

AGENDA

Thursday, October 17, 2019 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2019-87

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. HOUSING AUTHORITY CONSENT AGENDA

1. Approval of Resolution No. 1941: Approval of the Fiscal Year 2020 Annual Plan Amendment – *Housing Authority of Clackamas County*

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

1. Earthquake Preparedness and the Clackamas County Shake Out Drill (Jamie Poole, Nancy Bush, Disaster Management)

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

IV. 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 of a Revenue Grant Amendment No.1 with the State of Oregon, Department of Education for Clackamas County Early Learning HUB Preschool Promise Capacity Building – *Children, Family & Community Connections*
2. Approval of Intra-Agency Agreement with Clackamas County Health Centers Division for School Based Health Centers (SBHC) operating funds – *Health Centers*
3. Amendment to a Sub-recipient Agreement with Northwest Housing Alternatives and the Community Development Division for Tenant-Based Rental Assistance funding – *Community Development*
4. Approval of Agency Services Agreement No. 8345, Amendment No. 5 with Mt. Hood Home Care Services, LLC to provide Oregon Project Independence In-home care for Clackamas County Residents – *Social Services*

B. Department of Transportation & Development

1. Approval of a contract with the National Safety Council for the purposes of Safe Systems Approach to Rural Road to Zero
2. Approval of Intergovernmental Agreement between Clackamas County and the City of Oregon City Related to Plan Review, Permitting, and Inspection Services, Including Clarification of Inspection Roles During Times of Emergencies
3. Approval of a Contract with Murraysmith, Inc. for the Jennings Ave: OR99E to Oatfield Rd Project - *Procurement*
4. Approval of Personal Services Contract with David Evans and Associates, Inc., to provide Design Services for Canby Marquam Highway Bear Creek Bridge - *Procurement*

C. Finance Department

1. Approval of Amendment No. 3 to the Intergovernmental Agreement between Water Environment Services and Clackamas County for Facilities Management and Maintenance
2. Approval of Purchase of Annual Technical Support Services from Oracle America, Inc. - *Procurement*

D. Elected Officials

1. Approval of Intergovernmental Agreement between the Clackamas County Sheriff's Office and the Oregon State Police for use of the Public Safety Training Center and the Bowman Training Complex - *ccso*
2. Approval of Intergovernmental Agreement between the Clackamas County Sheriff's Office and the City of West Linn Police Department for use of the Public Safety Training Center and the Bowman Training Complex - *ccso*
3. Approval of Intergovernmental Agreement between the Clackamas County Sheriff's Office and Multnomah County Sheriff's Office for use of the Public Safety Training Center and the Bowman Training Complex - *ccso*
4. Approval of Intergovernmental Agreement between the Clackamas County Sheriff's Office and the City of Milwaukie Police Department for use of the Public Safety Training Center and the Bowman Training Complex - *ccso*
5. Approval of Intergovernmental Agreement between the Clackamas County Sheriff's Office and the City of Oregon City Police Department for use of the Public Safety Training Center and the Bowman Training Complex - *ccso*
6. Approval of Intergovernmental Agreement between the Clackamas County Sheriff's Office and the City of Gladstone Police Department for use of the Public Safety Training Center and the Bowman Training Complex - *ccso*
7. Approval of Intergovernmental Agreement between the Clackamas County Sheriff's Office and the City of Gresham Police Department for use of the Public Safety Training Center and the Bowman Training Complex - *ccso*

E. Business & Community Services

1. Approval of Amendment No. 3 to an Intergovernmental Agreement with the City of Gladstone to Provide Library Director Services

V. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of a Contract between the North Clackamas Parks and Recreation District (NCPRD) and Enviser, Inc. for District Wide Mechanical and HVAC Services - *Procurement*

VI. WATER ENVIRONMENT SERVICES

1. Approval of Amendment No. 3 to the Intergovernmental Agreement between Water Environment Services and Clackamas County for Facilities Management and Maintenance
2. Approval of a Service Connection Mortgage in the North Clackamas Service Area between Water Environment Services and Marina D. Healey Trustee of the Thomas E. Godfrey Living Trust

VII. COUNTY ADMINISTRATOR UPDATE

VIII. COMMISSIONERS COMMUNICATION

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

October 17, 2019

Housing Authority of Clackamas County Board of Commissioners

Members of the Board:

Approval of Resolution #1941: Approval of the Fiscal Year 2020 Annual Plan Amendment

| | |
|--|---|
| Purpose/Outcomes | Approval of the Housing Authority of Clackamas County's (HACC) Annual Plan Amendment by Resolution number 1941 |
| Dollar Amount and Fiscal Impact | No fiscal impact |
| Funding Source | U.S. Department of Housing and Urban Development No County General Funds are involved. |
| Duration | Effective January 7, 2020 through June 30, 2020 |
| Previous Board Action | FY 2020 (7/1/19-6/30/20) Annual Plan approved by the HACC Board on April 4, 2019 by Resolution No. 1937 |
| Strategic Plan Alignment | <ol style="list-style-type: none"> 1. Ensure safe, healthy and secure communities 2. Individuals and families in need are healthy and safe 3. Grow a vibrant community 4. Sustainable and Affordable Housing 5. Build public trust through good government |
| Contact Person | Jill Smith, HACC Executive Director (503) 742-5336 |
| Contract No. | N/A |

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department, requests the approval of Resolution #1941, which approves the Housing Authority's Annual Plan Amendment. A public hearing was held on October 10th, 2019, to receive and consider public comments on HACC's Plan, however, no comments were received.

The Annual Plan is effective July 1st, 2019. The purpose of the Plan is to provide an annual update to HUD (U.S. Department of Housing and Urban Development) regarding the Housing Authority's policies, rules, and requirements concerning its operations, programs and services. The Annual Plan can be amended during the implementation year by calling a public hearing in front of the Housing Authority Board of Commissioners and by providing notification of the amendment of modification to HUD. The amendment will be approved in accordance with HUD's plan review procedures, as provided in the Code of Federal Regulations (CFR) 903.23.

The proposed amendment identifies policy changes and additional clarification, required by HUD, on HACC's development plans for its Public Housing properties. A summary of the changes are:

- Added additional redevelopment options for exploring for the Oregon City View Manor property to section B.2 of the Annual Plan (page 2 of packet)
- Added additional redevelopment options for exploring for the Clackamas Heights property to section B.2 of the Annual Plan (page 2 of packet)
- Added additional redevelopment options for exploring for the Hillside Park property and important dates to section B.2 of the Annual Plan (page 2 of packet)

- Added additional redevelopment options for exploring for the Hillside Manor property and Project Based Voucher configuration to section B.2 of the Annual Plan (page 2 of packet)
- Additional policy changes for the Housing Choice Voucher Program can be found on Attachment A-2
- Additional policy changes for the Public Housing Program can be found on Attachment B-1 and B-2

The Plan Amendment meets the following requirements of the Quality Housing and Work Responsibility Act (QHWRA) of 1998:

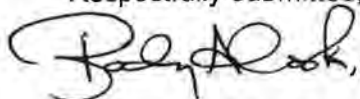
- The Annual Plan was developed in consultation with the Resident Advisory Board (RAB).
- The RAB is made up of residents from Public Housing and Section 8 programs. The RAB met on July 30th, 2019 to review the Annual Plan Amendment.
- HACC posted a public notice opening the Annual Plan for public review and comments from August 1, 2019 through September 15th, 2019.
- The Plan was made available at the HACC Administrative Office, HACC Property Management Offices, Clackamas County Oak Grove Library, and was posted on HACC's website.
- A Public Hearing in front of the HACC Board was held on October 10th, 2019. A public notice was published on July 26th, 2019 for the public hearing.

Once the Board adopts the Annual Plan Amendment, including all attachments, the final step is to submit the Annual Plan Amendment to HUD. HUD requires 75 days of review before its effective, estimated to be effective January 7, 2020.

RECOMMENDATION:

Staff recommends that the HACC Board of County Commissioners approve Resolution #1941, and permit staff to submit the final version of the plan amendment to HUD no later than October 24th, 2019.

Respectfully submitted,

 HACC Deputy Director/FOA

Richard Swift, Director

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

In the Matter of Approving the
Housing Authority of Clackamas
County's FY 2020 Annual Plan
(Agency Plan) Amendment



Resolution No. 1941
Page 1 of 1

WHEREAS, the Housing Authority of Clackamas County (HACC) developed an FY 2020 Annual Plan that was approved by the Housing Authority Board of Commissioners on April 4th, 2019 (Agency Plan) and

WHEREAS, the Agency Plan was amended during the implementation year by calling a public hearing in front of the Board of Commissioners and by providing notification of the amendment of modification to HUD, and

WHEREAS, the Agency Plan Proposed Amendment was advertised in the Oregonian on July 26th, 2019 for public review and comment from August 1st, 2019 through September 15th, 2019, and

WHEREAS, the Agency Plan Proposed Amendment was developed using required HUD templates with input and recommendations from an established Resident Advisory Board (RAB) on July 30th, 2019, and

WHEREAS, the Agency Plan Proposed Amendment was discussed and testimony was taken at a public hearing in front by the HACC's Board of Commissioners on October 10th, 2019, and

WHEREAS, HUD requires HACC Board approval of the Agency Plan Proposed Amendment in the form of a board resolution, and

NOW THEREFORE BE IT RESOLVED that the Agency Plan Proposed Amendment is approved, and the Executive Director of the Housing Authority of Clackamas County is authorized to submit these documents to HUD.

DATED this 17th day of October, 2019

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

Jim Bernard, Chair

Recording Secretary

Housing Authority of Clackamas County



Mid-Year Amendment to Annual Plan 2019-2020

Effective Dates January 7, 2020 – June 30, 2020

Housing Authority of Clackamas County

Amendment to Annual Plan 2019-20

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| Streamlined Annual PHA Plan (High Performer PHAs) | U.S. Department of Housing and Urban Development Office of Public and Indian Housing | OMB No. 2577-0226 Expires: 02/29/2016 |
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Purpose. The 5-Year and Annual PHA Plans provide a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services, and informs HUD, families served by the PHA, and members of the public of the PHA's mission, goals and objectives for serving the needs of low- income, very low- income, and extremely low- income families

Applicability. Form HUD-50075-HP is to be completed annually by **High Performing PHAs**. PHAs that meet the definition of a Standard PHA, Troubled PHA, HCV-Only PHA, Small PHA, or Qualified PHA do not need to submit this form.

Definitions.

