized supervisor when in contact with vulnerable populations (children, persons age 60 and older, and people with disabilities). CEC shall refuse to engage with such Members if the Member has plead guilty or been convicted of any felony crime involving physical neglect, injury, death or sexual abuse.

3.11. Provide supervision and direction to Members in those situations that pertain to Confluence duties in Exhibit C.

3.12. Ensure that Member payroll taxes are paid to the extent required under the law.

4.0. RESPONSIBILITIES OF THE PARTNER: The Partner shall:

4.1. Perform all Partner duties set forth in Exhibit C.

4.2. Work with Members to complete the service project described in Exhibit C in accordance with and subject to the terms and conditions in this Agreement.

4.3. Provide a Partner representative as specified in Exhibit C to facilitate communications and provide technical assistance and support to the extent it is necessary to ensure successful completion of the project.

4.4. Ensure that permits are obtained and regulatory requirements for project-related work are met.

4.5. Verify Member driving eligibility prior to the start of the service. Confluence does not request driving abstracts or otherwise screen for safe driving.

4.6. Provide reasonable accommodation for Members who disclose a disability.

4.7. Publicize to the media and to the community, to the greatest extent practical, CEC's partnership with the Partner's organization.

4.8. Submit documentation detailing the value of noncash (in-kind) contributions the Partner provided in support of the project.

4.9. Provide adequate training, office space and the necessary equipment for Members to successfully provide project services set forth in Exhibit C.

4.10. Provide tools that are necessary for the project and not already available through CEC.

4.11. Recognize that whenever Members serve with students of local schools and/or with volunteers (youth or adult) on projects outlined in this Agreement, it is in a technical assistance/mentoring capacity. CEC is not responsible for the supervision, discipline, safety or transportation of students or adult volunteers.

4.12. Support CEC policy that requires Members to wear AmeriCorps uniforms or identifiers.

4.13. Comply with the AmeriCorps' Prohibited Activities policy set forth in Exhibit A.

4.14. Pay CEC invoices within 30 days of the invoice date.

4.15. Support the Member in recruiting and tracking volunteers to support the project.

4.16. Refuse to allow any employee under this Agreement who may have recurring access to vulnerable populations (children, persons age 60 and older and individuals with disabilities) to work on the project described in Exhibit C if, to the Partner's actual knowledge, the person has plead guilty or been convicted of any felony crime involving physical neglect, injury, death or a sexual offense.

4.17. Provide supervision and direction to Members while Members are working on the Partner's projects or the Partner's property or service site.

4.18. Ensure the Member is aware of her/his performance throughout the term of service.

4.19. Ensure the Member activities do not generate operating revenue for the organization.

4.20. Ensure the Member does not perform services, duties or other activities that were assigned to an

employee.

4.21. Establish measurable and achievable goals for the project and support the Member in accurately reporting the extent to which these goals were met.

4.22. Evaluate CEC at the conclusion of the project using online Partner surveys and forms provided by CEC.

5.0. PARTNER HANDBOOK: All parties agree to comply with the terms set forth in the enclosed Partner Handbook.

6.0. TERMINATION:

6.1. Mutual Agreement. This Agreement may be terminated by CEC and the Partner's mutual written agreement. This Agreement may be terminated by Partner for convenience upon providing CEC sixty (60) day's written notice. Upon termination pursuant to this Section 6.1, CEC shall be entitled to receive prorated payment for services rendered through the termination date. If CEC has received full payment for the agreement term prior to the termination date, CEC shall retain an amount equal to its prorated share through the termination date and CEC shall reimburse the Partner the balance of the payment for the agreement term within thirty (30) days of the termination date. Prorations shall be based on the full agreement term defined in Section 2 of this Agreement.

6.2. Breach. This Agreement may be terminated by either CEC or the Partner if the other party violates a provision of this Agreement and the violation is not adequately addressed within fifteen (15) days after the violating party receives notice of the violation. If CEC terminates this Agreement pursuant to this Section 6.2, the Partner shall pay CEC the entire balance of any outstanding fees that are owed pursuant to Exhibit C. The outstanding balance shall be paid within thirty (30) days of the date CEC notifies the Partner that the Agreement has been terminated. If Partner terminates this Agreement pursuant to Section 6.2, CEC will only be entitled to receive a prorated payment for services rendered through the termination date. If CEC has received full payment for the agreement term prior to the termination date, CEC shall retain an amount equal to its prorated share through the termination date and CEC shall reimburse the Partner the balance of the payment for the agreement term within thirty (30) days of the termination date. Prorations shall be based on the full agreement term defined in Section 2 of this Agreement.

6.3. Immediate Termination. CEC or the Partner may immediately terminate this Agreement if the other party knowingly allows any person who will be working on the project as described in Exhibit C and who may have recurring access to vulnerable populations (children, persons age 60 and older and individuals with disabilities) if any such person has plead guilty or been convicted of any felony crime involving physical neglect, injury, death or sexual abuse.

7.0. ASSIGNMENT: Neither CEC nor the Partner may assign this Agreement, or any interest herein, without the prior written consent of the other party.

8.0. EMPLOYMENT RELATIONSHIP: All Parties understand and agree that this Agreement is not intended and shall not be construed as creating an employment relationship between CEC and the Partner or between Members and the Partner, their respective officers, employees and agents. All parties agree that Members are solely the employee of CEC, shall not be considered or treated as employees of the Partner.

9.0. INDEMNIFICATION:

9.1. CEC. To the extent authorized by Oregon law, CEC agrees to defend, indemnify and hold harmless the Partner and its officers, employees and agents from and against claims, actions, proceedings, liabilities, losses, damages, costs and expenses, including attorney's fees, that may arise as a result of CEC's performance under this Agreement.

9.2. Partner. Subject to the conditions and limitations of Oregon Tort Claims Act (ORS 30.260 through 30.300) and the Oregon Constitution Article XI, Section 10, Partner agrees to defend, indemnify and hold harmless CEC and their officers, employees and agents from and against claims, actions, proceedings, liabilities, losses,

damages, costs and expenses, including attorney's fees, that may arise as a result of the Partner's performance under this Agreement.

10.0. INSURANCE:

10.1. CEC. Through its technical partnership with PCEI, CEC will carry Workers' Compensation insurance for Members to cover claims or compensation that is owed for injuries that Members may incur while Members are providing the services described in Exhibit C. Partner will not direct Member to provide services beyond those identified in Exhibit C or to provide services in a manner that violates the law or conflicts with any requirements of this Agreement.

10.2. Partner. Unless waived in writing by an authorized CEC representative, the Partner shall be self-insured or carry general liability insurance and automobile insurance if Members are using Partner vehicles that cover the Members while Members are providing project services that are identified in Exhibit C. The Partner shall provide evidence in a form that is approved by CEC that the Partner has the insurance required under this Section 10.2.

11.0. WAIVER: Absent a written Agreement signed by both CEC and the Partner acknowledging a waiver of any provision in this Agreement, failure by either party at any time to require performance of any provision in this Agreement by the other party shall in no way affect the parties' rights to enforce the provisions in this Agreement, nor shall any waiver by a party of the breach of this Agreement be held to be a waiver of any succeeding breach or a waiver of this clause.

12.0. SEVERABILITY: If any terms in this Agreement or application thereof to any person or circumstance are held invalid, then such invalidity shall not affect other terms or applications of the Agreement which can be given effect without the invalid term or application, and to this end, the terms of this Agreement are declared severable.

13.0. MEDIATION: If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, CEC and the Partner agree first to try in good faith to settle the dispute by mediation.

14.0. COMPLIANCE WITH APPLICABLE LAW: The Parties agree to comply with all federal, state and local laws, including but not limited to statutes, rules and regulations which prohibit discrimination on the basis of race, color, creed, religion, national origin, age, gender, sexual orientation, marital status or the presence of any sensory, mental or physical disability, or which prohibit the release of confidential student information (the Family Educational Rights and Privacy Act) or which require child abuse reporting.

15.0. NOTICE: All notices required under this Agreement shall be deemed to have been properly provided upon deposit of the notice in the United States mail, postage prepaid, addressed to the parties as follows:

AmeriCorps Program:

Confluence Environmental Center
5441 SE Belmont Street, Suite 25
Portland, OR 97215

Project Partner:

Clackamas County, Sustainability & Solid Waste
150 Beaver Creek Road
Oregon City, OR 97045

16.0. WHOLE AGREEMENT: The Parties agree that this Agreement constitutes the entire agreement between the parties and supersedes all prior or existing written or oral agreements between the parties and may not be amended other than in writing signed by the parties.

17.0. AUTHORITY: The individuals executing this Agreement represent that they have the legal authority under applicable laws or actions by their respective Boards of Directors to execute this Agreement and bind their

respective organization.

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

19.0. DEBT LIMITATION. This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year indicated below. By signing, the Partner certifies that the project described in Exhibit C is unfunded or underfunded to the extent that the Partner requires assistance from Members to complete the project and that Members are not displacing existing or potential workers to complete the project.

Confluence Environmental Center (CEC)

Partner Organization

CEC Board President Name

Agreement Signee Name

CEC Board President Signature

Agreement Signee Signature

Date

Date

Confluence AmeriCorps Program

Approved as to Form (if applicable)

Elizabeth Cabral

Program Director Name

Andrew Naylor

City Attorney/Designee Name

Elizabeth Cabral

Program Director Signature

City Attorney/Designee Signature

6/15/2020

Date

10/20/20

Date

Please review, sign/date and email your Partner Agreement to Elizabeth Cabral at ecabral@confluencecenter.org within 30 days of receipt.

An executed copy will be emailed to you.

AMERICORPS SERVICE AGREEMENT
Exhibit A - Prohibited Activities and Ineligible Organizations

Federal law and the Corporation for National and Community Service (“Corporation”) policy prohibit AmeriCorps Programs and Members from engaging in certain activities while using Corporation funds or on Corporation time. Members are not prohibited from engaging in any of these activities in their personal capacities and on their own time. If there is any question about whether a certain activity is permissible, please contact Confluence. Examples of prohibited activities include, but are not limited to:

- a. Attempting to influence legislation;
- b. Organizing or engaging in protests, petitions, boycotts or strikes;
- c. Assisting, promoting or deterring union organizing;
- d. Impairing existing contracts for services or collective bargaining Contracts;
- e. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- f. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation or elected officials;
- g. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- h. Providing a direct benefit to--
 - i. a business organized for profit,;
 - ii. a labor union;
 - iii. a partisan political organization;
 - iv. a non-profit organization that fails to comply with the restrictions contained in Section 501c(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent Members from engaging in advocacy activities undertaken on their own initiative; and
 - v. an organization engaged in the religious activities described in paragraph (g) of this section, unless Corporation assistance is not used to support the religious activities;
- i. Conducting a voter registration drive or using Corporation funds to conduct a voter registration drive;
- j. Providing abortion services or referrals for receipt of such services; and
- k. Such activities as the Corporation may prohibit.

AmeriCorps members may not engage in the above activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed above. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-Corporation funds. Individuals should not wear the AmeriCorps logo while doing so.

Non-Displacement

Programs may not permit a Member to fill in for an absent employee. By law, Members may not under any circumstances perform services, duties, or activities that had been assigned to an employee or to an employee who has recently resigned or has been discharged. Programs may not use a Member in a way that will displace an employee or position or infringe on an employee's promotional opportunities. Provisions include:

- a. An employer may not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving Corporation assistance;
- b. An organization may not displace a volunteer by using a participant in a program receiving Corporation assistance;
- c. A service opportunity will not be created under this chapter that will infringe in any manner on the promotional opportunity of an employed individual;
- d. A participant in a program receiving Corporation assistance may not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee;
- e. A participant in any program receiving assistance under this chapter may not perform any services or duties, or engage in activities, that –
 - i. Will supplant the hiring of employed workers; or
 - ii. Are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures
- f. A participant in any program receiving assistance under this chapter may not perform services or duties that have been performed by or were assigned to any -
 - i. Presently employed worker;
 - ii. Employee who recently resigned or was discharged;
 - iii. Employee who is subject to a reduction in force or who has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;
 - iv. Employee who is on leave (terminal, temporary, vacation, emergency, or sick); or
 - v. Employee who is on strike or who is being locked out.

AMERICORPS SERVICE AGREEMENT
Exhibit B – Funding Source Certification
(To be completed and signed by the Supervisor)

1. Are the matching cash funds for this project coming from a federal source?

____ (Yes, go to 2) ____ (No)

2. If yes, can you certify that the federal funds may be used to match funds for other federal grants*?

____ (Yes) ____ (No)

*To make this determination, check with your federal funder or refer to the federal guidance for your federal funding source. If you can use funds, please provide a letter from the authorized federal agent certifying that funds can be used to match other federal grants, in this case, with ***Corporation for National and Community Service***. Please print your certification on letterhead, sign/date and submit to Confluence Environmental Center with your signed agreement.

Supervisor **Name**

Supervisor **Signature**

Date

AMERICORPS SERVICE AGREEMENT
Exhibit C – Scope of Service

1. **Position Title:** Waste Reduction Specialist
2. **Partner Name:** Clackamas County
3. **Service Site Location(s):** 150 Beaver Creek Road, Oregon City, OR 97204

4. **Contact Names:**

Confluence AmeriCorps Representative

Name: Elizabeth Cabral

Title: Program Director

Phone: 503-719-6779

Email: ecabral@confluencecenter.org

Partner Representative

Name: Eben Polk

Title: Program Supervisor

Phone: 503-742-4470

Email: epolk@clackamas.us

Project Supervisor

Name: Eben Polk

Title: Program Supervisor

Phone: 503-742-4470

Email: epolk@clackamas.us

5. **Service Activity Schedule:**

All Supervisors are required to attend *Supervisor Orientation* on August 20, 2020. The Member will begin their term of service with a CEC Member orientation beginning on September 8, 2020. The Supervisor will attend the final day of *Member Orientation* on September 15, 2020. The Supervisor will begin Site and Project Onboarding for the Member beginning September 16, 2020. The Member will serve 32-40 hours per week through July 30, 2021. The Supervisor will receive a Confluence AmeriCorps Program Calendar at Supervisor Orientation which will include dates the Member will not be available at the service site.

6. **Project Summary:**

In Partnership with the Confluence Environmental Center, the Member will help us bring greater consistency and value to recycling and waste reduction in apartment, condo and mobile home communities, including low-income, racially diverse, and underserved residents (per census tract data). This position will build on the success of previous AmeriCorps members and pilot new programming to help connect outreach and education with service-level and infrastructure analysis, demographics, and partnership-building, for a more holistic, effective and inclusive approach to community assistance. The Member will develop and implement outreach to targeted communities in Clackamas County (40%).

The successful candidate will work with our schools coordinator to develop and deliver wasted food prevention presentations to school classrooms in Clackamas County. The Member will also conduct school food waste audits to identify waste prevention opportunities, as well as identify school-based food pantries or other resources. Additionally, the Member will help pilot new family-focused activities for after-school events focusing on green cleaners and wasted food prevention. (40%)

The Member will participate in Confluence led professional development activities: Professional Development Series, completing a Change Agent Project, team meetings, National Service events and other self-directed development opportunities (20%).

7. Project Resources and Training Provided by Partner:

The Partner will provide all training and equipment necessary to successfully complete the project. The Partner will serve as the direct supervisor for the Member and will meet with the Member regularly to review and set project goals.

8. Project Resources and Training Provided by CEC:

CEC, through its technical partnership with PCEI, will provide the Member living allowance and health insurance, if eligible. CEC will provide a Pre-Service orientation for the Member that will include an overview of AmeriCorps, Confluence rules and regulations, AmeriCorps Prohibited Activities, as well as other training that will prepare the Member for their term of service. CEC will require Members to attend Leadership Development trainings, monthly Team Meetings and two National Days of Service.

9. Evaluation method:

The Partner will develop tracking and reporting systems to measure outcomes of the project in accordance with the AmeriCorps Performance Measures. CEC will provide forms and technical assistance.

10. Project Costs:

Project costs, which include all AmeriCorps Program costs, are paid with AmeriCorps funds and funds provided by the Partner.

a. Partner Cash Match Amount: **\$13,800**

11. Schedule of Payment:

Confluence will invoice the Partner as indicated below. Partner will pay invoice within 30 days of the invoice date. Partner will make checks payable to **Confluence Environmental Center**.

a. Total Amount of compensation under this agreement shall not exceed: **\$13,800**

b. Invoice Schedule: **August 1, 2020 (net 30)**

12. Project In Kind:

In-kind donations are an integral part of the Confluence AmeriCorps Program. All in-kind donations must be accurately verified and submitted on the in kind reporting form provided by Confluence.

a. Partner In Kind Amount: **\$200**

b. In Kind Report Due **February 14, 2021**

13. Authorizing Signatures:

Confluence AmeriCorps Program

Partner Organization

Elizabeth Cabral _____
Program Director **Name**

Supervisor **Name**

Elizabeth Cabral _____
Program Director **Signature**

Supervisor **Signature**

6/15/2020 _____
Date

Date



DAN JOHNSON
DIRECTOR

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

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

A Board Order Approving the Transfer of the Collection Service Franchise and Service Area Held by Bliss Sanitary Service, Inc. through a Change in Control

Purpose/Outcome	A Board Order approving the transfer of a solid waste collection franchise
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Annual renewal of ten year term absent grounds for suspension, modification, or revocation; per code 10.03.300 D.
Previous Board Action/Review	Board Order 86-885 transferred franchise from Cleveland Bliss to James and Shirley Bliss
Counsel Review	Reviewed and approved by County Counsel on December 8, 2020
Strategic Plan Alignment	<ol style="list-style-type: none"> How does this item align with your Department's Strategic Business Plan goals? This item is a result of providing franchise oversight of the solid waste. How does this item align with the County's Performance Clackamas goals? Every county citizen has access to safe, convenient garbage and recycling services to ensure healthy communities.
Procurement Review	<ol style="list-style-type: none"> Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> If no, provide brief explanation: This item is related to managing the solid waste collection franchise system dictated by Chapter 10.03 of the County Code, franchise transfers are reviewed by the Solid Waste Commission and the Board of County Commissioners and do not require review by Procurement
Contact Person	Rick Winterhalter, Sr. Sustainability Analyst DTD SSW 503-742-4466

BACKGROUND:

The Clackamas County Solid Waste and Waste Management Code (10.03.250) allows the holder of a solid waste or wastes Collection Service Franchise to change control of the franchise to other persons by providing written notification and with approval from the Board. The Board may approve the transaction with a recommendation from the Solid Waste Commission.

In 1970 Cleve Bliss Garbage Service was granted one of the County's original solid waste collection franchises (70-16-C) serving the area "from Shorty's Corner (Firwood Rd) east to County Line" (Attachment A). Mr. Bliss had been serving this part of the county since the mid 1950's. Mr. Bliss incorporated his business, as Bliss Sanitary Service, Inc., in 1973 and this corporation has held the franchise since that time.

In 1986 the Board approved the transfer of the franchise from Cleve to his son and daughter-in-law Jim and Shirley Bliss. Bliss Sanitary has continued to provide service to the area since that time and expanded the business to include recycling services for all of their mountain customers.

Jim and Shirley Bliss are seeking approval to transfer the franchise to Rhonda Bliss (their daughter) through a change in control of Bliss Sanitary Service, Inc. (Attachment B). Rhonda has worked for the company with increasing responsibility since July of 1994 and is currently the manager. This transfer meets all the conditions in Chapter 10.03.250 of the County Code.

The Solid Waste Commission met November 23, 2020 to discuss this transfer. The Commission voted unanimously in favor to approve the transfer of this franchise through a change in control.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the transfer of franchise 70-16-C through a change in control of Bliss Sanitary Service, Inc., effective January 1, 2021, as recommended by a unanimous vote of the Solid Waste Commission.

Respectfully submitted,



Eben Polk, Supervisor

DTD-Sustainability & Solid Waste

Attachments:

- A. Bliss Franchise Map (70-16-C)
- B. Application Bliss Transfer
- C. Board Order

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

In the Matter of a Transfer of the Collection Service Franchise and service area held by Bliss Sanitary Service, Inc. through a change in control.



Board Order No. _____

Page 1 of 2

Whereas, this matter coming before the Board of County Commissioners at this time and it appearing to the Board that an application for transfer of the Solid Waste Collection Service Franchise and service area 70-16-C has been received by the Solid Waste Commission pursuant to Section 10.03.250 of the County Code; and

Whereas the Solid Waste Commission at its meeting of November 23, 2020 reviewed the application and made its findings as follows:

1. That the franchise to collect solid waste in Clackamas County, area 70-16-C, was granted to Cleveland Bliss Garbage Service by Board Order No. 70-1074 in July 1970; and
2. That Cleveland Bliss Garbage Service incorporated in 1973 as Bliss Sanitary Service, Inc. with controlling interest held by Cleveland Bliss; and
3. That Cleveland Bliss sold controlling interest in Bliss Sanitary Service, Inc. to James A. and Shirley A. Bliss and the franchise was transferred by Board Order 86-885 on August 21, 1986; and
4. That James A. and Shirley A. Bliss intend to sell their controlling interest in Bliss Sanitary Service, Inc. to Rhonda Bliss; and
5. That Ronda Bliss is of good moral character; and
6. That Bliss Sanitary Service, Inc. continues to have available collection vehicles, equipment, facilities and personnel sufficient to meet the standards of the Clackamas County Code Chapter 10.03; and
7. That Bliss Sanitary Service, Inc. shall be subject to all laws, ordinances, and other applicable conditions and requirements of franchise holders in Clackamas County.

Whereas, on the basis of its findings, the Solid Waste Commission has recommended in favor of the transfer, through a change in control, of the Collection Service Franchise held by Bliss Sanitary Service, Inc.; and

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

In the Matter of a Transfer of the
Collection Service Franchise
and service area held by Bliss
Sanitary Service, Inc. through a
change in control.



Board Order No. _____
Page 2 of 2

**NOW THEREFORE, the Clackamas County Board of County
Commissioners resolves as follows:**

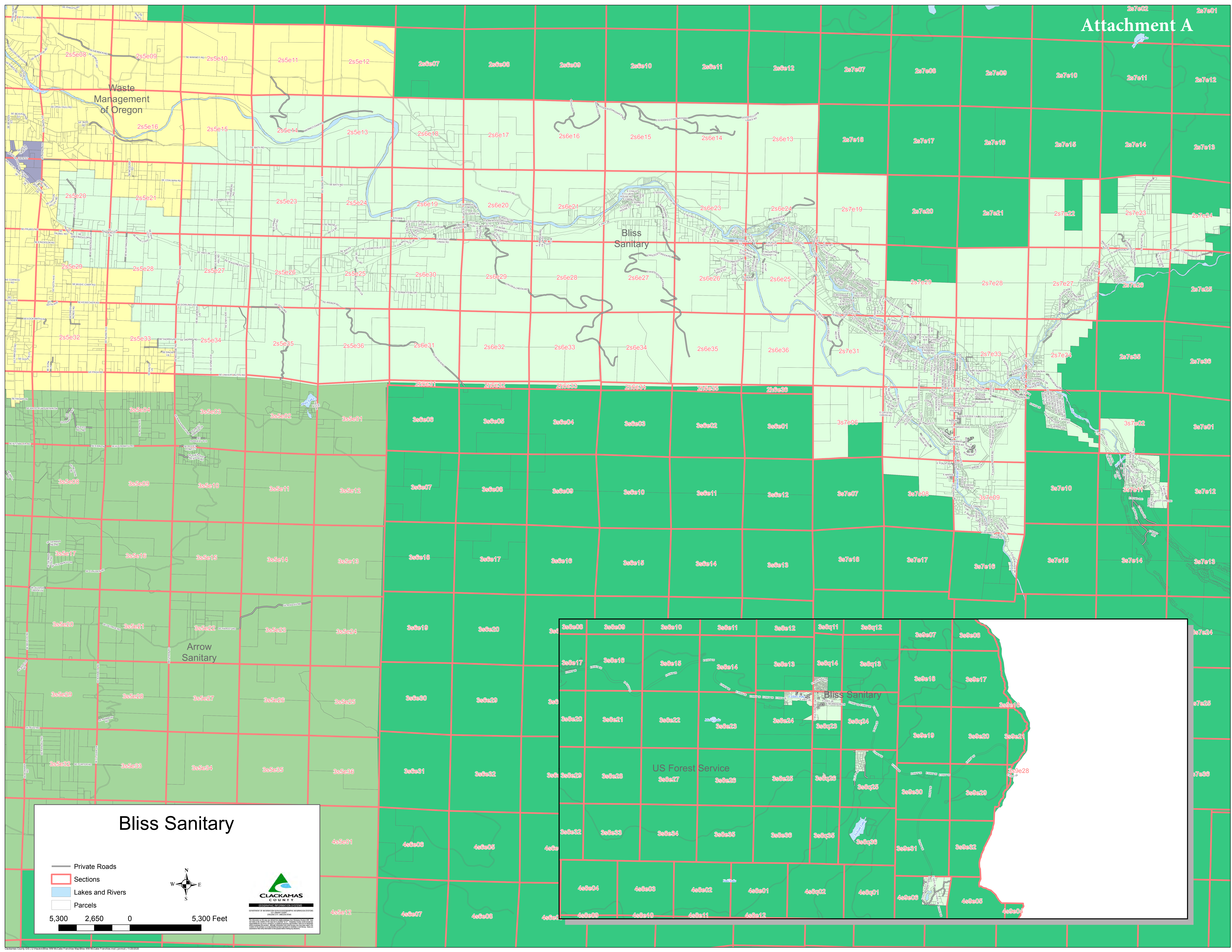
1. The Board of Commissioners accepts the findings and recommendations of the Solid Waste Commission set forth above; and
2. The Solid Waste Collection Service Franchise and service area (70-16-C) held by Bliss Sanitary Service, Inc. with James A. Shirley A. Bliss as owners is hereby transferred to Bliss Sanitary Service, Inc., with Rhonda Bliss as owner. Said transfer to be effective January 1, 2021.

DATED this _____ day of December, 2020.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



Waste Management of Oregon

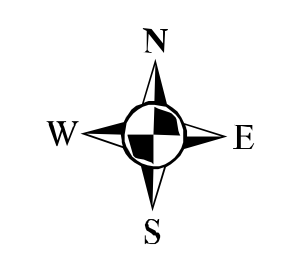
Bliss Sanitary

Arrow Sanitary

US Forest Service

Bliss Sanitary

- Private Roads
- Sections
- Lakes and Rivers
- Parcels



5,300 2,650 0 5,300 Feet



**APPLICATION to TRANSFER a FRANCHISE
Through Change in Control**

Attachment B

Transferor

Name of Franchise

To be Transferred: Bliss Sanitary Service, Inc.

Number of the Franchise

To Be Transferred: 70-16-C

NAME OF AUTHORIZED FRANCHISE HOLDER: Bliss Sanitary Service, Inc.

The Franchise holder is a: Privately held corporation; Publicly Traded Corporation;

Partnership; LLC; Single Proprietorship; Other _____

In the case of corporations please list all the officers and registered agent and their contact information. List the registry number assigned to the corporation by the Secretary of State's State Corporation Division for all business entities and aliases associated with the entity holding the current franchise. Attach documentation verifying the information or simply refer to the documentation. *An example of the documentation would be a copy of the search results on the Secretary of State's State Corporation Division website.*
<http://www.filinginoregon.com/>

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Duration Date	Next Renewal Date
104094-15	DBC	ACT	Oregon	12-20-1973		12-20-2018

Entity Name	Bliss Sanitary Service, Inc.
Foreign Name	

Type	PPB	PRINCIPAL PLACE OF BUSINESS					
Addr 1	28371 SE HWY 212						
CSZ	BORING	OR	97009	Country	UNITED STATES OF AMERICA		
Type	AGT	REGISTERED AGENT		Start Date	11-17-1986	Resign Date	
Name	James	A	Bliss	Phone Number:	503-658-4617		
Addr 1	18855 SE Heuke Rd						
CSZ	Damascus	OR	97089	Country	UNITED STATES OF AMERICA		

Transferor continued

Registered Agent, continued					
Type	MAILING ADDRESS				
Addr 1	PO BOX 935				
CSZ	BORING	OR	97009	Country	UNITED STATES OF AMERICA

Type	PR E	PRESIDENT				Resign Date	
Name	James	A	Bliss		Phone Number:	503-658-4617	
Addr 1	18855 SE Heuke Rd						
CSZ	Damascus	OR	97089	Country	UNITED STATES OF AMERICA		

Type	SE C	SECRETARY				Resign Date	
Name	Shirley	A	Bliss		Phone Number:	503-658-4617	
Addr 1	18855 SE Heuke Rd						
CSZ	Damascus	OR	97089	Country	UNITED STATES OF AMERICA		

Transferee

Name of Business Entity Proposing to Hold the Bliss Sanitary Service, Inc. franchise number 70-16-C named above:

BLISS SANITARY SERVICE, INC.

This will be the name used in the Board action granting this entity the privilege of operating a solid waste collection franchise under Clackamas County Code 10.03.

This business entity is a: Privately held corporation; Publicly Traded Corporation;

Partnership; LLC; Single Proprietorship; Other _____

In the case of corporations please list all the officers and registered agent and their contact information. List the registry number assigned to the corporation by the Secretary of State's State Corporation Division for all business entities and aliases associated with the entity holding the current franchise. Attach documentation verifying the information or simply refer to the documentation. An example of the documentation would be a copy of the search results on the Secretary of State's State Corporation Division website. <http://www.filinginoregon.com/>

NAME OF AUTHORIZED OWNER AND / OR COORPORATION:

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Duration Date	Renewal Date
204210-95	DBC	ACT	OREGON	03-01-2004		
Entity Name	Bliss Sanitary Service, Inc.					
Foreign Name						
Type	PRINCIPAL PLACE OF BUSINESS					
Addr 1	28371 SE HWY 212					
CSZ	BORING	OR	97009	Country	UNITED STATES OF AMERICA	
Type	AG T	REGISTERED AGENT		Start Date	03-01-2004	Resign Date
Name	Rhonda E Bliss			Phone Number: 503-623-3417		
Addr 1	43242 SE Tapp Rd Sandy OR 97055					
Type	MA L	MAILING ADDRESS				
Addr 1	Po Box 935					
CSZ	Boring	OR	97009	Country	UNITED STATES OF AMERICA	
Type	PR	PRESIDENT				Resign Date

	E				
Name	Rhonda	E	Bliss	Phone Number:	503-663-3417
Addr 1	43242 SE Tapp Rd				
CSZ	Sandy	OR	97055	Country	UNITED STATES OF AMERICA

Type	SE C	SECRETARY			Resign Date	
Name	Cheyenne	m	Baker	Phone Number:	503-663-3417	
Addr 1	43242 SE Tapp Rd					
CSZ	Sandy	OR	97055	Country	UNITED STATES OF AMERICA	

TRANSFeree

1. I SHALL notify the County of any intent to change principal ownership or name of the business entity holding the franchise.
 YES NO
2. I SHALL submit a written request receive the forms for *Change in Control* or *Name Change* of the Franchise Holder prior to either action occurring.
 YES NO
3. I SHALL notify the County of any intent to transfer the franchise to another person or entity.
 YES NO
4. I SHALL be bound by the County's decision to accept or deny a *Change in Control*, *Name Change*, or *Transfer* of the franchise.
 YES NO
5. I recognize the County's authority to revoke the privileges of holding this franchise without compensation.
 YES NO
6. I recognize the County's authority to realign the borders of the area served by this franchise.
 YES NO
7. I HAVE not willfully misrepresented the material facts or information given in this application for a franchise.
 YES NO
8. I SHALL not willfully misrepresent material facts or information given in a future application for a franchise.
 YES NO
9. I SHALL comply with all policies established by the County during the Franchise period.
 YES NO
10. I SHALL use only authorized disposal sites.
 YES NO
11. I SHALL notify the County of all disposal sites used at the time of this application and when those sites change.
 YES NO

12. I SHALL furnish the County with a Certificate of Insurance and comply with Section 10.03.160 B 4, 5 and 6 of the Clackamas County Solid Waste and Waste Management Code and any subsequent amendments of regulations adopted thereto.
 YES NO
13. I SHALL make accurate and timely franchise fee payments due the County under the Clackamas County Code and any subsequent amendments of regulations adopted thereto.
 YES NO
14. I SHALL submit, on forms provided by the County, the production records of the transferor beginning January 1 of the year of the transfer to the closest month end prior to the submittal of the request for transfer.
 YES NO
15. I SHALL separately submit, on forms provided by the County, the financial and production records of the transferor beginning January 1 of the year of the transfer to the date of the transfer as determined by the Board of County Commissioners. If the transfer takes place in the first quarter the submittal date shall be June 10; if in the second quarter the submittal date shall be September 10, if in the third quarter the , submittal date shall be September 10; in in the fourth quarter the submittal shall be the same as required for the annual financial review.
 YES NO
16. I SHALL separately submit, on forms provided by the County, the financial and production records produced by me after assuming operational responsibility of the franchise at the time of required submittal for the annual financial review.
 YES NO
17. I SHALL combine, on forms provided by the County, the financial and production records produced by the transferor prior to my assuming operational responsibility of this franchise, with the production records produced by me after assuming operational responsibility, in order to meet the County's requirement for generation of the annual financial review report.
 YES NO
18. I SHALL maintain collection vehicles, equipment, facilities and personnel commensurate with existing service.
 YES NO
19. I SHALL continue to serve customers at the level of service they are accustomed to at the time of the transfer.
 YES NO
20. I SHALL notify the County of any intention to change the level of service provided to customers at the time of the transfer.
 YES NO
21. I SHALL notify the County of any impending changes to collection vehicles, equipment, facilities and personnel (management and other County contacts) during the franchise period.
 YES NO
22. I SHALL secure written approval of the County prior to making changes to collection vehicles, and equipment affecting a change in service delivery from that of the transferor.
 YES NO
23. I SHALL not willfully refuse to provide adequate service in a defined service area.
 YES NO
24. I SHALL not willfully misrepresent the total number of customers or any other information relating to performing the operations necessary to comply with the Clackamas County Code and any subsequent amendments of regulations adopted thereto.
 YES NO

25. I SHALL not willfully violate the Clackamas County Code, Administrative Rules, ORS Chapter 459 and 459A, or the rules or regulations promulgated there under and any subsequent amendments of regulations adopted thereto.
 YES NO

26. I SHALL provide the best possible integrated solid waste collection service in the area served by my Clackamas County Franchise.
 YES NO

TRANSFeree (BUYER)

I/we agree to the above commitments and will attend any Board of County Commission or Solid Waste Commission meeting on this matter to answer any questions regarding the transfer of the franchise by any Board, Commission or staff member.

[Signature]
(signature)

Cheyenne M Bauer
(signature)

Rhonda E Bliss
(print name)

Cheyenne M Bauer
(print name)

President
Title

Title Secretary

DATE: 12/01/19

TRANSFEROR (SELLER)

I/we agree to the transfer and sale

[Signature]
(signature)

Shirley A Bliss
(signature)

James A Bliss
(print name)

Shirley A Bliss
(print name)

President
Title

Title Secretary Title

DATE: 12/01/19

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

In the Matter of a Transfer of the
Collection Service Franchise and
service area held by Bliss Sanitary
Service, Inc. through a change in
control.



Board Order No. _____
Page 1 of 2

Whereas, this matter coming before the Board of County Commissioners at this time and it appearing to the Board that an application for transfer of the Solid Waste Collection Service Franchise and service area 70-16-C has been received by the Solid Waste Commission pursuant to Section 10.03.250 of the County Code; and

Whereas the Solid Waste Commission at its meeting of November 23, 2020 reviewed the application and made its findings as follows:

1. That the franchise to collect solid waste in Clackamas County, area 70-16-C, was granted to Cleveland Bliss Garbage Service by Board Order No. 70-1074 in July 1970; and
2. That Cleveland Bliss Garbage Service incorporated in 1973 as Bliss Sanitary Service, Inc. with controlling interest held by Cleveland Bliss; and
3. That Cleveland Bliss sold controlling interest in Bliss Sanitary Service, Inc. to James A. and Shirley A. Bliss and the franchise was transferred by Board Order 86-885 on August 21, 1986; and
4. That James A. and Shirley A. Bliss intend to sell their controlling interest in Bliss Sanitary Service, Inc. to Rhonda Bliss; and
5. That Ronda Bliss is of good moral character; and
6. That Bliss Sanitary Service, Inc. continues to have available collection vehicles, equipment, facilities and personnel sufficient to meet the standards of the Clackamas County Code Chapter 10.03; and
7. That Bliss Sanitary Service, Inc. shall be subject to all laws, ordinances, and other applicable conditions and requirements of franchise holders in Clackamas County.

Whereas, on the basis of its findings, the Solid Waste Commission has recommended in favor of the transfer, through a change in control, of the Collection Service Franchise held by Bliss Sanitary Service, Inc.; and

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

In the Matter of a Transfer of the
Collection Service Franchise
and service area held by Bliss
Sanitary Service, Inc. through a
change in control.



Board Order No. _____
Page 2 of 2

**NOW THEREFORE, the Clackamas County Board of County
Commissioners resolves as follows:**

1. The Board of Commissioners accepts the findings and recommendations of the Solid Waste Commission set forth above; and
2. The Solid Waste Collection Service Franchise and service area (70-16-C) held by Bliss Sanitary Service, Inc. with James A. Shirley A. Bliss as owners is hereby transferred to Bliss Sanitary Service, Inc., with Rhonda Bliss as owner. Said transfer to be effective January 1, 2021.

DATED this _____ day of December, 2020.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



DAN JOHNSON
DIRECTOR

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

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

A Board Order Approving Waste Management Fee Adjustments for the
Franchised Operations of the
Clackamas County Garbage & Recycling Transfer Station

Purpose/Outcome	A Board Order approving Solid Waste Management fee adjustments for the County owned transfer station
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Subject to Annual Review
Previous Board Action/Review	Board Order 2016-68 approving a fee increase at the county owned transfer station
Counsel Review	Reviewed and approved by County Counsel on December 8, 2020.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. How does this item align with your Department's Strategic Business Plan goals? This item is a result of providing franchise oversight of the solid waste. 2. How does this item align with the County's Performance Clackamas goals? Every county citizen has access to safe, convenient garbage and recycling services to ensure healthy communities.
Procurement Review	<ol style="list-style-type: none"> 1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. If no, provide brief explanation: This item is related to managing the solid waste collection franchise system dictated by Chapter 10.03 of the County Code, and is reviewed by the Solid Waste Commission and the Board of County Commissioners and do not require review by Procurement
Contact Person	Rick Winterhalter, Sr. Sustainability Analyst DTD SSW 503-742-4466

BACKGROUND:

The County's transfer station, located east of the City of Sandy, is a small drop-off facility serving about 34,000 customers a year bringing trash, metal, electronics and recyclables for

disposal. The last fee increase at the Transfer Station was approved and made effective by the Board on July 1, 2016.

Recently the franchised operator, Waste Management of Oregon, Inc., made a significant investment to improve the site’s stormwater management system, to ensure compliance with their National Pollutant Discharge Elimination System (NPDES) permit. In addition to operational and equipment changes, the on-site stormwater pond was enlarged significantly. (Attachment A)

This project came in \$60,762 under budget at \$129,238. This is an allowable expense to be considered when assessing the fees charged at the transfer station in accordance with the current franchise agreement:

4.7 The costs of complying with all laws, regulations or orders applicable to the obligations of the Franchisee under federal, state or local law, as now or hereafter amended.

In order to capture this expense over the time remaining on the current franchise (which ends 1/31/2027), staff recommends a three dollar (\$3.00) increase in the minimum and per-yard fees charged to customers. At current usage levels, this increase will recoup costs for the site improvement within the current franchise period.

The County has also invested approximately \$165,000 in the transfer station in recent years, including projects to repair paving and improve safety at the tipping wall. The County was able to cover these costs from solid waste fund reserves rather than recovering costs through increased fees. Those funds were not available for this project.

Transfer Station	Current	Proposed	Change
General Garbage-per yard	\$21.00	\$24.00	\$3.00
Per can	\$7.00	\$8.00	\$1.00
Minimum: <=3cans or 1 yard	\$21.00	\$24.00	\$3.00
Heavy Waste per yard	\$35.00	\$38.00	\$3.00
Minimum:<=2 cans or 1 yard	\$21.00	\$24.00	\$3.00
<i>See Attachment B for a complete list of fees</i>			

The Solid Waste Commission met November 23, 2020 to discuss the proposed fee increase. The Commission voted in favor of the proposed adjustment.

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners approve the increase to select fees at the Clackamas County Garbage & Recycling Transfer Station to become effective January 1, 2021 as recommended by the Solid Waste Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eben Polk". The signature is fluid and cursive, with the first name "Eben" and last name "Polk" clearly distinguishable.

Eben Polk, Supervisor
DTD-Sustainability & Solid Waste

Attachments:

- A. Stormwater Facility Transfer Station
- B. Fee Schedule Transfer Station
- C. Board Order Transfer Station Fee Increase

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

In The Matter of Approving Waste Management Fee Adjustments for the Franchised Operations of the Clackamas County Garbage & Recycling Transfer Station



Board Order No. _____

Page 1 of 2

Whereas, This matter coming before the Board of County Commissioners at this time, and it appearing to the Board that a recommendation has been received by the Solid Waste Commission for a Waste Management Fee adjustment, and

Whereas, It further appearing to the Board that the Solid Waste Commission, at a meeting on November 23, 2020 reviewed the recommendation and supporting report received by the Commission for a fee increase for the franchised operations of the Clackamas County Garbage & Recycling Transfer Station and made their findings as follows:

1. That changes to the transfer station's 1200-Z Industrial Stormwater General Permit required several operational and engineering modifications on site; and
2. That the primary engineering modification was rebuilding and enlarging the existing stormwater retention pond; and
3. That the franchised operator Waste Management of Oregon, Inc. paid for operational and equipment changes and for the design and construction of the stormwater pond; and
4. That a fee increase has been requested by Waste Management of Oregon, Inc., to pay for the equipment and design and construction costs of the new stormwater facility at the Clackamas County Garbage & Recycling Transfer Station; and
5. That the last fee increase at the Clackamas County Garbage & Recycling Transfer Station was made effective on July 1; 2016, and
6. That this request for an increase is just and reasonable under Chapter 10.03.340 of the County Code; and
7. That the fees be established as set forth in the schedule attached hereto as Exhibit A of this order.

Whereas, It further appearing to the Board that on the basis of their findings, the Solid Waste Commission has recommended in favor of granting the fee increases to be included in aforementioned Fee Schedule, and

Whereas, The Board having considered the Fee Schedule, we do adopt the findings of the Solid Waste Commission as our own Findings and do further find that the fee increases as set out herein are just, fair and reasonable;

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

In The Matter of Approving
Waste Management Fee
Adjustments for the Franchised
Operations of the Clackamas
County Garbage & Recycling
Transfer Station



Board Order No. _____

Page 2 of 2

**NOW THEREFORE, the Clackamas County Board of County
Commissioners resolves as follows:**

1. That the foregoing recommendations be adopted and that Waste Management of Oregon, Inc., be granted the fee increase as set forth in Exhibit A of this order for the operation of the Clackamas County Garbage & Recycling Transfer Station according to the recommendations effective January 1, 2021.

DATED this _____ day of December, 2020.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary





Clackamas County Transfer Station Fee Schedule Effective January 1, 2021		
Garbage:	Fee	Minimum
Light Waste or General Garbage (per cubic yard)	\$24.00	\$24.00 <1cuyd
Light can - 32 Gallon	\$8.00	\$24.00 <=3 Cans
Heavy Waste or Demo Debris (per cubic yard)	\$38.00	\$24.00 <1cuyd
Heavy Can - 32 Gallon	\$9.00 ea	\$24.00 <=2 Cans
Tires	On rim	Off rim
Passenger/Lt Truck <=16"	\$3.85 ea	\$2.50 ea
Large Truck/Trailer 17"- 21"	\$14.50 ea	\$8.50 ea
Tires over 21"	Inquire	Inquire
Furniture, Appliances:		
Refrigerators, Freezers, Air conditioners - even if refrigerant is removed	\$20.00 ea	NA
Stuffed Chair/Recliner/ Love seat or Couch	\$12.00 ea	NA
Sectional or Hide a bed	\$17.00 ea	NA
Twin Mattress	\$12.00 ea	\$12.00 Set
Full/Double Mattress	\$12.00 ea	\$17.00 Set
Queen Mattress	\$16.00 ea	\$24.00 Set
King Mattress	\$17.00 ea	\$25.00 Set
Large Loads-by weight	\$70 per ton	NA

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

In The Matter of Approving Waste Management Fee Adjustments for the Franchised Operations of the Clackamas County Garbage & Recycling Transfer Station



Board Order No. _____
Page 1 of 2

Whereas, This matter coming before the Board of County Commissioners at this time, and it appearing to the Board that a recommendation has been received by the Solid Waste Commission for a Waste Management Fee adjustment, and

Whereas, It further appearing to the Board that the Solid Waste Commission, at a meeting on November 23, 2020 reviewed the recommendation and supporting report received by the Commission for a fee increase for the franchised operations of the Clackamas County Garbage & Recycling Transfer Station and made their findings as follows:

1. That changes to the transfer station's 1200-Z Industrial Stormwater General Permit required several operational and engineering modifications on site; and
2. That the primary engineering modification was rebuilding and enlarging the existing stormwater retention pond; and
3. That the franchised operator Waste Management of Oregon, Inc. paid for operational and equipment changes and for the design and construction of the stormwater pond; and
4. That a fee increase has been requested by Waste Management of Oregon, Inc., to pay for the equipment and design and construction costs of the new stormwater facility at the Clackamas County Garbage & Recycling Transfer Station; and
5. That the last fee increase at the Clackamas County Garbage & Recycling Transfer Station was made effective on July 1; 2016, and
6. That this request for an increase is just and reasonable under Chapter 10.03.340 of the County Code; and
7. That the fees be established as set forth in the schedule attached hereto as Exhibit A of this order.

Whereas, It further appearing to the Board that on the basis of their findings, the Solid Waste Commission has recommended in favor of granting the fee increases to be included in aforementioned Fee Schedule, and

Whereas, The Board having considered the Fee Schedule, we do adopt the findings of the Solid Waste Commission as our own Findings and do further find that the fee increases as set out herein are just, fair and reasonable;

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

In The Matter of Approving
Waste Management Fee
Adjustments for the Franchised
Operations of the Clackamas
County Garbage & Recycling
Transfer Station



Board Order No. _____
Page 2 of 2

NOW THEREFORE, the Clackamas County Board of County Commissioners resolves as follows:

1. That the foregoing recommendations be adopted and that Waste Management of Oregon, Inc., be granted the fee increase as set forth in Exhibit A of this order for the operation of the Clackamas County Garbage & Recycling Transfer Station according to the recommendations effective January 1, 2021.

DATED this _____ day of December, 2020

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



December 17, 2020

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with Metro to Implement the
FY 20-21 Annual Waste Reduction and Recycle at Work Program

Purpose/ Outcomes	This IGA provides funding and updates the County’s solid waste, waste reduction and recycling work plan for 2020-2021, developed collaboratively each year with Metro. Funds disbursed by Metro under the IGA partially offset the cost of meeting state requirements of a local annual waste reduction plan pursuant to the Regional Waste Plan and Oregon’s Opportunity to Recycle Act.
Dollar Amount and Fiscal Impact	The IGA provides for FY 20-21 funding of \$506,360 (\$131,473 – commercial food scraps technical assistance; \$225,170 – general waste reduction; \$149,717 – commercial waste reduction).
Funding Source	Metro’s Regional System Fees and County Solid Waste Franchise Fees
Duration	July 1, 2020 – June 30, 2021
Previous Board Action	The BCC has approved a Solid Waste Management Plan and supplemental funding from Metro annually since 1991.
Counsel Review	Reviewed and approved by County Counsel on December 7, 2020
Strategic Plan Alignment	1. Ensure safe, healthy and secure communities. (BCC) 2. Honor, utilize, promote and invest in natural resources. (BCC) 3. Waste reduction and conservation of resources. (DTD-S&SW)
Contact Person	Eben Polk – Sustainability & Solid Waste (DTD) 503-742-4470
Contract No.	Metro Contract No. 937043

BACKGROUND:

Annually Metro and local governments within the tri-county area collaborate to update and refine plans for outreach, education and technical assistance in waste reduction and recycling. This IGA covers FY 20-21 funding and updates the work plan.

This agreement, as with prior Metro IGAs for solid waste, is retroactive. Although contracts and agreements must typically be signed before their effective date, Metro typically releases the IGA well into the fiscal year, resulting in approval by the Board during the IGA period.

The annual plans are designed to meet the goals and objectives of our Regional Waste Plan (formerly the Regional Solid Waste Management Plan) which itself implements state policies for the provision of opportunities to recycle, and waste reduction. In its role as the lead agency for RWP implementation, Metro has approved the County’s Annual Waste Reduction Plan for FY 20-21. The plans have two main components: the ‘Annual Plan’, which provides education and resources for residents and community members to participate in waste reduction and recycling, and the ‘Recycle at Work’ program, which provides technical assistance to workplaces. As with FYs 17-18, 18-19 and 19-20, this IGA includes additional funds to work with food-related

businesses, specifically in implementing the local food scraps collection ordinances adopted by Gladstone, Lake Oswego, Milwaukie, Oregon City, West Linn, Wilsonville, and the County for its urban unincorporated area and Happy Valley.

In support of these annual plans, Metro redistributes revenue collected from disposal of garbage at Metro's owned and franchised facilities. The regional funding calculation is based on population (for the Annual Plan funds) and the number of employees (for Recycle at Work funds) in each jurisdiction. The County meets the annual responsibilities of the RWP and annual plans for its unincorporated areas and the Cities of Barlow, Canby, Estacada, Gladstone, Happy Valley, Lake Oswego, Milwaukie, Molalla, Oregon City, Sandy, West Linn, and Wilsonville, in exchange for the funds allocated for those jurisdictions by Metro.

These local agreements ensure that programs and customer service as experienced by residents and businesses, and communication with collection companies who provide service across jurisdictions, are consistent, efficient, and cost-effective.

This year the County's combined funding for the Annual Plan and the Recycle at Work components increased by \$8,023, to \$374,887. Commercial food scraps funding decreased to \$131,473 due to the delay in program implementation facilitated by COVID-19.

Attached for reference are our agreements with Cities to perform the work necessary to meet the obligations of the RWP in exchange for Metro funds and the Annual Waste Reduction and Recycle at Work Reports for year-end FY 19-20 (Year 30).

The annual report offers details of the work accomplished using the funds distributed via this IGA. Highlights from the past year include:

- 9 Library of Things opened September 2019: Canby, Estacada, Hoodland, Lake Oswego, Milwaukie, Oregon City, Sandy, West Linn, Wilsonville
- Provided 50 volunteer opportunities for Master Recyclers (additional opportunities cancelled due to COVID-19).
- Supported 5 Repair Fairs in Estacada, Oregon City, Canby, West Linn, and Lake Oswego. An additional 5 Repair Fairs were scheduled, but cancelled due to COVID-19
- Over 4,000 recycle guides and additional resources provided to 164 multifamily communities (additional spring outreach cut short due to COVID-19)
- Postcard sent to all addresses within the county (residential, multifamily, and business)
- Provided just under 1,100 businesses with waste reduction, recycling, and sustainable practices. Certified 22 businesses (representing 2,600 employees) as Leaders in Sustainability, and prepared for implementation of the upcoming Food Waste Requirement
- Just over 30% of Clackamas County schools are currently certified as Oregon Green Schools, and 9,851 unique students were engaged through 70 presentations in 25 schools (additional activities were cancelled due to COVID-19)
- We modified and delivered Metro's climate change presentation 33 times to 635 students

These efforts align with the crucial services provided by our franchised solid waste collectors.

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners approve and sign the Intergovernmental Agreement with Metro (No.937043) containing the FY 20-21 work plan approved by Metro, and funding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eben Polk". The signature is fluid and cursive, with the first name "Eben" and last name "Polk" clearly distinguishable.

Eben Polk, Supervisor
DTD-Sustainability & Solid Waste

Attachments:

- A. IGA and Work Plan (No. 937043) for BCC Signature
- B. FY 19-20 Annual Report to Metro
- C. City Letters of Understanding for Ongoing Outreach

Intergovernmental Agreement

Metro Contract No. 937043

THIS AGREEMENT, entered into and under the provisions of ORS Chapter 190, is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, and CLACKAMAS COUNTY, hereinafter referred to as “County”, whose address is 2051 Kaen Road, Oregon City, OR 97045.

In exchange for the promises and other valuable consideration set forth below, the parties agree as follows:

1. Purpose. The purpose of this Agreement is to establish the responsibilities of the parties in implementing the FY 2020-21 Metro and Local Government Annual Waste Reduction Plan, Business Technical Assistance and Outreach, and Business Food Waste Program.

2. Term. This Agreement shall be effective July 1, 2020, and shall remain in effect through June 30, 2021 unless earlier terminated in conformance with this Agreement, or extended by written amendment signed by both parties. Costs for this project may be incurred beginning July 1, 2020.

3. Services Provided and Deliverables. County and Metro shall perform the services described in the attached Scope of Work, which is made part of this Agreement by reference, and otherwise fully comply with the provisions in Exhibit A: Scope of Work (Attachments A, B, C and D).

4. Payment for Services. Metro shall pay County for Annual Waste Reduction services performed and materials delivered in the maximum sum of TWO HUNDRED TWENTY-FIVE THOUSAND, ONE HUNDRED SEVENTY AND NO/100THS DOLLARS (\$225,170.00) and for Business Technical Assistance and Outreach services performed and materials delivered in the maximum sum of ONE HUNDRED FORTY-NINE THOUSAND, SEVEN HUNDRED SEVENTEEN AND NO/100THS DOLLARS (\$149,717.00) and for Business Food Waste Requirement services performed and materials delivered in the maximum sum of ONE HUNDRED THIRTY-ONE THOUSAND FOUR HUNDRED SEVENTY-THREE AND NO/100THS DOLLARS (\$131,473.00) in the manner and at the time designated in the Scope of Work. Metro has appropriated sufficient funds to provide the funding

Intergovernmental Agreement

required by this Agreement during the current fiscal year. Funding may be subject to budget adjustments in Metro's discretion at any time during the term of the Agreement. Grant Funds due after June 30 of any given year are subject to funds being appropriated by the Metro Council. The parties must not interpret this Agreement as a pledge of any source of Metro funds, including but not limited to its ad valorem property taxes, the full faith and credit of Metro, nor any other legally available revenues, taxes or other funds to make the payments described in the Scope of Work. Metro will provide sixty (60) days' written notice to County prior to a budget adjustment that reduces grant funds to the County. If Metro reduces grant funds to the County, the parties will execute an amendment to this Agreement that reduces the County's responsibilities under this Agreement to correspond to Metro's reduction in grant funds.

5. Insurance. County agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement to levels necessary to protect against public body liability as specified in ORS 30.272. County also agrees to maintain for the duration of this Agreement, Workers' Compensation Insurance coverage for all its employees as a self-insured employer, as provided by ORS chapter 656, or disability coverage under its Disability, Retirement and Death Benefits Plan.

6. Indemnification. Subject to the provisions of the Oregon Constitution and Oregon Tort Claims Act, County shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney fees, arising out of or in any way connected with, County's performance under this Agreement. Subject to the provisions of the Oregon Constitution and Oregon Tort Claims Act, Metro shall indemnify, defend, and hold County and County's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney fees, arising out of or in any way connected with, Metro's performance under this Agreement..

7. Termination. This Agreement may be terminated by either party without cause upon giving 90 days written notice of intent to terminate. This Agreement may be terminated with less than 90 days' notice if a party is in default of the terms of this Agreement. In the case of a default, the party

Intergovernmental Agreement

alleging the default shall give the other party at least 30 days written notice of the alleged default, with opportunity to cure within the 30-day period. Termination shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

8. State Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279A, B & C and to the extent those provisions apply, they are incorporated into this Agreement by reference. Specifically, it is a condition of this Contract that all employers working under this Agreement are subject employers that will comply with ORS 656.017.

9. Notices. Legal notice provided under this Agreement shall be delivered personally or by certified mail to the following individuals:

For County:
Eben Polk
Clackamas County
150 Beaver Creek Road
Oregon City, OR 97045

For Metro:
Office of Metro Attorney
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

Informal coordination of this Agreement will be conducted by the following designated Project Managers:

For County:
Eben Polk
Clackamas County
150 Beaver Creek Road
Oregon City, OR 97045
(503) 742-4470

For Metro:
Office of Metro Attorney
Metro
600 NE Grand Avenue
Portland, OR 97232-2736
(503) 797-1647

County may change the above-designated Project Manager by written notice to Metro. Metro may change the above-designated Project Manager by written notice to County.

10. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any condition, be assigned or transferred by either party without prior written approval by the other party.



600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Intergovernmental Agreement

11. Integration. This writing contains the entire Agreement between the parties, and may only be amended by written instrument, signed by both parties.

12. Severability. If any portion of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken.

This Agreement is dated as of the last signature date below.

CLACKAMAS COUNTY

METRO

By: _____

By: _____

Print name and title

Print name and title

Date

Date

Intergovernmental Agreement

Scope of Work – Exhibit A

Attachment A

SCOPE OF WORK: Annual Waste Reduction Plan

- a) Term: July 1, 2020 to June 30, 2021.
- b) County's responsibilities. County shall:
1. Provide to Metro a copy of County's Resolution, Ordinance, or signature of authorized representative approving this Intergovernmental Agreement including all of its attachments.
 2. Upon request, provide to Metro a copy of the Intergovernmental Agreement or Letter of Understanding authorizing County to act on Cities' behalf in developing and implementing a joint annual waste reduction program.
 3. Ensure that by June 30, 2021, the activities specified in Attachments A and D have been completed.
 4. On or before August 1, 2021, submit the following:
 - A) A completed reporting template.
 - B) Demonstrated compliance with applicable state law and the Regional Waste Plan.
- c) Metro Responsibilities. Metro shall:
1. Provide technical assistance to County as necessary to develop, execute, monitor, and evaluate the project.
 2. Provide assistance to County on promotional and educational activities.
 3. Monitor the general project progress and review, as necessary, County's accounting records relating to project expenditures.
 4. Provide County with any necessary reporting templates.
- d) Budget and Terms of Payment:
1. Upon completion of section (b)(1) and (b)(2) of this Scope of Work, Metro shall pay County \$219,575.00 in one lump sum. County's billing invoices shall include the Metro contract number, County name, remittance address, invoice date, invoice number, and invoice amount. County's billing invoices shall be sent to Metro Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736 or metroaccountspayable@oregonmetro.gov. The Metro contract number shall be referenced in the email subject line. County's billing invoices for goods and services through June 30 shall be submitted to Metro by July 15. Payment shall be made by Metro on a Net 30 day basis upon approval of County's invoice.

Intergovernmental Agreement

Scope of Work – Exhibit A

2. County shall provide services described in Attachment D in exchange for the following funding allocations:

Barlow	\$72
Canby	\$8,978
Estacada	\$1,973
Gladstone	\$6,306
Happy Valley	\$11,494
Johnson City	\$299
Lake Oswego	\$20,719
Milwaukie	\$10,877
Molalla	\$5,236
Oregon City	\$18,841
Rivergrove	\$267
Sandy	\$5,866
West Linn	\$13,722
Wilsonville	\$13,579
<u>Unincorporated Clackamas County</u>	<u>\$106,940</u>
TOTAL	\$225,170.00

3. County and Metro recognize that the Metro and Local Government Annual Waste Reduction Plan is a multi-year program and that future rounds of funding will depend in part on County's performance in implementing program activities during the term of this contract.

Intergovernmental Agreement

Scope of Work – Exhibit A

Attachment B

SCOPE OF WORK: Business Technical Assistance and Outreach

- a) Term: July 1, 2020 to June 30, 2021.
- b) County's responsibilities. County shall:
 1. Hire and train individuals as staff or contractors who work in the County's offices or external contractors whose primary responsibilities and duties are to provide waste prevention and recycling technical assistance and Business Recycling Requirement compliance services to businesses in Clackamas County.
 2. Implement the Regional Service Standard: Business, Business Recycling Requirement and Business Recycling Annual Outreach Plan sections in Attachment D that identify the County's strategy for targeting and recruiting businesses for waste prevention and recycling assistance and compliance with business recycling requirements.
 3. On or before August 1, 2021, submit an annual progress report on the accomplishments of the business assistance program, including:
 - A) A completed end-of-year report in a form provided by Metro and that includes:
 - i) A narrative on the successes and challenges of the business assistance program;
 - ii) Overall expenditures and Metro funds spent on the business assistance program during the fiscal year (July 1, 2020 through June 30, 2021);
 - iii) A list of staff who worked on business assistance during the fiscal year (July 1, 2020 through June 30, 2021), their level of full-time equivalent (FTE) work time spent on business assistance, and their source of funding (Metro or local government)
 - B) Data collected for each business assisted through the program including contact information and type of assistance provided
 4. Make resources available to businesses as appropriate for the County.
 5. Establish a compliance program for the Business Recycling Requirement consistent with applicable Metro Code and associated Administrative Rule and provide written description to Metro.
- c) Metro Responsibilities. Metro shall:
 1. Provide resources and staff time to County to develop, execute, monitor, and evaluate the Business Technical Assistance and Outreach program.
 2. Monitor the general program progress and review as necessary, County's accounting records relating to Business Technical Assistance and Outreach program expenditures.
 3. Notify the County of Metro business assistance or pilots and any other business recruitment scheduled for the term of the IGA.
 4. Provide the County with standardized reporting forms for annual progress reports.

Intergovernmental Agreement

Scope of Work – Exhibit A

5. Review and revise the program goals and budget as needed in conjunction with the Solid Waste Directors.
6. Conduct an evaluation of the program as needed, which may include on-site visits to businesses by Metro staff or independent third-party contractors.

d) Budget and Terms of Payment:

1. Metro shall pay County \$149,717.00 in one lump sum. County’s billing invoices shall include the Metro contract number, County name, remittance address, invoice date, invoice number, and invoice amount. County’s billing invoices shall be sent to Metro Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736 or metroaccountspayable@oregonmetro.gov. The Metro contract number shall be referenced in the email subject line. County’s billing invoices for goods and services through June 30 shall be submitted to Metro by July 15. Payment shall be made by Metro on a Net 30 day basis upon approval of County invoice.
2. County shall provide services described in section (b) in exchange for the following funding allocations:

Barlow	\$26
Canby	\$6,020
Estacada	0
Gladstone	\$2,722
Happy Valley	\$3,063
Johnson City	\$15
Lake Oswego	\$18,672
Milwaukie	\$12,447
Molalla	\$2,689
Oregon City	\$14,594
Rivergrove	\$19
Sandy	\$3,375
West Linn	\$4,335
Wilsonville	\$18,312
<u>Unincorporated Clackamas Co.</u>	<u>\$63,428</u>
 TOTAL	 \$149,717

Attachment C

SCOPE OF WORK: Business Food Waste Requirement

- a) Term: July 1, 2020 to June 30, 2021.
- b) County's responsibilities. County shall:
 1. Submit to Metro a revised Business Food Waste Requirement Implementation Plan no later than February 1, 2021.
 2. Hire and train a minimum of 1.0 FTE as staff or contractor who works in the County's offices or external contractor whose primary responsibilities and duties are to provide technical assistance to subject businesses for implementation of the business food waste requirement in compliance with the minimum standards of Metro Ordinance No 18-1418 and associated Administrative Rules.
 3. Utilize funding to hire staff and to purchase program-related equipment with funding allocated as described in section d) 2. below.
 4. Participate in the Commercial Work Group (CWG) and CWG Food Scraps Subcommittee for the purpose of collaborating on multijurisdictional food-generating business assistance, implement activities in the CWG Program Plan for FY 20-21 and participate in regional trainings.
 5. Utilize the Food Scraps Program Evaluation System developed for this program to collect and report data to Metro to demonstrate compliance with the business food waste requirement and assist with program evaluation.
 - a. Determine business compliance by conducting site visits at 100% of non-participating businesses and 20% of participating businesses subject to the requirement to assure that the required conditions of compliance are met by the end of the applicable implementation period based on the judgment of staff conducting the site visit.
 - b. On a quarterly basis submit business food waste compliance reports in the agreed upon format.
 - c. Once a year, at the end of FY Q2, provide a companion narrative report that contains qualitative information including successes and challenges.
 6. Report annually on expenditures.
 - a. Overall expenditures including local government and Metro funds spent on business food waste assistance program during the fiscal year (July 1, 2020 through June 30, 2021);
 - b. List of staff who worked on food waste business assistance during the fiscal year (July 1, 2020 through June 30, 2021), their level of full-time equivalent (FTE) work time dedicated to providing technical assistance to businesses subject to the food scraps requirement, total labor hours funded by Metro funds, and total number of businesses served.
 - c. Establish and describe an auditable accounting method for any labor hours funded by Metro funds. Preserve records for a minimum of five years after the end of the program and allow reasonable access to Metro upon request and as may be deemed necessary by Metro.
 - d. Provide documentation to demonstrate appropriate expenditure of funds provided for food waste collection containers.

c) Metro Responsibilities. Metro shall:

1. Provide resources and staff time to County to develop, execute, monitor, and evaluate the program.
2. Monitor general progress and review as necessary.
3. Convene and facilitate the quarterly CWG and CWG Food Scraps Subcommittee meetings as needed.
4. Analyze data from business food waste compliance reports submitted by jurisdictions on a quarterly and annual basis and provide quarterly reports to County that include graphical and numerical summaries of the compliance and performance data.
5. Report annually to the Metro Council on progress towards program goals.

d) Budget and Terms of Payment:

1. Metro shall pay County in one lump sum upon receipt and Metro approval of revised Business Food Waste Requirement Implementation Plan no later than February 1, 2021. County's billing invoices shall include the Metro contract number, County name, remittance address, invoice date, invoice number, and invoice amount. County's billing invoices shall be sent to Metro Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736 or metroaccountspayable@oregonmetro.gov. The Metro contract number shall be referenced in the email subject line. County's billing invoices for goods and services through June 30 shall be submitted to Metro by July 15. Payment shall be made by Metro on a Net 30 day basis upon approval of County invoice.

2. County shall provide services described in section (b) in exchange for the following funding allocations:

a. Staffing support (1.0 FTE):	\$124,374.00
<u>Container allocation</u>	<u>\$7,099.00</u>
TOTAL	\$131,473.00

Attachment D

Local Government Annual Implementation Plan

Jurisdiction: Clackamas County

Contact: Eben Polk

I. Required Elements

Regional Service Standard: Single Family Residential

1. Demonstrate compliance with the regional service standard by completing/updating the table below.

Jurisdiction	Recycling Collection Frequency		Recycling Container Size		Glass Collection Frequency		Yard Debris Collection Frequency		Yard Debris Container Size		Alternative Program Approved	Resid FW
	Urban	Rural	Urban	Rural	Urban	Rural	Urban	Rural	Urban	Rural	Y/N	Y/N
Uninc. Clackamas	W	W	60/90	14/60/90	W	W	W	N	60	N	N/A	
Barlow	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Canby	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Estacada	W	N/A	60	N/A	W	N/A	N	N/A	N/A	N/A	N/A	
Gladstone	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Happy Valley	W	N/A	60/90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Johnson City	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Lake Oswego	W	N/A	60	N/A	W	N/A	W	N/A	60	N/A	N/A	Yes 2016
Milwaukie	W	N/A	60	N/A	W	N/A	W	N/A	60	N/A	N/A	Yes 2017
Molalla	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Oregon City	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Rivergrove	W	N/A	60	N/A	W	N/A	W	N/A	60	N/A	N/A	
Sandy	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
West Linn	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Wilsonville	W	N/A	60	N/A	W	N/A	W	N/A	60	N/A	N/A	Yes 2020

2. List materials collected in each jurisdiction.

In each jurisdiction within Clackamas County, the single family recycling program accepts all the materials outlined in Attachment A: Reference Table 1: mixed recycling (including paper, cardboard, plastic bottles, jugs, and round containers (6 oz. or larger), and metal cans), glass bottles and jars, and motor oil. Yard debris is collected in all cities and urban unincorporated communities within the Metro urban growth boundary and the cities of Barlow, Canby, Molalla, and Sandy. The Cities of Lake Oswego, Milwaukie, and Wilsonville allow residential food scraps within yard debris containers.

3. Describe any variations from the regional service standard, exemptions and additional conditions in place.

None

4. Using the table below, demonstrate how you will meet the single family outreach and education minimum service standard. Include any outreach that exceeds the minimum standard.

Single Family Outreach and Education

Content	Audience	Distribution Method	Frequency
Provide information regarding waste prevention, reuse, recycling, and composting.	All waste generators		At least 4x/yr
ClackCo Newsletter (Countywide newsletter reaching every mailing address and PO box. Two issues are anticipated for FY20-21.) <ul style="list-style-type: none"> • 1 ad or article addressing contamination priorities identified in the regional Contamination Reduction Education Plan (CREP) and <i>RecycleorNot</i> website • 2 Recycle Guide • 1 Depot List • 1 ad or article promoting reuse (e.g. Metro Paint, local reuse resources, repair at home, etc.) • 1 ad or article promoting composting • 1 ad educating about Household Hazardous Waste (HHW) disposal <i>If the public health situation allows:</i> <ul style="list-style-type: none"> • 1 ad promoting the Master Recycler course 	All county addresses	Mail	2x/yr
Offer ads, articles and recycling guide used within ClackCo Newsletter to member cities to include within their own publications, if desired.	Cooperative member cities	Mail, Online	2x/yr
Postcard providing recycling information.	All county addresses	Mail	1x/yr
Bill Insert providing recycling information.	Garbage & recycling customers	Mail or electronic	1x/yr
Multifamily Property Manager Mailer – reminder about Opportunity to Recycle requirements, service standard, and resources/services available. <i>(This is included in this section because the state requirement for providing information, as identified above, includes all waste generators—this complements bill inserts.)</i>	All multifamily property managers and owners	Mail	1x/yr

<p>Recycle Guide and Depot List available to all cooperative member cities and collectors for new customers as stated in our Code/Administrative Rules. Recycle Guide and Depot List also available online, and we encourage cities and collectors to link to our online resources on their own webpages. Available to both audiences in the following languages:</p> <ul style="list-style-type: none"> • English • Spanish • Russian* • Vietnamese* • Simplified Chinese* • Korean* • Thai* <p>(*Recycle Guide available but not Depot List in this language)</p>	<p>New and existing garbage customers; Cooperative member cities; Online users</p>	<p>Mail, Online, In-person (if possible)</p>	<p>Throughout the year</p>
<p>One community or media event to promote waste prevention, reuse, recycling, or composting.</p>	<p>All waste generators</p>		<p>Annually</p>
<p>1 virtual event, or a series of virtual events, that cover the topics of waste prevention, reuse, recycling, and/or composting.</p>	<p>Online users</p>	<p>Online</p>	<p>1x/yr</p>
<p>Provide a packet of educational materials that contains information listing the materials collected for recycling, the schedule for collection, the proper method of preparing materials for collection, and an explanation of the reasons to recycle.</p>	<p>New customers</p>		
<p>Recycle Guide and Depot List will continue to be provided to all cooperative city members and collectors for distribution to new customers per our Code/Administrative Rules. Recycle Guide and Depot List also available online, and we encourage cities and collectors to link to our online resources on their own webpages. Recycle Guide and Depot List are available in the following languages:</p> <p>English, Spanish, Russian*, Vietnamese*, Simplified Chinese*, Korean*, Thai*</p> <p>(* Recycle Guide available but not Depot List)</p>	<p>New and existing garbage customers; Cooperative city members; Online users</p>	<p>Mail, Online, In-person (if possible)</p>	<p>Throughout the year</p>
<p>Recycle Guide, webpages, and/or bill Insert/post card provides information on the benefits of recycling.</p>	<p>New and existing garbage customers; Online users</p>	<p>Mail, Online, In-person (if possible)</p>	<p>Throughout the year</p>

Outreach and Education that Exceeds the Minimum Service Standard			
Content	Audience	Distribution Method	Frequency
Recycling			
Recycle Guide and relevant handouts/webpages will updated to reflect the regional CREP, including promotion of <i>Recycle or Not</i> message as appropriate.	Staff	n/a	n/a
Review outreach materials provided by collectors for accuracy.	Staff	n/a	1x/yr
Review outreach materials provided by member cities for accuracy.	Staff	n/a	1x/yr
4 or more city/community newsletters provide recycling information to include in their own publications.	Community members	Mail and/or electronic	1x/yr
4 or more Facebook, Twitter, or Nextdoor posts about recycling contamination and/or proper recycling.	Online users	Online	4x/yr
1,000 up-to-date Recycle Guides with Depot lists distributed. <i>NOTE: Depot lists and related outreach and education at events currently encourages plastic film take-back opportunities.</i>	Community members	Collection companies, online, etc.	Throughout year
Recycle Guide available in 7 languages online (English, Spanish, Russian, Vietnamese, Simplified Chinese, Korean, Thai)	Community members	Collection companies, online, etc.	Available year-round
1 or more Facebook, Twitter, or Nextdoor posts about the redemption of deposit containers.	Online users	Online	1x/yr
1 or more Facebook, Twitter, or Nextdoor posts to promote each featured contaminant outlined by CREP during the targeted timeline.	Online users	Online	1x+/yr for each item
Backyard Composting			
1 or more links to composting resources on our website.	Online users	Online	Available year-round
Reuse and Waste Prevention			
1 or more Facebook or Twitter posts about wasting less food.	Online users	Online	1x/yr
3 or more ESWL virtual presentations.	Community groups	Virtual event	Available year-round
3 Farmers Markets offered content to include in their newsletters and Facebook pages about wasting less food.	Farmers Market subscribers	Online	Summer
2 links to food preservation and rescue resources provided on our website.	Online users	Online	Available year-round

1 or more Facebook, Twitter, or Nextdoor posts about opportunities and resources to reduce waste and encourage reuse.	Online users	Online	1x/yr
<i>The reuse/prevention item listed below will only happen if the public health situation allows.</i>			
1 or more Repair Fairs.	Event goers	In-person	3x/yr
Master Recycler Support			
10 or more volunteer opportunities arranged/offered to Master Recyclers for fulfillment of their payback hours.	Master Recyclers	Virtual event	10x/yr
3 or more presentations topics available to Master Recyclers.	Master Recyclers	Virtual event	Available year-round
1 refresher event for Master Recyclers to ask questions and get up-to-date information.	Master Recyclers	Virtual event	1x/yr
1 volunteer appreciation event OR a series of virtual gatherings.	Master Recyclers	Virtual event	1x/yr or more
Explore other ways to show our appreciation to active Master Recyclers (rewards/recognition program, etc).	Staff	n/a	n/a
While respecting the added stress many community groups are experiencing during the pandemic, and acknowledging that many of the community groups we'd like to work with are on the responding front lines, explore partnerships with community groups interested in a community designed Master Recycler course, when funding support is identified by Metro or the County.	Staff	n/a	n/a
<i>Those Master Recycler actions below will only happen if the public health situation allows.</i>			
1 ad in ClackCo Quarterly, Facebook, Twitter, Nextdoor, e-newsletters, website, 4 city/community newsletters promoting the Master Recycler course.	All county addresses, online users	Mail, online	1x/yr per outlet
1 Master Recycler course hosted in the county each year.	Master Recyclers	In-person	1x/yr
4 staff presentations given during the Master Recycler course.	Staff	In-person	1x/yr
Toxicity Reduction			
Explore a partnership with Sheriff's Office, WES, and Public Health to develop a joint webpage for disposal of unwanted medication and sharps.	Staff	n/a	n/a
3 green cleaner presentations.	Online users	Virtual event	4x/yr
1 or more Facebook or Twitter posts promoting the use of green cleaners and/or the proper disposal of toxics.	Online users	Online	1x/yr
Information on Metro South's Hazardous Waste Facility included on our Recycle Depot list and website.	Staff	n/a	n/a

Information on Drug Take Back boxes included on our Recycle Depot list and website.	Staff	n/a	n/a
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Regional Service Standard: Multifamily Residential

1. Describe how you will meet or exceed the multifamily recycling minimum service standard.

Our multifamily recycling program accepts all of the materials outlined in Attachment A: Reference Table 3, including mixed recycling and glass bottles and jars. In addition,

- Multifamily communities can add yard debris service for an additional fee.
- Some multifamily communities have the option to add food only service for an additional fee, some can include food scraps in their yard debris service, but most do not have either.
- We assist multifamily property managers in getting used motor oil picked up when found on-site.

We further meet or exceed the recycling minimum service standard as follows:

- Multifamily communities have no-less-than weekly.
- We conduct site evaluations of multifamily communities on a drop-in and pre-scheduled basis to confirm the presence of bins for all streams, as well as to provide technical assistance (annual goal: **100+** communities).
- We provide signage and decals for our staff and collection companies to use to clearly mark collection bins and enclosure areas, as needed.
- We work with property managers and collectors to start/re-start mixed recycling and/or glass service at communities we find are missing service.

2. Using the table below, demonstrate how you will meet the multifamily outreach and education minimum service standard. Include any outreach that exceeds the minimum standard.

Multifamily Outreach and Education

Content	Audience	Distribution Method	Frequency
Provide information regarding waste prevention, reusing, recycling, and composting.	All existing waste generators		At least four times per calendar year
ClackCo Newsletter – provide a variety of articles around waste reduction and recycling (see SF section for details)	All county addresses	Mail	2x/yr
Recycle Guide Postcard (with garbage and recycling company survey to offer all customers an opportunity to provide feedback about service)	All county addresses	Mail	1x/yr
Bill insert providing recycling information. [NOTE: though bill inserts don’t reach typical multifamily residents, this action is identified across all our program areas for consistency.]	Garbage & recycling customers	Mail or electronic	1x/yr
Recycle Guide and Depot List available online in the following languages:	Online users	Online	Throughout the year

English, Spanish, Russian*, Vietnamese*, Simplified Chinese*, Korean*, Thai* (* Recycle Guide available but not Depot List)			
Offer ads, articles and recycling guide used within ClackCo Newsletter to member cities to include within their own publications, if desired.	Cooperative member cities	Mail, Online	2x/yr
One community or media event to promote waste prevention, reuse, recycling, or composting.	All waste generators		Annually
1 virtual event, or a series of virtual events that cover the topics of waste prevention, reuse, recycling, and/or composting.	Virtual participants	Online	1x/yr
Provide waste reduction and recycling educational and promotional information designed for and directed toward the residents of multifamily dwellings. Reminding residents of the opportunity to recycle, including the types of materials accepted and the proper preparation of the items.	Multifamily residents		As frequently as necessary to be effective in reaching new residents and reminding existing residents.
Provide waste reduction and recycling resources: <ul style="list-style-type: none"> • MF-specific Recycle guides*/depot list • Recycle magnet • Reusable recycling bags (750 bags) • Brochures (HHW, sharps, film, e-cycles, etc.) • Virtual resources (videos, infographics, etc.) ...directly to residents and/or Green Teams or via property managers at move-in and at lease renewals at 150+ multifamily communities.	Multifamily residents	In-person, remotely, electronic (via property managers and owners)	Throughout the year
Update signage (decals, posters, signs) in recycling areas to identify proper bins and indicate accepted items at multifamily communities where requested or identified as needed (i.e. existing decals are damaged, faded or missing) during a site visit. Regional signage will be used once it is available.	Multifamily residents and staff	In-person	Throughout the year
<i>Those listed below will only happen if the public health situation allows.</i>			
Attend at least 25 Multifamily Community Events <ul style="list-style-type: none"> • Door-to-door outreach • Presentations (Reduce-Reuse-Recycle, ESWL, Green Cleaners, etc.) • Tabling at pool parties • Other community events 	Multifamily residents	In-person	Throughout the year

Provide waste reduction and recycling educational and promotional information designed for and directed toward multifamily property owners and managers.	Multifamily owners and managers		At least annually
Send Multifamily Property Manager Mailer – reminder about Opportunity to Recycle requirements and service standard, resources/services offered, and encourage to self-score their trash/recycling set-up per the County’s property-level grading rubric – to 600+ multifamily communities’ billing addresses and site address (if on-site office).	All multifamily property managers and owners on file	Mail	Annually
Quarterly multifamily property manager e-newsletter - deliver to 275+ email addresses – includes waste reduction and recycling reminders, hints, and tips (content can be copied and used in community newsletters to residents).	Multifamily property managers and owners	Electronic (MyEmma)	Quarterly
Outreach and Education that Exceeds the Minimum Service Standard	Audience	Distribution Method	Frequency
Provide technical assistance and/or resources to 50+ multifamily communities that have not received assistance in the past two years.	Multifamily property managers and owners	In-person	Throughout the year
Promote the County’s MF property-level grading system – encourage 30+ PMs to self-score their on-site garbage and recycling set-ups to identify opportunities for improvement. Continue to share lessons learned and integrate/update as regional standards warrant.	Multifamily property managers or owners	Mail, Online, In-person	Throughout the year
Offer Plastic Film Collection – when a property manager is interested, set up a collection bin for plastic film that staff/residents/Green Team can then take back to a store for recycling.	Multifamily property managers, owners, residents	In-person	Throughout the year
Track and ensure equitable assistance to low-income communities as identified by the state “Affordable Housing Inventory in Oregon” database.	Multifamily property managers, residents	In-person	Throughout the year
Multifamily workshop/forum - promote technical assistance, services, and resources for staff and residents at 2 local or multi-jurisdictional gathering, via Zoom; brainstorm MF solutions (bulky waste, waste reduction, education, etc.).	Multifamily property owners or managers; possibly management companies &	Virtually	2x/yr

	portfolio managers		
Share regional multifamily contacts flyer in all (4) quarterly multifamily property manager e-newsletter.	Multifamily property managers	E-newsletter	At least 1x/yr
Conduct design review for trash/recycling enclosures per our Zoning and Development Ordinance for new multifamily construction and multifamily tenant improvement projects.	Multifamily owners & property managers	Electronically	Throughout the year
Support an AmeriCorps member to collaborate with and provide resources/services to 25+ multifamily communities located in target census tracts (high-density low-income or non-English speaking).	Multifamily property managers, owners, residents	In-person or remotely	Throughout the year
<i>Those listed below will only happen if the public health situation allows.</i>			
Bulky Waste Pilot – Work with interested property managers and collection companies to test regular bulky waste collection at multifamily communities that will help inform future multifamily bulky waste collection.	Multifamily property managers, owners, residents	In-person or remotely	1x/yr
Promote reuse (book exchange, swap event [one-time or ongoing], garage sale, off-site donation vs disposal, etc.) at 50+ multifamily communities.	Multifamily property managers	E-newsletter; In-person	Throughout the year
Promote Repair Fairs – send emails to local multifamily communities about 3+ upcoming repair fairs in their neighborhood (info/flyers provided to share with residents).	Multifamily property managers	Email	Throughout the year
Support an AmeriCorps member to give presentations or participate in interactive events about Reduce-Reuse-Recycle, ESWL, Green Cleaners at 10+ multifamily communities.	Multifamily property managers, owners, residents	In-person or remotely	Throughout the year
Incentivize 4 Master Recyclers to adopt-their/a-multifamily-community with a \$250 stipend to be used to promote waste reduction and recycling (e.g. purchase bags, provide food at an event, create a Green Team, etc.).	Master Recyclers (multifamily residents or neighbors)	In-person or remotely	Throughout the year

*MF-specific recycle guide: The majority of multifamily residents receive multifamily recycle guides promoting reuse. At communities where yard debris is available, they receive a recycle guide with yard debris instructions instead of reuse. A couple receive customized guides that highlight on-site film collection.