- (1) **High-Performer PHA** – A PHA that owns or manages more than 550 combined public housing units and housing choice vouchers, and was designated as a high performer on both of the most recent Public Housing Assessment System (PHAS) and Section Eight Management Assessment Program (SEMAP) assessments.
- (2) **Small PHA** – A PHA that is not designated as PHAS or SEMAP troubled, or at risk of being designated as troubled, and that owns or manages less than 250 public housing units and any number of vouchers where the total combined units exceeds 550.
- (3) **Housing Choice Voucher (HCV) Only PHA** – A PHA that administers more than 550 HCVs, was not designated as troubled in its most recent SEMAP assessment, and does not own or manage public housing.
- (4) **Standard PHA** – A PHA that owns or manages 250 or more public housing units and any number of vouchers where the total combined units exceeds 550, and that was designated as a standard performer in the most recent PHAS or SEMAP assessments.
- (5) **Troubled PHA** – A PHA that achieves an overall PHAS or SEMAP score of less than 60 percent.
- (6) **Qualified PHA** – A PHA with 550 or fewer public housing dwelling units and/or housing choice vouchers combined, and is not PHAS or SEMAP troubled.

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|--|---|---------------------------|-----------------|------------------------------------|--|-------------------------------------|
| A. PHA Information. | | | | | | |
| A.1 | PHA Name: <u>Housing Authority of Clackamas County</u> PHA Code: <u>OR001</u> PHA Type: <input type="checkbox"/> Small <input checked="" type="checkbox"/> High Performer PHA Plan for Fiscal Year Beginning: (MM/YYYY): <u>07/2019</u> PHA Inventory (Based on Annual Contributions Contract (ACC) units at time of FY beginning, above) Number of Public Housing (PH) Units <u>545</u> Number of Housing Choice Vouchers (HCVs) <u>1,752</u> Total Combined <u>2,297</u> PHA Plan Submission Type: <input type="checkbox"/> Annual Submission <input checked="" type="checkbox"/> Revised Annual Submission | | | | | |
| <p>Availability of Information. In addition to the items listed in this form, PHAs must have the elements listed below readily available to the public. A PHA must identify the specific location(s) where the proposed PHA Plan, PHA Plan Elements, and all information relevant to the public hearing and proposed PHA Plan are available for inspection by the public. Additionally, the PHA must provide information on how the public may reasonably obtain additional information of the PHA policies contained in the standard Annual Plan, but excluded from their streamlined submissions. At a minimum, PHAs must post PHA Plans, including updates, at each Asset Management Project (AMP) and main office or central office of the PHA. PHAs are strongly encouraged to post complete PHA Plans on their official website. PHAs are also encouraged to provide each resident council a copy of their PHA Plans.</p> <p>PHA Plan, PHA Plan Elements, and Public Hearing Information can be found at the following locations:</p> <ol style="list-style-type: none"> 1) Housing Authority Administrative Office, 13930 S Gain Street, Oregon City, OR 97045 2) Housing Authority Clackamas Heights Property Management Office, 13900 S Gain Street, Oregon City, OR 97045 3) Housing Authority Hillside Property Management Office, 2889 Hillside Court, Milwaukie, OR 97222 4) Housing Authority Website: http://www.clackamas.us/housingauthority/plansandreports.html 5) Clackamas County Public Library located at 16201 S.E. McLoughlin, Oak Grove, OR 97222 6) Resident Advisory Boards Members receive a hard copy of the draft Annual Plan <p><input type="checkbox"/> PHA Consortia: (Check box if submitting a Joint PHA Plan and complete table below)</p> | | | | | | |
| | | Participating PHAs | PHA Code | Program(s) in the Consortia | Program(s) not in the Consortia | No. of Units in Each Program |
| | | | | | | PH |
| | | | | | | HCV |
| | | Lead PHA: | | | | |
| B. Annual Plan Elements | | | | | | |

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|-------------------|---|
| <p>B.1</p> | <p>Revision of PHA Plan Elements.</p> <p>(a) Have the following PHA Plan elements been revised by the PHA since its last Annual PHA Plan submission?</p> <p>Y N</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Statement of Housing Needs and Strategy for Addressing Housing Needs (See Attachment C)</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Deconcentration and Other Policies that Govern Eligibility, Selection, and Admissions (See Attached A & B for Policy Changes)</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Financial Resources (See Attachment E)</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Rent Determination (See Attachment A-2 and B-1)</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Homeownership Programs</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Safety and Crime Prevention</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Pet Policy</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Substantial Deviation (See Attachment K)</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Significant Amendment/Modification (See Attachment K)</p> <p>(b) The PHA must submit its Deconcentration Policy for Field Office Review. See Attachment D</p> <p>(c) If the PHA answered yes for any element, describe the revisions for each element below. See Attachments referenced above</p> |
| <p>B.2</p> | <p>New Activities.</p> <p>(a) Does the PHA intend to undertake any new activities related to the following in the PHA's current Fiscal Year?</p> <p>Y N</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Hope VI or Choice Neighborhoods.</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Mixed Finance Modernization or Development</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Demolition and/or Disposition</p> <p><input type="checkbox"/> <input type="checkbox"/> Conversion of Public Housing to Tenant Based Assistance (Section 18 Demolition/Disposition)</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Conversion of Public Housing to Project-Based Assistance under RAD</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Project Based Vouchers</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Units with Approved Vacancies for Modernization</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Other Capital Grant Programs (i.e., Capital Fund Community Facilities Grants or Emergency Safety and Security Grants)</p> <p>(b) If any of these activities are planned for the current Fiscal Year, describe the activities. For new demolition activities, describe any public housing development or portion thereof, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act under the separate demolition/disposition approval process. If using Project-Based Vouchers (PBVs), provide the projected number of project based units and general locations, and describe how project basing would be consistent with the PHA Plan.</p> <p>In 2018, HACC submitted a Section 18 Disposition application for Oregon City View Manor, a 100-unit Public Housing property located at 200 S. Longview Way, Oregon City. HACC plans to continue seeking a Section 18 Disposition for this site in 2019-2020. If approved, HACC will relocate all 100 households using Section 8 vouchers and the assistance of a relocation contractor. In addition, HACC plans to explore the feasibility of submitting a straight RAD or Section 18 and RAD blended application as an alternative process for this property in 2019-2020.</p> <p>In 2018, HACC prepared and submitted a grant to Metro to develop a community plan for the redevelopment of the Clackamas Heights property, a 100-unit Public Housing property located at 13900 S. Gain St., Oregon City, OR 97045. HACC plans to explore the feasibility of submitting a Section 18, Straight RAD or Section 18 and RAD blended application as an alternative process for this property in 2019-2020.</p> <p>HACC submitted a RAD application for our Hillside Park project consisting of a 100-unit Public Housing property located at 2887 SE Hillside Ct, Milwaukie. The application was approved and the PHA received the CHAP April 26, 2019. HACC is exploring the possibility of revising the application to utilize the Section 18 and RAD blend process instead of a straight RAD conversion. We anticipate this project may be a good candidate for a Section 18 Demolition and Disposition application and plan to pursue that application in 2019-2020. If approved, HACC will relocate all 100 households using Section 8 vouchers and the assistance of a relocation contractor.</p> <p>As of 2019, our multi-phase Rental Administration Demonstration (RAD) application for the rehabilitation of Hillside Manor, located at 2889 SE Hillside Ct, Milwaukie, has been approved and the project is moving forward towards rehabilitation closing in 1st quarter 2020. Our Rental Administration Demonstration (RAD) application for the redevelopment of Hillside Park has been submitted and we are awaiting HUD approval. We are planning to update the application to utilize the RAD and Section 18 blend process in which we plan to replace 100 units, with 70 under RAD HAP contract and 30 under a regular PBV contract (including 3 de minimis units that are backfilled with regular PBVs)</p> <p>Lastly, HACC has 145 scattered sites throughout Clackamas County. We anticipate working with HUD and submitting a RAD application to begin the process of a Section 18 Disposition and/or Demolition application for these sites in 2019. If approved, HACC will relocate all 145 households using Section 8 vouchers and the assistance of a relocation contractor.</p> <p>200 PBV's were approved by HUD for new development and rehabilitation projects. Request for proposals or awards of PBV are yet to be determined based on the Metro Affordable Housing Bond, the Hillside Redevelopment Plan (in initial phase of planning) and other development projects in the very early stages that are hopefully being developed in the next five (5) years. This is consistent with the PHA Plan to modernize, redevelop and demo/disposition) as our PHA Plan is required to align with the County's Consolidated Plan, Fair Housing Plan, Action Plan and Ten-Year Plan to end homelessness.</p> <p>Utilizing funds allocated to the Housing Authority from the Metro Affordable Housing Bond, HACC will expand its development capacity by hiring new staff to direct affordable housing development in the County. In addition to new staff it is anticipated that Metro Bond funds will be used to acquire and rehabilitate a facility in Gladstone that will provide 50 units of SRO Housing for homeless individuals.</p> |

B.3 Progress Report.

Provide a description of the PHA's progress in meeting its Mission and Goals described in the PHA 5-Year Plan.

PHA Goal 1: Develop new housing units with long-term affordability for a broad range of low-income households with an emphasis on dispersal of affordable housing by:

- Applied for and received 55 additional VASH vouchers
- Applied for and received 41 additional Mainstream vouchers
- Continuing to leverage private and/or other public funds to create additional housing opportunities
- Working with a broker to acquire land for new construction of affordable housing
- Conducted a financial feasibility study for rehabilitation, disposition, or redevelopment of existing Public Housing properties
- As of 2019, our multi-phase Rental Administration Demonstration (RAD) application for the rehabilitation of Hillside Manor has been approved and the project is moving forward towards rehabilitation closing in 4th quarter 2019. Our Rental Administration Demonstration (RAD) application for the redevelopment of Hillside Park has been submitted and we are awaiting HUD approval.
- Prepared and submitted a grant to Metro to develop a community plan for the Hillside Park property
- Prepared and submitted a grant to Metro to develop a community plan for the Clackamas Heights property
- Continued planning for the utilization of RAD & Demolition/Disposition Section 18 to improve & increase the number of affordable housing units
- Submitted a Section 18 Demo/Disposition application for Oregon City View Manor. This application is still in process with HUD.
- Rosewood Station is under construction with the first of six buildings scheduled for leasing in May 2019. Total affordable housing is 212 units.
- S.M. (include campus & pleasant) Completed an application and received funding for Veteran's Housing funding for a 24-unit affordable housing development in Oregon City, OR. This project is closing on its construction financing in 1st quarter 2019 and will complete construction by 1st quarter 2020.
- Provided financing for the development of 28 units of affordable housing in Milwaukie, serving families and veterans as a part of a campus redevelopment for a local nonprofit partner.
- Submitted a HUD Section 108 loan application & received loan approval to fund a variety of affordable housing projects including acquisition, new construction, and rehabilitation. This may include acquisition of property in Gladstone and along Holcomb Blvd. in Oregon City.

Housing Authority of Clackamas County certifies that the RAD conversion complies with all applicable site selection and neighborhood reviews standards and that all appropriate procedures have been followed.

PHA Goal 2: Improve access & housing choice for everyone, with a focus on protected classes and single parent households by:

- Provided voucher mobility counseling
- Conducted outreach efforts to potential voucher landlords
- Revised payment standards to reduce the barriers to finding affordable housing
- Continuing our security deposit loan program for Section 8 families
- Provided higher payment standards for families needing ADA units.
- Surveyed and Maintained a list of ADA units within the County to assist families seeking housing
- Awarded project based vouchers to Northwest Housing Alternatives and PEDCOR.

PHA Goal 3: Enforce Fair Housing Laws and Increase public understanding of Fair Housing laws by:

- HACC hosted several free Fair Housing trainings and plans to continue hosting free training
- Strengthened the partnership with Fair Housing Council of Oregon and continued distributing fair housing information
- Continued to partner with Housing Rights & Resources Program
- We offer training at Metro Multifamily and other Landlord Group Meetings on the Benefits of Rental Assistance
- Distributed Fair Housing Videos and Information to landlords participating in Section 8 through Landlord newsletter.
- Continuing to educate clients on Fair Housing Rights & provide Fair Housing brochures at Orientation meetings
- Continued attending State subcommittee meetings on Renters Rights and other nonprofit Renter Rights Advocacy Groups
- Aligned our 5-year plan with the County's 5-year Consolidated Plan & completed the Assessment of Fair Housing plan
- On August 5, 2015, FHEO made findings of non-compliance under Section 504, which covers discrimination based on disability (*Structural modifications are delayed but in progress). Specifically, FHEO found non-compliance with regulations that require site accessibility and ensure non-discrimination in housing policies and practices, both based on disability. Due to unusual physical constraints, designing ADA compliant driveways has caused substantial delays. However, the final driveway project contract is now executed with completion in March of 2019.

PHA Goal 4: Improve the quality of Housing Authority assisted housing and customer service by:

- Maintained high performer status in Section 8
- Improved the physical environment in our public offices
- Streamlined administrative operations, creating efficiencies and improving customer service
- Implemented a client feedback system to gauge if improvements are needed
- Completed 69 capital fund rehabilitation projects. Twelve of these 69 projects were substantial rehabilitations averaging \$60,000 per unit
- Prepared and submitted a multi-phase Rental Administration Demonstration (RAD) application for the rehabilitation of Hillside Manor and the redevelopment of Hillside Park.
- Developed strategies for cross training staff to ensure we provide the highest level of service to clients we serve
- Attend RAD & LIHTC Compliance Trainings for new developments scheduled to come on line in 2020.
- Staff training on Diversity, Equity and Inclusion (DEI) via Meyer Memorial Trust Grant

PHA Goal 5: Improve community quality of life and economic vitality by:

- Partnered with social service agencies to provide services to school aged youth
- Developed stronger partnerships with service providers who assist our elderly and/or disabled residents
- Continued to grow the community gardens program
- Encouraged Resident participation through Resident Associations
- Partnered with County Social Services to staff additional case management, with a focus on eviction prevention
- Installed multiple Security Upgrades at Hillside Manor

| | |
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| | <input checked="" type="checkbox"/> Applied for a Metro Grant to assist in the planning of the Hillside Park redevelopment, envisioned to be a mixed income community offering a variety of housing opportunities along a spectrum of affordability. <input checked="" type="checkbox"/> Applied for a Metro Grant to assist in the planning of the Clackamas Heights redevelopment, envisioned to be a mixed income community offering a variety of housing opportunities along a spectrum of affordability. PHA Goal 6: Promote self-sufficiency and asset development of families and individuals by: <input checked="" type="checkbox"/> Continue to partner with local & regional workforce partners to increase the number of employed/under-employed persons in assisted housing <input checked="" type="checkbox"/> Partnered with agencies to provide supportive services to increase independence for the elderly and families with disabilities <input checked="" type="checkbox"/> Awarded Resident Opportunities Self Sufficiency (ROSS) grant <input checked="" type="checkbox"/> Applied for the new Family Self Sufficiency (FSS) grant <input checked="" type="checkbox"/> Research and apply for future grants that provide services and enhance residents' quality of life <input checked="" type="checkbox"/> Awarded a grant to implement a new credit building program for Public Housing residents. |
| B.4. | Most Recent Fiscal Year Audit. (a) Were there any findings in the most recent FY Audit? Y N <input type="checkbox"/> <input checked="" type="checkbox"/> (b) If yes, please describe: |
| Other Document and/or Certification Requirements. | |
| C.1 | Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan <u>Form 50077-ST-HCV-HP</u> , <i>Certification of Compliance with PHA Plans and Related Regulations</i> , must be submitted by the PHA as an electronic attachment to the PHA Plan. |
| C.2 | Civil Rights Certification. <u>Form 50077-ST-HCV-HP</u> , <i>Certification of Compliance with PHA Plans and Related Regulations</i> , must be submitted by the PHA as an electronic attachment to the PHA Plan. |
| C.3 | Resident Advisory Board (RAB) Comments. (a) Did the RAB(s) provide comments to the PHA Plan? Y N <input checked="" type="checkbox"/> <input type="checkbox"/> If yes, comments must be submitted by the PHA as an attachment to the PHA Plan. PHAs must also include a narrative describing their analysis of the RAB recommendations and the decisions made on these recommendations. |
| C.4 | Certification by State or Local Officials. <u>Form HUD 50077-SL</u> , <i>Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan</i> , must be submitted by the PHA as an electronic attachment to the PHA Plan. |
| D | Statement of Capital Improvements. Required in all years for all PHAs completing this form that administer public housing and receive funding from the Capital Fund Program (CFP). |
| D.1 | Capital Improvements. Include a reference here to the most recent HUD-approved 5-Year Action Plan (HUD-50075.2) and the date that it was approved by HUD. See HUD Form 50075.2 approved by HUD on 10/04/2018. |

Instructions for Preparation of Form HUD-50075-HP Annual Plan for High Performing PHAs

- A. PHA Information.** All PHAs must complete this section.
- A.1** Include the full PHA Name, PHA Code, PHA Type, PHA Fiscal Year Beginning (MM/YYYY), PHA Inventory, Number of Public Housing Units and or Housing Choice Vouchers (HCVs), PHA Plan Submission Type, and the Availability of Information, specific location(s) of all information relevant to the public hearing and proposed PHA Plan. (24 CFR §903.23(4)(e))
- PHA Consortia:** Check box if submitting a Joint PHA Plan and complete the table. (24 CFR §943.128(a))

B. Annual Plan.

B.1 Revision of PHA Plan Elements. PHAs must:

Identify specifically which plan elements listed below that have been revised by the PHA. To specify which elements have been revised, mark the "yes" box. If an element has not been revised, mark "no."

Statement of Housing Needs and Strategy for Addressing Housing Needs. Provide a statement addressing the housing needs of low-income, very low-income and extremely low-income families and a brief description of the PHA's strategy for addressing the housing needs of families who reside in the jurisdiction served by the PHA. The statement must identify the housing needs of (i) families with incomes below 30 percent of area median income (extremely low-income), (ii) elderly families and families with disabilities, and (iii) households of various races and ethnic groups residing in the jurisdiction or on the waiting list based on information provided by the applicable Consolidated Plan, information provided by HUD, and other generally available data. The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units, and location. For years in which the PHA's 5-Year PHA Plan is also due, this information must be included only to the extent it pertains to the housing needs of families that are on the PHA's public housing and Section 8 tenant-based assistance waiting lists. 24 CFR §903.7(a)(1) and 24 CFR §903.12(b). Provide a description of the PHA's strategy for addressing the housing needs of families in the jurisdiction and on the waiting list in the upcoming year. For years in which the PHA's 5-Year PHA Plan is also due, this information must be included only to the extent it pertains to the housing needs of families that are on the PHA's public housing and Section 8 tenant-based assistance waiting lists. 24 CFR §903.7(a)(2)(i) and 24 CFR §903.12(b).

Deconcentration and Other Policies that Govern Eligibility, Selection and Admissions. Describe the PHA's admissions policy for deconcentration of poverty and income mixing of lower-income families in public housing. The Deconcentration Policy must describe the PHA's policy for bringing higher income tenants into lower income developments and lower income tenants into higher income developments. The deconcentration requirements apply to general occupancy and family public housing developments. Refer to 24 CFR §903.2(b)(2) for developments not subject to deconcentration of poverty and income mixing requirements. 24 CFR §903.7(b) Describe the PHA's procedures for maintaining waiting lists for admission to public housing and address any site-based waiting lists. 24 CFR §903.7(b) A statement of the PHA's policies that govern resident or tenant eligibility, selection and admission including admission preferences for both public housing and HCV. (24 CFR §903.7(b)) Describe the unit assignment policies for public housing. 24 CFR §903.7(b)

Financial Resources. A statement of financial resources, including a listing by general categories, of the PHA's anticipated resources, such as PHA operating, capital and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support public housing or tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned use for the resources. (24 CFR §903.7(c))

Rent Determination. A statement of the policies of the PHA governing rents charged for public housing and HCV dwelling units, including applicable public housing flat rents, minimum rents, voucher family rent contributions, and payment standard policies. (24 CFR §903.7(d))

Homeownership Programs. A description of any homeownership programs (including project number and unit count) administered by the agency or for which the PHA has applied or will apply for approval. For years in which the PHA's 5-Year PHA Plan is also due, this information must be included only to the extent that the PHA participates in homeownership programs under section 8(y) of the 1937 Act. (24 CFR §903.7(k)) and 24 CFR §903.12(b).

Safety and Crime Prevention (VAWA). A description of: 1) Any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking; 2) Any activities, services, or programs provided or offered by a PHA that helps child and adult victims of domestic violence, dating violence, sexual assault, or stalking, to obtain or maintain housing; and 3) Any activities, services, or programs provided or offered by a public housing agency to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families. (24 CFR §903.7(m)(5))

Pet Policy. Describe the PHA's policies and requirements pertaining to the ownership of pets in public housing. (24 CFR §903.7(n))

Substantial Deviation. PHA must provide its criteria for determining a "substantial deviation" to its 5-Year Plan. (24 CFR §903.7(r)(2)(i))

Significant Amendment/Modification. PHA must provide its criteria for determining a "Significant Amendment or Modification" to its 5-Year and Annual Plan. Should the PHA fail to define "significant amendment/modification", HUD will consider the following to be "significant amendments or modifications": a) changes to rent or admissions policies or organization of the waiting list; b) additions of non-emergency public housing CFP work items (items not included in the current CFP Annual Statement or CFP 5-Year Action Plan); or c) any change with regard to demolition or disposition, designation, homeownership programs or conversion activities. See guidance on HUD's website at: Notice PIH 1999-51. (24 CFR §903.7(r)(2)(ii))

If any boxes are marked "yes", describe the revision(s) to those element(s) in the space provided.