Regional Service Standard: Businesses

1. Describe how you will meet or exceed the business recycling minimum service standard.

Each jurisdiction in Clackamas County offers commercial mixed recycling (including paper, cardboard and plastic bottles, jugs, and round containers (6 oz. or larger), and metal cans) and glass recycling as standard service.

- Using the table below, demonstrate how you will meet the business outreach and education minimum service standard. Include any outreach that exceeds the minimum standard.

Business Outreach and Education

Content	Audience	Frequency
Provide information regarding waste prevention, reusing, recycling, and composting.	All existing waste generators	At least four times per calendar year
ClackCo Newsletter (countywide newsletter reaching every mailing address and PO box. 2 issues are anticipated for 2020) <ul style="list-style-type: none"> • 1 ad or article addressing contamination priorities identified in the regional Contamination Reduction Education Plan (CREP) and <i>RecycleorNot</i> website • 2 Recycle Guide • 1 Depot List • 1 ad or article promoting reuse (e.g. Metro Paint, local reuse resources, repair at home, etc.) • 1 ad educating about Household Hazardous Waste (HHW) disposal 	All county addresses	2x/year
Post card providing recycling information.	All county addresses	1x/yr
Bill Insert providing recycling information.	Garbage & recycling customers	1x/yr
Recycle Guide and Depot List available online in the following languages: <ul style="list-style-type: none"> • English • Spanish • Russian* • Vietnamese* • Simplified Chinese* • Korean* • Thai* (* Recycle Guide available but not Depot List)	Online users	Throughout the year
Outreach and Education that Exceeds the Minimum Service Standard		
Offer ads, articles social media content, and recycling guides used within ClackCo Newsletter to member cities to include within their own publications, if desired.	Cooperative member cities	2x/yr

10+ Social media posts (Facebook, Instagram, Twitter, Nextdoor) about recycling contamination, proper recycling, waste reduction, deposit containers, green cleaners, ESWL, FWSWM, free support, etc.	Online users	Throughout the year
Update signage (decals, posters, signs) in recycling areas to indicate accepted items at 100+ businesses through in-person visits (safe-distance) and mailings. In-person visits will emphasize outdoor and non-contact work such as review of enclosures and containers for contaminants. Education to staff will happen virtually or over the phone.	Workplaces	By request
Workplace trainings and presentations – offered virtually online or through videoconference	Workplaces - Virtually	By request
E-newsletters: Deliver to 300+ email addresses	Workplaces	Quarterly
One community or media event to promote waste prevention, reuse, recycling, or composting.	All waste generators	Annually
See Single-Family residential section action for a virtual event	Online Users	1x/year
Host a (virtual) gathering for businesses to network and learn from each other, and learn more about waste reduction, prevention, reuse, recycling, and/or composting.	Workplaces	1x/year
Provide a packet of educational materials that contains information listing the materials collected for recycling, the schedule for collection, the proper method of preparing materials for collection, and an explanation of the reasons to recycle.	New customers	
Recycle Guide and Depot List will continue to be provided to all cooperative city members and collectors for distribution to new customers per our Code/Administrative Rules. Recycle Guide and Depot List also available online, and we encourage cities and collectors to link to our online resources on their own webpages. Recycle Guide and Depot List are available in the following languages: English, Spanish, Russian*, Vietnamese*, Simplified Chinese*, Korean*, Thai* (* Recycle Guide available but not Depot List)	New and existing garbage customers; Cooperative city members; Online users	Throughout the year
New and Existing Business Notification Letters and follow-up calls/visits: E/Mail 250+ letters to new and existing businesses that have not received assistance in the past two years.	Workplace owners/managers	Throughout the year
Recycle Guide, webpages, and/or bill Insert/post card provides information on the benefits of recycling.	New and existing garbage customers; Online users	Throughout the year

Business Recycling Requirement

1. Demonstrate compliance with the business recycling requirement by completing the table below.

Each jurisdiction in Clackamas County offers commercial mixed recycling (including paper, cardboard, plastic bottles, jugs, and round containers (6 oz. or larger), and metal cans) and glass recycling as standard service. Each jurisdiction also has a Business Recycling Requirement with the exception of the City of Estacada.

Required Action	Local Government Program
Establish a method for ensuring business compliance with the requirement.	We receive leads on new businesses from a variety of sources including, city business license data, new account information from franchised collectors, local chambers and observations in the field by technical assistance staff. Our New Business Protocol includes mailing/emailing a notification letter requesting verification of compliance in online survey, following up via a phone call, reviewing survey results, and following up with phone verification.
Exempt businesses from compliance.	The County or a city may exempt a business that provides access to county technical assistance staff and demonstrates, in the determination of the County or a city that they cannot comply. At present there are no such formal exemptions in place.
Send notice to businesses outlining the requirements and how to receive assistance.	Clackamas County sends a New Business Letter to any identified new business throughout the county with the exception of the City of Estacada. The letter describes the business recycling requirements, directs businesses to complete an online survey to identify their compliance, and offers resources and assistance for compliance. The letter is followed up with a call to go over compliance, and reminder email with the same information in the initial letter.
Enforcement method.	With the exception of Estacada, which has not adopted a Business Recycling Requirement, each jurisdiction in Clackamas County is responsible for enforcement. If multiple technical assistance attempts fail after a business is notified, then Clackamas County technical assistance staff would prepare and submit information about the compliance situation with the county or city code enforcement staff, and city staff representing solid waste and recycling issues. For unincorporated Clackamas County, the county code Title 10, 10.03.145 Business Recycling Requirement allows for enforcement actions. At present there are no enforcement cases.

Report to Metro	We will include the number of businesses notified and compliance actions taken in our Annual Report as described in AP510-Section 4.
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Business Technical Assistance and Outreach

Business Recycling Requirement

Provide a narrative that demonstrates the following:

1. Local jurisdiction has hired staff or contractors whose primary responsibilities and duties are to provide technical assistance and Business Recycling Requirement compliance services to businesses.
2. A strategy for targeting and recruiting businesses for assistance.

Business technical assistance and Business Recycling Requirement compliance, referred to here as the Recycle at Work program, is implemented through Clackamas County’s Sustainability & Solid Waste Program, housed in the Department of Transportation & Development. The program, supported in part through regional RAW funding, provides technical assistance to businesses on waste prevention, reuse, recycling, toxics reduction and resource conservation. We have integrated commercial food waste technical assistance over the last three years as most cities and the urban unincorporated areas included service for commercial food scraps collection. For many businesses, food waste is not a separate issue, it is part of their holistic efforts to reduce waste and adopt more sustainable practices.

In FY 20-21 business recycling technical assistance and BRR compliance will be staffed by three staff, at approximately 2.5 FTE, all of whose primary duties and responsibility are commercial technical assistance and BRR compliance. These staff will continue providing technical assistance (either onsite or over the phone, video conference or email) in the adoption of waste reduction and sustainability practices and Business Recycling Requirement compliance services to businesses. In addition, Metro resources help fund an additional staff person who is focused on development of food waste reduction in the commercial sector, including food donation, compost enrollment and food waste reduction. This staff person also coordinates commercial enclosure design review. As local food scraps collection ordinances go into effect the entire commercial technical assistance team will participate in notifying and enrolling businesses subject to a requirement.

Our strategy to target and recruit businesses for technical assistance is multi-faceted: We track assistance by city to ensure a fair share of our effort is directed to each community. We generate leads through new businesses licenses reported by cities, new customer lists from franchised collectors, building permit applications in unincorporated areas, cold calls, visits to local chamber meetings, outreach to community partners, and advertisements in print publications such as the county’s newsletter, Green Living Journal, and city newsletters, when available. We also advertise and recruit for participation in our green business certification program, Leaders in Sustainability (LiS). We feature certain businesses that are models for others on social media, in written publications and occasionally in videos.

Clackamas County’s Sustainability Analysts will continue to support regional outreach campaigns that entail the commercial sector and utilize the tools and resources developed by the regional Commercial Work Group (CWG). Staff will attend specialist roundtables and participate in any training activities developed.

We use our database and the County’s performance measurement program called Performance Clackamas to track consultations, BRR compliance, and the adoption of new practices in several areas (waste reduction, energy or water conservation, or food waste).

Compliance with Business Recycling Requirements (BRR) ultimately rests with the local jurisdiction in which a business’s address falls. Clackamas County Sustainability & Solid Waste supports business compliance in unincorporated Clackamas and participating incorporated cities by providing technical assistance and notification to businesses we encounter that do not meet the requirement. Such businesses, and new businesses in the community, receive a letter outlining their requirements under BRR. Businesses that are not recycling according to a local government’s requirement and do not accept assistance may be referred to the city or county’s code compliance program. For unincorporated Clackamas County, the county code Title 10, 10.03.145 Business Recycling Requirement allows for enforcement actions as a Priority 1 Violation.

Complete the following table listing specific efforts planned for completion during this fiscal year.

Business Assistance Annual Outreach Plan	
Target audience, goals, and outreach strategy	Planned Efforts
Government Facilities (required)	<p>Internal:</p> <ul style="list-style-type: none"> 0. Ensure internal Business Recycling Requirement compliance, updating signage at waste stations and recycling centers, as needed and buildings reopen to staff. <ul style="list-style-type: none"> ○ Provide recycling refresher trainings at staff meetings upon request (possibly via Zoom). 1. Develop a phased, multi-year strategy to certify all County departments in Leaders in Sustainability (LiS). <ul style="list-style-type: none"> ○ Draft county-wide policies that address LiS requirements. 2. Continue educating County employees about recycling, toxics reduction and waste prevention through the Wellness, Safety and Sustainability Fair (if this event happens or takes a different format) and other all-county communications. <p>External:</p> <ul style="list-style-type: none"> • Collaborate with City partners to share recycling and waste prevention resources internally and externally. <ul style="list-style-type: none"> ○ Work with city partners to refresh BRR efforts. ○ Work with city partners on updating webpages with recycling information and the free support available.

	<ul style="list-style-type: none"> ○ Share recycling and waste reduction social media posts with city partners. ● City partners exemplify leadership in recycling and waste prevention business operations. ● Work with 2 public agencies, beyond a city partner, to reduce waste.
New Businesses (required)	
	<p>3. Lead generation and partnership building – maintain a strong network of leads that help us find out about new businesses.</p> <ul style="list-style-type: none"> ● Continue working with our partners (Collectors, Cities, Health Department, Internal Permits Department, and Chambers of Commerce) to identify new businesses. Mail letters and provide direct outreach to these businesses identified. <ul style="list-style-type: none"> ○ Connect with 250 businesses on BRR compliance. ● Collaborate and develop information to include in our partner’s new business packets and have them link to our requirements webpage or remain stocked on informational flyers. ● Identify and strengthen partnerships with organizations (examples including Energy Trust of Oregon, water providers, CCC Small Business Program) to help identify new leads. <p>4. Existing business education efforts –</p> <ul style="list-style-type: none"> ○ Provide assistance (mostly through email and phone consultations) to 700 businesses. ○ Maintain or reestablish relationships with PMs to educate staff and keep recycling streams clean. Provide them with free technical assistance and resources. <ul style="list-style-type: none"> ○ Connect 2 x/yr with property management companies and request e-trainings for their staff. ○ Target 50 businesses we haven’t connected with in over 2 years about BRR and our free assistance through mailings, and phone or email follow-ups. ○ Include recycling information in a bill insert to all commercial garbage customers. <p>5. Marketing efforts –</p> <ul style="list-style-type: none"> ○ Maintain updated content on website. ○ Utilize social media, paid and earned media advertising, mailings, partner’s events, cold calling

	<p>and e-newsletter content to drive traffic to our website and to inform business on waste reduction and recycling practices, and informing them about our technical assistance and free support.</p> <ul style="list-style-type: none"> i. Aim for 25% open rate o Expand case statements and testimonials, highlighting best practices in waste reduction and recycling to share with businesses.
<p>Target Businesses that have cultural and language barriers to implementation (optional)</p>	
	<ul style="list-style-type: none"> • Develop relationships with organizations already working with the underserved community. Develop relationships with underserved businesses (including Hispanic, Asian, and Black-owned businesses) by attending virtual community organization meetings and seeking out consultations with underserved businesses through new partnership with MESO. We are also exploring having office hours at the MESO office, and sharing our services in their online training series. <ul style="list-style-type: none"> o Frequency of attendance at Hispanic community organizations events/meetings o # consultations and contacts with Hispanic and Black owned-businesses. • Increase and standardize bilingual services, marketing and resources for our program. <ul style="list-style-type: none"> o Hispanic community members provide feedback on translation o E-newsletters are translated into Spanish. o Maintain updated content on website. o Utilize social media, mailings, partner’s events, cold calling and e-newsletter content to engage with businesses of color. • Make LiS certification processes more accessible to the Spanish community.
<p>Target Business Sectors, Institutions or Materials including effort to promote food waste reduction and voluntary food scraps collection prior to implementation of the Business Food Waste Requirement in March 2021 (optional)</p>	
	<ul style="list-style-type: none"> • Increase awareness of best practices to prevent the wasting of food among the businesses most likely to adopt those behaviors by featuring case statements

	<p>and testimonials on website, print collateral, and in e-newsletters.</p> <ul style="list-style-type: none"> • Provide technical assistance, through contactless drop-off, phone consultations, and online trainings, and increase business adoption of food waste reduction practices. <ul style="list-style-type: none"> ○ Collaborate with cities to promote voluntary food scraps collection efforts ○ Respond to request for voluntary participation. • Participate in regional effort to educate about single-use and “compostable” packaging. • Promote Wilsonville’s add-on commercial services for batteries and fluorescent lamp recycling, and Styrofoam® drop-off at WRI.
Commercial contamination reduction activities (optional)	
	<ul style="list-style-type: none"> • Feature common error items and promote Recycle or Not game in e-newsletters 2x/year. • Mailing to a targeted list of businesses informing them of common contaminants. • Update staff presentations to align with regional contamination messaging. • Recycle Guide and relevant handouts/webpages will be updated to reflect the regional CREP, including promotion of <i>Recycle or Not</i> message as appropriate.
Other commercial waste prevention, or waste reduction activities (optional)	
	<ul style="list-style-type: none"> • Use Leaders in Sustainability certification to engage businesses at a deeper level and encourage adoption of more waste reduction practices. This will be done mostly through phone and email consultations, and video conferences. <ul style="list-style-type: none"> ○ 20 businesses certify • Update the Leaders in Sustainability certification elements to align with new Regional Waste Plan goals. <ul style="list-style-type: none"> ○ Incorporate section on equity and diversity ○ Identify barriers and make certification processes more accessible to the Spanish-speaking community.

Business Food Waste Requirement

1. Local jurisdiction has hired staff or contractors whose primary responsibilities and duties are to provide technical assistance and Business Food Waste Requirement compliance services to businesses.

See Narrative section above.

2. Implement approved and updated Business Food Waste Requirement Implementation Plan beginning March 31, 2021.

II. Cooperative Regional Priority Initiatives and Programs

Contamination Reduction Education Plan

Describe how your jurisdiction will implement the following outreach and education initiatives in the community and to businesses:

- Incorporate Recycle or Not messages and content into existing English and Spanish language recycling education programs and activities, including online resources and customer feedback communication conducted by local haulers, to ensure consistency with regional contamination reduction messages.
- Promote the featured contaminants.
- Link to and promote the Recycle or Not English and Spanish language websites and Instagram accounts.

Recycle or Not messages will be incorporated into our English and Spanish Recycle Guides, which are available through virtual events throughout the year, to new businesses, online, and provided to local haulers for distribution to new and existing customers. Recycle or Not messages will also be promoted on our webpages, through social media, in e-newsletters, incorporated into staff trainings at businesses (either virtually or in-person as COVID allows), and the printed county-wide newsletter.

We have and will continue to promote featured contaminants in printed and social media content, and use our social media channels and website to link community members into Recycle or Not content.

Multifamily Program Improvements

Describe how your jurisdiction will actively participate in and commit to the following:

- Development and implementation of a plan to deploy regional signage (posters, stickers, decals) for multifamily waste and recycling receptacles and enclosures. (Local government staff will not be the only deployment mechanism.)

We support and commit to participate in regional, collaborative conversations about plan development and implementation around the deployment of regional signage, including the shared tracking of decal deployment. Regional signage will be used once it is available.

- Development of implementation plans to ensure minimum volume and service level requirements at all multifamily properties are met. Local governments will have two years; July 2021-July 2023 to ensure all properties meet minimums.

We support and commit to participate in regional, collaborative conversations about the development of implementation plans to ensure service level requirements at multifamily communities are met. We expect local governments to lead this process and commit to supporting involvement of the cities within Clackamas County towards volume and service level requirements. We affirm the use of data and input from community members, property managers and collectors in developing implementation plans.

- Planning related to Regional Waste Plan actions 10.5 and 10.6 to determine goals, outcomes and lead agency(s) for bulky waste collection and enclosure design improvement projects.

We support and commit to participate in regional, collaborative conversations about the advancement of RWP actions 10.5 and 10.6 in regards to bulky waste collection and enclosure design, respectively, for multifamily communities. We believe a regional conversation can outline regional goals to help local jurisdictions identify and implement local plans, though it is important to acknowledge the differences in the two projects. Bulky waste collection is a collection issue with oversight by the local jurisdictions’ solid waste and recycling programs; enclosure design includes additional players (e.g. Land Use, Planning, Zoning, etc.), which requires additional coordination at the local level. We expect local governments to lead a process that addresses collection, towards the goals outlined in the RWP, and we commit to supporting involvement of the cities within Clackamas County towards these goals. We affirm the use of data and input from community members, property managers and collectors in developing implementation plans

Bulky Waste Collection: As outlined in our plan (public health situation pending), we will work with interested property managers and collection companies to test regular bulky waste collection at multifamily communities that will help inform future multifamily bulky waste collection.

Enclosure Design: As stated in our plan, we will continue to conduct enclosure design review for multifamily communities (new construction and tenant improvements).

Table B2 D
School Outreach and Assistance 2020-2021

Clackamas County devotes 0.65 FTE to school outreach, education, and assistance.

Topic and outreach strategy	Goal(s)
<p><i>General recycling and composting education and technical assistance</i></p> <ul style="list-style-type: none"> • Refine contact list to reflect new or closed schools and personnel changes • Provide general recycling, composting, and waste reduction information to all schools, which includes a Recycle Guide and composting information <ul style="list-style-type: none"> ○ Recycle guide (yes/no) ○ Composting information where applicable • Curate and refer schools to high quality online resources • Provide additional/special recycling information <ul style="list-style-type: none"> ○ Promote modified Trex School Challenge opportunity 	<p>All schools will receive information quarterly during the school year in September, December, March, and late May</p> <p>All schools will have the information and infrastructure they need to properly and safely collect recyclable and compostable materials</p> <p>Provide technical assistance to a minimum of 75 schools</p> <p>Provide an equitable amount of service to Title 1 and Rural schools</p>

<ul style="list-style-type: none"> ○ Work with individual schools, as requested, to modify other recycling programs in light of Covid-19 guidelines ● Provide free recycling and composting containers and signage ● Stagger outreach to prioritize Title 1 and rural schools ● Provide learning opportunities for green team leaders via Zoom 	
<p><i>Oregon Green Schools participation</i></p> <p>Strategy:</p> <ul style="list-style-type: none"> ● Support school sustainability and waste reduction through Oregon Green School certification ● Encourage schools to maintain OGS certification during a year of periodic distance-learning by fine-tuning recycling and waste reduction practices to reflect the Covid-19 era ● Support school participation in virtual summits (assuming in-person summits will not take place) ● Support additional strands of OGS certification like Transportation and Schoolyard Habitats & Gardens ● Continue to develop programming for high school engagement 	<p>Maintain 25% certification</p> <p>Host distance summits</p>
<p><i>Food waste prevention</i></p> <p>Provide food donation guidance to schools through the Green Lunchrooms Guide and Oregon Green Schools’ Green Lunchrooms Certification</p> <p>Offer food waste reduction workbook and presentation to schools</p>	<p>Work with a minimum of one district to implement food donation from the cafeteria to a pantry or onsite program (ideal)</p> <p>Provide workbooks and education on food waste prevention to a minimum of 3 schools</p>
<p><i>Small grant program</i></p> <p>Offer and promote small grants to schools to meet waste reduction and/or recycling goals</p> <p>Work with district Nutrition Service staff to identify schools with interest in milk dispensers</p>	<p>Distribute \$10,000 in grants to support waste reduction projects and Oregon Green Schools goals</p> <p>Assist up to five additional schools in the purchase of milk dispensers (\$15,000 budget)</p>
<p><i>Youth engagement</i></p> <p>Continue to engage youth regarding Clackamas County’s Climate Action Plan</p> <p>Advertise the Youth Voices Video Project to gather more youth perspectives on climate change</p>	<p>Engage a minimum of five high schools on issues around climate change</p> <p>Help to recruit youth members to serve on the Advisory Committee</p>

<p><i>Classroom (formal) Education</i></p> <p>Adapt classroom presentations to be delivered from a distance Develop take-home projects for school kids around sustainability to offer to schools that are engaging in distance learning</p>	<p>Provide presentations to a minimum of 20 schools</p>
<p><i>Teacher professional development</i></p> <p>Offer professional development on the topic of climate change to teachers. Open to collaboration with Metro and other local groups</p>	<p>Host or provide a minimum of one professional development opportunity for middle and high school teachers</p>

Regional Waste Plan

2019-20 End-of-Year Report for Annual Program Tasks

Report submitted: August 31, 2020

Jurisdiction: [Clackamas County](#)

Contact: [Eben Polk](#)

Instructions

Using the tasks in your jurisdiction's approved plan submitted for the 2019-20 fiscal year, populate the tables below. Alternately, reporting columns may be added to approved plans and submitted in lieu of this reporting template as long as all reporting requirements in this form are addressed.

*Annual reports documenting efforts completed and financial accountability by local governments must be submitted to Metro no later than **September 1, 2020**.*

I. Required Elements

Regional Service Standard: Single Family Residential

*Instructions: Have there been any changes to the following in your jurisdiction during FY 2019-20? If yes, note changes in the table below. **If no changes, table may be left blank.***

One change is underway in Wilsonville which is offering residential food waste collected in Yard Debris (see highlighted and bold). Otherwise, no changes from the prior year.

Jurisdiction	Recycling Collection Frequency		Recycling Container Size		Glass Collection Frequency		Yard Debris Collection Frequency		Yard Debris Container Size		Alternative Program Approved	Resid FW
	Urban	Rural	Urban	Rural	Urban	Rural	Urban	Rural	Urban	Rural		
Uninc. Clackamas	W	W	60/90	14/60/90	W	W	W	N	60	N	N/A	
Barlow	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Canby	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Estacada	W	N/A	60	N/A	W	N/A	N	N/A	N/A	N/A	N/A	
Gladstone	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Happy Valley	W	N/A	60/90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Johnson City	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Lake Oswego	W	N/A	60	N/A	W	N/A	W	N/A	60	N/A	N/A	Yes 2016
Milwaukie	W	N/A	60	N/A	W	N/A	W	N/A	60	N/A	N/A	Yes 2017
Molalla	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Oregon City	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Rivergrove	W	N/A	60	N/A	W	N/A	W	N/A	60	N/A	N/A	
Sandy	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
West Linn	W	N/A	90	N/A	W	N/A	W	N/A	60	N/A	N/A	
Wilsonville	W	N/A	60	N/A	W	N/A	W	N/A	60	N/A	N/A	Yes 2020

W=weekly; 14/60/90=capacity in gallons; N/A = not applicable; N = not available

Single Family Outreach and Education

Using the table below, demonstrate how you met the single family outreach and education minimum service standard. Include any outreach that exceeds the minimum standard.

PLAN TASKS		REPORTING
Content	Audience/ Distribution Method/ Frequency	Comments
Provide information regarding waste prevention, reuse, recycling, and composting.	All waste generators At least 4x/yr	
<p>ClackCo Quarterly (countywide newsletter reaching every mailing address and PO box quarterly)</p> <ul style="list-style-type: none"> • 1 article about the recycling system and/or relevant recycling news • 1 ad/article addressing contamination priorities identified in the regional Contamination Reduction Education Plan (CREP) and <i>RecycleorNot</i> website • 1 article promoting reuse • 2 Recycle Guides • 1 Depot List • 1 ad for Bottle Drop • 1 ad on Paint Care • 1 ad on Oregon E-Cycles • 1 ad promoting Eat Smart Waste Less (ESWL) • 1 ad promoting the Master Recycler course • 1 ad educating about Household Hazardous Waste (HHW) disposal • 1 ad/article about multifamily recycling • 1 article with Business examples of waste prevention, reuse, recycling and toxics reduction • 1 ad/article with Business food waste reduction information 	<p>All county addresses</p> <p>Mail</p> <p>3x/yr</p>	<p>ClackCo Nov 2019</p> <ul style="list-style-type: none"> - 1 depot list - 1 recycle guide - 1 article about recycling system - 1 ESWL ad - 1 CREP ad on plastic bags - 1 Inclement weather reminder - 1 article on eliminating school cafeteria waste - 1 article about waste reduction at Leaders in Sustainability businesses <p>ClackCo Feb 2020</p> <ul style="list-style-type: none"> - 1 article and 1 ad on opened Library of Things - 1 article on local businesses taking steps to reduce food waste - 1 Oregon E-Cycles ad - 1 article on the bag ban - 1 ad and 1 article promoting the Master Recycler course - 1 article about Oregon Green Schools <p>ClackCo May 2020 (4 planned paged cut to 1.5 due to COVID-19)</p> <ul style="list-style-type: none"> - 1 Earth Day article with link to online list of Earth Day activities to practice safely at home during COVID-19 - 1 article on COVID-19 and garbage/recycling service - 1 ad on HHW disposal

		<ul style="list-style-type: none"> - 1 article about Repair Fair volunteers <p>The following items were pulled at the last minute from the May 2020 ClackCo due to COVID-19:</p> <ul style="list-style-type: none"> - 1 ad promoting our event recycling program - 2 articles on our AmeriCorps members - A Recycle or Not matching game, article, and promotion of the Instagram account - Second depot list - Second recycle guide with updated Recycle or Not language
Offer ads, articles and recycling guide used within ClackCo Quarterly to member cities to include within their own publications, if desired.	<p>Cooperative member cities</p> <p>Mail, online</p> <p>3x/yr</p>	<p>Boones Ferry Messenger Dec 2019 Gladstone City Newsletter Feb 2020</p> <p>Reached out to Sandy, Happy Valley, and Milwaukie with no response</p> <p>Planned Spring outreach held off due to COVID-19.</p>
Bill Insert or post card providing recycling information.	<p>Garbage & recycling customers</p> <p>Mail and/or electronic bill insert</p> <p>1x/yr</p>	<p>Postcard to all addresses within the county (residential, multifamily, and business), May 2020</p>
<p>Recycle Guide and Depot List available to all cooperative member cities and collectors for new customers as stated in our Code/Administrative Rules. Recycle Guide and Depot List also available online, and we encourage cities and collectors to link to our online resources on their own webpages. Available to both audiences in the following languages:</p> <ul style="list-style-type: none"> • English • Spanish • Russian* • Vietnamese* 	<p>New and existing garbage customers; Cooperative member cities; Online users</p> <p>Mail, Online, In-person</p> <p>Throughout the year</p>	<p>Recycle Guide and Depot List available to all online.</p> <p>2,000 Recycle guides printed and given to haulers</p> <p>Audited city and collector webpages for provided information on garbage and recycling. Continued work on project delayed due to COVID-19.</p>

<ul style="list-style-type: none"> • Simplified Chinese* • Korean* • Thai* <p>(*Recycle Guide available but not Depot List in this language)</p>		
One community or media event to promote waste prevention, reuse, recycling, or composting.	All waste generators Annually	
<p>Clackamas County Fair - topics include</p> <ul style="list-style-type: none"> • Recycle right • Reuse/repair/textiles • Eat Smart, Waste Less • Green cleaners • Water conservation 	<p>Fairgoers</p> <p>In-person</p> <p>1x/yr</p>	Clackamas County Fair 2019. Interacted with 1,981 people on topics of recycling, green cleaners, preventing wasted food, repair fairs, and water conservation.
Provide a packet of educational materials that contains information listing the materials collected for recycling, the schedule for collection, the proper method of preparing materials for collection, and an explanation of the reasons to recycle.	New customers	
<p>Recycle Guide and Depot List will continue to be provided to all cooperative city members and collectors for distribution to new customers per our Code/Administrative Rules. Recycle Guide and Depot List also available online, and we encourage cities and collectors to link to our online resources on their own webpages. Recycle Guide and Depot List are available in the following languages:</p> <ul style="list-style-type: none"> • English • Spanish • Russian* • Vietnamese* • Simplified Chinese* • Korean* • Thai* <p>(* Recycle Guide available but not Depot List)</p>	<p>New and existing garbage customers; Cooperative city members; Online users</p> <p>Mail, Online, In-person</p> <p>Throughout the year</p>	<p>Audited city and collector webpages for provided information on garbage and recycling. Continued work on project delayed due to COVID-19.</p> <p>Audited collectors new customer information packets and other information mailed to customers. Continued work on project delayed due to COVID-19.</p>
Recycle Guide, webpages, and/or Bill Insert provides information on the benefits of recycling.	New and existing garbage customers; Online users	Statewide goals for materials management and the 2050 Vision for

	Mail, Online, In-person Throughout the year	Materials Management in Oregon provided on our website .
Outreach and Education that Exceeds the Minimum Service Standard		
Content	Audience/ Distribution Method/ Frequency	Comments
Recycling		
Recycle Guide and all relevant handouts/webpages will be updated to reflect the regional CREP, including promotion of <i>Recycle or Not</i> message.	Staff n/a n/a	Recycle guide updated to reflect Recycle or Not language Webpage update delayed due to COVID-19 and working with Web Team to develop a more visual presentation of the information that satisfies both ours and their desires and requirements.
Review outreach materials provided by member cities and collectors for accuracy.	Staff n/a 1x/yr	Audited city and collector webpages for provided information on garbage and recycling. Continued work on project delayed due to COVID-19. Audited collectors new customer information packets and other information mailed to customers. Continued work on project delayed due to COVID-19.
4 or more city/community newsletters provide recycling information to include in their own publications.	Community members Mail and/or electronic 1x/yr per newsletter	Boones Ferry Messenger Dec 2019 Gladstone City Newsletter Feb 2020 Reached out to Sandy, Happy Valley, and Milwaukie with no response. Planned Spring outreach cancelled due to COVID-19.
4 or more Facebook, Twitter, or Nextdoor posts about recycling contamination and/or proper recycling.	Online users Online 4x/yr	10 Facebook Posts (1 , 2 , 3 , 4 , 5 , 6 , 7 , 8 , 9 , 10). 14,347 impressions. 947 Engagements. 19 Tweets
1,000 up-to-date Recycle Guides with Depot lists distributed.	Community members Events, collection companies, online, etc. Throughout year	3,661 Recycle Guides with Depot lists distributed.

Recycle Guide available in 7 languages online (English, Spanish, Russian, Vietnamese, Simplified Chinese, Korean, Thai)	Community members Events, collection companies, online, etc. Available year-round	Recycle guides available in all languages online .
1,000 or more households receive recycling cart tags (Oops or Nice Job).	Households in study area Cart tag 1 study	We did not do this project due to a countywide hiring freeze and COVID-19.
Plan developed to implement residential cart tagging throughout the county on a schedule.	Staff n/a n/a	We did not do this project due to a countywide hiring freeze and COVID-19.
1 or more Facebook, Twitter, or Nextdoor posts about the redemption of deposit containers.	Online users Online 1x/yr	1 Facebook post
1 or more Facebook, Twitter, or Nextdoor posts to promote each featured contaminant outlined by CREP during the targeted timeline (plastic bags/wrap July – Dec ‘19; frozen food boxes Jan – Jun ‘20)	Online users Online 1x+/yr for each item	While not specifically Recycle or Not, we had 2 Facebook posts about plastic bags/wrap (1 , 2) 4 Take-out container Facebook posts (1 , 2 , 3 , 4), 2 tweets
Backyard Composting		
1 or more links to composting resources on our website.	Online users Online Available year-round	4 links to composting resources.
Research possibility of selling discounted Metro compost bins at a more convenient location for Clackamas County residents.	Staff n/a n/a	Reached out to Metro about possibility of selling at Metro South or another location – status unclear.
Reuse and Waste Prevention		
10 community events will include the Reduce Wasted Food kit with ESWL materials.	Event goers In-person Throughout year	25 community events included the Reduce Wasted Food kit with ESWL materials.
1 or more Facebook or Twitter posts about wasting less food.	Online users Online	1 Facebook post

	1x/yr	
3 or more ESWL presentations.	Event goers In-person Throughout year	2 ESWL presentation; planned additional presentations cut short due to COVID-19.
100 ESWL pledges to reduce wasted food at home.	Event goers In-person Throughout year	261 ESWL pledges.
3 Farmers Markets offer information on wasting less food.	Event goers In-person Summer	The Oregon City, Milwaukie, and West Linn 2019 Farmers Markets all offered information on wasting less food through Master Recyclers tabling on the topic.
2 links to food preservation and rescue resources will be provided on our website and/or provided in relevant flyers as part of the Reduce Wasted Food kit.	`	1 link to food preservation resources for residential audiences. The ESWL wasted food prevention toolkit includes links to ESWL, as well as resources to the OSU Extension Service.
1 or more Facebook, Twitter, or Nextdoor posts about opportunities and resources to reduce waste and encourage reuse.	Online users Online 1x/yr	2 Facebook posts, (1 , 2) 1 video promoting the Library of Things 5 tweets 5 Nextdoor posts – Repair Fairs
3 or more Repair Fairs.	Event goers In-person 3x/yr	5 Repair Fairs (Estacada, Oregon City, Canby, West Linn, Lake Oswego). 5 scheduled Repair Fairs cancelled due to COVID-19.
5 or more Library of Things open.	Library patrons In-person Throughout year	9 Library of Things opened September 2019: Milwaukie, Wilsonville, Lake Oswego, West Linn, Oregon City, Sandy, Estacada, Hoodland, Canby.
Develop materials based on DEQ’s Make Every Thread Count program on the environmental impacts of textiles for use at tabling events	Staff n/a n/a	No capacity to work on project.
Master Recycler Support		
1 ad in ClackCo Quarterly, Facebook, Twitter, Nextdoor, e-newsletters, website, 4 city/community	All county addresses, online users	Master Recycler course promoted in: - ClackCo Feb 2020 - Online webpage

newsletters promoting the Master Recycler course.	Mail, online 1x/yr per outlet	<ul style="list-style-type: none"> - 1 county-wide Nextdoor post - 8 Tweets - 2 Facebook posts (1, 2) - Ad in the Health And Wellness paper, Canby Herald, Clackamas Review, Lake Oswego Review, West Linn Tidings, The Mountain Times, the Boones Ferry Messenger, and the Gladstone City Newsletter
1 Master Recycler course hosted in the county each year.	Master Recyclers In-person 1x/yr	Cancelled due to COVID-19.
4 staff presentations given during the Master Recycler course.	Staff In-person 1x/yr	Cancelled due to COVID-19.
10 or more volunteer opportunities arranged/offered to Master Recyclers for fulfilment of their payback hours.	Master Recyclers In-person 10x/yr	50 volunteer opportunities for Master Recyclers. Additional opportunities cancelled due to COVID-19.
3 or more tabling topics available for Master Recyclers to check-out.	Master Recyclers In-person 1x/yr	4 tabling topics were provided to Master Recyclers: <ul style="list-style-type: none"> - Recycling (checked out 26 times) - Green cleaners (checked out 18 times) - Wasted food (checked out 19 times) - Textiles (checked out 6 times)
3 or more presentations topics available to Master Recyclers.	Master Recyclers In-person 1x/yr	3 presentation topics available to Master Recyclers <ul style="list-style-type: none"> - Recycling - Green cleaners - Wasted food
1 refresher event for Master Recyclers to ask questions and get up-to-date information in preparation for the summer event season.	Master Recyclers In-person 1x/yr	Planned event cancelled due to COVID-19. In substitution, we hosted a virtual viewing of The Story of Plastic in May, followed by a panel of local experts for our Master Recyclers.
1 volunteer appreciation event.	Master Recyclers In-person 1x/yr	16 Master Recyclers joined us on February 8 th 2020 for an appreciation bowling event.

Explore other ways to show our appreciation to active Master Recyclers (rewards/recognition program, etc).	Staff n/a n/a	Began exploring the idea of Master Recycler happy hours over Zoom.
Toxicity Reduction		
4 or more tabling events promoting the use of green cleaners, HHW, sharps, and unwanted medication.	Event goers In-person 4x/yr	18 events had Green Cleaners messaging.
Explore a partnership with Sheriff's Office, WES, and Public Health to develop a joint flyer and/or webpage for disposal of unwanted medication and sharps.	Staff n/a n/a	Planned to explore this project in the Spring. Was delayed to do COVID-19.
4 green cleaner presentations.	Event goers In-person 4x/yr	1 green cleaner presentation. 4 planned Spring events cancelled due to COVID-19.
300 Green cleaner booklets distributed.	Event goers In-person Throughout year	464 green cleaner booklets distributed.
1 or more Facebook or Twitter posts promoting the use of green cleaners and/or the proper disposal of toxics.	Online users Online 1x/yr	1 Facebook post
Information on Metro South's Hazardous Waste Facility included on our Recycle Depot list and website.	Staff n/a n/a	Can see Recycle Depot list here . Can see website here .
150 Healthy and Safe Metro coupon booklets distributed.	Event goers In-person, mail Throughout year	283 coupon booklets distributed.
Information on Drug Take Back boxes included on our Recycle Depot list and website.	Staff n/a n/a	Can see Recycle Depot list here . Can see website here .

50 Clackamas River Water Providers “How to Properly Dispose of Unwanted Medication” brochures distributed at community events.	Event goers In-person Throughout year	66 “How to Properly Dispose of Unwanted Medication” brochures distributed.
50 Metro “Safe Disposal of Medical Syringes” distributed at community events.	Event goers In-person Throughout year	54 Metro “Safe Disposal of Medical Syringes” brochures distributed.

Regional Service Standard: Multifamily Residential

Instructions: Describe how you met or exceeded the multifamily recycling minimum service standard.

Our multifamily recycling program accepted, and continues to accept, all of the materials outlined in Metro Code Chapter 5.10.230(b), including mixed recycling and glass bottles and jars. In addition,

- Multifamily communities can add yard debris service for an additional fee; and
- We assisted multifamily property managers in getting used motor oil picked up when found on-site.

We further met or exceeded the recycling minimum service standard as follows:

- Multifamily communities had no-less-than weekly collection (with the occasional exception for some compactors and the occasional glass carts that are less than half full).
- We conducted site evaluations of multifamily communities on a drop-in and pre-scheduled basis to confirm the presence of bins for all streams, as well as to provide technical assistance (annual goal: **100+** communities; **164** communities received waste reduction and/or recycling info/resources/assistance).
- We provided signage and/or decals to clearly mark collection bins and enclosure areas to **65** multifamily communities.
- We collaborated with collectors and property managers to start mixed recycling and/or glass service at **12** communities that were missing service (most typically lacking a glass cart); we then helped educate residents.
- Some multifamily communities started (or continued) food scrap collection (some on commercial routes, others on residential yard debris routes where food is permitted).

Multifamily Outreach and Education

Instructions: Using the table below, demonstrate how you met the multifamily outreach and education minimum service standard. Include any outreach that exceeds the minimum standard.

PLAN TASKS		REPORTING
Content	Audience Distribution Method	Comments

	Frequency	
Provide information regarding waste prevention, reuse, recycling, and composting*.	All waste generators At least 4x/yr	
<p>ClackCo Quarterly</p> <ul style="list-style-type: none"> • 1 article about the recycling system and/or relevant recycling news • 1 ad/article addressing CREP identified focus items and <i>RecycleorNot</i> • 1 article promoting reuse • 2 Recycle Guides • 1 Depot List • 1 ad for Bottle Drop • 1 ad on Paint Care • 1 ad on Oregon E-Cycles • 1 ad promoting ESWL • 1 ad promoting the Master Recycler course • 1 ad educating about HHW disposal • 1 ad/article about multifamily recycling • 1 article with Business examples of waste prevention, reuse, recycling and toxics reduction <p>1 ad/article with Business food waste reduction information</p>	<p>All county addresses</p> <p>Mail</p> <p>3x/yr</p>	<p>ClackCo Nov 2019</p> <ul style="list-style-type: none"> • 1 depot list • 1 recycle guide • 1 article about recycling system • 1 ESWL ad • 1 CREP ad on plastic bags • 1 Inclement weather reminder • 1 article on eliminating school cafeteria waste • 1 article about waste reduction at Leaders in Sustainability businesses <p>ClackCo Feb 2020</p> <ul style="list-style-type: none"> • 1 article and 1 ad on opened Library of Things • 1 article on local businesses taking steps to reduce food waste • 1 Oregon E-Cycles ad • 1 article on the bag ban • 1 ad and 1 article promoting the Master Recycler course • 1 article about Oregon Green Schools <p>ClackCo May 2020 (4 planned paged cut to 1.5 due to COVID)</p> <ul style="list-style-type: none"> • 1 Earth Day article with link to online list of Earth Day activities to practice safely at home during COVID • 1 article on COVID and garbage/recycling service • 1 ad on HHW disposal • 1 article about Repair Fair volunteers <p>The following items were pulled at the last minute from the May 2020 ClackCo due to COVID:</p> <ul style="list-style-type: none"> • 1 ad promoting our event recycling program • 2 articles on our AmeriCorps members • A Recycle or Not matching game, article, and promotion of the Instagram account

		<ul style="list-style-type: none"> • Second depot list • Second recycle guide with updated Recycle or Not language
<p>Clackamas County Fair - topics include</p> <ul style="list-style-type: none"> • Recycle right • Reuse/repair • Eat Smart, Waste Less • Green cleaners • Water conservation 	<p>Fairgoers</p> <p>In-person</p> <p>1x/yr</p>	<p>Clackamas County Fair 2019: Interacted with 1,981 people on topics of recycling, green cleaners, preventing wasted food, repair fairs, and water conservation.</p>
<p>Recycle Guide and Depot List available online in the following languages:</p> <ul style="list-style-type: none"> • English • Spanish • Russian* • Vietnamese* • Simplified Chinese* • Korean* • Thai* <p>(* Recycle Guide available but not Depot List)</p>	<p>Online users</p> <p>Online</p> <p>Throughout the year</p>	<p>Recycle Guide and Depot List available to all online at https://www.clackamas.us/recycling/recycleguide.html</p>
<p>Multifamily-targeted Recycle Guide</p> <p><i>NOTE: When recycle guides are provided specifically for multifamily audiences we use a version that promotes reuse in the space allotted to yard debris guidance in the guide for single-family residents. Yard debris / composting service is extremely uncommon in multifamily communities in Clackamas County and not a part of the minimum service standard. Multifamily communities with on-site yard debris bins for residents' use receive a Recycle Guide with yard debris instructions.</i></p>	<p>Residents at multifamily communities</p> <p>In-person</p> <p>As needed</p>	<p>4,010 recycle guides given to multifamily communities</p>
<p>One community or media event to promote waste prevention, reuse, recycling, or composting.</p>	<p>All waste generators</p> <p>Annually</p>	
<p>ClackCo Quarterly</p> <ul style="list-style-type: none"> • 1 article about the recycling system and/or relevant recycling news • 1 ad/article addressing CREP identified focus items and <i>Recycle or Not</i> • 1 article promoting reuse • 2 Recycle Guides 	<p>All county addresses</p> <p>Mail</p> <p>3x/yr</p>	<p>ClackCo Nov 2019</p> <ul style="list-style-type: none"> • 1 depot list • 1 recycle guide • 1 article about recycling system • 1 ESWL ad • 1 CREP ad on plastic bags • 1 Inclement weather reminder

<ul style="list-style-type: none"> • 1 Depot List • 1 ad for Bottle Drop • 1 ad on Paint Care • 1 ad on Oregon E-Cycles • 1 ad promoting ESWL • 1 ad promoting the Master Recycler course • 1 ad educating about HHW disposal • 1 ad/article about multifamily recycling • 1 article with Business examples of waste prevention, reuse, recycling and toxics reduction <p>1 ad/article with Business food waste reduction information</p>		<ul style="list-style-type: none"> • 1 article on eliminating school cafeteria waste • 1 article about waste reduction at Leaders in Sustainability businesses <p>ClackCo Feb 2020</p> <ul style="list-style-type: none"> • 1 article and 1 ad on opened Library of Things • 1 article on local businesses taking steps to reduce food waste • 1 Oregon E-Cycles ad • 1 article on the bag ban • 1 ad and 1 article promoting the Master Recycler course • 1 article about Oregon Green Schools <p>ClackCo May 2020 (4 planned paged cut to 1.5 due to COVID)</p> <ul style="list-style-type: none"> • 1 Earth Day article with link to online list of Earth Day activities to practice safely at home during COVID • 1 article on COVID and garbage/recycling service • 1 ad on HHW disposal • 1 article about Repair Fair volunteers <p>The following items were pulled at the last minute from the May 2020 ClackCo due to COVID:</p> <ul style="list-style-type: none"> • 1 ad promoting our event recycling program • 2 articles on our AmeriCorps members • A Recycle or Not matching game, article, and promotion of the Instagram account • Second depot list • Second recycle guide with updated Recycle or Not language
<p>Clackamas County Fair - topics include</p> <ul style="list-style-type: none"> • Recycle right • Reuse/repair/textiles • Eat Smart, Waste Less • Green cleaners <p>Water conservation</p>	<p>Fairgoers</p> <p>In-person</p> <p>1x/yr</p>	<p>Clackamas County Fair 2019: Interacted with 1,981 people on topics of recycling, green cleaners, preventing wasted food, repair fairs, and water conservation.</p>
<p>Provide waste reduction and recycling educational and promotional information designed for and directed toward the residents of multifamily dwellings. Reminding residents of the opportunity</p>	<p>Multifamily residents</p>	

to recycle, including the types of materials accepted and the proper preparation of the items.	As frequently as necessary to be effective in reaching new residents and reminding existing residents	
<p>Give waste reduction and recycling resources:</p> <ul style="list-style-type: none"> • Recycle guides/depot list • Recycle magnet • Reusable recycling bags (750 bags) • Brochures (HHW, sharps, film, paint, etc.) <p>...directly to residents during community events or via property managers at move-in and at lease renewals at 150+ multifamily communities.</p>	<p>Multifamily residents</p> <p>In-person</p> <p>As requested, as needed</p>	<p>The following resources were provided at 164 multifamily communities:</p> <ul style="list-style-type: none"> • 4,010 recycle guides • 1,236 magnets • 2,144 bags • 1,555+ waste reduction or recycling brochures
<p>Attend at least 30 Multifamily Community Events</p> <ul style="list-style-type: none"> • Door-to-door (D2D) outreach • Presentations (Reduce-Reuse-Recycle, ESWL, Green Cleaners, etc.) • Tabling at pool parties <p>Other community events</p>	<p>Multifamily residents</p> <p>In-person</p> <p>Throughout the year</p>	<p>We participated in the following events* at 20 multifamily communities:</p> <ul style="list-style-type: none"> • 5 D2Ds • Presentations <ul style="list-style-type: none"> • 10 recycling • 2 ESWL • 1 green cleaner • Tabling <ul style="list-style-type: none"> • 4 recycling • 1 ESWL • 2 Door hangers • 1 Movie screening <p>*COVID-19 cancelled Spring outreach events.</p>
Update signage and stickers in recycling areas to indicate accepted items and proper bins at 50+ multifamily communities.	<p>Multifamily residents and staff</p> <p>In-person</p> <p>Throughout the year</p>	We updated signs and/or stickers at 65 multifamily communities.
Provide waste reduction and recycling educational and promotional information designed for and directed toward multifamily property owners and managers.	Multifamily owners and managers	

	At least annually	
Multifamily Property Manager Mailer – reminder about Opportunity to Recycle requirements and service standard, resources/services offered, etc. sent to 500+ multifamily communities’ billing addresses and site address (if on-site office).	All multifamily property managers and owners on file Mail Annually	Our multifamily property manager/owner mailer was sent to 616 multifamily communities.
Quarterly multifamily property manager e-newsletter - deliver to 250+ email addresses – includes waste reduction and recycling reminders, hints, and tips (content can be copied and used in community newsletters to residents).	Multifamily property managers and owners Electronic (MyEmma) Quarterly	Quarterly multifamily property manager e-newsletter was delivered to 276 email addresses (opened by 159 at 149 communities). Links: <ul style="list-style-type: none"> • Summer/Fall 2020 • Special COVID-19 Community Resources Edition • Spring/Summer 2020 • Winter/Spring 2020 • Fall/Winter 2019
Provide technical assistance and/or resources to 50+ multifamily communities that have not received assistance in the past two years.	Multifamily property managers and owners In-person Throughout the year	We worked with 110 multifamily communities that had not received assistance in the past two years.
Outreach and Education that Exceeds the Minimum Service Standard		
Pilot MF grading system – provide feedback in letter grade form to property managers/owners of 20+ multifamily communities about the effectiveness of their recycling system based on a number of factors from enclosure location, cleanliness, signage, education, etc.	Multifamily property managers or owners Mail; In-person Pilot (1x/yr)	We provided scores to 55 multifamily communities, and included the rubric to 616 multifamily communities via the annual mailer.
Plastic Film Collection – when a property manager is interested, set up a collection bin for plastic film that	Multifamily property managers,	We provided collection bins for plastic film and wrap to 5 multifamily communities. We also

<p>staff/residents/Green Team can then take back to a store for recycling. <i>NOTE: outreach and education around plastic film take-back opportunities may be shaped by the potential statewide plastic bag ban and retailer reactions to a ban</i></p>	<p>owners, residents</p> <p>In-person</p> <p>Throughout the year</p>	<p>provided 450 film flyers to 17 multifamily communities.</p>
<p>Track and ensure equitable assistance to low-income communities as identified by the state “Affordable Housing Inventory in Oregon” database.</p>	<p>Multifamily property managers, residents</p> <p>In-person</p> <p>Throughout the year</p>	<p>In the last two years, we have worked with 80% (47/59) of low-income communities. Comparatively, we have worked with 40% (246/618) of total multifamily communities (excluding those with single family accounts) in the same time period.</p>
<p>Multifamily workshop/forum - promote technical assistance, services, and resources for staff and residents at 1+ local or multi-jurisdictional gathering, like green business gatherings; brainstorm MF solutions (bulky waste, waste reduction, education, etc.).</p>	<p>Multifamily property management companies, portfolio managers, and property managers</p> <p>In-person</p> <p>1x/yr</p>	<p>Due to COVID-19, our April 23rd event was modified to a Zoom call. 4 property managers RSVP’d, but only 2 participated (representing 5 communities).</p>
<p>Promote reuse (book exchange, swap event [one-time or ongoing], garage sale, off-site donation vs disposal, etc.) at 50+ multifamily communities.</p>	<p>Multifamily property managers</p> <p>E-newsletter; In-person</p> <p>Throughout the year</p>	<p>Due to COVID-19, swap events and donation could not be encouraged during the usual Spring outreach. Despite this, reuse was encouraged at 32 multifamily communities.</p>
<p>Promote Repair Fairs – send emails to local multifamily communities about 3+ upcoming repair fairs in their neighborhood (info/flyers provided to share with residents).</p>	<p>Multifamily property managers</p> <p>Email</p> <p>Throughout the year</p>	<p>Promotional flyers for 5 repair fairs were emailed to 95 property managers at multifamily communities within the vicinity of the events.</p>

<p>Share regional multifamily contacts flyer in 1+ quarterly multifamily property manager e-newsletter.</p>	<p>Multifamily property managers</p> <p>E-newsletter</p> <p>At least 1x/yr</p>	<p>The regional multifamily contacts flyer was shared in all 4 quarterly multifamily property manager e-newsletters.</p>
<p>Recruit and train an AmeriCorps member to collaborate with, and deliver resources/services (including 10+ presentations or interactive events about Reduce-Reuse-Recycle, ESWL, Green Cleaners) to 25+ multifamily communities located in target census tracts (high-density low-income or non-English speaking).</p>	<p>Multifamily property managers, owners, residents</p> <p>In-person</p> <p>Throughout the year</p>	<p>Our AmeriCorps Member conducted site visits at 64 multifamily communities, provided resources to 14, and participated in events at 4. Due to COVID-19, scheduled multifamily events were cancelled and Spring outreach was eliminated.</p>

Regional Service Standard: Businesses

Instructions: Describe how you met or exceeded the business recycling minimum service standard.

Each jurisdiction in Clackamas County offers at-least-weekly collection of commercial mixed recycling (including paper, cardboard and plastic bottles, jugs, and round containers (6 oz. or larger), and metal cans) and glass recycling as standard for cart and container service.

Business Outreach and Education

Instructions: Using the table below, demonstrate how you met business outreach and education minimum service standard. Include any outreach that exceeds the minimum standard.

PLAN TASKS				REPORTING
Content	Audience	Distribution Method	Frequency	Comments
Provide information regarding waste prevention, reuse, recycling, composting	All existing waste generators		At least 4x/yr	
ClackCo Quarterly <ul style="list-style-type: none"> • 1 article about the recycling system and/or relevant recycling news • 1 ad/article addressing CREP identified focus items and <i>Recycle or Not</i> • 1 article promoting reuse • 2 Recycle Guides • 1 Depot List • 1 ad for Bottle Drop • 1 ad on Paint Care • 1 ad on Oregon E-Cycles • 1 ad promoting ESWL • 1 ad promoting the Master Recycler course • 1 ad educating about HHW disposal • 1 ad/article about multifamily recycling 	All county addresses	Mail	3x/year	ClackCo Nov 2019 <ul style="list-style-type: none"> - 1 depot list - 1 recycle guide - 1 article about recycling system - 1 ESWL ad - 1 CREP ad on plastic bags - 1 Inclement weather reminder - 1 article on eliminating school cafeteria waste - 1 article about waste reduction at business certified as Leaders in Sustainability ClackCo Feb 2020 <ul style="list-style-type: none"> - 1 article and 1 ad on opened Library of Things - 1 article on local businesses taking steps to reduce food waste - 1 Oregon E-Cycles ad - 1 article on the bag ban - 1 ad and 1 article promoting the Master Recycler course

<ul style="list-style-type: none"> • 1 article with Business examples of waste prevention, reuse, recycling and toxics reduction • 1 ad/article with Business food waste reduction information 				<ul style="list-style-type: none"> - 1 article about Oregon Green Schools <p>ClackCo May 2020 (4 planned paged cut to 1.5 due to COVID-19)</p> <ul style="list-style-type: none"> - 1 Earth Day article with link to online list of Earth Day activities to practice safely at home during COVID-19 - 1 article on COVID-19 and garbage/recycling service - 1 ad on HHW disposal - 1 article about Repair Fair volunteers <p>The following items were pulled at the last minute from the May 2020 ClackCo due to COVID-19:</p> <ul style="list-style-type: none"> - 1 ad promoting our event recycling program - 2 articles on our AmeriCorps members - A Recycle or Not matching game, article, and promotion of the Instagram account - Second depot list - Second recycle guide with updated Recycle or Not language
<p>Bill Insert or post card providing recycling information.</p>	<p>Garbage customers</p>	<p>Mail and/or electronic bill insert</p>	<p>1x/yr</p>	<p>Postcard to all addresses within the county (residential, multifamily, and business), May 2020</p>
<p>Recycle Guide and Depot List provided to all collectors for distribution to new customers as stated in our Code/Administrative Rules. Recycle Guide and Depot List also available online. Recycle Guide and Depot List available in the following languages:</p> <ul style="list-style-type: none"> • English • Spanish • Russian* • Vietnamese* 	<p>New and existing garbage customers</p>	<p>Mail and/or electronic bill insert</p>	<p>1x/yr</p>	<p>Recycle Guide and Depot List available to all online.</p> <p>2,000 Recycle guides printed and given to haulers</p> <p>Audited city and collector webpages for provided information on garbage and recycling. Continued work on project delayed due to COVID-19.</p>

<ul style="list-style-type: none"> • Simplified Chinese* • Korean* • Thai* <p>(* Recycle Guide available, but not Depot List)</p>				
<p>10+ Social media posts (Facebook, Instagram, Twitter, Nextdoor) about recycling, waste reduction, deposit containers, green cleaners, ESWL, FWSWM, etc.</p>	Online users	Online	Throughout the year	<p>1 Facebook post about deposit containers, 2 Facebook posts about plastic bags/wrap (1, 2), 4 Facebook posts about recycling contamination from take-out containers (1, 2, 3, 4), 2 Tweets about recycling contamination from take-out containers. 1 Facebook post about wasting less food, 2 Facebook, 5 Tweets, and 5 Nextdoor posts about opportunities and resources to reduce waste and encourage reuse (1, 2) or Repair Fairs 1 video promoting the Library of Things. 1 Facebook posts promoting the use of green cleaners and/or proper disposal of toxics. 5 Facebook posts, 5 Tweets promoting Leaders in Sustainability and the achievements they accomplished to received certification (1,2,3,4,5), 1 Facebook post on donations to food assistance programs</p>
<p>5+ Print media ads (chamber ads, local newspaper ads, community newsletters, etc.) about waste prevention, recycling, and program resources/services.</p>	Community members	Print	Throughout the year	<p>3 Green Living Journal ads Boones Ferry Messenger Dec 2019 Gladstone City Newsletter Feb 2020 Planned Spring outreach held off due to COVID-19.</p>
<p>Quarterly e-newsletters featuring topics such as recycling right, learning from peers, news articles, and employee engagement - deliver to 300+ email addresses</p>	Workplaces	Email	Quarterly	<p>Sept 2019 (General business audience – 340 received, 41% open rate)</p> <ul style="list-style-type: none"> - Promotion of waste reduction practices achieved by 9 recent Leaders in Sustainability

				<ul style="list-style-type: none"> - Employee engagement through participating in The People’s EcoChallenge - Energy conservations training opportunities - Electric Vehicle Fair in LO - David Alloway America has a recycling problem video <p>October 2019 (Food Establishments – 500 received, 33% open rate)</p> <ul style="list-style-type: none"> - Promotion of free assistance and resources - Food waste reduction success story at grocery business - Upcoming food waste requirements - ETO workshop for restaurants - Attributes study findings on disposable packaging <p>Dec 2019 (General business audience – 360 received, 36% open rate)</p> <ul style="list-style-type: none"> - Promotion of waste reduction/sustainability practices achieved by 6 recent Leaders in Sustainability - Holiday recycling contamination - RoN website and game - Information on bag ban and straws by request policy - OASE Internship opportunity <p>Feb 2020 (General business audience – 360 received, 41% open rate)</p> <ul style="list-style-type: none"> - Promotion of waste reduction/sustainability practices achieved by 4 recent Leaders in Sustainability
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				<ul style="list-style-type: none"> - Promotion of our business-to-business learning from peers coffee time. <p>March 2020 (Food Establishments and General Business Audience– 1,375 received, 42% open rate)</p> <ul style="list-style-type: none"> - COVID updates on garbage and recycling service - Donation of surplus food / promotion of food assistance programs - Update on policy delay - COVID-19 business resources - Sustainable actions while working from home <p>May 2020 (General business audience – 1,000 received, 46% open rate)</p> <ul style="list-style-type: none"> - Who’s Open? Map - Guidance on reopening - Sustainability in a time of COVID - Take-out containers are trash / RoN website and game promotion <p>June 2020 (General business audience – 1,350 received, 35% open rate)</p> <ul style="list-style-type: none"> - Small Business Relief Grants - Reopening resources - Garbage and Recycling Guidance - Free Support - Styrofoam recycling art Metro South - To-go containers are trash / RoN - Employee engagement Plastic Free EcoChallenge - Serve Safe Reopening guidelines
Workplace trainings and presentations on waste reduction, recycling right,	Workplaces	In-person	By request	16 presentations, to business staff on topics covering reduce, reuse, recycle.

sustainable practice adoption				
Mailer to existing businesses, and in-person follow-up reminding businesses about BRR, resources/services offered, and benefits of waste reduction. Reach 200+ businesses that have not received assistance in past two years.	Workplace owners/managers	In-person	Throughout the year	365 businesses received a cold call visit or reminder letters that hadn't received a visit in the past two years, 68 of these were letters sent.
One community or media event to promote waste prevention, reuse, recycling, or composting.	All waste generators		Annually	
Clackamas County Fair, topics include: <ul style="list-style-type: none"> • Recycle right • Reuse/repair • Eat Smart, Waste Less • Green cleaners Waste prevention	Fairgoers	In-person	1x/yr	Clackamas County Fair 2019. Interacted with 1,981 people on topics of recycling, green cleaners, preventing wasted food, repair fairs, and water conservation.
Business to business events, topics to include: Waste reduction/prevention, recycling, certification, mentorship (Examples include Regional Green Business Gathering, Coffee talk style)	Event goers	Event	2x/yr	In March 2020 we hosted 17 organizations (representing over 1,500 employees such as Bob Red Mill, Providence Hospital, Cornell Pump, Stanley Infrastructure and others) in a workshop to discuss and share examples of single-use reduction. The feedback from all attendees was very positive and everyone left feeling empowered to do something at their organization. Due to COVID-19 our other event was postponed.
Provide a packet of educational materials that contains information listing the materials collected for recycling, the schedule for collection, the proper method of preparing	New customers			

materials for collection, and an explanation of the reasons to recycle.				
Recycle Guide and Depot List provided to all collectors for distribution to new customers as stated in our Code/Administrative Rules. Recycle Guide and Depot List also available online . Recycle Guide and Depot List available in the following languages: <ul style="list-style-type: none"> • English • Spanish • Russian* • Vietnamese* • Simplified Chinese* • Korean* • Thai* (* Recycle Guide available, but not Depot List)	New and existing garbage customers	Mail and/or electronic bill insert	1x/yr	Audited city and collector webpages for provided information on garbage and recycling. Continued work on project delayed due to COVID-19. Audited collectors new customer information packets and other information mailed to customers. Continued work on project delayed due to COVID-19.
Recycle Guide, webpages, and/or Bill Insert provides information on the benefits of recycling.	New and existing garbage customers; Online users	Mail, online, in-person	Throughout the year	Statewide goals for materials management and the 2050 Vision for Materials Management in Oregon provided on our website .
Notification Letter to New Businesses containing information related to BRR (materials collected for recycling, free support and supplies and online form to request services/materials, and an explanation of the reasons to recycle).	New Businesses	Mail, in-person, and email follow-up	Quarterly	We sent 186 Notification Letters to businesses, 120 of these we had never engaged with, and the other 46 had engagement longer than 2 years ago.
Update signage and stickers in recycling areas to indicate accepted items and proper bins at 50+ business properties.	Users of enclosure	In-person	Throughout the year	We provided 107 new recycling and 52 garbage decals on outside containers in enclosure areas.
New Recycle Guide distributed.	Workplaces	In person, online download or email	Ongoing throughout the year	We distributed 100 hard copies of the Recycle Guides, Many more were emailed or downloaded from our order form to be emailed to

				staff, but we didn't track this number.
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Business Recycling Requirement

Instructions: Demonstrate compliance with the business recycling requirement by completing the table below.

Required Action	Local Government Program
Establish a method for ensuring business compliance with the requirement.	We receive leads on new businesses from a variety of sources including, city business license data, new account information from franchised collectors, local chambers and observations in the field by technical assistance staff. Our New Business Protocol includes mailing/emailing a notification letter requesting verification of compliance in an online survey (Eng/Spanish), following up via a phone call, reviewing survey results, and following up with phone verification.
Exempt businesses from compliance.	The County or a city may exempt a business that provides access to county technical assistance staff and demonstrates, in the determination of the County or a city that they cannot comply. At present there are no such formal exemptions in place.
Send notice to businesses outlining the requirements and how to receive assistance.	Clackamas County sends a New Business Letter to any identified new business throughout the county with the exception of the City of Estacada. The letter describes the business recycling requirements, directs businesses to complete an online survey to identify their compliance, and offers resources and assistance for compliance. The letter is followed up with a call to go over compliance, and reminder email with the same information in the initial letter. This notification is supplemented through inspections and cold calls in the field.
Enforcement method.	With the exception of Estacada, which has not adopted a Business Recycling Requirement, each jurisdiction in Clackamas County is responsible for enforcement. If multiple technical assistance attempts fail after a business is notified, then Clackamas County technical assistance staff prepare and submit information about the compliance situation with the county or city code enforcement staff, and city staff representing solid waste and recycling issues. For unincorporated Clackamas County, the county code Title 10, 10.03.145 Business

	Recycling Requirement allows for enforcement actions. At present there are no enforcement cases.
Report to Metro.	We include the number of businesses notified and compliance actions taken in our Annual Report as described in AP510-Section 4.

Revised Business Food Waste Requirement

*Due to COVID-19, the implementation of the Business Food Waste Requirement was postponed by one year and a revised implementation plan is due to Metro in **February 2021**.*

Instructions: Please provide a brief summary of the work performed in your jurisdiction during FY 2019-20 in preparation for program implementation according to the original timeline.

In collaboration with our city partners, we achieved the following during 2019-2020 to prepare for the business food waste requirement:

Ordinance development and passage: Jurisdictions that had not already done so adopted the food scraps collection requirement for businesses during the first part of the 19-20 FY.

Implementation planning: We developed an implementation plan approved by city partners and with input from our franchised garbage and recycling collection companies.

Staffing: In anticipation of the upcoming work we hired Carlina Arango as a sustainability analyst to join our business outreach team with a focus on commercial food scraps collection. Carlina is a fluent Spanish speaker and writer.

Outreach and education materials: Working with regional peers and within our own team we continued translating and revising materials including leave-behinds and notification letters.

Data tracking: We participated in and supported the ongoing development and testing of data collection for our Salesforce database and reporting elements for Metro.

II. Business Technical Assistance and Outreach

Business Recycling Requirement

Administrative Information—Expenditures and Staffing

Instructions: Provide overall Recycle at Work expenditures to date and Metro Recycle at Work funds spent for the current program year (July 1 through June 30). List staff working on Recycle at Work, FTE, and source of funding for staff (Metro or local government).

Recycle at Work (RAW) Expenditures (Including Commercial Organics Funds and Expenses)

Labor: FY 19-20 Salaries & Benefits Costs Apportioned to RAW, Based on Actual Staffing	\$237,284
Overhead Costs Associated with RAW Labor	\$85,422
Mileage / Fleet (est.)	\$4,500
Program Expenses - Resources & Materials (resources, publications, marketing, decals, commercial food carts)	\$21,620
Total	\$350,826

RAW Funding

Metro Regional Recycle at Work Funds	\$147,289
County Funds	\$203,537
Total Funding deployed for RAW	\$350,826

Recycle at Work Labor Details

Program Staff	Title	RAW FTE	Months	Labor Cost (FTE x Fraction of Year x Annual Salary & Benefits)	Funding Source
Eben Polk	Supervisor	0.05	12	\$18,380	County
Kelly Stewart	Sr. Sustainability Analyst	0.4	12	\$60,341	County / RAW
Carlina Arango**	Sustainability Analyst	0.25	6	\$15,850	County
Alex Mihm	Sustainability Analyst	0.75	12	\$79,083	Recycle At Work
Nancy Nordman*	Sustainability Analyst	0.48	12	\$30,587	Recycle at Work
Emily Murkland**	Sustainability Analyst	0.15	12	\$18,525	County / RAW
Jaylen Schmitt*	Sustainability Analyst	0.48	5.5	\$14,519	Recycle at Work

Total Adjusted	\$237,284
FTE: 2.175 (FTE x Fraction of Year, Summed)	

*=temporary status—some accrued sick and vacation time is awarded but value not included here
**=COVID response. With the mandate and distance to transfer payments postponed, staff time for Carlina and Emily was directed to business technical assistance through our Emergency Operations Center, and to supporting food donation efforts connecting businesses, emergency food providers, community based organizations, and County emergency food programming

NOTE: this table does not include expenditures for our schools program, though some technical assistance for schools is similar to workplace (RaW) technical assistance. Schools work is valued around \$150,000 including labor, overhead, and program expenses.

Technical Assistance Report

Instructions: Attach an Excel spreadsheet that includes the following information related to businesses assisted during the current program year (July 1 through June 30):

- *Name and address of business.*
- *Type of assistance (resources delivered, onsite assistance, or phone/email).*
- *Dates of assistance.*

Compliance Actions Taken

Instructions: Provide the number of businesses that received code enforcement actions for non-compliance with the Business Recycling Requirements during the current program year (July 1 through June 30).

There were no compliance actions taken within Clackamas County in FY 19-20.

Narrative

Instructions: Provide a narrative on the successes and challenges of the business assistance program.

As is typical, this year staff sought out and encountered businesses that were not aware of or set up with recycling or meeting BRR requirements. We continue to share these details with new/ongoing businesses, verify compliance, and address gaps where noticed to bring them into compliance. For some larger corporations additional measures seem necessary, especially with the state of the markets and need for clean materials—this might include warning letters, elevated compliance conversations with regional managers, or in future, enforcement actions.

Our approach spending some of our time in the field visiting businesses proactively yields results. With thousands of businesses subject to BRR and constant change and turnover in systems, it is not surprising that ongoing outreach makes a difference in minimizing contamination and supporting recovery. We occasionally encounter businesses where recycling service is incomplete—these may be new businesses where services are lost in the shuffle, a new manager has ignored the service, proper containers have been misplaced, repurposed or lost, or simply needed education. For example, we encountered some businesses who were only recycling cardboard, such as Clackamas Town Center, Wilco, Builders First, and an industrial areas off International Way. We found others that lacked a glass container or cart and didn't know this was an option or containers that were poorly labeled causing confusion for staff using

the bins. We noticed an increase in requests for information and staff trainings to clarify which materials are accepted in recycling, and confusion around which materials are allowed.

Leaders in Sustainability Recognition

The Leaders in Sustainability program continues to provide us with an opportunity to work in depth with an organization, build relationships, and help advance adoption of sustainable practices. We continue to search for ways to attract more businesses into the program and enhance our mentorship program for businesses to learn from each other. The program focuses on topics such as policy and employee engagement, materials management, water and energy conservation, transportation and community engagement. Businesses have used the process to create and build a green team, provide a structure to embed sustainable practices into the way they do business and culture, expand their sustainability effort beyond Clackamas County to other offices across the region/country, market their work in a competitive marketplace, and brought more collaboration to large organizations.

Near the end of FY 2019-2020 we initiated an update to our Leaders in Sustainability certification. Among several updates and improvements was the addition of several practices for businesses to promote diversity, equity and inclusion.

There are current **42** certified businesses representing over 4,100 employees in the county. A similar number of businesses are working on the certification checklist. We continue to hear from businesses they appreciate the value of the certification, local recognition, opportunities to learn from other businesses, a set of practices to guide their efforts, and support from advisors. The checklist helps them identify what they have already accomplished, identify low hanging opportunities and create a plan for continuous improvement.

Annual Outreach Plan

Instructions: Complete the following table listing all tasks from your jurisdictions’ approved FY 2019-20 plan, notes regarding implementation/completion of the task including changes from the original plan. Include quantitative data when possible.

Recycle at Work Annual Outreach Plan		Reporting
Target audience, goals, and outreach strategy	Planned Efforts	Completed Efforts/Notes
Government Facilities (required)	Continue advocating for additional waste prevention activities in internal operations.	
	<ul style="list-style-type: none"> o Update new-hire orientation training materials, including to develop and deliver a 10-minute presentation that includes guidance and best practice information. o Ensure internal Business Recycling Requirement compliance, updating signage 	<ul style="list-style-type: none"> o HR has relevant information that they include and distribute in new hire packets. The intranet has updated content as well. o The buildings observed during this fiscal year were BRR compliant. We also provided updated signage in areas that were needed and presented on

	<p>at waste stations and recycling centers, as needed.</p> <ul style="list-style-type: none"> ○ Actively promote recycling refresher trainings at staff meetings. ○ Continue working with Facilities staff to maximize waste-reduction and recovery opportunities in county operations, including reviewing and discussing recycling access options for new construction and renovations. ○ Continue educating County employees about recycling, toxics reduction and waste prevention through the Wellness, Safety and Sustainability Fair and other all county communications. <ul style="list-style-type: none"> ○ Reach 300 county employees at our Wellness Fair table ○ Continue developing stronger relationships with cities within 	<p>recycling and sustainability at these locations:</p> <ul style="list-style-type: none"> ○ Transportation & Maintenance (6 presentations to 130+ total DSB employees) Presentation to 20 managers and team leaders covering recycling basics, and best practices our department accomplished in getting certified, along with green practices staff are required to follow. ○ Water Environment Services (50 people) ○ Our team continues to support Facilities staff (Sheryl Hall) dedicated to recovery of materials and waste reduction opportunities. We help Sheryl deploy and update recycling signage in facilities and collection containers for items such as batteries. Sheryl also recommends alternatives to building occupants. Facilities continues to replace paper towel dispensers with newer models that generate less paper towel waste. In this capital budget Facilities proposed (but funding was deferred) installation of a series of water bottle filling stations in a handful of buildings. ○ The Wellness, Safety, and Sustainability fair was canceled due to COVID-19, however, in April 2020 we honored 50 years of Earth Day by sharing over <u>50 actions</u> in our weekly updates to all staff that individuals can take to make a difference. Every week, from April on, sustainable actions were featured for staff to try out. Finally, our County Administrator asked for employee feedback on streamlining operations and improve efficiencies and one suggestion they received included going paperless. Already one department has seen over \$500,000 savings from going paperless. ○ Through the Food Scraps Requirement process we strengthened our connections with Clackamas County Recycling Partnership cities within the
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	<p>the county and other government agencies.</p> <ul style="list-style-type: none"> ○ Work with cities to keep their education materials (on the web and print) and new hire onboarding materials current. ○ Encourage more government agencies and departments to participate in Leaders in Sustainability (LiS) with a goal to get one city, department or other government facility (such as H3S Clackamas Fire, or NCPRD) to become LiS certified. 	<p>Metro district. We met monthly and shared information, renewing communication channels on upcoming projects such as the food waste requirement, rates, RWP vision, MF projects, and more.</p> <ul style="list-style-type: none"> ○ Milwaukie and Wilsonville updated recycling and waste reduction information on their websites. We will continue working with the others to maintain updated info. ○ Clackamas Counties Department of Transportation and Development certified at the Gold level in august 2019. Other departments are interested in certification and we look to get basic requirements embedded into county policy as a starting point for the entire county to be certified.
<p>New Businesses (required)</p>	<p>Provide assistance to over 700 new and existing businesses and workplaces.</p>	
	<ul style="list-style-type: none"> ○ Lead generation and partnership building – maintain a stronger network of leads that help us find out about new businesses. <ul style="list-style-type: none"> ○ Continue working with our partners (Collectors, Cities, Health Department, Internal Permits Department, and Chambers of Commerce) to identify new businesses. Mail letters and provide direct outreach to these businesses identified. ○ Collaborate and develop information to include in 	<p>We provided 1,518 consultations to 1,073 unique businesses during 2019-20. See Technical Assistance Report. We provided 657 recycling posters</p> <ul style="list-style-type: none"> ○ We received notice of 188 new businesses through our partners. A better system has been established with several of our cities, collectors, and internal Design Review/Certificate of Occupancy process on being informed of new businesses. All of these businesses received a letter from us - 120 received our New Business Notification letter and the other 68 received a reminder letter about Business Recycling Requirements and our services and support. Overall, we verified BRR compliance at 475 businesses – new and existing. ○ We sent information about BRR and our assistance to 10 Clackamas County

	<p>our partner’s new business packets and ensure they remain stocked on informational flyers.</p> <ul style="list-style-type: none"> ○ Identify and strengthen partnerships with organizations (examples including Energy Trust of Oregon, water providers, CCC Small Business Program) to help identify new leads. 	<p>Area Chambers in May 2020 reminding them of our support to businesses. Additionally, we are in the process of auditing city and collector webpages for information on garbage and recycling, however this project was delayed due to COVID. One city and one collector updated their webpage/ agreed to link to our updated requirements webpage.</p> <ul style="list-style-type: none"> ○ We continue to stay connected and meet frequently with Environmental Health, Economic Development, WES, Clackamas River Water Providers, ETO, PGE, and other Energy Service contractors. We realize this collaboration is important because we are often working with the same businesses and can leverage our messages across each other. For example, a few years ago an ETO contractor reached out to us to see if we could get “in” with a large energy user because they were unsuccessful. We were able to connect with the facilities manager of this business, build a relationship, and refer them to the energy program. This business recently certified as a Leader in Sustainability at the Gold level in May 2020. <p>Additionally, our teams involvement in COVID-19 Emergency Operation Center response has helped strengthen our connections to programs that support businesses. We are collaborating more with Economic Development coordinators at and across the county, working out arrangements with MESO to provide information on our support at their Business Series and Open Houses for underrepresented businesses, and have more information sharing with CCC and Clackamas WorkSource Partnership, which has helped us share resources with businesses.</p>
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	<ul style="list-style-type: none"> ○ Existing business education efforts – <ul style="list-style-type: none"> ○ Work with the cities to include information in the business license renewal processes or other avenue annually. ○ Maintain or reestablish relationships with large generators/ PMs to educate staff and keep recycling streams clean. Provide them with free technical assistance and resources. ○ Target a percentage of businesses we haven't connected with in a long time about BRR and our free assistance. ○ Include recycling information and our assistance in a bill insert to all commercial garbage customers. ○ Marketing efforts – target our intended audiences utilizing social media, paid and earned media advertising, mailings, partner's events, cold calling and newsletter content to draw businesses into requesting our technical assistance and providing deeper support. 	<ul style="list-style-type: none"> ○ One city includes extensive BRR details in their packet, and two others include a check box for BRR on their business license application. We also receive complete business license lists annually from 4 cities. We hope to integrate BRR information into some of the renewal processes next year. ○ We provided assistance to 22 businesses with over 200 staff including DWFritz, FLIR Systems, Mentor Graphics, Pacific Seafood, Kaiser and Providence Hospitals, and more. In total these businesses represent 11,050 staff. We intended to send a mailer in April, but due to COVID-19 this effort was postponed. Additionally, we presented at a Lunch and Learn session at Shorenstein Reality, which represents 20 buildings and tenants and PMs were present. ○ 365 businesses received a cold call visit or reminder letters that hadn't received a visit in the past two years. 68 letters were sent. ○ A postcard with recycling information and survey details was sent to all addresses within the county (residential, multifamily, and business) in May 2020. ○ We advertised in the Green Living Journal, Pamplin Media newspapers, posted ads on the County's social media outlets, sent 7 e-newsletters that featured topics such as Recycle or Not messages, star trash, promoted practices Leaders in Sustainability achieved, information on compostable products, and more. We had over 60 requests for resources or assistance from our web form.
Target Businesses that are Underserved or Underrepresented (optional)		

	<ul style="list-style-type: none"> ○ Deepen relationships with organizations that work with Latino businesses and employees. ○ Make educational materials in other languages more accessible. This could include creating additional leave behind flyers, how-to instructional posters, trainings and recycling refreshers and short instructional videos in Spanish or other identified languages. ○ Develop a protocol for the interpreter cards and pilot their use. ○ Add resources on the web in Spanish. 	<ul style="list-style-type: none"> ○ We have had a successful year of building partnerships with organizations serving Spanish-speaking populations since the addition of a Bilingual team member in January 2020. We are frequently attending gatherings hosted by some of these organizations (now via Zoom), and going out in the field together on occasion as well. ○ We made several advancements to having more accessible, translated materials this year. We updated our New Business Notification Letters to feature (in Spanish) what the letter is about and instruction for how to find information in other languages on our website. Our e-Newsletters also includes information on how to access information in other languages. We have begun translating our presentations into Spanish (and will have them available on video) for employee training. Additionally, we are developing these resources: <ul style="list-style-type: none"> ○ Interpreter cards were printed on waterproof paper and each advisors carries it around with their County badge ready to be used. So far, we haven't had too many opportunities to use these cards. ○ All county webpages are now available to be translated into 15 different languages using Google Translate. We have accessed the Google Spanish translation of some of our key pages and have independently translated a few of these for better clarity. Additionally, Our Recycling posters and guides feature 7 languages, and are able to easily be downloaded and printed from our web form.
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	<ul style="list-style-type: none"> ○ Respond to requests for assistance in Spanish. 	<ul style="list-style-type: none"> ○ We have a Bilingual message on our phone tree, and more accessible webpages this year, and were prepared to respond to requests for assistance.
Target Business Sectors, Institutions or Materials (optional)		
	<ul style="list-style-type: none"> ○ Conduct 2 targeted campaigns among retirement communities, churches, or manufacturers, aiming for approximately 50 businesses each, based on specific industry types or size of organization reminding them of BRR, our services, and promote participation in LiS. 	<ul style="list-style-type: none"> ○ We focused on supporting food assistance programs and a network of faith organizations for these campaigns. There was some cross over between the two campaigns because some food assistance programs are within churches that are part of the interfaith partners in sustainability group. <ul style="list-style-type: none"> ○ We surveyed over 80 food assistance organizations asking them a preset list of questions, then followed up with dropping off resources such as food waste reduction materials and donation supplies to 13 organizations. Later in the year we sent a newsletter to our list of email contacts at food assistance programs with relevant information for their business segment, and reminded them of other elements of our assistance. 55% opened the newsletter and 48% clicked on the different resources provided. From this newsletter we had several organizations requested materials as a result of this effort. Our relationships with food assistance programs has strengthened during COVID-19. ○ In 2018, LOSN convened an interfaith group of 15 faith based organizations whom are working to strengthen their sustainability efforts. They host quarterly meetings which we have been part of since the inception of this group. We have spent the past year building relationships with members. In May 2020, we provided an hour-long presentation

		<p>on reduce, reuse, recycle, plus reviewed basic green strategies for places of worship (both during the week and on service days). Attendees received a list of links and resources such as recycle guides, order form, Find a Recycler, and Recycle or Not information). They will be forming a cohort to work on LIS certification together starting in the Fall of 2020.</p> <ul style="list-style-type: none"> ○ We intended to have a campaign toward retirement communities in March 2020, but COVID-19 delayed these plans.
<p>Other commercial waste prevention, or waste reduction activities (optional)</p>	<p>Continue to develop and grow our green business recognition program, Leaders in Sustainability</p>	
	<ul style="list-style-type: none"> ● Use various media outlets to promote certified businesses, share successes and promote the program. Currently we work with our Chambers, Green Living Journal, ClackCo Quarterly newspaper, social media, video and Green Business Directory website for spotlights. <ul style="list-style-type: none"> ○ Create and distribute quarterly e-newsletters, aiming for 25% open rate. ○ Create two promotional videos spotlighting a LiS business and the practices they adopted. ○ Post success stories on social media channels 	<ul style="list-style-type: none"> ○ We promote LiS businesses using FaceBook and Twitter, video spotlights (mash-up delayed due to COVID-19), features in our e-newsletter, and are building out testimonials and case studies for our website and leave-behinds. We featured newly re/certified list in the November issue of #ClackCo Quarterly. ○ We distributed newsletters in September, December and February that featured LiS certified businesses. In total we sent 7 newsletters in 2019-20 with an average open rate of 39%. In March, we increased the number of businesses we sent information to from~350 to ~1250 recipients. ○ We have a draft in really rough form. It remains in progress due to COVID-19.