PHAs must submit a Deconcentration Policy for Field Office review. For additional guidance on what a PHA must do to deconcentrate poverty in its development and comply with fair housing requirements, see 24 CFR 903.2. (24 CFR §903.23(b))

B.2 New Activities. If the PHA intends to undertake any new activities related to these elements or discretionary policies in the current Fiscal Year, mark "yes" for those elements, and describe the activities to be undertaken in the space provided. If the PHA does not plan to undertake these activities, mark "no."

Hope VI. 1) A description of any housing (including project name, number (if known) and unit count) for which the PHA will apply for HOPE VI; and 2) A timetable for the submission of applications or proposals. The application and approval process for Hope VI is a separate process. See guidance on HUD's website at: <http://www.hud.gov/offices/pih/programs/ph/hope6/index.cfm>. (Notice PIH 2010-30)

Mixed Finance Modernization or Development. 1) A description of any housing (including name, project number (if known) and unit count) for which the PHA will apply for Mixed Finance Modernization or Development; and 2) A timetable for the submission of applications or proposals. The application and approval process for Mixed Finance Modernization or Development is a separate process. See guidance on HUD's website at: <http://www.hud.gov/offices/pih/programs/ph/hope6/index.cfm>. (Notice PIH 2010-30)

Demolition and/or Disposition. Describe any public housing projects owned by the PHA and subject to ACCs (including name, project number and unit numbers [or addresses]), and the number of affected units along with their sizes and accessibility features) for which the PHA will apply or is currently

pending for demolition or disposition; and (2) A timetable for the demolition or disposition. This statement must be submitted to the extent that approved and/or pending demolition and/or disposition has changed. The application and approval process for demolition and/or disposition is a separate process. See guidance on HUD's website at: http://www.hud.gov/offices/pil/centers/sac/demo_dispo/index.cfm. (24 CFR §903.7(h))

Conversion of Public Housing. Describe any public housing building(s) (including project number and unit count) owned by the PHA that the PHA is required to convert or plans to voluntarily convert to tenant-based assistance; 2) An analysis of the projects or buildings required to be converted; and 3) A statement of the amount of assistance received to be used for rental assistance or other housing assistance in connection with such conversion. See guidance on HUD's website at: <http://www.hud.gov/offices/pil/centers/sac/conversion.cfm>. (24 CFR §903.7(i))

Project-Based Vouchers. Describe any plans to use HCVs for new project-based vouchers. (24 CFR §983.57(b)(1)) If using project-based vouchers, provide the projected number of project-based units and general locations, and describe how project-basing would be consistent with the PHA Plan.

Other Capital Grant Programs (i.e., Capital Fund Community Facilities Grants or Emergency Safety and Security Grants)

B.3 Progress Report. For all Annual Plans following submission of the first Annual Plan, a PHA must include a brief statement of the PHA's progress in meeting the mission and goals described in the 5-Year PHA Plan. (24 CFR §903.7(r)(1))

B.4 Most Recent Fiscal Year Audit. If the results of the most recent fiscal year audit for the PHA included any findings, mark "yes" and describe those findings in the space provided. (24 CFR §903.7(p))

C. Other Document and/or Certification Requirements

C.1 Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan. Provide a certification that the following plan elements have been revised, provided to the RAB for comment before implementation, approved by the PHA board, and made available for review and inspection by the public. This requirement is satisfied by completing and submitting form HUD-50077 SM-HP.

C.2 Civil Rights Certification. Form HUD-50077 SM-HP, *PHA Certifications of Compliance with the PHA Plans and Related Regulation*, must be submitted by the PHA as an electronic attachment to the PHA Plan. This includes all certifications relating to Civil Rights and related regulations. A PHA will be considered in compliance with the AFFH Certification if: it can document that it examines its programs and proposed programs to identify any impediments to fair housing choice within those programs; addresses those impediments in a reasonable fashion in view of the resources available; works with the local jurisdiction to implement any of the jurisdiction's initiatives to affirmatively further fair housing, and assures that the annual plan is consistent with any applicable Consolidated Plan for its jurisdiction. (24 CFR §903.7(o))

C.3 Resident Advisory Board (RAB) comments. If the RAB provided comments to the annual plan, mark "yes," submit the comments as an attachment to the Plan and describe the analysis of the comments and the PHA's decision made on these recommendations. (24 CFR §903.13(c), 24 CFR §903.19)

C.4 Certification by State or Local Officials. Form HUD-50077-SL, *Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan*, must be submitted by the PHA as an electronic attachment to the PHA Plan. (24 CFR §903.15)

D. Statement of Capital Improvements. PHAs that receive funding from the Capital Fund Program (CFP) must complete this section. (24 CFR 903.7 (g))

D.1 Capital Improvements. In order to comply with this requirement, the PHA must reference the most recent HUD approved Capital Fund 5 Year Action Plan. PHAs can reference the form by including the following language in Section C. 8.0 of the PHA Plan Template: "See HUD Form 50075.2 approved by HUD on XX/XX/XXXX."

This information collection is authorized by Section 511 of the Quality Housing and Work Responsibility Act, which added a new section 5A to the U.S. Housing Act of 1937, as amended, which introduced the 5-Year and Annual PHA Plan. The 5-Year and Annual PHA Plans provide a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services, and informs HUD, families served by the PHA, and members of the public of the PHA's mission, goals and objectives for serving the needs of low-income, very low-income, and extremely low-income families.

Public reporting burden for this information collection is estimated to average 16.64 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and respondents are not required to complete this form, unless it displays a currently valid OMB Control Number.

Privacy Act Notice. The United States Department of Housing and Urban Development is authorized to solicit the information requested in this form by virtue of Title 12, U.S. Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

ATTACHMENT A-2

Summary of Proposed Housing Choice Voucher Administrative Plan Policy Changes Effective Upon Board Approval

| Chapter | Old Policy Language | New Policy Language | Summary |
|---------|---|--|---|
| 10-7 | <p>Housing Assistance Payments [24 CFR 982.311(d)] <u>HACC Policy</u></p> <p>If participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin on the first of the month following the month the family moves out of the first assisted unit. The PHA will not pay overlapping Housing Assistance Payments for two separate units, unless an exception is made by the PHA in accordance with this Plan. For this reason, it is recommended families plan accordingly and give 30 to 60 day notices and plan to move out on the last day of the month assistance was paid to the current landlord.</p> | <p>Housing Assistance Payments [24 CFR 982.311(d)] <u>HACC Policy</u></p> <p><i>All language removed.</i></p> | <p>Allows HACC to pay overlapping rental assistance for one month while tenant is in the move process. Eases the stress of moving for tenants especially when porting to another jurisdiction.</p> |
| 11-10 | <p>HACC-Initiated Interim Reexaminations</p> <p>HACC-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by HACC. They are not scheduled because of changes reported by the family. <u>HACC Policy</u> <u>HACC Policy</u></p> <p>HACC will conduct interim reexaminations in each of the following instances: For families receiving the Earned Income Disallowance (EID), HACC will conduct an interim reexamination at the start and conclusion of the 24-month eligibility period. If the family has reported zero income, the PHA may conduct an interim reexamination every 3 months as long as the family continues to report that they have no income. Families are required to provide all information supporting their contention that they are receiving absolutely no outside source of income and will be given information on Worksource, the FSS program and other resources to try to improve their economic situation.</p> | <p>HACC-Initiated Interim Reexaminations</p> <p>HACC-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by HACC. They are not scheduled because of changes reported by the family. <u>HACC Policy</u></p> <p><i>Removed the highlighted language:</i> HACC Policy HACC will conduct interim reexaminations in each of the following instances: For families receiving the Earned Income Disallowance (EID), HACC will conduct an interim reexamination at the start and conclusion of the 24-month eligibility period. Families are required to provide all information supporting their contention that they are receiving absolutely no outside source of income and will be given information on Worksource, the FSS program and other resources to try to improve their economic situation. If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), the PHA will schedule an interim</p> | <p>Reduce work load requirement of checking every quarter and family already is required to report within 7 days if there is a change of income such as employment, Social Security Award, or child support.</p> |