	<ul style="list-style-type: none"> ○ Business to business opportunities – <ul style="list-style-type: none"> ○ Enhance mentorship program amongst LiS peers by creating more opportunities for businesses to connect/learn from each other – e-newsletter, organize business-to-business learning opportunities that could include tours or organizing events that would strengthen connections between our business leaders. ○ Target a key business sector and help create opportunities for that sector to work together on challenging materials or practices. 	<ul style="list-style-type: none"> ○ This was delayed due to COVID-19. ○ We hosted a workshop in March 2020 that drew 17 large businesses that provided an opportunity for businesses to gather and learn from each other in an effort to reduce single-use items. Several members of the group were eager to stay connected after, and two even decided to work on alternative transportation options together as a result of their connection. Unfortunately, the regional green business gathering didn't happen due to COVID-19. ○ We had planned to convene food assistance program in FY19-20, but due to COVID-19 this effort was delayed until next year. Otherwise, a few members of the Green Manufacturers Group in Wilsonville, which we convened in 2018-19 continues to collaborate with each other on sustainability initiatives.
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Business Food Waste Requirement

Administrative Information—Expenditures and Staffing

Instructions: Demonstrate that local jurisdiction has hired staff or contractors whose primary responsibilities and duties are to provide food waste technical assistance to businesses.

- *Provide overall business food waste assistance expenditures to date and Metro business food waste assistance funds spent for the current program year (July 1 through June 30).*

To date, inclusive of FY 19-20, Clackamas County has expended at least \$517,391 in staff, overhead and program expenditures, reflecting regional food scraps funding from Metro of \$350,000 from FY 09-10 through FY 18-19, and \$167,391 in the recently completed FY 19-20.

Reflecting the fact that one new FTE for food scraps was funded for a full year but was not hired until January 2020, the County is carrying forward in reserve \$55,797 to be dedicated for food scraps staffing in the future, either to offset a reduction or to allow an additional part time staff person.

- *List staff working on business food waste assistance, FTE, total labor hours funded by Metro funds and total number of businesses served.*

Program Staff	Title	FOOD			Funding Source
		FTE During Months Worked	Annual Equivalent FTE (FTE x Fraction of Year)	Labor Cost	
Eben Polk	Supervisor	0.05	0.05	\$18,380	County / Metro - FOOD
Kelly Stewart	Sr. Sustainability Analyst	0.4	0.4	\$60,341	Metro - FOOD
Carlina Arango	Sustainability Analyst	0.75	0.375	\$47,549	Metro - FOOD
Alex Mihm	Sustainability Analyst	0.25	0.25	\$26,361	Metro - FOOD
Emily Murkland	Sustainability Analyst	0.6	0.6	\$74,099	Metro - FOOD
		2.05	1.675 (approx. 3,484 hours)	\$226,730	

Note: these calculations do not include use of County funds for overhead or program expense costs.

281 businesses received assistance relating to food waste in FY 19-20. If the implementation timeline for the commercial foods scraps collection requirement were not delayed, this number would have been higher. While the delay reduced the numbers of businesses seeking and receiving assistance of all kinds, including food scraps assistance, during the COVID pandemic response Emily Murkland (who was tapped by the Emergency Operations Center) and Kelly Stewart have continued meaningful work in support of food donation, both connecting businesses with emergency food providers, working with the Food Bank and other partners to source edible food for communities experiencing hunger, and continuing relationship building with emergency food providers. Carlina Arango has been tapped by our Emergency Operations Center but has maintained a focus on business technical assistance and outreach, serving as a liaison to the business community with an emphasis on businesses owned by people of color, cultural minorities, or where languages other than English are spoken heavily.

- *Describe auditable accounting method for labor hours funded by Metro funds.*

Clackamas County uses a labor hour accounting program called Workforce for entry of worked hours and leave time. All employees are required to use the web-based tool to account for each discrete block of time when an employee works on a particular project, program area, or contract.

No later than November 2020 we will establish codes in Workforce allowing us to run detailed reports on daily and cumulative hours worked by County staff on technical assistance to implement the Business Food Waste Requirement and related work (e.g. food waste prevention and edible food donation). The codes will differentiate between work conducted with businesses within and without the Metro district boundary.

Narrative

Instructions: Provide a narrative report that contains the following qualitative information:

- *Successes: Brief narrative of program successes in providing technical assistance to businesses on food waste prevention, donation of edible surplus food and food scraps collection.*

Prevention: We worked closely with three establishments to measure their food waste in 2019-20. These included **Rose Villa Senior Living, Gladstone Senior Center, and La Hacienda Galvan.** Rose Villa, learned how important staff engagement was, and realized the importance of keeping a closer eye on this waste to the point of hiring a person that is assigned to measure and monitor wasted food more closely. Gladstone Senior Center found there were opportunities at the salad bar and educating patrons that attend their congregate meals. We learned about La Hacienda Galvan's existing waste reduction practices, such as inquiring with customers if they want chips opposed to automatically supplying them to each table, and asking customers how many tortillas they prefer when fajitas are order, that have help them reduce the amount of wasted food. Having case study examples and an action for an organization to begin down the path of prevention is helpful because there are a lot of complexities around how to provide guidance on this topic.

Donation: We continue to nurture our relationships with Clackamas County food assistance programs, providing them with resources and assistance beyond our initial effort of gathering information. Last year, we provided over 600 copies of Eat Smart, Waste Less food storage fliers to food assistance programs to distribute to their clients. Additionally, COVID-19 and our assistance in the Emergency Operations Center has allowed us to engage in more collaborative ways with both food assistance programs and OFB. Working in this space for the past several years positioned us well to helping set up a distribution site to supply food to CBO's and organizations providing assistance to the most vulnerable populations. The urgency to get more food out to those in need has allowed us to continue collaboration with school districts in the county, and exploring more hub and spoke models.

We also spent a lot of this year gathering information from large food waste generators on their current donation status, and learning about the type of surplus food they may have, and willingness to participate in a donation program. We helped facilitate a donation of 200 gallons of surplus vinegar to OFB, and collaborated with Greentree Consulting, a franchised owner of McDonald's, on labeling food ready for donation so recipient pantry's better understood their dating method. Engagement with Greentree Consulting helped us identify additional McDonald's sites to be paired with local food rescue agencies, and connected us with Food Donation Connection, the consultant hired to pair chain restaurants with a local meal site, and we facilitated a discussion with FDC and our regional waste reduction partners.

We also shared information in several e-newsletters during March and May on how food establishments could donate surplus food to their local food assistance programs. Partners have

connected donors to local programs such as Willamette Egg making a large donation of surplus goods to multiple food assistance programs at the beginning of the pandemic when there were more severe supply chain issues, and businesses have helped source less expensive food for food assistance programs. We also matched Kaiser Hospital with a local food assistance program after their longtime partner stopped accepting material from them during COVID-19.

Food scraps collection

We had several focused efforts during FY19-20 that allowed us to engage with 96 food establishments. Our efforts included: 1) inform new establishments of requirements, 2) check-ins with current participants during the more challenging summer months, 3) sending e-newsletters to over 500 food establishment managers and owners, 3) tabling at Restaurant Depot, and 4) sending direct mail marketing materials. Most remaining non-participating Group 1 restaurants have shared with us they will begin a program when it is required. They were engaged and ready to implement a food scraps collection program but paused due to COVID-19.

Below is a summary on the number of businesses reached during each of these efforts:

Engagement with businesses	
Summer check-in	22
New businesses informed	21
E-newsletter (sent/opened)	500/150
Tabling at Restaurant Depot (interactions)	26
Direct Marketing to Group 1	25
Corporate and Property Manager Meetings	6
Engagement with Group 1/2/3/4	47/17/26/6
New food scraps separation participants	13

- *Challenges: Brief narrative of program challenges in providing technical assistance to businesses on food waste prevention, donation of edible surplus food and food scraps collection.*

Prevention: We continue to seek for local examples of food waste reduction practices to feature in case studies. Having these local examples is helpful for other organizations to learn from, but it’s been challenging finding the leaders. Additionally, we are still navigating how to provide waste prevention strategies to an organization since food is their businesses. So far we have a soft approach in learning what a business does, and asking questions, suggesting they measure their waste but this could be perceived as time-consuming and cumbersome. We are still honing in on how we can provide assistance on food waste prevention.

Donation: There continues to be transportation logistics challenges for pantries operating in Clackamas County. Concerns and confusion about the safety and acceptability of prepared foods, persist and awareness of what local pantries can accept. Although the interest in a food assistance program collecting this food type exists. Because of these challenges making connections with businesses, usually restaurants, we are working with is challenging to impossible.

Food Scraps Collection

Several communities in Clackamas County do not have service available for commercial food scraps collection yet. In these areas, we have not provided much outreach to food establishments because of this. In other parts of the county, we have engaged with the same

group of businesses since 2016, or earlier and know a good number of them are waiting for the mandate to take effect. Every year we develop opportunities for food establishments to learn more about food waste issues and the free support we offer such as workshops or free resource, but this industry is constantly faced with industry pressures, time restrictions, staffing changes, and limited overhead which limits their ability to advance their efforts..

- *Participation in the activities outlined in the CWG Program Plan including committees and regional trainings.*

Clackamas County is actively engaged in activities outlined in the CWG Program Plan. We have taken leading roles collaborating with OFB, and the development of donation educational collateral, and we actively participate in the planning and implementation of Plan components including hosting and promoting FWSWM events, providing input into the donation mapping tool, utilizing FRED to improve our data tracking efforts, and finding leaders to showcase food waste reduction practices. Some of these efforts are described throughout this report. We appreciate the partnerships with ORLA and WWF because we learn best practices from the industry, and their affiliation brings our information additional credibility.

III. Cooperative Regional Priority Initiatives and Programs

Contamination Reduction Education Plan

Describe how your jurisdiction has implemented the following outreach and education initiatives:

- *Incorporated Recycle or Not messages and content into existing English and Spanish language recycling education programs and activities, including online resources and customer feedback communication conducted by local haulers ('oops' cart tags), to ensure consistency with regional contamination reduction messages.*
 - 2 events checked out the Recycle or Not Master Recycler Toolkit. Additional events cancelled due to COVID-19.
 - English and Spanish recycle guides updated to reflect Recycle or Not language. View [online](#).
 - An updated recycle guide with Recycle or Not language, a Recycle or Not matching game, article, and promotion of the Instagram account were all designed and planned for the spring 2020 ClackCo Quarterly, but the issue was delayed, refocused and cut back after the onset of COVID-19, so the content was not published.
- *Promoted the featured contaminants: plastic bags and plastic wrap from July to December 2019 and frozen food boxes from January to June 2020.*
 - CREP plastic bag ad included in [ClackCo Nov 2019](#)
 - We had 2 Facebook posts about plastic bags/wrap ([1](#), [2](#))
 - 4 Take-out container Facebook posts ([1](#), [2](#), [3](#), [4](#)), 2 tweets
- *Linked to and promoted the Recycle or Not English and Spanish language websites.*
 - Webpage update was delayed due to COVID-19. Currently working with the county's Web Team to develop a more visual presentation of the information that satisfies both ours and Web Team desires and requirements.

Multifamily Program Improvements

- *Instructions: Describe how your jurisdiction actively participated in and committed to the design of regional signage (posters, stickers, decals) for multifamily bins.*

Clackamas County supported and participated in a collaborative, regional effort to design and test regional signage for multifamily bins and recycling areas/rooms/enclosures. Our multifamily and CREW representatives, and solid waste director, met with other local jurisdictions, Metro, and Brink to cooperatively advance regional signage. We offered to support and supplement user feedback organized for residents working with Trash for Peace, by working with our local multifamily partners (key property managers and Northwest Housing Alternatives' resident service coordinators) to gather user feedback (in English and Spanish) on signage options; we supplied results to Metro.

- *Instructions: Provide a brief narrative of program and technical assistance successes and challenges in the multifamily sector.*

Successes:

- Our AmeriCorps Member created a 2.5 minute recycling video that is now available on our website and on the county’s YouTube channel. This will be shared in an upcoming e-newsletter, and has already been shared with some multifamily communities. A Spanish version will be coming.
- Prior to COVID-19, we participated in our first green cleaner group conversation with Spanish-speakers at a multifamily community. Using a popular education model, we engaged with eight adults and made safer cleaners to take home. Additional group events were requested, but unable to take place due to COVID-19.
- Albeit a very small turnout, the two property managers who participated in the modified multifamily property manager gathering provided good insight as to what a larger, virtual event may look like.
- This was our first year sharing rating scale scores. We shared grades with property managers/owners at 55 multifamily communities. In addition, one HOA president reached out to request resources after she self-scored a C; she felt they could do better.

Challenges

- COVID-19 proved to be the biggest challenge. The majority of our multifamily outreach takes place in the spring (summer events, door-to-door outreach, etc.). Furthermore, we had reached out to a few collection companies to test some bulky waste collection options, but that was abruptly curtailed due to COVID-19, as well.
- Accessing property management companies that oversee a portfolio of properties has continued to be difficult; even property managers have voiced how closed off the companies are. This fiscal year, we reached out to six companies (directly or via property managers) and three multifamily organizations, none of which proved successful.

IV. School-Based Waste Reduction and Educational Programs

Clackamas County, in a long-standing partnership with the Clackamas County Refuse and Recycling Association, provides technical assistance and outreach and education for schools throughout Clackamas County that helps to meet state-level options under the Opportunity to Recycle Act, as do our business, multifamily and single-family / community level programs.

School Outreach, Education and Technical Assistance		Reporting
Target audience, goals, and outreach strategy Audience: public and private schools throughout Clackamas County	Planned Efforts (Scope / Method / Frequency)	Comments and Completed Efforts/Notes
Provide recycling, composting, and waste prevention/reuse technical assistance to schools throughout Clackamas County in order to increase	Provide technical assistance to a minimum of 75 schools	Provided technical assistance to 69 schools. This number would have

<p>recycling and /or composting awareness and capability among students, school staff and faculty.</p> <ul style="list-style-type: none"> • Prepare and distribute annual waste reduction packet to all schools in Clackamas County in order to provide information about how to reduce solid waste generated by schools. • Identify waste reduction opportunities for schools. • Continue to refine list of best contact at each school to receive the annual packet. • Reach out to schools to make them aware of the recycling assistance available. Methods for reaching schools include the “Clack Co Quarterly” publication, cold calls and e-newsletters. • Provide recycling containers and signage on request. • Provide annual yes/no recycling information to schools. • Encourage reuse at schools. Examples include having a one-sided paper box in each classroom for students to use for note-taking or doodling, starting a Reuse Closet at the school for easy exchange of materials, hosting Halloween Costume Exchanges at schools to reduce the number of new costumes purchased, establishing a school supplies closet to organize and reuse supplies year to year. • Assist schools with small grants for waste reduction projects, including milk dispensers 	<p>Provide an equitable level of service to Title 1 schools</p> <p>Assist a minimum of 4 schools with the purchase of milk dispensers</p>	<p>been higher, but schools shut down in mid-March.</p> <p>Provided the following items:</p> <ul style="list-style-type: none"> • 123 blue bins • 12 Brutes • 15 bus tubs • 9 clear streams • 555 CS bags <p>Grants: Provided approximately \$25,000 in small grants to schools. The bulk of these funds went to the North Clackamas School District to purchase milk dispensers to reduce milk and milk carton waste during school meals.</p> <p>Equity: 34% of Clackamas County’s public schools are designated as Title 1.</p> <p>During the 2019-2020 SY, staff provided service to 23 Title 1 schools, which accounts for around 33% of the schools we worked with during the school year.</p>
<p>Encourage film plastic recycling through the Trex School Challenge</p>	<p>Educate students, teachers, and families about film plastic recycling with the dual message to keep film plastics out of the regular recycling and recycling opportunities through grocery stores.</p> <p>Work with schools throughout the County</p>	<p>Statewide Trex School Challenge numbers:</p> <ul style="list-style-type: none"> • 37 schools participated (16 from Clackamas County) • 15,865 pounds collected (9,348 from Clackamas County schools)

	<p>to collect and recycle a minimum of 5,000 pounds of film plastics</p>	<p>Clackamas County schools led the state in plastics collection, with 3 schools receiving awards:</p> <ul style="list-style-type: none"> • Trillium Primary (490) • John McLoughlin Elementary (4056) • Alliance Charter Academy (1209)
<p>Student engagement and education: We engage students through student-led activities with the Oregon Green Schools program, classroom presentations, and special projects.</p>	<p>Minimum of 25% participation in the Oregon Green Schools program</p> <p>Host a high school summit in the Metro area and facilitate similar summits in the Eugene and Bend areas</p> <p>Deliver classroom presentations to 40 schools</p>	<p>Just over 30% of Clackamas County schools are currently OGS certified</p> <p>OGS hosted a very successful HS summit in early March of 2020 as part of the Green Schools Conference through the Center for Green Schools. Clackamas County had three schools in attendance (Lake Oswego High, Lakeridge High, and Sandy High)</p> <p>Delivered 70 presentations in 25 schools. If the school year had not ended early, we would have delivered presentations in several additional schools</p> <ul style="list-style-type: none"> • 33 climate change to 635 students • 10 composting with worms presentations • 3 food waste presentations • 14 waste audits • 10 Where is away • 11,232 student interactions

		<ul style="list-style-type: none">• 9851 unique students engaged
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BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of an Agreement
between the City of Barlow
and Clackamas County

ORDER NO. 88-11


This matter coming on at this time to be heard, and it appearing to the Board that Winston Kurth, Director of Clackamas County Department of Transportation and Development, has recommended to this Board the adoption of an Agreement between the City of Barlow and Clackamas County for the collection and disposal of solid waste in and about the City of Barlow, and the Board being fully advised;

This Board finds that it would be in the best interest of Clackamas County to enter into said Agreement, now therefore

IT IS HEREBY ORDERED that Clackamas County enter into said Agreement, copy of which is to be placed on file in the Clackamas County Office of Financial Administration with this Order Number affixed thereto, with the understanding that said Agreement is subject to all public contracting laws and the Constitution of this State.

DATED this 7th day of January, 1988.

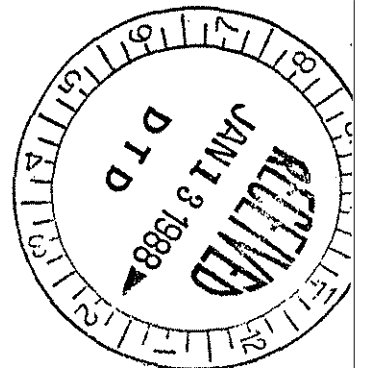
BOARD OF COUNTY COMMISSIONERS


Ed Lindquist - Chairman


Dale Harlan - Commissioner


Darlene Hooley - Commissioner

DTD



D. Phillips



Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

RECEIVED

JUL 25 2008

CITY OF DAMASCUS

SUNNYBROOK SERVICE CENTER

9101 SE SUNNYBROOK BLVD. | CLACKAMAS, OR 97015

LETTER OF UNDERSTANDING

This letter of understanding is between Clackamas County's Department of Transportation and Development (Clackamas County) and the City of Damascus (City) commencing July 1, 2008. This agreement shall continue to stay in force until either party terminates the agreement. Either party may terminate this agreement with a 30-day written notice prior to May 1st of each year this agreement is in effect.

ORS 459 and 459A requires the metropolitan service district (Metro) for Multnomah, Washington and Clackamas counties and the cities therein in aggregate to develop integrated solid waste management plans and implement associated activities designed to meet goals established by the DEQ. Metro council adopts a DEQ approved Regional Solid Waste Management Plan (RSWMP) for a ten (10) year planning period. In each of the ten years local governments and Metro create annual work plans to meet the goals and objectives established in the RSWMP. A new RSWMP was recommended to Metro Council for adoption by both the Solid Waste Advisory Committee and the Metro Policy Advisory Committee, with the recommended action occurring on July 17, 2008.

Clackamas County actively engages with Metro in all matters associated with the provision of integrated solid waste management services within all of Metro's boundaries, paying particular attention to the effect of these plans on citizens within incorporated and unincorporated areas of Clackamas County. Additionally, many of the goals and objectives of the RSWMP are only accomplished through the cooperative working relationship Clackamas County has established with the franchised solid waste collectors operating within the County's borders.

Since 1990 Clackamas County has been successful meeting the requirements necessary for annual plan adoption by Metro. The adoption of the annual plan releases funds collected, by Metro, from the disposal of regional tons of solid waste to be land filled or incinerated. Clackamas County intends to continue participating in this process through the functional period of the newly adopted Regional Solid Waste Management Plan and in the development of future plans.

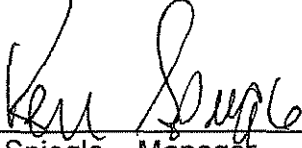
Key components of meeting the goals established by the RSWMP are directly related to the activities of the solid waste collection franchisee. Currently there are several collection practices considered to be standard components of the RSWMP. These include but are not limited to: 1) Weekly collection of residential recyclables; 2) Collection of glass separated on the truck from other recyclables; 3) Providing the opportunity for all businesses to have recyclables collected. Clackamas County, through this agreement, requests the opportunity to review any proposed deviation from the standard collection practices of the solid waste collection franchisee presented to the City. The review is for the purpose of ensuring continued compliance with the RSWMP. Clackamas County agrees to present the findings to the City.

Clackamas County will continue providing staff for waste reduction planning, program implementation and education for the unincorporated areas of the County and in the cities of Damascus, Happy Valley, Sandy, Lake Oswego, Gladstone, Oregon City, West Linn, Molalla, and Wilsonville. Additionally, County staff will

continue working in conjunction with the franchised solid waste collectors' Education Coordinator working throughout the County and its cities providing educational programs in schools.

This letter clarifies the City intends to continue its partnership with Clackamas County in the waste reduction program. The County will provide the activities listed in the Annual Waste Reduction Plan, write the final report, work with Metro in development of next year's plan elements, and keep the City apprised of activities within its boundary. This letter further clarifies the County will provide direct assistance to businesses, schools and government facilities within the City as applies to meeting the requirements of the regional Recycle @ Work program.

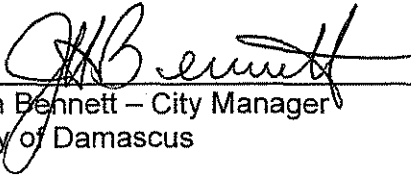
In return, the City authorizes Metro to annually distribute their portion of the Annual Waste Reduction and Recycle @ Work funds to Clackamas County until this agreement is terminated.



Ken Spiegle – Manager
Community Environment Division, Clackamas County

7-23-08

Date



Jim Bennett – City Manager
City of Damascus

7/28/08

Date



Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SUNNYBROOK SERVICE CENTER
9101 SE SUNNYBROOK BLVD. | CLACKAMAS, OR 97015

LETTER OF UNDERSTANDING

This letter of understanding is between Clackamas County's Department of Transportation and Development (Clackamas County) and the City of Estacada (City) commencing July 1, 2008. This agreement shall continue to stay in force until either party terminates the agreement. Either party may terminate this agreement with a 30-day written notice prior to May 1st of each year this agreement is in effect.

ORS 459 and 459A requires the metropolitan service district (Metro) for Multnomah, Washington and Clackamas counties and the cities therein in aggregate to develop integrated solid waste management plans and implement associated activities designed to meet goals established by the DEQ. Metro council adopts a DEQ approved Regional Solid Waste Management Plan (RSWMP) for a ten (10) year planning period. In each of the ten years local governments and Metro create annual work plans to meet the goals and objectives established in the RSWMP. A new RSWMP was recommended to Metro Council for adoption by both the Solid Waste Advisory Committee and the Metro Policy Advisory Committee, with the recommended action occurring on July 17, 2008.

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Key components of meeting the goals established by the RSWMP are directly related to the activities of the solid waste collection franchisee. Currently there are several collection practices considered to be standard components of the RSWMP. These include but are not limited to: 1) Weekly collection of residential recyclables; 2) Collection of glass separated on the truck from other recyclables; 3) Providing the opportunity for all businesses to have recyclables collected. Clackamas County, through this agreement, requests the opportunity to review any proposed deviation from the standard collection practices of the solid waste collection franchisee presented to the City. The review is for the purpose of ensuring continued compliance with the RSWMP. Clackamas County agrees to present the findings to the City.

Clackamas County will continue providing staff for waste reduction planning, program implementation and education for the unincorporated areas of the County and in the cities of Barlow, Damascus, Estacada, Gladstone, Happy Valley, Lake Oswego, Molalla, Oregon City, Sandy, West Linn, and Wilsonville. Additionally, County staff will continue working in conjunction with the franchised solid waste collectors' Education Coordinator working throughout the County and its cities providing educational programs in schools.

This letter clarifies the City intends to continue its partnership with Clackamas County in the waste reduction program. The County will provide the activities listed in the Annual Waste Reduction Plan, write the final report, work with Metro in development of next year's plan elements, and keep the City apprised of activities within its boundary. This letter further clarifies the County will provide direct assistance to businesses, schools and government facilities within the City as applies to meeting the requirements of the regional Recycle @ Work program.

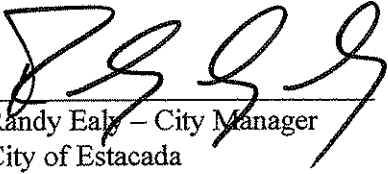
In return, the City authorizes Metro to annually distribute their portion of the Annual Waste Reduction and Recycle @ Work funds to Clackamas County until this agreement is terminated.



Ken Spiegle – Manager
Community Environment Division, Clackamas County

9-5-08

Date



Randy Ealy – City Manager
City of Estacada

9-8-08

Date



Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SUNNYBROOK SERVICE CENTER
9101 SE SUNNYBROOK BLVD. | CLACKAMAS, OR 97015

LETTER OF UNDERSTANDING

This letter of understanding is between Clackamas County's Department of Transportation and Development (Clackamas County) and the City of Gladstone (City) commencing July 1, 2008. This agreement shall continue to stay in force until either party terminates the agreement. Either party may terminate this agreement with a 30-day written notice prior to May 1st of each year this agreement is in effect.

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Clackamas County actively engages with Metro in all matters associated with the provision of integrated solid waste management services within all of Metro's boundaries, paying particular attention to the effect of these plans on citizens within incorporated and unincorporated areas of Clackamas County. Additionally, many of the goals and objectives of the RSWMP are only accomplished through the cooperative working relationship Clackamas County has established with the franchised solid waste collectors operating within the County's borders.

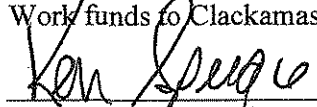
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In return, the City authorizes Metro to annually distribute their portion of the Annual Waste Reduction and Recycle @ Work funds to Clackamas County until this agreement is terminated.



Ken Spiegle – Manager
Community Environment Division

7-30-08
Date



Ron Partch – Administrator
City of Gladstone

Aug 14-08
Date

INTERGOVERNMENTAL AGREEMENT

Between the City of Happy Valley and Clackamas County

This agreement is entered into this 10th day of September, 2007, between the City of Happy Valley ("City"), a municipal corporation of the State of Oregon, and Clackamas County ("County"), a political subdivision of the State of Oregon.

WHEREAS, ORS 190.003 TO 190.030 allows for units of local government to enter into agreement for the performance of any or all functions and activities which such units have authority to perform; and

WHEREAS, Clackamas County has adopted a Solid Waste and Waste Management Ordinance on June 10, 1970; and

WHEREAS, Clackamas County has franchised the collection of solid waste and collects certain fees from the collection of such solid waste; and

WHEREAS, the City desires a contractual relationship with the County whereby the County will be responsible for administering Solid Waste Management Services on behalf of the City; and

NOW THEREFORE, Clackamas County and the City of Happy Valley hereby agree to the following:

A. Effective Date and Termination

This Agreement shall commence on July 1, 2007 upon execution by both parties and continue until terminated by either party. A party may terminate the Agreement for any reason with 90 day written notice, or upon 30 days written notice for breach of the Agreement, including non-payment of fees appropriately due, provided the breach is not cured during the 30 day period.

B. The County Shall:

1. If requested by the City, make appropriate recommendations to City officials regarding acceptable solid waste management practices in the City.
2. Collect the appropriate franchise fees earned from City customers and provide quarterly reports to the City regarding the amount collected.

3. Ensure the franchised solid waste collector(s) serving the citizens of Happy Valley comply with all applicable rules and regulations commensurate with the provision of the service.
4. Review and investigate all rate adjustment requests, make recommendations and bring these requests and recommendations before the Clackamas Solid Waste Commission so that the Clackamas County Solid Waste Commission may make its recommendation to the Clackamas County Board of County Commissioners. Prepare the Annual Waste Reduction Plan and required reports for Metro and the Department of Environmental Quality (DEQ).
5. Perform the tasks associated with meeting the requirements of the Annual Waste Reduction Plan, additional programs required of Metro to meet the requirements of the Regional Solid Waste Management Plan, and any programs required by the DEQ.
6. Prepare applications, administer and report to Metro, the County, and if requested, the City on the results of Metro funded projects.

C. The City shall:

1. Collaborate with the County on waste reduction and recycling educational and promotional programs delivered in the community.

D. Compensation

The County currently collects a five percent (5%) franchise fee on gross collection revenues (less revenue from the sale of recyclables and from customer payment of disposal from drop box service). Additionally, the County may receive grant money from Metro to perform the requirements of the County's Annual Waste Reduction Plan. The amount of money is predicated on the population being served. From time to time Metro may budget additional moneys to pay directly to local governments based on other metrics.

The County shall retain one-half of the franchise fee collected from solid waste customers within the boundaries of the City of Happy Valley as compensation for performing the services under this agreement. The franchise fee report and the balance of the fees shall be delivered to the City forty-five (45) days past the last day of the quarter in question.

Further, the City shall request Metro send the monies apportioned annually to the City of Happy Valley for carrying out the responsibilities required of the Regional Solid Waste Management Plan directly to the County.

Compensation is subject to review ninety (90) days prior to the end of each fiscal year. The purpose of this review is to determine whether the actual costs being incurred align with the revenue distribution in the agreement.

E. Attorney Fees

In the event any party files litigation to enforce this Agreement, or any portion thereof, the prevailing party shall be entitled to reasonable attorney fees and costs, including any fees and costs incurred in an appeal, as determined by the appropriate court.

F. Amendment

This Agreement may be amended within its current term or any successive term by the joint agreement of the parties. To be effective, all amendments shall be in writing and signed by authorized representatives of each party.

G. Hold Harmless

Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, the City shall hold harmless and indemnify County, its officers, employees, and agents against any and all claims, damages, losses and expenses (including attorney(s) fees and costs), arising out of, or resulting from the County's performance of this Agreement when the loss or claim is attributable to the acts or omissions of the City.

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H. Severability

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

CITY of Happy Valley

By: Robert C. Wickham Date: 09/18/07
Mayor

ATTEST:
By: Kristen Walden Date: 9/18/07
City Recorder

Approved as to Form:
By: Thomas Spaully Date: 10/17/07
City Attorney

CLACKAMAS COUNTY

By: [Signature] Date: 2-7-08 C-1
Chairperson, Clackamas County
Board of Commissioners

Approved as to Form:
By: David W. Adelson Date: 2/7/08
County Counsel

ATTEST:
By: Mary Raetnke Date: 2-7-08
Recording Secretary



Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SUNNYBROOK SERVICE CENTER
9101 SE SUNNYBROOK BLVD. | CLACKAMAS, OR 97015

LETTER OF UNDERSTANDING

This letter of understanding is between Clackamas County's Department of Transportation and Development (Clackamas County) and the City of Lake Oswego (City) commencing July 1, 2008. This agreement shall continue to stay in force until either party terminates the agreement. Either party may terminate this agreement with a 30-day written notice prior to May 1st of each year this agreement is in effect.

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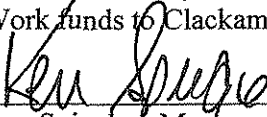
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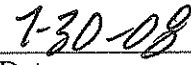
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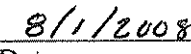
Ken Spiegle - Manager
Community Environment Division



Date



Joel Komarek - ~~City Engineer~~ *Project Director*
City of Lake Oswego



Date



Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SUNNYBROOK SERVICE CENTER
9101 SE SUNNYBROOK BLVD. | CLACKAMAS, OR 97015

LETTER OF UNDERSTANDING

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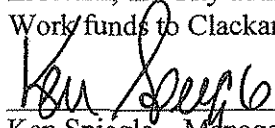
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Ken Spiegle – Manager
Community Environment Division

7-30-08
Date



JoAnn Herrigel – Community Services Director
City of Milwaukie

8/1/08
Date



Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SUNNYBROOK SERVICE CENTER
9101 SE SUNNYBROOK BLVD. | CLACKAMAS, OR 97015

LETTER OF UNDERSTANDING

This letter of understanding is between Clackamas County's Department of Transportation and Development (Clackamas County) and the City of Molalla (City) commencing July 1, 2008. This agreement shall continue to stay in force until either party terminates the agreement. Either party may terminate this agreement with a 30-day written notice prior to May 1st of each year this agreement is in effect.

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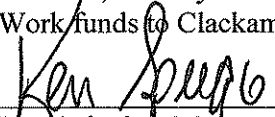
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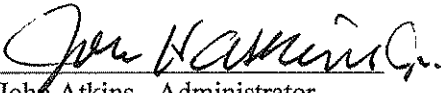
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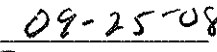
Ken Spiegle - Manager
Community Environment Division



Date



John Atkins - Administrator
City of Molalla



Date



Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SUNNYBROOK SERVICE CENTER
9101 SE SUNNYBROOK BLVD. | CLACKAMAS, OR 97015

LETTER OF UNDERSTANDING

This letter of understanding is between Clackamas County's Department of Transportation and Development (Clackamas County) and the River Cities Environmental Services District (City) commencing July 1, 2008. This agreement shall continue to stay in force until either party terminates the agreement. Either party may terminate this agreement with a 30-day written notice prior to May 1st of each year this agreement is in effect.

ORS 459 and 459A requires the metropolitan service district (Metro) for Multnomah, Washington and Clackamas counties and the cities therein in aggregate to develop integrated solid waste management plans and implement associated activities designed to meet goals established by the DEQ. Metro council adopts a DEQ approved Regional Solid Waste Management Plan (RSWMP) for a ten (10) year planning period. In each of the ten years local governments and Metro create annual work plans to meet the goals and objectives established in the RSWMP. A new RSWMP was recommended to Metro Council for adoption by both the Solid Waste Advisory Committee and the Metro Policy Advisory Committee, with the recommended action occurring on July 17, 2008.

Clackamas County actively engages with Metro in all matters associated with the provision of integrated solid waste management services within all of Metro's boundaries, paying particular attention to the effect of these plans on citizens within incorporated and unincorporated areas of Clackamas County. Additionally, many of the goals and objectives of the RSWMP are only accomplished through the cooperative working relationship Clackamas County has established with the franchised solid waste collectors operating within the County's borders.

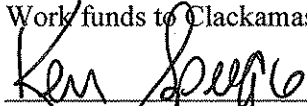
Since 1990 Clackamas County has been successful meeting the requirements necessary for annual plan adoption by Metro. The adoption of the annual plan releases funds collected, by Metro, from the disposal of regional tons of solid waste to be land filled or incinerated. Clackamas County intends to continue participating in this process through the functional period of the newly adopted Regional Solid Waste Management Plan and in the development of future plans.

Key components of meeting the goals established by the RSWMP are directly related to the activities of the solid waste collection franchisee. Currently there are several collection practices considered to be standard components of the RSWMP. These include but are not limited to: 1) Weekly collection of residential recyclables; 2) Collection of glass separated on the truck from other recyclables; 3) Providing the opportunity for all businesses to have recyclables collected. Clackamas County, through this agreement, requests the opportunity to review any proposed deviation from the standard collection practices of the solid waste collection franchisee presented to the City. The review is for the purpose of ensuring continued compliance with the RSWMP. Clackamas County agrees to present the findings to the City.

Clackamas County will continue providing staff for waste reduction planning, program implementation and education for the unincorporated areas of the County and in the cities of Barlow, Damascus, Estacada, Gladstone, Happy Valley, Lake Oswego, Molalla, Oregon City, Sandy, West Linn, and Wilsonville. Additionally, County staff will continue working in conjunction with the franchised solid waste collectors' Education Coordinator working throughout the County and its cities providing educational programs in schools.

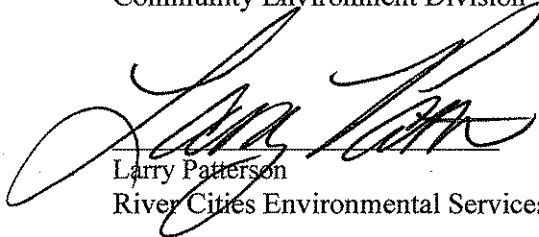
This letter clarifies the City intends to continue its partnership with Clackamas County in the waste reduction program. The County will provide the activities listed in the Annual Waste Reduction Plan, write the final report, work with Metro in development of next year's plan elements, and keep the City apprised of activities within its boundary. This letter further clarifies the County will provide direct assistance to businesses, schools and government facilities within the City as applies to meeting the requirements of the regional Recycle @ Work program.

In return, the City authorizes Metro to annually distribute their portion of the Annual Waste Reduction and Recycle @ Work funds to Clackamas County until this agreement is terminated.



Ken Spiegle – Manager
Community Environment Division

7-30-08
Date



Larry Patterson
River Cities Environmental Services District

9/23/08
Date



Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SUNNYBROOK SERVICE CENTER
9101 SE SUNNYBROOK BLVD. | CLACKAMAS, OR 97015

LETTER OF UNDERSTANDING

This letter of understanding is between Clackamas County's Department of Transportation and Development (Clackamas County) and the City of Sandy (City) commencing July 1, 2008. This agreement shall continue to stay in force until either party terminates the agreement. Either party may terminate this agreement with a 30-day written notice prior to May 1st of each year this agreement is in effect.

ORS 459 and 459A requires the metropolitan service district (Metro) for Multnomah, Washington and Clackamas counties and the cities therein in aggregate to develop integrated solid waste management plans and implement associated activities designed to meet goals established by the DEQ. Metro council adopts a DEQ approved Regional Solid Waste Management Plan (RSWMP) for a ten (10) year planning period. In each of the ten years local governments and Metro create annual work plans to meet the goals and objectives established in the RSWMP. A new RSWMP was recommended to Metro Council for adoption by both the Solid Waste Advisory Committee and the Metro Policy Advisory Committee, with the recommended action occurring on July 17, 2008.

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Since 1990 Clackamas County has been successful meeting the requirements necessary for annual plan adoption by Metro. The adoption of the annual plan releases funds collected, by Metro, from the disposal of regional tons of solid waste to be land filled or incinerated. Clackamas County intends to continue participating in this process through the functional period of the newly adopted Regional Solid Waste Management Plan and in the development of future plans.

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Clackamas County will continue providing staff for waste reduction planning, program implementation and education for the unincorporated areas of the County and in the cities of Barlow, Damascus, Estacada, Gladstone, Happy Valley, Lake Oswego, Molalla, Oregon City, Sandy, West Linn, and Wilsonville. Additionally, County staff will continue working in conjunction with the franchised solid waste collectors' Education Coordinator working throughout the County and its cities providing educational programs in schools.

This letter clarifies the City intends to continue its partnership with Clackamas County in the waste reduction program. The County will provide the activities listed in the Annual Waste Reduction Plan, write the final report, work with Metro in development of next year's plan elements, and keep the City apprised of activities within its boundary. This letter further clarifies the County will provide direct assistance to businesses, schools and government facilities within the City as applies to meeting the requirements of the regional Recycle @ Work program.

In return, the City authorizes Metro to annually distribute their portion of the Annual Waste Reduction and Recycle @ Work funds to Clackamas County until this agreement is terminated.

Ken Spiegler
Ken Spiegler - Manager
Community Environment Division

7-30-08
Date

Scott Lazenby
Scott Lazenby - City Manager
City of Sandy

8/1/08
Date



Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SUNNYBROOK SERVICE CENTER
9101 SE SUNNYBROOK BLVD. | CLACKAMAS, OR 97015

LETTER OF UNDERSTANDING

This letter of understanding is between Clackamas County's Department of Transportation and Development (Clackamas County) and the City of Wilsonville (City) commencing July 1, 2008. This agreement shall continue to stay in force until either party terminates the agreement. Either party may terminate this agreement with a 30-day written notice prior to May 1st of each year this agreement is in effect.

ORS 459 and 459A requires the metropolitan service district (Metro) for Multnomah, Washington and Clackamas counties and the cities therein in aggregate to develop integrated solid waste management plans and implement associated activities designed to meet goals established by the DEQ. Metro council adopts a DEQ approved Regional Solid Waste Management Plan (RSWMP) for a ten (10) year planning period. In each of the ten years local governments and Metro create annual work plans to meet the goals and objectives established in the RSWMP. A new RSWMP was recommended to Metro Council for adoption by both the Solid Waste Advisory Committee and the Metro Policy Advisory Committee, with the recommended action occurring on July 17, 2008.

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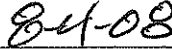
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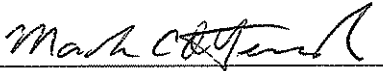
In return, the City authorizes Metro to annually distribute their portion of the Annual Waste Reduction and Recycle @ Work funds to Clackamas County until this agreement is terminated.




Ken Spiegle – Manager
Community Environment Division



Date



Mark C. Ottenad
City of Wilsonville



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:

**Authorization to Purchase Quantity 11 Dodge vehicles for the
Clackamas County Sheriff's Office**

Purpose / Outcome	Approval to purchase a total of eleven (11) vehicles for the Clackamas County Sheriff's Office.
Dollar Amount and Fiscal Impact	\$341,305.81
Funding Source	Clackamas County Sheriff's Office 216-1603-06831-485510
Duration	June 30, 2021
Previous Board Action/Review	N/A
Strategic Plan Alignment	Replaces less reliable vehicles. Ensure safe secure communities.
Contact Person	Russ Weber, Equipment Coordinator, (503) 722-6324

Background:

The Clackamas County Sheriff's Office has requested that the Clackamas County Fleet Services Division purchase five (5) 2020 Dodge Ram 2500 Tradesman Crew Cab 4X4 Pickups and six (6) 2020 Dodge Durango Pursuit AWD (WDEE75) from Withnell Motor Company through the State of Oregon Contract #5553.

These vehicles will be assigned to the Sheriff's Office Patrol Division and will replace aging vehicles that are currently assigned to the patrol division.

Procurement Process:

Approval of the purchase is being requested under the Local Contract Review Board Rule C-046-0400, Authority of Cooperative Procurements. The purchase will be made off cooperative contract #5553 with the State of Oregon Cooperative Purchasing Agreement Program through Withnell Motor Company. A notice of Intent to Purchase the five (5) Dodge Ram 2500 Tradesman Crew Cab 4X4 Pickups & six (6) Dodge Durango Pursuit AWD (WDEE75) was issued on December 2, 2020. No comments were received at the time of closing on December 9, 2020.

Recommendation:

Staff recommends the Board of County Commissioners approve this purchase.

Sincerely,

Warren Gadberry

Digitally signed by Warren
Gadberry
Date: 2020.12.07 12:09:08 -08'00'

Warren Gadberry
Fleet Manager

Placed on the Board Agenda of _____ by the Procurement Division.

Chair Approval _____

Draft

Approval of Previous Business Meeting Minutes:

November 5, 2020

November 12, 2020

November 25, 2020

December 3, 2020

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, November 5, 2020 – 6:00 PM

Virtual Meeting via Zoom

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

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

Chair Bernard:

- We are holding this meeting virtually. If you've joined us on the Zoom app for this meeting, and you are interested in providing public comment, we will prompt you regarding how to do that when the time is right.
- You will have the option of providing your comments to us live.
- Alternatively, anyone can send in a comment to be read during the Citizen Communication portion of our meeting over email. Just send it in at any time during the meeting by emailing bcc@clackamas.us.
- Be sure to include your name and area when you email.

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

1. Nancy Bush

~Board Discussion~

- **1. Approval of an Addendum No 3 to Board Order No. 2020-66 Declaring a State of Emergency Regarding Wildfires (Stephen Madkour, County Counsel)

Chair Bernard asked for a motion.

MOTION:

Commissioner Savas: I move we approve Addendum No 3 to Resolution No. 2020-66 Declaring a Local State of Emergency Regarding Wildfires.

Commissioner Humberston: Second.

Clerk called the poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

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

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

1. Sherry Hall

~Board Discussion~

***** COVID-19 Update** <https://www.clackamas.us/meetings/bcc/business>

1. Philip Mason-Joyner

~Board Discussion~

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

1. Presentation regarding Hispanic Interagency Networking Team (HINT)
~Board Discussion~
- *2. Presentation Clackamas County Disaster Management, Red Cross, EPA
~Board Discussion~

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

1. First Reading of Ordinance No. _____, Adding Clackamas County Code Chapter 8.10, Short-Term Rentals to the Clackamas County Code, and Amending Clackamas County Code Chapter 2.07, Compliance Hearings Officer

~Board Discussion~

Chair Bernard opened the public hearing and asked Christina Terwilliger to moderate this portion.

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

- **Craig Thivy Oak Grove – concerned about language in draft**
- **Scott Farleigh – Alpine CCO – concern about garbage**
- **Les Poole – Oak Grove – Parking Issues**
- **Gerald Murphy – Parking – Long Term Rentals**
- **Kai – Short term rental retreats**
- **Josh Powell – Email**
- **Kevin Eike – Email**
- **Brett Fischer – Government Camp CPO – Apposed lower fees**
- **C Gam – Single Family Homes**
- **Brian Ferry – Email**
- **Ariel Stephenson – Email**
- **Todd Ienna – Email**

~Board Discussion~

Chair Bernard closed the public hearing and asked for a motion to read the Ordinance by title only.

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

Chair Bernard: Second.

the Clerk called the poll

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 asked for the clerk to assign a number and read the ordinance by title only:

Clerk assigned **09-2020** and read the ordinance by title only

~Board Discussion~

Chair Bernard asked for further discussion and announced the Second Reading will be
Wednesday, November 25, 2020 at the Board's regular scheduled Business meeting at 10 AM

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

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

MOTION:

Commissioner Humberston: I move we approve the consent agenda.

Commissioner Savas: Second.

Clerk called the poll

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 an Intergovernmental Agreement between the Housing Authority of Clackamas County and the Community Development Division for conducting Environmental Reviews – *Community Development*
2. Approval of a Sub recipient Agreement with Lifeworks NW for Intensive Case Management Services – *Behavioral Health*
3. Approval of Sub recipient Agreement with Quest Center for Integrative Health or W.I.S.H. Program Services – *Behavioral Health*
4. Approval for the Public Health Division to apply for the NACCHO Local Climate and Health Demonstration Site funding opportunity. – *Public Health*
5. Approval of an Intra-Agency Agreement with Health Centers Division (CHCD) to reimburse Public Health Division (CCPHD) for client services provide by the Public Health Medical Director at the Health Centers Beaver creek Clinic – *Public Health*
6. Approval of a Sub recipient Agreement with Cascadia Behavioral Healthcare, Inc. for Residential Treatment Services - *Behavioral Health*
7. Approval of a Sub recipient Agreement with Cascadia Behavioral Healthcare, Inc. for Assertive Community Treatment Program - *Behavioral Health*
- *8. Approval of Amendment #1 to Subrecipient Grant Agreement with Ant Farm, Inc., to Provide CARES Funded Rent Assistance Services

B. Department of Transportation & Development

1. Approval of a Resolution Declaring the Public Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property for the Bear Creek (Canby Marquam Highway) Bridge Project and Authorizing Good Faith Negotiations and Condemnation Actions

C. Finance Department

1. Approval of a Contract with ERP Analysts, Inc. dba ERPA Group for Chart of Accounts Re-Installation and PeopleSoft Updates - *Procurement*

D. Technology Services

1. Approval for an Intergovernmental Agreement between Clackamas Broadband eXchange, City of Portland and Oregon Health & Science University for sharing data resources

IV. PUBLIC COMMUNICATION *Moderated by Christina Terwilliger*
<https://www.clackamas.us/meetings/bcc/business>

-No E-Mails

-Angela Nyland – Red Cross and Wildfires/Tents
-Les Poole – Gladstone - Rioting

V. COUNTY ADMINISTRATOR UPDATE
<https://www.clackamas.us/meetings/bcc/business>

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

Meeting Adjourned at 12:

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, November 12, 2020 – 10:01 AM

Virtual Meeting via Zoom

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

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

Chair Bernard:

- We are holding this meeting virtually. If you've joined us on the Zoom app for this meeting, and you are interested in providing public comment, we will prompt you regarding how to do that when the time is right.
- You will have the option of providing your comments to us live.
- Alternatively, anyone can send in a comment to be read during the Citizen Communication portion of our meeting over email. Just send it in at any time during the meeting by emailing bcc@clackamas.us.
- Be sure to include your name and area when you email.

***** Elections Update**

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

1. Sherry Hall

~Board Discussion~

***** Wildfire Update**

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

1. Nancy Bush gave an update regarding Wildfires in Clackamas County.

~Board Discussion~

*****COVID-19 Update**

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

1. Dr. Sarah Present gave update

~Board Discussion~

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

1. Veterans Day Proclamation and Resolution (Erika Silver, Health Housing and Human Services)

~Board Discussion~

MOTION:

Commissioner Humberston: I move we approve the Proclamation.

Commissioner Schrader: Second.

the Clerk called the poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

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

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

MOTION:

Commissioner Humberston: I move we approve the Consent Agenda.
Commissioner Schrader: Second.
the Clerk called the poll
Commissioner Fischer: Aye.
Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

~Board Discussion~

Asked to have A.4 discussed at issues next week

A. Health, Housing & Human Services

1. Approval of a Sub-recipient Agreement with Clackamas Women's Shelter (CWS) and the Community Development Division ESG Funding for the CWS Homeless Shelter – Community Development
2. Approval of a Federal Subrecipient Grant Amendment #1 with Clackamas Women's Services to Improve Criminal Justice Response to Domestic Violence – Children, Family & Community Connections
3. Approval for a Revenue Agreement with CareOregon for Dental Health Expansion – Health Centers
4. Approval of Amendment #6 to an Intergovernmental Agreement with The State of Oregon, Housing and Community Services Department to Provide Grant Funding Up to A Not to Exceed Amount – Social Services

B. Department of Transportation & Development

1. Approval of an Intergovernmental Agreement with ODOT (Contract No. 34384) for the Foster Road Paving at Hwy 212
2. Approval of an Intergovernmental Agreement with University of Oregon for an Americorps Member
3. Approval of a Contract with Sustainability Solutions Group Worker Co-operative for the Climate Action Plan Project
4. Approval of a Contract with Murraysmith, Inc. for the Stafford Road Improvements Project (Pattulo Way to Rosemont Road)

C. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC
2. Request by the Clackamas County Sheriff's Office to Enter into an Intergovernmental Agreement with North Clackamas School District for School Resource Officers in the 2021-2023 School Years – *Clackamas County Sheriff's Office*

D. Technology Services

1. Approval for a Service Level Agreement between Clackamas Broadband eXchange and Wholesail Networks LLC for dark fiber connections.

E. Finance

1. Approval of an Amendment to an Intergovernmental Agreement between Clackamas County and Clackamas 800 Radio Group for Clackamas County Public Safety Radio System Replacement Project (C800) Bond Funding

III. PUBLIC COMMUNICATION Christina Terwilliger Moderated

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

- Kevin Moss – Damascus – Email C800
- Tonia Hunt – Safe Kids Collation – Children’s Safety Levy
- Rose Fuller - Clackamas County - Children’s Safety Levy
- Rebecca Nichols - Children’s Safety Levy
- Robin Christiansen – CASA - Children’s Safety Levy
- Simon Fulford - Children’s Safety Levy

IV. COUNTY ADMINISTRATOR UPDATE

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

V. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED 11:33 AM

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>

Wednesday, November 25, 2020 – 10:00 AM

Virtual Meeting via Zoom

PRESENT: Chair Jim Bernard
Commissioner Sonya Fischer
Commissioner Ken Humberston
Commissioner Paul Savas (joined at 10:02)
Commissioner Martha Schrader

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

Chair Bernard:

- We are holding this meeting virtually. If you've joined us on the Zoom app for this meeting, and you are interested in providing public comment, we will prompt you regarding how to do that when the time is right.
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- Be sure to include your name and area when you email.

***** Wildfire Update**

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

1. Nancy Bush gave an update regarding Wildfires in Clackamas County.

~Board Discussion~

*****COVID-19 Update**

1. Philip Mason-Joyner gave update on COVID-19

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

~Board Discussion~

Chair Bernard announced the Board will recess as the Board of County Commissioners and convene as the Housing Authority Board for the next item.

I. HOUSING AUTHORITY CONSENT AGENDA

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

I. HOUSING AUTHORITY CONSENT AGENDA

1. In the Matter of approval to execute the General Depository Agreement, HUD Form 51999 - HACC

MOTION:

Commissioner Leenstra: I move we approve the Housing Authority Consent Agenda.

Commissioner Humberston: Second.

Clerk call the poll:

Commissioner Leenstra: Aye.

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 6-0.

Chair Bernard announced the Board will recess as the Board of County Commissioners and convene as the Clackamas County Surface Water Management Agency for the next item.

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

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

1. Recognition of County Surveyor Ray Griffin as 2020 Surveyor of the Year (Cheryl Bell, Department of Transportation)

~Board Discussion~

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

1. Second Reading of Ordinance No. 09-2020, Adding Clackamas County Code Chapter 8.10, Short-Term Rentals to the Clackamas County Code, and Amending Clackamas County Code Chapter 2.07, Compliance Hearings Officer (Nathan Boderman, County Counsel)

~Board Discussion~

Chair Bernard opened the public hearing and asked Christina Terwilliger to moderate this portion.

- **No Public Comment .**

Emails:

- **Livia Catrucci – Fees**
- **Laura Peterson – Pro**
- **Betsy – Mt. Hood Rentals**

Chair Bernard closed the public hearing and asked for a motion to read the Ordinance by title only.

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

Chair Bernard: Second.

Clerk called the poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Ney.

Commissioner Schrader: Ney.

Chair Bernard: Aye – the Ayes have it, the motion carries 3-2.

~Board Discussion~

Commissioner Humberston: I move we approve the Ordinance No. 09-2020 Adding Clackamas County Code Chapter 8.10, Short-Term Rentals to the Clackamas County Code, and Amending Clackamas County Code Chapter 2.07, Compliance Hearings Officer.

Chair Bernard: Second.

~Board Discussion~

Clerk called the poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Ney.

Commissioner Schrader: Ney.

Chair Bernard: Aye – the Ayes have it, the motion carries 3-2.

Chair Bernard Announce the Board will recess as the Board of County Commissioners and Convene as Clackamas County Surface Water Management Agency for the next public hearing.

2. Approval of Resolution Authorizing a Financing for New Capital Projects for Surface Water Management Agency of Clackamas County (Nathan Boderman, County Counsel) <https://www.clackamas.us/meetings/bcc/business>

~Board Discussion~

Chair Bernard opened the public hearing and asked Christina Terwilliger to moderate this portion.

- **No Public Comment.**
- **No Emails.**

Chair Bernard closed the public hearing and asked for a motion

MOTION:

Chair Bernard: I move we approve the Resolution Authorizing a Financing for New Capital Projects for Surface Water Management Agency of Clackamas County.

Commissioner Humberston: Second.
the Clerk called the poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

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

Chair Bernard Announce the Board will Adjourn as Clackamas County Surface Water Management Agency and Convene as the Service District No. 1 for the next public hearing.

3. Approval of Resolution Authorizing a Financing for New Capital Projects Clackamas County Service District No. 1 (Nathan Boderman, County Counsel) <https://www.clackamas.us/meetings/bcc/business>

~Board Discussion~

Chair Bernard opened the public hearing and asked Christina Terwilliger to moderate this portion.

- **No Public Comment.**
- **No Emails.**

Chair Bernard closed the public hearing and asked for a motion

MOTION:

Commissioner Humberston: I move we approve the Resolution Authorizing a Financing for New Capital Projects Clackamas County Service District No. 1.

Commissioner Savas: Second.
the Clerk called the poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

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

Chair Bernard Announce the Board will Adjourn as Clackamas County Service District No. 1 and Convene as the Tri-City Service District for the next public hearing.

4. Approval of Resolution Authorizing a Financing for New Capital Projects for Tri-City Service District (Nathan Boderman, County Counsel) <https://www.clackamas.us/meetings/bcc/business>

~Board Discussion~

Chair Bernard opened the public hearing and asked Christina Terwilliger to moderate this portion.

- **No Public Comment.**
- **No Emails.**

Chair Bernard closed the public hearing and asked for a motion

MOTION:

Commissioner Humberston: I move we approve the Resolution Authorizing a Financing for New Capital Projects for Tri-City Service District.

Commissioner Savas: Second.

the Clerk called the poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

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

Chair Bernard Announce the Board will Adjourn as the Tri-City Service District and Convene as Water Environment Services for the next public hearing.

5. Approval of Resolution Authorizing a Financing for New Capital Projects for Water Environment Services (Nathan Boderman, County Counsel) <https://www.clackamas.us/meetings/bcc/business>

~Board Discussion~

Chair Bernard opened the public hearing and asked Christina Terwilliger to moderate this portion.

- **No Public Comment.**
- **No Emails.**

Chair Bernard closed the public hearing and asked for a motion

MOTION:

Commissioner Humberston: I move we approve the Resolution Authorizing a Financing for New Capital Projects for Water Environment Services.

Commissioner Savas: Second.

the Clerk called the poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

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

Chair Bernard Announce Water Environment Services and Convene as the Board of County Commissioners for the next rest of the hearing.

IV. PUBLIC DISCUSSION ITEMS <https://www.clackamas.us/meetings/bcc/business>
County Administration

1. Supporting the Construction Career Pathways Program (Tracy Moreland, County Administration)

~Board Discussion~

Chair Bernard opened the public hearing and asked Christina Terwilliger to moderate this portion.

- **Tiffany Thompson – Metro - Thankful**
- **No Emails.**

Chair Bernard closed the public hearing and asked for a motion

MOTION:

Commissioner Humberston: I move we approve the consent agenda.
Commissioner Savas: Second.
the Clerk called the poll
Commissioner Fischer: Aye.
Commissioner Savas: Aye.
Commissioner Humberston: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

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

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

MOTION:

Commissioner Humberston: I move we approve the consent agenda.
Commissioner Savas: Second.
~Board Discussion~

Commissioner Savas asked to have

VI. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of an Intergovernmental Agreement Between City of Milwaukie and North Clackamas Parks and Recreation District for Funding Construction of Phase III of Milwaukie Bay Park

Pulled

the Clerk called the poll

Commissioner Fischer: Aye.
Commissioner Savas: Aye.
Commissioner Humberston: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

A. Health, Housing & Human Services

1. Approval for a Revenue Agreement with CareOregon for COVID Direct Member Support & Telehealth Infrastructure funding. – *Health Centers*
2. Approval of Sub-recipient Professional Services Agreement with Cascade AIDS Project for Human Immunodeficiency Virus (HIV) Testing and Counseling Services – *Public Health*
3. Approval to Accept Federal Grant Award for a Comprehensive Opioid, Stimulant, and Substance Abuse Site-Based Program Grant (COSSAP – *CFCC*)
4. Amendment #8 to Agreement #7462 a Revenue Agreement with CareOregon for Pharmacist Services to members enrolled with the Oregon Health Plan (OHP) – *Health Centers*

B. Department of Transportation & Development

1. Approval of Contract Amendment No. 2 with the National Safety Council for the purposes of Safe Systems Approach to Rural Road to Zero
2. Approval of an Intergovernmental Agreement with the Oregon Department of Transportation for Right of Way Services for the South End Road at Milepost 3.8 Project

3. Approval of a Contract with DiExSys, LLC for Traffic Safety Software – *Procurement*

C. Business & Community Services

1. A Board Order Approving Property Disposition Procedures Amendment and Property Control Transfer of Korner Park Property from Business and Community Services (BCS) to Clackamas County Department of Transportation and Development (DTD)

D. Technology Services

1. Approval for a Service Level Agreement with Cascade Utilities Inc for a connection to Government Camp.
2. Approval for a Service Level Agreement with OHSU for a dark fiber connection.

E. Juvenile Department

1. Approval of Amendment #9 Intergovernmental Agreement with Multnomah County Assessment and Evaluation for Assessment and Evaluation Beds for Youth

***F. County Administration**

- *1. Approval of a Contract with Hawkins Delafield & Wood, LLP to serve as a P3 Legal Advisor - *Procurement*

***PULLED**

VI. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of an Intergovernmental Agreement Between City of Milwaukie and North Clackamas Parks and Recreation District for Funding Construction of Phase III of Milwaukie Bay Park

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

No Emails

Christine Kennedy – Tootie Smith Concerns

VIII. COUNTY ADMINISTRATOR UPDATE

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

1. Board Statement to the County:

“As elected leaders we want to assure everyone in our community that Clackamas County remains committed to advancing the values and principles of equity and inclusion. These values will continue to inform our policies and our commitment to our citizens, particularly the BIPOC community. We are a diverse County, and our diversity makes our communities stronger. Stronger communities make a stronger Clackamas County.”

MOTION:

Commissioner Savas: I move we support this Statement.

Commissioner Humberston: Second.

the Clerk called the poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard:

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

IX. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED 12:07 PM

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>

Wednesday, December 3, 2020 – 10:00 AM

Virtual Meeting via Zoom

PRESENT: Chair Jim Bernard
Commissioner Sonya Fischer
Commissioner Ken Humberston
Commissioner Paul Savas (joined at 10:02)
Commissioner Martha Schrader

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

Chair Bernard:

- We are holding this meeting virtually. If you've joined us on the Zoom app for this meeting, and you are interested in providing public comment, we will prompt you regarding how to do that when the time is right.
- You will have the option of providing your comments to us live.
- Alternatively, anyone can send in a comment to be read during the Citizen Communication portion of our meeting over email. Just send it in at any time during the meeting by emailing bcc@clackamas.us.
- Be sure to include your name and area when you email.

***** Assessor Report**

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

1. Tami Little gave an update regarding Property Taxes in Clackamas County.

~Board Discussion~

***** Wildfire Update**

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

1. Nancy Bush gave an update regarding Wildfires in Clackamas County.

~Board Discussion~

***** COVID-19 Update**

1. Dr. Sarah Present gave update on COVID-19

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

~Board Discussion~

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

1. Adoption of Previously Approved Comprehensive Plan Map Amendment and Zone Change Application (Nate Boderman, County Counsel)

~Board Discussion~

Chair Bernard asked for a motion to read the Ordinance by title only.

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

Commissioner Schrader: Second.

Clerk Polled

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.
~Board Discussion~

Commissioner Humberston: I move we ZDO-299-20-CP and ZDO300-20-ZAP, a Comprehensive Plan Map Amendment and Zoning and Zoning Map Amendment proposed by Brooktraut Properties LLC for property described as T2S, R2E, Section 11D, Tax Lot 1601, W.M. with situs address 16147 SE 135th Ave, Clackamas, Oregon, as previously approved at the October 21st, 2020 land use hearing.

Commissioner Savas: Second.
Clerk called the poll
Commissioner Fischer: Aye.
Commissioner Humberston: Aye.
Commissioner Savas: Ney.
Commissioner Schrader: Ney.
Chair Bernard: Aye – the Ayes have it, the motion carries 3-2.

II. **PUBLIC HEARINGS** <https://www.clackamas.us/meetings/bcc/business>

1. PUBLIC HEARING Pursuant To Section 147(F) Of The Internal Revenue Code Of 1986, As Amended, For The FINANCING Of Certain Facilities From The EXECUTION AND DELIVERY Of Tax-Exempt Obligations (Rich Swift, Health, Housing, and Human Services)

~Board Discussion~

Chair Bernard opened the public hearing and asked Christina Terwilliger to moderate this portion.

- **No Public Comment.**
- **No Emails.**

Chair Bernard closed the public hearing and asked for a motion

MOTION:

Commissioner Humberston: I move we approve the PUBLIC HEARING Pursuant To Section 147(F) Of The Internal Revenue Code Of 1986, As Amended, For The FINANCING Of Certain Facilities From The EXECUTION AND DELIVERY Of Tax-Exempt Obligations.

Commissioner Savas: Second.
the Clerk called the poll
Commissioner Fischer: Aye.
Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

2. Approval of a Resolution for a Clackamas County Supplemental Budget for Fiscal Year 2020-2021 (Sandra Montoya, Finance)

~Board Discussion~

Chair Bernard opened the public hearing and asked Christina Terwilliger to moderate this portion.

- **No Public Comment.**
- **No Emails.**

Chair Bernard closed the public hearing and asked for a motion

MOTION:

Commissioner Humberston: I move we approve the Resolution for a Clackamas County Supplemental Budget for Fiscal Year 2020-2021.

Commissioner Schrader: Second.

the Clerk called the poll
Commissioner Fischer: Aye.
Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

- *3. Board Order and Ordinance Temporarily Amending Clackamas County Code Section 2.05.160.2 to Allow For Vacation Accrual For Non-Represented County Employees during a Covid 19 Pandemic and Wildfire declaring an Emergency (Stephen Madkour, County Counsel)

~Board Discussion~

Chair Bernard opened the public hearing and asked Christina Terwilliger to moderate this portion.

- **Les Poole – Gladstone – Non Rep Questions.**
- **No Emails.**

Chair Bernard closed the public hearing and asked for a motion

MOTION:

Commissioner Humberston: I move we read Ordinance and Board order by title only.
Commissioner Schrader: Second.
the Clerk called the poll
Commissioner Fischer: Aye.
Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

Chair Bernard asked for the Clerk to assign and number and read the ordinance and board order by title only

2020-79 Amending Clackamas County Code Section 2.05.160.2 to Allow For Vacation Accrual For Non-Represented County Employees during a Covid 19 Pandemic and Wildfire declaring an Emergency

Chair Bernard announced second reading to be Thursday, December 17, 2020 at the board's regular scheduled business meeting at 10:00 AM

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

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

MOTION:

Commissioner Humberston: I move we approve the consent agenda.
Commissioner Schrader: Second.

~Board Discussion~

Commissioner Savas asked to have

VI. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

- *3. Approval of an Intergovernmental Agreement Between City of Milwaukie and North Clackamas Parks and Recreation District for Funding Construction of Phase III of Milwaukie Bay Park

Pulled

the Clerk called the poll
Commissioner Fischer: Aye.

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

A. Health, Housing & Human Services

1. Approval of a Subrecipient Agreement with ColumbiaCare Services, Inc. for Residential Treatment Services – *Behavioral Health*
2. Approval for a Revenue Agreement with CareOregon for the Primary Care Payment Model (Track 2) Program - Per Member Per Month (PCPM) Incentive Program – *Health Centers*
3. Approval of Grant Agreement #18869 with Ride Connection, Inc. to Provide Funding for Specialized Service Rides Provided by Members of the Clackamas County Transportation Consortium – *Social Services*
4. Approval of Grant Agreement #18870 with Ride Connection, Inc. to Provide Funding for Specialized Service Rides Provided by Members of the Clackamas County Transportation Consortium – *Social Services*
5. Approval of Grant Agreements #18871, #18872, #18873 with Ride Connection, Inc. to Provide Funding for Rides Provided by Social Services, Transportation Reaching People - *Social Services*
6. Agreement#146873-3 with The State of Oregon, Department of Human Services, Seniors and People with Disabilities Division – *Social Services*
7. Approval of Change Order #5 between Clackamas County and Banlin Construction, LLC for Clackamas County Children’s Commission Head Start New Classroom Building Project – *Community Development*
8. Approval of Amendment # 1 to a Personal Services Agreement with Robert Half, Inc. temporary administrative staff – *Public Health*
9. Approval of Personal Services Contract with Bridges to Change Inc. for Temporary Housing for Mental Health and Substance Abuse Patients– *Procurement*

B. Department of Transportation & Development

1. Approval to apply to the Oregon Department of Transportation for All Roads Transportation Safety Program funding for federal fiscal years 2024-2027
2. Approval of Contract Amendment No. 1 with the Oregon Department of Transportation (ODOT) to the Transportation Growth Management (TGM) Grant – “Quick Response Program” for the US Route 26 Main Street Site Redevelopment Plan

C. Business & Community Services

1. Adoption of Barton Park Complex Master Plan, to set the vision for the future of recreation, conservation, and development of Barton Park and associated properties

2. Amendment #1 to agreement with River City Boat Sales, LLC for lease of Boones Ferry Marina

IV. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of a Resolution for North Clackamas Parks and Recreation District for Transfer of Appropriations for Fiscal Year 2020-2021
2. Approval of Contract between North Clackamas Parks and Recreation District and Shiels Oblatz Johnsen for the Owner's Representative Services for Milwaukie Bay Park – *Procurement*
- *3. Approval of an Intergovernmental Agreement Between City of Milwaukie and North Clackamas Parks and Recreation District for Funding Construction of Phase III of Milwaukie Bay Park

V. LIBRARY DISTRICT OF CLACKAMAS COUNTY

1. Approval of a Resolution for the Library Service District of Clackamas County for a Supplemental Budget (Less Than Ten Percent) for Fiscal Year 2020-2021

Chair Bernard Announce the Board will Adjourn as the Board of County Commissioners and Convene as Water Environment Services for the next matter.

- *3. Approval of an Intergovernmental Agreement Between City of Milwaukie and North Clackamas Parks and Recreation District for Funding Construction of Phase III of Milwaukie Bay Park

~Board Discussion~

MOTION:

Commissioner Fisher: I move we approve with amendments.
Chair Bernard: Second.
the Clerk called the poll
Commissioner Fischer: Aye.
Commissioner Humberston: Aye.
Commissioner Savas: Abstain.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 4-0-1.

Chair Bernard Announce Water Environment Services and Convene as the Board of County Commissioners for the next rest of the hearing.

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

Moderated by Christina Terwilliger

1. Les Poole – Gladstone – Metro Issues
2. Grover Jeffery Bornefeld – NCPRD Milwaukie
3. Elizabeth Berk - Email

~Board Discussion~

Chair Bernard closed the public hearing

VII. COUNTY ADMINISTRATOR UPDATE<https://www.clackamas.us/meetings/bcc/business>

MOTION:

Commissioner Humberston: I move we approve to send the letter.
Commissioner Schrader: Second.
the Clerk called the poll
Commissioner Fischer: Aye.
Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

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

MEETING ADJOURNED 12:10 PM

46PM



CRAIG ROBERTS, Sheriff

Clackamas County Sheriff's Office

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office for approval of a
2nd Amendment to the Intergovernmental Agreement (IGA) with Tri-Met for Police Services

Purpose/Outcome	This second amendment to the Intergovernmental Agreement (IGA) with Tri-Met for Police Services clarifies partnership and extends the agreement termination date
Dollar Amount and Fiscal Impact	Funds are currently budgeted within the Sheriff's Office FY 2020-21 budget
Funding Source	Tri-Met reimburses the Sheriff's Office for all costs related to these police services
Safety Impact	Furtheres the Board of County Commissioners' strategic priority of ensuring safe, healthy and secure communities
Duration	The current agreement will end on 03/31/2021; or earlier, should a new agreement be completed and executed prior to that date
Previous Board Action/Review	The Board of County Commissioners approved a prior extension of this IGA through 12/31/2020
Counsel Review	<ol style="list-style-type: none"> <i>Date of Counsel review: 12/07/2020</i> <i>Initials of County Counsel performing review: AN</i>
Procurement Review	<ol style="list-style-type: none"> <i>Was the item processed through Procurement? yes <input type="checkbox"/> no <input type="checkbox"/> Not applicable</i> <i>If no, provide brief explanation: Not applicable</i>
Contact Person	Nancy Artmann, Sheriff's Finance Manager – nartmann@clackamas.us
Contract No.	GC150813LG

BACKGROUND:

Approval of this amendment removes the City of Portland as a party to the agreement and allows for an extension of the current agreement through 03/31/2021. This will provide time for a new agreement to be finalized and executed.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners approves and signs this 2nd amendment to the IGA as submitted.

Respectfully submitted,

Craig Roberts,
Sheriff

AMENDMENT NUMBER 2
INTERGOVERNMENTAL AGREEMENT BETWEEN THE TRI-COUNTY
METROPOLITAN TRANSPORTATION DISTRICT OF OREGON AND THE
CLACKAMAS COUNTY SHERIFF'S OFFICE FOR TRANSIT POLICE SERVICES
Agreement No. GC150813LG

This Amendment No. 2 amends the Intergovernmental Agreement (Agreement) between the Tri-County Metropolitan Transportation District of Oregon (TriMet), the City of Portland (Portland), and the Clackamas County Sheriff's Office for Transit Police Services to include removal of the City of Portland as a party to the Agreement and to extend the term. This Amendment No. 2 is effective January 1, 2021, and amends the Agreement as set forth below.

1. TriMet and the Clackamas County Sheriff's Office (the Parties) agree and acknowledge that the City of Portland is no longer participating in the Transit Police Division effective January 1, 2021. This Amendment strikes all references in the Agreement to the City of Portland or the Prime Agreement executed by Portland and TriMet.
2. By signing this Amendment, the Parties ratify the Agreement and their respective obligations therein without participation of the City of Portland.
3. The Parties extend the final term of this Agreement for a period of time up to March 31, 2021. The Agreement will end at the earlier of March 31, 2021, or when new primary and subsidiary agreements are executed for all participating jurisdictions.
4. Command Staff responsibilities for the Division, including any hiring of non-sworn staff, will be assumed by other jurisdictions as provided by a staffing letter pursuant to the Agreement.
5. Notwithstanding the forgoing, Exhibit 4 to the Agreement governing investigations will remain in effect and be administered by the Transit Police Command staff.

NO OTHER CHANGES

The individuals signing below represent and warrant that they have authority to bind the party for which they sign. This Amendment may be signed electronically in two or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

**CLACKAMAS COUNTY
SHERIFF'S OFFICE**

TRIMET

Signature

Marla Blagg
TriMet Exec. Dir. Safety and
Security

Printed Name

Date

Title

Date

Approved as to form:



Attorney for Clackamas County
Sheriff's Office

TriMet Legal Department

12/07/2020

Date

Date



CRAIG ROBERTS, Sheriff

Clackamas County Sheriff's Office

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office to approve the
4th Amendment to the Intergovernmental Agreement (IGA) with the Oregon Marine Board

Purpose/Outcome	This 4 th Amendment to the Clackamas County Sheriff's Office IGA with the Oregon State Marine Board will extend the termination date and add funds for the current fiscal year
Dollar Amount and Fiscal Impact	Funds are currently budgeted within the Sheriff's Office FY 2020-21 budget
Funding Source	The Oregon State Marine Board will reimburse the Sheriff's Office for services as stated in the IGA
Safety Impact	Furtheres the Board of County Commissioners' strategic priority of ensuring safe, healthy and secure communities
Duration	The agreement period is July 1, 2020 – June 30, 2021
Previous Board Action/Review	The Board of County Commissioners has approved all past agreements and amendments presented by the Oregon State Marine Board
Counsel Review	<ol style="list-style-type: none"> <i>Date of Counsel review:</i> 11/12/2020 <i>Initials of County Counsel performing review:</i> AN
Procurement Review	<ol style="list-style-type: none"> <i>Was the item processed through Procurement?</i> yes <input type="checkbox"/> no <input type="checkbox"/> Not applicable <i>If no, provide brief explanation:</i> Not applicable
Contact Person	Nancy Artmann, Sheriff's Finance Manager – nartmann@clackamas.us
Contract No.	250-1920CLACKAMAS-000

BACKGROUND:

This 4th amendment to the IGA between the Clackamas County Sheriff's Office and the Oregon State Marine Board extends the termination date to June 30, 2021 and adds funding for FY 2020-21 in the amount of \$439,881.30.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners approves and signs this amendment.

Respectfully submitted,

Craig Roberts,
Sheriff

Amendment No. 4 to IGA 250-1920CLACKAMAS-000

This is Amendment No. 4 to IGA 250-1920CLACKAMAS-000, dated July 1, 2019, as amended from time to time ("Agreement") between the State of Oregon, acting by and through its State Marine Board ("OSMB"), and Clackamas ("County"). The referenced agreement is the 2019-2020 Law Enforcement Intergovernmental Agreement with the County of Clackamas for marine law enforcement activities. This Amendment is effective on July 1, 2020, or the date of the last signature, whichever occurs last ("Amendment Effective Date").

The Agreement is amended as follows (new language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~):

- 1. Section 3 of the Agreement is amended as follows:

This Agreement is effective on July 1, 2019, or the date of the last signature, whichever occurs last) ("Effective Date"), and terminates on ~~June 30, 2020~~ **June 30, 2021**, unless terminated earlier in accordance with Section 17.

- 2. Section 7 of the Agreement is amended as follows:

OSMB shall, upon receipt and approval of expenditure documentation, pay to the County an amount not to exceed \$445,324.93 **in the first year ending June 30, 2020, and \$439,881.30 in the second year ending June 30, 2021.** Payment requests shall be only for authorized services provided by the County pursuant to this agreement and for costs actually incurred by the County in conjunction with such services (including salaries/benefits, supplies or purchases of boats/equipment). At OSMB's discretion, federal funds may be used for payment.

- 3. For services performed on or after the Amendment Effective Date, Exhibit B of the Agreement is deleted and replaced with Revised Exhibit B attached here to, effective the Amendment Effective Date.

Except as expressly amended above, all other terms and conditions of Agreement are still in full force and effect. County certifies that the representations, warranties and certifications contained in the Agreement are true and correct as of the Amendment Effective Date and with the same effect as though made at the time of this Agreement.

COUNTY

By: _____
Title: _____
Date: _____
FEID # _____

STATE OF OREGON, acting by and through its State Marine Board

By: _____
Title: _____
Date: _____

Approved pursuant to ORS 291.047

By: _____
Assistant Attorney General
Date: _____



Boating Safety Action Plan

for Clackamas County Sheriff's Office

FY 2020-21

Agency

Address: 2223 S Kaen Rd Oregon City OR 97045

Phone #: 503-655-8218

Contact for Questions: Sgt. Nate Thompson 503-572-7118

Patrol Hours:	3500
Program Hours:	3260
Total Hours:	6760

**Total Available Hours
from Page 7**

10,080.00

Your 2020-21 Action Plan Overview

Our focus in 2020-21 continues to be risk intervention. Collisions, high speed accidents, livery rentals, BUII and nav rule violations are critical. While basic compliance is still important, please briefly describe your strategies to focus your patrol efforts on risk intervention and accident prevention at your key, higher risk waterways.

Our high risk waterways continue to be the Willamette River both above and below the falls during the summer months. Interaction between pleasure boaters and PWC is a concern on the lower Willamette River. With the new rules on the upper Willamette we anticipate a influx of wake sport boats on the lower river which already has a congested mixed user groups. The upper Willamette River mostly has complaints about boat wakes and wake or towed water sports. With the possibility of updating the new rules in place on the upper Willamette River regarding the wake sport boating restriction we will have a major focus on this area over the summer months. After spending all last summer educating boater on the new rules we will have even more work re-educating them on the changes and the new towed water sports endorsement.

The Clackamas River sees very heavy traffic during the warm summer months. With five to seven thousand people floating down the river a day. Patrol of this area can be a strain on resources. We no longer have the use of a diversion program to help educate boaters on the safety equipment they need. With the reduction of the PFD fine we will be issuing citations and providing boaters with PFD's while we still have some available. We will also be looking for funding to continue purchasing PFD's so that we are able to give them to boaters who are without.

The reservoirs on the Clackamas River will continue to be patrol by Marine Patrol year round and have an increased patrols July through September through a contract with PGE.

This years Patrol hours and Program hours are the same as last year. We should have the same staffing levels this year as last. These hours only including the hours for our full time Marine Deputies. There could be more patrol hours than planned if all of the seasonal positions are filled. Additionally several of the positions are for MSO's and those are secondary officers on the boat and their hours are not counted towards the program and patrol hours.

Annual Patrol Plan: 3500 Hours

Expectation: Directed patrols will prioritize risk-based interventions first, then administrative compliance. Interventions should include a full BER. Consider local operation, use patterns, seasonal risks (fishing, cold water, wind etc). Patrol plan should reference ORS/OAR (at left) pertinent to your area of operation.

Risk Intervention

- Local Rules
OAR 250-020
- PFDs
830.215
- Muffling Device
830.260
- Sound Signaling
830.230
- Unsafe Operation
830.305
- Reckless Operation
830.315
- BUll
830.325
- Maintain Lookout
830.335
- Nav Rules
830.340
- Traffic Lanes
830.345
- Riding on Bow
830.360
- Occupy transom
830.362
- Waterskiing/Observer
830.365
- Boat Livery
830.415, 420

Compliance

- AIS
- Boater Ed Card
- Outfitter Guide

To fulfill the directive of the Marine Board we will focus on risk-based intervention in our high risk waterways. This means there may be a drop in the number of boater contacts for basic boat inspections.

On the lower Willamette River we will focus on the area of Meldrum Bar. This area is very popular with personal water crafts. PWC's and boats, both motorized and non-motorized, in this area are often operated in close proximity to each other. Our patrol will focus on unsafe operation, fail to maintain lookout, Navigation Rules as well as rules specific to PWC's. We will utilize patrol boats as well as PWC's to patrol this area.

The upper Willamette River has complaints of congestion and excessive wakes. There were several new laws put into place last year. This year is the first year of another new law, the implementation of the towed water sport endorsement. With the new laws and possible changes mid season to last years new laws the boater will face some drastic changes that could be confusing. If this is the case we will mostly focus on education rather than enforcement. Our primary focus will be on the zones that restrict certain type of boat operation. We will still focus on areas outside of the restriction area as well, these areas are prone for congestion which leads to rules of the road violations.

The Clackamas River has a large amount of non-motorized traffic during the summer months. We have done studies showing that on hot days five to seven thousand people float between Barton Park and Carver Park. There are other areas of the river with heavy traffic but this area is by far the busiest. We will focus patrols on safety equipment such as PFD's and Sound Signaling devices as well as making sure we have compliance with the new law requiring a water way access permit.

We contract with PGE to provide patrols to their Reservoirs which includes, Estacada Lake, North Fork Reservoir, Frog Lake, Lake Harriet and Timothy Lake.

These lakes have very high use in the summer months. Most are slow speed lakes so they do not have a lot of high risk activities. North Fork reservoir is the busiest with a mixed user group. Patrols of these waterway will be focused on PFD's and other safety equipment at the ramps and on the water. On water and shore patrol will prioritize any high risk behavior.

We are currently still working with OSP Fish and Game to contact fishermen. They have a boat slip at our boat house that they are able to use. We strongly encourage Deputies to patrol with OSP so that they can learn from each other and work as a team.

Boating Safety Program Waterbodies To Be Patrolled



County/Agency: Clackamas County Sheriff's Office

FY 2020-21

Waterways (Inland & Ocean)	Specific Area	Start MM/YY	End MM/YY	Add'l Comments
Willamette River	Above the Falls	Year	Round	Year round use both motorized and non. Very heavy use during summer months.
Willamette River	Below the Falls	Year	Round	Heavy year round use both motorized and non. Fishing traffic in winter spring and summer. Some commercial traffic.
Clackamas River	All	Year	Round	Heavy year round use both motorized and non. Fishing traffic in winter spring and summer. Heavy non motorized use in summer months.
Sandy River	All	Year	Round	Patrol during winter and spring for fishing traffic. Summer patrol are minimal due to water level and low use. Use has increased due to the alcohol ban on the Clackamas River.
Molalla River	All	Year	Round	Patrol during winter and spring for fishing traffic. Summer patrol are minimal due to water level and low use.
Tualatin River	All	Year	Round	Most patrols are during the summer months. There is mixed use traffic. Low head dam on the river that we put up warning buoys for.
Pudding River	All	Year	Round	Very low use year round. Mixed motor and non motorized traffic. Most traffic is during duck and goose hunting season.
North Fork Reservoir	All	Year	Round	Most of the focus during summer months. Heavy mixed use traffic. This is a PGE reservoir.
Estacada Lake	All	Year	Round	Most of the focus during summer months. Mixed use traffic with minimal use mostly during summer months. This is a PGE Reservoir
Frog Lake	All	Year	Round	Patrol to make sure boats are not on the water. This lake has no boats allowed. This is a PGE reservoir
Lake Harriet	All	Year	Round	Mostly fishing traffic this is a PGE reservoir. New boat ramp and docks installed in 2018 so we are expecting increased traffic
Timothy Lake	All	Year	Round	Fishing traffic both motorized and non. Lake has a 10mph speed limit. There are three boat ramps on the lake and many pump outs only accessible by boat. This is a PGE reservoir
Trillium Lake	All	Year	Round	Non motorized only lake. High traffic during the summer months.
Lake Oswego	All	Year	Round	Work with Lake Oswego Lake Patrol to address problem areas



Annual Program Plan 3260 Hours	
Instructor Training	<p>Expectation: Note personnel involved or willing to be involved in providing training on OSMB behalf. Participation pre-approved by training coordinator.</p>
	<p>Sergeant Thompson will continue to teach the OSMB PWC course that is offered at Clackamas County.</p> <p>Sergeant Thompson, Deputy Belmont and Deputy Peterson will instruct at the Academy, Drift and Jet if their attendance is needed.</p>
Training	<p>Expectation: New or inexperienced DPSST certified marine officers will complete Marine Law Enforcement Academy, Drift Boat, White Water, Swift Water Rescue and other training as appropriate, and attend pre- and post-season meetings, if possible.</p>
	<p>New Marine Deputy Ross Clemson will be attending the Marine Academy, Drift and Jet operations this year.</p>
Non-OSMB Training	<p>Expectation: Training as per program standards to maintain high level of police skill, performance and certifications.</p>
	<p>Deputy's will participate in all required Sheriff's Office Training. To include monthly training in firearms and defensive tactics.</p>
Maintenance	<p>Expectation: Perform regular and appropriate maintenance such as winterization, oil changes, trailer bearings, basic repairs and other preventative work as needed.</p>
	<p>We will continue to perform basic repair and maintenance on our boats. We would like to get additional training in Rotax / Seadoo maintenance so that we can do our own maintenance on our boat with this engine and pump. We need a way to connect to the rotax engine to update maintenance and reset codes.</p>
Waterway Markers	<p>Expectation: Map and track OSMB-funded or approved waterway markers, maintain and confirm locations as per ORS, OAR, safety and informational requirements, maintain inventory.</p>
	<p>We currently maintain and place about 20 buoys on our waterways. We currently don't have a boat with a davit so we will be adding that to one of our patrol boats. With our moving water we have to pull, drop and store all of these waterway markers and anchors.</p>

Hazard Mitigation	Expectation: Identify and respond to extraordinary waterway hazards through coordination with OSMB.
	We will continue to clear waterway hazards using Sheriff's Office resources. If a hazard is unable to be cleared we will reach out to OSMB for assistance.
Abandoned Boats	Expectation: Identify, assess, mitigate and investigate as appropriate. Coordinate with OSMB Abandoned Vessel Program manager.
	We do not have any abandoned boats currently in our property room but as these come in we will work with OSMB to dispose of these boats.
Education	Expectation 1: Plan and implement public outreach strategies that teach public basic on-water safety skills. Expectation 2: Provide directly or through partners equivalency exam opportunities in your county.
	Clackamas County works with several schools of all age levels throughout the year to educate water safety. We also attend meeting with different adult groups to talk about boating safety. We do provide equivalence exams when requested. We have 3 Deputies trained as Boat Oregon instructors.
Trailing/Travel	Expectation: Note necessary trailering and traveling times specific to your AOR.
	Several lakes in the county have to have a boat trailered to them. Some are as long as a 2 hour commute. We pick route to and from these lakes so that other waterway can be checked and patrol at the same time. We have boats inside boathouses on both the upper and lower Willamette River. These boats are trailered several times a week to be fueled and cleaned.
Accident Investigation	Expectation: Follow investigation protocols. Notify Boat Accident Investigation Team of fatal or serious accidents. Fully evaluate for BUII. Complete reports within timeframe.
	Deputy Belmont has been trained in boat accident investigation and we also have a accident reconstruction team at the Sheriff's Office if needed.
Administrative	Expectation: Office duties required for program operations.
	Most administrative duties are completed by the Sergeant but some are done by the deputies. Although administrative duties are time consuming and necessary at the Clackamas County Marine program we will attempt to do shore and river patrol everyday.
HINS/Livery/Moorage Checks	Expectation: Provide HIN inspections as requested; inspect liveries annually for records compliance; check moorages annually to ensure registration compliance.
	We currently schedule HIN's on a regular basis and do livery and moorage checks several times a year depending on the need.

**Note: Programs are monitored for Road Patrol Assistance and other non-marine activities. Hours should be incidental to program. Also, avoid non-marine operations that cause overtime hours to be charged to marine funding.*

Boating Safety Program Proposed Costs



County/Agency: Clackamas County Sheriff FY 2020-21

Allocation (some may not apply)	OSMB	County/Agency Contribution
LE Allocation:	\$439,881.30	
Boat Allocation:		
Special Emphasis:		
Total: ✓	\$439,881.30	\$0.00
Proposed Program Costs:		
	OSMB	County/Agency Contribution
1. Personnel (Must match totals on Form A)	\$439,881.30	\$219,039.50
2. Operations and Maintenance (Must match totals on Form B)	\$0.00	\$163,723.00
3. Boat		382,762.50
4. Total direct Proposed Program Cost (1+2+3, should equal Total in above section)	\$439,881.30	\$369,413.70

County/Agency Authorized Representative:

Signature

9/5/2020

Date

Jenna Morrison

Typed Name

Telephone

Boating Safety Program



Proposed Personnel Costs – Form A

Note: “# of Hours” equals staff time dedicated to marine program. This may include overhead such as personal leave but should be proportional to their position (2080 hrs is full time). Note that total hours should be consistent with combined “Patrol” and “Program” hours on page 1.

County/Agency: Clackamas County Sheriff's FY 2020-21

Employee Compensation				Compensation		
Name	Title	# of Hours	Cost per Hour	Total	OSMB	County/ Agency Cash Contribution
1. Full Time Supervisor	Sergeant	2,080.00	\$88.71	\$184,516.80	\$128,000.00	\$56,516.80
2. Full Time Deputy	Deputy	2,080.00	\$72.41	\$150,612.80	\$120,000.00	\$30,612.80
3. Full Time Deputy	Deputy	2,080.00	\$72.41	\$150,612.80	\$120,000.00	\$30,612.80
4. 6 month Full Time Deputy	Seasonal Deputy	1,040.00	\$72.41	\$75,306.40	\$51,881.30	\$23,425.10
5. Seasonal PGE Contract Deputy	Seasonal Deputy	400.00	\$37.08	\$14,832.00	\$0.00	\$14,832.00
6. Marine Service Officer 1	MSO	600.00	\$17.10	\$10,260.00	\$0.00	\$10,260.00
7. Marine Service Officer 2	MSO	600.00	\$17.10	\$10,260.00	\$0.00	\$10,260.00
8. Marine Service Officer 3	MSO	600.00	\$17.10	\$10,260.00	\$0.00	\$10,260.00
9. Marine Service Officer 4	MSO	600.00	\$17.10	\$10,260.00	\$0.00	\$10,260.00
10.				\$0.00		
11.				\$0.00		
12.				\$0.00		
13.				\$0.00		
14.				\$0.00		
15.				\$0.00		
16.				\$0.00		
17.				\$0.00		
18.				\$0.00		
19.				\$0.00		
20.				\$0.00		
21. Sub-Total (lines 1 thru 20)		10,080.00		\$616,920.80	\$419,881.30	\$197,039.50
22. Overtime (cannot exceed 5% of OSMB's amount on line 21)					\$20,000.00	\$22,000.00
23. Total Proposed Personnel Costs (lines 21 + 22)					\$439,881.30	\$219,039.50

70/30
80/20
80/20
70/30

Boating Safety Program Proposed Operations & Maintenance Costs – Form B



County/Agency: Clackamas County Sheriff FY 2020-21

Operating Supplies/Maintenance/Training Costs	Actual Expenditures		
	Total	OSMB	County/ Agency Cash Contrib.
A. Fuel: Vehicle 9,000.00 gallons @ \$ \$3.00 per gallon Boat 6,000.00 gallons @ \$ \$3.00 per gallon <div style="text-align: right;">Subtotal of A:</div>	\$27,000.00 \$18,000.00 \$45,000.00	\$0.00	\$27,000.00 \$18,000.00 \$45,000.00
B. Vehicle Lease			
C. Moorage	\$12,208.00		\$12,208.00
D. Expendable Supplies – (\$500 max/each item) specify: 1. Materials and Services 2. 3. 4. <div style="text-align: right;">Subtotal of D:</div>	\$29,286.00 \$29,286.00	\$0.00	\$29,286.00 \$29,286.00
E. Maintenance – Refer to your 20-21 maintenance service plan, enter data below: Identify by OR # and make: 1. Total Maintenance budget for all boats 2. <i>See attached maintenance schedule</i> 3. 4. 5. 6. <div style="text-align: right;">Subtotal of E:</div>	\$22,895.00 \$22,895.00	\$0.00	\$22,895.00 \$22,895.00
F. Insurance – (specify Insurance Company & policy #): Hartford Fire Insurance Policy #520MKA7840	\$15,111.00		\$15,111.00
G. Non-OSMB Training – specify: 1. 2. 3. 4. <div style="text-align: right;">Subtotal of G:</div>	\$0.00	\$0.00	\$0.00

H. Training Attending-- specify:			
1. Drift:			
2. Jet:			
3. Academy:			
4. Other: Total Training budget for Marine Board Training	\$6,155.00		\$6,155.00
Subtotal of H:	\$6,155.00	\$0.00	\$6,155.00
I. Other – specify:			
1. County Allocation Charges	\$33,068.00		\$33,068.00
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
Subtotal of I:	\$33,068.00	\$0.00	\$33,068.00
Subtotal:	\$163,723.00	\$0.00	\$163,723.00



Clackamas County Fleet Service Plan - 2020

Maintenance Budget (inputted in Action Plan, Form B, Section E)

When estimating the maintenance budget it is important to review the following:

- 1) Current engine hours
- 2) Maintenance item, service, and interval charts provided in this plan
- 3) Projected platform usage for the budget period
- 4) Actual maintenance costs from previous years
- 5) Maintenance records in the OMLEAR database under *Reports: Patrol Boat Service History*

Action Plan – 2019 Maintenance Review

- 1) Maintenance records and reporting is good. No suggestions at this time.

If you have questions about this maintenance service plan or the action plan please contact **Brian Paulsen at 503-378-2610** or email: brian.paulsen@oregon.gov. The following are required maintenance items with service intervals based on marine law enforcement use.

2019 River Wild – OR 740 XCX

Engine - Propulsion: Rotax 250 ECT Supercharged 240 HP

ITEM	SERVICE	INTERVAL
Engine Oil & Filter	CHANGE	100 HRS - 1 YR
Anti-Corrosion Spray	LUBRICATE	1 YR
Supercharger Clutch	CHANGE	200 HRS
Exhaust System	CLEAN - FLUSH	1 YR
Coolant Hoses	INSPECT	1 YR
Engine Coolant	CHANGE	300 HRS - 5 YRS
Fuel Tanks & Hoses	INSPECT	1 YR
Spark Plugs	REPLACE	200 HRS - 2 YRS
Ignition Coil Seals	LUBRICATE	1 YR
Steering Components	INSPECT	1 YR
Propulsion System	INSPECT - LUBE	1 YR
Sacrificial Anode	INSPECT	1 YR
Trailer Brakes and Bearings	INSPECT	1 YR
Trailer Tires	INSPECT	1 YR



2016 River Wild – OR 725 XCX

Engine - Propulsion: Yanmar 8 LV Diesel – Hamilton HJ241

ITEM	SERVICE	INTERVAL
Engine Oil & Filter	CHANGE	100 HRS
Engine Coolant	CHANGE	250 HRS
Seawater Impeller	INSPECT - REPLACE	250 HRS
Air Filter – Intake Silencer	INSPECT - CLEAN	250 HRS
Fuel Filter Element	REPLACE	250 HRS
Fuel - Water Separator	DRAIN	50 HRS
Belts	INSPECT - REPLACE	1 YR
Heat Exchanger – Cooling System Passages	INSPECT - CLEAN	1 YR
Turbo-charger	INSPECT – CLEAN	250 HRS
Zinc Anodes – Pump & Engine	INSPECT - REPLACE	1 YR
Reverse Cylinder Shaft	GREASE	100 HRS
Main Jet Thrust Bearing	GREASE	10 HRS
Jet Pump Tear-Down	INSPECT - CLEAN	1 YR
Trailer Brakes and Bearings	INSPECT	1 YR
Trailer Tires	INSPECT	1 YR

2019 Yamaha VXR – OR 751 XCX

Engine - Propulsion: Yamaha 1812cc

ITEM	SERVICE	INTERVAL
Engine Oil & Filter	CHANGE	50 HRS - 1 YR
Anti-Corrosion Spray	LUBRICATE	1 YR
Valve Adjustment	SERVICE	200 HRS
Cooling System	CLEAN - FLUSH	1 YR
Coolant Hoses/Strainers	INSPECT - CLEAN	1 YR
Fuel Tank Water Separator	DRAIN	50 HRS - 1 YR
Air Filter Element	INSPECT - CHANGE	1 YR
Steering Cable, Reverse and Trim Rods	LUBRICATE	1 YR
Fuel Tank & Hoses	INSPECT	1 YR
Spark Plugs	REPLACE	100 HRS
Reverse Shift Gate	LUBRICATE	1 YR
Steering Components	INSPECT	1 YR
Propulsion System	INSPECT	1 YR
Sacrificial Anode	INSPECT	1 YR
Trailer Bearings & Tires	INSPECT	1 YR



2019 Yamaha VXR – OR 752 XCX

Engine - Propulsion: Yamaha 1812cc

ITEM	SERVICE	INTERVAL
Engine Oil & Filter	CHANGE	50 HRS - 1 YR
Anti-Corrosion Spray	LUBRICATE	1 YR
Valve Adjustment	SERVICE	200 HRS
Cooling System	CLEAN - FLUSH	1 YR
Coolant Hoses/Strainers	INSPECT - CLEAN	1 YR
Fuel Tank Water Separator	DRAIN	50 HRS - 1 YR
Air Filter Element	INSPECT - CHANGE	1 YR
Steering Cable, Reverse and Trim Rods	LUBRICATE	1 YR
Fuel Tank & Hoses	INSPECT	1 YR
Spark Plugs	REPLACE	100 HRS
Reverse Shift Gate	LUBRICATE	1 YR
Steering Components	INSPECT	1 YR
Propulsion System	INSPECT	1 YR
Sacrificial Anode	INSPECT	1 YR
Trailer Bearings & Tires	INSPECT	1 YR

2016 Bad Cat – OR 926 XX

Engine - Propulsion: cataraft w/o motor

ITEM	SERVICE	INTERVAL
UV Coating - 303 AP	APPLY	1 YR
Valve Gaskets	INSPECT - CLEAN	1 YR
Frame & Straps	INSPECT	1 YR
Anchor Rope	INSPECT	1 YR
Anchor Pulley System	INSPECT - LUBE	1 YR
Oars and Oar Locks	INSPECT	1 YR

2016 Bad Cat – OR 927 XX

Engine - Propulsion: cataraft w/o motor

ITEM	SERVICE	INTERVAL
UV Coating - 303 AP	APPLY	1 YR
Valve Gaskets	INSPECT - CLEAN	1 YR
Frame & Straps	INSPECT	1 YR
Anchor Rope	INSPECT	1 YR
Anchor Pulley System	INSPECT - LUBE	1 YR
Oars and Oar Locks	INSPECT	1 YR



2007 North River – OR 396 XCX

Engine - Propulsion: Marine Power 6.0L – Hamilton HJ212

ITEM	SERVICE	INTERVAL
Engine Oil & Filter	CHANGE	50 HRS
Engine Coolant	CHANGE	2 YRS
Spark Plugs	INSPECT - CLEAN	1 YR
Fuel Filter (G Force)	REPLACE	1 YR
Flame Arrestor	CLEAN	100 HRS
Belts	INSPECT	1 YR
Spark Plug Wires	INSPECT	1 YR
Breather Hoses	CLEAN	1 YR
Starter Bendix	GREASE	1 YR
Heat Exchanger	INSPECT - CLEAN	1 YR
Zinc Anodes	INSPECT - CLEAN	1 YR
Main Jet Thrust Bearing	GREASE	10 HRS
Annual Pump Tear-Down	INSPECT - CLEAN	1 YR
Trailer Brakes and Bearings	INSPECT	1 YR
Trailer Tires	INSPECT	1 YR

2009 Thunder Jet – OR 402 XCX

Engine - Propulsion: Mercury Sport Jet 200 HP

ITEM	SERVICE	INTERVAL
Bilge Siphon Hose	INSPECT - CLEAN	10 HRS
Drive Housing Lubricant	REPLACE	1 YR
Stator Assembly Lubricant	REPLACE	1 YR
Fuel Filter (In-Line)	REPLACE	1 YR
Fuel Water Separator	REPLACE	1 YR
Compressor Air Filter	REPLACE	1 YR
Spark Plugs	INSPECT	100 HRS
Belts	INSPECT	1 YR
Belt Tensioner	LUBE	1 YR
Impeller Shaft	GREASE	1 YR
Zinc Anodes	INSPECT - CLEAN	1 YR
Reverse Gate Bushings	INSPECT	1 YR
Cooling System	FLUSH	1 YR
Trailer Brakes and Bearings	INSPECT	1 YR
Trailer Tires	INSPECT	1 YR



2007 North River – OR 384 XCX

Engine - Propulsion: Marine Power 6.0L – Hamilton HJ212

ITEM	SERVICE	INTERVAL
Engine Oil & Filter	CHANGE	50 HRS
Engine Coolant	CHANGE	2 YRS
Spark Plugs	INSPECT - CLEAN	1 YR
Fuel Filter (G Force)	REPLACE	1 YR
Flame Arrestor	CLEAN	100 HRS
Belts	INSPECT	1 YR
Spark Plug Wires	INSPECT	1 YR
Breather Hoses	CLEAN	1 YR
Starter Bendix	GREASE	1 YR
Heat Exchanger	INSPECT - CLEAN	1 YR
Zinc Anodes	INSPECT - CLEAN	1 YR
Main Jet Thrust Bearing	GREASE	10 HRS
Annual Pump Tear-Down	INSPECT - CLEAN	1 YR
Trailer Brakes and Bearings	INSPECT	1 YR
Trailer Tires	INSPECT	1 YR

2009 Sotar

Engine - Propulsion: raft w/o motor

ITEM	SERVICE	INTERVAL
UV Coating - 303 AP	APPLY	1 YR
Valve Gaskets	INSPECT - CLEAN	1 YR
Frame & Straps	INSPECT	1 YR
Anchor Rope	INSPECT	1 YR
Anchor Pulley System	INSPECT - LUBE	1 YR
Oars and Oar Locks	INSPECT	1 YR

2004 Sotar

Engine - Propulsion: cataraft w/o motor

ITEM	SERVICE	INTERVAL
UV Coating - 303 AP	APPLY	1 YR
Valve Gaskets	INSPECT - CLEAN	1 YR
Frame & Straps	INSPECT	1 YR
Anchor Rope	INSPECT	1 YR
Anchor Pulley System	INSPECT - LUBE	1 YR
Oars and Oar Locks	INSPECT	1 YR



CRAIG ROBERTS, Sheriff

Clackamas County Sheriff's Office

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office to Accept a Grant from
Oregon Impact for reimbursement related to
Pedestrian Safety Enforcement

Purpose/Outcome	Funds received by Oregon Impact will reimburse the Sheriff's Office for FFY 2020-21 expenditures related to pedestrian safety enforcement activities
Dollar Amount and Fiscal Impact	The total grant award amount is \$6,000
Funding Source	The funds come to the County via a grant award from Oregon Impact
Safety Impact	Furtheres the Board of County Commissioners' strategic priority of ensuring safe, healthy and secure communities
Duration	The project period is 10/01/2020 – 09/30/2021
Previous Board Action/Review	The Board of County Commissioners has approved prior awards granted by Oregon Impact for this purpose
Counsel Review	<ol style="list-style-type: none"> <i>Date of Counsel review:</i> 11/24/2020 <i>Initials of County Counsel performing review:</i> AN
Procurement Review	<ol style="list-style-type: none"> <i>Was the item processed through Procurement?</i> yes <input type="checkbox"/> no <input type="checkbox"/> Not applicable <i>If no, provide brief explanation:</i> Not applicable
Contact Person	Nancy Artmann, Sheriff's Finance Manager – nartmann@clackamas.us
Contract No.	None

BACKGROUND:

Funds awarded via this grant reimburse the Sheriff's Office for pedestrian safety enforcement operations. These operations are conducted at or near pedestrian crossing locations to detect and respond to motorist and pedestrian violations. The award period is on a federal fiscal year from 10/01/2020 – 09/30/2021.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners signs and approves this grant agreement between the Clackamas County Sheriff's Office and Oregon Impact.

Respectfully submitted,

Craig Roberts,
Sheriff

OREGON IMPACT
Transportation Safety Division Grant Agreement
(Federal Funded only)
Pedestrian Safety Enforcement Grant
Clackamas County Sheriff's Office

This Transportation Safety Division Grant Agreement ("Agreement") is made by Oregon Impact hereinafter referred to as Grantor and Clackamas County Sheriff's Office, hereinafter referred to as Agency, Grantee or Subrecipient, and collectively referred to as the Parties (the "Project").

Agreement Terms and Conditions

1. Effective Date. This Agreement is effective on the date that it is fully executed and approved as required by applicable law or October 1, 2020, whichever is later (the "Effective Date"). Reimbursements will be made for Project Costs incurred on or after **October 1, 2020** through and including **September 30, 2021** (the "Grant Period"), unless terminated earlier. No Grant Funds are available for expenditures incurred after the Grant Period.

2. Agreement Documents. This Agreement includes the following documents, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

- Exhibit C - SUMMARY OF FEDERAL REQUIREMENTS.
- The Agreement Terms and Conditions set forth herein
- Exhibit A Project Description
- Exhibit B ODOT Grant Budget and Cost Sharing
- Exhibit D - INFORMATION REQUIRED BY 2 CFR § 200.331(a)(1).

All of the Exhibits attached hereto are incorporated herein by this reference.

3. Grant Award. In accordance with this Agreement, Agency shall provide Grantee an amount not to exceed **\$6000.00** (the "Grant Funds") for eligible costs of the Project.

4. Project.

a. Description. The Grant Funds shall be used solely for the activities described in Exhibit A (the "Project") and may not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by Agency pursuant to **Section 5c** hereof. Grantee shall implement and complete the Project in accordance with Exhibit A.

b. Project Change Procedures. Any proposed changes in the scope of the Project, the Project objectives, key Project personnel, time period, or Budget must be requested in writing and approved by Agency. Grantee shall not perform any Project changes without a Grant Adjustment Form, submitted in the form provided by ODOT, and signed by Agency and Grantee. Any extension of the time period for completion or performance of the Project must be requested at least six weeks prior to the end of the stated time period and

may need approval of the funding agency (identified in **Section 8** of this Agreement) if the end of the grant award year is involved.

c. Conditions of Project Approval. [RESERVED].

5. Grant Funds.

a. Use of Grant Funds. The Grant Funds shall be used solely for the Project activities described in Exhibit A in accord with the ODOT Grant Budget and Cost Sharing set forth in Exhibit B (the "Budget"). Grantee agrees to use its best efforts to fully expend the Grant Funds for their stated purposes within the Grant Period, after which time all unspent award funds are no longer available for the project beyond the end of the Grant Period.

b. Eligible Project Costs. The Grant Funds may be used only for Grantee's actual Project costs to the extent those costs are (a) reasonable, necessary and directly used for the Project; and (b) eligible or permitted uses of the Grant Funds under, as applicable, federal and State law and this Agreement and are (c) not excluded from reimbursement or payment as a result of any later financial review or audit ("Eligible Project Costs"). Eligible Project Costs do not include any expenditures incurred outside of the Grant Period.

c. Reimbursement. ODOT will disburse the Grant Funds only as reimbursement for Eligible Project Costs paid by Grantee and upon receipt and approval of Grantee's Quarterly Reports and Claims for Reimbursement (along with any required supplementary documents like Residual Value Agreement form, receipts indicating proof of purchase, etc.) submitted in accord with **Section 6** of this Agreement. Grantee will be reimbursed only for Eligible Project Costs incurred by Grantee after the date set forth in the "Authorization to Proceed" for the Project provided to Grantee by Agency. Grant Funds shall not be used for Project activities previously carried out with the Grantee's own resources with no declared intent to be reimbursed under this Agreement (supplanting). Income earned through services conducted through the Project should be used to offset the cost of the Project and be included in the Budget.

d. Conditions Precedent to Reimbursement.

ODOT's obligation to disburse Grant Funds to Grantee is subject to the conditions precedent that:

- (i) ODOT has received funding (including federal funds), appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the reimbursement;
- (ii) Grantee is in compliance with the terms of this Agreement and no Grantee Default under **Section 13** of this Agreement has occurred or is occurring; and
- (iii) ODOT has received and approved the reports and Claims for Reimbursement submitted by Grantee.

e. Availability of Federal Funds. The federal funds committed under this Agreement are subject to the continuation of funds made available to Agency by the National Highway Traffic Safety Administration (NHTSA)

and the Federal Highway Administration (FHWA) (each or collectively the "Federal Funding Agency") by statute or administrative action.

6. Project Reporting and Management. Grantee's Project Director (described below) shall be responsible for implementing this Agreement and establishing and maintaining procedures that will ensure the effective administration of the Project.

a. Project Director Responsibilities. The Project Director shall:

(i) **Accounting.** Establish or use an accounting system that conforms to general accepted accounting principles, as described in **Section 10a** of this Agreement, and ensure that source documents are developed which will reliably account for the Grant Funds expended, any required match provided, and any grant project income.

(ii) **Personnel.** Maintain copies of job descriptions and resumes of persons hired for all Project-related positions which are funded at 0.25 FTE or more.

(iii) **Hours Worked.** Maintain records showing actual hours utilized in Project-related activities by all Grant Funded personnel and by all other staff personnel or volunteers whose time is used as in-kind match.

(iv) **Quarterly Reports.** Complete a quarterly highway safety project report ("Quarterly Report"). Each Quarterly Report must be signed by the Project Director or the Designated Alternate and submitted to Agency by the tenth day of the month following the close of each calendar quarter for the duration of the Grant Period. The "Project Director" is the person responsible for implementing this Agreement and establishing and maintaining procedures that will ensure the effective administration of the project objectives. The "Designated Alternate" is an individual who is given the authority to sign Quarterly Reports for the Project Director, in the event he/she is unable to sign due to circumstances beyond his/her control.

(v) **Reimbursement Claims.** Submit a Claim for Reimbursement within 35 days of the end of the calendar quarter in which expenses were incurred (submit claims no more than monthly), using the form provided by Agency as follows:

(A) Residual Value Agreement form, and invoices and/or receipts indicating proof of purchase. Copies of ODOT's pre-approval, invoices and/or receipts for all specified items must be submitted to Agency upon request with the Claim for Reimbursement.

(B) Claims for Reimbursement may be submitted as often as monthly but must be submitted at least quarterly; and

(C) Claims for Reimbursement must be signed (or electronically 'signed/approved', if applicable) by the Project Director or the Designated Alternate (Agency will not accept duplicated signatures).

b. Travel. Grantee shall keep a record of all significant travel. Agency will provide reimbursement without pre-approval only for in-state travel by persons employed by Grantee in Project-related activities. All out-of-state or other travel must be pre-approved by Agency. Grantee must adhere to the State's travel policy, such as utilizing

Government Services Administration (GSA) travel reimbursement rates. To receive approval or reimbursement, the trip must be detailed on the Budget or requested in a grant adjustment as described under Project Change Procedures. All travel outside the Grantee's jurisdiction should be summarized on the Quarterly Reports.

c. Development of Print or Production Materials.

(i) **Agency Rights.** Grantee shall provide Agency with draft copies of all outreach, media, and/or educational materials to be developed using Grant Funds, and prior to production (regardless of medium: print, broadcast, radio, etc.).

Agency may suggest revisions and must pre-approve production of any materials developed using Grant Funds. All brochures; course, workshop and conference announcements; and other materials that are developed and/or printed using Grant Funds shall include a statement crediting Agency. Materials produced through the Project shall be provided to Agency for its use and distribution and may not be sold for profit by either the Grantee or any other party. Every invention, discovery, work or authorship, trade secret or other tangible or intangible item that Grantee is required to deliver to Agency under this Agreement and all intellectual property rights therein ("Work Product"), including derivative works and compilations shall be the property of Agency; any original work of authorship created by Grantee under this Agreement is "work made for hire" of which Agency is the author. Grantee hereby irrevocably assigns to Agency any and all rights, title, and interest in all original Work Product created by Grantee under this Agreement. Upon Agency's reasonable request, Grantee shall execute such further documents and instruments necessary to fully vest such rights in Agency. Grantee forever waives any and all rights relating to Work Product created by Grantee under this Agreement, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

(ii) **Grantee Rights.** If the Work Product created by Grantee under this Agreement is a derivative work based on Grantee Intellectual Property, or is a compilation that includes Grantee Intellectual Property, Grantee hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Grantee intellectual property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

(iii) **Third Party Rights.** If the Work Product created by Grantee under this Agreement is third party intellectual property or a derivative work based on third party intellectual property, or is a compilation that includes third party intellectual property, Grantee shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing element of the third party intellectual property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

(iv) **Other State/Federal Rights.** The rights granted or reserved under this section are subject to any requirements

of the Federal or State Funding Agency, including those set forth in Exhibit C of this Agreement. If state or federal law requires that Agency or Grantee grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Agency or the United States own the intellectual property in the Work Product, then Grantee shall execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

d. Equipment Purchased with Grant Funds.

(i) **Residual Value Agreement.** If Grant Funds are used in whole or in part to acquire any single item of equipment costing \$5,000 or more (which acquisition is only upon ODOT's pre-approval), Grantee shall complete and submit to Agency an equipment inventory that lists such items and includes Agency's rules governing the removal or release of such items from Grantee's inventory (a "Residual Value Agreement"), in the form provided by Agency. Agency may, at its discretion, require Grantee to execute a Residual Value Agreement for equipment costing less than \$5,000 in order to track the tangible equipment purchased with Grant Funds. A copy of the original vendor's invoice indicating quantity, description, manufacturer's identification number and cost of each item will be attached to the signed agreement. All equipment should be identified with the Grantee's property identification number.

(ii) **Federal Requirements.** Grantee shall comply with all applicable federal requirements related to the purchase of equipment with Grant Funds, including but not limited to any "Buy America," ownership and disposition requirements set forth in Exhibit C.

e. Costs and Expenses Related to Employment of Individuals; Insurance; Workers' Compensation.

Grantee is responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholding. In addition, Grantee's subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017 and shall provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Grantee shall ensure that each of its sub-recipient(s), contractor(s), and subcontractor(s) complies with these requirements.

7. Final Report. Grantee must prepare a Project Director's Final Evaluation Report ("Final Report") in accordance with the Evaluation Plan described in Exhibit A and in the form provided by Agency to Grantee. This report is separate and distinct from the required fourth Quarterly Report; this Final Report must cover the entire grant year. The Final Report must be submitted within 35 days following the last day of the Grant Period. The

report may be no more than ten pages and must include the following elements:

a. Objective and Activities. A summary of the Project including problems addressed, objectives, major activities and accomplishments as they relate to the objectives;

b. Costs. A summary of the costs of the Project including the amount of Grant Funds and amounts paid by Grantee, other agencies and private sources. The amount of volunteer time should be identified;

c. Implementation. Discussion of implementation process so that other agencies implementing similar projects can learn from Grantee's experiences; including descriptions of what went as planned, what didn't work as expected, what important elements made the Project successful or as successful as expected;

d. Evaluation. Respond to each of the evaluation questions set forth in Exhibit A, including completing and referencing the Data Table (as applicable);

e. Completed Data Table. Complete the Data Table (as applicable) by inserting the information in the format required in Exhibit A.

8. Recovery of Grant Funds.

a. Recovery of Grant Funds. Any Grant Funds disbursed to Grantee under this Agreement that are expended in violation of one or more of the provisions of this Agreement, including any Grant Funds used for ineligible or unauthorized expenditures as determined by a state or federal review for which Grant Funds have been claimed and payment received, ("Misexpended Funds") must be returned to Agency. Grantee shall return all Misexpended Funds to Agency no later than fifteen (15) days after ODOT's written demand.

b. Audit.

i. Grantee shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.

ii. If Grantee receives federal awards in excess of \$750,000 in a federal fiscal year, Grantee is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F.

iii. Grantee shall save, protect and hold harmless from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Agreement. Grantee acknowledges and agrees that any audit costs incurred by Grantee as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Grantee and the State or Oregon.

9. General Representation and Warranties of Grantee. Grantee represents and warrants to ODOT as follows:

a. Organization and Authority. Grantee is duly organized and validly existing under the laws of the

State of Oregon and is eligible to receive the Grant Funds. Grantee has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Grantee of this Agreement:

- (i) have been duly authorized by all necessary action of Grantee;
- (ii) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Grantee's, as applicable, governing laws or Articles of Incorporation or Bylaws,
- (iii) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties may be bound or affected, and
- (iv) no further authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

b. Binding Obligation. This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee, enforceable in accordance with its terms subject to, if applicable, the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. No Gratuities. Grantee's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

The warranties set in this **Section 9** are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

10. Records Maintenance and Retention.

a. Records, Access to Records and Facilities.

Grantee shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with, as applicable, all generally accepted accounting principles, generally accepted governmental auditing standards, and minimum standards for audits of non-profit organizations. Grantee shall ensure that each of its sub-recipients and subcontractors, if any, complies with these requirements. Agency, the Secretary of State of Oregon (Secretary), the federal government (including the Federal Funding Agency or the Comptroller General of the United States), and their duly authorized representatives shall have access to the books, documents, papers and records of Grantee that are directly related to this Agreement, the Grant Funds, or the Project for the purpose of making audits and

examinations and may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Nothing herein is meant to be or will be interpreted to be a waiver of any protection against disclosure of records or communication otherwise provided by law, including protection provided by attorney-client privilege or the attorney work product doctrine.

b. Retention of Records. Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project (including all records required under 49 CFR Part 18.42) until the date that is the later of: (i) any date required under 49 CFR Part 18.42 or (ii) six (6) years following the expiration of the Grant Period.

c. Expenditure Records. Grantee shall document the expenditure of all Grant Funds reimbursed by ODOT under this Agreement. Grantee shall create and maintain all expenditure records in sufficient detail to permit Agency to verify how the Grant Funds were expended. This Section 10 shall survive any expiration or termination of this Agreement.

11. Sub-agreements.

~~**a. Subcontractors.** Performance of this Agreement shall not be subcontracted in whole or in part, except with the written consent of Agency. If applicable, Grantee shall not assign this Agreement or the Project described herein, either in whole or in part, or otherwise attempt to convey any right, privilege, duty or obligation hereunder, without the prior written consent of Agency.~~

~~**b. Terms of Subcontracts.** Any contracts or other service agreements that are entered into by the Grantee as part of the Project shall be reviewed and approved by Agency to determine whether the work to be accomplished is consistent with the objectives and funding criteria of the Project. Grantee shall ensure that any subcontractors adhere to applicable requirements established for the Grant Funds and that any subcontracts include provisions for the following:~~

- ~~(i) Administrative, contractual, or legal remedies in instances where subcontractors violate or breach sub contract terms, and provide for such sanctions and penalties as may be appropriate;~~
- ~~(ii) Access by the Grantee, the state, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the contractor which are directly pertinent to that specific subcontract, for the purpose of making audit, examination, excerpts, and transcriptions. Sucontractors shall maintain all required records for six years after Grantee makes final payments and all other pending matters are closed;~~
- ~~(iii) Notice of Agency's requirements and regulations pertaining to reporting, requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such subcontract, and requirements and regulations pertaining to copyrights and rights in data; and~~

(iv)) Any additional requirements imposed by federal law and set forth in **Exhibit C**, including without limitation, sections 1 (Miscellaneous Federal Provisions), 2 (Equal Employment Opportunity), 3 (Clean Air, Water and EPA), 4 (Other Environmental Standards), 5 (Energy Efficiency), 6 (Audits), 7 (Intellectual Property Rights), 8 (Super Circular), 9 (Whistleblower), 10 (Nondiscrimination), 11 (Buy America), 12 (Prohibits Helmet Use Survey/Checkpoints), 13 (Political Activity), 14 (Federal Lobbying), 15 (State Lobbying), and 16 (Debarment).

c. Conditional Terms. Where applicable, subcontracts shall include the following provisions:

- (i) Termination for cause and for convenience by the Grantee including the manner by which it will be effected and the basis for the settlement (subcontracts in excess of \$10,000);
- (ii) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and supplemented in Dept. of Labor regulations (41 CFR Part 60) (subcontracts in excess of \$10,000);
- (iii) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Dept. of Labor regulations (29 CFR Part 5) (subcontracts in excess of \$2,500);
- (iv) Bidders, proposers, and applicants must certify that neither they nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in the Project by any federal agency or department (subcontracts in excess of \$25,000; and
- (v) Any additional terms required by federal law and set forth in Exhibit C.

d. Subcontractor Indemnity/Insurance.

(i) **Indemnity.** Grantee's subcontract(s) shall require the other party to such subcontract(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State of Oregon ("State") and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Grantee's subcontract or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the other party to Grantee's subcontract(s) from and against any and all Claims. Any such indemnification shall also provide that neither Grantee's subrecipient(s), contractor(s) nor subcontractor(s) (collectively

"Subgrantees"), nor any attorney engaged by Grantee's Subgrantee(s), shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Grantee's Subgrantee is prohibited from defending State or that Grantee's Subgrantee is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Grantee's Subgrantee if the State elects to assume its own defense.

(ii) **Insurance.** Grantee may require the other party, or parties, to each of its subcontracts that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts typically provided for projects of the Project's nature. Any insurance obtained by the other party to Grantee's subagreements, if any, shall not relieve Grantee of the requirements of Section 11 of this Agreement. The other party to any subcontract with Grantee, if the other party employs subject workers as defined in ORS 657.027, must obtain Workers Compensation Coverage as described in **Section 6**.

12. Termination

a. Termination by Agency. Agency may terminate this Agreement effective upon delivery of written notice of termination to Grantee, or at such later date as may be established by Agency in such written notice, if:

- (i) Grantee fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Grantee is, for any reason, rendered improbable, impossible, or illegal;
- (ii) Agency fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
- (iii) Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
- (iv) The Project would not produce results commensurate with the further expenditure of funds; or
- (v) Grantee takes any action pertaining to this Agreement without the approval of Agency and which under the provisions of this Agreement would have required the approval of Agency; or
- (vi) Grantee is in default under any provision of this Agreement.

b. Termination by Grantee. Grantee may terminate this Agreement effective upon delivery of written notice of termination to Agency, or at such later date as may be established by Grantee in such written notice, if:

- (i) The requisite local funding or match, if any, to continue the Project becomes unavailable to Grantee; or
- (ii) Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- (iii) Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Grantee is no longer authorized to operate or to carry out the Project.

c. Termination by Either Party. If a Party fails to comply with any of the terms of this Agreement, the other Party may terminate this Agreement upon at least ten days' notice to the other Party or upon failure of the other Party to cure within any cure period provided in the notice.

13. Default.

a. Grantee Default. Any of the following constitutes a default by Grantee under this Agreement:

- (i) Any false or misleading representation is made by or on behalf of Grantee or sub-grantee, in this Agreement or in any document provided by Grantee to Agency related to the Grant Funds or the Project;
- (ii) Grantee fails to cure any performance as provided in Section 12.c;
- (iii) Grantee fails to perform any other obligation required under this Agreement; or
- (iv) If and to the extent allowed by law, Grantee initiates or consents to a proceeding or case, or a proceeding or case is commenced without the application or consent of Grantee, seeking: (A) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (B) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (C) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

b. Agency Default. Agency will be in default under this Agreement if it fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement.

14. Remedies.

a. Agency Remedies. Upon any default, Agency may pursue any or all remedies in this Agreement and any other remedies available at law or in equity to enforce the performance of any obligation of Grantee. Remedies may include, but are not limited to:

- (i) Terminating Agency's commitment and obligations under the Agreement as provided in **Section 12**;
- (ii) Requiring repayment of the Grant Funds and all interest earned by Grantee on those Grant Funds as

provided in **Section 8**.

No remedy available to Agency is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Agreement will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

b. Grantee Remedies. In the event Agency defaults on any obligation in this Agreement, Grantee's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of Agency's obligations.

15. General Provisions.

a. Indemnification and Hold Harmless. Subject to the conditions and limitations of the Oregon Constitution, if any, and the Oregon Tort Claims Act (ORS 30.260 to 30.300), if applicable, Grantee shall indemnify, defend, save and hold harmless State of Oregon ("State") and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee, its officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by Grantee from and against any and all Claims. Neither Grantee or any attorney engaged by Grantee may defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Grantee is prohibited from defending State or that Grantee is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Grantee if the State elects to assume its own defense.

b. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

c. Amendments. This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

d. Duplicate Payment. Grantee is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the

State of Oregon or the United States of America or any other party, organization or individual.

e. No Third Party Beneficiaries. Agency and Grantee are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

f. Notices. Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same, postage prepaid, to Grantee Project Director or Agency Contact at the address or number set forth below or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against Agency, such facsimile transmission must be confirmed by telephone notice to Agency Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received. Notices shall be directed to:

Grantee: Clackamas County Sheriff's Office
Project Director: Sean Collinson

Pass Through Entity/Grantor: Oregon Impact
Project Director: Janelle Lawrence

g. Governing Law, Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Agency (or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. *Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.*

h. Compliance with Law. Grantee shall comply with all applicable federal (including those set forth in **Exhibit C**), state, and local laws, regulations, executive orders and ordinances applicable to the Project including, but

not limited to, the provisions of ORS 319.020 and OAR 738 Divisions 124 and 125 where applicable by this Agreement, incorporated herein by reference and made a part of this Agreement.

i. Independent Contractor. Grantee shall perform the Project as an independent contractor and not as an agent or employee of Agency. Grantee has no right or authority to incur or create any obligation for or legally bind Agency in any way. Agency cannot and will not control the means or manner by which Grantee performs the Project, except as specifically set forth in this Agreement. Grantee is responsible for determining the appropriate means and manner of performing the Project. Grantee acknowledges and agrees that Grantee is not an "officer", "employee", or "agent" of Agency, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

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

k. Counterparts. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

l. Integration and Waiver. This Agreement, and the attached Exhibits, constitute the entire Agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Agreement shall not constitute a waiver by Agency of that or any other provision.

The Grantee, by its signature below, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

GRANTOR: OREGON IMPACT

BY: _____

Janelle Lawrence, Executive Director

Date: _____

GRANTEE: PROJECT DIRECTOR

BY:  _____

Print Name: Sean Collinson

Date: 10/07/2020 _____

GRANTEE: DESIGNATED ALTERNATE

BY:  _____

Print Name: CHRIS CATE _____

Date: 10-15-2020 _____

GRANTEE: AUTHORIZING OFFICIAL

BY: _____

Print Name & Title: _____

Date: _____

EXHIBIT A

Pedestrian Safety Enforcement Grant

Agency agrees that the principal purpose of this agreement is to conduct pedestrian safety enforcement operations. Definition: A pedestrian safety operation is an intensive direct team law enforcement activity conducted at or near pedestrian crossing locations within specific time frames. The team generally will include an observer/recorder, a decoy pedestrian, and an adequate number of chase LEO's to maximize the number of violator contacts to detect both motorist and pedestrian violations. Although the primary focus of the operations are specific pedestrian-related violations, any observed safety related Vehicle Code violation may be addressed.

Initiate HVE news media; press releases, radio interviews, etc., informing the public what the PSE's are about. Both pre and post media notification is required.

In participating months, complete the data entry into Badge Data and submit an Oregon Impact PSE Activity Report. The pre and post media releases for each enforcement will also be uploaded into Badge Data, prior to submitting the agencies monthly claim. Claims should be submitted to Oregon Impact by the 15th of the following month when participating in a PSE deployment.

At the end of the grant year with your agencies final claim, you will be required to complete an PSE Grant Final Report and Evaluation on behalf of your agency.

Agencies receiving these funds will ensure that a current and active LEO has attended the PSE training course within the past three (3) years of working the grant.

In the interest of fairness and to support a defensible citation the agency will:

- Measure out the required stopping distance and add 10 miles an hour to the stopping distance provided.
- Add additional reaction time (2 seconds).
- Decoy pedestrian will use due care and will wear visible clothing.
- Notify the media in advance with the time, date, and location of the PSE operation.
- Invite the media.
- Use video cameras to tape the operation, if possible.
- Conduct the operation during daylight hours, in good weather.

Only actual LEO overtime pay rates will be reimbursed to the grantees in their project claims. Those timesheets and individual pay rates that support the claim may need to be verified at the time of an audit, so make sure to keep clear and detailed records for each claim submitted. In addition, match time is required by the Agencies participating in this grant in the amount of twenty percent (20%) of the amount awarded.

EXHIBIT B

BUDGET AND COST SHARING

Federal Award Project Description: Pedestrian Safety Enforcement

Clackamas County Sheriff's Office has been awarded a total of \$6000.00 in Pedestrian Safety Enforcement Grant dollars for FFY_2020/2021 and agrees to fulfill the requirement of the grant listed above in Exhibit A.

Actual LEO overtime pay rates will be reimbursed to the grantee through their project claims. Those timesheets and individual pay rates that support the claim may need to be verified at the time of an audit, so make sure to keep clear and detailed records for each claim submitted.

Grantee Agency Information

Grantee/Subrecipient: Clackamas County Sheriff's Office
Project Director: Sean Collinson

Signature:



(the person signing claim(s) for reimbursement must have the Designated Alternate sign instead if they received any compensation from the grant, i.e., overtime pay, travel reimbursement, etc.)

Title: Lieutenant

Phone: 503-785-5083

Mailing address: 2223 Kaeth Rd
Oregon City, OR 97045

Email address: chriscat@clackamas.co

EXHIBIT C
SUMMARY OF FEDERAL REQUIREMENTS
ANNUAL FFY CERTIFICATIONS AND ASSURANCES
FOR HIGHWAY SAFETY GRANTS
(23 USC CHAPTER 4; SEC. 1906, PUB. L. 109-159)

***Additional Required Federal Terms and Conditions for
Grants funded with Federal Funds***

General Applicability and Compliance. Unless exempt under other federal law provisions, Grantee shall comply with, and, as indicated, cause all subcontractors to comply with, the following federal requirements to the extent that they are applicable to this Agreement, to Grantee, or to the Project, or to any combination of the foregoing. For purposes of this Amendment, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. Miscellaneous Federal Provisions. Grantee shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to Grantee or the Project. Without limiting the generality of the foregoing, Grantee expressly agrees to comply and require all subcontractors or subrecipients to comply with the following laws, regulations and executive orders to the extent they are applicable to the Project: (a) Title VI and VII of the Civil Rights Act of 1964, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, (c) the Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975, (d) Title IX of the Education Amendment of 1972, (e) the Drug Abuse Office and Treatment Act of 1972, (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (g) Section 523 and 527 of the Public Health Service Act of 1912, (h) Title VIII of the Civil Rights act of 1968, (i) the Hatch Act (U.S.C. 1501-1508 ad 7328), (j) Davis-Bacon Act (40 U.S.C. 276a to 276a7), (k) the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), (l) the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), (m) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated. No federal funds may be used to provide work in violation of 42 U.S.C. 14402.

2. Equal Employment Opportunity. If this Agreement, including amendments, is for more than \$10,000, then Grantee shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

3. Clean Air, Clean Water, EPA Regulations. If this Agreement, including amendments, exceeds \$150,000

then Grantee shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to ODOT and the appropriate Regional Office of the Environmental Protection Agency. Grantee shall include and require all subcontractors to include language requiring the subcontractor to comply with the federal laws identified in this section.

4. Other Environmental Standards. Grantee shall comply and require all subcontractors to comply with all applicable environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order 11514; (b) protection of wetlands pursuant to Executive Order 11990; (c) evaluation of flood hazards in flood plains in accordance with Executive Order 11988; (d) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et. seq.); (e) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (f) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (g) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

5. Energy Efficiency. Grantee shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).

6. Audits.

a. Grantee shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.

b. If Grantee receives federal awards in excess of \$750,000 in a federal fiscal year, Grantee is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F.

c. Grantee shall save, protect and hold harmless from the cost of any audits or special investigations performed

by the Secretary of State with respect to the funds expended under this Agreement. Grantee acknowledges and agrees that any audit costs incurred by Grantee as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Grantee and the State or Oregon.

7. Federal Intellectual Property Rights Notice. The Federal or State Funding Agency, as the awarding agency of the Grant Funds may have certain rights as set forth in the federal requirements pertinent to the Grant Funds. For purposes of this subsection, the terms "grant" and "award" refer to funding issued by the Federal Funding Agency to Agency. The Grantee agrees that it has been provided the following notice:

a. The Federal Funding Agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Project Work Product, and to authorize others to do so, for federal government purposes with respect to:

(i) The copyright in any work developed under a grant, subgrant or contract under a grant or subgrant; and

(ii) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

The parties are subject to applicable requirements and regulations of the Federal Funding Agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.

8. Uniform Guidance and Administrative Requirements. 2 CFR Part 200, or the equivalent applicable provision adopted by the Federal Funding Agency in 2 CFR Subtitle B, including but not limited to the following:

a. Property Standards. 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds. Such requirements include, without limitation, that material and equipment shall be used in the program or activity for which it was acquired as long as needed, whether or not the Project continues to be supported by Grant Funds. Ownership of equipment acquired with Grant Funds shall be vested with the Grantee. Costs incurred for maintenance, repairs, updating, or support of such equipment shall be borne by the Grantee. If any material or equipment ceases to be used in Project activities, the Grantee agrees to promptly notify Agency. In such event, Agency may

direct the Grantee to transfer, return, keep, or otherwise dispose of the equipment.

b. Procurement Standards. When procuring goods or services (including professional consulting services) with *state funds*, the applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C; or for *federally funded* projects 2 CFR §§ 200.318 b through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.

c. Contract Provisions. The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Grantee, and Grantee shall also include these contract provisions in its contracts with non-Federal entities. As applicable, Grantee shall make purchases of any equipment, materials, or services pursuant to this Agreement under procedures consistent with those outlined in ORS Chapters 279, 279A, 279B and 279C.

9. Federal Whistleblower Protection. Grantee shall comply, and ensure the compliance by subcontractors or subgrantees, with 10 USC 2409 2324 and 41 U.S.C. 4712.

10. Nondiscrimination. Grantee will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 et seq.), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);

- Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR at 74087 to 74100).

In addition, Grantee:

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted.
- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;
- Agrees to comply (and require any of its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
- Agrees to insert in all contracts and funding agreements with other state or private entities the following clause:
 "During the performance of this contract/funding agreement, the contractor/funding recipient agrees—
 a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
 b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-

- discrimination law or regulation, as set forth in Appendix B of 49 CFR part 21 and herein;
- c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State or Oregon highway safety office, US DOT or NHTSA;
- d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- e. To insert this clause, including paragraphs (a) through (e), in every subcontract and sub-agreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

11. Buy America Act. All material and equipment purchased shall be produced in the United States in accordance with Section 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424; 96 Stat. 2097) unless the Secretary of Transportation has determined under Section 165 that it is appropriate to waive this agreement.

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal Funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

12. Prohibition on Using Grant Funds to Check for Helmet Use. The State and each subrecipient will not use 23 U.S.C Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

13. Political Activity (Hatch Act). The State will comply with provisions of the Hatch Act (5 U.S.C. §§1501-1508) which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

14. Certification Regarding Federal Lobbying.

Certification for Contracts, Grants, Loans, and Cooperative Agreements.

Grantee certifies by the signature of its authorized representative to this Agreement that, to the best of his or her knowledge and belief:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- c. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

15. Restriction on State Lobbying. None of the funds will be used for any activity specifically designed to urge or influence a state or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots")

lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

16. Certification Regarding Debarment and Suspension.

Instructions for Primary Tier Participant Certification (States)

- a. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR Parts 180 and 1200.
- b. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
- d. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR Parts 180 and 1200.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>)

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions

1. The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery,

falsification or destruction of record, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

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

2. Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR Parts 180 and 1200.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms *covered transaction, civil judgment, debarment, suspension, ineligible, , participant, person, principal, and voluntarily excluded*, as used in this clause, are defined in 2 CFR Part 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all

solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR Parts 180 and 1200.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participant may, but is not required to, check the System for Award Management Exclusion website (<https://www.sam.gov/>)

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered

transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

EXHIBIT D
INFORMATION REQUIRED BY 2 CFR § 200.331(a)(1)*

Federal Award Identification:

1. Subrecipient name (which must match registered name in DUNS): Clackamas County Sheriff's Office
2. Subrecipient unique entity identifier (e.g. DUNS number): 09-699-2656
3. Federal Award Identification Number (FAIN): 69A3751830000405hORO
4. Federal Award Date: October 1, 2020
5. Sub-award Period of Performance Start and End Date: From October 1, 2020 to September 30, 2021
6. Total Amount of Federal Funds Obligated by this Agreement: \$6000.00
7. Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement ** \$46,000.00
8. Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$46,000.00
9. Federal award project description: Statewide pedestrian safety enforcement (PSE) operations overtime mini -grant program to Oregon law enforcement agencies, to also include operations, training and evaluation, and diversion classes as applicable.
10. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the pass-through entity:
 - (a) Name of Federal awarding agency: NHTSA
 - (b) Name of pass-through entity: Oregon Impact
 - (c) Contact information for awarding official of the pass-through entity: Janelle Lawrence
11. Assistance Listing (CFDA) Number and Name: 20.616 State and Community Highway Safety.
Amount \$6000.00
12. Is Award Research and Development? No
13. Indirect cost rate for the Federal award: 0.00%

*For the purposes of this Exhibit, the term "Subrecipient" refers to Recipient, and the term "pass-through entity" refers to Oregon Impact .

**The Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity is the Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity during the current 2021 fiscal year.

Vendor or Sub-Recipient Determination

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, Agency's determination is that: Grantee is a subrecipient.



Clackamas County Sheriff's Office

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office to Accept a Grant from
Oregon Impact for reimbursement related to
Driving Under the Influence of Intoxicants High Visibility Enforcement

Purpose/Outcome	Funds received by Oregon Impact will reimburse the Sheriff's Office for FFY 2020-21 expenditures related to Driving Under the Influence of Intoxicants High Visibility enforcement activities
Dollar Amount and Fiscal Impact	The total grant award amount is \$20,000
Funding Source	The funds come to the County via a grant award from Oregon Impact
Safety Impact	Furtheres the Board of County Commissioners' strategic priority of ensuring safe, healthy and secure communities
Duration	The project period is 10/01/2020 – 09/30/2021
Previous Board Action/Review	The Board of County Commissioners has approved prior awards granted for this purpose
Counsel Review	1. <i>Date of Counsel review:</i> 11/24/2020 2. <i>Initials of County Counsel performing review:</i> AN
Procurement Review	1. <i>Was the item processed through Procurement?</i> yes <input type="checkbox"/> no <input type="checkbox"/> Not applicable 2. <i>If no, provide brief explanation:</i> Not applicable
Contact Person	Nancy Artmann, Sheriff's Finance Manager – nartmann@clackamas.us
Contract No.	None

BACKGROUND:

Funds awarded via this grant reimburse the Sheriff's Office for Driving Under the Influence of Intoxicants High Visibility Enforcement operations. The Clackamas County Sheriff's Office joins agencies throughout Oregon conducting these high visibility operations. The operations provide a visible presence to deter motorists from driving while under the influence of intoxicants. These operations are conducted on 12/16/2020 – 01/02/2021 and on 08/18/2021 – 09/06/2021. The award period is on a federal fiscal year from 10/01/2020 – 09/30/2021.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners signs and approves this grant agreement between the Clackamas County Sheriff's Office and Oregon Impact.

Respectfully submitted,

Craig Roberts,
Sheriff

OREGON IMPACT

Transportation Safety Division Grant Agreement
(Federal Funded only)
Driving Under the Influence of Intoxicants High
Visibility Enforcement Grant
Clackamas County Sheriff's Office

This Transportation Safety Division Grant Agreement ("Agreement") is made by Oregon Impact hereinafter referred to as Grantor and Clackamas County Sheriff's Office, hereinafter referred to as Agency, Grantee or Subrecipient, and collectively referred to as the Parties (the "Project").

Agreement Terms and Conditions

1. Effective Date. This Agreement is effective on the date that it is fully executed and approved as required by applicable law or October 1, 2020, whichever is later (the "Effective Date"). Reimbursements will be made for Project Costs incurred on or after **October 1, 2020** through and including **September 30, 2021** (the "Grant Period"), unless terminated earlier. No Grant Funds are available for expenditures incurred after the Grant Period.

2. Agreement Documents. This Agreement includes the following documents, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

Exhibit C - SUMMARY OF FEDERAL REQUIREMENTS.
The Agreement Terms and Conditions set forth herein
Exhibit A Project Description
Exhibit B ODOT Grant Budget and Cost Sharing
Exhibit D - INFORMATION REQUIRED BY 2 CFR §
200.331(a)(1).

All of the Exhibits attached hereto are incorporated herein by this reference.

3. Grant Award. In accordance with this Agreement, Agency shall provide Grantee an amount not to exceed **\$20,000.00** (the "Grant Funds") for eligible costs of the Project.

4. Project.

a. Description. The Grant Funds shall be used solely for the activities described in Exhibit A (the "Project") and may not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by Agency pursuant to **Section 5c** hereof. Grantee shall implement and complete the Project in accordance with Exhibit A.

b. Project Change Procedures. Any proposed changes in the scope of the Project, the Project objectives, key Project personnel, time period, or Budget must be requested in writing and approved by Agency. Grantee shall not perform any Project changes without a Grant Adjustment Form, submitted in the form provided by ODOT, and signed by Agency and Grantee. Any extension of the time period for completion or performance of the Project must be requested at least

six weeks prior to the end of the stated time period and may need approval of the funding agency (identified in **Section 8** of this Agreement) if the end of the grant award year is involved.

c. Conditions of Project Approval. [RESERVED].

5. Grant Funds.

a. Use of Grant Funds. The Grant Funds shall be used solely for the Project activities described in Exhibit A in accord with the ODOT Grant Budget and Cost Sharing set forth in Exhibit B (the "Budget"). Grantee agrees to use its best efforts to fully expend the Grant Funds for their stated purposes within the Grant Period, after which time all unspent award funds are no longer available for the project beyond the end of the Grant Period.

b. Eligible Project Costs. The Grant Funds may be used only for Grantee's actual Project costs to the extent those costs are (a) reasonable, necessary and directly used for the Project; and (b) eligible or permitted uses of the Grant Funds under, as applicable, federal and State law and this Agreement and are (c) not excluded from reimbursement or payment as a result of any later financial review or audit ("Eligible Project Costs"). Eligible Project Costs do not include any expenditures incurred outside of the Grant Period.

c. Reimbursement. ODOT will disburse the Grant Funds only as reimbursement for Eligible Project Costs paid by Grantee and upon receipt and approval of Grantee's Quarterly Reports and Claims for Reimbursement (along with any required supplementary documents like Residual Value Agreement form, receipts indicating proof of purchase, etc.) submitted in accord with **Section 6** of this Agreement. Grantee will be reimbursed only for Eligible Project Costs incurred by Grantee after the date set forth in the "Authorization to Proceed" for the Project provided to Grantee by Agency. Grant Funds shall not be used for Project activities previously carried out with the Grantee's own resources with no declared intent to be reimbursed under this Agreement (supplanting). Income earned through services conducted through the Project should be used to offset the cost of the Project and be included in the Budget.

d. Conditions Precedent to Reimbursement.

ODOT's obligation to disburse Grant Funds to Grantee is subject to the conditions precedent that:

(i) ODOT has received funding (including federal funds), appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the reimbursement;

(ii) Grantee is in compliance with the terms of this Agreement and no Grantee Default under **Section 13** of this Agreement has occurred or is occurring; and

(iii) ODOT has received and approved the reports and Claims for Reimbursement submitted by Grantee.

e. Availability of Federal Funds. The federal funds committed under this Agreement are subject to the continuation of funds made available to Agency by the

National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) (each or collectively the "Federal Funding Agency") by statute or administrative action.

6. Project Reporting and Management. Grantee's Project Director (described below) shall be responsible for implementing this Agreement and establishing and maintaining procedures that will ensure the effective administration of the Project.

a. Project Director Responsibilities. The Project Director shall:

(i) **Accounting.** Establish or use an accounting system that conforms to general accepted accounting principles, as described in **Section 10a** of this Agreement, and ensure that source documents are developed which will reliably account for the Grant Funds expended, any required match provided, and any grant project income.

(ii) **Personnel.** Maintain copies of job descriptions and resumes of persons hired for all Project-related positions which are funded at 0.25 FTE or more.

(iii) **Hours Worked.** Maintain records showing actual hours utilized in Project-related activities by all Grant Funded personnel and by all other staff personnel or volunteers whose time is used as in-kind match.

(iv) **Quarterly Reports.** Complete a quarterly highway safety project report ("Quarterly Report"). Each Quarterly Report must be signed by the Project Director or the Designated Alternate and submitted to Agency by the tenth day of the month following the close of each calendar quarter for the duration of the Grant Period. The "Project Director" is the person responsible for implementing this Agreement and establishing and maintaining procedures that will ensure the effective administration of the project objectives. The "Designated Alternate" is an individual who is given the authority to sign Quarterly Reports for the Project Director, in the event he/she is unable to sign due to circumstances beyond his/her control.

(v) **Reimbursement Claims.** Submit a Claim for Reimbursement within 35 days of the end of the calendar quarter in which expenses were incurred (submit claims no more than monthly), using the form provided by Agency as follows:

(A) Residual Value Agreement form, and invoices and/or receipts indicating proof of purchase. Copies of ODOT's pre-approval, invoices and/or receipts for all specified items must be submitted to Agency upon request with the Claim for Reimbursement.

(B) Claims for Reimbursement may be submitted as often as monthly but must be submitted at least quarterly; and

(C) Claims for Reimbursement must be signed (or electronically 'signed/approved', if applicable) by the Project Director or the Designated Alternate (Agency will not accept duplicated signatures).

b. Travel. Grantee shall keep a record of all significant travel. Agency will provide reimbursement without pre-approval only for in-state travel by persons employed by Grantee in Project-related activities. All out-of-state or other travel must be pre-approved by Agency. Grantee

must adhere to the State's travel policy, such as utilizing Government Services Administration (GSA) travel reimbursement rates. To receive approval or reimbursement, the trip must be detailed on the Budget or requested in a grant adjustment as described under Project Change Procedures. All travel outside the Grantee's jurisdiction should be summarized on the Quarterly Reports.

c. Development of Print or Production Materials.

(i) **Agency Rights.** Grantee shall provide Agency with draft copies of all outreach, media, and/or educational materials to be developed using Grant Funds, and prior to production (regardless of medium: print, broadcast, radio, etc.).

Agency may suggest revisions and must pre-approve production of any materials developed using Grant Funds. All brochures, course, workshop and conference announcements, and other materials that are developed and/or printed using Grant Funds shall include a statement crediting Agency. Materials produced through the Project shall be provided to Agency for its use and distribution and may not be sold for profit by either the Grantee or any other party. Every invention, discovery, work or authorship, trade secret or other tangible or intangible item that Grantee is required to deliver to Agency under this Agreement and all intellectual property rights therein ("Work Product"), including derivative works and compilations shall be the property of Agency; any original work of authorship created by Grantee under this Agreement is "work made for hire" of which Agency is the author. Grantee hereby irrevocably assigns to Agency any and all rights, title, and interest in all original Work Product created by Grantee under this Agreement. Upon Agency's reasonable request, Grantee shall execute such further documents and instruments necessary to fully vest such rights in Agency. Grantee forever waives any and all rights relating to Work Product created by Grantee under this Agreement, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

(ii) **Grantee Rights.** If the Work Product created by Grantee under this Agreement is a derivative work based on Grantee Intellectual Property, or is a compilation that includes Grantee Intellectual Property, Grantee hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Grantee intellectual property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

(iii) **Third Party Rights.** If the Work Product created by Grantee under this Agreement is third party intellectual property or a derivative work based on third party intellectual property, or is a compilation that includes third party intellectual property, Grantee shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing element of the third party intellectual property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

(iv) **Other State/Federal Rights.** The rights granted or

reserved under this section are subject to any requirements of the Federal or State Funding Agency, including those set forth in Exhibit C of this Agreement. If state or federal law requires that Agency or Grantee grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Agency or the United States own the intellectual property in the Work Product, then Grantee shall execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

d. Equipment Purchased with Grant Funds.

(i) **Residual Value Agreement.** If Grant Funds are used in whole or in part to acquire any single item of equipment costing \$5,000 or more (which acquisition is only upon ODOT's pre-approval), Grantee shall complete and submit to Agency an equipment inventory that lists such items and includes Agency's rules governing the removal or release of such items from Grantee's inventory (a "Residual Value Agreement"), in the form provided by Agency. Agency may, at its discretion, require Grantee to execute a Residual Value Agreement for equipment costing less than \$5,000 in order to track the tangible equipment purchased with Grant Funds. A copy of the original vendor's invoice indicating quantity, description, manufacturer's identification number and cost of each item will be attached to the signed agreement. All equipment should be identified with the Grantee's property identification number.

(ii) **Federal Requirements.** Grantee shall comply with all applicable federal requirements related to the purchase of equipment with Grant Funds, including but not limited to any "Buy America," ownership and disposition requirements set forth in Exhibit C.

e. Costs and Expenses Related to Employment of Individuals; Insurance; Workers' Compensation.

Grantee is responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholding. In addition, Grantee's subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017 and shall provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Grantee shall ensure that each of its sub-recipient(s), contractor(s), and subcontractor(s) complies with these requirements.

7. Final Report. Grantee must prepare a Project Director's Final Evaluation Report ("Final Report") in accordance with the Evaluation Plan described in Exhibit A and in the form provided by Agency to Grantee. This report is separate and distinct from the required fourth Quarterly Report; this Final Report must cover the entire grant year. The Final Report must be submitted within 35

days following the last day of the Grant Period. The report may be no more than ten pages and must include the following elements:

a. Objective and Activities. A summary of the Project including problems addressed, objectives, major activities and accomplishments as they relate to the objectives;

b. Costs. A summary of the costs of the Project including the amount of Grant Funds and amounts paid by Grantee, other agencies and private sources. The amount of volunteer time should be identified;

c. Implementation. Discussion of implementation process so that other agencies implementing similar projects can learn from Grantee's experiences; including descriptions of what went as planned, what didn't work as expected, what important elements made the Project successful or as successful as expected;

d. Evaluation. Respond to each of the evaluation questions set forth in Exhibit A, including completing and referencing the Data Table (as applicable);

e. Completed Data Table. Complete the Data Table (as applicable) by inserting the information in the format required in Exhibit A.

8. Recovery of Grant Funds.

a. Recovery of Grant Funds. Any Grant Funds disbursed to Grantee under this Agreement that are expended in violation of one or more of the provisions of this Agreement, including any Grant Funds used for ineligible or unauthorized expenditures as determined by a state or federal review for which Grant Funds have been claimed and payment received, ("Misexpended Funds") must be returned to Agency. Grantee shall return all Misexpended Funds to Agency no later than fifteen (15) days after ODOT's written demand.

b. Audit.

i. Grantee shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.

ii. If Grantee receives federal awards in excess of \$750,000 in a federal fiscal year, Grantee is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F.

iii. Grantee shall save, protect and hold harmless from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Agreement. Grantee acknowledges and agrees that any audit costs incurred by Grantee as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Grantee and the State or Oregon.

9. General Representation and Warranties of Grantee. Grantee represents and warrants to ODOT as follows:

a. Organization and Authority. Grantee is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Grantee has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Grantee of this Agreement:

- (i) have been duly authorized by all necessary action of Grantee;
- (ii) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Grantee's, as applicable, governing laws or Articles of Incorporation or Bylaws,
- (iii) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties may be bound or affected, and
- (iv) no further authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

b. Binding Obligation. This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee, enforceable in accordance with its terms subject to, if applicable, the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. No Gratuities. Grantee's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to sub-agreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

The warranties set in this **Section 9** are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

10. Records Maintenance and Retention.

a. Records, Access to Records and Facilities.

Grantee shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with, as applicable, all generally accepted accounting principles, generally accepted governmental auditing standards, and minimum standards for audits of non-profit organizations. Grantee shall ensure that each of its sub-recipients and subcontractors, if any, complies with these requirements. Agency, the Secretary of State of Oregon (Secretary), the federal government (including the Federal Funding Agency or the Comptroller General of the United States), and their duly authorized representatives shall have access to the books, documents, papers and records of Grantee that are

directly related to this Agreement, the Grant Funds, or the Project for the purpose of making audits and examinations and may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Nothing herein is meant to be or will be interpreted to be a waiver of any protection against disclosure of records or communication otherwise provided by law, including protection provided by attorney-client privilege or the attorney work product doctrine.

b. Retention of Records. Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project (including all records required under 49 CFR Part 18.42) until the date that is the later of: (i) any date required under 49 CFR Part 18.42 or (ii) six (6) years following the expiration of the Grant Period.

c. Expenditure Records. Grantee shall document the expenditure of all Grant Funds reimbursed by ODOT under this Agreement. Grantee shall create and maintain all expenditure records in sufficient detail to permit Agency to verify how the Grant Funds were expended. This Section 10 shall survive any expiration or termination of this Agreement.

11. Sub-agreements.

~~**a. Subcontractors.** Performance of this Agreement shall not be subcontracted in whole or in part, except with the written consent of Agency. If applicable, Grantee shall not assign this Agreement or the Project described herein, either in whole or in part, or otherwise attempt to convey any right, privilege, duty or obligation hereunder, without the prior written consent of Agency.~~

~~**b. Terms of Subcontracts.** Any contracts or other service agreements that are entered into by the Grantee as part of the Project shall be reviewed and approved by Agency to determine whether the work to be accomplished is consistent with the objectives and funding criteria of the Project. Grantee shall ensure that any subcontractors adhere to applicable requirements established for the Grant Funds and that any subcontracts include provisions for the following:~~

- ~~(i) Administrative, contractual, or legal remedies in instances where subcontractors violate or breach sub contract terms, and provide for such sanctions and penalties as may be appropriate;~~
- ~~(ii) Access by the Grantee, the state, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the contractor which are directly pertinent to that specific subcontract, for the purpose of making audit, examination, excerpts, and transcriptions. Subcontractors shall maintain all required records for six years after Grantee makes final payments and all other pending matters are closed;~~
- ~~(iii) Notice of Agency's requirements and regulations pertaining to reporting, requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such subcontract, and requirements and~~

regulations pertaining to copyrights and rights in data; and
(iv) Any additional requirements imposed by federal law and set forth in Exhibit C, including without limitation, sections 1 (Miscellaneous Federal Provisions), 2 (Equal Employment Opportunity), 3 (Clean Air, Water and EPA), 4 (Other Environmental Standards), 5 (Energy Efficiency), 6 (Audits), 7 (Intellectual Property Rights), 8 (Super Circular), 9 (Whistleblower), 10 (Nondiscrimination), 11 (Buy America), 12 (Prohibits Helmet Use Survey/Checkpoints), 13 (Political Activity), 14 (Federal Lobbying), 15 (State Lobbying), and 16 (Debarment).

- c. Conditional Terms.** Where applicable, subcontracts shall include the following provisions:
- (i) Termination for cause and for convenience by the Grantee including the manner by which it will be effected and the basis for the settlement (subcontracts in excess of \$10,000);
 - (ii) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and supplemented in Dept. of Labor regulations (41 CFR Part 60) (subcontracts in excess of \$10,000);
 - (iii) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Dept. of Labor regulations (29 CFR Part 5) (subcontracts in excess of \$2,500);
 - (iv) Bidders, proposers, and applicants must certify that neither they nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in the Project by any federal agency or department (subcontracts in excess of \$25,000; and
 - (v) Any additional terms required by federal law and set forth in Exhibit C.

d. Subcontractor Indemnity/Insurance.
(i) **Indemnity.** Grantee's subcontract(s) shall require the other party to such subcontract(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State of Oregon ("State") and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Grantee's subcontract or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the other party to Grantee's subcontract(s) from and against any and all Claims. Any such indemnification shall also provide

that neither Grantee's subrecipient(s), contractor(s) nor subcontractor(s) (collectively "Subgrantees"), nor any attorney engaged by Grantee's Subgrantee(s), shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Grantee's Subgrantee is prohibited from defending State or that Grantee's Subgrantee is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Grantee's Subgrantee if the State elects to assume its own defense.
(ii) **Insurance.** Grantee may require the other party, or parties, to each of its subcontracts that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts typically provided for projects of the Project's nature. Any insurance obtained by the other party to Grantee's subagreements, if any, shall not relieve Grantee of the requirements of Section 11 of this Agreement. The other party to any subcontract with Grantee, if the other party employs subject workers as defined in ORS 657.027, must obtain Workers Compensation Coverage as described in Section 6.

12. Termination

a. Termination by Agency. Agency may terminate this Agreement effective upon delivery of written notice of termination to Grantee, or at such later date as may be established by Agency in such written notice, if:
(i) Grantee fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Grantee is, for any reason, rendered improbable, impossible, or illegal;
(ii) Agency fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
(iii) Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
(iv) The Project would not produce results commensurate with the further expenditure of funds; or
(v) Grantee takes any action pertaining to this Agreement without the approval of Agency and which under the provisions of this Agreement would have required the approval of Agency; or
(vi) Grantee is in default under any provision of this Agreement.
b. Termination by Grantee. Grantee may terminate this Agreement effective upon delivery of written notice

of termination to Agency, or at such later date as may be established by Grantee in such written notice, if:

(i) The requisite local funding or match, if any, to continue the Project becomes unavailable to Grantee; or

(ii) Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

(iii) Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Grantee is no longer authorized to operate or to carry out the Project.

c. Termination by Either Party. If a Party fails to comply with any of the terms of this Agreement, the other Party may terminate this Agreement upon at least ten days' notice to the other Party or upon failure of the other Party to cure within any cure period provided in the notice.

13. Default.

a. Grantee Default. Any of the following constitutes a default by Grantee under this Agreement:

(i) Any false or misleading representation is made by or on behalf of Grantee or sub-grantee, in this Agreement or in any document provided by Grantee to Agency related to the Grant Funds or the Project;

(ii) Grantee fails to cure any performance as provided in Section 12.c;

(iii) Grantee fails to perform any other obligation required under this Agreement; or

(iv) If and to the extent allowed by law, Grantee initiates or consents to a proceeding or case, or a proceeding or case is commenced without the application or consent of Grantee, seeking: (A) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (B) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (C) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

b. Agency Default. Agency will be in default under this Agreement if it fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement.

14. Remedies.

a. Agency Remedies. Upon any default, Agency may pursue any or all remedies in this Agreement and any other remedies available at law or in equity to enforce the performance of any obligation of Grantee. Remedies may include, but are not limited to:

(i) Terminating Agency's commitment and obligations under the Agreement as provided in **Section 12**;

(ii) Requiring repayment of the Grant Funds and all interest earned by Grantee on those Grant Funds as provided in **Section 8**.

No remedy available to Agency is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Agreement will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

b. Grantee Remedies. In the event Agency defaults on any obligation in this Agreement, Grantee's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of Agency's obligations.

15. General Provisions.

a. Indemnification and Hold Harmless. Subject to the conditions and limitations of the Oregon Constitution, if any, and the Oregon Tort Claims Act (ORS 30.260 to 30.300), if applicable, Grantee shall indemnify, defend, save and hold harmless State of Oregon ("State") and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee, its officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by Grantee from and against any and all Claims. Neither Grantee or any attorney engaged by Grantee may defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Grantee is prohibited from defending State or that Grantee is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Grantee if the State elects to assume its own defense.

b. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

c. Amendments. This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

d. Duplicate Payment. Grantee is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work

performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

e. No Third Party Beneficiaries. Agency and Grantee are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

f. Notices. Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same, postage prepaid, to Grantee Project Director or Agency Contact at the address or number set forth below or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against Agency, such facsimile transmission must be confirmed by telephone notice to Agency Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received. Notices shall be directed to:

Grantee: Clackamas County Sheriff's Office
Project Director: Steve Steinberg

Pass Through Entity/Grantor: Oregon Impact
Project Director: Janelle Lawrence

g. Governing Law, Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Agency (or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. *Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.*

h. Compliance with Law. Grantee shall comply with all applicable federal (including those set forth in **Exhibit C**), state, and local laws, regulations, executive orders

and ordinances applicable to the Project including, but not limited to, the provisions of ORS 319.020 and OAR 738 Divisions 124 and 125 where applicable by this Agreement, incorporated herein by reference and made a part of this Agreement.

i. Independent Contractor. Grantee shall perform the Project as an independent contractor and not as an agent or employee of Agency. Grantee has no right or authority to incur or create any obligation for or legally bind Agency in any way. Agency cannot and will not control the means or manner by which Grantee performs the Project, except as specifically set forth in this Agreement. Grantee is responsible for determining the appropriate means and manner of performing the Project. Grantee acknowledges and agrees that Grantee is not an "officer", "employee", or "agent" of Agency, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

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

k. Counterparts. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

l. Integration and Waiver. This Agreement, and the attached Exhibits, constitute the entire Agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Agreement shall not constitute a waiver by Agency of that or any other provision.

The Grantee, by its signature below, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

GRANTOR: OREGON IMPACT

BY: _____

Janelle Lawrence, Executive Director

Date: _____

GRANTEE: PROJECT DIRECTOR

BY: _____

Print Name: Steve Steinberg

10.22.20

Date: _____ 

GRANTEE: DESIGNATED ALTERNATE

BY: Chris Cate

Print Name: CHRIS CATE

Date: 10-27-2020

GRANTEE: AUTHORIZING OFFICIAL

BY: _____

Print Name & Title: _____

Date: _____

EXHIBIT A

Driving Under the Influence of Intoxicants High Visibility Enforcement Grant

Agency agrees to participate in the two (2) NHTSA pre-determined HVE national events statewide with other Oregon agencies; Christmas 2020/New Year 2021 (12/16/2020 -1/2/2021) and Labor Day 2021 (8/18/2021-9/6/2021). Additional events are optional: Super Bowl, St. Patrick's Day, 4-20 day, Cinco de Mayo, Memorial Day, 4th of July, Hash Oil Holiday, or other local event priority opportunities that your agency might have when planning for the year.

Initiate HVE news media; press releases, Facebook, radio interviews, scheduling ride-along, etc., informing the public what the HVE's are about. Both pre and post media notification is required for HVE events.

In participating months, complete the reporting data entry into *Badge Data* and submit an Oregon Impact DUUI Overtime Enforcement Claim monthly. The individual LEO reports for each shift and also copies of the pre and post media releases for HVE events will be uploaded into *Badge Data*, prior to submitting the agencies monthly claim. Claims should be submitted to Oregon Impact by the 15th of the following month.

Agencies receiving these funds will ensure that all law enforcement officers participating in this grant have received SFST, DRE or ARIDE training or attended a SFST refresher training course within the past three (3) years of working the grant.

Only actual LEO overtime pay rates will be reimbursed to the grantees in their project claims. Those timesheets and individual pay rates that support the claim may need to be verified at the time of an audit, so make sure to keep clear and detailed records for each claim submitted. In addition, match time is required by the agencies participating in this grant in the amount of twenty percent (20%) of the amount awarded.

EXHIBIT B

BUDGET AND COST SHARING

Federal Award Project Description: Driving Under the Influence

Clackamas County Sheriff's Office has been awarded a total of \$20,000.00 in DUII High Visibility and Sustained Overtime Grant dollars for FFY_2020/2021 and agrees to fulfill the requirement of the grant listed above in Exhibit A.

Actual LEO overtime pay rates will be reimbursed to the grantee through their project claims. Those timesheets and individual pay rates that support the claim may need to be verified at the time of an audit, so make sure to keep clear and detailed records for each claim submitted.

Grantee Agency Information

Grantee/Subrecipient: Clackamas County Sheriff's Office
Project Director: Steve Steinberg

Signature:

Chris Cate CHRIS CATE

(the person signing claim(s) for reimbursement must have the Designated Alternate sign instead if they received any compensation from the grant, i.e., overtime pay, travel reimbursement, etc.)

Title: Lieutenant

Phone: 503-793-0031

Mailing address: 2223 Kaen Rd

Oregon City, OR 97045

Email address: chriscat@clackamas.us

EXHIBIT C
SUMMARY OF FEDERAL REQUIREMENTS
ANNUAL FFY CERTIFICATIONS AND ASSURANCES
FOR HIGHWAY SAFETY GRANTS
(23 USC CHAPTER 4; SEC. 1906, PUB. L. 109-159)

***Additional Required Federal Terms and Conditions for
Grants funded with Federal Funds***

General Applicability and Compliance. Unless exempt under other federal law provisions, Grantee shall comply with, and, as indicated, cause all subcontractors to comply with, the following federal requirements to the extent that they are applicable to this Agreement, to Grantee, or to the Project, or to any combination of the foregoing. For purposes of this Amendment, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. Miscellaneous Federal Provisions. Grantee shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to Grantee or the Project. Without limiting the generality of the foregoing, Grantee expressly agrees to comply and require all subcontractors or subrecipients to comply with the following laws, regulations and executive orders to the extent they are applicable to the Project: (a) Title VI and VII of the Civil Rights Act of 1964, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, (c) the Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975, (d) Title IX of the Education Amendment of 1972, (e) the Drug Abuse Office and Treatment Act of 1972, (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (g) Section 523 and 527 of the Public Health Service Act of 1912, (h) Title VIII of the Civil Rights act of 1968, (i) the Hatch Act (U.S.C. 1501-1508 ad 7328), (j) Davis-Bacon Act (40 U.S.C. 276a to 276a7), (k) the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), (l) the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), (m) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated. No federal funds may be used to provide work in violation of 42 U.S.C. 14402.

2. Equal Employment Opportunity. If this Agreement, including amendments, is for more than \$10,000, then Grantee shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

3. Clean Air, Clean Water, EPA Regulations. If this Agreement, including amendments, exceeds \$150,000

then Grantee shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to ODOT and the appropriate Regional Office of the Environmental Protection Agency. Grantee shall include and require all subcontractors to include language requiring the subcontractor to comply with the federal laws identified in this section.

4. Other Environmental Standards. Grantee shall comply and require all subcontractors to comply with all applicable environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order 11514; (b) protection of wetlands pursuant to Executive Order 11990; (c) evaluation of flood hazards in flood plains in accordance with Executive Order 11988; (d) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et. seq.); (e) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (f) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (g) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

5. Energy Efficiency. Grantee shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).

6. Audits.

a. Grantee shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.

b. If Grantee receives federal awards in excess of \$750,000 in a federal fiscal year, Grantee is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F.

c. Grantee shall save, protect and hold harmless from the cost of any audits or special investigations performed

by the Secretary of State with respect to the funds expended under this Agreement. Grantee acknowledges and agrees that any audit costs incurred by Grantee as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Grantee and the State or Oregon.