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| <p>If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), the PHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.</p> <p>If at the time of the annual reexamination, tenant declarations were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the PHA will conduct an interim reexamination HACC may conduct an interim reexamination at any time in each of the following instances:</p> <ul style="list-style-type: none"> • In order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint. • If HACC determines that the family income is unstable. This includes, but is not limited to, employment benefits, child support, general assistance and odd jobs. | <p>reexamination to coincide with the end of the period for which it is feasible to project income.</p> <p>If at the time of the annual reexamination, tenant declarations were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the PHA will conduct an interim reexamination HACC may conduct an interim reexamination at any time in each of the following instances:</p> <ul style="list-style-type: none"> • In order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint. • If HACC determines that the family income is unstable. This includes, but is not limited to, employment benefits, child support, general assistance and odd jobs. | |
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| <p>11-11</p> | <p>Required Reporting</p> <p>HUD regulations give HACC the freedom to determine the circumstances under which families will be required to report changes affecting income.</p> <p><u>HACC Policy</u></p> <p>Families are required to report all increases in income (including new employment or change of employment), and assets within 7 business days of the date the change takes effect.</p> <p>The PHA will only conduct interim examinations that result in an increase in income under the following circumstances:</p> <ol style="list-style-type: none"> 1) For families that qualify for the earned income disallowance (EID), and only when the EID family's share of rent will change as a result of the increase. 2) For families participating in the FSS program when the increase is due to an increase in earned income that will result in an increase in escrow credit. 3) When changes in income have not been reported to the PHA in a timely manner (within 7 business days of the change). In this situation, the PHA will conduct an interim reexamination and will make the change in tenant rent retroactive to the first of the month following the month when the change occurred. The family will be required to enter into a repayment agreement with the PHA for the overpaid assistance. 4) When the family previously had been at zero income. <p>In all other cases, the PHA will note the information in the tenant file, but will not conduct an interim reexamination.</p> | <p>Required Reporting</p> <p>HUD regulations give HACC the freedom to determine the circumstances under which families will be required to report changes affecting income.</p> <p><u>HACC Policy</u></p> <p><i>Removed the highlighted language:</i></p> <p>Families are required to report all increases in income (including new employment or change of employment), and assets within 7 business days of the date the change takes effect.</p> <p>The PHA will only conduct interim examinations that result in an increase in income under the following circumstances:</p> <ol style="list-style-type: none"> 1) For families that qualify for the earned income disallowance (EID), and only when the EID family's share of rent will change as a result of the increase. 2) For families participating in the FSS program when the increase is due to an increase in earned income that will result in an increase in escrow credit. <p>In all other cases, the PHA will note the information in the tenant file, but will not conduct an interim reexamination.</p> | <p>HACC will reduce workload and family burden. This will allow families to stabilize with new income sources until their next annual. Tenants are often losing other benefits such as food stamps and/or TANF so a stabilization period is needed.</p> |
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| 17-36 | <p><u>HACC Policy</u> HACC's goal is to provide as many families with vouchers as possible. Given the budget limitations of the program, HACC must implement policies that control its HAP expenditures. HACC Policy The rent to owner including utility allowances must not exceed <u>the lowest of</u> An amount determined by HACC:</p> <ul style="list-style-type: none"> • For PBV's with HACC Disposition funds, the initial HAP gross rent amount cannot exceed 110% of FMR; and • For all other PBV's rent adjustments (rent increase requests) gross rent shall not exceed HACC's Payment Standards. • The reasonable rent; or • The rent requested by the owner. | <p><u>HACC Policy</u> The rent to owner must not exceed the lowest of the following amounts:</p> <ul style="list-style-type: none"> • An amount determined by the PHA, not to exceed applicable payment standard for the unit bedroom size minus any utility allowance; • The reasonable rent; or • The rent requested by the owner. <p>For all PBV rent approved prior to April 1, 2019, The initial rent to owner will not fall below the subsidy layering review rent approved by HUD.</p> | <p>HACC has limited funding and needs to establish a consistent cap on what developers can request for rents on project based voucher units.</p> |
| 19 | <p>FSS Program only offered to Housing Choice Voucher participants</p> | <p>FSS Program being offered to Public Housing and Housing Choice Voucher participants with a preference to serve those Public Housing households living in scattered site units.</p> | <p>HACC allowing Public Housing families the opportunity to participate in the FSS Program. The preference for scattered sites is to give these families an opportunity to build escrow should HACC decide to dispose of scattered sites in the future this would allow families a potential opportunity to purchase their home.</p> |

ATTACHMENT B-1

Summary of Proposed Admissions and Continued Occupancy Plan Policy Changes Effective April 2020

| Chapter | Old Policy Language | New Policy Language | Summary |
|----------------|--|--|---|
| 9 Page 9-13 | <p>HACC-initiated Interim Reexaminations</p> <p>PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by HACC. They are not scheduled because of changes reported by the family.</p> <p><u>HACC Policy</u></p> <p>HACC will conduct interim reexaminations in each of the following instances: For families receiving the Earned Income Disallowance (EID), HACC will conduct an interim reexamination at the start, to adjust the exclusion with any changes in income, and at the conclusion of the 24-month eligibility period.</p> <p>If the family has reported zero income, HACC will conduct an interim reexamination every 4 months as long as the family continues to report that they have no income.</p> <p>If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), HACC will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.</p> <p>If at the time of the annual reexamination, tenant declarations were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, HACC will conduct an interim reexamination.</p> <p>HACC may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.</p> | <p>HACC-initiated Interim Reexaminations</p> <p>PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by HACC. They are not scheduled because of changes reported by the family.</p> <p><u>HACC Policy</u></p> <p><i>Removed the highlighted language:</i></p> <p>HACC will conduct interim reexaminations in each of the following instances: For families receiving the Earned Income Disallowance (EID), HACC will conduct an interim reexamination at the start, to adjust the exclusion with any changes in income, and at the conclusion of the 24-month eligibility period.</p> <p>If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), HACC will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.</p> <p>If at the time of the annual reexamination, tenant declarations were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, HACC will conduct an interim reexamination.</p> <p>HACC may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.</p> | <p>Reduce work load requirement of checking every quarter and family already is required to report within 7 days if there is a change of income such as employment, Social Security Award, or child support.</p> |

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| <p>9 Page 9- 14</p> | <p>Required Reporting</p> <p>HUD regulations give HACC the discretion to determine the circumstances under which families will be required to report changes affecting income.</p> <p><u>HACC Policy</u></p> <p>Families are required to report all increases in income (including new employment or change of employment), and assets within 7 business days of the date the change takes effect. HACC will only conduct interim reexaminations that result in an increase in income under the following circumstances:</p> <ol style="list-style-type: none"> 1) For families that qualify for the earned income disallowance (EID), and only when the EID family's share of rent will change as a result of the increase. 2) When changes in income have not been reported to HACC in a timely manner (within 7 business days of the change). In this situation, HACC will conduct an interim reexamination and will make the change in tenant rent retroactive to the first of the month following the month when the change occurred. The family will be required to enter into a repayment agreement with HACC for the overpaid assistance. 3) When the family previously had been at zero income. <p>In all other cases, HACC will note the information in the tenant file, but will not conduct an interim reexamination.</p> | <p>Required Reporting</p> <p>HUD regulations give HACC the discretion to determine the circumstances under which families will be required to report changes affecting income.</p> <p><u>HACC Policy</u></p> <p>Families are required to report all increases in income (including new employment or change of employment), and assets within 7 business days of the date the change takes effect. HACC will only conduct interim reexaminations that result in an increase in income under the following circumstances:</p> <ol style="list-style-type: none"> 1) For families that qualify for the earned income disallowance (EID), and only when the EID family's share of rent will change as a result of the increase. 2) For families participating in the FSS program when the increase is due to an increase in earned income that will result in an increase in escrow credit. <p>In all other cases, HACC will note the information in the tenant file, but will not conduct an interim reexamination.</p> | <p>HACC will reduce workload and family burden. This will allow families to stabilize with new income sources until their next annual. Tenants are often losing other benefits such as food stamps and/or TANF so a stabilization period is needed.</p> <p>Adding new language (#2) for PH newly adopted FSS program participation.</p> |
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| <p>Chapter 19</p> <p>New Chapter added FSS Action Plan</p> | <p>Previously we had no Family Self Sufficiency (FSS) Program for Public Housing.</p> | <p>FSS Program being offered to Public Housing for the first time with a preference to serve those households living in scattered site units.</p> | <p>HACC allowing Public Housing families the opportunity to participate in the FSS Program. The preference for scattered sites is to give these families an opportunity to build escrow should HACC decide to dispose of scattered sites in the future this would allow families a potential opportunity to purchase their home.</p> |
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Attachment B-2

FSS Action Plan for the Housing Authority of Clackamas County's Family Self-Sufficiency Program

January 2020

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PUBLIC NOTICE

A Public Meeting to cover the Housing Authority of Clackamas County's (HACC) Amendment to the Annual Plan effective 2019-2020 will be held on July 30th, 2019, at 10AM at OCVM Community Center, 200 S. Longview Way., Oregon City, OR 97045. Resident Advisory Board members and Public Housing residents are encouraged to attend.

A Public Hearing to comment on HACC's 2019-2020 Draft Amendment to the Annual Plan will be held on October 10, 2019, before the HACC Board of Commissioners. The Commissioners meet at 10:00 AM, in their hearing room at the Public Services Building located at 2051 Kaen Road, Oregon City, Oregon. Everyone is welcomed to attend and comment on the proposed Amendment to the Annual Plan.

HACC developed its Plan in compliance with the Quality Housing and Work Responsibility Act of 1998 and Federal Register, Docket No. FR-4829-N-01.

The Draft Amendment to the Plan will be available for review from August 1, 2019 - September 15th, 2019 and can be found online at <http://www.clackamas.us/housingauthority/plansandreports.html>. Hard copies are kept for public review at HACC's administrative office located at 13930 South Gain Street, Oregon City, OR, open Monday through Thursday, 8AM to 6PM. The Amendment to the Annual Plan can also be viewed at the Clackamas County Library, 16201 SE McLoughlin, Milwaukie, OR 97267.

Written comments should be directed to Elizabeth Miller, Housing Authority of Clackamas County, P.O. Box 1510, Oregon City, OR 97045, or by email at emiller@clackamas.us. These comments must be received by September 15th, 2019.

Attachment P

RESIDENT ADVISORY BOARD MEETING MINUTES

Tuesday, July 30, 2019 10am – 1pm at Hillside Park Community Center

- I. **10:00am - 10:15am** **Welcome and Introductions – Jill Smith**
Intro to what we will be discussing today-(New changes to policies, Public posting and comment period, changes in bylaws)

- II. **10:15am - 10:40am** **Proposed Admin Plan Policy Changes – Toni Karter**
 - Review Attachment A- Policy changes to annual plan (proposed policy changes)
Admin plan

ATTACHMENT A

Summary of Proposed Housing Choice Voucher Administrative Plan Policy Changes Effective Upon Board Approval

| Chapter | Old Policy Language | New Policy Language | Summary |
|---------|---|--|--|
| 10-7 | <u>HACC Policy</u> If participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin on the first of the month following the month the family moves out of the first assisted unit. The PHA will not pay overlapping Housing Assistance Payments for two separate units, unless an exception is made by the PHA in accordance with this Plan. For this reason, it is recommended families plan accordingly and give 30 to 60 day notices and plan to move out on the last day of the month assistance was paid to the current landlord. | <u>HACC Policy</u> <i>All language removed.</i> | Allows HACC to pay overlapping rental assistance for one month while tenant is in the move process. Eases the stress of moving for tenants especially if porting to another jurisdiction. |

| | | | |
|-------|---|---|---|
| 11-10 | <p><u>HACC Policy</u></p> <p>If the family has reported zero income, the PHA may conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.</p> | <p><u>HACC Policy</u></p> <p><i>All language removed</i></p> | <p>Reduce work load requirement of checking every quarter and allows family to enjoy any new employment income until next Annual Reexam.</p> |
| 11-11 | <p><u>HACC Policy</u></p> <p>4) When the family previously had been at zero income.</p> | <p><u>HACC Policy</u></p> <p><i>All language removed.</i></p> | <p>HACC will reduce workload and family burden. This will allow family to enjoy new income sources until their next annual.</p> |
| 11-11 | | <p><u>HACC Policy</u></p> <p>If a family reports a change that would result in an increase in family share of the rent, the PHA will note the information in the tenant file, but will not conduct an interim reexamination except for FSS or if EID requires change.</p> | <p>HACC will reduce workload and family burden. This will allow family to enjoy new income sources until their next annual.</p> |
| 17-36 | <p><u>HACC Policy</u></p> <p>HACC's goal is to provide as many families with vouchers as possible. Given the budget limitations of the program, HACC must implement policies that control its HAP expenditures.</p> <p><u>HACC Policy</u></p> <p>The rent to owner including utility allowances must not exceed <u>the lowest of</u></p> <p>An amount determined by HACC:</p> <ul style="list-style-type: none"> • For PBV's with HACC Disposition funds, the initial HAP gross rent amount cannot exceed 110% of FMR; and • For all other PBV's rent adjustments (rent increase requests) gross rent shall not exceed HACC's Payment Standards. • The reasonable rent; or • The rent requested by the owner. | <p><u>HACC Policy</u></p> <p>The rent to owner must not exceed the lowest of the following amounts:</p> <ul style="list-style-type: none"> • An amount determined by the PHA, not to exceed applicable payment standard for the unit bedroom size minus any utility allowance; • The reasonable rent; or • The rent requested by the owner. <p>For all PBV rent approved prior to April 1, 2019, The initial rent to owner will not fall below the subsidy layering review rent approved by HUD.</p> | <p>HACC has limited funding and needs to establish a consistent cap on what developers can request for rents on project based voucher units.</p> |

| | | | |
|----|---|--|---|
| | | | |
| 19 | FSS Program only offered to Housing Choice Voucher participants | FSS Program being offered to Public Housing and Housing Choice Voucher participants with a preference to serve those Public Housing households living in scattered site units. | HACC allowing Public Housing families the opportunity to participate in the FSS Program. |