7. Federal Intellectual Property Rights Notice. The Federal or State Funding Agency, as the awarding agency of the Grant Funds may have certain rights as set forth in the federal requirements pertinent to the Grant Funds. For purposes of this subsection, the terms "grant" and "award" refer to funding issued by the Federal Funding Agency to Agency. The Grantee agrees that it has been provided the following notice:

a. The Federal Funding Agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Project Work Product, and to authorize others to do so, for federal government purposes with respect to:

(i) The copyright in any work developed under a grant, subgrant or contract under a grant or subgrant; and

(ii) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

The parties are subject to applicable requirements and regulations of the Federal Funding Agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.

8. Uniform Guidance and Administrative Requirements. 2 CFR Part 200, or the equivalent applicable provision adopted by the Federal Funding Agency in 2 CFR Subtitle B, including but not limited to the following:

a. Property Standards. 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds. Such requirements include, without limitation, that material and equipment shall be used in the program or activity for which it was acquired as long as needed, whether or not the Project continues to be supported by Grant Funds. Ownership of equipment acquired with Grant Funds shall be vested with the Grantee. Costs incurred for maintenance, repairs, updating, or support of such equipment shall be borne by the Grantee. If any material or equipment ceases to be used in Project activities, the Grantee agrees to promptly notify Agency. In such event, Agency may

direct the Grantee to transfer, return, keep, or otherwise dispose of the equipment.

b. Procurement Standards. When procuring goods or services (including professional consulting services) with *state funds*, the applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C; or for *federally funded* projects 2 CFR §§ 200.318 b through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.

c. Contract Provisions. The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Grantee, and Grantee shall also include these contract provisions in its contracts with non-Federal entities. As applicable, Grantee shall make purchases of any equipment, materials, or services pursuant to this Agreement under procedures consistent with those outlined in ORS Chapters 279, 279A, 279B and 279C.

9. Federal Whistleblower Protection. Grantee shall comply, and ensure the compliance by subcontractors or subgrantees, with 10 USC 2409 2324 and 41 U.S.C. 4712.

10. Nondiscrimination. Grantee will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 et seq.), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);

- Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR at 74087 to 74100).

In addition, Grantee:

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted.
- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;
- Agrees to comply (and require any of its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
- Agrees to insert in all contracts and funding agreements with other state or private entities the following clause:
 "During the performance of this contract/funding agreement, the contractor/funding recipient agrees—
a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-

- discrimination law or regulation, as set forth in Appendix B of 49 CFR part 21 and herein;
- c.** To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State or Oregon highway safety office, US DOT or NHTSA;
- d.** That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- e.** To insert this clause, including paragraphs (a) through (e), in every subcontract and sub-agreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

11. Buy America Act. All material and equipment purchased shall be produced in the United States in accordance with Section 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424; 96 Stat. 2097) unless the Secretary of Transportation has determined under Section 165 that it is appropriate to waive this agreement.

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal Funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

12. Prohibition on Using Grant Funds to Check for Helmet Use. The State and each subrecipient will not use 23 U.S.C Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

13. Political Activity (Hatch Act). The State will comply with provisions of the Hatch Act (5 U.S.C. §§1501-1508) which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

14. Certification Regarding Federal Lobbying.

Certification for Contracts, Grants, Loans, and Cooperative Agreements.

Grantee certifies by the signature of its authorized representative to this Agreement that, to the best of his or her knowledge and belief:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

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

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

15. Restriction on State Lobbying. None of the funds will be used for any activity specifically designed to urge or influence a state or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots")

lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

16. Certification Regarding Debarment and Suspension.

Instructions for Primary Tier Participant Certification (States)

a. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR Parts 180 and 1200.

b. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.

d. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR Parts 180 and 1200.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov>)

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions

1. The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery,

falsification or destruction of record, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

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

2. Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR Parts 180 and 1200.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR Part 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all

solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR Parts 180 and 1200.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participant may, but is not required to, check the System for Award Management Exclusion website (<https://www.sam.gov/>)

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered

transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

EXHIBIT D

INFORMATION REQUIRED BY 2 CFR § 200.331(a)(1)*

Federal Award Identification:

1. Subrecipient name (which must match registered name in DUNS): Clackamas County Sheriff's Office
2. Subrecipient unique entity identifier (e.g. DUNS number): 09-699-2656
3. Federal Award Identification Number (FAIN): 69A37518300001640R1
4. Federal Award Date: October 1, 2020
5. Sub-award Period of Performance Start and End Date: From October 1, 2020 to September 30, 2021
6. Total Amount of Federal Funds Obligated by this Agreement: \$20,000.00
7. Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement**: \$46,000.00
8. Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$46,000.00
9. Federal award project description: This grant program is for DUII overtime enforcement to be conducted by agencies throughout the state. Approximately 74 agencies covering over 80% of the state's population will receive overtime funds for FFY2020. Agencies participating in High Visibility Enforcement events will provide DUII-specific patrols at designated high-incidence windows for impaired driving, this grant also allows for flexibility to accommodate local community events that can be designated as high impaired-driving risks.
10. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the pass-through entity:
 - (a) Name of Federal awarding agency: NHTSA
 - (b) Name of pass-through entity: Oregon Impact
 - (c) Contact information for awarding official of the pass-through entity: Janelle Lawrence
11. Assistance Listing (CFDA) Number and Name: 20.608 Minimum Penalties for Repeat Offenders for Driving While Intoxicated (164 DUII grants) Amount \$20,000.00
12. Is Award Research and Development? No
13. Indirect cost rate for the Federal award: 0.00%

*For the purposes of this Exhibit, the term "Subrecipient" refers to Recipient, and the term "pass-through entity" refers to Oregon Impact .

**The Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity is the Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity during the current 2020 fiscal year.

Vendor or Sub-Recipient Determination

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, Agency's determination is that: Grantee is a subrecipient.

**Office of the County Treasurer**Public Services Building
2051 Kaen Road, Suite 460 | Oregon City, OR 97045

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of the Clackamas County Investment Policy

Purpose/Outcomes	Provides investment framework for Clackamas County investment portfolio.
Dollar Amount and Fiscal Impact	None.
Funding Source	None.
Duration	Effective upon approval
Previous Board Action	The Board last reviewed and approved this policy on January 16, 2020.
Strategic Plan Alignment	Build public trust through good government.
Counsel Review	Not applicable.
Procurement Review	Not applicable. The item is not a contract, IGA, lease or other similar agreement that requires procurement review.
Contact Person	Brian Nava, Treasurer 503-742-5995 and bnava@clackmas.us
Contract No.	None.

Background:

The Clackamas County Investment Policy provides the framework for the investment of the County's public funds by the Treasurer's office. The County chooses to purchase investments with a maturity between 0 and 36 months. The Oregon Short Term Fund Board requires annual adoption of the plan by the Board of County Commissioners. No changes in substance have been made to the policy from the previous version reviewed.

Recommendation:

We respectfully recommend that the Board approve the Clackamas County Investment Policy.

Respectfully submitted,

Brian T. Nava
Clackamas County Treasurer



Brian T. Nava
County Treasurer

Office of the County Treasurer

Public Services Building
2051 Kaen Road, Suite 460 | Oregon City, OR 97045

Clackamas County

Office of the Treasurer

Investment Policy

2051 Kaen Rd, #460

Oregon City, Oregon 97045

503-742-5990 FAX 503-742-5996

bnava@clackamas.us

Clackamas County Investment Policy

I. Objectives:

The primary objectives of investment activities shall be safety, liquidity, and yield:

Safety:

Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk.

Credit Risk: Clackamas County will minimize credit risk, the risk of loss due to the financial failure of the security issuer or backer, by:

- Limiting exposure to poor credits and concentrating the investments in the safest types of securities.
- Pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisors with which Clackamas County will do business.
- Diversifying the investment portfolio so that potential losses on individual securities will be minimized.
- Actively monitoring the investment portfolio holdings for ratings changes, changing economic/market conditions, etc.

Interest Rate Risk: Clackamas County will minimize the risk that the market value of securities in the portfolio will fall due to changes in general interest rates, by:

- Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity.
- Investing operating funds primarily in shorter-term securities or short-term investment pools.
- Diversifying the portfolio by maturity dates to mitigate the impact of reinvestment risk.

Liquidity:

The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands (static liquidity). Furthermore, since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets (dynamic liquidity).

Yield:

The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of lesser importance compared to the safety and liquidity objectives described above. The majority of the portfolio is limited to highly rated/low risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities are generally held to maturity unless declining credit or liquidity needs warrant a pre-maturity sale.

II. Scope:

This policy applies to the investment of both short-term operating funds and long-term capital funds including bond proceeds and bond reserve funds. This policy applies to all component units of Clackamas County unless specific, written exclusion has been granted by the County Treasurer and the unit has a policy which has been adopted by the Board of Commissioners and submitted to the Oregon Short Term Fund Board.

Investments of employees' retirement funds, deferred compensation plans, and other funds are not covered by this policy.

III. Standards of Care:

Prudence:

The standard of care to be used by investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

Investment officers are appointed by the County Treasurer. Investment officers acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and the liquidity and the sale of securities are carried out in accordance with the terms of this policy.

Ethics and Conflicts of Interest:

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees, officers and their families shall refrain from undertaking personal investment transactions with the same individual with which business is conducted on behalf of Clackamas County. Officers and employees shall, at all times, comply with the State of Oregon Government Standards and Practices code of ethics set forth in Oregon Revised Statutes (ORS) 244.

Delegation of Authority:

Treasurer: Authority to manage the investment program is granted to the publicly elected County Treasurer, and derived from the following: ORS 294.035 to 294.053, 294.125 to 294.145, and 294.810. The Treasurer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials. No person may engage in an investment transaction without approval of the Treasurer.

Deputy Treasurer: Administration of the investment program is hereby delegated to the Deputy Treasurer, who under the direction and supervision of the Treasurer shall act in accordance with established written procedures and internal controls for the operation of the investment program consistent with this investment policy.

IV. Safekeeping and Custody:

Purchased investment securities will be delivered by Fed book entry, DTC, or physical delivery and to the extent feasible, held in third party safekeeping with a designated custodian. The trust department of a bank may be designated as custodian for safekeeping specific securities. The custodian shall issue a safekeeping receipt to Clackamas County listing the specific instrument, selling broker/dealer, issuer, coupon, maturity, CUSIP number, purchase or sale price, transaction date, and other pertinent information.

V. Accounting Method:

Accounting Standards:

The Clackamas County Treasurer's Office shall comply with required legal provisions and Generally Accepted Accounting Principles (GAAP). The accounting principles are those contained in the pronouncements of authoritative bodies including, but not necessarily limited to, the American Institute of Certified Public Accountants (AICPA); the Financial Accounting Standards Board (FASB); and the Government Accounting Standards Board (GASB).

Investment Return:

Investment returns are calculated as total return, including interest earned, premiums, discounts and appreciation or depreciation of investment values. Investment return for purposes of benchmarking against performance indicators will be compared on a total portfolio basis.

Investment Costs:

Investments will be carried at par. Losses on the sale of investments will be recognized at time of sale. Premiums or discounts on securities will be amortized or accreted over the life of the securities.

Investment Fee:

Where allowable, an investment fee of 0.01% of portfolio par value may be deducted from interest earned and credited to the County General Fund each month. After deducting the investment fee, interest earnings will be credited as of the last day of each month to the funds from which the investment was made based on the average daily balance in the fund.

VI. Internal Controls:

The Treasurer is responsible for establishing and maintaining an adequate internal control structure designed to reasonably protect the assets of Clackamas County from loss, theft or misuse. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuations of costs and benefits require estimates and judgments by management.

The internal controls shall address, at a minimum, the following points:

- Control of collusion (to the extent reasonable and feasible).
- Separation of transaction authority from accounting and record keeping.
- Custodial safekeeping.
- Avoidance of physical delivery of securities whenever possible and address control requirements for physical delivery where necessary.
- Clear delegation of authority to subordinate staff members.
- Written confirmation of transactions for investments and wire transfers.
- Wire transfer and ACH agreements.
- Compliance and oversight with investment parameters including diversification and maximum maturity.

VII. Reporting Requirements:

Reports to Governing Body:

The Clackamas County Treasurer will make available a monthly report to the County Commissioners, the County Administrator, and the directors of all component units. This report will include but not necessarily be limited to: Portfolio activity, instruments held, market valuation, as well as any narrative necessary for adequate clarification.

Management Reports:

The investment officer or officers shall maintain up-to-date computer reports of portfolio activity providing reports which are timely and available both daily and weekly.

VIII. Investment Policy Adoption:

This Investment Policy will be formally adopted by the Clackamas County Board of Commissioners, and will be readopted annually even if there are no changes.

Maximum investment maturity under this policy is 36 months. As required, this investment policy was previously submitted to the Oregon Short Term Fund (OSTF) Board for comment prior to its approval by the Clackamas County Board of Commissioners, and complies with the requirements of ORS 294.135.

IX. Qualified Financial Institutions:

Providers of Investment Services:

The Treasurer will maintain a list of all authorized Broker/Dealers and Financial Institutions authorized to provide investment services. To qualify for the list they must be an approved security Broker/Dealer selected by credit worthiness that is authorized to provide investment services in the State of Oregon.

These may include "primary" dealers or regional dealers that qualify under Securities & Exchange Commission Rule 15C3-1 (uniform net capital rule). No public deposits exceeding federal insurance limits shall be made except in a qualified public depository as established by the State of Oregon or as otherwise allowed by ORS 295.

Broker/Dealer Questionnaire:

All financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply the Treasurer with the following information:

- Audited financial statement.
- Proof of National Association of Security Dealers certification.
- Proof of state registration.
- Completed Broker/Dealer Questionnaire.
- Certification of having read and understood the Clackamas County Investment Policy.

Firm Approval:

After due consideration and approval, the firm may be added to the list. The Treasurer will conduct a periodic review of the financial condition and registration requirements of qualified Broker/Dealers. Preferably, firms shall have a local office and Registered Representative in Oregon. However, the County will not exclude Broker/Dealers located outside the state as long as they are licensed in Oregon and meet all other qualifications.

An updated Broker/Dealer Questionnaire will be mailed to each firm periodically, and should be completed and returned to the Treasurer's office. Failure to complete the updated questionnaire may lead to removal from the approved list.

Additions or deletions to the list will be made at the Treasurer's discretion.

X. Suitable and Authorized Investments

The following investments will be permitted by this policy, ORS 294.035, ORS 294.040 and 294.810:

- U.S. Treasury Obligation (bills, notes and bonds)
- U.S. Government Agency Securities and Instruments of Government Sponsored Corps (e.g. US Agency Obligations)
- Banker's Acceptances (BA's) from qualified institutions
- State of Oregon Investment Pool (e.g. Oregon Short Term Fund)
- Qualified Certificates of Deposits (CD's), Savings Accounts and Institution Time Deposits
(Subject to ORS 295 collateralization)
- Repurchase Agreements
- State and Local Government Securities (e.g. municipal debt)
- Corporate Indebtedness

XI. Portfolio Diversification

Diversification will be sought within the following guidelines with the purpose of reduction of overall portfolio risk while attaining market average rates of return. The investments shall be diversified by investment type, issuer and maturity.

Diversification will be measured on a total portfolio basis. Diversification within individual portfolios may deviate from the total portfolio requirements due to liquidity requirements.

Due to fluctuations in the aggregate surplus funds balance, maximum percentages for a particular issuer, investment type or maturity may be exceeded at a point in time subsequent to the purchase of a particular security. Securities need not be liquidated to realign the portfolio; however, consideration should be given to this matter when future liquidations are made.

Diversification by Type and Issuer:

<i><u>Security</u></i>	<i><u>% limitation of total portfolio</u></i>
US Treasury	No Limit
US Government Agencies	No limit 50% in any single Government Sponsored Enterprise
State of Oregon Investment Pool	50% of total portfolio, or the maximum imposed by statute
Certificates of Deposit	50% of total portfolio 25% in any single qualified financial institution
Banker's Acceptances	50% of total portfolio 25% in any single qualified financial institution
Commercial Paper and Corporate Notes	35% of total portfolio, per ORS 294.035 5% in any one corporation, their subsidiaries or affiliates
State and Local Government Securities	25% of total portfolio
Repurchase Agreements	25% of total portfolio 10% in any single qualified financial institution

Diversification by Maturity:

Maturity limitations shall depend upon whether the funds being invested are considered short term or long term funds. All funds shall be considered short term except those reserved for capital projects (e.g. bond sale proceeds) and special assessment repayments being held for debt retirement.

- **Short Term Portfolio (maturity up to 3 years):**

Investment maturity for operating funds shall be scheduled to coincide with projected cash flow needs and timed to comply with the following guidelines:

Maturity will be laddered to provide for interest rate fluctuations and to minimize investment interest rate risk. Careful monitoring of interest rate fluctuation will provide a basis for evaluating risk and return.

1 to 90 day maturity	Minimum of 25% of total portfolio
1 to 365 day maturity	No limit
12 months to 24 months maturity	Maximum of 40% of total portfolio
24 months to 36 months maturity	Maximum of 30% of total portfolio

- **Long Term Portfolio (Capital Projects and Special Assessment Repayments):**

Maturity scheduling shall be timed according to anticipated need. For example, investment of capital project funds shall be timed to meet projected contractor payments. Investment of prepaid assessment funds shall be tied to bond payment dates, after cash flow projections are made using a forecasting model which considers prepayment rate, delinquency rate, interest on bonds, and income on investments.

The investments of bond proceeds are restricted under bond covenants that may be more restrictive than the investment parameters included in this policy. Bond proceeds shall be invested in accordance with the most restrictive parameters of this policy and the applicable bond covenants and tax laws.

This investment policy has been submitted for review by the OSTF Board as specified above and in accordance with ORS 294.135(1) (a), debt service reserves may be invested to a maturity date not exceeding five years. Otherwise debt service reserves shall not be invested to a maturity date exceeding one year.

XII. Bids and Offers

Before any security purchase or sale is initiated, the Investment Officer(s) shall first determine the appropriateness of seeking competitive bids or offers. Such factors to consider include where the securities are held, the size of the transaction, and the term to maturity. When required by tax laws or bond covenants competitive bids and offers shall always be sought for security purchases and sales of bond funds.

XIII. Collateralization:

All bank deposits shall be held in qualified Oregon depositories in accordance with ORS Chapter 295.

Certificates of Deposit are considered investments under this policy, and are subject to the collateral requirements of ORS Chapter 295, except those specifically exempted under ORS 295.004.

ORS 294.035(3)(j) requires repurchase agreement collateral to be limited in maturity to three years and priced according to percentages prescribed by written policy of the Oregon Investment Council or the Oregon Short-Term Fund (OSTF) Board. On January 22, 2019, the OSTF Board adopted the following margins via their OSTF Board Sample Policy for Local Governments:

US Treasury Securities: 102%

US Agency Discount and Coupon Securities: 102%

Mortgage Backed and other: 103%

*Limited to those securities described in ORS 294.035(1)

XIV. Performance Indicators:

The performance of the County's portfolio shall be measured against the performance of the relevant alternative investments and comparative bond indexes. The performance of the portfolio should be compared to the performance of alternative investments such as:

- Oregon Local Government Investment Pool,
- 90-day Treasury bill rate,
- Certificates of deposit,
- Bond indices with similar risk profiles (e.g. Bond indexes comprised of high grade investments and maximum maturities of three years),
- Other municipalities,
- Any other indices the Treasurer deems appropriate.

As deemed appropriate, when comparing performance, consider all fees and expenses involved with managing the portfolio in the computation of the portfolio's rate of return.

It is pertinent to note that alternative investments, such as the Oregon Local Government Investment Pool (LGIP), are less restrictive than the constraints the County is required to follow via ORS 294 and this investment policy. Thus, when reviewing the performance of the portfolio, the goal of the County should not be to maintain an annualized yield that is equal to the alternative investments outlined above, but to have a measure that is comparable.

For example, an annualized yield that is not more than $\frac{1}{2}$ percent (0.5%) lower than the Oregon LGIP and is not less than $\frac{1}{4}$ percent (0.25%) higher than the 90 day Treasury Bill yield.

XV. Securities Lending:

Pursuant to a formal securities lending policy, the Treasurer may enter into agreements to lend, for compensation, certain investments under a formal security lending agreement. At this time, the Treasurer has no agreements for security lending services, and no Clackamas County Securities Lending Policy is in place.

XVI. Additional Documents

Other documents may be used in conjunction with this policy, and are available from the Treasurer's office upon request.



JUVENILE DEPARTMENT
JUVENILE INTAKE AND ASSESSMENT CENTER
 2121 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Personal Services Contract Amendment #5 with Parrott Creek Child and Family Services to Provide Sex Offender Treatment to Youth

Purpose/ Outcomes	Amendment of Juvenile Sex Offender Treatment Program Contract between Clackamas County Juvenile Department and Parrott Creek Child and Family Services.
Dollar Amount and Fiscal Impact	AMENDMENT #5 will add \$ 23,000.00 + Time Total Amended Contract value: \$500,236.80
Funding Source	These services are funded through County General Fund and State of Oregon Individualized Services funds.
Duration	Contract extension for 3 months, Effective January 1, 2021 through March 31, 2021
Previous Board Action	Approval of Amendment #3 on July 28, 2017
Strategic Plan Alignment	Ensure safe, healthy, and secure communities. Juvenile Sex Offender Treatment is provided to prevent repeat new criminal sexual referrals.
Counsel Review	AN, 12/8/2020
Procurement Review	Did this purchase go through the Procurement Division: Yes.
Contact Person	Christina L. McMahan, Director – Juvenile Department 503-655-8342 ext. 3171.
Contract No.	2937

BACKGROUND:

The mission of the Clackamas County Juvenile Department (“CCJD”) is to provide equitable juvenile justice, family support, intervention, and reformation services to youth so they can repair harm to victims, experience positive change, and contribute to a safe, healthy, and secure community.

CCJD supports a system of interventions that addresses a youth’s risk factors and supports success for that youth by identifying and building upon their strengths, competencies, and natural supports to prevent further system involvement. Youth will be assisted in creating greater connections within their community. Youth are to be served in the most developmentally appropriate, least restrictive, and most cost-effective level of intervention.

Attached is a contract amendment for Juvenile Sex Offender Treatment between Clackamas County Juvenile Department and Parrott Creek Child and Family Services (“PCCFS”). A New solicitation (RFP#2020-29) was issued July 28, 2020 and proposals received August 27, 2020. The County and Proposer are in the negotiation process and anticipate award shortly. This amendment is to extend time and funds in order to finalize negotiations with for the new contract to avoid loss of client services.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached amendment #5 with Parrott Creek Child and Family Services to provide Juvenile Sex Offender Treatment to youth residing in Clackamas County involved with the Clackamas County Juvenile Department.

Respectfully submitted,

Christina L. McMahan, Director
Juvenile Department

Placed on the Agenda of _____ by the Procurement Division

AMENDMENT #5
TO THE CONTRACT DOCUMENTS WITH PARROTT CREEK CHILD AND FAMILY SERVICES, INC. FOR CLACKAMAS COUNTY JUVENILE SEX OFFENDER TREATMENT PROGRAM
Contract #2937

This Amendment #5 is entered into between **Parrott Creek Child and Family Services, Inc.** (“Contractor”) and Clackamas County (“County”) and shall become part of the Contract documents entered into between both parties on **September 22, 2015** (“Contract”).

The Purpose of this Amendment #5 is to make the following changes to the Contract:

1. ARTICLE I, Section 1. **Effective Date and Duration** is hereby amended as follows:
 The Contract termination date is hereby changed from December 31, 2020 to March 31, 2021

2. ARTICLE I, Section 2. **Compensation** is hereby amended as follows:
 Due to the time extension, County is authorizing additional Compensation in the amount of \$23,000.00. The total compensation shall not exceed \$500,236.80

ORIGINAL CONTRACT	\$ 64,994.36
AMENDMENT #1	\$ 91,569.36
AMENDMENT #2	ADD SCOPE OF WORK
AMENDMENT #3	\$ 274,708.08 (3 Year renewal)
AMENDMENT #4	\$ 45,965.00 + Time
<u>AMENDMENT #5</u>	<u>\$ 23,000.00 + Time</u>
TOTAL AMENDED CONTRACT	\$ 500,236.80

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect. By signature below, the parties agree to this Amendment #5, effective upon the date of the last signature below.

Parrott Creek Child and Family Services, Inc. **Clackamas County**

 Authorized Signature Date

 Printed Name

 Title

 Chair Date

 Recording Secretary

 Counsel Review



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

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

Date: December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Amendment to an Intergovernmental Agreement between Clackamas and Multnomah Counties for HIPAA and Part 2 Officer

Purpose/Outcome	<i>Amend the IGA to correct the rate and extend the contract term</i>
Dollar Amount and Fiscal Impact	<i>Services are to be provided on an as-needed basis at the hourly rate of \$120 per hour.</i>
Funding Source	<i>County general fund.</i>
Duration	<i>July 1, 2020 to July 1, 2022</i>
Previous Board Action/Review	<i>The Board approved the IGA for services on October 15, 2020 but due to Multnomah County's error the rate was incorrect.</i>
Strategic Plan Alignment	<i>1. Ensure safe, health and secure communities. 2. Build public trust through good government.</i>
Counsel Review	<i>December 2, 2020</i>
Contact Person	<i>Kathleen Rastetter, Senior Asst. County Counsel</i>

BACKGROUND:

Clackamas County has engaged the services of a HIPAA compliance expert employed by Multnomah County for several years. The IGA for the current term was approved by the Board but due to Multnomah County's error the rate for services was incorrect, and Multnomah County now proposes a two-year term.

RECOMMENDATION:

Staff respectfully recommends that the Board approve the amendment to the IGA.

Respectfully submitted,

*Kathleen Rastetter*Kathleen J. Rastetter
Senior Asst. County Counsel

**MULTNOMAH COUNTY
INTERGOVERNMENTAL AGREEMENT**

Amendment No: 1

Multnomah County Contract: NON-D-IGA-R-12778-2021

This is an amendment to Multnomah County's Contract referenced above effective Wednesday, July 01, 2020 between Multnomah County ("County") and Clackamas County ("Contractor"), referred to collectively as the "Parties".

The following changes below are made and incorporated into to Contract:

1. The Parties agree:

- a. The termination of this Contract is extended from July 1, 2021 to June 30, 2022
- b. Payment Terms:

Clackamas County agrees to pay an hourly rate up to \$120.00 for services rendered from July 1, 2020 through the contract termination date (July 1, 2020 - June 30, 2022). Both Parties understand that Multnomah County may request that this Agreement be amended to increase or decrease compensation amount annually if costs are higher or lower than anticipated at the agreement commencement. Multnomah County will invoice Clackamas County Office of County Counsel quarterly. Payment will be due thirty (30) days after invoice.

Invoice mailing address:

Clackamas County Counsel
2051 Kaen Road
Oregon City, OR 97045

2. All other terms and conditions of the Contract shall remain the same.

MULTNOMAH COUNTY, OREGON:

CONTRACTOR:

County Chair or Designee:

Signature:

Date: _____

Print Name: _____

Dept. Director or Designee:

Title:

Date: _____

Date: _____

REVIEWED:

JENNY M. MADKOUR
COUNTY ATTORNEY FOR MULTNOMAH COUNTY

By
Assistant County Attorney _____ N/A _____

Approved as to
form by: _____

Date: _____

Date: _____



STAFF REPORT

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Stephen L. Madkour
County Counsel

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

Approval of a Board Order Scheduling a
Public Hearing regarding the Dissolution of the Shady Dell Water Control District

Purpose/Outcomes	To set a Public Hearing on the dissolution of the Shady Dell Water Control District pursuant to the procedures under ORS 198.335 to ORS 198.365.
Dollar Amount and Fiscal Impact	Negligible. County Counsel staff time to prepare documents for dissolution and Finance staff time to deposit funds from District upon dissolution.
Funding Source	General Fund.
Duration	The Public Hearing must be held no less than 21 days and no more than 30 days from the date of the Board Order.
Strategic Plan Alignment	Building public trust through good government.
Previous Board Action	September 29, 2020 the Board discussed the matter at Issues and directed staff to prepare a Financial Statement as required by ORS 198.350.
County Counsel Review	December 2, 2020
Procurement Review	This matter is not a procurement requiring review.
Contact Person	Jeffrey D. Munns, Assistant County Counsel (503)742-5984

BACKGROUND:

The Clackamas County Treasurer's office received notice from the State of Oregon, Secretary of State's Office, on September 8, 2020, that the Shady Dell Water Control District had not filed budget documents since the year 2016, as required by ORS 297.435, ORS 297.464 and ORS 297.465.

County Counsel's office then began to investigate the status of the Shady Dell Water Control District. We were able to make contact with the District's attorney and last elected officer. The District has ceased operations. Further, the neighboring non-profit water district, Molalla River District Improvement Company, was contacted. They did not appear to be active nor interested in assuming the duties of the Shady Dell Water Control District as allowed under ORS 198.360. The matter was presented to the Board at Issues on September 29, 2020 to initiate the dissolution procedures under ORS 198.335 to ORS 198.365, and we were directed to prepare a Financial Statement as required by ORS 198.350.

After receiving and reviewing records of the District we were able to prepare the Financial Statement, attached hereto as "Exhibit A" to the Board Order. Under the procedures of ORS 198.355 the Board having must set a public hearing for the purpose of considering dissolution of the Shady Dell Water Control District.

RECOMMENDATION:

Staff respectfully recommends approval of a Board Order Scheduling a Public Hearing regarding the Dissolution of the Shady Dell Water Control District.

Sincerely,



Jeffrey D. Munns
Assistant County Counsel

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

In the Matter of Scheduling a
Public Hearing regarding the
Dissolution of the Shady Dell
Water Control District



Board Order No. _____

Whereas, the Clackamas County Board of Commissioners having received notice from the State of Oregon, Secretary of State's Office, on September 8, 2020, that the above named district has not filed budget documents since the year 2016, as required by ORS 297.435, ORS 297.464 and ORS 297.465.

Whereas, the Board initiated the dissolution procedures under ORS 198.335 to ORS 198.365, on September 29, 2020 and directed staff to prepare a Financial Statement as required by ORS 198.350.

Whereas, staff having determined information for the Financial Statement, attached hereto as "Exhibit A". The Board having reviewed the Financial Statement prepared pursuant to ORS 198.350 it now appears to the Board that a hearing shall be set for the purpose of considering dissolution of the Shady Dell Water Control District;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Board approves and adopts the Financial Statement found in "Exhibit A" that is attached hereto and incorporated by reference.
2. The Financial Statement shall be filed with the Clackamas County Clerk pursuant to ORS 198.350.
3. A hearing on the question of dissolving the District shall be held on Wednesday, January 14, 2021, at 10:00 A.M. All interested persons may appear. All persons having claims against the District shall present them at the time of the hearing.
4. The County shall publish notice in accordance with ORS 198.355(2).

DATED this 17th day of December, 2020.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Exhibit A

FINANCIAL STATEMENT (REQUIRED FOR DISSOLUTION OF INACTIVE DISTRICTS) FOR THE SHADY DELL WATER CONTROL DISTRICT

FINANCIAL STATEMENT (ORS 198.350):

1. The District was formed in 1958.
2. The Clackamas County Clerk's Office records indicate that the last election of officers was May 21, 2013. The names of the people last serving as members of the governing board of the District are as follows by position: 1. Gary Oedell, 2. Janice Baylor, 3. Jim Harold, 4. Darby Pereira, 5. Patricia Ross, 6. Patricia Cronin, 7. Mitchell Ross, 8. Margaret Rickles, and 9. Cheryl Cruikshank. Only Patricia Cronin filed for the May 19, 2015 election. No candidates have filed since. All terms of board members would have expired in May 2017.
3. There is no known outstanding bond, coupon or other indebtedness of the District.
4. There are no known parcels of real property or interest in real property owned by the District.
5. There are no known uncollected charges, taxes and assessments levied by the District.
6. There is no known personal property of the District. The District currently has \$564.89 in an account at Columbia Bank.
7. There are no significant costs for dissolution of the District. Pursuant to the applicable statutes, ORS 198.335 to ORS 198.365, dissolution of the District can be accomplished without an election (and the resultant election costs). It is expected that Clackamas County will absorb the administrative costs of the dissolution.



December 17, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Local Grant Agreement Amendment #3 between Clackamas County and
 Micro Enterprise Services of Oregon (MESO) for MESO to provide
 a small grants program on behalf of Clackamas County
in support of the local business community impacted by the COVID-19 pandemic

Purpose/Outcomes	Approve a Local Grant Agreement Amendment #3 between Clackamas County and MESO for MESO to provide grants to the Clackamas County small business community. The amendment adds \$4,392,342 in CARES Act and State Lottery dollars funding to the agreement to fund administration fees and additional grants to the local small business community.
Dollar Amount and Fiscal Impact	\$4,392,342 (CARES Act CFDA 20.019 , State Lottery dollars) for programmatic and administrative expenditures allocated as follows: a) Additional \$4,071,109 for small grants to small businesses pursuant to the terms and conditions of the CARES Act (CFDA 20.019) payable upon execution. b) Additional \$219,527 administrative fee to SUBRECIPIENT pursuant to the terms and conditions of the CARES Act (CFDA 20.019) payable upon execution. c) Additional \$101,706 administrative fee to SUBRECIPIENT sourced from State of Oregon Lottery dollars.
Funding Source	CARES Act and State Lottery dollars. CARES Act funds will pass through the Business and Community Services budget. State Lottery dollars are already accounted for in the BCS budget.
Duration	This Agreement becomes effective on execution. Eligible non-federal expenses for this Agreement may be charged during the period beginning May 21, 2020 and expiring May 31, 2021 , a total of twelve (12) months and ten (10) days. Eligible federal expenses for this Agreement may be charged during the period beginning May 21, 2020 and expiring December 30, 2020 , a total of seven (7) months and nine (9) days.
Previous Board Action	<ul style="list-style-type: none"> • The original agreement with MESO was signed by the BCC on May 21, 2020, Agenda Item # E.1. • Amendment #1 was signed by the BCC on July 16, 2020, Agenda Item # C.4. • Amendment #2 was signed by BCS Director Laura Zentner on behalf of the BCC on August 26, 2020. Board agenda date August 20, 2020, Agenda Item # D.1.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1) This grant agreement amendment supports the BCS goal of giving businesses access to innovative tools and programs to help them locate or expand in Clackamas County. Providing grants to businesses impacted by COVID-19 will help them make it through the pandemic so they can operate/reopen under the new normal, and eventually expand when economic times improve. 2) This grant agreement amendment supports the County strategic priority of Growing a Vibrant Economy by providing much needed assistance to

	Clackamas County small businesses so they can remain in business throughout the COVID-19 pandemic.
County Counsel Review	County Counsel Review Date: December 10, 2020 Counsel Initials: ARN
Procurement Review	Was the item processed through procurement? No This agreement is a grant agreement, therefore is not subject to Procurement oversight.
Contact Person	Laura Zentner, BCS Director (503) 742-4351 Sarah Eckman, BCS Deputy Director (503) 742-4303
Contract No.	BCS-20-038

BACKGROUND:

Business and Community Services has developed a program with MESO to provide economic and social assistance to Clackamas County small businesses affected by COVID-19. A key element of this program is providing much needed cash to these businesses, to assist with sustaining them through the challenges of COVID-19 and until full reopening is possible.

On our behalf, MESO has already completed two rounds of grants to hundreds of county businesses. The funding received from this grant amendment will allow us to fund grant applicants who were eligible in the second round, but were not funded due to lack of dollars.

The additional funding will also provide a third round of grants, in the form of a simplified application process that will award businesses impacted by the State of Oregon [Executive Order 20-65 \(Temporary Freeze to Address Surge in COVID-19 Cases in Oregon\)](#), sections 4.a. and 4.b. with \$2,500 to assist with operating expenses incurred while closed or (food and drink establishments) offering take-out/drive-through/delivery services per guidelines of the Executive Order. Businesses eligible for this program are “Food and Drink Establishments that were prohibited from offering on-premises consumption of food or drink, inside or outside”, and “Certain Business and Activities Close/Prohibited During the Freeze Period”, defined as:

- (1) Gyms and fitness organizations;
- (2) Indoor recreational activities, museums;
- (3) Venues that host or facilitate indoor or outdoor events, unless they are hosting an event that is allowed to proceed under sector-specific guidance, and are in compliance with that guidance;
- (4) Zoos, gardens, aquariums, outdoor entertainment activities as defined in OHA guidance;
- (5) Indoor pools, sports, sports facilities or athletic activities.

The new grant program will be intentionally marketed to businesses in the industries referenced above, with an emphasis on those owned by historically disadvantaged business owners.

RECOMMENDATION:

Staff respectfully recommends the BCC approve the grant agreement amendment #3 with MESO.

ATTACHMENT:

Local Grant Agreement Amendment #3 between Clackamas County and Micro Enterprise Services of Oregon (MESO)

Respectfully submitted,

Laura Zentner

Laura Zentner, CPA
Director, Business & Community Services

Federal and State Subrecipient Agreement Amendment (FY 20-21)
Business & Community Services

<u>Local Grant Agreement Number No. BCS-20-001</u>	<u>Board Order Number: XXXXXX-XX</u>
<u>Department/Division: Business & Community Services</u>	<u>Amendment No. 3</u>
<u>Recipient: Micro Enterprise Services of Oregon</u>	<u>Amendment Requested By: Business & Community Services</u>
Changes: <input type="checkbox"/> Work Plan	<input checked="" type="checkbox"/> Agreement Budget
<input type="checkbox"/> Agreement Term	<input checked="" type="checkbox"/> Other: Add federal terms and conditions

This Amendment #3 adds funding to the Local Grant Agreement (No. BCS-20-001) entered into between Clackamas County, by and through its Department of Business and Community Services ("County") and Micro Enterprise Services of Oregon ("Recipient") on or about May 21, 2020 (the "Agreement"), and converts part of the original funding to federal CARES dollars and adds additional CARES dollars. The purpose of this Amendment #3 is to make the following changes to the Agreement:

1. **Agreement Number** is hereby amended to 20-038 due to conversion of portion of award to federal funding.
2. **"RECIPIENT"**. All references in the Agreement and Exhibits to "RECIPIENT" shall be replaced with "SUBRECIPIENT."
3. **Section 1. Term and Effective Date** is hereby replaced with the following:

Term and Effective Date. This Amendment #3 becomes effective on execution. Eligible **non-federal** expenses for this Agreement may be charged during the period beginning **May 21, 2020 and expiring May 31, 2021**, a total of twelve (12) months and ten (10) days. Eligible **federal** expenses for this Agreement may be charged during the period beginning **May 21, 2020 and expiring December 30, 2020**, a total of seven (7) months and nine (9) days.

4. **Section 4, Grant Funds**, is hereby replaced with the following:

Grant Funds. The maximum, not to exceed, grant amount COUNTY will pay is **\$4,933,842**. Disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Payment Request. Failure to comply with the terms of this Agreement may result in withholding of payment. Funding on this award is sourced as follows:

- 4.1 **CARES Act (Catalogue of Federal Domestic Assistance [CFDA] #: 21.019)** issued to COUNTY by DAS and the U.S. Department of the Treasury (Federal Award Identification #: Unavailable) and reserved for small business grant payments: **\$311,000**
- 4.2 **COUNTY State Lottery dollars** reserved for technical assistance, online tool development, and administration fees: **\$254,306**.
- 4.3 **COVID-19 Emergency Business Assistance Program Forgivable Loan dollars** entered into between the County and the State of Oregon ("State Business Assistance Loan"; Agreement C2020197), reserved for small business grant payments: **\$45,000**

4.4 Second COVID-19 Emergency Business Assistance Program Forgivable Loan dollars entered into between the County and the State of Oregon (“Second State Business Assistance Loan”; Agreement C2020385), reserved for small business grant payments: **\$155,000**

4.5 CARES Act (Catalogue of Federal Domestic Assistance [CFDA] #: 21.019) issued to COUNTY by the State of Oregon, through its Department of Administrative Services (“DAS”) and the U.S. Department of the Treasury (Federal Award Identification #: Unavailable; State grant #2503) and reserved for small business grant payments and administration fees: **\$4,168,536**

5. **Section 5, Disbursements**, is hereby amended to add the following:

Disbursements will be made in lump sum according to the following schedule:

- 5.1.70 \$4,392,342 (CARES Act **CFDA 21.019, State Lottery dollars**) for programmatic and administrative expenditures allocated as follows:
- i. Additional \$4,071,109 for small grants to small businesses pursuant to the terms and conditions of the CARES Act (**CFDA 21.019**) payable upon execution.
 - ii. Additional \$219,527 administrative fee to SUBRECIPIENT pursuant to the terms and conditions of the CARES Act (**CFDA 21.019**) payable upon execution.
 - iii. Additional \$101,706 administrative fee to SUBRECIPIENT sourced from State of Oregon Lottery dollars payable upon execution.

6. **Section 6. Requests for Disbursement**, is hereby replaced with:

Requests for Disbursement. Disbursements outlined in section 5, above, shall be invoiced by SUBRECIPIENT to COUNTY on RECIPIENT letterhead and referencing agreement number 20-038. Disbursements made from section 5.2 are contingent on receiving programmatic reports as outline in Exhibit C: Performance Reporting and review of program performance by COUNTY.

7. **Section 12. a), Financial Management**, is hereby replaced with:

- a) **Financial Management.** SUBRECIPIENT shall comply with Generally Accepted Accounting Principles (“GAAP”) or another equally accepted basis of accounting, use adequate internal controls, and maintain necessary sources documentation for all costs incurred. SUBRECIPIENT shall comply with the following federal requirements:
- a. 2 CFR 200.303 – Internal Controls
 - b. 2 CFR 200.331 through 200.332 – Subrecipient Monitoring and Management
 - c. 2 CFR 200 Subpart F – Audit Requirements

8. **Section 12, b), Revenue Accounting** is hereby replaced with:

- b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or “deferred” until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are “earned”. All non-federal grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to COUNTY by July 30, 2021, as described in 11.h, below. All federal grant revenues not fully earned and expended in compliance with the requirements and

objectives by the end of the federal period of performance (December 30, 2020) shall be returned to COUNTY by January 20, 2020.

9. **Section 12, d), Allowable Uses of Funds**, is hereby amended to add the following:

SUBRECIPIENT shall use funds only for those purposes authorized in this Agreement and in accordance with ORS 461.512 and ORS 461.540(3)(c) **and the CARES Act, with guidance from the U.S. Department of Treasury FAQ's, updated frequently and found at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>.**

10. **Section 12, g), Performance Reporting**, is hereby amended to add the following:

g) **Performance Reporting.** SUBRECIPIENT must submit Performance Reports according to the schedule specified in Exhibit C: Performance Reporting. On July 15, 2021, unless extended by amendment, SUBRECIPIENT shall provide to COUNTY a summary of expenses against the budget outlined in Exhibit B: Program Budget. Any funds not expended under the program shall be returned to COUNTY by July 30, 2021. **Performance reporting and a summary of expenses against the federally-funded portion of the budget (Exhibit B: Program Budget) shall, on the conclusion of federally-funded activities (December 30, 2020), be due by January 20, 2021.**

11. Section 12, i), **Monitoring**, is hereby replaced with:

i) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. COUNTY, the State of Oregon Lottery Division, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.

12. **Exhibit A, Statement of Program Objectives**, the following language is hereby added to this Exhibit:

CARES Act funds (\$3,960,109) added to this Agreement in Amendment #3 will be disbursed by SUBRECIPIENT to Clackamas County businesses via two (2) methods:

- a) **Fund Unfunded Grant Applications:** Fund grant applications received under Clackamas County's November 24 – December 5, 2020 grant application period, funded by Subrecipient Grant Agreement 21-011, that were not funded due to applications in excess of the available grant funding, and;
- b) **Simplified flat award amount application process:** Provide a simplified, \$2,500 flat award amount, grant application process whereby businesses impacted by State of Oregon Executive Order 20-65, sections 4.a. (Food and Drink Establishments) and 4.b. (Certain businesses and activities closed/prohibited during the freeze period), can apply for and receive an expedited grant award.

Executive Order 20-65(https://www.oregon.gov/gov/admin/Pages/eo_20-65.aspx)
excerpt:

4. **Business and sector-specific restrictions during the freeze period:** Pursuant to ORS 401.168(1), ORS 401.188(1) to (3), and ORS 433.441(3)(a), (b), and (f), businesses must comply with any applicable OHA guidance, including but not limited to employer guidance, and face coverings guidance, which may be amended from time to time. Additionally, the following requirements apply:

a. **Food and drink establishments:**

(1) During the freeze period, restaurants, bars, taverns, brew pubs, wine bars, wineries, cafes, food courts, coffee shops, clubs, or other similar establishments that offer food or drink may not offer or allow on-premises consumption of food or drink, inside or outside. Establishments may offer food or drink for off-premises consumption (e.g., take-out or drive-through) or for delivery.

(2) Paragraph 4(a)(1) of this Executive Order does not apply to health care facilities, child care facilities, workplaces, government buildings, emergency response activities, school-based food programs, encampments of people experiencing homelessness, and shelter and meal programs serving vulnerable populations. Such places are encouraged to use physical distancing, staggered schedules, take-out, and other similar measures to reduce the risk associated with the spread of COVID-19, and must follow any applicable OHA guidance.

b. **Certain businesses and activities closed/prohibited during the freeze period:** Subject to any modifications made to the following list (through OHA guidance, at the direction of the Governor), operation of the following businesses and activities are prohibited during the freeze period:

- (1) Gyms and fitness organizations;
- (2) Indoor recreational activities, museums;
- (3) Venues that host or facilitate indoor or outdoor events, unless they are hosting an event that is allowed to proceed under sector-specific guidance, and are in compliance with that guidance;
- (4) Zoos, gardens, aquariums, outdoor entertainment activities as defined in OHA guidance;
- (5) Indoor pools, sports, sports facilities or athletic activities.

Subrecipient shall comply with the following grant award criteria:

- 1) Business must be classified as one of the industry types referenced in State of Oregon Executive Order 20-65, sections 4.a. and 4.b.
- 2) Business must be headquartered in Oregon and have its principal operations in Clackamas County.
- 3) Business must have 50 employees or less
- 4) If required by Oregon law to be registered with the Oregon Secretary of State to do business in Oregon, the business is so registered.
- 5) The business is either for-profit or an entity tax-exempt under section 501(c)(3) of the Internal Revenue Code.

- 6) During the period of March 1, 2020 through December 30, 2020 (“Performance Period”), the business incurred necessary expenditures due to the COVID-19 public health emergency.

The following businesses are **ineligible** to apply for or receive funding under the program:

- 1) Passive real estate holding companies and entities holding passive investments.
- 2) Non-profit entities that do not have federal 501(c)(3) status.
- 3) Businesses that experience a decline in revenues for reasons other than those caused by the COVID-19 pandemic (e.g. seasonal or cyclical businesses cycles).
- 4) Businesses that are delinquent on federal, state or local taxes that were due on or before the date of application.
- 5) Businesses that do not comply with all federal, state and local laws and regulations.
- 6) Businesses that have closed and do not intend to reopen.

Subrecipient is strongly encouraged to implement its program consistent with Exhibit E of the grant agreement between County and the State of Oregon regarding CARES Act (Catalogue of Federal Domestic Assistance [CFDA] #: 21.019), a copy of which is attached to this Amendment #3 as Exhibit A and incorporated by this reference herewith.

13. **Exhibit B, Program Budget**, is hereby replaced with the following amended budget:

	CARES (CFDA 21.019)	Lottery (Local funding)	State # C2020197	State # C2020385	Total
Small Business Grants	4,479,536		45,000	155,000	4,679,536
Technical Assistance		100,000			100,000
Online tools		1,500			1,500
Admin Fee		152,806			152,806
Total	4,479,536	254,306	45,000	155,000	4,933,842

14. The following exhibit is hereby added to the Agreement:

Exhibit E. Compliance with Applicable Laws

- a. **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, “Equal Employment Opportunity” as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT.
- b. **Rights to Inventions Made Under a Contract or Agreement.** SUBRECIPIENT agrees that contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in

any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any further implementing regulations issued by the U.S. Treasury Department.

- c. **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- d. **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request County to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. COUNTY shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by COUNTY shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- e. **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- f. **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:
 - i. Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
 - ii. Procure a commercial sex act during the period of time the award is in effect; or
 - iii. Used forced labor in the performance of the Agreement or subaward under this Agreement.

SUBRECIPIENT must inform COUNTY immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this Agreement. COUNTY may terminate this Agreement, without penalty, for violation of these provisions. COUNTY's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must include these requirements in any subaward made to public or private entities under this Agreement.

15. The following exhibit is hereby added to the Agreement:

Exhibit F. Additional Federal Terms and Conditions.

- a. Federal Provisions
 - i. The use of all federal funds paid under this Agreement are subject to all applicable federal regulations, including the provisions described below.
 - ii. SUBRECIPIENT must ensure that any further distribution or payment of the federal funds paid under this Agreement by means of any contract, subgrant, or other agreement between SUBRECIPIENT and another party for the

performance of any of the activities of this Agreement, includes the requirement that such funds may be used solely in a manner that complies with the provisions of this Agreement.

- iii. SUBRECIPIENT must include and incorporate the provisions described below in all contracts and subgrants that may use, in whole or in part, the funds provided by this Agreement.
 - iv. SUBRECIPIENT must comply, and ensure the compliance by subcontractors or subgrantees, with 41 USC 4712, Program for Enhancement of Employee Whistleblower Protection. SUBRECIPIENT must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712.
- b. In accordance with US Treasury guidance, SUBRECIPIENT is subject to the following provisions, as applicable:
- i. If SUBRECIPIENT has not used funds it has received to cover costs that were obligated by December 30, 2020, as required by the statute, those funds must be returned to COUNTY.
 - ii. For the purposes of these provisions, the following definitions apply:
 1. "Contract" means this Agreement or any contract or subgrant funded by this Agreement.
 2. "Contractor" and "Subrecipient" and "Non-Federal entity" mean SUBRECIPIENT or SUBRECIPIENT's contractors or subgrantees, if any.
 - iii. 2 CFR 200.303 Internal Controls
 - iv. 2 CFR 200.330 through 200.332 Subrecipient Monitoring and Management
 - v. Subpart F – Audit Requirements of 2 CFR 200 Subpart F
 1. Contractor must comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
 2. If Contractor receives federal awards in excess of \$750,000 in a fiscal year, Contractor is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to COUNTY within 30 days of completion.
 3. Contractor must save, protect and hold harmless the State of Oregon, through its DAS, and COUNTY from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Contract. Contractor acknowledges and agrees that any audit costs incurred by Contractor as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Contractor and COUNTY.
- c. System for Award Management. SUBRECIPIENT must comply with applicable requirements regarding the System for Award Management (SAM), accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. SUBRECIPIENT must also comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the Grantee) the unique entity identifier required for SAM registration.

16. The following exhibit is hereby added to the Agreement:

Exhibit G: Coronavirus Relief Fund Frequently Asked Questions.

SUBRECIPIENT is responsible to read and implement guidance found in the Coronavirus Relief Fund Frequently Asked Questions (“CRFFAQ”), published by the US Department of Treasury, as it relates to this Agreement. The CRFFAQ is updated frequently and the most up-to-date version can be found at: <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>

Except as amended hereby, all other terms and conditions of the Agreement remain in full force and effect.

[Signature page follows]

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

Micro Enterprise Services of Oregon

4008 NE MLK Jr. Blvd.
Portland, OR 97212

CLACKAMAS COUNTY

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Ken Humberston

Commissioner: Paul Savas

Commissioner: Martha Schrader

Signing on behalf of the Board:

By: _____
Its: _____

Dated: _____

By: _____
Its: _____

Dated: _____

EXHIBIT A
STATE OF OREGON
GRANT AGREEMENT

Grant No. 2503

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

SECTION 1: AUTHORITY

Pursuant to funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and as allocated to Agency by the Oregon Emergency Board, Agency is authorized to enter into a grant agreement and provide funding for the purposes described in this Grant.

SECTION 2: PURPOSE

Section 5001 of the CARES Act provides funds to state, local and tribal governments through the Coronavirus Relief Fund to be used for expenditures incurred due to COVID-19 during the period of March 1, 2020 through December 30, 2020 (the “Performance Period”). This Grant governs the disbursement of funds from the Coronavirus Relief Fund to Grantee for the Performance Period to reimburse the costs of the activities described in Exhibit A.

SECTION 3: EFFECTIVE DATE AND DURATION

When all Parties have executed this Grant, and all necessary approvals have been obtained (“Executed Date”), this Grant is effective and has a Grant funding start date as of March 1, 2020 (“Effective Date”), and, unless extended or terminated earlier in accordance with its terms, will expire on December 30, 2020.

SECTION 4: GRANT MANAGERS

4.1 Agency’s Grant Manager is:

Gerold Floyd
Department of Administrative Services
Attention: Coronavirus Relief Fund
155 Cottage Street NE, Salem, OR 97301
Phone: 503-378-2709
Email: CoronavirusReliefFund@Oregon.gov

4.2 Grantee’s Grant Manager is:

Name: Michael Morasko
Address: 2051 Kaen Rd, Oregon City, OR 97045
Phone: 503-742-5435
Email: mmorasko@clackamas.us

4.3 A Party may designate a new Grant Manager by written notice to the other Party.

SECTION 5: PROJECT ACTIVITIES

To receive funds under this Grant, Grantee must perform the project activities set forth in Exhibit A (the “Project”), attached hereto and incorporated in this Grant by this reference, during the Performance Period.

SECTION 6: GRANT FUNDS

In accordance with the terms and conditions of this Grant, Agency will provide Grantee up to an amount not to exceed \$4,168,536.00 (the “Grant Funds”) for eligible Project costs incurred during the Performance Period. Agency will pay the Grant Funds from monies available through the Coronavirus Relief Fund (“Funding Source”).

SECTION 7: DISBURSEMENT GENERALLY

- 7.1 **Disbursement.** Agency will disburse Grant Funds to Grantee in a single disbursement within five business days of the Executed Date.
- 7.2 **Conditions Precedent to Disbursement.** Agency’s obligation to disburse Grant Funds to Grantee under this Grant is subject to satisfaction of each of the following conditions precedent:
 - 7.2.1 Agency has received sufficient funding, appropriations, expenditure limitation, allotments or other necessary expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement from the Funding Source;
 - 7.2.2 No default as described in Section 13 has occurred; and
 - 7.2.3 Grantee’s representations and warranties set forth in Section 8 are true and correct on the date of disbursement(s) with the same effect as though made on the date of disbursement.
- 7.3 **No Duplicate Payment.** Grantee may use other funds in addition to the Grant Funds to complete the Project; provided, however, funds received pursuant to this Grant are not used for expenditures for which a local government entity has received any other supplemental funding (whether state,

federal or private in nature) for that same expense unless otherwise authorized by Agency in writing.

SECTION 8: REPRESENTATIONS AND WARRANTIES

8.1 Organization/Authority. Grantee represents and warrants to Agency that:

8.1.1 Grantee is a local government duly organized and validly existing;

8.1.2 Grantee has all necessary rights, powers and authority under any organizational documents and under Oregon Law to (i) execute this Grant, (ii) incur and perform its obligations under this Grant, and (iii) receive financing, including the Grant Funds, for the Project;

8.1.3 This Grant has been duly executed by Grantee and when executed by Agency, constitutes a legal, valid and binding obligation of Grantee enforceable in accordance with its terms;

8.1.4 If applicable and necessary, the execution and delivery of this Grant by Grantee has been authorized by an ordinance, order or resolution of its governing body, or voter approval, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings; and

8.1.5 There is no proceeding pending or threatened against Grantee before any court or governmental authority that if adversely determined would materially adversely affect the Project or the ability of Grantee to carry out the Project.

8.2 False Claims Act. Grantee acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) made by (or caused by) Grantee that pertains to this Grant or to the Project. Grantee certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Grantee further acknowledges in addition to the remedies under Section 14, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Grantee.

8.3 No limitation. The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided by Grantee.

SECTION 9: INDEMNITY/LIABILITY

9.1 Indemnity. Subject to the limitations of Article XI, § 10, of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), Grantee must defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorneys’ fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subgrantees, contractors, subcontractors, or agents under this Grant (each of the foregoing individually or collectively a “Claim” for purposes of this Section).

- 9.2 Defense.** Grantee may have control of the defense and settlement of any Claim subject to this Section. But neither Grantee nor any attorney engaged by Grantee may defend the Claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Grantee settle any Claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event the State of Oregon determines Grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon’s interests, or an important governmental principle is at issue and the State of Oregon desires to assume its own defense. Grantee may not use any Grant Funds to reimburse itself for the defense of or settlement of any Claim.
- 9.3 Limitation.** Except as provided in this Section, neither Party will be liable for incidental, consequential, or other direct damages arising out of or related to this Grant, regardless of whether the damages or other liability is based in contract, tort (including negligence), strict liability, product liability or otherwise. Neither Party will be liable for any damages of any sort arising solely from the termination of this Grant in accordance with its terms.

SECTION 10: INSURANCE

As a “public body” as defined in ORS 30.260, Grantee agrees to insure any obligations that may arise for Grantee under this Grant, including any indemnity obligations, through (i) the purchase of insurance as indicated in Exhibit B; or (ii) the use of self-insurance or assessments paid under ORS 30.282 that is substantially similar to the types and amounts of insurance coverage indicated on Exhibit B; or (iii) a combination of any or all of the foregoing.

SECTION 11: GOVERNING LAW, JURISDICTION

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

SECTION 12: ALTERNATIVE DISPUTE RESOLUTION

The Parties should attempt in good faith to resolve any dispute arising out of this Grant. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Grant. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each Party will bear its own costs incurred for any mediation or non-binding arbitration.

SECTION 13: DEFAULT

13.1 Grantee. Grantee will be in default under this Grant upon the occurrence of any of the following events:

13.1.1 Grantee fails to use the Grant Funds for the intended purpose described in Exhibit A or otherwise fails to perform, observe or discharge any of its covenants, agreements or obligations under this Grant;

13.1.2 Any representation, warranty or statement made by Grantee in this Grant or in any documents or reports relied upon by Agency to measure the Project, the expenditure of Grant Funds or the performance by Grantee is untrue in any material respect when made; or

13.1.3 A petition, proceeding or case is filed by or against Grantee under any federal or state bankruptcy, insolvency, receivership or other law relating to reorganization, liquidation, dissolution, winding-up or adjustment of debts; in the case of a petition filed against Grantee, Grantee acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal; or Grantee becomes insolvent or admits its inability to pay its debts as they become due, or Grantee makes an assignment for the benefit of its creditors.

13.2 Agency. Agency will be in default under this Grant if, after 15 days written notice specifying the nature of the default, Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Grant; provided, however, Agency will not be in default if Agency fails to disburse Grant Funds because there is insufficient expenditure authority for, or moneys available from, the Funding Source.

SECTION 14: REMEDIES

14.1 Agency Remedies. In the event Grantee is in default under Section 13.1, Agency may, at its option, pursue any or all of the remedies available to it under this Grant and at law or in equity, including, but not limited to: (i) termination of this Grant under Section 16.2, (ii) reducing or withholding payment for Project activities or materials that are deficient or Grantee has failed to complete by any scheduled deadlines, (iii) requiring Grantee to complete, at Grantee's expense, additional activities necessary to satisfy its obligations or meet performance standards under this Grant, (iv) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, (v) exercise of its right of recovery of overpayments under Section 15 of this Grant or setoff,

or both, or (vi) declaring Grantee ineligible for the receipt of future awards from Agency. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

- 14.2 Grantee Remedies.** In the event Agency is in default under Section 13.2 and whether or not Grantee elects to terminate this Grant, Grantee’s sole monetary remedy will be, within any limits set forth in this Grant, reimbursement of Project activities completed and accepted by Agency and authorized expenses incurred, less any claims Agency has against Grantee. In no event will Agency be liable to Grantee for any expenses related to termination of this Grant or for anticipated profits.

SECTION 15: WITHHOLDING FUNDS, RECOVERY

Agency may withhold from disbursements of Grant Funds due to Grantee, or Grantee must return to Agency within 30 days of Agency’s written demand:

- 15.1** Any Grant Funds paid to Grantee under this Grant, or payments made under any other agreement between Agency and Grantee, that exceed the amount to which Grantee is entitled;
- 15.2** Any Grant Funds received by Grantee that remain unexpended or contractually committed for payment of the Project at the end of the Performance Period;
- 15.3** Any Grant Funds determined by Agency or the U.S. Department of the Treasury to be spent for purposes other than allowable Project activities; or
- 15.4** Any Grant Funds requested by Grantee as payment for deficient activities or materials.

SECTION 16: TERMINATION

- 16.1 Mutual.** This Grant may be terminated at any time by mutual written consent of the Parties.
- 16.2 By Agency.** Agency may terminate this Grant as follows:
- 16.2.1** At Agency’s discretion, upon 30 days advance written notice to Grantee;
- 16.2.2** Immediately upon written notice to Grantee, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency’s reasonable administrative discretion, to perform its obligations under this Grant;
- 16.2.3** Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted by a court in such a way that Agency’s performance under this Grant is prohibited or Agency is prohibited from funding the Grant from the Funding Source; or
- 16.2.4** Immediately upon written notice to Grantee, if Grantee is in default under this Grant and such default remains uncured 15 days after written notice thereof to Grantee.

16.3 By Grantee. Grantee may terminate this Grant as follows:

- 16.3.1** Immediately upon written notice to Agency, if Grantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to perform its obligations under this Grant.
- 16.3.2** Immediately upon written notice to Agency, if applicable laws, rules, regulations or guidelines are modified or interpreted by a court in such a way that the Project activities contemplated under this Grant are prohibited by law or Grantee is prohibited from paying for the Project from the Grant Funds or other planned Project funding; or
- 16.3.3** Immediately upon written notice to Agency, if Agency is in default under this Grant and such default remains uncured 15 days after written notice thereof to Agency.

SECTION 17: MISCELLANEOUS

- 17.1 Conflict of Interest.** Grantee by signature to this Grant declares and certifies the award of this Grant and the Project activities to be funded by this Grant, create no potential or actual conflict of interest, as defined by ORS Chapter 244, for a director, officer or employee of Grantee.
- 17.2 Nonappropriation.** Agency's obligation to pay any amounts and otherwise perform its duties under this Grant is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Grant. Nothing in this Grant may be construed as permitting any violation of Article XI, Section 7, of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.
- 17.3 Amendments.** The terms of this Grant may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.
- 17.4 Notice.** Except as otherwise expressly provided in this Grant, any notices to be given under this Grant must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Grant Manager at the physical address or email address set forth in this Grant, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- 17.5 Survival.** All rights and obligations of the Parties under this Grant will cease upon termination of this Grant, other than the rights and obligations arising under Sections 9, 11, 12, 14, 15 and subsections 17.5 and 17.13 hereof and those rights and obligations that by their express terms survive termination of this Grant; provided, however, termination of this Grant will not prejudice any rights or obligations accrued to the Parties under this Grant prior to termination.
- 17.6 Severability.** The Parties agree if any term or provision of this Grant is declared by a court of

competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Grant did not contain the particular term or provision held to be invalid.

- 17.7 Counterparts.** This Grant may be executed in several counterparts, all of which when taken together constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Grant so executed constitutes an original.
- 17.8 Compliance with Law.** In connection with their activities under this Grant, the Parties must comply with all applicable federal, state and local laws.
- 17.9 Intended Beneficiaries.** Agency and Grantee are the only parties to this Grant and are the only parties entitled to enforce its terms. Nothing in this Grant provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Grant.
- 17.10 Assignment and Successors.** Grantee may not assign or transfer its interest in this Grant without the prior written consent of Agency and any attempt by Grantee to assign or transfer its interest in this Grant without such consent will be void and of no force or effect. Agency's consent to Grantee's assignment or transfer of its interest in this Grant will not relieve Grantee of any of its duties or obligations under this Grant. The provisions of this Grant will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
- 17.11 Contracts and Subgrants.** Grantee may enter into contracts or subgrants for any of the Project activities required of Grantee under this Grant, however Grantee is required to communicate subgrantee information to Agency in such a manner and timing as prescribed by Agency that Agency considers necessary to fulfill its federal reporting obligations.
- 17.12 Time of the Essence.** Time is of the essence in Grantee's performance of the Project activities under this Grant.
- 17.13 Records Maintenance and Access.** Grantee must maintain all financial records relating to this Grant in accordance with generally accepted accounting principles. In addition, Grantee must maintain any other records, whether in paper, electronic or other form, pertinent to this Grant in such a manner as to clearly document Grantee's performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Grant, are collectively referred to as "Records." Grantee acknowledges and agrees Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Grantee must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Grant, or until the conclusion of any audit, controversy or litigation arising out of or related to this Grant, whichever date is later.
- 17.14 Headings.** The headings and captions to sections of this Grant have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this

Grant.

17.15 Grant Documents. This Grant consists of the following documents, which are incorporated by this reference and listed in descending order of precedence:

- This Grant less all exhibits
- Exhibit A (The Project)
- Exhibit C (Federal Terms and Conditions)
- Exhibit B (Insurance)
- Exhibit D (Federal Award Identification)
- Exhibit E (Equity in Grant Access)

17.16 Merger, Waiver. This Grant and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Grant. No waiver or consent under this Grant binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

17.17 Real Property. If the Project includes the acquisition, construction, remodel or repair of real property or improvements to real property, and if such assets are disposed of prior to December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the Grant Funds provided by section 601(d) of the Social Security Act.

The signatures of the parties follow on the next page.

SECTION 18: SIGNATURES

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES IT HAS READ THIS GRANT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. The Parties further agree that by the exchange of this Grant electronically, each has agreed to the use of electronic means, if applicable, instead of the exchange of physical documents and manual signatures. By inserting an electronic or manual signature below, each authorized representative acknowledges that it is their signature, that each intends to execute this Grant, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

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

STATE OF OREGON acting by and through its Department of Administrative Services

By: _____
Name, Title

Date

Clackamas County

By: _____
Authorized Signature

Date

Printed Name

Title

93-6002286
Federal Tax ID Number

096992656
DUNS Number

Approved for Legal Sufficiency in accordance with ORS 291.047

By: Samuel B. Zeigler
Senior Assistant Attorney General
Oregon Department of Justice

by email dated 11/24/2020
Date

EXHIBIT A THE PROJECT

SECTION I. PROJECT DESCRIPTION

Subject to the eligibility requirements of 42 U.S.C. § 801 and any implementation guidance from the U.S. Department of the Treasury, including, without limitation, the guidance identified in Section II below, Grantee will use the Grant Funds to disburse grants to businesses as described more particularly in this Exhibit A and Exhibit E. Grantee represents and warrants that the Grant Funds will be used only to cover those costs of business subgrantees that (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in Grantee's budget most recently approved as of March 27, 2020; and (3) were, or are, incurred during the Performance Period. Grantee may not use any Grant Funds to prepay or otherwise cover Grantee-mandated business fees before awarding a grant to an eligible business.

Grantee will disburse Grant Funds only to businesses that meet all of the following minimum **eligibility** requirements; only one application may be submitted per business:

1. The business is headquartered in Oregon and has its principal operations in Oregon.
2. If required by Oregon law to be registered with the Oregon Secretary of State to do business in Oregon, the business is so registered.
3. The business is either for-profit or an entity tax-exempt under section 501(c)(3) of the Internal Revenue Code.
4. During the Performance Period, the business incurred necessary expenditures due to the COVID-19 public health emergency.

The following businesses are **ineligible** to apply for or receive funding under the Program:

1. Passive real estate holding companies and entities holding passive investments.
2. Non-profit entities that do not have federal 501(c)(3) status.
3. Businesses that experience a decline in revenues for reasons other than those caused by the COVID-19 pandemic (e.g. seasonal or cyclical businesses cycles).
4. Businesses that are delinquent on federal, state or local taxes that were due on or before the date of application.
5. Businesses that do not comply with all federal, state and local laws and regulations.
6. Businesses that have closed and do not intend to reopen.

Award Amount

Grantee's grant awards to eligible businesses shall be in amounts determined by Grantee.

Program Access

Agency intends that the Grant Funds are made accessible to all Oregonians. Accordingly, Agency strongly encourages Grantee to market its grant program and seek subgrantees based on the recommendations set forth in Exhibit E, Equity in Grant Access.

SECTION II. U.S. Treasury Guidelines and Answers to FAQs

Agency will disburse Grant Funds only for eligible costs incurred by Grantee for the Performance Period and in accordance with criteria and guidance established by US Treasury:

<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

Additionally, the US Treasury has provided answers to frequently asked questions regarding eligible costs under the Coronavirus Relief Fund:

<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>

Direct Administrative Costs Allowed. Grantee's administrative costs directly attributable to the administration of its grant program funded by this Grant can be reimbursed or otherwise paid with Grant Funds. Such direct administrative costs shall not exceed 5% of the Grant Funds awarded under this Grant.

Indirect Costs Not Allowed. In accordance with U.S. Treasury guidance, Grantee shall not reimburse or otherwise pay any of its indirect costs with Grant Funds. The information described in this paragraph overrides any other verbal or written rate(s) or information provided by Agency.

SECTION III. REPORTING REQUIREMENTS

No later than January 5, 2021, Grantee shall provide Agency a final report on the following:

1. Total use of Grant Funds;
2. Total number of applicants and beneficiaries; and
3. For each beneficiary that Grantee awards a grant:
 - a. A short description of the beneficiary's business, including business entity type, industry, number of employees and length of operating history; and
 - b. The demographic information reported on the voluntary demographic questionnaire by owners of each beneficiary business.

Additionally, no later than January 5, 2021, for the period October 1, 2020 to December 30, 2020, Grantee shall report the following information, as applicable, to Agency:

- a. Amount spent on administrative expenses;
- b. Amount spent on budgeted personnel and services diverted to a substantially different use;
- c. Amount spent to COVID-19 testing and contract tracing;
- d. Amount spent on economic support (other than small business, housing, and food assistance);
- e. Amount spent on expenses associated with the issuance of tax anticipation notes;
- f. Amount spent on facilitating distance learning;
- g. Amount spent on food programs;
- h. Amount spent on housing support;
- i. Amount spent to improve telework capabilities of public employees;
- j. Amount spent on medical expenses;

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- k. Amount spent on nursing home assistance;
- l. Amount spent on payroll for public health and safety employees;
- m. Amount spent on personal protective equipment;
- n. Amount spent on public health expenses;
- o. Amount spent on small business assistance;
- p. Amount spent on unemployment benefits;
- q. Amount spent on workers' compensation;
- r. Amount spent on items not listed above; and
- s. The primary place of performance of this Project.

The requirements of this Section III survive termination of this Grant.

EXHIBIT B INSURANCE

INSURANCE REQUIREMENTS

Grantee must obtain at Grantee's expense, and require its first tier contractors and subgrantees, if any, to obtain the insurance specified in this exhibit prior to performing under this Grant, and must maintain it in full force and at its own expense throughout the duration of this Grant, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Grantee must obtain and require its first-tier contractors and subgrantees, if any, to obtain the following insurance from insurance companies or entities acceptable to Agency and authorized to transact the business of insurance and issue coverage in Oregon. Coverage must be primary and non-contributory with any other insurance and self-insurance, with the exception of professional liability and workers' compensation. Grantee must pay and require its first-tier contractors and subgrantees to pay, if any, for all deductibles, self-insured retention and self-insurance, if any.

WORKERS' COMPENSATION

All employers, including Grantee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Grantee shall require and ensure that each of its subgrantees, contractors, and subcontractors complies with these requirements. If Grantee is a subject employer, as defined in ORS 656.023, Grantee shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Grantee is an employer subject to any other state's workers' compensation law, Grantee shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000, and shall require and ensure that each of its out-of-state subgrantees, contractors, and subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY

Required **Not required**

Commercial general liability insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to Agency. This insurance must include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Grant, and have no limitation of coverage to designated premises, project or operation. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit may not be less than \$2,000,000.

AUTOMOBILE LIABILITY INSURANCE

Required **Not required**

Automobile liability insurance covering Grantee's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the commercial general liability insurance (with separate limits for commercial general liability and automobile liability). Use

of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

PROFESSIONAL LIABILITY

Required Not required

Professional liability insurance covering any damages caused by an error, omission or any negligent acts related to the activities performed under this Grant by the Grantee and Grantee’s contractors, subgrantees, agents, officers or employees in an amount not less than \$_____ per claim. Annual aggregate limit may not be less than \$_____. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months must be included in the professional liability insurance coverage, or the Grantee must provide tail coverage as stated below.

NETWORK SECURITY AND PRIVACY LIABILITY

Required Not required

Grantee must provide network security and privacy liability insurance for the duration of the Grant and for the period of time in which Grantee (or its business associates, contractors, or subgrantees) maintains, possesses, stores or has access to Agency or client data, whichever is longer, with a combined single limit of no less than \$_____ per claim or incident. This insurance must include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of Agency or client data (which may include, but is not limited to, Personally Identifiable Information (“PII”), payment card data and Protected Health Information (“PHI”)) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of Agency data.

POLLUTION LIABILITY

Required Not required

Pollution liability insurance covering Grantee’s or appropriate contractor or subgrantee’s liability for bodily injury, property damage and environmental damage resulting from sudden, accidental, or gradual pollution and related cleanup costs incurred by Grantee, all arising out of the Project activities (including transportation risk) performed under this Grant is required. Combined single limit per occurrence may not be less than \$_____. Annual aggregate limit may not be less than \$_____.

An endorsement to the commercial general liability or automobile liability policy, covering Grantee’s, contractor, or subgrantee’s liability for bodily injury, property damage and environmental damage resulting from sudden, accidental, or gradual pollution and related clean-up costs incurred by Grantee that arise from the Project activities (including transportation risk) performed by Grantee under this Grant is also acceptable.

DIRECTORS, OFFICERS AND ORGANIZATION LIABILITY

Required Not required

Directors, officers and organization liability insurance covering the Grantee’s organization, directors, officers, and trustees actual or alleged errors, omissions, negligent, or wrongful acts, including improper governance, employment practices and financial oversight - including improper oversight and/or use of Grant Funds and donor contributions - with a combined single limit of no less than \$_____ per claim.

CRIME PROTECTION COVERAGE: EMPLOYEE DISHONESTY or FIDELITY BOND

Required Not required

Employee dishonesty or fidelity bond covering loss of money, securities and property caused by dishonest acts of Grantee’s employees. Coverage limits may not be less than \$_____.

PHYSICAL ABUSE AND MOLESTATION INSURANCE COVERAGE

Required Not required

Abuse and molestation insurance in a form and with coverage satisfactory to the State covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Grantee, its contractors, subcontractors or subgrantees (“Covered Entity”) is responsible including but not limited to any Covered Entity’s employees and volunteers. Policy endorsement’s definition of an insured must include the Covered Entity and its employees and volunteers. Coverage must be written on an occurrence basis in an amount of not less than \$_____ per occurrence. Any annual aggregate limit may not be less than \$_____. Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. The limits must be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, must be treated as a separate occurrence for each victim. Coverage must include the cost of defense and the cost of defense must be provided outside the coverage limit.

EXCESS/UMBRELLA INSURANCE

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED

All liability insurance, except for workers’ compensation, professional liability, and network security and privacy liability (if applicable), required under this Grant must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Grantee’s activities to be performed under this Grant. Coverage must be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of Grantee’s ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

WAIVER OF SUBROGATION

Grantee waives, and must require its first tier contractors and subgrantees waive, rights of subrogation which Grantee, Grantee’s first tier contractors and subgrantees, if any, or any insurer of Grantee may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Grantee must obtain, and require its first tier contractors and subgrantees to obtain, any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Grantee or the Grantee’s insurer(s).

TAIL COVERAGE

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Grantee must maintain, and require its first tier contractors and subgrantees, if any, maintain, either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the Effective Date of this Grant, for a minimum of 24 months following the later of (i) Grantee's completion and Agency's acceptance of all Project activities required under this Grant, or, (ii) Agency or Grantee termination of Grant, or, (iii) the expiration of all warranty periods provided under this Grant.

CERTIFICATE(S) AND PROOF OF INSURANCE

If Grantee is self-insured for any of the Insurance Requirements specified in Exhibit B of this Agreement, Grantee may so indicate by submitting a certificate of insurance as required in this Exhibit B.

At Agency's request, Grantee must provide to Agency a Certificate(s) of Insurance for all required insurance. The Certificate(s) must list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) must also include all required endorsements or copies of the applicable policy language effecting coverage required by this Grant. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance, Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Grant. Grantee must furnish acceptable insurance certificates to: CoronavirusReliefFund@oregon.gov or by mail to: Department of Administrative Services, Attention: Coronavirus Relief Fund, 155 Cottage Street NE, Salem, OR, 97301 prior to commencing the work.

NOTICE OF CHANGE OR CANCELLATION

Grantee or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW

Grantee agrees to periodic review of insurance requirements by Agency under this Grant, and to provide updated requirements as mutually agreed upon by Grantee and Agency.

STATE ACCEPTANCE

All insurance providers are subject to Agency acceptance. If requested by Agency, Grantee must provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this exhibit.

EXHIBIT C

FEDERAL TERMS AND CONDITIONS

1. FEDERAL FUNDS

1.1. If specified below, Agency's payments to Grantee under this Grant will be paid in whole or in part by funds received by Agency from the United States Federal Government. If so specified then Grantee, by signing this Grant, certifies neither it nor its employees, contractors, subcontractors or subgrantees who will perform the Project activities are currently employed by an agency or department of the federal government.

Payments will will not be made in whole or in part with federal funds.

1.2. In accordance with the Chief Financial Office's Oregon Accounting Manual, policy 30.40.00.104, Agency has determined:

Grantee is a subrecipient Grantee is a contractor Not applicable

1.3. Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Grant: 21.019

2. FEDERAL PROVISIONS

2.1. The use of all federal funds paid under this Grant are subject to all applicable federal regulations, including the provisions described below.

2.2. Grantee must ensure that any further distribution or payment of the federal funds paid under this Grant by means of any contract, subgrant, or other agreement between Grantee and another party for the performance of any of the activities of this Grant, includes the requirement that such funds may be used solely in a manner that complies with the provisions of this Grant.

2.3. Grantee must include and incorporate the provisions described below in all contracts and subgrants that may use, in whole or in part, the funds provided by this Grant.

2.4. Grantee must comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Grantee must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC § 4712.

In accordance with U.S. Treasury guidance – Grantee is subject to the following provisions, as applicable.

If a government has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to DAS.

For purposes of these provisions, the following definitions apply:

“Contract” means this Grant or any contract or subgrant funded by this Grant.

“Contractor” and **“Subrecipient”** and **“Non-Federal entity”** mean Grantee or Grantee's contractors or subgrantees, if any.

(A) 2 CFR §200.303 Internal Controls

(B) 2 CFR §§ 200.330 through 200.332 Subrecipient Monitoring and Management

(C) Subpart F – Audit Requirements of 2 CFR §§ 200.500 *et seq.*

i. Contractor must comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.

ii. If Contractor receives federal awards in excess of \$750,000 in a fiscal year, Contractor is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to Agency within 30 days of completion.

iii. Contractor must save, protect and hold harmless Agency from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Contract. Contractor acknowledges and agrees that any audit costs incurred by Contractor as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Contractor and State.

(D) System for Award Management. Grantee must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. The Grantee also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the Grantee) the unique entity identifier required for SAM registration.

3. ADDITIONAL FEDERAL REQUIREMENTS

None.

EXHIBIT D

FEDERAL AWARD IDENTIFICATION

(Required by 2 CFR 200.331(a))

(i) Grantee Name: <i>(must match DUNS registration)</i>	Clackamas County
(ii) Grantee's DUNS number:	096992656
(iii) Federal Award Identification Number (FAIN):	
(iv) Federal award date: <i>(date of award to DAS by federal agency)</i>	March 27, 2020
(v) Grant period of performance start and end dates:	Start: March 1, 2020 End: December 30, 2020
(vi) Total amount of federal funds obligated by this Grant:	\$4,168,536.00
(vii) Total amount of federal funds obligated to Grantee by Agency, including this Grant:	\$21,878,703.48
(viii) Total Amount of Federal Award committed to Grantee by Agency: <i>(amount of federal funds from this FAIN committed to Grantee)</i>	\$21,878,703.48
(ix) Federal award project description:	Coronavirus Relief Fund
(x)	
a. Federal awarding agency:	U.S. Department of the Treasury
b. Name of pass-through entity:	Oregon Department of Administrative Services
c. Contact information for awarding official of pass-through entity:	Gerold Floyd, CoronavirusReliefFund@Oregon.gov
(xi) CFDA number, name, and amount:	Number: 21.019 Name: Coronavirus Relief Fund Amount: \$1,388,506,837.10
(xii) Is award research and development?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(xiii) Indirect cost rate:	Not allowed per U.S. Treasury guidance
(xiv) Is the 10% de minimis rate being used per §200.414?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

EXHIBIT E

EQUITY IN GRANT ACCESS

Agency intends that the Grant Funds be made accessible to all Oregonians, including members of historically underserved population groups (including, but not limited to, Asian, Pacific Islander, Black, Hispanic, Native American, Indigenous, members of Tribes and women).

Accordingly, Agency strongly encourages Grantee to implement its grant program so that it targets one or more of the following types of businesses:

- a. Businesses with less than 100 employees
- b. Businesses within rural areas
- c. Businesses that identify as minority-owned, women-owned, service-disabled veteran-owned, and emerging small businesses
- d. Nonprofit business entities owned by Black, Indigenous, Asian Pacific Islander and all other People of Color and/or women (or eligible nonprofits primarily serving these communities)

MARKETING AND OUTREACH

Additionally, Agency strongly encourages Grantee to conduct a robust marketing program that reaches out locally to businesses by:

- Utilizing program marketing and application materials provided by Agency and, when feasible, make such materials available in languages that are representative of the local population.
- Conducting a stepped marketing program that reaches out and markets to members of historically underserved population groups in advance of marketing to the general public. Attached to this Exhibit as Attachment 1 is a contact list of culturally specific organizations that are available to help Grantee implement its stepped marketing program. Agency encourages Grantee to contact and partner with one or more of these organizations in its marketing efforts.
- Using the State of Oregon’s “Equity Framework in COVID-19 Response and Recovery” as a guide in the design of Grantee’s grant program:
https://www.oregon.gov/gov/policy/Documents/EquityFrameworkCovid19_2020.pdf.

Attachment 1 to Exhibit E

List of Culturally Specific Organizations

1. Adelante Mujeres – Andrea Chunga-Celis, achungacelis@adelantemujeres.org
2. IRCO – Jenny Bremner, jennyb@irco.org
3. MESO – Stephanie Basalyga, sbasalyga@mesopdx.org
4. The Urban League of Portland – Cinna’Mon Williams, CWilliams@ulpdx.org
5. Latino Built – Leanna Petrone, Leanna@latinobuilt.org
6. RDI – Jennifer Groth, jgroth@rdiinc.org
7. Professional Business Development Group – Kenechi Onyeagusi, kenechi@pbdgweb.com
8. RAIN – Jennifer Damiani, jennifer@scoutconsultants.com
9. EDCO – Brian Vierra, brian@edcoinfo.com
10. Huerto de la Familia – Marissa Zarate, marissa@huertodelafamilia.org
11. A Greater Applegate – Seth Kaplan, seth@agreaterapplegate.org
12. Centro Cultural – Jonath Colon Montesi, jcolon@centrocultural.org
13. High Desert Partnership – Brenda Smith, director@highdesertpartnership.org
14. Micro Enterprise Resources Initiative and Training (MERIT) – Hugo Munez, VISION2@meritnw.org
15. Umatilla Electric Cooperative – Emily Cecil, uecbrc@gmail.com
16. Philippine American Chambers of Commerce – Jan Mason (PACCO), janice.pacco@gmail.com
17. Black American Chamber of Commerce – Jesse Hyatt (BACC), jesse.hyatt@blackamericanchamber.org
18. Hispanic Metropolitan Chamber – Carmen Castro, ccastro@hmccoregon.com
19. Ashland Chamber of Commerce – Sandra Slattery, sandra@ashlandchamber.com
20. Native American Youth and Family (NAYA) – Sky Waters, SkyW@nayapdx.org
21. Asian Pacific American Network of Oregon (APANO) – Todd Struble, todd@apano.org
22. Metropolitan Contractor Improvement Partnership – John Jackley, john@mcip-pdx.org
23. Hacienda CDC – Aldo Medina, amedina@haciendacdc.org
24. Oregon Native American Chamber (ONAC) – James Parker, jparker@onacc.org
25. Oregon Latinx Leadership Network – Anthony Veliz, aveliz@izomarketing.com

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26. CAUSA – Adriana Miranda, adriana@causaoregon.org
27. Coalition of Communities of Color – Marcus Mundy, marcus@coalitioncommunitiescolor.org
28. COFA Alliance National Network – Joe Enlet, fsmcgportland@gmail.com
29. Latino Community Association – Brad Porterfield, brad@latinocommunityassociation.org
30. Salem Capitol Connections – Marin Arreola, advancedecon@aol.com
31. Oregon Association of Minority Entrepreneurs – Jorge Guerra, jorge@oame.org
32. National Association of Minority Contractors – Nate McCoy, nate@namc-oregon.org
33. PCUN- Small Business Cohort – Omar Alvarado, omaralvarado@pcun.org
34. Warm Springs Community Action Team – Dustin Seyler, dustin@wscat.org



December 17, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of State of Oregon, Department of Administrative Services, Grant Agreement with Clackamas County to provide CARES Act funding for grants to the local small business community impacted by the COVID-19 pandemic

Purpose/Outcomes	Approve a State of Oregon, Department of Administrative Services, Grant Agreement with Clackamas County to provide CARES Act funding for grants to the local small business community impacted by the COVID-19 pandemic.
Dollar Amount and Fiscal Impact	\$4,168,536 in CARES Act funding to be distributed to the Clackamas County small business community via the County's Emergency Business Assistance Grant Program.
Funding Source	CARES Act, via State of Oregon acting through its Department of Administrative Services.
Duration	Agreement is effective upon signature by both parties and will expire on December 30, 2020.
Previous Board Action	EOC Commander Nancy Bush briefed the BCC on this agreement during the BCC Business Meeting on December 10, 2020. The agreement was received by the County on December 9, 2020 and is being expedited to meet the extremely short timelines.
Strategic Plan Alignment	1) This grant agreement supports the BCS goal of giving businesses access to innovative tools and programs to help them locate or expand in Clackamas County. Providing grants to businesses impacted by COVID-19 will help them make it through the pandemic so they can operate/reopen under the new normal, and eventually expand when economic times improve. 2) This grant agreement supports the County strategic priority of Growing a Vibrant Economy by providing much needed assistance to Clackamas County small businesses so they can remain in business throughout the COVID-19 pandemic.
County Counsel Review	County Counsel Review Date: December 10, 2020 Counsel Initials: ARN
Procurement Review	Was the item processed through procurement? No The item is a grant agreement, and is not processed through Procurement.
Contact Person	Laura Zentner, BCS Director (503) 742-4351 Sarah Eckman, BCS Deputy Director (503) 894-3135
Contract No.	Grant No. 2503

BACKGROUND:

Governor Kate Brown recently announced that the state would commit \$55 million in financial assistance to support Oregon businesses who have been impacted by COVID-19. These funds have been allocated to counties to distribute to businesses who have been financially impacted. Counties are encouraged to prioritize businesses within the hospitality industry, businesses impacted by the freeze, small businesses, and women, Black, Indigenous, People of Color, and Tribal-owned businesses.

Each county received a base of \$500,000 plus a per capita allocation of the remainder of the funds. Clackamas County's allocation is \$4,168,536. All counties will receive the funds as a direct deposit. It is not a reimbursement-based process. BCS will facilitate the funding receipt and distribution process. Distribution of funds is at each county's discretion. Counties decide eligibility criteria (outside of the minimum eligibility listed below) and how businesses apply to receive funds, as well as how to communicate the application process to businesses.

Counties are asked to make a good faith effort to prioritize the hospitality industry, businesses impacted by the freeze, small businesses, and women, Black, Indigenous, People of Color, and Tribal-owned businesses.

The State has provided the following minimum eligibility requirements; only one application may be made per business:

1. The business is headquartered in Oregon and has its principal operations in Oregon.
2. If required by Oregon law to be registered with the Oregon Secretary of State to do business in Oregon, the business is so registered.
3. The business is either for-profit or an entity tax-exempt under section 501(c)(3) of the Internal Revenue Code.
4. The business was adversely affected in either one of the following two ways:
 - a. The business was prohibited from operating as directed by Executive Orders 20-12 or 20-65.
 - b. The business can demonstrate a one-month decline in sales of 25% or more, incurred by the COVID-19 pandemic, between March 1, 2020 and November 30, 2020, as compared against the same period of time in 2019.

Business and Community Services has developed a grant distribution program with local non-profit, Micro Enterprise Services of Oregon (MESO) to provide grants to local small businesses affected by COVID-19. This program helps vulnerable businesses impacted by COVID-19 by providing much needed cash during this very challenging time.

BCS will enter into an agreement with MESO for them to provide the grant distribution process for the State of Oregon CARES Act funds. Due to the extremely short timeframe for this program (awards must be committed by December 30, 2020), and the high volume of work for the County and MESO, a simplified grant program has been designed to fully utilize all funds provided by the State by providing grants to struggling small businesses.

The program will distribute funds in two ways:

- 1) Fund applicants who recently applied for grants under the Clackamas County \$1 million grant funding stream, but were not funded due to lack of funds. These applicants represent small businesses across Clackamas County and the program was marketed to small businesses, and women, Black, Indigenous, People of Color, and Tribal-owned businesses. The program has more than \$4 million in applications currently unfunded.
- 1) Open a simplified application for hospitality industry businesses, and possibly others prohibited from operating as directed by Executive Orders 20-12 or 20-65, that will provide \$2,500 - \$3,000 grants to applicants meeting a small set of criteria.

Accepting this CARES Act funding will allow Clackamas County to provide a substantial amount of money to the local small business community during challenging times and the holiday season.

RECOMMENDATION:

Staff respectfully recommends the BCC approve the State of Oregon, Department of Administrative Services, Grant Agreement with Clackamas County to provides CARES Act funding for grants to the local small business community impacted by the COVID-19 pandemic.

ATTACHMENT:

State of Oregon, Department of Administrative Services, Grant Agreement with Clackamas County

Respectfully submitted,

Laura Zentner

Laura Zentner, CPA
Director, Business & Community Services

STATE OF OREGON GRANT AGREEMENT

Grant No. 2503

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

SECTION 1: AUTHORITY

Pursuant to funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and as allocated to Agency by the Oregon Emergency Board, Agency is authorized to enter into a grant agreement and provide funding for the purposes described in this Grant.

SECTION 2: PURPOSE

Section 5001 of the CARES Act provides funds to state, local and tribal governments through the Coronavirus Relief Fund to be used for expenditures incurred due to COVID-19 during the period of March 1, 2020 through December 30, 2020 (the “Performance Period”). This Grant governs the disbursement of funds from the Coronavirus Relief Fund to Grantee for the Performance Period to reimburse the costs of the activities described in Exhibit A.

SECTION 3: EFFECTIVE DATE AND DURATION

When all Parties have executed this Grant, and all necessary approvals have been obtained (“Executed Date”), this Grant is effective and has a Grant funding start date as of March 1, 2020 (“Effective Date”), and, unless extended or terminated earlier in accordance with its terms, will expire on December 30, 2020.

SECTION 4: GRANT MANAGERS

4.1 Agency’s Grant Manager is:

Gerold Floyd
Department of Administrative Services
Attention: Coronavirus Relief Fund
155 Cottage Street NE, Salem, OR 97301
Phone: 503-378-2709
Email: CoronavirusReliefFund@Oregon.gov

4.2 Grantee’s Grant Manager is:

Name: Michael Morasko
Address: 2051 Kaen Rd, Oregon City, OR 97045
Phone: 503-742-5435
Email: mmorasko@clackamas.us

4.3 A Party may designate a new Grant Manager by written notice to the other Party.

SECTION 5: PROJECT ACTIVITIES

To receive funds under this Grant, Grantee must perform the project activities set forth in Exhibit A (the “Project”), attached hereto and incorporated in this Grant by this reference, during the Performance Period.

SECTION 6: GRANT FUNDS

In accordance with the terms and conditions of this Grant, Agency will provide Grantee up to an amount not to exceed \$4,168,536.00 (the “Grant Funds”) for eligible Project costs incurred during the Performance Period. Agency will pay the Grant Funds from monies available through the Coronavirus Relief Fund (“Funding Source”).

SECTION 7: DISBURSEMENT GENERALLY

- 7.1 **Disbursement.** Agency will disburse Grant Funds to Grantee in a single disbursement within five business days of the Executed Date.
- 7.2 **Conditions Precedent to Disbursement.** Agency’s obligation to disburse Grant Funds to Grantee under this Grant is subject to satisfaction of each of the following conditions precedent:
 - 7.2.1 Agency has received sufficient funding, appropriations, expenditure limitation, allotments or other necessary expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement from the Funding Source;
 - 7.2.2 No default as described in Section 13 has occurred; and
 - 7.2.3 Grantee’s representations and warranties set forth in Section 8 are true and correct on the date of disbursement(s) with the same effect as though made on the date of disbursement.
- 7.3 **No Duplicate Payment.** Grantee may use other funds in addition to the Grant Funds to complete the Project; provided, however, funds received pursuant to this Grant are not used for expenditures for which a local government entity has received any other supplemental funding (whether state,

federal or private in nature) for that same expense unless otherwise authorized by Agency in writing.

SECTION 8: REPRESENTATIONS AND WARRANTIES

8.1 Organization/Authority. Grantee represents and warrants to Agency that:

8.1.1 Grantee is a local government duly organized and validly existing;

8.1.2 Grantee has all necessary rights, powers and authority under any organizational documents and under Oregon Law to (i) execute this Grant, (ii) incur and perform its obligations under this Grant, and (iii) receive financing, including the Grant Funds, for the Project;

8.1.3 This Grant has been duly executed by Grantee and when executed by Agency, constitutes a legal, valid and binding obligation of Grantee enforceable in accordance with its terms;

8.1.4 If applicable and necessary, the execution and delivery of this Grant by Grantee has been authorized by an ordinance, order or resolution of its governing body, or voter approval, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings; and

8.1.5 There is no proceeding pending or threatened against Grantee before any court or governmental authority that if adversely determined would materially adversely affect the Project or the ability of Grantee to carry out the Project.

8.2 False Claims Act. Grantee acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) made by (or caused by) Grantee that pertains to this Grant or to the Project. Grantee certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Grantee further acknowledges in addition to the remedies under Section 14, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Grantee.

8.3 No limitation. The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided by Grantee.

SECTION 9: INDEMNITY/LIABILITY

9.1 Indemnity. Subject to the limitations of Article XI, § 10, of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), Grantee must defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorneys’ fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subgrantees, contractors, subcontractors, or agents under this Grant (each of the foregoing individually or collectively a “Claim” for purposes of this Section).

- 9.2 Defense.** Grantee may have control of the defense and settlement of any Claim subject to this Section. But neither Grantee nor any attorney engaged by Grantee may defend the Claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Grantee settle any Claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event the State of Oregon determines Grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or an important governmental principle is at issue and the State of Oregon desires to assume its own defense. Grantee may not use any Grant Funds to reimburse itself for the defense of or settlement of any Claim.
- 9.3 Limitation.** Except as provided in this Section, neither Party will be liable for incidental, consequential, or other direct damages arising out of or related to this Grant, regardless of whether the damages or other liability is based in contract, tort (including negligence), strict liability, product liability or otherwise. Neither Party will be liable for any damages of any sort arising solely from the termination of this Grant in accordance with its terms.

SECTION 10: INSURANCE

As a "public body" as defined in ORS 30.260, Grantee agrees to insure any obligations that may arise for Grantee under this Grant, including any indemnity obligations, through (i) the purchase of insurance as indicated in Exhibit B; or (ii) the use of self-insurance or assessments paid under ORS 30.282 that is substantially similar to the types and amounts of insurance coverage indicated on Exhibit B; or (iii) a combination of any or all of the foregoing.

SECTION 11: GOVERNING LAW, JURISDICTION

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

SECTION 12: ALTERNATIVE DISPUTE RESOLUTION

The Parties should attempt in good faith to resolve any dispute arising out of this Grant. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Grant. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each Party will bear its own costs incurred for any mediation or non-binding arbitration.

SECTION 13: DEFAULT

13.1 Grantee. Grantee will be in default under this Grant upon the occurrence of any of the following events:

13.1.1 Grantee fails to use the Grant Funds for the intended purpose described in Exhibit A or otherwise fails to perform, observe or discharge any of its covenants, agreements or obligations under this Grant;

13.1.2 Any representation, warranty or statement made by Grantee in this Grant or in any documents or reports relied upon by Agency to measure the Project, the expenditure of Grant Funds or the performance by Grantee is untrue in any material respect when made; or

13.1.3 A petition, proceeding or case is filed by or against Grantee under any federal or state bankruptcy, insolvency, receivership or other law relating to reorganization, liquidation, dissolution, winding-up or adjustment of debts; in the case of a petition filed against Grantee, Grantee acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal; or Grantee becomes insolvent or admits its inability to pay its debts as they become due, or Grantee makes an assignment for the benefit of its creditors.

13.2 Agency. Agency will be in default under this Grant if, after 15 days written notice specifying the nature of the default, Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Grant; provided, however, Agency will not be in default if Agency fails to disburse Grant Funds because there is insufficient expenditure authority for, or moneys available from, the Funding Source.

SECTION 14: REMEDIES

14.1 Agency Remedies. In the event Grantee is in default under Section 13.1, Agency may, at its option, pursue any or all of the remedies available to it under this Grant and at law or in equity, including, but not limited to: (i) termination of this Grant under Section 16.2, (ii) reducing or withholding payment for Project activities or materials that are deficient or Grantee has failed to complete by any scheduled deadlines, (iii) requiring Grantee to complete, at Grantee's expense, additional activities necessary to satisfy its obligations or meet performance standards under this Grant, (iv) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, (v) exercise of its right of recovery of overpayments under Section 15 of this Grant or setoff,

or both, or (vi) declaring Grantee ineligible for the receipt of future awards from Agency. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

- 14.2 Grantee Remedies.** In the event Agency is in default under Section 13.2 and whether or not Grantee elects to terminate this Grant, Grantee’s sole monetary remedy will be, within any limits set forth in this Grant, reimbursement of Project activities completed and accepted by Agency and authorized expenses incurred, less any claims Agency has against Grantee. In no event will Agency be liable to Grantee for any expenses related to termination of this Grant or for anticipated profits.

SECTION 15: WITHHOLDING FUNDS, RECOVERY

Agency may withhold from disbursements of Grant Funds due to Grantee, or Grantee must return to Agency within 30 days of Agency’s written demand:

- 15.1** Any Grant Funds paid to Grantee under this Grant, or payments made under any other agreement between Agency and Grantee, that exceed the amount to which Grantee is entitled;
- 15.2** Any Grant Funds received by Grantee that remain unexpended or contractually committed for payment of the Project at the end of the Performance Period;
- 15.3** Any Grant Funds determined by Agency or the U.S. Department of the Treasury to be spent for purposes other than allowable Project activities; or
- 15.4** Any Grant Funds requested by Grantee as payment for deficient activities or materials.

SECTION 16: TERMINATION

- 16.1 Mutual.** This Grant may be terminated at any time by mutual written consent of the Parties.
- 16.2 By Agency.** Agency may terminate this Grant as follows:
- 16.2.1** At Agency’s discretion, upon 30 days advance written notice to Grantee;
- 16.2.2** Immediately upon written notice to Grantee, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency’s reasonable administrative discretion, to perform its obligations under this Grant;
- 16.2.3** Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted by a court in such a way that Agency’s performance under this Grant is prohibited or Agency is prohibited from funding the Grant from the Funding Source; or
- 16.2.4** Immediately upon written notice to Grantee, if Grantee is in default under this Grant and such default remains uncured 15 days after written notice thereof to Grantee.

16.3 By Grantee. Grantee may terminate this Grant as follows:

- 16.3.1** Immediately upon written notice to Agency, if Grantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to perform its obligations under this Grant.
- 16.3.2** Immediately upon written notice to Agency, if applicable laws, rules, regulations or guidelines are modified or interpreted by a court in such a way that the Project activities contemplated under this Grant are prohibited by law or Grantee is prohibited from paying for the Project from the Grant Funds or other planned Project funding; or
- 16.3.3** Immediately upon written notice to Agency, if Agency is in default under this Grant and such default remains uncured 15 days after written notice thereof to Agency.

SECTION 17: MISCELLANEOUS

- 17.1 Conflict of Interest.** Grantee by signature to this Grant declares and certifies the award of this Grant and the Project activities to be funded by this Grant, create no potential or actual conflict of interest, as defined by ORS Chapter 244, for a director, officer or employee of Grantee.
- 17.2 Nonappropriation.** Agency's obligation to pay any amounts and otherwise perform its duties under this Grant is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Grant. Nothing in this Grant may be construed as permitting any violation of Article XI, Section 7, of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.
- 17.3 Amendments.** The terms of this Grant may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.
- 17.4 Notice.** Except as otherwise expressly provided in this Grant, any notices to be given under this Grant must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Grant Manager at the physical address or email address set forth in this Grant, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- 17.5 Survival.** All rights and obligations of the Parties under this Grant will cease upon termination of this Grant, other than the rights and obligations arising under Sections 9, 11, 12, 14, 15 and subsections 17.5 and 17.13 hereof and those rights and obligations that by their express terms survive termination of this Grant; provided, however, termination of this Grant will not prejudice any rights or obligations accrued to the Parties under this Grant prior to termination.
- 17.6 Severability.** The Parties agree if any term or provision of this Grant is declared by a court of

competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Grant did not contain the particular term or provision held to be invalid.

- 17.7 Counterparts.** This Grant may be executed in several counterparts, all of which when taken together constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Grant so executed constitutes an original.
- 17.8 Compliance with Law.** In connection with their activities under this Grant, the Parties must comply with all applicable federal, state and local laws.
- 17.9 Intended Beneficiaries.** Agency and Grantee are the only parties to this Grant and are the only parties entitled to enforce its terms. Nothing in this Grant provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Grant.
- 17.10 Assignment and Successors.** Grantee may not assign or transfer its interest in this Grant without the prior written consent of Agency and any attempt by Grantee to assign or transfer its interest in this Grant without such consent will be void and of no force or effect. Agency's consent to Grantee's assignment or transfer of its interest in this Grant will not relieve Grantee of any of its duties or obligations under this Grant. The provisions of this Grant will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
- 17.11 Contracts and Subgrants.** Grantee may enter into contracts or subgrants for any of the Project activities required of Grantee under this Grant, however Grantee is required to communicate subgrantee information to Agency in such a manner and timing as prescribed by Agency that Agency considers necessary to fulfill its federal reporting obligations.
- 17.12 Time of the Essence.** Time is of the essence in Grantee's performance of the Project activities under this Grant.
- 17.13 Records Maintenance and Access.** Grantee must maintain all financial records relating to this Grant in accordance with generally accepted accounting principles. In addition, Grantee must maintain any other records, whether in paper, electronic or other form, pertinent to this Grant in such a manner as to clearly document Grantee's performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Grant, are collectively referred to as "Records." Grantee acknowledges and agrees Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Grantee must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Grant, or until the conclusion of any audit, controversy or litigation arising out of or related to this Grant, whichever date is later.
- 17.14 Headings.** The headings and captions to sections of this Grant have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this

Grant.

17.15 Grant Documents. This Grant consists of the following documents, which are incorporated by this reference and listed in descending order of precedence:

- This Grant less all exhibits
- Exhibit A (The Project)
- Exhibit C (Federal Terms and Conditions)
- Exhibit B (Insurance)
- Exhibit D (Federal Award Identification)
- Exhibit E (Equity in Grant Access)

17.16 Merger, Waiver. This Grant and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Grant. No waiver or consent under this Grant binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

17.17 Real Property. If the Project includes the acquisition, construction, remodel or repair of real property or improvements to real property, and if such assets are disposed of prior to December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the Grant Funds provided by section 601(d) of the Social Security Act.

The signatures of the parties follow on the next page.

SECTION 18: SIGNATURES

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES IT HAS READ THIS GRANT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. The Parties further agree that by the exchange of this Grant electronically, each has agreed to the use of electronic means, if applicable, instead of the exchange of physical documents and manual signatures. By inserting an electronic or manual signature below, each authorized representative acknowledges that it is their signature, that each intends to execute this Grant, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

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

STATE OF OREGON acting by and through its Department of Administrative Services

By: _____
Name, Title

Date

Clackamas County

By: _____
Authorized Signature

Date

Printed Name

Title

93-6002286
Federal Tax ID Number

096992656
DUNS Number

Approved for Legal Sufficiency in accordance with ORS 291.047

By: Samuel B. Zeigler
Senior Assistant Attorney General
Oregon Department of Justice

by email dated 11/24/2020
Date

EXHIBIT A THE PROJECT

SECTION I. PROJECT DESCRIPTION

Subject to the eligibility requirements of 42 U.S.C. § 801 and any implementation guidance from the U.S. Department of the Treasury, including, without limitation, the guidance identified in Section II below, Grantee will use the Grant Funds to disburse grants to businesses as described more particularly in this Exhibit A and Exhibit E. Grantee represents and warrants that the Grant Funds will be used only to cover those costs of business subgrantees that (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in Grantee's budget most recently approved as of March 27, 2020; and (3) were, or are, incurred during the Performance Period. Grantee may not use any Grant Funds to prepay or otherwise cover Grantee-mandated business fees before awarding a grant to an eligible business.

Grantee will disburse Grant Funds only to businesses that meet all of the following minimum **eligibility** requirements; only one application may be submitted per business:

1. The business is headquartered in Oregon and has its principal operations in Oregon.
2. If required by Oregon law to be registered with the Oregon Secretary of State to do business in Oregon, the business is so registered.
3. The business is either for-profit or an entity tax-exempt under section 501(c)(3) of the Internal Revenue Code.
4. During the Performance Period, the business incurred necessary expenditures due to the COVID-19 public health emergency.

The following businesses are **ineligible** to apply for or receive funding under the Program:

1. Passive real estate holding companies and entities holding passive investments.
2. Non-profit entities that do not have federal 501(c)(3) status.
3. Businesses that experience a decline in revenues for reasons other than those caused by the COVID-19 pandemic (e.g. seasonal or cyclical businesses cycles).
4. Businesses that are delinquent on federal, state or local taxes that were due on or before the date of application.
5. Businesses that do not comply with all federal, state and local laws and regulations.
6. Businesses that have closed and do not intend to reopen.

Award Amount

Grantee's grant awards to eligible businesses shall be in amounts determined by Grantee.

Program Access

Agency intends that the Grant Funds are made accessible to all Oregonians. Accordingly, Agency strongly encourages Grantee to market its grant program and seek subgrantees based on the recommendations set forth in Exhibit E, Equity in Grant Access.

SECTION II. U.S. Treasury Guidelines and Answers to FAQs

Agency will disburse Grant Funds only for eligible costs incurred by Grantee for the Performance Period and in accordance with criteria and guidance established by US Treasury:

<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

Additionally, the US Treasury has provided answers to frequently asked questions regarding eligible costs under the Coronavirus Relief Fund:

<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>

Direct Administrative Costs Allowed. Grantee's administrative costs directly attributable to the administration of its grant program funded by this Grant can be reimbursed or otherwise paid with Grant Funds. Such direct administrative costs shall not exceed 5% of the Grant Funds awarded under this Grant.

Indirect Costs Not Allowed. In accordance with U.S. Treasury guidance, Grantee shall not reimburse or otherwise pay any of its indirect costs with Grant Funds. The information described in this paragraph overrides any other verbal or written rate(s) or information provided by Agency.

SECTION III. REPORTING REQUIREMENTS

No later than January 5, 2021, Grantee shall provide Agency a final report on the following:

1. Total use of Grant Funds;
2. Total number of applicants and beneficiaries; and
3. For each beneficiary that Grantee awards a grant:
 - a. A short description of the beneficiary's business, including business entity type, industry, number of employees and length of operating history; and
 - b. The demographic information reported on the voluntary demographic questionnaire by owners of each beneficiary business.

Additionally, no later than January 5, 2021, for the period October 1, 2020 to December 30, 2020, Grantee shall report the following information, as applicable, to Agency:

- a. Amount spent on administrative expenses;
- b. Amount spent on budgeted personnel and services diverted to a substantially different use;
- c. Amount spent to COVID-19 testing and contract tracing;
- d. Amount spent on economic support (other than small business, housing, and food assistance);
- e. Amount spent on expenses associated with the issuance of tax anticipation notes;
- f. Amount spent on facilitating distance learning;
- g. Amount spent on food programs;
- h. Amount spent on housing support;
- i. Amount spent to improve telework capabilities of public employees;
- j. Amount spent on medical expenses;

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- k. Amount spent on nursing home assistance;
- l. Amount spent on payroll for public health and safety employees;
- m. Amount spent on personal protective equipment;
- n. Amount spent on public health expenses;
- o. Amount spent on small business assistance;
- p. Amount spent on unemployment benefits;
- q. Amount spent on workers' compensation;
- r. Amount spent on items not listed above; and
- s. The primary place of performance of this Project.

The requirements of this Section III survive termination of this Grant.

EXHIBIT B INSURANCE

INSURANCE REQUIREMENTS

Grantee must obtain at Grantee's expense, and require its first tier contractors and subgrantees, if any, to obtain the insurance specified in this exhibit prior to performing under this Grant, and must maintain it in full force and at its own expense throughout the duration of this Grant, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Grantee must obtain and require its first-tier contractors and subgrantees, if any, to obtain the following insurance from insurance companies or entities acceptable to Agency and authorized to transact the business of insurance and issue coverage in Oregon. Coverage must be primary and non-contributory with any other insurance and self-insurance, with the exception of professional liability and workers' compensation. Grantee must pay and require its first-tier contractors and subgrantees to pay, if any, for all deductibles, self-insured retention and self-insurance, if any.

WORKERS' COMPENSATION

All employers, including Grantee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Grantee shall require and ensure that each of its subgrantees, contractors, and subcontractors complies with these requirements. If Grantee is a subject employer, as defined in ORS 656.023, Grantee shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Grantee is an employer subject to any other state's workers' compensation law, Grantee shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000, and shall require and ensure that each of its out-of-state subgrantees, contractors, and subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY

Required **Not required**

Commercial general liability insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to Agency. This insurance must include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Grant, and have no limitation of coverage to designated premises, project or operation. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit may not be less than \$2,000,000.

AUTOMOBILE LIABILITY INSURANCE

Required **Not required**

Automobile liability insurance covering Grantee's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the commercial general liability insurance (with separate limits for commercial general liability and automobile liability). Use

of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

PROFESSIONAL LIABILITY

Required Not required

Professional liability insurance covering any damages caused by an error, omission or any negligent acts related to the activities performed under this Grant by the Grantee and Grantee’s contractors, subgrantees, agents, officers or employees in an amount not less than \$_____ per claim. Annual aggregate limit may not be less than \$_____. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months must be included in the professional liability insurance coverage, or the Grantee must provide tail coverage as stated below.

NETWORK SECURITY AND PRIVACY LIABILITY

Required Not required

Grantee must provide network security and privacy liability insurance for the duration of the Grant and for the period of time in which Grantee (or its business associates, contractors, or subgrantees) maintains, possesses, stores or has access to Agency or client data, whichever is longer, with a combined single limit of no less than \$_____ per claim or incident. This insurance must include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of Agency or client data (which may include, but is not limited to, Personally Identifiable Information (“PII”), payment card data and Protected Health Information (“PHI”)) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of Agency data.

POLLUTION LIABILITY

Required Not required

Pollution liability insurance covering Grantee’s or appropriate contractor or subgrantee’s liability for bodily injury, property damage and environmental damage resulting from sudden, accidental, or gradual pollution and related cleanup costs incurred by Grantee, all arising out of the Project activities (including transportation risk) performed under this Grant is required. Combined single limit per occurrence may not be less than \$_____. Annual aggregate limit may not be less than \$_____.

An endorsement to the commercial general liability or automobile liability policy, covering Grantee’s, contractor, or subgrantee’s liability for bodily injury, property damage and environmental damage resulting from sudden, accidental, or gradual pollution and related clean-up costs incurred by Grantee that arise from the Project activities (including transportation risk) performed by Grantee under this Grant is also acceptable.

DIRECTORS, OFFICERS AND ORGANIZATION LIABILITY

Required Not required

Directors, officers and organization liability insurance covering the Grantee’s organization, directors, officers, and trustees actual or alleged errors, omissions, negligent, or wrongful acts, including improper governance, employment practices and financial oversight - including improper oversight and/or use of Grant Funds and donor contributions - with a combined single limit of no less than \$_____ per claim.

CRIME PROTECTION COVERAGE: EMPLOYEE DISHONESTY or FIDELITY BOND

Required Not required

Employee dishonesty or fidelity bond covering loss of money, securities and property caused by dishonest acts of Grantee’s employees. Coverage limits may not be less than \$_____.

PHYSICAL ABUSE AND MOLESTATION INSURANCE COVERAGE

Required Not required

Abuse and molestation insurance in a form and with coverage satisfactory to the State covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Grantee, its contractors, subcontractors or subgrantees (“Covered Entity”) is responsible including but not limited to any Covered Entity’s employees and volunteers. Policy endorsement’s definition of an insured must include the Covered Entity and its employees and volunteers. Coverage must be written on an occurrence basis in an amount of not less than \$_____ per occurrence. Any annual aggregate limit may not be less than \$_____. Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. The limits must be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, must be treated as a separate occurrence for each victim. Coverage must include the cost of defense and the cost of defense must be provided outside the coverage limit.

EXCESS/UMBRELLA INSURANCE

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED

All liability insurance, except for workers’ compensation, professional liability, and network security and privacy liability (if applicable), required under this Grant must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Grantee’s activities to be performed under this Grant. Coverage must be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of Grantee’s ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

WAIVER OF SUBROGATION

Grantee waives, and must require its first tier contractors and subgrantees waive, rights of subrogation which Grantee, Grantee’s first tier contractors and subgrantees, if any, or any insurer of Grantee may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Grantee must obtain, and require its first tier contractors and subgrantees to obtain, any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Grantee or the Grantee’s insurer(s).

TAIL COVERAGE

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Grantee must maintain, and require its first tier contractors and subgrantees, if any, maintain, either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the Effective Date of this Grant, for a minimum of 24 months following the later of (i) Grantee's completion and Agency's acceptance of all Project activities required under this Grant, or, (ii) Agency or Grantee termination of Grant, or, (iii) the expiration of all warranty periods provided under this Grant.

CERTIFICATE(S) AND PROOF OF INSURANCE

If Grantee is self-insured for any of the Insurance Requirements specified in Exhibit B of this Agreement, Grantee may so indicate by submitting a certificate of insurance as required in this Exhibit B.

At Agency's request, Grantee must provide to Agency a Certificate(s) of Insurance for all required insurance. The Certificate(s) must list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) must also include all required endorsements or copies of the applicable policy language effecting coverage required by this Grant. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance, Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Grant. Grantee must furnish acceptable insurance certificates to: CoronavirusReliefFund@oregon.gov or by mail to: Department of Administrative Services, Attention: Coronavirus Relief Fund, 155 Cottage Street NE, Salem, OR, 97301 prior to commencing the work.

NOTICE OF CHANGE OR CANCELLATION

Grantee or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW

Grantee agrees to periodic review of insurance requirements by Agency under this Grant, and to provide updated requirements as mutually agreed upon by Grantee and Agency.

STATE ACCEPTANCE

All insurance providers are subject to Agency acceptance. If requested by Agency, Grantee must provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this exhibit.

EXHIBIT C

FEDERAL TERMS AND CONDITIONS

1. FEDERAL FUNDS

1.1. If specified below, Agency's payments to Grantee under this Grant will be paid in whole or in part by funds received by Agency from the United States Federal Government. If so specified then Grantee, by signing this Grant, certifies neither it nor its employees, contractors, subcontractors or subgrantees who will perform the Project activities are currently employed by an agency or department of the federal government.

Payments will will not be made in whole or in part with federal funds.

1.2. In accordance with the Chief Financial Office's Oregon Accounting Manual, policy 30.40.00.104, Agency has determined:

Grantee is a subrecipient Grantee is a contractor Not applicable

1.3. Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Grant: 21.019

2. FEDERAL PROVISIONS

2.1. The use of all federal funds paid under this Grant are subject to all applicable federal regulations, including the provisions described below.

2.2. Grantee must ensure that any further distribution or payment of the federal funds paid under this Grant by means of any contract, subgrant, or other agreement between Grantee and another party for the performance of any of the activities of this Grant, includes the requirement that such funds may be used solely in a manner that complies with the provisions of this Grant.

2.3. Grantee must include and incorporate the provisions described below in all contracts and subgrants that may use, in whole or in part, the funds provided by this Grant.

2.4. Grantee must comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Grantee must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC § 4712.

In accordance with U.S. Treasury guidance – Grantee is subject to the following provisions, as applicable.

If a government has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to DAS.

For purposes of these provisions, the following definitions apply:

“Contract” means this Grant or any contract or subgrant funded by this Grant.

“Contractor” and **“Subrecipient”** and **“Non-Federal entity”** mean Grantee or Grantee's contractors or subgrantees, if any.

(A) 2 CFR §200.303 Internal Controls

(B) 2 CFR §§ 200.330 through 200.332 Subrecipient Monitoring and Management

(C) Subpart F – Audit Requirements of 2 CFR §§ 200.500 *et seq.*

i. Contractor must comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.

ii. If Contractor receives federal awards in excess of \$750,000 in a fiscal year, Contractor is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to Agency within 30 days of completion.

iii. Contractor must save, protect and hold harmless Agency from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Contract. Contractor acknowledges and agrees that any audit costs incurred by Contractor as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Contractor and State.

(D) System for Award Management. Grantee must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. The Grantee also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the Grantee) the unique entity identifier required for SAM registration.

3. ADDITIONAL FEDERAL REQUIREMENTS

None.

EXHIBIT D FEDERAL AWARD IDENTIFICATION (Required by 2 CFR 200.331(a))

(i) Grantee Name: <i>(must match DUNS registration)</i>	Clackamas County
(ii) Grantee's DUNS number:	096992656
(iii) Federal Award Identification Number (FAIN):	
(iv) Federal award date: <i>(date of award to DAS by federal agency)</i>	March 27, 2020
(v) Grant period of performance start and end dates:	Start: March 1, 2020 End: December 30, 2020
(vi) Total amount of federal funds obligated by this Grant:	\$4,168,536.00
(vii) Total amount of federal funds obligated to Grantee by Agency, including this Grant:	\$21,878,703.48
(viii) Total Amount of Federal Award committed to Grantee by Agency: <i>(amount of federal funds from this FAIN committed to Grantee)</i>	\$21,878,703.48
(ix) Federal award project description:	Coronavirus Relief Fund
(x)	
a. Federal awarding agency:	U.S. Department of the Treasury
b. Name of pass-through entity:	Oregon Department of Administrative Services
c. Contact information for awarding official of pass-through entity:	Gerold Floyd, CoronavirusReliefFund@Oregon.gov
(xi) CFDA number, name, and amount:	Number: 21.019 Name: Coronavirus Relief Fund Amount: \$1,388,506,837.10
(xii) Is award research and development?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(xiii) Indirect cost rate:	Not allowed per U.S. Treasury guidance
(xiv) Is the 10% de minimis rate being used per §200.414?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

EXHIBIT E

EQUITY IN GRANT ACCESS

Agency intends that the Grant Funds be made accessible to all Oregonians, including members of historically underserved population groups (including, but not limited to, Asian, Pacific Islander, Black, Hispanic, Native American, Indigenous, members of Tribes and women).

Accordingly, Agency strongly encourages Grantee to implement its grant program so that it targets one or more of the following types of businesses:

- a. Businesses with less than 100 employees
- b. Businesses within rural areas
- c. Businesses that identify as minority-owned, women-owned, service-disabled veteran-owned, and emerging small businesses
- d. Nonprofit business entities owned by Black, Indigenous, Asian Pacific Islander and all other People of Color and/or women (or eligible nonprofits primarily serving these communities)

MARKETING AND OUTREACH

Additionally, Agency strongly encourages Grantee to conduct a robust marketing program that reaches out locally to businesses by:

- Utilizing program marketing and application materials provided by Agency and, when feasible, make such materials available in languages that are representative of the local population.
- Conducting a stepped marketing program that reaches out and markets to members of historically underserved population groups in advance of marketing to the general public. Attached to this Exhibit as Attachment 1 is a contact list of culturally specific organizations that are available to help Grantee implement its stepped marketing program. Agency encourages Grantee to contact and partner with one or more of these organizations in its marketing efforts.
- Using the State of Oregon’s “Equity Framework in COVID-19 Response and Recovery” as a guide in the design of Grantee’s grant program:
https://www.oregon.gov/gov/policy/Documents/EquityFrameworkCovid19_2020.pdf.

Attachment 1 to Exhibit E

List of Culturally Specific Organizations

1. Adelante Mujeres – Andrea Chunga-Celis, achungacelis@adelantemujeres.org
2. IRCO – Jenny Bremner, jennyb@irco.org
3. MESO – Stephanie Basalyga, sbasalyga@mesopdx.org
4. The Urban League of Portland – Cinna’Mon Williams, CWilliams@ulpdx.org
5. Latino Built – Leanna Petrone, Leanna@latinobuilt.org
6. RDI – Jennifer Groth, jgroth@rdiinc.org
7. Professional Business Development Group – Kenechi Onyeagusi, kenechi@pbdgweb.com
8. RAIN – Jennifer Damiani, jennifer@scoutconsultants.com
9. EDCO – Brian Vierra, brian@edcoinfo.com
10. Huerto de la Familia – Marissa Zarate, marissa@huertodelafamilia.org
11. A Greater Applegate – Seth Kaplan, seth@agreaterapplegate.org
12. Centro Cultural – Jonath Colon Montesi, jcolon@centrocultural.org
13. High Desert Partnership – Brenda Smith, director@highdesertpartnership.org
14. Micro Enterprise Resources Initiative and Training (MERIT) – Hugo Munez, VISION2@meritnw.org
15. Umatilla Electric Cooperative – Emily Cecil, uecbrc@gmail.com
16. Philippine American Chambers of Commerce – Jan Mason (PACCO), janice.pacco@gmail.com
17. Black American Chamber of Commerce – Jesse Hyatt (BACC), jesse.hyatt@blackamericanchamber.org
18. Hispanic Metropolitan Chamber – Carmen Castro, ccastro@hmccoregon.com
19. Ashland Chamber of Commerce – Sandra Slattery, sandra@ashlandchamber.com
20. Native American Youth and Family (NAYA) – Sky Waters, SkyW@nayapdx.org
21. Asian Pacific American Network of Oregon (APANO) – Todd Struble, todd@apano.org
22. Metropolitan Contractor Improvement Partnership – John Jackley, john@mcip-pdx.org
23. Hacienda CDC – Aldo Medina, amedina@haciendacdc.org
24. Oregon Native American Chamber (ONAC) – James Parker, jparker@onacc.org
25. Oregon Latinx Leadership Network – Anthony Veliz, aveliz@izomarketing.com

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26. CAUSA – Adriana Miranda, adriana@causaoregon.org
27. Coalition of Communities of Color – Marcus Mundy, marcus@coalitioncommunitiescolor.org
28. COFA Alliance National Network – Joe Enlet, fsmcgportland@gmail.com
29. Latino Community Association – Brad Porterfield, brad@latinocommunityassociation.org
30. Salem Capitol Connections – Marin Arreola, advancedecon@aol.com
31. Oregon Association of Minority Entrepreneurs – Jorge Guerra, jorge@oame.org
32. National Association of Minority Contractors – Nate McCoy, nate@namc-oregon.org
33. PCUN- Small Business Cohort – Omar Alvarado, omaralvarado@pcun.org
34. Warm Springs Community Action Team – Dustin Seyler, dustin@wscat.org

Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045



Board of County Commissioners
Clackamas County

Members of the Board:

Authorization to Contract for the Microsoft Enterprise Agreement for Software and Licensing from Dell Marketing L.P.

Purpose/Outcomes	Continued and Expanded utilization of Microsoft Windows, Office, M365, Exchange, Server, SQL and related products and licenses.
Dollar Amount and Fiscal Impact	\$2,532,944.64 Total Contract over 3 years
Funding Source	Existing Technology Services allocated budget. Specifically 747-0227 capital fund.
Duration	3 years starting on January 1 st 2021, ending Dec 31 st 2023
Previous Board Action	Approval of current Enterprise Agreement Renewal in FY 17-18
Strategic Plan Alignment	Direct support for County and Technology Service initiatives for: <ul style="list-style-type: none"> - Build a strong infrastructure - Build public trust through good government
Counsel Review	12/08/2020, ARN
Procurement Review	Yes
Contact Person	Dave Devore (503) 723-4996
Contract No.	3569

BACKGROUND:

Clackamas County has made a significant investment in technology to support and enhance the County business functions. A large and crucial component of this investment is in the desktop / server system software, office product tools, email services, systems & account management / security and system connectivity. While Technology Services is constantly monitoring the marketplace and available products, the County has chosen to follow what continues to be the industry standard products provided by the Microsoft. This platform and suite of products is the best fit for the technical and business requirements of the County.

The Microsoft Enterprise Agreement provides a volume discount for a large suite of products with a simplified licensing mechanism that allows for both cloud hosted and on premise versions of Office, Windows, and related server access licenses. This allows for the best value on licensing costs for continuously updating applications and the most flexibility as we continue to provide a secure, adaptive hybrid model of County hosted and cloud hosted applications and data.

The State of Oregon maintains a Master Enterprise Agreement with Microsoft which allows local governments to take advantage of statewide purchasing price levels when developing their own Enterprise Agreement with Microsoft. Technology Services has worked closely with Microsoft on a new Agreement to keep the costs as low as possible while still covering the product and licensing requirements of the County.

Funds for this Agreement are budgeted in the Technology Services budget in Fund 747 Program 227 Account 437231. TS will continue to budget funds for the duration of this agreement through FY21-22 and FY22-23. The Clackamas County Sheriff is also budgeting funds to contribute to cover their portion of license usage.

PROCUREMENT PROCESS

Approval of this purchase is being requested under the Local Contract Review Board Rule C-046-0440, Authority of Cooperative Procurements. The purchase will be made off cooperative contract #MHEC-07012015, Midwestern Higher Education Commission with Dell Marketing, L.P. In accordance with C-046-0440, Procurement issued a notice of intent to purchase off of the cooperative on November 19, 2020. No comments to the notice were received.

RECOMMENDATION:

Staff respectfully recommends approval of the Microsoft Enterprise Agreement through Dell Marketing, L.P. Staff further recommends that the Board delegate authority to the Technology Services Director to sign agreements necessary in the ongoing performance of this Agreement.

Sincerely,

David Cummings, CIO
Director, Clackamas County Technology Services

Placed on the _____ agenda by Procurement

**CLACKAMAS COUNTY
MICROSOFT MASTER LICENSE AGREEMENT
Contract #3569**

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County, a political subdivision of the State of Oregon (“County”), on behalf of its Technology Services department and Dell Marketing, L.P. (“Contractor”). This Addendum shall be attached to, and incorporated into, the Midwestern Higher Education Commission Cooperative Contract # 07012015 for Microsoft Master License Agreement. (“Vendor Agreement”). As used below, "Contract" means this Addendum and the Vendor Agreement. To the extent there is any conflict between the Addendum and the Vendor Agreement, the terms of this Addendum shall control.

- A. Term.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on December 30, 2023
- B. Consideration.** The total consideration paid by the County under the Contract shall not exceed Two Million Five Hundred Thirty Two Thousand Nine Hundred Forty Four and Sixty Four Cents (\$2,532,944.64) as identified in the attached Dell Quote dated October 1, 2020.
- C. County Contract Administrator.** The County Contract Administrator for this Contract is **Chris Fricke**, CFricke@clackamas.us.
- D. Invoices and Payments.** Invoices shall be submitted to: Stephanie Cry, SCry@clackamas.us.

Payment and late fees shall only be in accordance with ORS 293.462.

- E. Insurance.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the workers’ compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

The insurance described in this section shall not be cancelled or materially changed without Contractor providing at least sixty (60) days written notice to the County. This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- F. Debt Limitation.** The 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.
- G. Public Contracting Requirements.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:

1. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
2. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
3. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.

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

4. As applicable, Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.

H. Governing Law; Venue. 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.

I. Termination. This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor and, upon receipt of the written notice, Contractor shall stop performance, and County shall pay Contractor for the goods or services delivered and accepted; (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; (iii) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

J. Compliance. Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract.

K. Tax Compliance. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all current and applicable tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue damages that arise from the breach and the termination of this Contract, and to pursue remedies available under this Contract or applicable law.

L. Indemnification. Contractor agrees to indemnify, hold harmless and defend the County, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of Contractor or Contractor's employees or agents. Any obligation of the County to indemnify, hold harmless and defend Contractor, its officers, elected officials, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the County or the County's employee or agents.

M. Dispute Resolution. No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel. Any requirements contained in this Contract waiving a right to a jury trial or requiring binding arbitration are void.

N. Records. Contractor shall maintain all accounting records relating to this Contract according to GAAP and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant County, the federal government, and their duly authorized representatives access to the Records, including reviewing, auditing, copying, and making transcripts. Any documents that are requested to

be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law ORS 192.

- O. Subcontractors.** Contractor shall ensure that its subcontractors, if any, comply with the requirements of this Addendum.
- P. Counterparts.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- Q. 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.
- R. Notices.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract administrators identified in Article 1, Section 6. If the notice is sent to County, a copy shall be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045h, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours of the email is sent during County’s normal business hours (Monday-Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein.

Dell Marketing, L.P.

Clackamas County

Authorized Signature Date

Jim Bernard, Chair Date

Name/Title (Printed)

Recording Secretary Date

Approved As To Form:

Clackamas County Counsel Date



December 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of FY20 State Homeland Security Grant Program
Application to the State of Oregon for Six Projects

Purpose/Outcomes	Disaster Management requests approval to apply to the State of Oregon for the FY20 State Homeland Security Grant Program (SHSP). The State requires one collaborative application from each county. The Clackamas County application includes three Clackamas County projects as well as three projects for other stakeholder agencies.
Dollar Amount and Fiscal Impact	The total amount of the application is \$707,980. \$136,300 is requested by Disaster Management for a portable emergency operations center and three shelter trailers. \$320,000 is requested by the Clackamas County Sheriff's Office for an armored tactical vehicle. The grant is a 100% federal share grant that will reimburse Clackamas County for all project costs. The remaining \$251,680 is for three projects that if awarded, will result in direct awards between the State and stakeholder agencies. These projects are: 1) \$9,980 – Two rail car hazmat release training aids for Clackamas Fire District #1 2) \$100,000 – Emergency Management Specialist for the City of Oregon City 3) \$141,700 – Simulation and Tactical Firearms Training Advancements for the City of Oregon City Police Department
Funding Source	FY 2020 State Homeland Security Grant Program via the State of Oregon Military Department, Office of Emergency Management
Duration	Estimated: October 1, 2020 through September 30, 2022.
Counsel Approval	12/08/2020 AN
Previous Board Action	None
Strategic Plan Alignment	1. Coordination and Integration of Planning and Preparedness 2. Ensure Safe, Healthy and Secure Communities
Contact Person	Nancy Bush, Director, 503-655-8665
Contract No.	Not applicable

BACKGROUND:

Each year, Clackamas County Disaster Management leads the development of the application for that fiscal year's State Homeland Security Grant Program. The projects are nominated and selected by the Homeland Security Task Force which is a group of Clackamas County public safety stakeholders. The funding provided in the grant awards allows the Disaster Management Department to maintain and enhance important emergency operations capabilities.

RECOMMENDATION:

Staff respectfully recommends Board approval of the FY20 SHSP grant application.

Respectfully submitted,

Nancy Bush, Director

RECORDING MEMO

x	New Agreement/Contract
	Amendment/Change Order Original Number _____
	Policy, Reports,
	Other

ORIGINATING COUNTY

DEPARTMENT: Disaster Management

PURCHASING FOR: N/A

OTHER PARTY TO

CONTRACT/AGREEMENT: State of Oregon

BOARD AGENDA DATE: December 17th, 2020

AGENDA ITEM NUMBER: _____

PURPOSE:

Approval of FY20 State Homeland Security Grant Program Application to the State of Oregon for Six Projects

*If you want the item returned to you after recording indicate here.
Please return to Daniel Nibouar after recording.*

**OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
HOMELAND SECURITY GRANT PROGRAM
STATE HOMELAND SECURITY PROGRAM
CFDA # 97.067
Clackamas County
\$36,600
Grant No: 20-204**

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as “OEM,” and **Clackamas County**, hereinafter referred to as “Subrecipient,” and collectively referred to as the “Parties.”

1. Effective Date. This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **October 1, 2020**, and ending, unless otherwise terminated or extended, on **September 30, 2022** (the “Grant Award Period”). No Grant Funds are available for expenditures after the Grant Award Period. OEM’s obligation to disburse Grant Funds under this Agreement is subject to Sections 6 and 10 of this Agreement.

2. Agreement Documents. This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

- Exhibit A: **Project Description and Budget**
- Exhibit B: **Federal Requirements and Certifications**
- Exhibit C: **Subcontractor Insurance**
- Exhibit D: **Information required by 2 CFR 200.331(a)**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C.

3. Grant Funds. In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed **\$36,600** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2020 State Homeland Security Program (SHSP) grant.

4. Project. The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.

5. Reports. Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.

a. Performance Reports.

- i. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of the agreed upon milestones. The narrative reports will address specific information regarding the activities carried out under the FY 2020 State Homeland Security Program.
- ii. Reports are due to OEM on or before the 30th day of the month following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31).
- iii. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

b. Financial Reimbursement Reports.

- i. To receive reimbursement, Subrecipient must submit a signed Request for Reimbursement (RFR), using a form provided by OEM that includes supporting documentation for all grant expenditures. RFRs may be submitted monthly but no less frequently than quarterly during the term of this Agreement. At a minimum, RFRs must be submitted on or before 30 days following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31), and a final RFR must be submitted no later than 30 days following the end of the grant period.
- ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
- iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period. Subrecipient agrees that no grant may be used for expenses incurred before or after the Grant Award Period.

6. Disbursement and Recovery of Grant Funds.

- a. **Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subrecipient for the Project, in accordance with the State Homeland Security Program guidance and application materials, including without limitation the United States Department of Homeland Security Notice of Funding Opportunity (NOFO), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit. The guidance, application materials and NOFO are available at <http://www.oregon.gov/oem/emresources/Grants/Pages/HSGP.aspx>.
- b. **Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
 - iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv. Subrecipient has provided to OEM a RFR in accordance with Section 5.b of this Agreement.
- c. Recovery of Grant Funds.** Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand.

7. Representations and Warranties of Subrecipient. Subrecipient represents and warrants to OEM as follows:

- a. Organization and Authority.** Subrecipient is a political subdivision of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.
- b. Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. NIMS Compliance.** By accepting FY 2020 funds, Subrecipient certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through OEM at http://www.oregon.gov/oem/emresources/Plans_Assessments/Pages/NIMS.aspx.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Records Maintenance and Access; Audit.

- a. Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, sub-recipients (collectively hereafter “contractors”), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.
- b. Retention of Records.** Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200, and to apprise itself of all rules and regulations set forth.
- c. Audits.**

 - i. If Subrecipient expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than \$750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.
 - ii. Audit costs for audits not required in accordance with 2 CFR 200 Subpart F are unallowable. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
 - iii. Subrecipient shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

9. Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance

- a. Subagreements.** Subrecipient may enter into agreements (hereafter “subagreements”) for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law

(including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than \$150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate, and for contracts for more than \$10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).

- i. Subrecipient shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subrecipient shall include with its RFR a list of all procurements issued during the period covered by the report.
 - ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
 - iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
 - iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
- b. Purchases and Management of Property and Equipment; Records.** Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:
- i. All property and equipment purchased under this agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.
 - ii. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.
 - iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.

- iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
- v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
- vi. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
- vii. Subrecipient agrees to comply with 2 CFR 200.313 pertaining to use and disposal of equipment purchased with Grant Funds, including when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
- viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
- ix. Subrecipient shall, and shall require its contractors to, retain the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with the State Homeland Security Program.

c. Subagreement indemnity; insurance. Subrecipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.

Any such indemnification shall also provide that neither Subrecipient's contractor(s) nor any attorney engaged by Subrecipient's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's contractor is prohibited from defending State or that Subrecipient's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's contractor if State elects to assume its own defense.

Subrecipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

10. Termination

- a. Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:
- i. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
 - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.
- b. Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
 - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the ten days, if the other Party fails to comply with any of the terms of this Agreement.
- d. Settlement upon Termination.** Immediately upon termination under Sections 10.a.i, v., or vi, no Grant Funds shall be disbursed by OEM and Subrecipient shall return to OEM Grant Funds previously disbursed to Subrecipient by OEM in accordance with Section 6.c and the terminating party may pursue additional remedies in law or equity. Termination of this Agreement does not relieve Subrecipient of any other term of this Agreement that may survive termination, including without limitation Sections 11.a and c.

11. GENERAL PROVISIONS

- a. Contribution.** To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors. This Section shall survive expiration or termination of this Agreement.

- b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.
- c. Responsibility for Grant Funds.** Subrecipient, pursuant to this Agreement with OEM, shall assume sole liability for its breach of the conditions of this Agreement, and shall, upon its breach of conditions that causes or requires OEM to return funds to DHS or FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the Subrecipient's indemnification ability, the indemnification amount shall be the maximum amount of funds available to Subrecipient for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

- g. Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subrecipient or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the State of Oregon without regard to principles

of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of the Circuit Court of Marion County in the State of Oregon, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- i. Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B.
- j. Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- k. Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. Subrecipient acknowledges and agrees that Subrecipient is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

CLACKAMAS COUNTY

STATE OF OREGON, acting by and through its Oregon Military Department, Office of Emergency Management

By _____

By _____

Name _____
(printed)

Name _____
(printed)
Operations and Preparedness Section Manager, OEM

Date _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Subrecipient)

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Subrecipient’s Legal Counsel

By Samuel B. Zeigler via email
Senior Assistant Attorney General

Date October 14, 2020

Date _____

Subrecipient Program Contact:

Nancy Bush
Director
Clackamas County Disaster Management
2200 Kaen Rd
Oregon City, OR 97045
503-655-8665
nbush@clackamas.us

OEM Program Contact:

Kevin Jeffries
Grants Coordinator
Oregon Military Department
Office of Emergency Management
P.O. Box 14370
Salem, OR 97309-5062
503-378-3661
kevin.jeffries@state.or.us

Subrecipient Fiscal Contact:

Michael Morasko
Senior Accountant
Clackamas County Disaster Management
2051 Kaen Rd
Oregon City, OR 97045
503-742-5435
mmorasko@clackamas.us

OEM Fiscal Contact:

Natalie Day
Lead Accountant
Oregon Military Department
Office of Emergency Management
P.O. Box 14370
Salem, OR 97309-5062
503-378-3931
natalie.day@state.or.us

EXHIBIT A

Project Description and Budget

I. Project Description

Adding three shelter/mass care trailers to Clackamas County's resources allows the county to provide sheltering in terrorist or catastrophic events.

II. Budget

Trailer	\$15,000
Cots	\$15,000
Cots, oversized	\$900
Blankets	\$4,800
Supplies	\$900
Total Budget:	\$36,600

EXHIBIT B

Federal Requirements and Certifications

I. General. Subrecipient agrees to comply with all federal requirements applicable to this Agreement. Those federal requirements include, without limitation, financial management and procurement requirements; requirements for maintaining accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP); and all other financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) program regulations and requirements.

II. Specific Requirements and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Subrecipient certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (2 CFR 200.213).
- B. Standard Assurances and Certifications Regarding Lobbying.** Subrecipient is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352 and *New Restrictions on Lobbying* published at 55 Federal Register 6736 (February 26, 1990).
- C. Compliance with Applicable Federal Law.** Subrecipient agrees to comply with all applicable laws, regulations, program guidance, the Federal Government in the performance of this Agreement, including but not limited to:
1. Administrative Requirements set forth in 2 CFR Part 200, including, without limitation:
 - a. Using Grant Funds only in accordance with applicable cost principles described in 2 CFR Subpart E, including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or the terms of federal awards or other reasons;
 - b. Subrecipient must establish a Conflict of Interest policy applicable to any procurement contract or subawards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to the OEM within 5 calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.
 2. USA Patriot Act of 2001, which amends 18 USC §§ 175-175c.
 3. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
 4. False Claims Act & Program Fraud Civil Remedies, 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
 5. Whistleblower Protection Act, 10 USC §§ 2409 and 2324 and 41 USC §§ 4712, 4304 and 4310 requiring compliance with whistleblower protections, as applicable.
 6. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subrecipient may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other

than receipt or expected receipt of Federal funds. Any project cost allocable to this Agreement may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons.

- D. Non-discrimination and Civil Rights Compliance.** Subrecipient, and all of its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including, but not limited to:
- a. Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., as amended, and related nondiscrimination regulations in 6 CFR Part 21 and 44 CFR Part 7.
 - b. Title VIII of the Civil Rights Act of 1968, 42 USC § 3601, as amended, and implementing regulations at 6 CFR Part 21 and 44 CFR Part 7.
 - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12213.
 - d. Age Discrimination Act of 1975, 42 USC § 6101 et seq.
 - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
 - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.
- E. Services to Limited English Proficient (LEP) Persons.** Subrecipient, and any of its contractors and subcontractors agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.
- F. Procurement of Recovered Materials.** Subrecipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.
- G. SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subrecipient must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.
- H. Drug Free Workplace Requirements.** Subrecipient agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, 41 USC § 701 et seq., as amended, and implementing regulations at 2 CFR Part 3001 which require that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subrecipient must notify this office if an employee of Subrecipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

- I. Human Trafficking (2 CFR Part 175).** Subrecipient must comply with requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, 22 USC § 7104, as amended and 2 CFR § 175.15.
- J. Fly America Act of 1974.** Subrecipient agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.
- K. Activities Conducted Abroad.** Subrecipient agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- L. Acknowledgement of Federal Funding from DHS.** Subrecipient agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
- M. Copyright.** Subrecipient shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subrecipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works.
- N. Patents and Intellectual Property Rights.** Unless otherwise provided by law, Subrecipient is subject the Bayh-Dole Act, 35 USC § 200 et seq., as amended, including requirements governing the development, reporting and disposition of rights to inventions and patents resulting from financial assistance awards, 37 CFR Part 401, and the standard patent rights clause in 37 CFR § 401.14.
- O. Use of DHS Seal, Logo and Flags.** Subrecipient agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- P. Personally Identifiable Information (PII).** Subrecipient, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.
- Q. Federal Debt Status.** Subrecipient shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit

overpayments and any amounts due under Section 11.c of this Agreement. See OMB Circular A-129 for additional information and guidance.

- R. Energy Policy and Conservation Act.** Subrecipient must comply with the requirements of 42 USC § 6201 which contains policies relating to energy efficiency that are defined in the state energy conservation plan issues in compliance with the Act
- S. Lobbying Prohibitions.** Subrecipient must comply with 31 USC §1352, which provides that none of the funds provided under an award may be expended by the subrecipient to pay any person to influence, or attempt to influence and officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.
- T. Terrorist Financing.** Subrecipient must comply with US Executive Order 13224 and US law that prohibits transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Subrecipients to ensure compliance with the EO and laws.
- U. Faith-Based Organizations.** Subrecipient must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.
- V. National Environmental Policy Act.** Subrecipient must comply with the requirements of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which requires Subrecipient to use all practicable means within its authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.
- W. Federal Leadership on Reducing Text Messaging while Driving.** Subrecipient is encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.
- X. Environmental Planning and Historic Preservation.** DHS/FEMA funded activities that may require an EHP review are subject to FEMA's Environmental Planning and Historic Preservation review process. If ground disturbing activities occur during construction, sub-recipient will monitor ground disturbance, and if any potential archeological resources are discovered, applicant will immediately cease work in that area and notify Oregon Office of Emergency Management, and DHS/FEMA.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Subrecipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, “TAIL” COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences; and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to OEM. Subrecipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a subagreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, “first tier” means a subagreement in which Subrecipient is a Party.

TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers’ compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers’ liability insurance with coverage limits of not less than \$500,000 must be included.

ii. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to OEM. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence, (for all claimants for claims arising out of a single accident or occurrence).

iii. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of: (i) the contractor's completion and Subrecipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and OEM may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If OEM approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Subrecipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage. INSURANCE REQUIREMENT REVIEW. Recipient agrees to periodic review of insurance requirements by OEM under this Agreement and to provide updated requirements as mutually agreed upon by OEM and Recipient.

OEM ACCEPTANCE. All insurance providers are subject to OEM acceptance. If requested by OEM, Recipient shall provide complete copies of its Contractors' insurance policies, endorsements, self-insurance documents and related insurance documents to OEM's representatives responsible for verification of the insurance coverages required under this Exhibit C.

Exhibit D

Information required by 2 CFR 200.331(a)

1. Federal Award Identification:
 - (i) Sub-recipient name (which must match registered name in DUNS): Clackamas County
 - (ii) Sub-recipient's DUNS number: 096992656
 - (iii) Federal Award Identification Number (FAIN): EMW-2020-SS-00091-S01
 - (iv) Federal Award Date: September 1, 2020
 - (v) Sub-award Period of Performance Start and End Date: From October 1, 2020 to September 30, 2022
 - (vi) Amount of Federal Funds Obligated by this Agreement: \$36,600
 - (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement *: \$36,600
 - (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$36,600
 - (ix) Federal award project description: State Homeland Security Program Grant plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation.
 - (x)
 - (a) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
 - (b) Name of Pass-through entity: Oregon Military Department, Office of Emergency Management
 - (c) Contact information for awarding official: Andrew Phelps, Director – Oregon Office of Emergency Management, PO Box 14370, Salem, OR 97309-5062
 - (xi) CFDA Number and Name: 97.067 Homeland Security Grant Program
Amount: \$7,787,500
 - (xii) Is Award R&D? No
 - (xiii) Indirect cost rate for the Federal award: 12%
2. Subrecipient's indirect cost rate: 0%

*The Total amount of Federal Funds Obligated to the Subrecipient by the pass-through entity is the Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity during the current fiscal year.



Nancy Bush

Director

Disaster Management
2200 Kaen Road
Oregon City, OR 97045

T 503-655-8378

clackamas.us

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Master Subscription Agreement with ESO
for an electronic patient care records (ePCRs) software.

Purpose/Outcomes	To standardize EMS equipment and tools utilized across all EMS agencies and improve patient coordinated and quality care using interoperable technology. Due to COVID-19 this project was escalated through the EOC to facilitate the tracking and monitoring of infectious disease through a common EMS electronic patient care records (ePCRs) software.
Dollar Amount and Fiscal Impact	Contract maximum value is \$447,665.
Funding Source	Funding through EMS system enhance funds - No County General Funds are involved.
Duration	Effective upon signature and terminates on December 31, 2025
Previous Board Action	No Previous Board Action
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on October 19, 2020 - AN
Procurement Review	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/>
Contact Person	Philip Mason-Joyner, EOC Command – (503) 742-5956
Contract No.	2856

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of a Master Subscription Agreement with ESO for an electronic patient care records (ePCRs) software.

Clackamas County's EMS Strategic Plan, approved by the Board of County Commissioners in December 2018, identifies equipment standardization, as a prioritized need. The EMS Strategic Plan Taskforce has selected electronic patient care records (ePCRs) as the first item towards standardizing. Standardization of this equipment has a huge benefit to patients in assuring coordinated and quality care is provided with interoperable technology.

EMS system enhancement funds will pay for the first year. Thereafter, the participating agencies will reimburse the county for their share of the annual fees.

Due to COVID-19 this project was escalated through the EOC to facilitate the tracking and monitoring of infectious disease through a common EMS electronic patient care records (ePCRs) software

Contract maximum value is \$447,665.

This contract is effective upon signature and continues through December 31, 2025.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached Master Subscription Agreement with ESO for an electronic patient care records (ePCRs) software, to complete the transaction, authorize the Procurement Office to execute any other needed instruments and purchase orders in order to complete the term.

Respectfully submitted,

A handwritten signature in black ink that reads "Nancy Bush". The signature is written in a cursive, flowing style.

Nancy Bush,
Disaster Management

Placed on the _____ agenda by the Procurement Division.



ORDER INSTRUCTIONS

1. Fill in Contact Info Below

Contact	Name	Email	Phone
Primary Business Contact	Bill Conway	WConway@clackamas.us	503-313-9170
Invoicing Contact	Jenyfer Smith	JenyferSmith@clackamas.us	503-742-5945
Legal Contact			
Software Administrator Contact			
Privacy/HIPAA Contact			
Tax Exempt?	YES OR NO	If YES, return Exempt Certificate with Agreement	
Purchase Order Required?	YES OR NO	If YES, return PO with Agreement	

2. Sign page 5.

3. Email entire contract to legal@esosolutions.com and your sales representative.

4. Enjoy your ESO Software

MASTER SUBSCRIPTION AND LICENSE AGREEMENT

This Master Subscription and License Agreement (this “**Agreement**”) is entered into as of date of last signature (“**Effective Date**”), by and between ESO Solutions, Inc., a Texas corporation having its principal place of business at 11500 Alterra Parkway, Suite 100 Austin, TX 78758, including its controlled subsidiaries, (collectively, “**ESO**”) and Clackamas County (“**Customer**”) having its principal place of commercial management at 2051 Kaen Rd., Oregon City, OR 97060. This Agreement consists of the General Terms & Conditions below and any Addenda (as defined below) executed by the parties, including any attachments to such Addenda.

The parties have agreed that ESO will provide Customer certain technology products and/or services and that Customer will pay ESO certain fees. Therefore, in consideration of the covenants, agreements and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows.

GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS.** Capitalized terms not otherwise defined in this Agreement shall have the meanings below:

“**Add-On Software**” means any complementary software components or reporting service(s) that ESO makes available to customer through its Licensed Software, Interoperability Software or SaaS.

“**Addendum**” means a writing addressing an order of a specific set of products or services executed by authorized representatives of each party. An Addendum may be (a) a Software Schedule, (b) a Statement of Work, (c) Sales Order, or (d) another writing the parties intend to be incorporated by reference into this Agreement.

“**Anonymized Data**” means Customer Data from which all personally identifiable information has been removed, as well as the names and addresses of Customer and any of its Users and/or Customer’s clients (and which, as a consequence, is neither PHI nor identifiable to or by Customer).

“**Customer Data**” means information, data and other content in electronic form that is submitted, posted, or otherwise transmitted by or on behalf of Customer through the Software.

“**Deliverable**” means software, report, or other work product created pursuant to a Statement of Work.

“**Documentation**” means user guides, operating manuals, and specifications regarding the Software.

“**Feedback**” refers to any suggestion or idea for improving or otherwise modifying ESO’s products or services.

“**Incident**” refers to a locked and uploaded record within the system on a per-encounter basis, regardless of the number of patients involved in said individual encounter.

“**Intellectual Property**” means trade secrets, copyrightable subject matter, patents and patent applications, and other proprietary information, activities, and any ideas, concepts, innovations, inventions and designs.

“**Interoperability Software**” means SaaS that allows Customer to exchange healthcare data with others. For the avoidance of doubt, Interoperability Software does not include Add-on Software or Licensed Software.

“**Licensed Software**” means the executable, object code version of software that ESO provides to Customer for its use and installation on Customer’s own equipment. For the avoidance of doubt, Licensed Software does not include Add-on Software, Interoperability Software or SaaS.

“**New Version**” means any new version of Licensed Software that ESO may from time to time introduce and market generally as a distinct licensed product, as may be indicated by Licensor’s designation of a new version number, brand or product.

“**Outage**” means Customer is unable to access SaaS, or such access is materially delayed, impaired or disrupted, in each case as caused or controlled by ESO.

“**Professional Services**” means professional services provided by ESO under a Statement of Work.

“**Protected Health Information**” or “**PHI**” shall have the meaning set forth in HIPAA. All references herein to PHI shall be construed to include electronic PHI, or ePHI, as that term is defined by HIPAA.

“**Reporting Services**” means, collectively, the different tools or features in the Software allowing Customer to generate compilations of data, including but not limited to ad-hoc reports, analytics, benchmarking or any other reporting tool provided through the Software.

“**SaaS**” means software-as-a-service that ESO hosts (directly or indirectly) for Customer’s use. For the avoidance of doubt, SaaS does not include Licensed Software, but does include Add-on Software and Interoperability Software.

“**Scheduled Downtime**” means periods when ESO intentionally interrupts the SaaS for the performance of system maintenance or to otherwise correct service errors.

“**Software**” means any ESO computer program, programming or modules specified in any Software Schedule or SOW. For the avoidance of doubt, Add-on Software, SaaS, Interoperability Software, and Licensed Software are collectively referred to as Software.

“**Software Schedule**” refers to an Addendum under which Customer has ordered either Add-on Software, Licensed Software, Interoperability Software or SaaS.

“**Statement of Work**” or “**SOW**” refers to an Addendum in which Customer has ordered Professional Services or a Deliverable from ESO.

“**Support Services**” means those services described in Exhibit B.

“**Third-Party Data**” means data not owned by ESO but which is (or access to which is) provided by ESO under a Software Schedule.

“**Third-Party Service**” means a service not provided by ESO but which is (or access to which is) offered by ESO in connection with its Software under a Software Schedule or Addendum.

“**Third-Party Software**” means software not owned by ESO but which is (or access to which is) provided by ESO under a Software Schedule or Addendum.

“**Use Restrictions**” means the restrictions imposed on Customer’s use of Software as described in Section 3.3.

“**User**” means any individual who uses the Software on Customer’s behalf or through Customer’s account or passwords, whether authorized or not.

2. **SOFTWARE ORDERS.** During the Term, Customer may order Software from ESO by signing an appropriate Software Schedule. Customer’s license to Licensed Software and its subscription to SaaS are set forth below. Each such Software Schedule is incorporated herein by reference.

3. LICENSE/SUBSCRIPTION TO SOFTWARE

- 3.1. **Grant of Subscription: SaaS.** For SaaS, during the Term Customer may access and use the SaaS and Reporting Services, in such quantities as are set forth on the applicable Software Schedule, subject to Customer’s compliance with the Use Restrictions and other limitations contained in this Agreement.
- 3.2. **Grant of License: Licensed Software.** For Licensed Software, during the Term ESO hereby grants Customer a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable license to copy and use the Licensed Software, in such quantities as are set forth on the applicable Software Schedule and as necessary for Customer’s internal business purposes, in each case subject to Customer’s compliance with the Use Restrictions and other limitations and obligations contained in this Agreement.
- 3.3. **Use Restrictions.** Except as provided in this Agreement or as otherwise authorized by ESO, Customer has no right to, and shall not: (a) decompile, reverse engineer, disassemble, print, copy or display the Software or otherwise reduce the Software to a human-perceivable form in whole or in part; (b) publish, release, rent, lease, loan, sell, distribute or transfer the Software to another person or entity; (c) reproduce the Software for the use or benefit of anyone other than Customer; (d) alter, modify or create derivative works based upon the Software either in

- whole or in part; or (e) use or permit the use of the Software for commercial time-sharing arrangements or providing service bureau, data processing, rental, or other services to any third party (including any affiliate not specifically listed in the applicable Software Schedule).
- 3.4. **Ownership.** The rights granted under the provisions of this Agreement do not constitute a sale of the Software. ESO retains all right, title, and interest in and to the Software, including without limitation all software used to provide the Software and all graphics, user interfaces, logos and trademarks reproduced through the Software, except to the limited extent set forth in this Agreement. This Agreement does not grant Customer any intellectual property rights in the Software or any of its components, except to the limited extent that this Agreement specifically sets forth Customer's rights to access, use, or copy the Software during the Term. Customer acknowledges that the Software and its components are protected by copyright and other laws.
- 3.5. **Third-Party Software and Services.** ESO neither accepts liability for, nor warrants the functionality, utility, availability, reliability or accuracy of, Third-Party Software or Third-Party Services. The Third-Party Software "EMS1 Academy" and/or "FireRescue1 Academy" and/or "EMS1 & FireRescue1 Academy – Implementation and Configuration" and/or "Learning Management System" and/or "EVALS Implementation" (collectively, "**Education**") is offered by ESO in collaboration with Lexipol, f/k/a The Praetorian Group. If Customer subscribes to Education, Customer acknowledges and agrees to the terms and conditions of the Praetorian license agreement, located at <http://www.praetoriandigital.com/LMS-Master-Service-Agreement>, which shall supersede this Agreement as it applies to Customer's use of Education and any Customer Data stored therein.
- 3.6. **Third-Party Data.** If Customer (as indicated on an Addendum) elects to license Third-Party Data (e.g., fire codes), then subject to the terms hereof, ESO hereby grants Customer a non-exclusive, non-sublicensable, and non-transferable license during the Term to use such Third-Party Data via the Software solely for Customer's internal purposes. Customer will not (i) allow greater access than that set forth in the applicable Software Schedule, (ii) disclose, release, distribute, or deliver Third-Party Data, or any portion thereof, to any third party (iii) copy, modify, or create derivative works of Third-Party Data, (iv) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available Third-Party Data, (v) attempt to output in any form more than 10% of the Third-Party Data or otherwise circumvent the usage limitations included in the Software, (vi) remove any proprietary notices included within Third-Party Data or Software, or (vii) use Third-Party Data in any manner or for any purpose that infringes or otherwise violates any proprietary right of a person, or that violates applicable law. ESO does not warrant the functionality, reliability, accuracy, completeness or utility of, Third-Party Data, or accept any liability therefor. Additional terms and limitations applicable to Third-Party Data may be provided on the applicable Addendum.
- 3.7. **New Versions & Sunset.** If ESO releases a New Version of Licensed Software, Customer may elect to receive such New Version, subject to a relicense fee of 75% of the standard price for such new version. All New Versions provided under this Agreement will constitute Licensed Software and be subject to the terms and conditions of this Agreement. ESO may discontinue Support Services for Licensed Software upon 12 months' notice to Customer.
- 4. HOSTING, SLA & SUPPORT SERVICES**
- 4.1. **Hosting & Management.** Customer shall be solely responsible for hosting and managing any Licensed Software. ESO shall be responsible for hosting and managing any SaaS.
- 4.2. **Service Level Agreement.** If an Outage, excluding Scheduled Downtime (as defined below), results in the service level uptime falling below 99% for three months in any rolling 12-month period (the "**Uptime Commitment**"), then Customer may immediately terminate this Agreement, in which case ESO will refund any prepaid, unearned Fees to Customer. This is Customer's sole remedy for ESO's breach of the Uptime Commitment.
- 4.3. **Scheduled Downtime.** ESO will provide reasonable notice to the Customer (Software Administrator Contact or otherwise) of Scheduled Downtime (usually at least 72 hours in advance), and will plan Scheduled Downtime to occur during non-peak hours (midnight to 6 a.m. Central Time). Scheduled Downtime shall never constitute a failure of performance or Outage by ESO.
- 4.4. **Support and Updates.** During the Term, ESO shall provide to Customer the Support Services, in accordance with Exhibit B, which is incorporated herein by reference.
- 5. FEES**
- 5.1. **Fees.** In consideration of the rights granted, Customer agrees to pay ESO the fees for the Software and Professional Services as set forth in the Software Schedule(s) or SOW(s) (collectively, "**Fees**"). The Fees are non-cancelable and non-refundable, except as expressly provided herein. Customer shall pay all invoices within 30 days of receipt.
- 5.2. **Third-Party Payer.** If Customer desires to use a third-party to pay some or all of the Fees on behalf of Customer (a "**Third-Party Payer**"), then (i) each applicable Addendum will identify such arrangement, (ii) the Third-Party Payer will enter into a written agreement with ESO regarding such arrangement, (iii) Customer may replace the Third-Party Payer by written notice to ESO (provided that no such change shall be made until the then-current Term's renewal), and (iv) Customer shall remain responsible for payment if the Third-Party Payer does not pay the Fees.
- 5.3. **Uplift on Renewal.** Except in the instance of Overages (as defined below), Fees for Software, which recur annually, shall increase by 3% each year this Agreement is in effect.
- 5.4. **Taxes and Fees.** The Fees are exclusive of all taxes and credit card processing fees, if applicable. Unless and until Customer provides ESO a tax exemption certificate, Customer will be responsible for and will remit (or will promptly reimburse ESO for) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on ESO's income) related to this Agreement.
- 5.5. **Appropriation of Funds.** If Customer is a city, county or other government entity, Customer will have the right to terminate the Agreement at the end of the Customer's fiscal term if Customer provides evidence that its governing body did not appropriate sufficient funds for the next fiscal year. Notwithstanding the foregoing, this provision shall not excuse Customer from past payment obligations or other Fees earned and unpaid.
- 5.6. **Usage Monitoring.** Customer is solely responsible for its own adherence to volume and use limitations indicated on the applicable Software Schedule. ESO may monitor Customer and Customer Affiliate's aggregated usage of the Software, and if the aggregated usage exceeds the level for which Customer has paid in the applicable Software Schedule (an "**Overage**"), Customer shall owe ESO the Fee corresponding to such usage level based on the Software Schedule (or if none, ESO's then-current rates). ESO may invoice for Overages immediately.
- 6. TERM AND TERMINATION**
- 6.1. **Term.** The term of this Agreement (the "**Term**") shall commence on the Effective Date and continue for the period set forth in the applicable Software Schedule (or, if none, for one year); provided that the Term shall be automatically extended to match the end of the last subscription period or license period of any Software provided hereunder. The Term may only be renewed by execution of a mutually agreeable amendment to this Agreement.
- 6.2. **Termination for Cause.** Either party may terminate this Agreement or any individual Software Schedule for the other party's uncured material breach by providing written notice. The breaching party shall have 30 days from receipt to cure such breach to the reasonable satisfaction of the non-breaching party.
- 6.3. **Effect of Termination.**
- 6.3.1. If Customer terminates this Agreement or any Software Schedule as a result of ESO's material breach, then to the extent that Customer has prepaid any Fees, ESO shall refund to Customer any prepaid Fees on a pro-rata basis to the extent such Fees are attributable to the period after the latter to occur of the (i) termination date or (ii) the date on which Customer actually ceases use of the Software.
- 6.3.2. Upon termination of this Agreement or any Software Schedule, Customer shall cease all use of the Software and delete, destroy or return all copies of the Documentation and Licensed Software in its possession or control, except as required by law. Customer shall remain obligated to pay appropriate Fees at ESO's then-current

rates if Customer continues to use or access Software after the termination or expiration of this Agreement. If Customer received discounts for any of the two years prior to the date of termination, Customer shall promptly pay ESO's invoice recouping such discounts.

6.3.3. Termination of this Agreement is without prejudice to any other right or remedy and shall not release a party from any liability.

6.4. **Delivery of Data.** If Customer requests its data within 60 days of expiration or termination of this Agreement, ESO will provide Customer its Customer Data in a searchable .pdf format. Customer acknowledges that ESO is under no obligation to retain Customer Data more than 60 days after expiration or termination of this Agreement.

7. REPRESENTATIONS AND WARRANTIES

7.1. **Material Performance of Software.** ESO represents and warrants that the Software will perform in material accordance with any Documentation provided by ESO.

7.2. **Due Authority.** Each party's execution, delivery and performance of this Agreement and each agreement or instrument contemplated by this Agreement has been duly authorized by all necessary corporate or government action.

7.3. **Customer Cooperation.** Customer agrees to use current operating systems and reasonably and timely cooperate with ESO, including providing ESO reasonable access to its equipment, software and data.

8. **DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 7, ESO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, TITLE, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ESO DOES NOT REPRESENT OR WARRANT THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE, OR THAT THE SOFTWARE (X) WILL PERFORM WITHOUT INTERRUPTION OR ERROR, OR (Y) IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7, CUSTOMER ACCEPTS THE SOFTWARE "AS-IS" AND "AS AVAILABLE."

9. CONFIDENTIALITY

9.1. **"Confidential Information"** refers to the following items: (a) any document marked "Confidential"; (b) any information orally designated as "Confidential" at the time of disclosure, provided the disclosing party confirms such designation in writing within five business days; (c) the Software and Documentation, whether or not designated confidential; (d) ESO's security controls, policies, procedures, audits, or other information concerning ESO's internal security posture; (e) any other nonpublic, sensitive information reasonably treated as trade secret or otherwise confidential; and (f) Customer Data which does not comprise PHI. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the other party's possession at the time of disclosure free of duty of non-disclosure; (ii) is independently developed without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the receiving party's improper action or inaction; (iv) is approved for release in writing by the disclosing party; or (v) PHI (which shall be governed by the Business Associate Agreement rather than this Section).

9.2. **Nondisclosure.** Each party shall use Confidential Information of the other party solely to fulfill the terms of this Agreement (the "**Purpose**"). Each party shall (a) ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein, and (b) not disclose Confidential Information to any other third party without prior written consent from the disclosing party. Without limiting the generality of the foregoing, the receiving party shall protect Confidential Information in accordance with applicable law and with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. A receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information of which it is aware.

9.3. **Termination & Return.** With respect to each item of Confidential Information, the obligations of nondisclosure will terminate three years

after the date of disclosure; provided that, such obligations related to Confidential Information constituting ESO's trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, a party shall return all copies of Confidential Information to the other or certify the destruction thereof.

9.4. **Retention of Rights.** This Agreement does not transfer ownership of Confidential Information or grant a license thereto.

9.5. **Open Records and Other Laws.** Notwithstanding anything in this Section to the contrary, the parties expressly acknowledge that Confidential Information may be disclosed if such Confidential Information is required to be disclosed by law, a lawful public records request, or judicial order, provided that prior to such disclosure, written notice of such required disclosure shall be given promptly and without unreasonable delay by the receiving party in order to give the disclosing party the opportunity to object to the disclosure and/or to seek a protective order. The receiving party shall reasonably cooperate in this effort but is not obligated to defend the disclosing party's position that any requested information is protected from disclosure under applicable law. In addition, Customer may disclose the contents of this Agreement solely for the purpose of completing its review and approval processes under its local rules, if applicable.

10. Insurance terms shall reside in the CLACKAMAS COUNTY GOVERNMENTAL CONTRACTING ADDENDUM Contract # 2856.

11. INDEMNIFICATION

11.1. **IP Infringement.** Subject to the limitations in Section 12, ESO shall defend and indemnify Customer from any damages, costs, liabilities, expenses (including reasonable attorney's fees) ("**Damages**") actually incurred or finally adjudicated as to any third-party claim or action alleging that the Software delivered pursuant to this Agreement infringe or misappropriate any third party's patent, copyright, trade secret, or other intellectual property rights enforceable in the applicable jurisdiction (each, an "**Indemnified Claim**"). If Customer makes an Indemnified Claim under this Section or if ESO determines that an Indemnified Claim may occur, ESO shall at its option: (a) obtain a right for Customer to continue using such Software; (b) modify such Software to make it a non-infringing equivalent or (c) replace such Software with a non-infringing equivalent. If (a), (b), or (c) above are not reasonably practicable, either party may, at its option, terminate the relevant Software Schedule, in which case ESO will refund any pre-paid Fees on a pro-rata basis for such Software Schedule. Notwithstanding the foregoing, ESO shall have no obligation hereunder for any claim resulting or arising from (x) Customer's breach of this Agreement; (y) modifications made to the Software that were not performed or provided by or on behalf of ESO or (z) the combination, operation or use by Customer (and/or anyone acting on Customer's behalf) of the Software in connection with any other product or service (the combination or joint use of which causes the alleged infringement). This Section 11 states ESO's sole obligation and liability, and Customer's sole remedy, for potential or actual intellectual property infringement by the Software.