-HACC Policy chapter 10-7 There is a language overlap when residents move in to a new unit, old policy (we pay the landlord until the 30th, and if the resident needed a few extra days we did not pay for those days) now we can pay for those overlap days.

-HACC Policy Chapter 11-10 if you reported 0 income you were required to fill out an interim reexamination form, this caused extra processing and tenant time, now we are doing a 3 month check instead and adjust if needed.

-HACC Policy change chapter 11-11 removing a policy #4-(zero income issue stated above) we are no longer doing an interim change, but rather a yearly (annual) change instead.

Resident comment – do we have to start paying the increase rent as soon as we get the increase in income? We are now doing a 30 day notice, but no adjustments made until 3 months later (or your annual recertification date)

Resident comment – Can HACC send a letter to residents to let them know they will be needing to save some of their income for future payments? Maybe we can edit our letters to add this to help residents prepare.

Resident comment? Is any extra income you make prorated? It comes up in the annual recertification and then is added to your annual income amount.

-HACC Policy Chapter 17-36- project Based Voucher Rent- Tied to a unit not a person- We are doing construction to add more PBV we are opening up the FSS to PH and section 8, residents can now add an escrow account to use for anything you may need, and we are thinking 25 slots to PH with scattered sites, then opening up to PH.

Resident comment – can we use it to buy a car? The money needs to be used for your self-sufficiency goals. HACC has limited funding and needs to establish a consistent CAP on what developers can request for rents on PBV units

- Discuss Family Self Sufficiency Chapter
- The FSS program is being offered to Public Housing and Housing Choice Voucher participants with preference to serve Public Housing households living in Scattered Sites units. HACC is allowing PH families the opportunity to participate in the FSS program.

We had to add the FSS action plan in order to add PH to the section 8 EID – earned Income Disallowance. We do not require you to inform us of a COLA increase due to us already having

this information in our system we will have already applied it. There is a 24 month disallowance so that you do not get penalized for job earnings –

Resident comment, I am not allowed to get TANIF due to being on the HA, and I had to pay back the money I received, so how can I benefit from getting a raise when I then lose other benefits. (Benefits cliff) this is one of the reasons why we want to change our policies

Resident comment- if we get a raise my rent increases and they take 75% of my raise, so the raise is not really a raise and my food stamps also go down.

Resident comment- another cliff, death benefit makes me lose Medicaid Food stamps. Yes, this is an issue we are trying to help, when someone comes up with new earnings it currently effects all other benefits you are currently receiving.

III. **10:40am - 11:00am Review New Lease – Rich Malloy**—updating and revising the lease.

Summary- not a lot of changes.

- format changes- old lease, what we want to do is make it easy for you to understand, and to create addendums to lease, pets, mold, swimming pools, and other things that effect liability and neighbors.

--We want to make it easier for you to pay your rent, the new late date is the following Monday, not on a Friday when we are not in the office, moving the late date from the 8th to the 15th to help accommodate people who receive their money and can't get in in to us by close of day on the 5th or 8th

--- Late rent fee, and charges for damages- these charges will be changing. Your obligations as a tenant or obligations as your landlord, Folks in the manor will not get the New Lease until 2020, or 2021, and rent is on a sliding scale. Some of the new information is non-negotiable, our goal is to create better housing and a better community for our residents.

Resident comment – what happens to damage done between now and when you redo the unit, will we be charged? Rich-Good question, and it is something that we will need to talk about and see what we want to do.

Resident comment- drop box mail, does it drop into the building, we put our rent check in there and what if someone takes the box off the wall and is able to steal our identity.

Another Resident comment- If we mail it on the 3rd, then it does not get posted until 2 days later, how can we get our checks to you? You can do automatic bill pay (although we understand that most residents do not have checking accounts), another option would be to walk it down to us. Allison-We will look at the security of the box outside of the building to make sure your payment will stay secure. Public Housing is being phased out in the next 10 years and will be replaced by properties with project based section 8 vouchers to maintain affordability for low and very low income individuals and families. The new ownership structure will not be as lenient as public housing when it comes to late rent payments or other lease violations.

--We are working with banks and credit unions to get rent payments to us as quickly as possible, and it is a good way for you to have a record of your payment to us.

Resident comment- when do we post the payments from residents? We do the same day as we receive it. Please let us know if you have other questions or ideas, you can let Jemila and Allison know.

Resident Comment- Do we need to do 8 hours of community service. Yes, this is all for PH, but when we are no longer public housing this will go away.

IV. 11:00am - 11:10am HACC Bylaws – Jill Smith

- Discuss adding the option of an additional resident commissioner---change is bylaws.
 - under article 2- commissioners and plus 1 resident- (Paul Reynolds) the change is that we can have up to 2 resident commissioners, this is not required, but we can if we feel we need. We are hoping to have an overlap in resident commissioners, and are going to be recruiting for a new resident commissioner since Paul will be retiring – Duties from Paul, have a clear understanding what goes on and how to get projects going, attend hearings and voting sessions, it gives him a better understanding of what is going on and what happens to help people get through some of the issues that he is facing. (Paul) I really like talking with the 5 commissioners and going to policy sessions and voting sessions to understand what is going on. Jill- Please apply to the resident commissioner appointment so we can get the person in and have some overlap to fully understand the process and learn from Paul.
 - 116 million proposed in affordable deals going to the Housing board and you have a tremendous impact on what will be happening.
 - We will still be involved whether we run the PH asset or not (Rich). Watch for the recruitment paperwork for the new Resident Commissioner

V. 11:10am - 11:30am Questions – Everyone-

--resident comment- is there a way to talk to someone when there is an emergency or a power outage, the number we have is to an answering machine and sometimes we get locked out of getting our laundry and being able to access the elevators. A-We are trying to figure out a new system, but until then, we do not have the money to expedite the elevator issues, and the construction date is May 2020.

Resident comment – Is the grounds ever going to be updated, the current guy only mows a few sections at a time also can we get fall cleanups for leaves and yard debris? Rich-We should be cleaning the gutters and mowing takes a while because we have so much land and buildings to get to that it takes a long time, and by the time

we get it all done, there are tall weeds up at the first spots we went to. Gutters overflowing is a maintenance issue and a work order should be called in.

Resident question for Rich – Can we get a neighborhood cleanup 3 times a year, currently it is June and October. Sonja We do not have funding, or a real need to do it more than the 2 times a year we are currently doing.

Resident comment- We have had a fire recently and it is a fire issue to not take the old furniture that people are storing up in between the 2 pick-up dates. Jemila-For fire safety we are trying to work with residents to clean up their homes and get rid of these fire hazards.

Resident comment- maybe we could have meetings for residents and support groups that are in a private area so that residents do not feel that everyone can hear or see the issues they are facing.

Resident Comment- we will be losing some lockers and we should find other ways for people to store their belongings. Allison- I am working with people to negotiate and help get rid of the belongings they do not need or are not using.

Resident Comment- Habitat for Humanity will pick up items that are in good shape and a full load is \$20.00.

Resident Comment- Residents are not abiding by their Lease agreements, people are not feeling safe, no one will return my calls at OC police dept. and I do not feel safe at CH and I fear retaliation. This affects my quality of life and is feeling traumatized by the culture of no one doing anything about the issues with neighbors and dog attacks, drunk neighbors, the language used, and we do not feel safe with living at Ch and the way the police treat people who are on Section 8 and PH.

Resident comment- Neighborhood block parties might help the community network on how to address the issues that are bothering us and causing us to not feel safe.

Sonja- There is a community officer for the CH area and we should invite him to come and talk with the residents at CH and help build Community building, Jill-this is a goal we have as well as lease enforcement, it is a new day, and you will lose your housing if you do not abide by the guidelines within the lease. Sonja- If there are issues it needs to be documents by the residents calling the police and providing the information we need to pursue issues and get problem residents out of housing. Jill- If you do not feel safe or that anything will happen when there is an incident, call Sonja and let her know so that she can handle the situation.

Resident comment- It can take 6-8 months to get problem tenants out. A-yes, sometimes it can take a while, that is why we are asking you to document everything.

Resident comment- New police chief in Milwaukie, and he will follow up on issues that are called in and it has made a real difference. A-that is good to know

Resident comment- He understands our budget, but can we have maintenance come around once a year to clean the railings, most of the residents here are disabled and are not able to clean them. Also geese poop and moss need to be cleaned off yearly to keep from being so slippery and unsafe on the back side of the manor. Jill- This would be a work order, and they should be submitted and tracked. Make a request and we will put in a work order for them. Also locust trees are overgrowing and are on the east side of the garden area at Hillside manor and could be cut back.