11.2. **Indemnification Procedures.** Upon becoming aware of any matter which is subject to the provisions of Sections 11.1 (a "Claim"), Customer must give prompt written notice of such Claim to ESO, accompanied by copies of any written documentation regarding the Claim received by the Customer. ESO shall compromise or defend, at its own expense and with its own counsel, any such Claim. Customer will have the right, at its option, to participate in the settlement or defense of any such Claim, with its own counsel and at its own expense; provided, however, that ESO will have the right to control such settlement or defense. ESO will not enter into any settlement that imposes any liability or obligation on Customer without the Customer's prior written consent. The parties will cooperate in any such settlement or defense and give each other full access to all relevant information, at ESO's expense.

12. LIMITATION OF LIABILITY

12.1. **LIMITATION OF DAMAGES.** NEITHER ESO NOR CUSTOMER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING CLAIMS FOR DAMAGES FOR LOST PROFITS, GOODWILL, USE OF MONEY, INTERRUPTED OR IMPAIRED USE OF THE SOFTWARE, AVAILABILITY OF

DATA, STOPPAGE OF WORK OR IMPAIRMENT OF OTHER ASSETS RELATING TO THIS AGREEMENT.

12.2. **SPECIFIC LIABILITY.** LIABILITY SHALL BE LIMITED AS FOLLOWS:

- a) ESO'S OBLIGATIONS UNDER SECTION 11 SHALL BE LIMITED TO \$3,000,000.
- b) DAMAGES ARISING FROM A PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS (INCLUDING A BREACH OF OBLIGATIONS REGARDING PROTECTED HEALTH INFORMATION), SHALL BE LIMITED TO \$4,000,000.
- c) DAMAGES ARISING FROM A PARTY'S WILLFUL MISCONDUCT OR CRIMINAL CONDUCT SHALL NOT BE LIMITED.

12.3. **GENERAL LIABILITY.** EXCEPT AS EXPRESSLY PROVIDED "SPECIFIC LIABILITY," ESO'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THREE TIMES THE FEES PAID BY (OR ON BEHALF OF) CUSTOMER WITHIN THE PRECEDING 12-MONTH PERIOD UNDER THE APPLICABLE ADDENDUM OR EXHIBIT GIVING RISE TO THE CLAIM.

12.4. THE FOREGOING LIMITATIONS, EXCLUSIONS, DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION PERMITTED TO THE FULLEST EXTENT POSSIBLE UNDER SUCH LAW. THE PARTIES AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR ESO'S SOFTWARE AND SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSES OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

12.5. THIS SECTION 12 SHALL SURVIVE EXPIRATION OR TERMINATION OF THE AGREEMENT.

13. **CUSTOMER DATA & PRIVACY**

- 13.1. **Ownership of Data.** As between ESO and Customer, all Customer Data shall be owned by Customer.
- 13.2. **Use of Customer Data.** Unless it receives Customer's prior written consent, ESO shall not: (a) access, process, or otherwise use Customer Data; and (b) intentionally grant any third-party access to Customer Data, including without limitation ESO's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement or authorized participants in the case of Interoperability Software. Notwithstanding the foregoing, ESO may use and disclose Customer Data to fulfill its obligations under this Agreement or as required by applicable law or legal or governmental authority. ESO shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.
- 13.3. **Anonymized Data.** CUSTOMER ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ESO MAY USE ANONYMIZED DATA FOR INTERNAL AND EXTERNAL PURPOSES (INCLUDING BENCHMARKING AND RESEARCH), PROVIDED THAT ESO WILL NOT SELL ANONYMIZED DATA TO THIRD PARTIES FOR COMMERCIAL USE. Without limiting the foregoing, ESO will own all right, title and interest in all Intellectual Property of any aggregated and de-identified reports, summaries, compilations, analysis, statistics or other information derived therefrom.
- 13.4. **Risk of Exposure.** Customer acknowledges and agrees that hosting data online involves risks of unauthorized disclosure and that, in accessing and using the SaaS, Customer assumes such risks. Customer has sole responsibility for obtaining, maintaining, and securing its network connections. ESO makes no representations to Customer regarding the reliability, performance or security of any network or provider.

14. **FEEDBACK RIGHTS & WORK PRODUCT**

- 14.1. **Feedback Rights.** ESO does not agree to treat as confidential any Feedback that Customer provides to ESO. Nothing in this Agreement will restrict ESO's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensation or crediting Customer. Feedback will not constitute Confidential Information, even if it would otherwise qualify as such pursuant to Section 9 (Confidential Information).
- 14.2. **Work Product Ownership.** In the event Customer hires ESO to perform Professional Services, ESO alone shall hold all right, title, and interest to all proprietary and intellectual property rights of the Deliverables (including, without limitation, patents, trade secrets, copyrights, and trademarks), as well as title to any copy of software made by or for Customer (if applicable). Customer hereby explicitly acknowledges and agrees that nothing in this Agreement or a separate SOW gives the Customer any right, title, or interest to the intellectual property or proprietary know-how of the Deliverables.

15. **GOVERNMENT PROVISIONS**

- 15.1. **Compliance with Laws.** Both parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on use of the Software and the performance of this Agreement
- 15.2. **Equal Opportunity.** The parties shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), and the posting requirements of 29 CFR Part 471, appendix A to subpart A, if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin.
- 15.3. **Excluded Parties List.** ESO agrees to immediately report to Customer if an employee or contractor is listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs.

16. **PHI ACCURACY & COMPLETENESS**

- 16.1. ESO provides the Software to allow Customer (and its respective Users) to enter, document, and disclose Customer Data, and as such, ESO gives no representations or guarantees about the accuracy or completeness of Customer Data (including PHI) entered, uploaded or disclosed through the Software.
- 16.2. Customer is solely responsible for any decisions or actions taken involving patient care or patient care management, whether those decisions or actions were made or taken using information received through the Software.

17. **MISCELLANEOUS**

- 17.1. **Independent Contractors.** The parties are independent contractors. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no ESO employee or contractor is or will be considered an employee of Customer.
- 17.2. **Notices.** Notices provided under this Agreement must be in writing and delivered by (a) certified mail, return receipt requested to a party's principal place of business as forth in the recitals on page 1 of this Agreement, (b) hand delivered, (c) facsimile with receipt of a "Transmission Confirmed" acknowledgment, (d) e-mail to a person designated in writing by the receiving party, or (e) delivery by a reputable overnight carrier service. In the case of delivery by facsimile or e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (e). The notice will be deemed given on the day the notice is received.
- 17.3. **Merger Clause.** In entering into this Agreement, neither party is relying upon any representations or statements of the other that are not fully expressed in this Agreement; rather each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statement not expressly set forth in this Agreement. In the event the Customer issues a purchase order, letter or any other document addressing the Software or Services to be provided and performed pursuant to this Agreement, it is hereby specifically agreed

- and understood that any such writing is for the Customer's internal purposes only, and that any terms, provisions, and conditions contained therein shall in no way modify this Agreement.
- 17.4. Severability. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 17.5. Subcontracting. Except for training and implementation services related to the Software, neither party may subcontract or delegate its obligations to each other hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in this Agreement, without the other party's prior written consent.
- 17.6. Modifications and Amendments. This Agreement may not be amended except through a written agreement signed by authorized representatives of each party, provided that the Customer agrees that ESO may rely on informal writings (including emails) of Customer's authorized representatives to terminate Software products and services. Notwithstanding the foregoing, a ratification of rate or tier increase for Software products and services then in use by Customer shall be done by an amendment to the CLACKAMAS COUNTY GOVERNMENTAL CONTRACTING ADDENDUM Contract # 2856.
- 17.7. Force Majeure. No delay, failure, or default will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control (collectively, "Force Majeure"). In such event, however, the delayed party must promptly provide the other party notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the event last longer than 30 days, the other party may immediately terminate the applicable Software Schedule.
- 17.8. Marketing. If requested by ESO, Customer agrees to reasonably cooperate with ESO's preparation and issuance of a public announcement regarding the relationship of the parties.
- 17.9. Waiver & Breach. Neither party will be deemed to have waived any rights under this Agreement unless it is an explicit written waiver made by an authorized representative. No waiver of a breach of this Agreement will constitute a waiver of any other breach hereof.
- 17.10. Survival of Terms. Unless otherwise stated, all of ESO's and Customer's respective obligations, representations and warranties under this Agreement which are not, by the expressed terms of this Agreement, fully to be performed while this Agreement is in effect shall survive the termination of this Agreement.
- 17.11. Ambiguous Terms. This Agreement will not be construed against any party by reason of its preparation.
- 17.12. Governing Law. This Agreement, any claim dispute or controversy hereunder (a "**Dispute**") will be governed by (i) the laws of the State of Oregon, or (ii) if Customer is a city, county, municipality or other governmental entity, the law of state where Customer is located, in each case foregoing without regard to its conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any Dispute, each party will bear its own attorneys' fees and costs and expressly waives any statutory right to attorneys' fees.
- 17.13. Dispute Resolution. Customer and ESO will attempt to resolve any Dispute through negotiation or by utilizing a mediator agreed to by the parties, rather than through litigation. Negotiations and mediations will be treated as confidential. If the parties are unable to reach a resolution within 30 days of notice of the Dispute to the other party, the parties may pursue all other courses of action available at law or in equity.
- 17.14. Technology Export. Customer shall not: (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export any software provided by ESO or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Software in, or export such software to, a country subject to a United States embargo (as of the Effective Date - Cuba, Iran, North Korea, Sudan, and Syria).
- 17.15. Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, and all such counterparts will constitute a single instrument.
- 17.16. Signatures. Electronic signatures on this Agreement or on any Addendum (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

ESO Solutions, Inc.

Clackamas County

By: _____
(signature)

By: _____
(signature)

Name: _____
(print name)

Name: _____
(print name)

Title: _____
(print title)

Title: _____
(print title)

EXHIBIT A-1

SAAS SOFTWARE SCHEDULE

(Applications - ESO EHR, ESO Fire, ESO PM, FIREHOUSE Cloud; IFC Codes; EMS1 Academy, FireRescue1 Academy, Staff Scheduling)

1. The SaaS subscription term shall begin 15 calendar days after the Effective Date ("SaaS Subscription Start Date"). Customer shall be deemed to have accepted the SaaS on the SaaS Subscription Start Date. The parties will make reasonable efforts to ensure that Customer is able to use the SaaS as contemplated as quickly as possible, but in no event will the SaaS Subscription Start Date be modified for implementation delays.
2. The following SaaS may be ordered under this Exhibit:
 - 2.1. ESO Electronic Health Record ("EHR") is a SaaS software application for prehospital patient documentation (<http://www.esosolutions.com/software/ehr>).
 - 2.2. ESO Personnel Management ("PM") is a SaaS software application for tracking personnel records, training courses and education history (<http://www.esosolutions.com/software/personnel-management>).
 - 2.3. ESO Fire is a SaaS software application for NFIRS reporting (<http://www.esosolutions.com/software/fire>).
3. The following Third-Party Data and/or Software may be ordered under this Exhibit: 2018 International Fire Code, 2015 International Fire Code, 2012 International Fire Code, Education (see section 3.5).
4. Third-Party Payer is responsible for the following products and Fees:

N/A
5. Customer hereby agrees to timely pay for the following products according to the schedule below:

EHR			
Product	Volume	Total	Fee Type
ESO EHR Suite - Multi-Agency	26551 Incidents	\$42,738.00	Recurring
EHR CAD Integration - Multi-Agency	26551 Incidents	\$4,994.00	Recurring
EHR Cardiac Monitor Integration - Multi-Agency	26551 Incidents	\$2,369.00	Recurring
EHR Billing Interface - Multi-Agency	26551 Incidents	\$1,244.00	Recurring
EHR Fax - Multi-Agency	26551 Incidents	\$3,375.00	Recurring
EHR - First Watch Interface	1	\$2,995.00	Recurring
NEMESIS Data Import - recurring	5000 Incidents	\$3,995.00	Recurring

Analytics			
Product	Volume	Total	Fee Type
Medical Director Oversight Account	26551 Incidents	\$1,695.00	Recurring

Total Recurring	\$	63,405.00
Total One-Time	\$	0.00
TOTAL	\$	63,405.00

6. All the Fees above will be invoiced by ESO as follows:
 - 6.1. Training shall be invoiced on the Effective Date.
 - 6.2. During the first year, 100% of the remaining Fees shall be invoiced on the SaaS Subscription Start Date.

6.3. During the second year and any renewal years thereafter, 100% of the recurring Fees shall be due on the anniversary of the SaaS Subscription Start Date.

EXHIBIT B
SUPPORT SERVICES ADDENDUM

1. **DEFINITIONS.** Capitalized terms not defined below shall have the same meaning as in the General Terms & Conditions.

- 1.1. "Enhancement" means a modification, addition or new release of the Software that when added to the Software, materially changes its utility, efficiency, functional capability or application.
- 1.2. "E-mail Support" means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.
- 1.3. "Error" means an error in the Software, which significantly degrades performance of such Software as compared to ESO's then-published Documentation.
- 1.4. "Error Correction" means the use of reasonable commercial efforts to correct Errors.
- 1.5. "Fix" means the repair or replacement of object code for the Software or Documentation to remedy an Error.
- 1.6. "Initial Response" means the first contact by a Support Representative after the incident has been logged and a ticket generated. This may include an automated email response depending on when the incident is first communicated.
- 1.7. "Management Escalation" means, if the initial Workaround or Fix does not resolve the Error, notification of management that such Error(s) have been reported and of steps being taken to correct such Error(s).
- 1.8. "Severity 1 Error" means an Error which renders the Software completely inoperative (e.g., a User cannot access the Software due to unscheduled downtime or an Outage).
- 1.9. "Severity 2 Error" means an Error in which Software is still operable; however, one or more significant features or functionality are unavailable (e.g., a User cannot access a core component of the Software).
- 1.1. "Severity 3 Error" means any other error that does not prevent a User from accessing a significant feature of the Software (e.g., User is experiencing latency in reports).
- 1.2. "Severity 4 Error" means any error related to Documentation or a Customer Enhancement request.
- 1.3. "Status Update" means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.
- 1.4. "Online Support" means information available through ESO's website (www.esosolutions.com), including frequently asked questions and bug reporting via Live Chat.
- 1.5. "Support Representative" shall be ESO employee(s) or agent(s) designated to receive Error notifications from Customer, which Customer's Administrator has been unable to resolve.
- 1.6. "Update" means an update or revision to Software, typically for Error Correction.
- 1.7. "Upgrade" means a new version or release of Software or a particular component of Software, which improves the functionality or which adds functional capabilities to the Software and is not included in an Update. Upgrades may include Enhancements.
- 1.8. "Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of the Software.

2. **SUPPORT SERVICES.**

- 2.1. Customer will provide at least one administrative employee (the "Administrator" or "Administrators") who will handle all requests for first-level support from Customer's employees with respect to the Software. Such support is intended to be the "front line" for support and information about the Software to Customer's Users. ESO will provide training, documentation, and materials to the Administrator to enable the Administrator to provide technical support to Customer's Users. The Administrator will notify a Support Representative of any Errors that the Administrator cannot resolve and assist ESO in information gathering.
- 2.2. ESO will provide Support Services consisting of (a) Error Correction(s); Enhancements, Updates and Upgrades that ESO, in its discretion, makes generally available to its customers without additional charge; and (c) E-mail Support, telephone support, and Online Support. ESO may use multiple forms of communication for purposes of submitting periodic status reports to Customer, including but not limited to, messages in the Software,

messages appearing upon login to the Software or other means of broadcasting Status Update(s) to multiple customers affected by the same Error, such as a customer portal.

- 2.3. ESO's support desk will be staffed with competent technical consultants who are trained in and thoroughly familiar with the Software and with Customer's applicable configuration. Telephone support and all communications will be delivered in intelligible English.
- 2.4. Normal business hours for ESO's support desk are Monday through Friday 7:00 am to 7:00 pm CT. Customer will receive a call back from a Support Representative after-hours for a Severity 1 Error.
3. **ERROR PRIORITY LEVELS.** Customer will report all Errors to ESO via e-mail (support@esosolutions.com) or by telephone (866-766-9471, option #3). ESO shall exercise commercially reasonable efforts to correct any Error reported by Customer in accordance with the priority level reasonably assigned to such Error by ESO.
 - 3.1. **Severity 1 Error.** ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within four hours; (iii) initiate Management Escalation promptly; and (iv) provide Customer with a Status Update within four hours if ESO cannot resolve the Error within four hours.
 - 3.2. **Severity 2 Error.** ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within eight hours; (iii) initiate Management Escalation within 48 hours if unresolved; and (iv) provide Customer with a Status Update within forty-eight hours if ESO cannot resolve the Error within forty-eight hours.
 - 3.3. **Severity 3 Error.** ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within three business days; and (iii) provide Customer with a Status Update within seven calendar days if ESO cannot resolve the Error within seven calendar days.
 - 3.4. **Severity 4 Error.** ESO shall (i) provide an Initial Response within seven calendar days.
4. **CONSULTING SERVICES.** If ESO reasonably believes that a problem reported by Customer is not due to an Error in the Software, ESO will so notify Customer. At that time, Customer may request ESO to proceed with a root cause analysis at Customer's expense as set forth herein or in a separate SOW. If ESO agrees to perform the investigation on behalf of Customer, then ESO's then-current and standard consulting rates will apply for all work performed in connection with such analysis, plus reasonable related expenses incurred. For the avoidance of doubt, Consulting Services will include customized report writing by ESO on behalf of Customer.
5. **EXCLUSIONS.**
 - 5.1. ESO shall have no obligation to perform Error Corrections or otherwise provide support for: (i) Customer's repairs, maintenance or modifications to the Software (if permitted); (ii) Customer's misapplication or unauthorized use of the Software; (iii) altered or damaged Software not caused by ESO; (iv) any third-party software; (v) hardware issues; (vi) Customer's breach of the Agreement; and (vii) any other causes beyond the ESO's reasonable control.
 - 5.2. ESO shall have no liability for any changes in Customer's hardware or software systems that may be necessary to use the Software due to a Workaround or Fix.
 - 5.3. ESO is not required to perform any Error Correction unless ESO can replicate such Error on its own software and hardware or through remote access to Customer's software and hardware.
 - 5.4. Customer is solely responsible for its selection of hardware, and ESO shall not be responsible the performance of such hardware even if ESO makes recommendations regarding the same.
6. **MISCELLANEOUS.** The parties acknowledge that from time-to-time ESO may update its support processes specifically addressed in this Exhibit and may do so by posting such updates to ESO's website or otherwise notifying Customer of such updates. Customer will accept updates to ESO's support procedures and any other terms in this Exhibit; provided however, that they do not materially decrease the level of Support Services that Customer will receive from ESO. THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.



Quote Date: 04/07/2020
 Customer Name: Clackamas County Public Health Division
 Quote #: Q-10703
 Quote valid until: 12/31/2020
 ESO Account Manager: Travis Potter

CUSTOMER CONTACT

End User Clackamas County Public Health Division
 Name Philip Mason-Joyner
 Email pmason@clackamas.us
 Phone (503) 742-5956

BILLING CONTACT

Payor Clackamas County Public Health Division
 Name Clackamas County Public Health Division
 Address 2051 Kaen Road Suite 367
 Oregon City OR, 97045
 Billing Frequency Annual
 Initial Term 12 months

EHR

Product	Volume	Total	Fee Type
ESO EHR Suite - Multi-Agency	26551 Incidents	\$42,738.00	Recurring
EHR CAD Integration - Multi-Agency	26551 Incidents	\$4,994.00	Recurring
EHR Cardiac Monitor Integration - Multi-Agency	26551 Incidents	\$2,369.00	Recurring
EHR Billing Interface - Multi-Agency	26551 Incidents	\$1,244.00	Recurring
EHR Fax - Multi-Agency	26551 Incidents	\$3,375.00	Recurring
EHR - First Watch Interface	1	\$2,995.00	Recurring
NEMESIS Data Import - recurring	5000 Incidents	\$3,995.00	Recurring

Analytics

Product	Volume	Total	Fee Type
Medical Director Oversight Account	26551 Incidents	\$1,695.00	Recurring

Total Recurring	\$	63,405.00
Total One-Time	\$	0.00
TOTAL	\$	63,405.00

*Additional fees may be applied by Customer's billing or CAD vendor for certain integrations or interfaces, and Customer is encouraged to discuss this with the applicable vendor.



Quote Date: 04/07/2020
Customer Name: Clackamas County Public Health
Division
Quote #: Q-10703
Quote valid until: 12/31/2020
ESO Account Manager: Travis Potter

TERMS AND CONDITIONS:

1. If the Customer indicated above has an ESO Master Subscription and License Agreement (MSLA) dated on or after February 20, 2017, then that MSLA will govern this Quote. **Otherwise, Customer intends and agrees that this Quote adopts and incorporates the terms and conditions of the MSLA and associated HIPAA business associate agreement hosted at the following web address, and that the products and services ordered above are subject thereto:**

<http://bit.ly/MSLAW>

2. The Effective Date of this Quote shall be the final date of signature.

3. If Customer has selected a third party to pay fees on their behalf, the applicable fees above shall be invoiced to the third party on Customer's behalf.

Clackamas County

[Signature]

[Print Name]

[Title]

[Today's Date]

For EHR, Analytics, the following payment terms apply:

Fees are invoiced at the Billing Frequency 15 days after the Effective Date, with recurring fees due on the anniversary.



Quote Date: 04/07/2020
Customer Name: Clackamas County Public Health
Division
Quote #: Q-10703
Quote valid until: 12/31/2020
ESO Account Manager: Travis Potter

EHR

Product	Description
ESO EHR Suite - Multi-Agency	Patient care reporting suite, includes EHR web and mobile client, Quality Management, AdHoc Reports, Analytics, Patient Tracker. Allows for unlimited users, unlimited mobile applications, live support, state and federal data reporting, ongoing weekly web training, software updates and upgrades.
EHR CAD Integration - Multi-Agency	Enables integration of CAD data into EHR mobile and web application. Ongoing maintenance included. Additional fees from your CAD vendor may apply.
EHR Cardiac Monitor Integration - Multi-Agency	Enables import of cardiac monitor data via local or cloud integration. Ongoing maintenance included. Unlimited heart monitors.
EHR Billing Interface - Multi-Agency	Enables integration of discrete ePCR data into third-party billing software. Ongoing maintenance included.
EHR Fax - Multi-Agency	Enables faxing of patient care records to destination facilities.
EHR - First Watch Interface	Enables transfer of EHR data to First Watch.
NEMSIS Data Import - recurring	Import of legacy NEMSIS data from 3rd party vendor into ESO for reporting and record retrieval. Some limitations may apply.

Analytics

Product	Description
Medical Account Director Oversight	Umbrella account for use by a medical director to access records and Analytics across multiple agencies, includes Patient Tracker, Analytics and AdHoc Reporting.



Quote Date: 04/07/2020
Customer Name: Clackamas County Public Health
Division
Quote #: Q-10703
Quote valid until: 12/31/2020
ESO Account Manager: Travis Potter

Please fill in your contact information below:

	Name	Email	Phone
Primary Business Contact			
Invoicing Contact			
Legal Contact			
Software Administrator Contact			
Privacy HIPAA Contact			
Tax Exempt	YES OR NO	If YES, return Exempt Certificate with Agreement	
Purchase Order Required?	YES OR NO	If YES, return PO with Agreement	

Please email the signed sales order to legal@eso.com and your sales representative.

EXHIBIT C
ADDITIONAL FEDERAL TERMS AND CONDITIONS

As used herein, “Contractor” means ESO Solutions, Inc., and “County” means Clackamas County, a political subdivision of the State of Oregon.

1. The County intends that all or a portion of the consideration paid to Contractor will be eligible for reimbursement by one or more federal agencies including, but not limited to, the Federal Emergency Management Agency (“FEMA”). This Contract is subject to the additional terms and conditions required by federal law for a federal award. All terms and conditions required under applicable federal law for a federal award including, but not limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein.
2. Termination. This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County, provided that the County shall pay to the Contractor any prorated fees for the use of the software prior to termination.
3. By execution of this Contract, Contractor hereby certifies that it and all subcontractors will comply with (i) all Federal statutes relating nondiscrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis race, color or national origin; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; the Age Discrimination Act of 1975, as amended (29 U.S.C. §§6101 et seq.), which prohibits discrimination on the basis of age; the Rehabilitation Act of 1973, as amended (29 U.S.C. §§793 et seq.), which prohibits discrimination against requires affirmative action for qualified individuals with disabilities; the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. §§4541 et seq.), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§523 and 527 of the Public Health Service Act of 1912 (4s U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VII of the Civil Rights Act of 1969 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; any other discrimination provisions in the specific statute(s) under which for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply; (ii) will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 et. seq.), and shall file the required certification if the award is \$100,000 or more; and (iii) will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
4. If this Contract involves a federal award that meets the definition of a “funding agreement” under 37 CFR § 401.2 (a), and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
5. If this Agreement is in excess of \$150,000, Contractor certifies that it and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the

Environmental Protection Agency. Contractor shall include these requirements in all contracts with subcontractors receiving more than \$150,000.

6. If this Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Contract Work Hours and Safety Standards Act 40 USC §§3701 et seq. as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. Contractor shall include and require all providers to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.
7. Contractor shall comply with 2 CFR 180.220 and 925. These regulations restrict sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs or activities. Contractor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Contractor may access the Excluded Parties List System at <https://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935). The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction that Contractor enters into. This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
8. Record Retention. Contractor will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by the federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337. Contractor agrees to provide to the County, to the FEMA Administrator, to the Comptroller General of the United States, or to any of their authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to provide the FEMA Administrator or the Administrator's authorized representative's access to construction or other work sites pertaining to the Work being completed under the Contract. In compliance with the Disaster Recovery Act of 2018, the Department of Resources Recycling and Recovery and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
9. DHS Seal, Logo, and Flags: Contractor shall not use the DHS seal(s), logos, crests, or reproductions of

flags or likenesses of DHS agency officials without specific FEMA pre-approval.

10. Compliance with Federal Law, Regulations, and Executive Orders: This is an acknowledgement that FEMA financial assistance may be used to fund this Contract only. Contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.
11. No Obligation by Federal Government: The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.
12. Program Fraud and False or Fraudulent Statements or Related Acts: Contractor acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.
13. Contractor will comply with all requirements of 2 CFR 200.321.
14. Procurement of Recovered Materials (Reference 2 CFR 200.322): Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
15. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification, set forth below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Contractor hereby makes the following certification:

Byrd Anti-Lobbying Amendment Certification
for Contracts, Grants, Loans, and Cooperative Agreements

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

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

The Contractor, ESO Solutions, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

ESO

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

EXHIBIT D BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is entered into as of **the date signed** (“Effective Date”) by and between **Clackamas County Health Housing & Human Services Department** (“Covered Entity”) and **ESO Solutions, Inc.** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations (“HIPAA”).

RECITALS

Whereas, the Covered Entity has engaged the services of the Business Associate, as defined under 45 CFR §160.103, for or on behalf of the Covered Entity;

Whereas, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement (“Agreement”);

Whereas, such information may be Protected Health Information (“PHI”) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

Whereas, the Parties agree to establish safeguards for the protection of such information;

Whereas, the Covered Entity and Business Associate desire to enter into this Business Associate Agreement to address certain requirements under the HIPAA Rules;

Now, Therefore, the parties hereby agree as follows:

SECTION I – DEFINITIONS

- 1.1 “Breach” is defined as any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
 - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within an Workforce member’s course and scope of employment or placement;
 - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Work force members; and
 - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 “Effective Date” shall be the Effective Date of this Business Associate Agreement.

- 1.5 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Business Associate Agreement.
- 1.6 "Health Care Operations" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.7 "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.
- 1.8 "Individual" shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.9 "Individually Identifiable Health Information" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.10 "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.11 "Protected Information" shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity's behalf.
- 1.12 "Required by Law" shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.13 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.14 "Security Incident" shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.15 "Unsecured Protected Health Information" shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.16 "Unsuccessful Security Incidents" shall mean a security incident that does not result in unauthorized access, use, disclosure, modification or destruction of information or interference with system operations.
- 1.17 "Workforce" means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;
- 2.4 To report within 5 business days to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual's designee as necessary to meet the Covered Entity's obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules. Notwithstanding the foregoing, in no event shall the Covered Entity or agent of the Covered Entity be permitted to view, access, or retain (or potentially view, access, or retain) information which Business Associate reasonably determines: i) is a risk to the security of its software if exposed; ii) pertains to its software or services and is proprietary, trade secret, or protected by copyright law; or iii) constitutes the protected information of Business Associate's

other customers, including but not limited to Protected Health Information, as defined by applicable federal law;

- 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.10 To provide to the Covered Entity or an Individual, within a reasonable time but no later than 5 business days, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.11 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such Electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
- 2.12 To report to Covered Entity any attempted or successful unauthorized access, use, disclosure, modification, or destruction of Covered Entity's ePHI or interference with Business Associate's system operations in Business Associate's information systems ("Security Incident" as defined by 45 C.F.R. § 164.304), of which Business Associate becomes aware. With regard to a Security Incident, Business Associate and Covered Entity recognize and agree that the significant number of meaningless attempts to, without authorization, access, use, disclose, modify or destroy ePHI will make real-time reporting formidable. Therefore, Business Associate and Covered Entity agree to the following reporting procedures for Security Incidents that result in unauthorized access, use, disclosure, modification or destruction of information or interference with system operations ("Successful Security Incidents") and for Security Incidents that do not so result ("Unsuccessful Security Incidents").

For Unsuccessful Security Incidents, Business Associate and Covered Entity agree that this Agreement constitutes notice from Business Associate of such Unsuccessful Security Incidents. By way of example, Covered Entity and Business Associate consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification or destruction of ePHI or interference with an information system:

1. Pings on Business Associate's firewall,
2. Port Scans,
3. Attempts to log on to a system or enter a database with an invalid password or username, and/or
4. Denial-of-service attacks that do not result in a server being taken off-line.

For Successful Security Incidents, Business Associate shall give notice promptly to Covered Entity in accordance with Section 2.4;

- 2.13 To retain records related to the PHI hereunder for a period of six (6) years unless the Business Associate Agreement is terminated prior thereto. In the event of termination of this Business Associate Agreement, the provisions of Section V of this Business Associate Agreement shall govern record retention, return or destruction;
- 2.14 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 5 business days, after the discovery of such Breach in accordance with 45 CFR §164.410. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
- 2.15 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:

- 3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,
- 3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:
 - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
 - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are

Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- c. Business Associate may aggregate and de-identify PHI and/or create limited data sets for use in research, evaluation and for publication or presentation of patient care quality improvement practices and outcomes. The Parties understand and agree that such aggregated and de-identified data is no longer PHI subject to the provisions of HIPAA and agree that Business Associate may retain such limited data sets indefinitely thereafter. Business Associate agrees that it will comply with all terms of this Agreement with respect to the limited data sets and that it shall not re-identify or attempt to re-identify the information contained in the limited data set, nor contact any of the individuals whose information is contained in the limited data set.

SECTION IV – NOTICE OF PRIVACY PRACTICES

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate's use or disclosure of PHI; (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above; and (d) notify Business Associate of any limitation(s) in its notice of privacy practices, prepared for compliance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

SECTION V – BREACH NOTIFICATION REQUIREMENTS

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
 - a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
 - b. In plain language including and to the extent possible:

- 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - 4) A brief description of what the Covered Entity and/or Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
 - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
- d. Provided to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

SECTION VI – TERM AND TERMINATION

- 6.1 **Term.** The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned, in a searchable pdf format, to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 6.2 **Termination for Cause.** Upon the Covered Entity's knowledge of a material breach of this Business Associate Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement if cure is not reasonably possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Subject to Section 12 of the Master Subscription and License Agreement "Vendor Agreement" (Limitations of Liability), should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate's knowledge of a material breach of this Business Associate Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Business Associate Agreement and the Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Business Associate Agreement if the Covered Entity has breached a material term of this Business Associate Agreement if cure is not reasonably possible.

6.3 Effect of Termination.

- a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return (in a searchable pdf format), or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.
- b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

SECTION VII – GENERAL PROVISIONS

- 7.1 **Regulatory references.** A reference in this Business Associate Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Business Associate Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time. All amendments must be in writing and signed by both Parties.

- 7.4 **Indemnification by Business Associate.** Subject to Section 12 of the Master Subscription and License Agreement (“Vendor Agreement”), Business Associate shall indemnify Covered Entity and its officers, directors, employees, agents, Affiliates, successors and permitted assigns from any damages, costs, liabilities, expenses (including costs of investigation, mitigation, and notification), and fines (including reasonable and actual attorney’s fees) (“Damages”) in connection with any claims or actions brought by third parties against Covered Entity. The amount which Business Associate shall be required to indemnify Covered Entity for shall be determined by comparative fault, with the relevant trier-of-fact determining 1) the amount of damages each third-party claimant would be entitled to recover if comparative fault was disregarded and 2) the percentage of the total fault of the parties to each third-party claim that is allocated to Business Associate, Covered Entity, and each claimant, with the percentage allocated to Business Associate being the amount of indemnification required under this section.
- 7.5 **Survival.** The respective rights and obligations of Business Associate under Section II of this Business Associate Agreement shall survive the termination of the Services Agreement and this Business Associate Agreement.
- 7.6 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

[Signature Page Follows]

The Parties hereto have duly executed this Agreement as of the Effective Date as defined here above.

Business Associate
ESO Solutions, Inc.

Covered Entity
Clackamas County

By: _____
Signature Authority

By: _____
Signature Authority

Title: _____

Title: _____

Date: _____

Date: _____

**CLACKAMAS COUNTY
GOVERNMENTAL CONTRACTING ADDENDUM
Contract # 2856**

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County, a political subdivision of the State of Oregon (“County”), on behalf of its Health, Housing & Human Services Department and ESO Solutions, Inc. (“Contractor”). This Addendum shall be attached to, and incorporated into the ESO Solutions, Inc. Master Subscription and License Agreement (“Vendor Agreement”). As used below, "Contract" means this Addendum, the Vendor Agreement, and all other Exhibits listed in Section C. To the extent there is any conflict between the Addendum and the Vendor Agreement, the terms of this Addendum shall control. No other terms or conditions, whether from the Contractor or its partners or affiliates, including standard click through license or website terms or use of privacy policy, shall apply to the Customer unless such terms are included in this Contract.

- A. Term.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on December 31, 2025.
- B. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum Not To Exceed (NTE) four hundred forty-seven thousand six hundred sixty-five dollars (\$ 447,665.00), for accomplishing the Work required by this Contract under the base five (5) year term and two (2) additional annual option periods. The annual fee for the first five years of the contract shall not increase. Fees for each of the optional extensions thereafter, and any extensions beyond that, shall not be increased by more than two percent (2%) a year. A breakdown of the annual not to exceed pricing is listed below:

Year	Yearly NTE Amount	Total
First 5 years in base Period	\$ 63,405.00	\$ 317,025.00
Optional Extension 1 (Year 6)	\$ 64,673.00	\$ 64,673.00
Optional Extension 2 (Year 7)	\$ 65,967.00	\$ 65,967.00
Total NTE		\$ 447,665.00

- C. Exhibits.** The following Exhibits are hereby attached to, and incorporated into this addendum by reference:
 - Exhibit A – ESO Solutions, Inc. Master Software License Agreement (Vendor Agreement)
 - Exhibit B – ESO Solutions, Inc. Price Quote
 - Exhibit C – Clackamas County Additional Federal Terms and Conditions
 - Exhibit D – Clackamas County Business Associate Agreement (BAA)
- D. County Contract Administrator.** The County Contract Administrator for this Contract is **Philip Mason-Joyner**.
- E. Travel and Other Expense.** 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: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- F. Invoices and Payments.** Invoices shall be submitted to: **Public Health Fiscal**; PHFiscalAP@clackamas.us Payment and late fees shall only be in accordance with ORS 293.462. 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.
- G. Insurance.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County and the entities named in section R of this contract as additionally insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Cyber Liability: combined single limit, or the equivalent, of not less than \$1,000,000.00 per claim, with an annual aggregate limit of \$4,000,000.00

The insurance described in this section shall not be cancelled or materially changed without Contractor providing at least sixty (60) days written notice to the County. This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- H. Debt Limitation.** The 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.
- I. Public Contracting Requirements.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:
1. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 2. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 3. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 4. As applicable, Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- J. Governing Law; Venue.** 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.
- K. Termination.** This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor and, upon receipt of the written notice, Contractor shall stop performance, and County shall pay Contractor for the goods or services delivered and accepted; (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; (iii) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.
- L. Compliance.** Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. This includes, but is not

limited to: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967; (vi) the Health Insurance Portability and Accountability Act of 1996; the Age Discrimination Acts of 1967 and 1975; (vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974; (viii) ORS Chapter 659; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; (xi) all regulations and administrative rules established pursuant to the foregoing laws; and (xii) County Local Contract Review Board Rules, containing language required to be in all public contracts, which is specifically incorporated by reference as if set forth herein.

- M. Tax Compliance.** Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and 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 or applicable law.
- N. Indemnification.** Subject to the limitations in Section 12 of the Vendor Agreement, Contractor agrees to indemnify and defend the County and the entities identified in section R of this Contract, their officers, elected officials, agents and employees from and against from any damages, costs, liabilities, expenses (including costs of investigation, mitigation, and notification), and fines (including reasonable and actual attorney's fees) ("Damages") in connection with any claims or actions brought by third parties against County arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of Contractor or Contractor's employees or agents. Any obligation of the listed entities to indemnify, hold harmless and defend Contractor, its officers, elected officials, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the County or the County's employee or agents.
- O. HIPAA Compliance.** Subject to the U.S. Health Insurance Portability and Accountability Act (HIPAA) of 1996 and its implementing regulation, the Standard of Privacy of Individuals Identifiable Health Information at 45 C.F.R. Part 160 and 164, Subpart A and E, the County is required to enter into a Business Associate Agreement, attached hereto as Exhibit D, with the Contractor prior to the commencement of any work under this Contract. Contractor acknowledges and agrees that protected health information ("PHI") disclosed by County to Contractor may only be used by or disclosed to Contractor pursuant the Business Associate Agreement or pursuant to a written consent in compliance with 42 C.F.R. Part 2, as may be amended from time to time. Contractor agrees to comply with any and all applicable privacy laws including without limitation, 42 C.F.R. Part 2.
- P. Dispute Resolution.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel. Any requirements contained in this Contract waiving a right to a jury trial or requiring binding arbitration are void.
- Q. Records.** Contractor shall maintain all accounting records relating to this Contract according to GAAP and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant County, the federal government, and their duly authorized representatives access to the Records, including reviewing, auditing, copying, and making transcripts. Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law ORS 192.
- R. Subcontractors.** Contractor shall ensure that agreements are in place for its subcontractors, if any, which meet HIPAA requirements.

S. Counterparts. This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

T. Fire Districts. Contractor agrees to provide materially the same terms as set forth in this Contract (including but not limited to all price terms, liability provisions, and other material terms and conditions) to the following entities identified below (the “Fire Districts”):

- Canby Fire District
- City of Lake Oswego
- Clackamas Fire District #1
- Colton Fire District
- Gladstone Fire District
- Hoodland Fire District
- Molalla Fire District
- Sandy Fire District
- Tualatin Valley Fire & Rescue

Each Fire District is required to sign a separate agreement with Contractor, and the parties shall make commercially reasonable efforts to assist in execution of such agreements. Provided, however, neither party can guarantee that any Fire District will enter into an agreement for the software.

U. 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.

V. Notices. Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County’s normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.

W. Data Security. Contractor agrees to preserve the confidentiality, integrity and accessibility of County data with administrative, technical and physical measures that conform to generally recognized industry standards, outlined above, and best practices. Maintenance of a secure processing environment includes but is not limited to the timely application of patches, fixes and updates to operating systems and applications as provided by Contractor or open source support.

X. Additional Federal Terms & Conditions.

The County intends that all or a portion of the consideration paid to Contractor will be eligible for reimbursement by one or more federal agencies including, but not limited to, the Federal Emergency Management Agency (“FEMA”). This Contract is subject to the additional terms and conditions required by federal law for a federal award. All terms and conditions required under applicable federal law for a federal award including, but not limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein. Further Federal Language is listed in Exhibit C.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein.

ESO Solutions, Inc.

Clackamas County

Authorized Signature Date

Authorized Signature Date

Name/Title (Printed)

Name/Title (Printed)

Approved As To Form:

Clackamas County Counsel Date



Evelyn Minor-Lawrence
Director

DEPARTMENT OF HUMAN RESOURCES

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

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Deferred Compensation Plan Document Update

Purpose/Outcomes	Restate the Deferred Compensation plan documents to incorporate mandatory and optional provisions of the 2019 SECURE Act and 2020 CARES Act as applicable to Section 457(b) retirement plans and other changes in accordance with retirement industry best practice.
Dollar Amount and Fiscal Impact	\$7,000.00
Funding Source	Plan Participant Fees
Duration	Implementation 1/1/2021
Previous Board Action	Policy Session 12/1/2020
Strategic Plan Alignment	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. 2. <i>How does this item align with the County's Performance Clackamas goals?</i> Build public trust through good government.
Contact Person	Kristi Durham, HR Benefits Manager 503-742-5470
Contract No.	N/A

BACKGROUND:

The passage of the 2019 SECURE Act and 2020 CARES Act included provisions pertaining to Section 457(b) retirement plans that required updates be made to the Clackamas County and the Housing Authority of Clackamas County's retirement plan documents to remain in compliance. Changes in retirement industry best practice were also included with the update to the plan documents.

RECOMMENDATION:

Staff recommends the Board approve the attached Deferred Compensation plan documents for the Clackamas County and the Housing Authority of Clackamas County's Section 457(b) retirement plans.

Respectfully submitted,

Kristi Durham, HR Benefits Manager

Clackamas County

Deferred Compensation Plan

**Amended and Restated
Effective January 1, 2021**

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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, 2021, 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, the lesser of:
- (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 Designated Beneficiary.** A designated beneficiary who is, at the time of the Participant's death: (a) the surviving spouse of the Participant; (b) a child of the Participant, but only during the period that the child is under age 21; (c) a disabled individual within the meaning of Code section 72(m)(7); (d) a chronically ill individual within the meaning of Code section 7702B(c)(2), except that that there must be a certification that the period of inability to perform at least two activities of daily living due to a loss of functional capacity is for an indefinite period which is reasonably expected to be lengthy in nature; or (e) any individual not described in (a) through (d) who is not more than ten years younger than the Participant.
- 2.15 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.
- 2.16 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.
- 2.17 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.
- 2.18 Employer.** Clackamas County, a political subdivision of the state of Oregon.
- 2.19 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.
- 2.20 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 Participant 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).

2.21 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).

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

2.23 Normal Retirement Age.

(a) The Normal Retirement Age shall be 70½, unless the Participant makes an election under Section 2.23(b) below.

(b) The Participant may, at any time prior to Severance from Employment and 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.

- 2.24 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.
- 2.25 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.
- 2.26 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.
- 2.27 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, 2021.
- 2.28 Plan Year.** The twelve (12) month period beginning January 1 and ending December 31.
- 2.29 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.
- 2.30 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.

2.31 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; or (ii) the date specified in the Participation Agreement.

- (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 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, 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 or forfeited as soon as administratively practicable. The refund to the Participant 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 transfers 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 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 2.23, 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 2.23) 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, Forms W-2, 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 72, or (2) the calendar year in which the Participant incurs a Severance from Employment. If the Participant attained age 70½ before January 1, 2020, however, "age 72" in the prior sentence shall be replaced with "age 70½".

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 Eligible Designated Beneficiary. The life expectancy of a Participant and the joint life expectancy of a Participant and the Participant's Eligible 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 Eligible Designated Beneficiary) may from time to time be re-determined, but not more frequently than annually.

- (f) Notwithstanding anything in this section 6.1 to the contrary, distributions required under Code Section 401(a)(9) that would otherwise be made during the 2020 calendar year shall not be made, pursuant to Section 2203 of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act of 2020, unless the affected Participant makes an affirmative distribution election for 2020. Periodic payments to Participants and lump-sum distributions requested by Participants that would satisfy the requirements for minimum distributions under Code Section 401(a)(9) shall still be made in 2020 unless the Participant requests suspension of the monthly withdrawals or elects to return the distribution to the Plan by August 31, 2020.

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 72, or (2) the calendar year in which the Participant incurs a Severance from Employment. If the Participant attained age 70½ before January 1, 2020, however, "age 72" in the prior sentence shall be replaced with "age 70½".

6.3 Benefits upon Severance from Employment. If Severance from Employment occurs prior to attainment of the Normal Retirement Age determined under Section 2.23, 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 72, or (2) the calendar year in which the Participant incurs a Severance from Employment. If the Participant attained age 70½

before January 1, 2020, however, “age 72” in the prior sentence shall be replaced with “age 70½”.

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, or the named beneficiary does not survive the Participant or Beneficiary, the death benefit will be payable in accordance with Section 8.2.
- (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 an Eligible Designated Beneficiary but not the Participant’s surviving spouse, death benefits payments under the Plan must, in accordance with the Eligible Designated 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 Eligible Designated 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 Eligible Designated Beneficiary; or

- (2) Be distributed no later than December 31 of the calendar year containing the tenth anniversary of the Participant's death.

Notwithstanding the foregoing, if an Eligible Designated Beneficiary dies before the Eligible Designated Beneficiary's interest is entirely distributed, or if the Eligible Designated Beneficiary is a child of the Participant who reaches age 21 before the child's interest is entirely distributed, the remaining portion of such interest shall be distributed within ten years after the death or age of majority of the Eligible Designated Beneficiary, as applicable.

- (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 72.
- (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 tenth 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 an Eligible Designated Beneficiary at least as rapidly as under the method of distribution in effect prior to the death of the Participant.
- (h) If there is no designated Beneficiary as of the date of the Participant's death, or if the designated beneficiary is not an Eligible Designated Beneficiary, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death where there is no designated Beneficiary and by December 31 of the calendar year containing the tenth anniversary of the Participant's death where the designated Beneficiary is not an Eligible Designated Beneficiary.

- (i) Notwithstanding anything in this section 6.5 to the contrary, distributions required under Code Section 401(a)(9) that would otherwise be made during the 2020 calendar year shall not be made, pursuant to Section 2203 of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act of 2020, unless the affected Beneficiary makes an affirmative distribution election for 2020. Regular monthly distributions to Beneficiaries and lump-sum distributions requested by Beneficiaries that would satisfy the requirements for minimum distributions under Code Section 401(a)(9) shall still be made in 2020 unless the Beneficiary requests suspension of the monthly withdrawals or elects to return the distribution to the Plan by August 31, 2020.

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; or
- (c) Effective for in-service distributions requested on or after January 1, 2020, the Participant has reached age 59½ or will reach age 59½ in the calendar year in which the request occurs.

6.7 Qualified Birth or Adoption Distributions.

- (a) A Qualified Birth or Adoption Distribution, or “QBAD,” is a distribution from the Participant’s Account on or after January 1, 2020 that meets the following requirements:

- (1) The distribution is made during the one-year period following the date on which a child of the Participant is born or on which legal adoption by the Participant of an Eligible Adoptee is finalized. An Eligible Adoptee is a child other than a child of the Participant's spouse who is either under age 18 or physically or mentally incapable of self-support, as described under Code Section 72(m)(7).
 - (2) The distribution is limited to \$5,000 for each Eligible Adoptee. This \$5,000 limit shall be aggregated among all eligible retirement plans and IRAs in which the Participant participates or of which the Participant is an owner. The Committee shall enforce this limit with respect to all eligible retirement plans sponsored by the Employer, but may reasonably rely on any self-certification from the Participant that the limit has not been reached when taking other plans into account.
 - (3) The QBAD may be repaid to the Plan if the repayment is made while the participant remains eligible to make rollover contributions to the Plan, in accordance with Section 14.1(f).
- (b) Eligible Participants shall be permitted to request and receive a QBAD, as provided in subsection (a). The Committee shall not withhold any portion of the QBAD, notwithstanding the treatment of the QBAD as a rollover contribution upon repayment. The Committee shall establish and implement any necessary administrative procedures for a QBAD, in accordance with Code Section 72(t)(2)(H).

6.8 CARES Act Distributions.

- (a) A CRD-Qualified Participant is a Participant who has self-certified that one of the following is true:
- (1) The Participant has been diagnosed with COVID-19 through a CDC-approved test;
 - (2) The Participant's spouse or dependent, as defined under Subsection 152 of the Code, has been diagnosed with COVID-19 through a CDC-approved test; or

- (3) The Participant has experienced adverse financial consequences as a result of:
 - (i) the Participant being quarantined, being furloughed or laid off by the County, having their County work hours reduced, remaining an employee of the County but being unable to work because of a lack of child care, experiencing a reduction in pay, or having a job offer rescinded or a start date delayed due to COVID-19;
 - (ii) the Participant's spouse or person who shares the Participant's principal residence being quarantined, being furloughed or laid off, having work hours reduced, being unable to work due to lack of childcare, experiencing a reduction in pay, or having a job offer rescinded or a start date for a job delayed due to COVID-19; or
 - (iii) closing or reducing hours of a business owned or operated by the Participant, the Participant's spouse, or a person who shares the Participant's principal residence.
- (b) Notwithstanding anything in this Article 6 to the contrary, a CRD-Qualified Participant shall be permitted to request and receive the following distributions from the Participant's Account:
 - (1) For the limited period beginning on April 20, 2020 and ending on August 17, 2020, a distribution not to exceed the lesser of the total balance in the Participant's Account and \$20,000.
 - (2) For the limited period beginning on August 18, 2020 and ending on December 30, 2020, a distribution not to exceed the lesser of the total balance in the Participant's Account and \$100,000; provided, however, that this \$100,000 limit shall be reduced by any distribution received under subsection (1) above.

The Committee shall establish and implement any necessary administrative procedures for any such distribution in order to comply with the requirements of Section 2202(a) of the CARES Act of 2020. To the extent the December 30, 2020 deadline for receiving distributions under this Section 6.7 is extended by act of law without modifying the other rules contained herein or the repayment rules

contained in Section 14.1(e), such extended deadline shall be implemented without requiring an amendment to the Plan.

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 who is not eligible for an in-service distribution at age 59½ under Section 6.6(c) 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.

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 in the following order of priority:

- (a) To the Participant's surviving spouse.

- (b) To the Participant's children in equal shares. If any of the Participant's children are deceased but have a surviving child or children, the deceased child's portion of the benefit will go to the deceased child's living children in equal shares.
- (c) To the Participant's surviving parents in equal shares.
- (d) To the Participant's siblings in equal shares. If any of the Participant's siblings are deceased but have a surviving child or children, the deceased sibling's portion of the benefit will go to the deceased sibling's living children in equal shares.
- (e) 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 or Employer Contributions received 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.

- (e) A repayment to the Plan from a Participant who received a Coronavirus-Related Distribution (“CRD”) pursuant to the requirements of Subsection 2202(a) of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act of 2020 shall be treated as an eligible rollover and allocated in accordance with the terms of this Section 14.1. Such Participant shall be permitted to repay any portion of a CRD to this Plan, provided that the repayment or repayments are made by no later than the end of the three-year period beginning on the date the CRD was received. The repayment to the Plan shall be treated as an indirect rollover, and the Committee may work with the Designated Institution to establish procedures for the acceptance of CRD rollovers.
- (f) A repayment to the Plan from a Participant who received a Qualified Birth or Adoption Distribution (“QBAD”) under Section 6.7 shall be treated as the direct transfer of an eligible rollover distribution, as defined in Code Section 402(c)(4), and shall be allocated in accordance with the terms of this Section 14.1. Such Participant shall be permitted to repay any portion of a QBAD, provided the Participant remains eligible to make rollover contributions to the Plan. The Committee may work with the Designated Institution to establish procedures for the acceptance of QBAD rollovers.

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 _____, 2020.

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:

Classification of Employees	Contribution Amount
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:

Classification of Employees	Deferral Amount
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:

Classification of Employees	Matching Contribution Amount
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

Housing Authority of Clackamas County

Deferred Compensation Plan

**Amended and Restated
Effective January 1, 2021**

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ARTICLE 1 INTRODUCTION

The Housing Authority of 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, 2021, 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, the lesser of:

- (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 Designated Beneficiary.** A designated beneficiary who is, at the time of the Participant's death: (a) the surviving spouse of the Participant; (b) a child of the Participant, but only during the period that the child is under age 21; (c) a disabled individual within the meaning of Code section 72(m)(7); (d) a chronically ill individual within the meaning of Code section 7702B(c)(2), except that that there must be a certification that the period of inability to perform at least two activities of daily living due to a loss of functional capacity is for an indefinite period which is reasonably expected to be lengthy in nature; or (e) any individual not described in (a) through (d) who is not more than ten years younger than the Participant.
- 2.15 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.
- 2.16 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.
- 2.17 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.
- 2.18 Employer.** The Housing Authority of Clackamas County, a political subdivision of the state of Oregon.
- 2.19 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.
- 2.20 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 Participant 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).

2.21 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).

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

2.23 Normal Retirement Age.

(a) The Normal Retirement Age shall be 70½, unless the Participant makes an election under Section 2.23(b) below.

(b) The Participant may, at any time prior to Severance from Employment and 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.

- 2.24 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.
- 2.25 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.
- 2.26 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.
- 2.27 Plan.** The Housing Authority of Clackamas County Deferred Compensation Plan effective December 15, 1977, as amended. The effective date of this amended and restated Plan is January 1, 2021.
- 2.28 Plan Year.** The twelve (12) month period beginning January 1 and ending December 31.
- 2.29 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.

- 2.30 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.
- 2.31 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; or (ii) the date specified in the Participation Agreement.
- (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 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, 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 or forfeited as soon as administratively practicable. The refund to the Participant 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 transfers 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 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 2.23, 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 2.23) 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, Forms W-2, 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 72, or (2) the calendar year in which the Participant incurs a Severance from Employment. If the Participant attained age 70½ before January 1, 2020, however, “age 72” in the prior sentence shall be replaced with “age 70½”

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 Eligible Designated Beneficiary. The life expectancy of a Participant and the joint life expectancy of a Participant and the Participant’s Eligible 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 Eligible Designated Beneficiary) may from time to time be re-determined, but not more frequently than annually.

- (f) Notwithstanding anything in this section 6.1 to the contrary, distributions required under Code Section 401(a)(9) that would otherwise be made during the 2020 calendar year shall not be made, pursuant to Section 2203 of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act of 2020, unless the affected Participant makes an affirmative distribution election for 2020. Periodic payments to Participants and lump-sum distributions requested by Participants that would satisfy the requirements for minimum distributions under Code Section 401(a)(9) shall still be made in 2020 unless the Participant requests suspension of the monthly withdrawals or elects to return the distribution to the Plan by August 31, 2020.

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 72, or (2)

the calendar year in which the Participant incurs a Severance from Employment. If the Participant attained age 70½ before January 1, 2020, however, “age 72” in the prior sentence shall be replaced with “age 70½”.

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, or the named beneficiary does not survive the Participant or Beneficiary, the death benefit will be payable in accordance with Section 8.2.
- (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 an Eligible Designated Beneficiary but not the Participant's surviving spouse, death benefits payments under the Plan must, in accordance with the Eligible Designated 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 Eligible Designated 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 Eligible Designated Beneficiary; or
 - (2) Be distributed no later than December 31 of the calendar year containing the tenth anniversary of the Participant's death.

Notwithstanding the foregoing, if an Eligible Designated Beneficiary dies before the Eligible Designated Beneficiary's interest is entirely distributed, or if the Eligible Designated Beneficiary is a child of the Participant who reaches age 21 before the child's interest is entirely distributed, the remaining portion of such interest shall be distributed within ten years after the death or age of majority of the Eligible Designated Beneficiary, as applicable.

- (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 72.
- (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 tenth 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 an Eligible Designated Beneficiary at least as rapidly as under the method of distribution in effect prior to the death of the Participant.
- (h) If there is no designated Beneficiary as of the date of the Participant's death, or if the designated beneficiary is not an Eligible Designated Beneficiary, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death where there is no designated Beneficiary and by December 31 of the calendar year containing the tenth anniversary of the Participant's death where the designated Beneficiary is not an Eligible Designated Beneficiary.
- (i) Notwithstanding anything in this section 6.5 to the contrary, distributions required under Code Section 401(a)(9) that would otherwise be made during the 2020 calendar year shall not be made, pursuant to Section 2203 of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act of 2020, unless the affected Beneficiary makes an affirmative distribution election for 2020. Regular monthly distributions to Beneficiaries and lump-sum distributions requested by Beneficiaries that would satisfy the requirements for minimum distributions under Code Section 401(a)(9) shall still be made in 2020 unless the Beneficiary requests suspension of the monthly withdrawals or elects to return the distribution to the Plan by August 31, 2020.

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; or
- (c) Effective for in-service distributions requested on or after January 1, 2020, the Participant has reached age 59½ or will reach age 59½ in the calendar year in which the request occurs.

6.7 Qualified Birth or Adoption Distributions.

- (a) A Qualified Birth or Adoption Distribution, or “QBAD,” is a distribution from the Participant’s Account on or after January 1, 2020 that meets the following requirements:
 - (1) The distribution is made during the one-year period following the date on which a child of the Participant is born or on which legal adoption by the Participant of an Eligible Adoptee is finalized. An Eligible Adoptee is a child other than a child of the Participant’s spouse who is either under age 18 or physically or mentally incapable of self-support, as described under Code Section 72(m)(7).
 - (2) The distribution is limited to \$5,000 for each Eligible Adoptee. This \$5,000 limit shall be aggregated among all eligible retirement plans and IRAs in which the Participant participates or of which the Participant is an owner. The Committee shall enforce this limit with respect to all eligible retirement plans sponsored by the Employer, but may reasonably rely on any self-certification from the Participant that the limit has not been reached when taking other plans into account.
 - (3) The QBAD may be repaid to the Plan if the repayment is made while the participant remains eligible to make rollover contributions to the Plan, in accordance with Section 14.1(f).
- (b) Eligible Participants shall be permitted to request and receive a QBAD, as provided in subsection (a). The Committee shall not withhold any portion of the QBAD, notwithstanding the treatment of the QBAD as a rollover contribution upon repayment. The Committee shall establish and implement any necessary

administrative procedures for a QBAD, in accordance with Code Section 72(t)(2)(H).

6.8 CARES Act Distributions.

- (a) A CRD-Qualified Participant is a Participant who has self-certified that one of the following is true:
- (1) The Participant has been diagnosed with COVID-19 through a CDC-approved test;
 - (2) The Participant's spouse or dependent, as defined under Subsection 152 of the Code, has been diagnosed with COVID-19 through a CDC-approved test; or
 - (3) The Participant has experienced adverse financial consequences as a result of:
 - (i) the Participant being quarantined, being furloughed or laid off by the County, having their County work hours reduced, remaining an employee of the County but being unable to work because of a lack of child care, experiencing a reduction in pay, or having a job offer rescinded or a start date delayed due to COVID-19;
 - (ii) the Participant's spouse or person who shares the Participant's principal residence being quarantined, being furloughed or laid off, having work hours reduced, being unable to work due to lack of childcare, experiencing a reduction in pay, or having a job offer rescinded or a start date for a job delayed due to COVID-19; or
 - (iii) closing or reducing hours of a business owned or operated by the Participant, the Participant's spouse, or a person who shares the Participant's principal residence.
- (b) Notwithstanding anything in this Article 6 to the contrary, a CRD-Qualified Participant shall be permitted to request and receive the following distributions from the Participant's Account:

- (1) For the limited period beginning on April 20, 2020 and ending on August 17, 2020, a distribution not to exceed the lesser of the total balance in the Participant's Account and \$20,000.
- (2) For the limited period beginning on August 18, 2020 and ending on December 30, 2020, a distribution not to exceed the lesser of the total balance in the Participant's Account and \$100,000; provided, however, that this \$100,000 limit shall be reduced by any distribution received under subsection (1) above.

The Committee shall establish and implement any necessary administrative procedures for any such distribution in order to comply with the requirements of Section 2202(a) of the CARES Act of 2020. To the extent the December 30, 2020 deadline for receiving distributions under this Section 6.7 is extended by act of law without modifying the other rules contained herein or the repayment rules contained in Section 14.1(e), such extended deadline shall be implemented without requiring an amendment to the Plan.

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 who is not eligible for an in-service distribution at age 59½ under Section 6.6(c) 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.

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 in the following order of priority:
- (a) To the Participant's surviving spouse.
 - (b) To the Participant's children in equal shares. If any of the Participant's children are deceased but have a surviving child or children, the deceased child's portion of the benefit will go to the deceased child's living children in equal shares.
 - (c) To the Participant's surviving parents in equal shares.
 - (d) To the Participant's siblings in equal shares. If any of the Participant's siblings are deceased but have a surviving child or children, the deceased sibling's portion of the benefit will go to the deceased sibling's living children in equal shares.
 - (e) 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 or Employer Contributions received 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.
- (e) A repayment to the Plan from a Participant who received a Coronavirus-Related Distribution ("CRD") pursuant to the requirements of Subsection 2202(a) of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act of 2020 shall be treated as an eligible rollover and allocated in accordance with the terms of this Section 14.1. Such Participant shall be permitted to repay any portion of a CRD to this Plan, provided that the repayment or repayments are made by no later than the end of the three-year period beginning on the date the CRD was received. The repayment to the Plan shall be treated as an indirect rollover, and the Committee may work with the Designated Institution to establish procedures for the acceptance of CRD rollovers.
- (f) A repayment to the Plan from a Participant who received a Qualified Birth or Adoption Distribution ("QBAD") under Section 6.7 shall be treated as the direct transfer of an eligible rollover distribution, as defined in Code Section 402(c)(4), and shall be allocated in accordance with the terms of this Section 14.1. Such Participant shall be permitted to repay any portion of a QBAD, provided the Participant remains eligible to make rollover contributions to the Plan. The

Committee may work with the Designated Institution to establish procedures for the acceptance of QBAD rollovers.

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 _____, 2020.

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:

Classification of Employees	Contribution Amount
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:

Classification of Employees	Deferral Amount
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:

Classification of Employees	Matching Contribution Amount
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



December 17, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Quitclaim Deed and Bill of Sale Between Clackamas County and Water Environment Services Pertaining to the Utilities Building at 902 Abernethy Road

Purpose/Outcome	Agreements authorizing the transfer of the Utilities Building located on the site of the Abernethy Transportation Maintenance facility.
Dollar Amount and Fiscal Impact	\$0 – Supported by Appraisal.
Funding Source	Not applicable.
Duration	In perpetuity.
Previous Board Action/Review	None.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure • Ensure safe, healthy and secure communities
County Counsel	County Counsel reviewed and approved the Quitclaim Deed and Bill of Sale on December 7, 2020
Contact Person	Chris Storey, Water Environment Services – Assistant Director

Since the devastating flooding in 1996 of the County’s property at 902 Abernethy Road in Oregon City (the “Property”), Clackamas County has been working to relocate all operations housed at that facility. At one time the site was the primary location for Water Environment Services (formerly the Utilities Department) and the Department of Transportation Development Services / Transportation Maintenance; currently the site houses a dilapidated office building, Clackamas County Fleet Services, Vector Control, Sheriff’s Office Fleet Operations and the Transportation Maintenance Division. The dilapidated office building, commonly referred to as the Utilities Building, was constructed and owned by Clackamas County Service District No. 1 (CCSD #1), and subsequently transferred to Water Environment Services (WES), although the County retained title to the real property on which the building was situated. The Utilities Building has not been used by CCSD #1 / WES for over a decade.

County Administration had made it a goal to prioritize the relocation of Transportation Maintenance from the current site. With the direction to relocate Transportation Maintenance to

a new site, the County entered into an agreement with The Blue at Abernethy Creek, LLC, that provides in part for the sale of the Property. To facilitate a clean transfer, the County is required to obtain any remaining interest that WES may have in the Utilities Building in order to transfer complete fee title to the buyer.

As part of an independent appraisal establishing a value for the overall site, the appraiser assigned a negative value specifically to the Utilities Building. This is based on the appraiser's conclusion that the best use of the site would be a total redevelopment since the industrial uses are no longer allowed under the updated zoning designation, that the uses previously housed in the building have likely lost their nonconforming use status, and that it is likely cost-prohibitive to rehab and repurpose the existing structure. There is value attributable to the land underneath the building, but that is owned by the County. Accordingly, the County will pay no money to WES as part of the transfer. The County will, however, release WES from any liability associated with the building moving forward, except to the extent the liability arises specifically out of the actions or omissions of WES or CCSD #1.

County Counsel has reviewed and approved this quitclaim deed and bill of sale.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioners, acting in their capacity as the governing body of Water Environment Services, authorize the transfer of the Utilities Building to the County by executing the attached quitclaim deed and bill of sale.

Sincerely,

Chris Storey
Digitally signed by Chris Storey
Date: 2020.12.08 16:20:58 -08'00'

Chris Storey
Assistant Director

Attachments: Quitclaim Deed
Bill of Sale

MAIL TAX STATEMENTS TO:

Clackamas County
2051 Kaen Rd.
Oregon City, OR 97045

AFTER RECORDING RETURN TO:

Clackamas County
2051 Kaen Rd.
Oregon City, OR 97045

GRANTOR'S ADDRESS:

Water Environment Services
150 Beaver Creek Rd.
Oregon City, Oregon 97045

GRANTEE'S ADDRESS:

Clackamas County
2051 Kaen Rd.
Oregon City, OR 97045

STATUTORY QUITCLAIM DEED

Water Environment Services, an intergovernmental entity formed pursuant to ORS Chapter 190, the "**Grantor**", releases and quitclaims to Clackamas County, a political subdivision of the state of Oregon, "**Grantee**", all right, title, and interest in the real property described in **Exhibit "A"**, which is attached hereto and incorporated herein.

Grantor acquired rights to the personal property located on the real property subject to this release from Clackamas County Service District No. 1 through a Bill of Sale recorded on July 3, 2018 in the Clackamas County Records as document #2018-041421.

The true and actual consideration paid for this conveyance is Zero Dollars (\$0), but other valuable consideration which includes all liability and demolition costs associated with the existing structure currently located on the property. Grantor is transferring any personal property rights it might have to the Grantee in any personal property located on the real property subject to this release through a separate Bill of Sale that the parties hereto executed on the same date as this release. Additionally, to the fullest extent permitted by law, Grantee shall indemnify, defend, save and hold harmless the Grantor and its elected officials, officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 *et. seq.* (hereinafter, referred to individually and collectively as "Claims"), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Grantee. It is the specific intention of the Parties that Grantor shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of Grantor or Clackamas County Service

District No. 1, be indemnified for all other Claims arising out of the use or possession of the real property described in *Exhibit “A”*.

The following is the notice as required by Oregon law: “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.”

Dated this _____ day of _____, 2020.

GRANTOR
Water Environment Services
An intergovernmental entity formed pursuant to ORS Chapter 190

Chair, Water Environment Services

State of Oregon)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 20____, by _____,
Chair of Water Environment Services, an intergovernmental entity formed pursuant to ORS Chapter 190.

Before me:

Notary Public for Oregon
My Commission Expires: _____

GRANTEE
Clackamas County

Chair, Board of County Commissioners

State of Oregon)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 20____, by _____,
Chair of the Clackamas County Board of County Commissioners.

Before me:

Notary Public for Oregon
My Commission Expires: _____

Exhibit A

Exhibit "A"

Real property in the County of Clackamas , State of Oregon, described as follows:

Parcel I: (22E29CD00100)

TRACT A:

Beginning at a point on the South boundary of the George Abernethy and wife Donation Land Claim in Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, at a point North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West 326 feet to the center of Abernethy Creek; thence along the center of said creek upstream to the above mentioned South boundary of George Abernethy Donation Land Claim; thence North 83 degrees 15' West tracing said Donation Land Claim boundary 372 feet to the place of beginning.

TRACT B:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, more particularly described as beginning at the Northwest corner of a tract of land conveyed to Ernst Steen and wife, by Deed recorded in Book 293, Page 345, Deed Records, said point being on the South boundary of the George Abernethy Donation Land Claim, North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West on the West line of said Steen Tract, 326.0 feet to the center of Abernethy Creek; thence along the center of said creek, downstream to the Southeast corner of a tract of land conveyed to J.H. Kuper by Deed recorded in Book 168, Page 513, Deed Records; thence North 6 degrees 15' East on the East line of said Kuper Tract to the South line of said Abernethy Donation Land Claim; thence South 83 degrees 15' East on said South line, 334.95 feet to the place of beginning;

EXCEPT the West 10 feet thereof.

TRACT C:

A part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe driven in the South boundary of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, at a point that is North 83 degrees 15' West 889.5 feet from the Northwest corner of the Ezra Fisher Donation Land Claim in said township and range; thence continuing on said line North 83 degrees 15' West 50 feet; thence South 6 degrees 42' West to the center of Abernethy Creek; thence along the center of Abernethy Creek upstream 66 feet to the Southeast corner of land conveyed to J.H. Kuper and wife by Deed recorded in Book 168, Page 513; thence North 6 degrees 42' East along the East line of said tract 142 feet to the place of beginning, being a strip 50 feet wide from the Easterly side of the said J.H. Kuper and wife Tract described in Book 168, at Page 513, Record of Deeds of Clackamas County, Oregon situated in Clackamas County, State of Oregon;

TOGETHER WITH a strip of land 10 feet in width off the entire Westerly boundary of Tax Lot 150 of the Oregon City Claim, which said tax lot adjoins the tract herein above described on the East, said 10 foot strip being more particularly described as follows:

The West 10 feet of the following described tract:

Part of the Oregon City Donation Land Claim in Section 29, in Township 2 South, Range 2 East, of the Willamette Meridian, more particularly described as beginning at the Northwest corner of a tract of land conveyed to Ernst Steen and wife, by Deed recorded in Book 293, Page 345, Deed Records, said point being on the South boundary of the George Abernethy Donation Land Claim, North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West on the West line of said Steen Tract 326.0 feet to the center of Abernethy Creek; thence along the center of said creek, downstream to the Southeast corner of a tract of land conveyed to J.H. Kuper by Deed recorded in Book 168, Page 513, Deed Records; thence North 6 degrees 15' East on the East line of said Kuper Tract to the South line of said Abernethy Donation Land Claim; thence South 83 degrees 15' East on said South line 334.95 feet to the place of beginning.

TRACT D:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning in the South line of the George Abernethy Donation Land Claim, North 83 degrees 15' West 939.55 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence continuing on said South Donation Land Claim line North 83 degrees 15' West 100 feet; thence South 6 degrees 45' West 271.25 feet to a point in the center of Abernethy Creek from which an iron pipe on the Northerly creek bank bears North 6 degrees 45' East 45.4 feet; thence upstream North 56 degrees East along said center creek line 132 feet, more or less, to a point South 6 degrees 42' West from the place of beginning; thence North 6 degrees 42' East to the place of beginning.

TRACT E:

Being a part of the Oregon City Donation Land Claim in Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, bounded and described as follows, to-wit:

Beginning at an iron pipe driven in the South boundary of the Donation Land Claim of George Abernethy and wife, in Township 2 South, Range 2 East, of the Willamette Meridian, at a point that is North 83 degrees 15' West 1039.55 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim in said township and range; running thence South 6 degrees 45' West 271.0 feet to the center of the Abernethy Creek; thence along the center of the said Abernethy Creek downstream South 56 degrees West 100 feet, more or less, to a point; thence North 6 degrees 45' East 100 feet distant and parallel to the West boundary of property described in Deed Records of Clackamas County, Oregon, in Book 168, Page 513, to the South boundary of the George Abernethy Donation Land Claim, aforesaid; thence tracing the South boundary of the said Donation Land Claim, 100 feet to the place of beginning.

TRACT F:

Beginning at a point in the South boundary of the George Abernethy Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, that is North 83 degrees 15' West 1139.55 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim and being the Northwest corner of the tract of land described in Deed from Gustave and Anna M. Engebrecht, his wife, to J. Blair and Helen M. Miller and recorded in Volume 233, on Pages 85 and 86, Record of Deeds for Clackamas County, Oregon; thence South 6 degrees 45' West following the West boundary of the above Miller Tract to the center of Abernethy Creek; thence downstream following the center of Abernethy Creek to the Southeast corner of the tract of land described in Deed from Gustave and Anna M. Engebrecht to Clackamas County and recorded in Volume 165, on Pages 108 and 109, Records of Deeds for Clackamas County, Oregon; thence

North 6 degrees 45' East 294.00 feet, more or less, following the Easterly boundary of the Clackamas County Tract herein last mentioned to the South boundary of the George Abernethy Donation Land Claim; thence South 83 degrees 15' East 234.25 feet, more or less, tracing the South boundary of the George Abernethy Donation Land Claim to the place of beginning, and all being located in the Oregon City Donation Land Claim in the Southwest one-quarter of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian.

TRACT G:

A part of the Oregon City Donation Land Claim in the Southwest one-quarter of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning on the South boundary of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, at an iron pipe driven at a point that is North 83 degrees 15' West 1373.8 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence at right angles to said line South 6 degrees 45' West 294.00 feet to the center of Abernethy Creek; thence with the meanders of the center of Abernethy Creek downstream North 71 degrees 10' West 160.8 feet; thence North 6 degrees 45' East 260 feet to an iron pipe in the South boundary of said George Abernethy Donation Land Claim; thence tracing said claim line South 82 degrees 15' East 167.3 feet to the place of beginning.

TRACT H:

A part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1531.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence South 6 degrees 45' West 250 feet to the right bank of Abernethy Creek; thence along the right bank North 83 degrees 15' West 50 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the said South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 50 feet to the place of beginning.

TRACT I:

Being a part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, bounded and described as follows, to-wit: Beginning at an iron pipe set on the South boundary line of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, said pipe being North 83 degrees 15' West 1581.1 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence tracing the Easterly boundary of the land of the grantor herein South 6 degrees 45' East 250 feet to the right bank of the Abernethy Creek; thence along the right bank of the Abernethy Creek North 83 degrees 15' West 45 feet; thence North 6 degrees 45' East and parallel to the Easterly boundary of the land of the grantor herein a distance of 250 feet to a point on the South boundary of the George Abernethy Donation Land Claim; thence tracing the Southerly boundary of the Abernethy Donation Land Claim South 83 degrees 15' East a distance of 45 feet to the place of beginning.

TRACT J:

The Westerly 55 feet of the following described property:

The Eastern one-half of part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 38 degrees 15' West 1581.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 45' West 250 feet to the right bank of Abernethy Creek;

thence along the right bank North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100 feet to the place of beginning.

TRACT K:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

The East one-half of the following described property to-wit: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1681.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; said iron pipe being the Northwest corner of a tract conveyed to Gertrude Bartlett by Deed recorded June 27, 1951 in Book 446, Page 7, Deed Records; thence South 6 degrees 45' West along the West line of said Barlett Tract 250 feet to the right bank of the Abernethy Creek; thence along the right bank of said creek North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250.00 feet to an iron pipe on the said South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100.00 feet to the place of beginning.

TRACT L:

The West one-half of the following described property, being a part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1681.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 45' West 250 feet to the right bank of the Abernethy Creek; thence along the right bank of said creek North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the said South line of said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100 feet to the place of beginning.

TRACT M:

That part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1781.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim, said iron being the Northwest corner of a tract conveyed to Henry Boguslasko, et ux, by Deed recorded in Book 130, Page 222, Deed Records; thence South 6 degrees 45' West along the West line of said Boguslasko Tract, 250 feet, more or less, to the center of Abernethy Creek; thence along the center of said creek, North 83 degrees 15' West 50 feet to the Southeast corner of a tract conveyed to Carl and Bertha Meiritz by Deed recorded in Book 152, Page 462, Deed Records; thence North 6 degrees 45' East along the East line of said Meiritz Tract, 250 feet, more or less, to an iron pipe on the South boundary of said Abernethy Claim; thence South 83 degrees 15' East, tracing said claim line, 50 feet to the point of beginning.

TRACT N:

That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654 being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of

the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows, to-wit:

Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT O:

Beginning at a point in the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, where the Easterly line of Van Buren Street, extended intersects said avenue; thence North 34 degrees 55' East 400 feet on the Easterly line of Van Buren Street extended; thence North 51 degrees 38' West to the center of Abernethy Creek; thence tracing the center of said creek North 87 degrees 20' West 261 feet to a point where the Easterly line of Jackson Street produced intersects the center of said creek; thence South 34 degrees 55' West 351.6 feet along said Easterly line of Jackson Street extended to the Northerly line of said McLoughlin Avenue; thence North 78 degrees 09' East 101.2 feet along the Northerly line of said McLoughlin Avenue; thence South 54 degrees 38' East to the place of beginning;

EXCEPTING THEREFROM that portion lying South of the North line of that parcel described in Deed to Clackamas County, recorded June 16, 1961 in Book 588, page 183, described as follows:

That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654 being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows:

Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT P:

Beginning at a point in the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, where the Easterly line of Jackson Street produced intersects the same; thence North 34 degrees 55' East 351.6 feet to the center line of Abernethy Creek; thence North 35 degrees 14' West 148.4 feet along the center line of said Abernethy Creek; thence South 34 degrees 55' West 479.7 feet to the Northerly line of McLoughlin Avenue; thence South 74 degrees 59' East 107.7 feet along said North line; thence North 78 degrees 09' East 57 feet along said North line of McLoughlin Avenue to the place of beginning:

EXCEPTING THEREFROM that portion lying South of the North line of that parcel described in Deed to Clackamas County, recorded June 16, 1961 in Book 588, page 183, described as follows: That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654

being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows, to-wit: Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT Q:

Beginning at a point on the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, that is North 79 degrees 24' East 201.00 feet from the intersection of the Easterly line of Madison Street and said Northerly boundary of McLoughlin Avenue; and running thence North 79 degrees 24' East 55.30 feet along the Northerly line of McLoughlin Avenue; thence South 74 degrees 59' East, 533.90 feet along said Northerly line; thence North 34 degrees 55' East 479.7 feet to the center of Abernethy Creek; thence North 35 degrees 14' West along the center of said creek 98.2 feet; thence South 57 degrees West 327 feet along the center of said creek; thence North 74 degrees 54' West 332.7 feet along the center of said creek; thence South 34 degrees 58' West 335 feet to the place of beginning.

Parcel II (22E29CA02400)

Part of the George Abernathy D.L.C. in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point North 83° 15' West 1538.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C., said point marks the Southwesterly corner of a tract conveyed to Antone Klootwyk, et ux, by Correction Deed recorded May 28, 1953 in Book 489, Page 449, Deed Records; thence North 83° 15' West along the North line of Redland Road 72.4 feet; thence North 6° 45' East 62.0 feet; thence North 41° 47' East 46.4 feet; thence South 83° 15' East 45.76 feet to the Northwesterly corner of the aforementioned Klootwyk tract; thence South 6° 45' West along the West line of said Klootwyk tract 100 feet to the point of beginning.

Parcel III: (22E29CA02500)

Tract A:

A tract of land in the George Abernethy D.L.C, in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron bolt in the Northerly boundary of Abernethy Road, said point being North 83° 15' West 1338.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C; thence following the Northerly boundary of said road North 83° 15' West 200.0 feet to an iron pipe; thence North 6° 45' East 100.0 feet to an iron pipe; thence South 83° 15' East 200.0 feet to an iron pipe; thence South 6° 45' West 100.0 feet to the place of beginning.

Tract B:

A parcel of land in the George Abernethy D.L.C., Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron bolt in the Northerly boundary of Abernethy Road, said point being North 83° 15'

West 1338.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; thence North 6° 45' East 100.0 feet to an iron pipe, said point being the true point of beginning; thence North 6° 45' East, 20 feet; thence North 83° 15' West, 231.74 feet; thence South 41°47' West, 24.43 feet; thence South 83° 15' East, 245.76 feet to an iron pipe and the true point of beginning.

Parcel IV: (22029CA02700)

A parcel of land in the County of Clackamas, Oregon; situated in the George Abernathy Donation Land Claim, Section 29, Township 2 South, Range 2 East of the Willamette Meridian, County of Clackamas and State of Oregon, described as follows:

Beginning at the Northwest Corner of the Ezra Fisher Donation Land Claim; thence North 83° 15' West, 1338.0 feet; thence, North 6° 45' East, 43.87 feet to the North Right-of-way Line of County Road No. 354 and the Southeast corner of that certain tract of land conveyed to Clackamas County, recorded June 29, 1968, by Recorder's Fee No. 68-14160, Film Records; thence, North 6° 45' East, 100.00 feet to the Northeast corner thereof; thence, North 6° 45' East, 20.00 feet to the True Point of Beginning and the Northeast corner of a second tract of land conveyed to said Clackamas County, recorded July 25, 1968 by Recorder's Fee No. 68-14034; thence, North 83° 15' West along the North line of said tract 231.74 feet to the Northwesterly corner thereof; thence South 41° 47' West, 24.43 feet to the most Westerly corner thereof; thence South 41° 47' West, 46.40 feet; thence South 6° 45' West, 62.00 feet to the intersection with the North Right-of-way Line of County Road No. 354; thence North 83° 15' West along said road line 30.00 feet, more or less, to the most Southerly Southeast corner of the tract of land described in that certain conveyance from Gustav and Anna Engebrecht to Oregon City and recorded June 4, 1936, in Book 232, on Page 245, Record of Deeds, Clackamas County, Oregon, said Southeast corner being located in the Northerly boundary of Market Road No. 20; thence North 6° 45' East, 62.00 feet; thence North 41° 47' East, 526.78 feet; thence South 6° 45' West, 373.34 feet to the True Point of Beginning.

Parcel V: (22E29DB00900)

Part of the George Abernathy D.L.C. in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of Geo. Abernathy and wife, which is the Northwest corner of the Ezra Fisher D.L.C.; Thence South 81° 15' East 97.2 feet to the land conveyed by J. M. Robertson to Gustav Engebrecht by deed recorded in Book 148, Page 485, Clackamas county Deed Records; thence tracing said Engebrecht's Westerly line North 7° 26' West 438.85 feet to a pipe driven in the center of county road; thence along county road South 61° 56' West 728.7 feet to a stone on the South boundary of the said George Abernathy D.L.C.; thence tracing said claim line South 82° 38' East 604 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within county roads.