Resident comments

- None at this time



Nancy Bush

Director

Disaster Management
2200 Kaen Road
Oregon City, OR 97045

T 503-655-8378

clackamas.us

October 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Presentation Regarding Earthquake Preparedness and the Clackamas County Shake Out Drill

| | |
|--|--|
| Purpose/Outcome | Awareness, safety, and protection during an earthquake. |
| Dollar Amount and Fiscal Impact | No direct budget impacts since this is an annual program that is shared between multiple County departments. |
| Funding Source | N/A |
| Duration | Shakeout occurs on October 17 at 10:17 AM |
| Previous Board Action | No Board Action necessary. This is a required annual earthquake safety drill. |
| County Counsel Review | N/A |
| Strategic Plan Alignment | 1. Coordination and Integration of Planning and Preparedness. 2. Ensure safe, healthy and secure communities. |
| Contact Person | Jamie Poole, Outreach and Technology Coordinator, Disaster Management, x8838 |

BACKGROUND:

Oregon is earthquake country and Clackamas County knows this first hand. In March 1993, the "Spring Break" quake roused many residents from sleep, damaging numerous homes and business, including severely damaging Molalla High School. State-wide, increasing attention is being given to the Cascadia Subduction Zone off of the Oregon coast and the potential for a magnitude 9.0 great earthquake.

Clackamas County is complying with Oregon Revised Statue (ORS) 401.900 by requiring all employees to participate in this annual earthquake drill to practice drop, cover and hold on. Some County facilities will also practice evacuating after the drill. Residents and businesses are encouraged to take part in practicing this personal protective measure to make taking immediate action more intuitive, since earthquakes strike with no warning. We encourage residents and businesses to take time afterwards and conduct a safety inspection to identify and mitigate potential falling hazards at home or work.

RECOMMENDATION:

Presentation only, recommendation is for all County employees to participate in the October 17th Shake Out drill at 10:17 AM.

Respectfully submitted,

Nancy Bush, Director
Department of Disaster Management

October 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Revenue Grant Amendment #1 with the State of Oregon, Department of Education for
Clackamas County Early Learning HUB Preschool Promise Capacity Building

| | |
|--|---|
| Purpose/Outcome | Preschool Promise Capacity Building allows financial supports for Continuous Quality Improvement (CQI) strategies for the Clackamas Early Learning HUB Preschool Promise program implementation and delivery services in the following areas: classroom quality improvement, infrastructure, training and technical assistance, professional development and comprehensive and family supports. |
| Dollar Amount and Fiscal Impact | Amendment adds \$15,000 for a total of \$60,000 for the period of July 1, 2017 through June 30, 2020. No County General Funds are involved and no match is required. |
| Funding Source | State of Oregon through its Department of Education Grant No. 11180 |
| Duration | Effective date July 1, 2017 and terminates on June 30, 2020 |
| Previous Board Action/Review | 102617-A1 |
| Strategic Plan Alignment | 1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities |
| Counsel Review | County Counsel has reviewed and approved this document. Date of counsel review: September 25, 2019 |
| Contact Person | Korene Mather 503-650-3339 |
| Contract No. | H3S8534 |

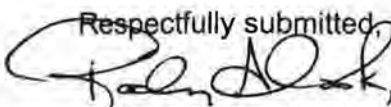
BACKGROUND:

The Children, Family & Community Connections Division of the Health, Housing and Human Services Department requests the approval of Grant Amendment #1 with the State of Oregon, Department of Education for the Clackamas County Early Learning HUB Preschool Promise Program. Preschool Promise Programs increase access to quality preschool and enhance quality in existing early education programs for preschool aged children. This Amendment #1 supports Continuous Quality Improvement strategies for implementation and delivery services.

This Revenue Grant Amendment extends the Agreement through June 30, 2020 and adds \$15,000 for a maximum value of \$60,000. It has been reviewed and approved by County Counsel.

RECOMMENDATION:

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

Respectfully submitted,

 H3S Deputy Director / FOR
 Richard Swift, Director
 Health, Housing & Human Services

Healthy Families. Strong Communities.

**GRANT AGREEMENT 11180
AMENDMENT No. 1**

1. This is Amendment No. 1 to Grant Agreement No. 11180 (as amended from time to time, the "Agreement") effective **July 1, 2017** between the State of Oregon, acting by and through its **Department of Education** ("Agency") and **Clackamas County** ("Grantee") on behalf of the Clackamas Early Learning Hub.
2. This Amendment shall be effective on October 1, 2019 or the last date the Amendment has been signed by every party and when required, approved in accordance with applicable laws, rules and regulations, including any federal approval and approval for legal sufficiency by the State of Oregon, Department of Justice.
3. The Agreement is hereby amended as follows with new language indicated by double underlining and deleted language is indicated by ~~striketrough and brackets~~:

A. The Agreement preamble and EFFECTIVE DATE AND DURATION are amended as follows:

**GRANT AGREEMENT
PRESCHOOL PROMISE CONTINUOUS QUALITY IMPROVEMENT GRANT**

This Grant Agreement ("Grant" or "Agreement") is made by the State of Oregon, acting by and through the Oregon Department of Education ("Agency"), and Clackamas County ("Grantee") on behalf of the Clackamas Early Learning Hub for financing of the project described in Exhibit A ("Project").

This Grant includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

- Exhibit A: Project Description
- Exhibit B: Reserved~~[Funding Request Form]~~
- Exhibit C: Insurance

EFFECTIVE DATE AND DURATION: When all Parties have executed this Agreement, and all necessary approvals have been obtained, this Agreement shall be effective as of July 1, 2017, and terminates on June~~[September]~~ 30, 2020~~[2019]~~, unless terminated earlier.

B. SECTION 1: DEFINITIONS is amended as follows:

The following capitalized terms have the meanings assigned below.

"Allowable" means costs of the Project incurred or to be expended by the Grantee that are used only for the purposes set forth in Exhibit A and the completed Funding Request Form in Exhibit B.

"Continuous Quality Improvement Plan (CQI Plan)" means a written plan by the Grantee for all activities for the project period, all anticipated expenditures, and all expected deliverables.

"Costs of the Project" means the Grantee's actual costs that are reasonable, necessary and directly related to the Project and are eligible or permitted uses of the Grant Funds under the Project.

"Default" means an event which, with notice or lapse of time or both, would become an Event of Default.

"Early Learning Division ("ELD")" means the division of the Oregon Department of Education responsible for the administration of and outcomes for the state's early learning system of programs and services.

"Early Learning Hub ("ELH")" means the local coordinating entity designated by and with whom the ELD has contracted to provide early learning system programs and services."

"Electronic Grant Management System ("EGMS")" means the electronic payment system operated by the Agency.

"Grant Amount" means funds provided under this Grant to complete the Project which shall not exceed:

\$20,000.00 during July 1, 2017[-] through June 30, 2018

\$40,000.00 aggregate through June 30, 2019

~~\$20,000.00~~~~[5,000.00]~~ anticipated amount during July 1, 2019-~~[September 30, 2019]~~June 30, 2020

~~\$60,000.00~~~~[45,000.00]~~ maximum during the term of the Grant.

"Project" means the activities of Grantee to carry out the preschool education services described in Exhibit A as the purposes of the Grant Amount and the Specific Work to be Accomplished, under authority of ORS 329.172 and OAR 581-019-0036 through 581-019-0049.

"Service Delivery Area ("SDA")" means the geographic area of Clackamas County, within which the Grantee may provide services.

"Spark" means Oregon's quality rating and improvement system for the childhood care and early learning system.

C. SECTION 3: DISBURSEMENTS is amended as follows:

A. Agency shall disburse Grant Funds to Grantee for the Project activities described in Exhibit A ~~[and according to the completed Funding Request Form set forth in Exhibit B].~~

B. Grantee shall provide any additional information or further detail regarding the expenditure of Grant Funds as Agency may request.

C. Disbursements will occur only after Agency has received the quarterly Early Learning Hub Continuous Quality Improvement (CQI) Plan (Project Activities and Costs of the Project expenditure tracker) ~~[completed Funding Request Form set forth in Exhibit B with an authorized signature]~~ and Agency has accepted the proposed Project activities, including any required deliverables and services, for which disbursement~~[reimbursement]~~ is sought via properly submitted documentation. ~~[Drawn down of approved funds shall occur through the]~~ The EGMS draw down request must be submitted within 30 days after actual expenditure information has been submitted to Agency.

D. If Agency determines that any completed Project activities or documentation are not acceptable and that any deficiencies are the responsibility of the Grantee, Agency shall prepare a detailed written description of any deficiencies within 15 days of receipt of the document or performance

of the activity, and deliver such notice to Grantee. Grantee shall correct any deficiencies at no cost to Agency.

E. Grantee shall not expend any funds above the Grant Amount without a fully executed amendment in place prior to anticipated expenditures.

D. SECTION 6(A): REPRESENTATIONS AND WARRANTIES OF THE GRANTEE is amended as follows:

A. Estimated Project Cost. A reasonable estimate of the Costs of the Project is shown in the CQI Plan [Exhibit B,] together with a description of how Grant Funds and other funds in addition to Grant proceeds, if any, are expected to be used to carry out the Project.

E. SECTION 10(D) of NOTICES is amended as follows:

Notices. All notices to be given under this Grant must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this section 10.D. Notices may only be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

If to the Agency: [~~Gwyn Bachtle, Project Coordinator~~]
Anthony J. Martirano, Preschool Grants Specialist (Primary) or
Dayna Jung, Program Manager (Secondary)
Early Learning Division
700 Summer Street NE, 3rd Floor
Salem, OR 97301
[~~gwyn.bachtle@ode.state.or.us~~
Anthony.J.Martirano@ode.state.or.us
Desk (503) 947-0654 Mobile (503) 507-5450
Dayna.Jung@ode.state.or.us
Mobile 503-856-6160[~~503-480-6963~~]

F. EXHIBIT A - PURPOSE OF GRANT AMOUNT is amended as follows:

The Grant Amount will allow financial supports for Continuous Quality Improvement strategies for the Preschool Promise implementation and delivery services in the following areas:

- Classroom quality improvement
- Infrastructure
- Training and technical assistance
- Professional development
- Comprehensive and family supports

~~[The Grant Amount will allow Grantee to identify the needs of underserved populations within the Service Delivery Area to provide financial support for the following capacity building and continuous improvement preschool service activities: start up activities; infrastructure development; and, training, technical assistance and professional development.]~~

G. EXHIBIT A – SPECIFIC WORK TO BE ACCOMPLISHED is amended as follows:

The Grantee shall utilize funds to support continuous quality improvements for the Preschool Promise implementation and delivery services as described in the CQI Plan [and distribute

awarded funds to early learning providers as described in the Request for Funding Form and The Capacity Building activities for the Grantee will depend on the specific needs of the communities in their Service Delivery Area.] and approved by the Agency. The strategies for the Grantee will depend on the specific needs of the communities in the Grantee's Early Learning Hub Preschool Promise service delivery region. The following activities are eligible under this Grant Amount:

Classroom Quality Improvements[Start-Up Activities]

- Classroom m[M]aterials and s[S]upplies to meet licensing and Spark top two tier rating (furniture, [X] books, [X] manipulatives).
- Curriculum and a[A]ssessment m[M]aterials
- Technology e[E]quipment (hardware, [X] computers, [X] devices, [X] software).
- [Insurance to meet program requirements.]
- Other activities as deemed appropriate, necessary, and approved by ELD program staff.
- Non-fixed gross motor equipment (tricycles or sporting equipment)

Infrastructure

- Playgrounds (purchase, [X] repair, [X] build, [X] recondition fixed playground equipment and [X] storage sheds).
- Facility h[H]ealth and & s[S]afety i[I]mprovements needed to meet licensing requirements.
- Other infrastructure purchases as deemed appropriate, necessary, and approved by ELD program staff.