Parcel VI: (22E29CC01400)

A part of the Oregon City D.L.C., in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of Geo. Abernathy and wife, which bears North 83° 15' west 1831.1 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; running thence South 6°45' West 250 feet, more or less, to the center of the Abernathy Creek; thence along the center line of said creek North 83° 15' west 50 feet; thence North 6° 45' east 250 feet, more or less, to an iron pipe on the said South line of said Abernathy Claim; thence tracing said line South 83° 15' East 50 feet to the place of beginning;

EXCEPTING THEREFROM that portion lying within Abernathy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel VII: (22E29CC01500)

A part of the Oregon City D.L.C., in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of George Abernethy and wife, which bears North 83°15' West 1916.1 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; running thence South 6°45' West 250.00 feet, more or less, to the right bank of Abernethy Creek; thence along the right bank South 83°15' East 35-00 feet to the Southwest corner of the Keller tract described in Book 465, page 266, Deed Records; thence along the Westerly line of said Keller tract North 6°45' East 250.00 feet, more or less, to an iron pipe on the South boundary of said Abernethy claim; thence North 83° 15' West 35.00 feet to the place of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel VIII: (22E29CC01600)

Part of Section 29, in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of George Abernethy and wife, which bears North 83° 15' West 1916.1 feet distant from the Northwest corner of the-Ezra Fisher D.L.C.; running thence South 6° 45' West 250 feet, more or less, to the right bank of Abernethy Creek; thence along the right bank North 83° 15' West 45 feet; thence North 6° 45' East 250 feet, more or less, to an iron pipe on the said south line of said Abernethy claim; thence tracing said line, South 83° 15' East 45 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel IX: (22E29CC01700)

That portion of the Southwest quarter of the Southwest quarter of Section 29, Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary line of the George Abernethy Donation Land Claim which bears North 83° 15' West 1961.1 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6° 45' West 250 feet more or less to the right bank of Abernethy Creek; thence along said right bank North 83° 15' West 65 feet to the Southwest corner of a tract conveyed to Henry Bogeslaski and wife, by deed recorded in Book 186, Page 344, Deed Records; thence North 6° 45' East along the West line of said Bogeslaski tract 250 feet more or less to an iron pipe on the South line of said Abernethy Donation Land Claim; thence along said South line South 83° 15' East 65 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

**WATER ENVIRONMENT SERVICES and CLACKAMAS COUNTY
BILL OF SALE**

This Bill of Sale ("Agreement") is made and entered into on this ____ day of _____, 2020 between Water Environment Services, an intergovernmental entity formed pursuant to ORS Chapter 190, (the "Seller"), and Clackamas County, a political subdivision of the state of Oregon (the "Buyer"), collectively referred to as the "Parties."

Agreement

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged, the Parties agree as follows:

1. **Property.** The Seller desires to transfer to the Buyer, and the Buyer desires to acquire, all of the Seller's right, title, and interest in and to any buildings, improvements and personal property located on land commonly known as 902 Abernethy Road, Oregon City, OR 97045, and more particularly described in Exhibit "A" which is attached hereto and incorporated herein (the "Property"). Seller acquired rights to the Property from Clackamas County Service District No. 1 through a Bill of Sale recorded on July 3, 2018 in the Clackamas County Records as document #2018-041421.
2. **Consideration.** The true and actual consideration paid for this conveyance is Zero Dollars (\$0), but other valuable consideration, which includes all liability and demolition costs associated with the existing structure currently located on the Property. Additionally, to the fullest extent permitted by law, Buyer shall indemnify, defend, save and hold harmless the Seller and its elected officials, officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 *et seq.* (hereinafter, referred to individually and collectively as "Claims"), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Buyer. It is the specific intention of the Parties that Seller shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of Seller or Clackamas County Service District No. 1, be indemnified for all other Claims arising out of the use or possession of the Property.
3. **Transfer of Ownership.** The Buyer will take ownership of the Property immediately upon the full execution of this Agreement.
4. **Warranty.** Except as otherwise expressly stated above, the Seller makes no warranties or representations with respect to the Property. The Buyer accepts the Property AS IS, WHERE IS, in its present condition, including all defects and with all faults, and there are no warranties of merchantability or of fitness for a particular purpose with respect to the Property.
5. **Counterparts.** This Agreement may be executed in multiple originals or counterparts, each of which will be deemed original for all purposes, together constituting one and the same instrument. Copies of the parties' signatures to this Agreement transmitted by facsimile, e-mail or other electronic means shall be considered originals for all purposes.

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

Seller:

Water Environment Services
An intergovernmental entity formed pursuant to ORS Chapter 190

Chair, Water Environment Services

Buyer:

Clackamas County

Chair, Board of County Commissioners

Exhibit A

Exhibit "A"

Real property in the County of Clackamas , State of Oregon, described as follows:

Parcel I: (22E29CD00100)

TRACT A:

Beginning at a point on the South boundary of the George Abernethy and wife Donation Land Claim in Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, at a point North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West 326 feet to the center of Abernethy Creek; thence along the center of said creek upstream to the above mentioned South boundary of George Abernethy Donation Land Claim; thence North 83 degrees 15' West tracing said Donation Land Claim boundary 372 feet to the place of beginning.

TRACT B:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, more particularly described as beginning at the Northwest corner of a tract of land conveyed to Ernst Steen and wife, by Deed recorded in Book 293, Page 345, Deed Records, said point being on the South boundary of the George Abernethy Donation Land Claim, North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West on the West line of said Steen Tract, 326.0 feet to the center of Abernethy Creek; thence along the center of said creek, downstream to the Southeast corner of a tract of land conveyed to J.H. Kuper by Deed recorded in Book 168, Page 513, Deed Records; thence North 6 degrees 15' East on the East line of said Kuper Tract to the South line of said Abernethy Donation Land Claim; thence South 83 degrees 15' East on said South line, 334.95 feet to the place of beginning;

EXCEPT the West 10 feet thereof.

TRACT C:

A part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe driven in the South boundary of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, at a point that is North 83 degrees 15' West 889.5 feet from the Northwest corner of the Ezra Fisher Donation Land Claim in said township and range; thence continuing on said line North 83 degrees 15' West 50 feet; thence South 6 degrees 42' West to the center of Abernethy Creek; thence along the center of Abernethy Creek upstream 66 feet to the Southeast corner of land conveyed to J.H. Kuper and wife by Deed recorded in Book 168, Page 513; thence North 6 degrees 42' East along the East line of said tract 142 feet to the place of beginning, being a strip 50 feet wide from the Easterly side of the said J.H. Kuper and wife Tract described in Book 168, at Page 513, Record of Deeds of Clackamas County, Oregon situated in Clackamas County, State of Oregon;

TOGETHER WITH a strip of land 10 feet in width off the entire Westerly boundary of Tax Lot 150 of the Oregon City Claim, which said tax lot adjoins the tract herein above described on the East, said 10 foot strip being more particularly described as follows:

The West 10 feet of the following described tract:

Part of the Oregon City Donation Land Claim in Section 29, in Township 2 South, Range 2 East, of the Willamette Meridian, more particularly described as beginning at the Northwest corner of a tract of land conveyed to Ernst Steen and wife, by Deed recorded in Book 293, Page 345, Deed Records, said point being on the South boundary of the George Abernethy Donation Land Claim, North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West on the West line of said Steen Tract 326.0 feet to the center of Abernethy Creek; thence along the center of said creek, downstream to the Southeast corner of a tract of land conveyed to J.H. Kuper by Deed recorded in Book 168, Page 513, Deed Records; thence North 6 degrees 15' East on the East line of said Kuper Tract to the South line of said Abernethy Donation Land Claim; thence South 83 degrees 15' East on said South line 334.95 feet to the place of beginning.

TRACT D:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning in the South line of the George Abernethy Donation Land Claim, North 83 degrees 15' West 939.55 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence continuing on said South Donation Land Claim line North 83 degrees 15' West 100 feet; thence South 6 degrees 45' West 271.25 feet to a point in the center of Abernethy Creek from which an iron pipe on the Northerly creek bank bears North 6 degrees 45' East 45.4 feet; thence upstream North 56 degrees East along said center creek line 132 feet, more or less, to a point South 6 degrees 42' West from the place of beginning; thence North 6 degrees 42' East to the place of beginning.

TRACT E:

Being a part of the Oregon City Donation Land Claim in Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, bounded and described as follows, to-wit:

Beginning at an iron pipe driven in the South boundary of the Donation Land Claim of George Abernethy and wife, in Township 2 South, Range 2 East, of the Willamette Meridian, at a point that is North 83 degrees 15' West 1039.55 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim in said township and range; running thence South 6 degrees 45' West 271.0 feet to the center of the Abernethy Creek; thence along the center of the said Abernethy Creek downstream South 56 degrees West 100 feet, more or less, to a point; thence North 6 degrees 45' East 100 feet distant and parallel to the West boundary of property described in Deed Records of Clackamas County, Oregon, in Book 168, Page 513, to the South boundary of the George Abernethy Donation Land Claim, aforesaid; thence tracing the South boundary of the said Donation Land Claim, 100 feet to the place of beginning.

TRACT F:

Beginning at a point in the South boundary of the George Abernethy Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, that is North 83 degrees 15' West 1139.55 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim and being the Northwest corner of the tract of land described in Deed from Gustave and Anna M. Engebrecht, his wife, to J. Blair and Helen M. Miller and recorded in Volume 233, on Pages 85 and 86, Record of Deeds for Clackamas County, Oregon; thence South 6 degrees 45' West following the West boundary of the above Miller Tract to the center of Abernethy Creek; thence downstream following the center of Abernethy Creek to the Southeast corner of the tract of land described in Deed from Gustave and Anna M. Engebrecht to Clackamas County and recorded in Volume 165, on Pages 108 and 109, Records of Deeds for Clackamas County, Oregon; thence

North 6 degrees 45' East 294.00 feet, more or less, following the Easterly boundary of the Clackamas County Tract herein last mentioned to the South boundary of the George Abernethy Donation Land Claim; thence South 83 degrees 15' East 234.25 feet, more or less, tracing the South boundary of the George Abernethy Donation Land Claim to the place of beginning, and all being located in the Oregon City Donation Land Claim in the Southwest one-quarter of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian.

TRACT G:

A part of the Oregon City Donation Land Claim in the Southwest one-quarter of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning on the South boundary of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, at an iron pipe driven at a point that is North 83 degrees 15' West 1373.8 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence at right angles to said line South 6 degrees 45' West 294.00 feet to the center of Abernethy Creek; thence with the meanders of the center of Abernethy Creek downstream North 71 degrees 10' West 160.8 feet; thence North 6 degrees 45' East 260 feet to an iron pipe in the South boundary of said George Abernethy Donation Land Claim; thence tracing said claim line South 82 degrees 15' East 167.3 feet to the place of beginning.

TRACT H:

A part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1531.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence South 6 degrees 45' West 250 feet to the right bank of Abernethy Creek; thence along the right bank North 83 degrees 15' West 50 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the said South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 50 feet to the place of beginning.

TRACT I:

Being a part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, bounded and described as follows, to-wit: Beginning at an iron pipe set on the South boundary line of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, said pipe being North 83 degrees 15' West 1581.1 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence tracing the Easterly boundary of the land of the grantor herein South 6 degrees 45' East 250 feet to the right bank of the Abernethy Creek; thence along the right bank of the Abernethy Creek North 83 degrees 15' West 45 feet; thence North 6 degrees 45' East and parallel to the Easterly boundary of the land of the grantor herein a distance of 250 feet to a point on the South boundary of the George Abernethy Donation Land Claim; thence tracing the Southerly boundary of the Abernethy Donation Land Claim South 83 degrees 15' East a distance of 45 feet to the place of beginning.

TRACT J:

The Westerly 55 feet of the following described property:

The Eastern one-half of part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 38 degrees 15' West 1581.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 45' West 250 feet to the right bank of Abernethy Creek;

thence along the right bank North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100 feet to the place of beginning.

TRACT K:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

The East one-half of the following described property to-wit: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1681.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; said iron pipe being the Northwest corner of a tract conveyed to Gertrude Bartlett by Deed recorded June 27, 1951 in Book 446, Page 7, Deed Records; thence South 6 degrees 45' West along the West line of said Barlett Tract 250 feet to the right bank of the Abernethy Creek; thence along the right bank of said creek North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250.00 feet to an iron pipe on the said South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100.00 feet to the place of beginning.

TRACT L:

The West one-half of the following described property, being a part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1681.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 45' West 250 feet to the right bank of the Abernethy Creek; thence along the right bank of said creek North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the said South line of said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100 feet to the place of beginning.

TRACT M:

That part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1781.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim, said iron being the Northwest corner of a tract conveyed to Henry Boguslasko, et ux, by Deed recorded in Book 130, Page 222, Deed Records; thence South 6 degrees 45' West along the West line of said Boguslasko Tract, 250 feet, more or less, to the center of Abernethy Creek; thence along the center of said creek, North 83 degrees 15' West 50 feet to the Southeast corner of a tract conveyed to Carl and Bertha Meiritz by Deed recorded in Book 152, Page 462, Deed Records; thence North 6 degrees 45' East along the East line of said Meiritz Tract, 250 feet, more or less, to an iron pipe on the South boundary of said Abernethy Claim; thence South 83 degrees 15' East, tracing said claim line, 50 feet to the point of beginning.

TRACT N:

That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654 being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of

the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows, to-wit:

Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT O:

Beginning at a point in the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, where the Easterly line of Van Buren Street, extended intersects said avenue; thence North 34 degrees 55' East 400 feet on the Easterly line of Van Buren Street extended; thence North 51 degrees 38' West to the center of Abernethy Creek; thence tracing the center of said creek North 87 degrees 20' West 261 feet to a point where the Easterly line of Jackson Street produced intersects the center of said creek; thence South 34 degrees 55' West 351.6 feet along said Easterly line of Jackson Street extended to the Northerly line of said McLoughlin Avenue; thence North 78 degrees 09' East 101.2 feet along the Northerly line of said McLoughlin Avenue; thence South 54 degrees 38' East to the place of beginning;

EXCEPTING THEREFROM that portion lying South of the North line of that parcel described in Deed to Clackamas County, recorded June 16, 1961 in Book 588, page 183, described as follows:

That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654 being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows:

Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT P:

Beginning at a point in the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, where the Easterly line of Jackson Street produced intersects the same; thence North 34 degrees 55' East 351.6 feet to the center line of Abernethy Creek; thence North 35 degrees 14' West 148.4 feet along the center line of said Abernethy Creek; thence South 34 degrees 55' West 479.7 feet to the Northerly line of McLoughlin Avenue; thence South 74 degrees 59' East 107.7 feet along said North line; thence North 78 degrees 09' East 57 feet along said North line of McLoughlin Avenue to the place of beginning:

EXCEPTING THEREFROM that portion lying South of the North line of that parcel described in Deed to Clackamas County, recorded June 16, 1961 in Book 588, page 183, described as follows: That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654

being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows, to-wit: Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT Q:

Beginning at a point on the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, that is North 79 degrees 24' East 201.00 feet from the intersection of the Easterly line of Madison Street and said Northerly boundary of McLoughlin Avenue; and running thence North 79 degrees 24' East 55.30 feet along the Northerly line of McLoughlin Avenue; thence South 74 degrees 59' East, 533.90 feet along said Northerly line; thence North 34 degrees 55' East 479.7 feet to the center of Abernethy Creek; thence North 35 degrees 14' West along the center of said creek 98.2 feet; thence South 57 degrees West 327 feet along the center of said creek; thence North 74 degrees 54' West 332.7 feet along the center of said creek; thence South 34 degrees 58' West 335 feet to the place of beginning.

Parcel II (22E29CA02400)

Part of the George Abernathy D.L.C. in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point North 83° 15' West 1538.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C., said point marks the Southwesterly corner of a tract conveyed to Antone Klootwyk, et ux, by Correction Deed recorded May 28, 1953 in Book 489, Page 449, Deed Records; thence North 83° 15' West along the North line of Redland Road 72.4 feet; thence North 6° 45' East 62.0 feet; thence North 41° 47' East 46.4 feet; thence South 83° 15' East 45.76 feet to the Northwesterly corner of the aforementioned Klootwyk tract; thence South 6° 45' West along the West line of said Klootwyk tract 100 feet to the point of beginning.

Parcel III: (22E29CA02500)

Tract A:

A tract of land in the George Abernethy D.L.C, in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron bolt in the Northerly boundary of Abernethy Road, said point being North 83° 15' West 1338.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C; thence following the Northerly boundary of said road North 83° 15' West 200.0 feet to an iron pipe; thence North 6° 45' East 100.0 feet to an iron pipe; thence South 83° 15' East 200.0 feet to an iron pipe; thence South 6° 45' West 100.0 feet to the place of beginning.

Tract B:

A parcel of land in the George Abernethy D.L.C., Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron bolt in the Northerly boundary of Abernethy Road, said point being North 83° 15'

West 1338.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; thence North 6° 45' East 100.0 feet to an iron pipe, said point being the true point of beginning; thence North 6° 45' East, 20 feet; thence North 83° 15' West, 231.74 feet; thence South 41°47' West, 24.43 feet; thence South 83° 15' East, 245.76 feet to an iron pipe and the true point of beginning.

Parcel IV: (22029CA02700)

A parcel of land in the County of Clackamas, Oregon; situated in the George Abernathy Donation Land Claim, Section 29, Township 2 South, Range 2 East of the Willamette Meridian, County of Clackamas and State of Oregon, described as follows:

Beginning at the Northwest Corner of the Ezra Fisher Donation Land Claim; thence North 83° 15' West, 1338.0 feet; thence, North 6° 45' East, 43.87 feet to the North Right-of-way Line of County Road No. 354 and the Southeast corner of that certain tract of land conveyed to Clackamas County, recorded June 29, 1968, by Recorder's Fee No. 68-14160, Film Records; thence, North 6° 45' East, 100.00 feet to the Northeast corner thereof; thence, North 6° 45' East, 20.00 feet to the True Point of Beginning and the Northeast corner of a second tract of land conveyed to said Clackamas County, recorded July 25, 1968 by Recorder's Fee No. 68-14034; thence, North 83° 15' West along the North line of said tract 231.74 feet to the Northwesterly corner thereof; thence South 41° 47' West, 24.43 feet to the most Westerly corner thereof; thence South 41° 47' West, 46.40 feet; thence South 6° 45' West, 62.00 feet to the intersection with the North Right-of-way Line of County Road No. 354; thence North 83° 15' West along said road line 30.00 feet, more or less, to the most Southerly Southeast corner of the tract of land described in that certain conveyance from Gustav and Anna Engebrecht to Oregon City and recorded June 4, 1936, in Book 232, on Page 245, Record of Deeds, Clackamas County, Oregon, said Southeast corner being located in the Northerly boundary of Market Road No. 20; thence North 6° 45' East, 62.00 feet; thence North 41° 47' East, 526.78 feet; thence South 6° 45' West, 373.34 feet to the True Point of Beginning.

Parcel V: (22E29DB00900)

Part of the George Abernathy D.L.C. in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of Geo. Abernathy and wife, which is the Northwest corner of the Ezra Fisher D.L.C.; Thence South 81° 15' East 97.2 feet to the land conveyed by J. M. Robertson to Gustav Engebrecht by deed recorded in Book 148, Page 485, Clackamas county Deed Records; thence tracing said Engebrecht's Westerly line North 7° 26' West 438.85 feet to a pipe driven in the center of county road; thence along county road South 61° 56' West 728.7 feet to a stone on the South boundary of the said George Abernathy D.L.C.; thence tracing said claim line South 82° 38' East 604 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within county roads.

Parcel VI: (22E29CC01400)

A part of the Oregon City D.L.C., in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of Geo. Abernathy and wife, which bears North 83° 15' west 1831.1 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; running thence South 6°45' West 250 feet, more or less, to the center of the Abernathy Creek; thence along the center line of said creek North 83° 15' west 50 feet; thence North 6° 45' east 250 feet, more or less, to an iron pipe on the said South line of said Abernathy Claim; thence tracing said line South 83° 15' East 50 feet to the place of beginning;

EXCEPTING THEREFROM that portion lying within Abernathy Creek;



December 10, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement Between the City of Gladstone and Water Environment Services Pertaining to Joint Collection System Work

Purpose/Outcome	Adopt IGA allowing WES and City of Gladstone to partner on I&I reduction project
Dollar Amount and Fiscal Impact	No additional WES expenditures – reimbursed by City of Gladstone
Funding Source	Capital funds as needed
Duration	Length of project or January 1, 2023, whichever is sooner
Previous Board Action/Review	None.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure • Ensure safe, healthy and secure communities
Counsel Review	This IGA was reviewed and approved by County Counsel on December 2, 2020.
Contact Person	Chris Storey, Water Environment Services – Assistant Director

Clackamas Water Environment Services (“WES”) has been coordinating with the City of Gladstone (“City”) to address collection system improvements for the benefit of both parties, specifically at the intersection of the systems and projects relating to inflow and infiltration (“I&I”) into the city’s sewer collection system.

The City is undertaking several projects relating to I&I reduction in response to both system need and a Mutual Agreement and Order (No. WQ/M-NWR2019-038) with the State of Oregon. The City Council also authorized phased in rate increases. The first in January 2020 and the second in January 2021 to meet the requirements of the MOA. The City and WES engineering staff have held conversations and believe that by partnering on this work the parties will realize administrative efficiencies and reduced costs by engaging one engineering consultant to complete Mt. Talbert and Gladstone Infiltration and Inflow Source Identification and Rehabilitation Project

("Project"). The Project involves hiring an engineering consultant to provide engineering services to conduct investigations that will identify I/I sources, design rehabilitation projects to correct the identified I/I sources, acquire permits associated with the rehabilitation projects, provide construction management services during construction, and conduct post rehabilitation flow monitoring and analysis to determine level of I/I reduction in the area tributary to the Mount Talbert Interceptor in Happy Valley and a portion of the City's sewer system.

Under this approach, WES will manage the Project, including construction. As work is completed, WES will invoice the City quarterly and the city shall reimburse expenses accrued related to the work beginning October 1, 2020.

WES staff supports the cost savings and coordinated efforts represented by this approach. The IGA as drafted was approved by the Gladstone City Council on November 10th, 2020.

County Counsel has reviewed and approved this IGA.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioners, acting in their capacity as the governing body of Water Environment Services, authorize and enter into the attached intergovernmental agreement.

Sincerely,

Greg Geist Digitally signed by Greg Geist
Date: 2020.12.02 12:04:38
-08'00'

Greg Geist
Director

Attachments: Form of IGA as approved by Gladstone City Council & related exhibits

**INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF GLADSTONE
AND WATER ENVIRONMENT SERVICES
RELATED TO THE MT. TALBERT AND GLADSTONE INFILTRATION AND INFLOW
SOURCE IDENTIFICATION AND REHABILITATION PROJECT**

THIS AGREEMENT (this "Agreement") is entered into by and between the **City of Gladstone** ("City"), a political subdivision of the State of Oregon, and **Water Environment Services** ("District"), an intergovernmental entity formed pursuant to ORS Chapter 190, collectively referred to as the "Parties" and each a "Party."

RECITALS

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

The District has completed the procurement of the Mt. Talbert and Gladstone Infiltration and Inflow Source Identification and Rehabilitation Project ("Project"). The Project involves hiring an engineering consultant to provide engineering services to conduct investigations that will identify Infiltration and Inflow (I/I) sources, design rehabilitation projects to correct the identified I/I sources, acquire permits associated with the rehabilitation projects, provide construction management services during construction, and conduct post rehabilitation flow monitoring and analysis to determine level of I/I reduction in the area tributary to the Mount Talbert Interceptor in Happy Valley and a portion of the City's sewer system.

The District and the City would like to take advantage of administrative efficiencies and cost effectiveness by engaging one engineering consultant to complete the Project for both Parties.

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

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or January 1, 2023, whichever is sooner.
2. **Rights and Obligations of the City.**
 - A. The City agrees to provide "District-Provided Services" and "General Assumptions" as applicable to Tasks 3 Gladstone Existing Data Review and SSES Planning and Tasks 6 Gladstone Field Work and I/I Source Investigation of the Project ("City Work"), as more specifically described in Exhibit "A" ("Work"), attached hereto and incorporated herein.
 - B. The District shall invoice quarterly and the City shall reimburse expenses accrued relating to the Work beginning on or about October 1st, 2020. The estimated full cost of the City Work, approximately \$461,822.00, shall be paid in full at completion of the Project, currently estimated on January 1, 2023. The parties agree that, irrespective of the above estimate, the City shall be fully responsible for all costs

relating to the City Work and such amount will be paid to District on or before January 1, 2023, unless the City Work is not yet complete, in which case full payment will be made 30 days after completion of the City Work. If, during the term of the Agreement, the City notifies District that reimbursements required under this Agreement may impair the City's ability to perform work planned under either its current Memorandum of Agreement and Order with the Oregon Department of Environmental Quality, or the City's adopted Capital Improvement Plan regarding sanitary or surface water infrastructure, then the parties agree that they shall hold discussions regarding the timing of the reimbursements contemplated under this Agreement.

3. Rights and Obligations of the District.

- A. The District hereby agrees to pay the full cost of the Work to the consultant, subject to reimbursement for the City Work pursuant to Section 2 above.
- B. The District agrees to provide "District-Provided Services" and "General Assumptions" as applicable to Tasks 1, 2, 4, 5, and 7 of the Project ("District Work"), as more specifically described in Exhibit "A."

4. Work Plan and Project Schedule.

- A. It is the desire of both Parties to complete the Project as soon as practicable, if possible prior to January 1, 2023.
- B. In the event any part of the Work is unable to be completed by January 1, 2023, the Parties may mutually agree in writing to adjust the Work timeline and this Agreement, or modify or terminate the Project as necessary. In the event of alterations to the Work, other terms of this Agreement shall remain in effect except for mutually agreed upon changes. In no event shall the City claim any damages, monetary or otherwise, resulting from the District's failure to complete the Project by January 1, 2023.

5. Representations and Warranties.

- A. *District Representations and Warranties:* District represents and warrants to City that District has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of District enforceable in accordance with its terms.
- B. *City Representations and Warranties:* City represents and warrants to District that City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of City enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the City or the District may terminate this Agreement at any time upon thirty (30) days written notice to the other party.

- B. Either the City or the District may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The City or the District shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either Party may terminate this Agreement in the event the Party fails to receive expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Agreement is prohibited or the the Party is prohibited from paying for such Work from the planned funding source.
- E. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- F. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination. Specifically, the City shall be obligated to pay District for all City Work that occurred prior to the termination and any costs arising from the City's termination of the Agreement and/or the ceasing of the City Work and District shall be required to complete all work previously paid for by City.

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the District, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts or omissions of the City or its officers, elected officials, owners, employees, volunteers, agents, or its subcontractors or anyone over which the City has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the District agrees to indemnify, save harmless and defend the

City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts or omissions of the District or its officers, elected officials, owners, employees, volunteers, agents, or its subcontractors or anyone over which the District has a right to control.

8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.
 - A. Jim Whynot, Public Works Director or designee will act as liaison for the City for the Project.

Contact Information:

City of Gladstone
18595 Portland Ave.
Gladstone, Or 97027
503-479-6866
whynot@ci.gladstone.or.us

Jessica Rinner or designee will act as liaison for the District for the Project.

Contact Information:

Water Environment Services
150 Beaver Creek Road
Oregon City, OR 97045
(503) 742-4551
jrinner@clackamas.us

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between City and District that arises from or relates to this Agreement shall be brought and conducted solely and

exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the City of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. District, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** Each Party shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Each Party shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, each Party shall permit the other Party's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** District and City are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- K. **Subcontract and Assignment.** Except as specifically contemplated herein, neither Party may enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall not be unreasonably withheld. A Party's consent to any subcontract shall not relieve the other Party of any of its duties or obligations under this Agreement.
- L. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- M. **Survival.** All provisions in sections 7, 9, and 10 shall survive the termination of this Agreement.
- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

- O. **Time is of the Essence.** City and District agree that time is of the essence in the performance this Agreement.
- P. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- Q. **Force Majeure.** Neither District nor City shall be held responsible for delay or default caused by events outside of the District or City's reasonable control including, but not limited to, fire, terrorism, riot, pandemic, epidemic, acts of God, or war. However, each Party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- R. **Confidentiality.** Each Party acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information from the other Party. Each Party shall be responsible for identifying such Confidential Information to the other Party. The Parties agree to hold Confidential Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement. The Parties acknowledge that each Party is subject to the Oregon Public Records law, and is responsible for responding to any public records request it receives, to the extent that it has access to the records requested, including responsibility for evaluating and appropriately handling the confidentiality of the information. In the event a Party receives a public records request for Confidential Information obtained in the course of performing its responsibilities under this Agreement, the Party receiving the request shall notify the other Party in time sufficient to permit the other Party to intervene or otherwise protect its interest.

[Signature Page Follows]

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

City of Gladstone



Authorized Signatory
11/17/20

Date

Water Environment Services

Chair

Date

Approved as to Form:



County Counsel

Exhibit A
STATEMENT OF WORK



**WATER ENVIRONMENT SERVICES
PERSONAL SERVICES CONTRACT
Contract # 3168**

This Personal Services Contract (this "Contract") is entered into between **Leeway Engineering Solutions, LLC** ("Contractor"), and Water Environment Services, a political subdivision of the State of Oregon ("District").

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 **September 1, 2021**.
2. **Scope of Work.** Contractor shall provide the following personal services: **Mt. Talbert and Gladstone Infiltration and Inflow Source Identification and Rehabilitation Project, Tasks 1 and 2** ("Work"), further described in the Mutually Agreed upon Scope of Work, **Exhibit A**. This Contract is authorizing the first two tasks outlined in the Request For Proposals ("RFP") for this project during this initial phase. Any additional tasks beyond 1 and 2 identified in the RFP will be authorized in the future through an amendment in accordance with the terms of this Contract.
3. **Consideration.** The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed one million, ninety thousand and fifty two dollars (**\$1,090,052.00**), for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in **Exhibit B**. 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. **Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. 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 invoices shall include the total amount billed to date by Contractor prior to the current invoice. 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 in accordance with ORS 293.462 to Contractor following the District's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the District will not be obligated to 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.

Invoices shall reference the above Contract Number and be submitted to: **Jessica Rinner**.

5. **Travel and Other Expense.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
6. **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, Exhibit A, and Exhibit B.

7. Contractor and District Contacts.

Contractor	District
Administrator: Rob Lee Phone: 503-828-7542 Email: rob.lee@leewayengineeringsolutions.com	Administrator: Jessica Rinner Phone: 503-742-4551 Email: jrinner@clackamas.us

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 will subject Contractor payments to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and 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. Contractor shall maintain such books and records for a minimum of six (6) 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 FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the District in its sole administrative discretion.
- 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 applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County 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. In no event shall this section be construed as a waiver by the District of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be

caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend Clackamas County and the District, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of District or any department of District, nor purport to act as legal representative of District or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for District, nor shall Contractor settle any claim on behalf of District without the approval of the Clackamas County Counsel's Office. District may, at its election and expense, assume its own defense and settlement.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the District 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, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the District and Clackamas County as an additional insureds on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it. Any obligation that District agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** 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. Except for liability arising under or related to Article II, Section 13 or Section 20 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.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to District, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during District's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, District shall have no rights in any pre-existing Contractor intellectual property provided to District by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for District use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District 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) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; (E) the Work under this Contract shall be performed in the same professional skill, care, diligence and standards as other professionals performing similar services under similar conditions; The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided; and (F) the Contractor shall be responsible for the technical accuracy of its services and documents resulting therefrom, and District shall not be responsible for discovering deficiencies therein. The Contractor shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in information furnished by the District.
- 14. 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, Sections 1, 6, 7, 11, 13, 14, 16, 21 and 27, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the District'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.
- 15. 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.

16. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the District, which shall be granted or denied in the District's sole discretion. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

17. 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.

18. TAX COMPLIANCE CERTIFICATION. The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

19. TERMINATIONS. This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the District (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the District fails to receive funding, appropriations, or other expenditure authority as solely determined by the District; or (B) if contractor breaches any Contract provision or is declared insolvent, District may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the District, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to District all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research, objects or other tangible things needed to complete the Work

20. REMEDIES. If terminated by the District due to a breach by the Contractor, then the District shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the District, less any setoff to which the District is entitled.

21. NO THIRD PARTY BENEFICIARIES. District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

22. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance this Contract.

23. 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.

- 24. FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by events outside the District or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling District to terminate this Contract for cause.
 - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
- 27. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
- 28. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the District is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the District is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the District provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the District with such Key Person's services unless the District provides prior written consent to such reassignment or transfer.
- 29. MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND

FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Leeway Engineering Solutions, LLC

 07/01/2020

Authorized Signature Date

Robert Lee / Principal Owner

Name / Title (Printed)

1616703.94 DLLC / Oregon

Oregon Business Registry #

Water Environment Services



Chair


Recording Secretary

7-16-2020
Date

Approved as to Form:

 7/7/2020
County Counsel Date

EXHIBIT A
MUTUALLY AGREED UPON SCOPE OF WORK



Attachment A

Scope of Services

Clackamas Water Environment Services, Clackamas County, Oregon

Mount Talbert and Gladstone Infiltration and Inflow Source Identification and Rehabilitation Program

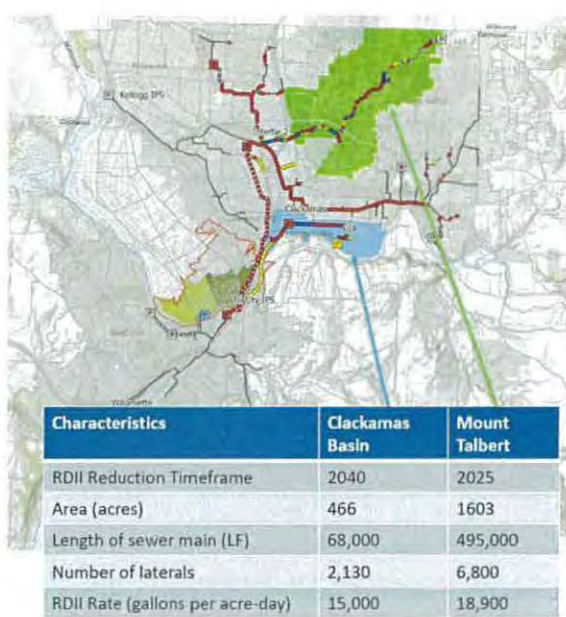
Background

In partnership with member cities, the District provides wastewater conveyance and treatment services to over 190,000 people in Clackamas County. The member cities, Gladstone, Milwaukie, Oregon City and West Linn, manage the collection systems within their jurisdictional boundaries and pay fees for downstream conveyance and treatment. The District owns and operates 23 wastewater pumping stations and 340 miles of sewer pipes. The District recently completed a Collection System Master Plan (“CSMP”) (Jacobs Engineering, 2019). The CSMP identifies 19 areas with excessive rates of I/I into the sewer system that can be cost-effectively reduced and recommends reducing the I/I in these areas by 65% over the next 20 years.

Clackamas Water Environment Services (District) is in the early stages of developing an infiltration and inflow (I/I) program aimed at reducing peak wet-weather flows into their wastewater collection system and treatment facilities.

This project is focused on identifying I/I sources with the ultimate goal of achieving 65% reduction of peak wet-weather I/I in two areas within the District’s service area; the Mount Talbert area and a portion of the City Gladstone (Gladstone), one of the District’s member communities that contributes wastewater flows to the District’s Tri-Cities Water Resources Recovery Facility (WRRF).

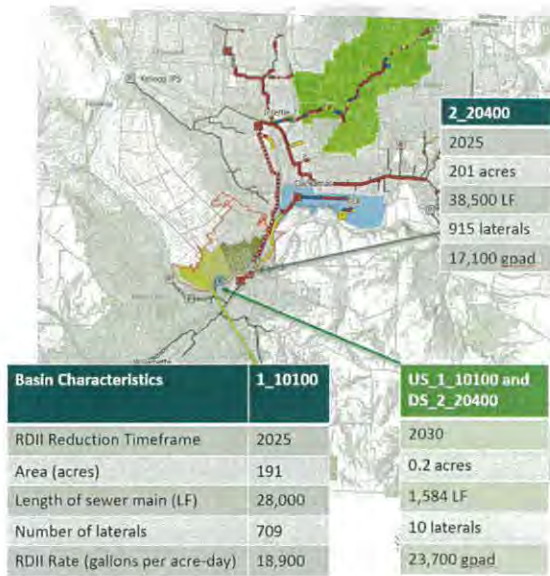
The figures and table below illustrate the Mount Talbert and Gladstone areas. Flow monitoring work previously conducted by the District utilized a combination of temporary and permanent flow meters to subdivide the Mount Talbert area into 13 smaller subbasins.



Site/ Basin	Pipe Diameter (in)	Means of Determining Net Basin Flow	Net Tributary Area (acres)	Net Tributary Pipe Length (feet)	Gross ADDF Weekday (mgd)	Net ADDF Weekday (mgd)
CLA HV1-2	8		156	24,240	0.08	0.08
CLA HV16-1A	8		177	23,907	0.09	0.09
CLA HV20-1	8		106	17,104	0.07	0.07
CLA HV5	18	+HV5 - HV51	407	54,515	0.54	0.16
CLA HV51	15	+HV51 - HV16-1A - HV20-1 - HV68	370	46,087	0.39	0.10
CLA HV68	12		224	36,419	0.13	0.13
CLA KT2	8		264	23,426	0.21	0.21
CLA KT2NE	10	+KT2NE - MT2-2-1 - MT2-9	53	8,402	0.39	0.20
CLA MT2-2-1	8		115	20,722	0.09	0.09
CLA MT2-9	8		185	27,560	0.10	0.10
CLA S10-6	8		192	32,915	0.12	0.12
CLA S197	8		196	33,064	0.15	0.15
CLA S208	12	+S208 - S10-6 - S197	186	28,890	0.41	0.13

A total of 13 temporary flow meters and 2 District permanent flow meters (HV 36 and MT 240) have data available for analysis.

The City of Gladstone area tributary to the Gladstone PS (and therefore to the Tri City WRRF) has been divided into 3 subbasins and is shown in the figure below. These 3 subbasins are included in this project.



Leeway Engineering Solutions, LLC (LW) shall provide services to detect sources of I/I, evaluate improvement options, and recommend priority improvements to the collection systems in these two areas.

Project Team

Leeway Engineering Solutions (LW) shall serve as the Prime Consultant for the Project, utilizing the following key staff:

Key Staff	Role
Rob Lee, PE, PMP	Project Manager
Yarrow Murphy, PE	Data Analysis Lead

The following Subconsultant firms shall support LW:

Subconsultant	Key Staff	Role
Kennedy Jenks	Dean Wood	Principal in Charge
Kennedy Jenks	Kathy Fretwell	Quality Control Manager
Kennedy Jenks	Dana Devin-Clarke, PE	Field Work Lead
Kennedy Jenks	Jana Otero, EIT	Field Work Support
Kennedy Jenks	Patrick Finn, EIT	Field Work Support
Smoke-testing firm (TBD)	TBD	Inflow source detection
CCTV firm (TBD)	TBD	Pipe and manhole inspection and dye testing

District-Provided Services

This scope assumes that the District will be acting on behalf of the City of Gladstone. The City of Gladstone will provide services via a separate agreement with the District.

- District will provide known GIS files relevant to the project
- District will provide available data within 10 business days of request
- District staff will provide institutional or operational knowledge of the system’s response to wet-weather

- District staff with knowledge of system maintenance and operations will be available to participate in staff interviews with advance notice.
- District will identify any known capacity or O&M-related restrictions in the basins that might hinder I/I investigations
- District and City of Gladstone staff, as appropriate, will attend workshops and meetings
- District will review deliverables within 10 business days of receiving them from the Consultant team
- District will lead public outreach and notification efforts (web-based notifications)
- District will provide guidance on interactions with property owners, including providing available past examples of field work public notifications

General Assumptions

- Tasks 3 and 6 will occur only if an Intergovernmental Agreement between the District and the City of Gladstone is executed.
- Required field investigations per basin are assumed using information provided as part of the Request for Proposals and shall be refined during Tasks 2 and 3 (Data Review) of the project
 - Costs for specialized subconsultants are assumed on a unit cost basis (i.e., per linear foot) and an assumed subbasin length of pipe for basins assumed to require those inspection techniques
- All Technical Memoranda (TM) shall be provided in MS Word and PDF format
- Hard copies of the draft and final TMs are not required and shall not be provided
- Deliverables, meeting/workshop agendas, and other materials shall be provided no less than five (5) working days prior to the meeting/workshop
- Meeting/workshops shall be conducted at District facilities or virtually using video conferencing.
- Meeting minutes shall be provided within five (5) working days following meeting/workshops.
- Project duration of 13 months.

Scope of Work

The Scope of Work for the Project is divided into the following tasks:

Task 1	Project Management
Task 2	Mt Talbert Existing Data Review and SSES Planning
Task 3	Gladstone Existing Data Review and SSES Planning
Task 4	Mt. Talbert HV68 and HV5 2021 Additional Flow Metering, Data Review, and SSES Planning (Owner-Authorization Required)
Task 5	Mt Talbert Field Work and I/I Source Investigation
Task 6	Gladstone Field Work and I/I Source Investigation
Task 7	Quality Management

Task 1. Project Management

Objective: Provide and perform project administration and management activities required for Project completion.

Activities: This Task includes technical and financial management, including the following:

- Project Management Plan – develop and submit a Project Management Plan (PMP) including scope, work plan, budget, schedule, and staffing plan.
- Project Monitoring – track and manage Project scope, schedule, and budget, including monthly forecasts of Earned Value and Estimate-to-Complete.
- Project Reporting and Invoicing – prepare monthly progress reports to be submitted with invoices. Monthly progress reports shall include task level budget status.
- Meetings – planned meetings include:
 - Kickoff meeting
 - Regularly scheduled monthly progress calls with District Project Manager

Deliverables: Progress updates, project status reports, variance reports, decision log and schedule updates submitted monthly, meeting agendas, meeting materials, meeting minutes, and monthly invoices

Assumptions: This Task assumes the following assumptions:

- Kickoff shall be held at District offices or by teleconference

Task 2. Mt Talbert Existing Data Review and SSES Planning

Objective: Gather and review available existing data for the Mount Talbert area to develop and present recommendations for the sanitary sewer evaluation survey (SSES) plan.

Activities: This Task includes the following activities:

- Conduct staff interviews – Consultant shall create maps and conduct interviews with District staff who are knowledgeable with the facilities and their problem areas.
- Develop Data Request and Gather Available Existing Data – The data required will include, but may not be limited to the following:
 - District GIS files for collection system and other background data
 - Flow monitoring data
 - CCTV or smoke-testing data conducted in the last 5 years
 - Lucity or other work order information pertaining to any repairs, maintenance activities, or reported overflows within the last 10 years
- Review Flow Data – Review flow data to characterize each subbasin's response to wet-weather events. Conduct hydrograph analysis on all temporary and permanent flow meter to identify suspected sources of I/I and recommend investigation techniques. Hydrograph analysis shall include three (3) discrete wet-weather events during the past monitoring period (raw data) plus hydrographs generated from the District's CSMP model under peak wet-weather flow conditions.
- Develop Recommendations for SSES Field Work – Develop recommendations for SSES field work from a suite of SSES tools including smoke testing, CCTV and manhole inspections, dye testing, trunk walks and trunk manhole inspections. Field

subcontractors and the internal team shall be solicited for cost estimates and workload. Investigation options shall be summarized by benefits, costs and risks for each option and subbasin, with a recommended plan and schedule.

- Private Property Outreach and Access Planning – Consultant shall develop and provide technical information in support of the public outreach required for private property outreach and access.
- TM#1-A, Mt. Talbert Sanitary Sewer Evaluation Study Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the Mt. Talbert Data Review and SSES Recommendations, including recommended investigation tools, workplan, costs, and public outreach requirements by subbasin.

Deliverables: Deliverables completed under this Task shall include:

- Draft and Final TM#1-A

Assumptions: This Task assumes the following:

- Task 2 shall be implemented concurrently with Task 3

Task 3. Gladstone Existing Data Review and SSES Planning

Objective: Gather and review available existing data to develop and recommend the sanitary sewer evaluation survey (SSES) plan for Gladstone basins 1_10100, 2_20400, and US_1_10100 and DS_2_20400.

Activities: This Task includes the following activities:

- Conduct staff interviews – Consultant shall create maps and conduct interviews with Gladstone staff who are knowledgeable with the facilities and their problem areas.
- Develop Data Request and Gather Available Existing Data – The data required will include, but may not be limited to the following:
 - City of Gladstone GIS for collection system and other background data
 - Flow monitoring data
 - CCTV or smoke-testing data conducted in the last 5 years
 - Records of work completed in last 10 years
- Review Data – Review flow data to characterize each subbasin's response to wet-weather events. Conduct hydrograph analysis on all temporary and permanent flow meter to identify suspected sources of I/I and recommend investigation techniques. Hydrograph analysis shall include three (3) discrete wet-weather events during the past monitoring period (raw data) plus data generated from the City's SSMP model under peak wet-weather flow conditions.
- Develop Recommendations for SSES Field Work – Develop recommendations for SSES field work from a suite of SSES tools including smoke testing, CCTV and manhole inspections, dye testing, trunk walks and trunk manhole inspections. Field subcontractors and the internal team shall be solicited for cost estimates and workload. Investigation options shall be summarized by benefits, costs and risks for each option and subbasin, with a recommended plan and schedule.
- Private Property Outreach and Access Planning – The City of Gladstone will lead the private property outreach and communication tasks. Consultant shall develop and

provide technical information in support of the City of Gladstone developing public outreach requirements prior to implementing the SSES Plan.

- o TM#1-B, Gladstone Sanitary Sewer Evaluation Study Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the City of Gladstone Data Review and SSES Recommendations, including recommended investigation tools, workplan, anticipated costs, and public outreach requirements by subbasin.

Deliverables: Deliverables completed under this Task shall include:

- o Draft and Final TM#1-B

Assumptions: This Task assumes the following:

- o Task 3 shall be implemented concurrently with Task 2

Task 4. Mt. Talbert HV68 and HV5 2021 Additional Flow Metering, Data Review, and SSES Planning (Owner-Authorization Required)

Objective: This Task shall further delineate the two largest subbasins in the Mt. Talbert area by flow metering and field work to investigate and identify I/I sources. This Task shall require District authorization if the District determines it to be necessary resulting from the findings of Task 2.

Activities: This Task includes the following activities:

- o Micro-metering – Consultant shall delineate subbasins HV68 and HV5 into smaller basins (of ideally 25,000 LF of sewer or less), select appropriate metering locations, and subcontract with a flow metering firm to install and monitor flows during the wet season (November 2020 to Feb 2021). For the purposes of budgeting, 2 meters in HV68 and 3 meters in HV5 for 5 months is assumed at \$3500 per meter per month.
- o Flow Data Review – Consultant shall conduct a review of collected information to characterize each subbasin's response to wet-weather events. Hydrograph analysis shall be conducted to develop recommendations on the suspected sources of I/I and the corresponding investigation techniques. Hydrograph analysis shall include 5 different wet-weather events during the monitoring period.
- o Develop Recommendations for SSES Field Work – Consultant shall develop recommendations using the suite of SSES tools including smoke testing, CCTV and manhole inspections, dye testing, trunk walks and trunk manhole inspections. Field subcontractors and the internal team shall be solicited for cost estimates and workload. Investigation options shall be summarized by benefits, costs and risks for each option and subbasin, with a recommended plan and schedule.
- o TM#1-A-1, Mt. Talbert HV68 and HV5 Sanitary Sewer Evaluation Study Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the HV68 and HV5 Data Review and SSES Recommendations, including recommended investigation tools, workplan, costs, and public outreach requirements by subbasin.

Deliverables: Deliverables developed under this Task shall include:

- o Micro-metering plan
- o Flow monitoring results and report

- Draft and Final TM#1-A-1

Assumptions: This Task assumes the following:

- District will provide access to flow monitoring locations.
- District will clean pipes upstream and downstream of flow monitoring locations.

Task 5. Mt. Talbert Field Work and I/I Source Identification

Objective: To conduct field work identified in Task 2 to investigate and identify I/I sources in the Mount Talbert area and use the results of the investigations to recommend future system improvements to cost-effectively remove sources of I/I.

Activities: This Task includes the following activities:

- Finalize SSES Workplan – Consultant shall finalize the SSES Workplan, procure and contract with field work subconsultants, develop schedule, and coordinate public notifications with the District. A data management plan shall be developed and in place during the field investigations. This plan shall be used to manage and review field data on an on-going basis as it is collected and in proper format, such as CCTV quality control checks of PACP coding and smoke-testing findings.
- Implement SSES Workplan Field Investigations – Consultant shall implement the finalized and approved recommendations from Task 2, Mt. Talbert Existing Data Review and SSES Planning. A 2-week look ahead schedule shall be provided weekly as part of the implementation. The following investigations are anticipated:
 - **Stream corridor walks** shall be conducted for the entire Mt. Talbert basin and document findings. Leeway and Kennedy Jenks staff shall self-perform this effort.
 - **Smoke testing** shall be conducted for basins that indicate a high peak inflow potential.
 - **CCTV** shall be conducted for basins that indicate a high peak infiltration potential.
 - **Dye testing** shall be conducted during CCTV investigations to validate smoke testing results.
- Public Notification – Consultant field teams shall provide individual notifications to property owners during field activities. Notifications shall include an advance door hangers (developed in Task 2) 24 to 48 hours in advance of private property impacts (e.g., smoke-testing, dye-testing, access through sewer easements, etc.) and a second door hanger left upon completion of the field activities. No door hangers shall be left for CCTV activities conducted solely within the ROW.
- SSES Documentation and Data Management – Consultant shall compile and review findings of field investigations. All CCTV with PACP Grade 4 or 5 defects (or equivalent, per engineering judgment) shall be reviewed. Data shall be provided to the District in geodatabase format. All I/I source findings (e.g., smoke-emissions, CCTV data, manhole defects, etc.) shall be tied to an existing District GIS asset (e.g., sewer main, catch basin, tax parcel, manhole, etc.). Data shall be provided as a GIS geodatabase.
- Develop Recommendations for I/I Source Removal – Consultant shall develop a list of recommendations, priority, and costs for addressing the I/I sources. Costs shall be developed at an accuracy per AACE Level 3 estimates.

- TM#2-A, Mt. Talbert SSES Findings and Rehab Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the field investigation findings and project recommendations by subbasin.

Deliverables: Deliverables developed under this Task shall include:

- Geodatabase of SSES Results
- Geodatabase of recommended projects
- Draft and Final TM#2-A

Assumptions: This Task assumes the following:

- Field investigations are based on the following estimated footages and unit costs:
 - **Stream corridor walks** shall be conducted for the entire Mt. Talbert basin. Approximately 8 days of stream walks shall be conducted by a 2-person team.
 - **Smoke testing** shall be conducted for 48,000 linear feet of sewer mains in 3 subbasins (KT2NE, KT2, HV20-1). A budgetary cost of \$1.75 per linear foot is assumed for the smoke-testing subcontractor. Initial review of temporary flow metering data indicate the following basins shall have smoke testing conducted: KT2NE, KT2, HV20-1. Upon completion of Task 2 more subbasins may be recommended for smoke testing.
 - **CCTV** shall be conducted for 72,000 linear feet of sewer mains in 4 subbasins (KT2NE, KT2, HV16-1A, HV20-1). A budgetary cost of \$2.50 per linear foot is assumed for cleaning and CCTV subcontractor. Initial review of temporary flow metering data indicate the following basins shall have CCTV inspections conducted: KT2NE, KT2, HV16-1A, HV20-1. Upon completion of Task 2 more subbasins may be recommended for CCTV inspection.
 - **Dye testing** shall be conducted for 5,000 linear feet of sewer mains in 3 subbasins (KT2NE, KT2, HV20-1). A budgetary cost of \$1.50 per linear foot is assumed for the dye-testing subcontractor. This footage may change after the completion of Task 2.
- Field investigations in Task 5 shall be conducted concurrently with field work in Task 6.
- 80 video segments (i.e., 25% of the sewer mains inspected) are assumed to have PACP Grade 4/5 defects and shall require review.
- Private property I/I source removal shall be included in recommendations and clearly identified as private property.

Task 6. Gladstone Field Work and I/I Source Identification

Objective: To conduct field work identified in Task 3 to investigate and identify I/I sources in the City of Gladstone area and use the results of the investigations to recommend future system improvements to cost-effectively remove sources of I/I.

Activities: This Task includes the following activities:

- Finalize SSES Workplan – Consultant shall finalize the SSES Workplan, procure and contract with field work subconsultants, develop schedule, and coordinate public notifications with the District and the City of Gladstone. A data management plan shall be developed and in place during the field investigations. This plan shall be used to manage and review field data on an on-going basis as it is collected and in proper format, such as CCTV quality control checks of PACP coding and smoke-testing findings.

- Implement SSES Workplan Field Investigations – Consultant shall implement the finalized and approved recommendations from Task 3, Gladstone Existing Data Review and SSES Planning. A 2-week look ahead schedule shall be provided weekly as part of the implementation. The following investigations are anticipated:
 - **Smoke testing** shall be conducted for basins that indicate a high peak inflow potential.
 - **CCTV** shall be conducted for basins that indicate a high peak infiltration potential.
 - **Dye testing** shall be conducted during CCTV investigations to validate smoke testing results.
- Public Notification – Consultant field teams shall provide individual notifications to property owners during field activities. Notifications shall include an advance door hanger (developed in Task 3) 24 to 48 hours in advance of private property impacts (e.g., smoke-testing, dye-testing, access through sewer easements, etc.) and a second door hanger left upon completion of the field activities. No door hangers shall be left for CCTV activities conducted solely within the ROW.
- SSES Documentation and Data Management – Consultant shall compile and review findings of field investigations. All CCTV with PACP Grade 4 or 5 defects (or equivalent, per engineering judgment) shall be reviewed. Data shall be provided to the District in geodatabase format. All I/I source findings (e.g., smoke-emissions, CCTV data, manhole defects, etc.) shall be tied to an existing District GIS asset (e.g., sewer main, catch basin, tax parcel, manhole, etc.). Data shall be provided as a GIS geodatabase.
- Develop Recommendations for I/I Source Removal – Consultant shall develop a list of recommendations, priority, and costs for addressing the I/I sources. Costs shall be developed at an accuracy per AACE Level 3 estimates.
- TM#2-B, Gladstone SSES Findings and Rehab Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the field investigation findings and project recommendations by subbasin.

Deliverables: Deliverables developed under this Task shall include:

- Geodatabase of SSES Results
- Geodatabase of recommended projects
- Draft and Final TM#2-B

Assumptions: This Task assumes the following:

- Field investigations are based on the following estimated footages and unit costs:
 - **Smoke testing** shall be conducted for 68,000 linear feet of sewer mains in 3 subbasins (1_10100, 2_20400, and US_1_1_10100 and DS_2_2_20400) is assumed for smoke testing. A budgetary cost of \$1.75 per linear foot is assumed for the smoke-testing subcontractor.
 - **CCTV** shall be conducted for 68,000 linear feet of sewer mains in 3 subbasins (1_10100, 2_20400, and US_1_1_10100 and DS_2_2_20400) is assumed for smoke testing. A budgetary cost of \$2.50 per linear foot is assumed for cleaning and CCTV subcontractor.
 - **Dye testing** shall be conducted for 7,000 linear feet of sewer mains in 3 subbasins (1_10100, 2_20400, and US_1_1_10100 and DS_2_2_20400) is assumed for

confirmation dye testing. A budgetary cost of \$1.50 per linear foot is assumed for the dye-testing subcontractor.

- Field investigations in Task 6 shall be conducted concurrently with field work in Task 5.
- 75 video segments (i.e., 25% of the sewer mains inspected) are assumed to have PACP Grade 4/5 defects and shall require review.
- Private property I/I source removal shall be included in recommendations and clearly identified as private property.

Task 7. Quality Management

Objective: To develop and implement a plan that focuses on and emphasizes quality throughout the execution of the Project.

Activities: This Task includes the following activities:

- Develop and follow a Quality Management Plan (QMP) for the project to be included in the PMP.
- Conduct quality reviews of all technical analyses, presentations and minutes, TMs, subconsultant deliverables, etc. and address review comments prior to submission in accordance with the QMP.
- For major work products (Technical Memoranda) develop a Comment Log to document District comments and Consultant responses.

Deliverables: Deliverables completed under this Task shall include:

- Quality Management Plan
- Comment Log

Assumptions: This Task assumes the following:

- None

Level of Effort Estimate

LW proposes to complete this work as detailed above on a time and expenses basis summarized on the attached Level of Effort estimate. This “not-to-exceed” amount is based on this scope of work and shall not be exceeded without approval and written authorization by the District.

EXHIBIT B
FEE SCHEDULE

**MT. TALBERT AND GLADSTONE I/I SOURCE IDENTIFICATION AND REHABILITATION PROJECT
CLACKAMAS COUNTY WATER ENVIRONMENT SERVICES
PROPOSED LEVEL OF EFFORT**

	LeeWAY		Hours	Labor	Expenses	Subconsultants										Subconsultant Multiplier	Subconsultant Total with Markup	Total	
	Principal Engineer RKL \$190.00	Professional Engineer YMM \$160.00				Kennedy Jenks DDC \$140.00	Kennedy Jenks JO/PF \$111.00	Kennedy Jenks MH/RP \$185.00	Kennedy Jenks DW/KF \$230.00	Kennedy Jenks Admin \$98.00	Kennedy Jenks Expenses	Kennedy Jenks Subtotal	Smoke-Testing Firm	CCTV and Dye-Testing Firm	Flow Monitoring				
Task 1 - Project Management																			
Project Management Plan	8	12	20	\$ 3,440	\$ -	0	0	0	0	0	0	\$ -	\$ 1,840				1.05	\$ 1,932	\$ 5,372
Project Monitoring	24	7	30	\$ 5,505	\$ -	12	0	0	0	0	0	\$ -	\$ 1,680				1.05	\$ 1,764	\$ 7,269
Project Reporting and Invoicing	18	20	38	\$ 6,540	\$ 69	4	0	0	18	0	0	\$ -	\$ 4,700				1.05	\$ 4,935	\$ 11,544
Task 1 Subtotal	50	38	88	\$ 15,485	\$ 69	16	0	0	26	0	0	\$ -	\$ 8,220	\$ -	\$ -	\$ -		\$ 8,531	\$ 24,185
Task 2 - Mt Talbert Existing Data Review and SSES Planning																			
Conduct Staff Interviews	6	9	15	\$ 2,580	\$ 35	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 2,615
Develop Data Request and Gather Existing Data	4	8	12	\$ 2,040	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 2,040
Review Data	20	40	60	\$ 10,200	\$ -	20	40	0	0	0	0	\$ -	\$ 7,240				1.05	\$ 7,602	\$ 17,802
Develop SSES Recommendations	10	18	28	\$ 4,780	\$ -	14	14	0	0	0	0	\$ -	\$ 3,514				1.05	\$ 3,690	\$ 8,470
Private Property Outreach and Access Planning	6	6	12	\$ 2,100	\$ -	4	4	0	0	0	0	\$ -	\$ 1,004				1.05	\$ 1,054	\$ 3,154
TM#1-A	12	32	44	\$ 7,400	\$ -	2	0	0	2	0	0	\$ -	\$ 740				1.05	\$ 777	\$ 8,177
Task 2 Subtotal	58	113	171	\$ 29,100	\$ 35	40	58	0	2	0	0	\$ -	\$ 12,498	\$ -	\$ -	\$ -		\$ 13,123	\$ 42,257
Task 3 - Gladstone Existing Data Review and SSES Planning																			
Conduct Staff Interviews	6	9	15	\$ 2,580	\$ 35	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 2,615
Develop Data Request and Gather Existing Data	4	8	12	\$ 2,040	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 2,040
Review Data	7	14	21	\$ 3,370	\$ -	12	12	0	0	0	0	\$ -	\$ 3,012				1.05	\$ 3,163	\$ 6,733
Develop SSES Recommendations	10	18	28	\$ 4,780	\$ -	14	14	0	0	0	0	\$ -	\$ 3,514				1.05	\$ 3,690	\$ 8,470
Private Property Outreach and Access Planning	6	6	12	\$ 2,100	\$ -	4	4	0	0	0	0	\$ -	\$ 1,004				1.05	\$ 1,054	\$ 3,154
TM#1-B	12	32	44	\$ 7,400	\$ -	2	0	0	2	0	0	\$ -	\$ 740				1.05	\$ 777	\$ 8,177
Task 3 Subtotal	45	87	132	\$ 22,470	\$ 35	32	30	0	2	0	0	\$ -	\$ 8,270	\$ -	\$ -	\$ -		\$ 8,684	\$ 31,188
Task 4 - Mt. Talbert HV68 and HV5 2021 Additional Flow Metering, Data Review, and SSES Planning (Owner-Authorization Required)																			
Micro-Metering	8	8	16	\$ 2,800	\$ 55	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ -
Flow Data Review and Hydrograph Analysis	12	30	42	\$ 7,080	\$ -	0	0	0	0	0	0	\$ -	\$ -	\$ 87,500			1.05	\$ 91,875	\$ 94,730
SSES Field Work Recommendations	10	18	28	\$ 4,780	\$ -	4	4	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 4,780
Private Property Outreach and Access Planning	12	24	36	\$ 6,120	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 6,120
TM#1-A-1	12	24	36	\$ 6,120	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 6,120
Task 4 Subtotal	42	80	122	\$ 20,780	\$ 55	0	0	0	0	0	0	\$ -	\$ -	\$ -	\$ 87,500	\$ -		\$ 91,875	\$ 112,710
Task 5 - Mt Talbert Field Work and I/I Source Identification																			
SSES Workplan and Data Management Plan	12	6	18	\$ 3,240	\$ -	12	0	0	0	0	0	\$ -	\$ 1,680				1.05	\$ 1,764	\$ 5,004
Implement Field Investigations	32	0	32	\$ 6,080	\$ -	32	0	0	0	0	0	\$ 800	\$ 5,280				1.05	\$ 5,544	\$ 11,824
Stream Corridor Walks	72	0	72	\$ 13,680	\$ 356	8	72	0	0	0	0	\$ -	\$ 9,112				1.05	\$ 9,568	\$ 23,604
Smoke Testing	54	0	54	\$ 10,260	\$ 217	40	60	0	0	0	0	\$ -	\$ 12,260	\$ 84,000			1.05	\$ 101,073	\$ 111,550
CCTV	29	0	29	\$ 5,510	\$ 183	20	60	0	0	0	0	\$ -	\$ 9,460	\$ 180,000			1.05	\$ 198,933	\$ 204,626
Dye Tasting	9	0	9	\$ 1,710	\$ 45	4	24	0	0	0	0	\$ -	\$ 3,224	\$ 7,500			1.05	\$ 11,260	\$ 13,015
SSES Documentation and Data Management	16	50	66	\$ 11,040	\$ -	16	128	0	0	2	2	\$ -	\$ 16,644				1.05	\$ 17,478	\$ 28,516
Develop I/I Source Removal Recommendations	24	13	37	\$ 6,540	\$ -	6	14	10	6	2	2	\$ -	\$ 8,820				1.05	\$ 6,111	\$ 12,751
TM#2-A	16	40	56	\$ 9,440	\$ -	12	32	12	4	6	6	\$ -	\$ 8,960				1.05	\$ 9,408	\$ 18,848
Task 5 Subtotal	264	109	373	\$ 67,600	\$ 800	150	390	22	10	10	\$ 800	\$ 70,760	\$ 84,000	\$ 187,600	\$ -	\$ -		\$ 361,137	\$ 429,537
Task 6 - Gladstone Field Work and I/I Source Identification																			
SSES Workplan and Data Management Plan	12	6	18	\$ 3,240	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 3,240
Implement Field Investigations	32	0	32	\$ 6,080	\$ -	32	0	0	0	0	0	\$ 800	\$ 5,280	\$ 119,000			1.05	\$ 138,755	\$ 149,232
Smoke Testing	54	0	54	\$ 10,260	\$ 217	40	68	0	0	0	0	\$ -	\$ 13,148	\$ 170,000			1.05	\$ 189,365	\$ 195,056
CCTV	29	0	29	\$ 5,510	\$ 183	20	68	0	0	0	0	\$ -	\$ 10,348	\$ 10,500			1.05	\$ 14,410	\$ 16,165
Dye Tasting	9	0	9	\$ 1,710	\$ 45	4	24	0	0	0	0	\$ -	\$ 3,224				1.05	\$ 15,956	\$ 24,636
SSES Documentation and Data Management	12	40	52	\$ 8,680	\$ -	12	120	0	0	2	2	\$ -	\$ 15,196				1.05	\$ 16,111	\$ 11,831
Develop I/I Source Removal Recommendations	20	12	32	\$ 5,720	\$ -	6	14	10	6	2	2	\$ -	\$ 8,820				1.05	\$ 6,111	\$ 12,751
TM#2-B	16	40	56	\$ 9,440	\$ -	12	32	12	4	6	6	\$ -	\$ 8,960				1.05	\$ 9,408	\$ 18,848
Task 6 Subtotal	184	98	282	\$ 50,640	\$ 444	126	326	22	10	10	\$ 800	\$ 61,976	\$ 119,000	\$ 180,500	\$ -	\$ -		\$ 379,550	\$ 430,634
Task 7 - Quality Management																			
Develop Quality Management Plan	12	6	18	\$ 3,240	\$ -	4	0	0	4	0	0	\$ -	\$ 1,480				1.05	\$ 1,554	\$ 4,794
Perform Quality Management	24	16	40	\$ 7,120	\$ -	4	4	4	24	0	0	\$ -	\$ 7,264				1.05	\$ 7,627	\$ 14,747
Task 7 Subtotal	36	22	58	\$ 10,360	\$ -	8	4	4	28	0	\$ -	\$ 8,744	\$ -	\$ -	\$ -	\$ -		\$ 9,181	\$ 19,541
TOTAL - ALL TASKS	679	647	1226	\$ 216,435	\$ 1,437	372	808	48	78	20	\$ 1,600	\$ 172,148	\$ 203,000	\$ 388,000	\$ 87,500	\$ -		\$ 872,180	\$ 1,090,052

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel VII: (22E29CC01500)

A part of the Oregon City D.L.C., in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of George Abernethy and wife, which bears North 83°15' West 1916.1 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; running thence South 6°45' West 250.00 feet, more or less, to the right bank of Abernethy Creek; thence along the right bank South 83°15' East 35-00 feet to the Southwest corner of the Keller tract described in Book 465, page 266, Deed Records; thence along the Westerly line of said Keller tract North 6°45' East 250.00 feet, more or less, to an iron pipe on the South boundary of said Abernethy claim; thence North 83° 15' West 35.00 feet to the place of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel VIII: (22E29CC01600)

Part of Section 29, in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of George Abernethy and wife, which bears North 83° 15' West 1916.1 feet distant from the Northwest corner of the-Ezra Fisher D.L.C.; running thence South 6° 45' West 250 feet, more or less, to the right bank of Abernethy Creek; thence along the right bank North 83° 15' West 45 feet; thence North 6° 45' East 250 feet, more or less, to an iron pipe on the said south line of said Abernethy claim; thence tracing said line, South 83° 15' East 45 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel IX: (22E29CC01700)

That portion of the Southwest quarter of the Southwest quarter of Section 29, Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary line of the George Abernethy Donation Land Claim which bears North 83° 15' West 1961.1 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6° 45' West 250 feet more or less to the right bank of Abernethy Creek; thence along said right bank North 83° 15' West 65 feet to the Southwest corner of a tract conveyed to Henry Bogeslaski and wife, by deed recorded in Book 186, Page 344, Deed Records; thence North 6° 45' East along the West line of said Bogeslaski tract 250 feet more or less to an iron pipe on the South line of said Abernethy Donation Land Claim; thence along said South line South 83° 15' East 65 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.



December 17, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement Between Health, Housing, and Human Services and Water Environment Services

Purpose/Outcome	Water Environment Services will provide administrative staff to assist Public Health with Department Operations Center (DOC) tasks needed for the COVI D-19 response.
Dollar Amount and Fiscal Impact	Contract maximum value \$50,000.
Funding Source	Health, Housing, and Human Services - 252-3250-00132-431900-0CARES. No Additional County General Funds are involved.
Duration	Effective July 01, 2020, and terminates on June 30, 2021.
Previous Board Action/Review	None.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Ensure safe, healthy and secure communities • Individuals and families in need are healthy and safe • Ensure safe, healthy, and secure communities
County Counsel	County Counsel reviewed and approved this Intergovernmental Agreement on November 24, 2020 - AK
Contact Person	Lauren Haney, Water Environment Services, 503-313-4243

BACKGROUND:

Water Environment Services requests the approval of an Intergovernmental Agreement with The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department for staff to assist Public Health with the COVID response.

Water Environment Services will provide administrative staff to assist Public Health with Department Operations Center (DOC) tasks needed for the COVID-19 response.

This Agreement is effective July 1, 2020, and continues through June 30, 2021.

RECOMMENDATION:

Staff recommends the Board approve this Intergovernmental Agreement Between Health, Housing, and Human Services and Water Environment Services.

Sincerely,

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

Attachments: Intergovernmental Agreement

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND WATER ENVIRONMENT SERVICES
Agreement #9614**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Water Environment Services ("Agency"), an intergovernmental entity formed under ORS Chapter 190, collectively referred to as the "Parties" and each a "Party."

RECITALS

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

The parties agree that Agency will provide 2 staff to assist with the County's Department Operations Center ("DOC") administrative tasks in support of the COVID-19 response.

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

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2021, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed **fifty thousand dollars** (\$50,000.) for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. County agrees to reimburse Agency for true and verifiable expenses as documented in WorkForce Software. Agency will invoice COUNTY monthly.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.

- B. *County Representations and Warranties*: County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Sherry Olson or their designee will act as liaison for the County.

Contact Information: SOlson4@clackamas.us - Phone number: 503-742-5342

Lauren Haney or their designee will act as liaison for the Agency.

Contact Information: LHaney@clackamas.us - Phone number: 503-742-4591

10. General Provisions.

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

- B. Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. Access to Records.** Both Parties shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Both Parties shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Both Parties shall permit the authorized representatives of the other Party’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the County. The County shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the County Project Manager.
- F. Hazard Communication.** Not Applicable.
- G. Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

- Q. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.
- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

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

Water Environment Services

By: _____
Board Chair or Delegate Authority

 Date

CLACKAMAS COUNTY

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

Signing on Behalf of the Board:

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

 Date

Exhibit A

SCOPE OF WORK AND COMPENSATION

I. Scope of Work

A. Agency agrees to:

1. Provide 2 staff, 2 days a week, 8:30a.m. – 6:00p.m. each to perform tasks including but not limited to the following list:
 - ICS 214 Activity logs for 60+ people daily
 - ICS 214 Activity log daily emails to COVID email group
 - DOC Roster reconciliation daily and updating as new staff added/removed
 - Maintaining and updating email group
 - Maintaining and updating weekly, COVID group phone list

B. County agrees to:

1. Supervise staff while performing the tasks specified above. Supervision of day-to-day work for Agency remains the responsibility of Agency.
2. Provide work space and necessary resources for staff to complete the work above.
3. Provide necessary training for staff on required tasks.



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Contract between Water Environment Services and Tribeca Transport, LLC.
for the Supernatant Hauling at the Boring Sewage Treatment Plant

Purpose/Outcome	Execution of the contract between Water Environment Services and Tribeca Transport, LLC for the Supernatant Hauling at the Boring Sewage Treatment Plant.
Dollar Amount and Fiscal Impact	\$150,000.00 annually, with a Total Contract Value up to \$750,000.00
Funding Source	WES General Funds.
Duration	June 30, 2024 with the option to renew for 2 additional years.
Previous Board Action/Review	Any previous Board discussion or action including date (Executive/Study Session or Business Meeting)
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? This aligns with departmental Strategic Business Plan goals in prevention of permit violations, due to process parameters outside of the original plant design. WES has experience difficulty in meeting permit limits in the wintertime related to excessive hydraulic flows. This hauling will help stay within the aforementioned plant design capacity until design and implementation of facility improvements/changes can be performed. 2. How does this item align with the County's Performance Clackamas goals? Ensure safe, healthy and secure communities.
Counsel Review	1. Date of Counsel review: 11/23/20 2. Initials of County Counsel performing review: AK
Procurement Review	1. Was this item processed through Procurement? Yes.
Contact Person	Terrance Romaine; 503-557-2821 Joshua Clark; 503-794-8046
Contract No.	3479

BACKGROUND:

Clackamas Water Environment Services ("WES"), a Department of Clackamas County, manages and operates the Boring Sewage Treatment Plant ("STP") located at 13305 SE Richey Road, Boring, OR. In 1986, the Boring STP was constructed to serve 60 commercial and residential customers. The Boring STP treats wastewater using a wastewater stabilization lagoons – intermittent slow sand filter system.

At times, the Boring STP is unable to meet effluent discharge limits as required by the Department of Environmental Quality (“DEQ”). Typically, this is during wet weather. Until capital improvements are made at the Boring STP, liquid supernatant must be removed from the lagoons periodically. Supernatant is the liquid lying above the precipitated solids. The supernatant is non-hazardous and total solids are typically between 92 mg/L and 98 mg/L.

Supernatant removal requires pumping the supernatant from the lagoons, transporting and discharging it at designated locations. Required removal in gallons per day will vary depending on weather and plant operations. Average expected hauling during wet weather is 20,000 to 30,000 gallons per day (gal/d). Contractor must be capable of hauling up to 60,000 gal/day should weather and plant conditions require this volume to be removed. There may be days when no hauling is required during wet weather.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS 279B and LCRB Rules on August 26, 2020. Proposals were opened on September 24, 2020. The District received four (4) proposals from Goodman Sanitation; Lovett, Inc.; O’Malley Brothers Corp.; and Tribeca Transport, LLC. An evaluation committee of three (3) WES personnel scored the Tribeca Transport, LLC proposal the highest. Upon Contract award, the final Scope of Work was negotiated and finalized.

RECOMMENDATION:

Staff recommends the Board approve the Contract with Tribeca Transport, LLC. for the Supernatant Hauling at the Boring Sewage Treatment Plant.

Respectfully submitted,

Greg Geist
Director, WES

Placed on the _____ Agenda by the Procurement Division.



GOODS AND SERVICES CONTRACT Contract #3479

This Goods and Services Contract (this “Contract”) is entered into between **Tribeca Transport, LLC**. (“Contractor”), and Water Environment Services, a political subdivision of the State of Oregon (“District”) for the purposes of providing supernatant hauling at the Boring Sewage Treatment Plant.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until June 30, 2024 with option for one (1) additional two (2) year renewal thereafter subject to the mutual agreement of the parties. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County acting as the Governing Body for the District. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in RFP #2020-68 Supernatant Hauling at the Boring Sewage Treatment Plant, published September 24, 2020, attached and hereby incorporated by reference as Exhibit “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit “A”, and the Contractor’s Proposal attached and hereby incorporated by reference as Exhibit “B.” Work shall be performed in accordance with a schedule approved by the District. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representative for this contract is: Terrance Romaine.

III. COMPENSATION

- 1. PAYMENT.** The District agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **one hundred fifty thousand dollars (\$150,000.00)** and the total Contract compensation shall not exceed **seven hundred fifty thousand dollars (\$750,000.00)**.
- 2. TRAVEL EXPENSE REIMBURSEMENT.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
- 3. INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent District contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. 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. Invoices shall be submitted to the District’s Representative at: tromaine@clackamas.us

IV. CONTRACT PROVISIONS

1. ACCESS TO RECORDS. Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and its duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of six

(6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. AVAILABILITY OF FUNDS. District certify that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.

3. CAPTIONS. The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

4. COMPLIANCE WITH APPLICABLE LAW. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

5. EXECUTION AND COUNTERPARTS. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

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

7. HAZARD COMMUNICATION. Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

8. INDEMNITY, RESPONSIBILITY FOR DAMAGES. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its

subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

9. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserve the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656.

10. INSURANCE. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the District evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

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

C. Contractor shall provide District a certificate of insurance naming the District and Clackamas County, and their officers, elected officials, agents, and employees additional insureds. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include the District and Clackamas County and their agents, officers, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the District in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the District under this insurance. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

D. If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for

the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

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

F. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

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

11. LIMITATION OF LIABILITIES. Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or District at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against District, such facsimile transmission must be confirmed by telephone notice to District's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. OWNERSHIP OF WORK PRODUCT. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in the District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to District that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance

with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

A. Performance Warranty. Contractor warrants that the goods provided to the District shall consistently perform according to the performance characteristics described in the Scope of Work.

B. Service Warranty. Contractor warrants that the services provided herein to the District, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and District's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the District to Contractor. The District agree to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, and all other terms and conditions which by their context are intended to survive termination of this Contract.

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

17. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract, by operation of law or otherwise, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. District may assign all or part of this Contract at any time without further permission required to the Contractor. District may assign all or part of this Contract at any time without further permission required to the Contractor.

18. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District's shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and

consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATION. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the District are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research or objects or other tangible things needed to complete the work.

22. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

23. NO THIRD PARTY BENEFICIARIES. District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

24. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

25. 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.

26. FORCE MAJEURE. Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

27. WAIVER. The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.

28. COMPLIANCE. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

29. DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the District except as to latent defects, fraud and Contractor's warranty obligations.

EXHIBIT A
RFP #2020-68
Supernatant Hauling at the Boring Sewage Treatment Plant
Published September 24, 2020

EXHIBIT B
VENDOR'S PROPOSAL



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Contract between Water Environment Services and
Hach Company to provide Flow Meters

Purpose/Outcome	Approve the attached 3 year Goods and Services Ordering Contract with Hach Company and authorizes the procurement office to place Purchase Orders against said contract, up to the total not-to-exceed amount.
Dollar Amount and Fiscal Impact	Total not-to-exceed dollar value of the contract is \$283,733.80 across three years
Funding Source	Capital Improvement: 639-20100-481010-P632209
Duration	Three (3) years from date of approval
Previous Board Action/Review	Board Approved Brand Standardization on November 14, 2019
Strategic Plan Alignment	1. This project supports the WES Strategic Plan to provide Enterprise Resiliency, Infrastructure Strategy and Performance and Operational Optimization. 2. This project supports the County Strategic Plan of building a strong infrastructure that delivers services to customers.
Counsel Review	November 23, 2020 A.K.
Procurement Review	Was the item processed through Procurement? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Contact Person	Jessica Rinner
Contract No.	3166

BACKGROUND:

Currently WES operates 340 miles of sewer pipe across Clackamas County. The last two iterations of flow meter upgrade purchases have been awarded to Hach via a competitive process. Now that WES has a substantial amount of Hach flow meters, and currently uses Hach auto-samplers, the business decision has been made to standardize its flow-meter upgrades and future auto-sampler purchases to this brand.

The Board approved WES standardized on Hach flow meters and auto samplers on November 14, 2019. The standardization provides several benefits. By consolidating, flowmeter and auto-sampler data will be able to be stored/accessed through one software/report system, which eliminates the inefficiency of using multiple systems for the same functions. Standardizing with Hach is anticipated to reduce costs for training, support, inventory and maintenance.

Additionally, Hach equipment is available through multiple resellers, allowing for adequate competition in the marketplace.

This agreement is for the purchase of flow meters from Hach over the next three years.

PROCUREMENT PROCESS:

Invitation to Bid #2019-70a was posted to ORPIN on June 04, 2020 and closed on June 22, 2020. Only one Bid was received from Hach Company. Upon a thorough review it was determined that the Bid was in full compliance with the requirements of the ITB. The Bid was approved by Water Environment Services and a contract was drafted, reviewed by County Counsel and routed to the Vendor for signature.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached 3 year Goods and Services Ordering Contract with Hach Company and authorizes the procurement office to place any Purchase Orders against said contract, up to the total not to exceed amount.

Respectfully submitted,

Greg Geist
Director, WES

Placed on the _____ Agenda by the Procurement Division.



GOODS AND SERVICES CONTRACT Contract #3166

This Goods and Services Contract (this “Contract”) is entered into between Hach Company (“Contractor”), and Water Environment Services, a political subdivision of the State of Oregon (“District”) for the purposes of providing Hach Flow Meters and Loggers.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until August 30, 2023. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County acting as the Governing Body for the District. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in ITB 2019-70a Flow Monitoring Meter Ordering Contract issued June 04, 2020, attached and hereby incorporated by reference as Exhibit “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit “A”, and the Contractor’s Bid attached and hereby incorporated by reference as Exhibit “B.” Work shall be performed in accordance with a schedule approved by the District. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representative for this contract is: **Jessica Rinner**, JRinner@clackamas.us.

This Contract is on an “on-call” basis for the purchase of goods.

The Contractor agrees to provide the products to the District. When the District wishes the Contractor to perform the Work, the District will submit an official District Purchase Order (“PO”) detailing the items to be ordered, and the total compensation, pursuant to the fee schedule set forth in this Contract. Only the specific items listed within the fee schedule may be ordered under this Contract. The Contractor may not provide the requested items until the District Purchase Order has been executed and received. In the event a delivery authorized under the District Purchase Order extends beyond the expiration of this Contract, the District Purchase Order shall remain in effect under the terms of this Contract until the completion of the order.

No Purchase Order shall modify or amend the terms and conditions of this Contract. For each authorized PO, a specific department representative shall be identified for coordination of delivery and payment on the PO itself.

III. COMPENSATION

- 1. PAYMENT.** The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed two hundred eighty-three thousand seven hundred thirty-three dollars eighty cents **\$283,733.80** for all Purchase Orders placed against this Contract. Consideration rates are on a time & materials basis in accordance with the rates and costs specified in Exhibit B. All rates specified within Exhibit B are firm fixed through the entire three year term of this contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized: Yes No

If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.

3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent District contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. 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. Invoices shall be submitted to the District’s Representative at: wes-procurement@co.clackamas.or.us

IV. CONTRACT PROVISIONS

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and its duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. **AVAILABILITY OF FUNDS.** District certify that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District’s reasonable administrative discretion, to continue to make payments under this Contract.

3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor’s surety from

obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

5. EXECUTION AND COUNTERPARTS. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

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

7. HAZARD COMMUNICATION. Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

8. INDEMNITY, RESPONSIBILITY FOR DAMAGES. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

9. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserve the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656.

10. INSURANCE. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the District evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence,

with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

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

C. Contractor shall provide District a certificate of insurance naming the District and Clackamas County, and their officers, elected officials, agents, and employee's additional insureds. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include the District and Clackamas County and their agents, officers, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the District in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the District under this insurance. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

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

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

F. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

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

11. LIMITATION OF LIABILITIES. Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to

that extent.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or District at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against District, such facsimile transmission must be confirmed by telephone notice to District's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. OWNERSHIP OF WORK PRODUCT. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in the District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to District that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

A. Performance Warranty. Contractor warrants that the goods provided to the District shall consistently perform according to the performance characteristics described in the Scope of Work.

B. Service Warranty. Contractor warrants that the services provided herein to the District, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and District's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the District to Contractor. The District agree to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in the following Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

16. SEVERABILITY. If any term or provision of this Contract is declared by a court of competent

jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

17. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract, by operation of law or otherwise, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. District may assign all or part of this Contract at any time without further permission required to the Contractor. District may assign all or part of this Contract at any time without further permission required to the Contractor.

18. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATION. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the District are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by

the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research or objects or other tangible things needed to complete the work.

22. NO THIRD PARTY BENEFICIARIES. District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

23. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

24. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. FORCE MAJEURE. Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

26. WAIVER. The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.

27. COMPLIANCE. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

28. DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the District except as to latent defects, fraud and Contractor's warranty obligations.

29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the District at times and places determined by the District. If the District finds goods and services furnished to be incomplete or not in compliance with the District, the District, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the District at a reduced price, whichever the District deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the District, the District may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the District's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

30. COOPERATIVE CONTRACTING. Pursuant to ORS 279A.200 to 279A.225, other public agencies may use this Contract resulting from a competitive procurement process unless the Contractor expressly noted in their proposal/quote that the prices and services are available to the District only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with Contractor; the District accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the District consents to such use by any other public agency.

31. 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

EXHIBIT A

2019-70a ITB Flow Monitoring Meter Ordering Contract

EXHIBIT B
Contractor Bid