Training and Technical Assistance and[&] Professional Development

- Training, mentoring, coaching for ELH[Hub] and [X] provider staff throughout the instructional year to increase the level of classroom instruction, child outcomes, teacher effectiveness within the classroom, and cultural responsiveness.
- Costs associated with accessing or providing training (training fees, [X] travel expenses, [X] substitute wages).
- Costs associated with educational attainment[~~obtainment~~] to meet Preschool Promise, Spark, business acumen or licensing requirements[, college tuition and credentialing fees].
- Instructional leadership professional development.
- Other activities as deemed appropriate, necessary and approved by ELD program staff.

Comprehensive and Family Supports

- Social-emotional support: mental health consultation, assessments, classroom materials, and other additional classroom supports as deemed necessary and appropriate.
- Health supports: screenings and supports for referrals and follow-up (dental, vision, hearing and other).
- Kindergarten transition: costs associated with improving and fostering kindergarten transitions.
- Family engagement: activities to support parent engagement in educational opportunities, program policy and decision-making, and partnering to establish child and family goals.
- Educational supports: culturally responsive training, curriculum, and professional development and other language and literacy supports.
- Other educational and family service supports purchases as deemed appropriate, necessary and approved by ELD program staff.

H. EXHIBIT A – ACTIVITIES TABLE is amended as follows:

| <u>ACTIVITIES</u> <u>7/1/2017 through</u> <u>9/30/2019</u> | <u>DELIVERABLES</u> | <u>DUE DATES</u> |
|--|--|---|
| Provide Capacity Building in accordance with specific funding request as approved by Agency. | Professional Development, Technical Assistance, and Start-Up activities of early learning providers. | July 1, 2017 – September 30, 2019 |
| Submit quarterly financial reports to Agency. | Financial report covering activities for the reporting period. | Quarterly, during 45 days following each calendar quarter |
| Maintain Inventory List of materials purchased with this Grant Amount | Inventory list | Must be available upon request by Agency |
| Final written report for the period <u>July 1, 2017 through September 30, 2019.</u> | Written summary report to Agency submitted. | Within 60 days [of Grant expiration] <u>after September 30, 2019</u> |
| <u>ACTIVITIES</u> <u>10/1/2019 through June 30, 2020</u> | <u>DELIVERABLES</u> | <u>DUE DATES</u> |
| <u>Submit CQI Plan in accordance with specific funding requests as approved by Agency.</u> | <u>Quarterly report detailing planned activities and expenditures.</u> | <u>October 1, 2019 through June 30, 2020. Due 30 days before the beginning of calendar quarter.</u> |
| <u>Submit quarterly financial reports to Agency</u> | <u>Report actual expenditure amounts for planned activities.</u> | <u>Quarterly within 45 days following each calendar quarter.</u> |
| <u>Maintain inventory list of materials purchased with this Grant Amount</u> | <u>Inventory list completed</u> | <u>Must be available upon request by Agency.</u> |
| <u>Submit final impact report</u> | <u>Final impact report submitted to Agency for review</u> | <u>Within 45 days of Grant expiration.</u> |

I. EXHIBIT B – FUNDS REQUEST FORM is deleted in its entirety and replaced with EXHIBIT B – Reserved.

J. EXHIBIT C – INSURANCE is deleted in its entirety and replaced with EXHIBIT C – INSURANCE REVISED, October 1, 2019, which is incorporated herein.

4. Except as expressly amended above, all other terms and conditions of original Agreement are still in full force and effect. Grantee certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

GRANTEE, BY EXECUTION OF THIS AMENDMENT, HEREBY ACKNOWLEDGES GRANTEE HAS READ THIS AMENDMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CLACKAMAS COUNTY on behalf of the Clackamas Early Learning Hub

By: _____ Date: _____
Authorized Signature

Printed Name/ Title

OREGON DEPARTMENT OF EDUCATION

By: _____ Date: _____
Authorized Signature/ Title

Approved for Legal Sufficiency

Cynthia Byrnes, DOJ Sr. Assist Attorney General
Name/ Title

Date: September 13, 2019

October 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intra-Agency Agreement with Clackamas County Health Centers Division for School Based Health Centers (SBHC) operating funds

| | |
|--|---|
| Purpose/ Outcomes | This Agreement provides the basis for a cooperative working relationship for SBHC primary care services at the Rex Putnam, Oregon City, and Sandy SBHC's. |
| Dollar Amount and Fiscal Impact | The maximum Agreement value is \$162,000. |
| Funding Source | Public Health is receiving grant funds from the State Public Health Authority – No County General Funds will be used. |
| Duration | Effective July 01, 2019 and terminates on June 30, 2020 |
| Previous Board Action | No previous Board actions |
| 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 10, 2019 |
| Contact Person | Kim La Croix, Access to Care Program Manager – (503) 742-5982 |
| Contract No. | 9294 |

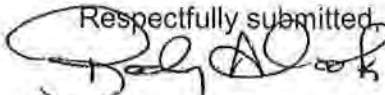
BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Intra-Agency Agreement with Clackamas County Health Centers Division (CCHCD) for primary care services at the Rex Putnam, Oregon City, and Sandy SBHC's. This will provide the basis for a cooperative working relationship and the provision of primary care services at the SBHC's. This agreement is funded with grant money received through the Local Public Health Authority (LPHA).

This contract is effective July 1, 2019 and continues through June 30, 2020. This agreement is delayed due to a lengthy negotiations process on certain details of the work and its dependence on the LPHA agreement being fully executed beforehand.

RECOMMENDATION:

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

Respectfully submitted

 Richard Swift, Director
 Health, Housing, and Human Services

INTRA-AGENCY AGREEMENT
BETWEEN
CLACKAMAS COUNTY PUBLIC HEALTH DIVISION
AND
CLACKAMAS COUNTY HEALTH CENTERS DIVISION

Contract # 9294

I. Purpose

This agreement provides the basis for a cooperative working relationship between the **Clackamas County Public Health Division** herein referred to as "CCPHD," and the **Clackamas County Health Centers Division**, herein referred to as "CCHCD," with the common goal of successfully operating a School Based Health Center (SBHC) program. The funds provided under this agreement shall only be used to support activities related to oversight, maintenance, administration, operation, and delivery of services within the SBHC.

II. Scope of Work and Cooperation

A. CCHCD agrees to:

1. Provide primary healthcare to students within Oregon City High School, Rex Putnam High School, and Sandy High School according to Oregon Health Authority SBHC protocols and certification requirements and CCHCD Policies.
2. All primary healthcare services must be delivered in accordance with the guidelines set forth in the 2017 Standards for Certification. The Standards for Certification includes administrative, operations and reporting guidance, and minimum standards and/or requirements in the areas of: certification process, sponsoring agency/facility, operations/staffing, laboratory, clinical services, data collection/reporting and quality assurance.
3. Maintain an operations agreement with Oregon City high school, Rex Putnam High school, and Sandy high school for the delivery of SBHC services by Clackamas County Health Centers. Provide a copy the operations agreements with the CCPHD annually.
4. Prepare SBHC facilities and staff for recertification site visits with Oregon Health Authority (OHA). Appoint SBHC leadership to participate in site visit and address items identified by OHA.
5. Participate in quarterly OHA SBHC meetings.
6. Designate a staff person to maintain the State Operational Profile (online portal) and submit data in accordance with OHA requirements.
7. Participate in OHA sponsored trainings and webinars.
8. Collaborate with CCPHD on grant proposals to support the SBHC when funding opportunities arise that align with the SBHC mission or improve population health that align with the SBHC and Health Centers mission and SBHC Strategic Plan.

9. Write and submit narrative and financial reports required by the grant funder. Share the narrative and financial reports with CCPHD.
10. Facilitate School district wide collaboration with SBHC staff, school district staff, public health services, other county departments, and community agencies in order to develop, implement, and maintain SBHC services for school-age children as opportunities arise.
11. Designate at least one medical provider and one other SBHC staff person to participate in biannual SBHC community of practice activities hosted by CCPHD. The SBHC site coordinator, Health Educator, and, as available, Pediatric Medical Director will be the only attendees at SBHC Community of Practices in person activities. Other clinical staff will participate via web based communications.
12. Upon request, share de-identified electronic health record (EPIC) data with CCPHD.
13. Conduct communication activities (e.g. website) that promote Oregon City, Rex Putnam, and Sandy SBHC clinics.

B. CCPHD agrees to:

1. Upon request, provide the oversight and technical assistance so that each SBHC in its jurisdiction meet the 2017 Standards for Certification for SBHC.
2. Assure to the OHA State Program Office (SPO) that all certification documentation and subsequent follow-up items are completed by the requested date(s) in accordance with the certification review cycle.
3. Meet with leadership team at least two times per year to facilitate communication and program development.
4. Upon receipt of proper invoice, distribute SBHC funding on behalf of the OHA to CCHCD for provision of healthcare services between July 1, 2019 and June 30, 2020.
5. Develop and distribute updated SBHC agreements as needed.
6. Facilitate biannual SBHC community of practice meetings.
7. Analyze school based health center related data, from a population health perspective, and share with CCHCD annually.
8. Conduct county-wide communications regarding SBHC services. CCPHD will notify and collaborate with CCHCD about communications related to the SBHCs where CCHCD is the medical sponsor.
9. Monitor fiscal and programmatic compliance, of CCHCD with this contract, by regularly reviewing invoices and participating in biennial state certification exit interviews.

III. Liaison Responsibility

Aria Baker will act as liaison from CCPHD:

ABaker@clackamas.us

Erin DeArmond-Reid will act as liaison from CCHCD:

Ereid@clackamas.us

IV. Compensation

CCPHD's obligations under this agreement are subject to receipt of grant funds from the State of Oregon for Program Element #44: School Based Health Centers.

The maximum amount available for CCHCD under this agreement shall not exceed \$162,000. The funds shall be distributed as follows:

- Up to \$54,000 for Oregon City SBHC
- Up to \$54,000 for Rex Putnam SBHC
- Up to \$54,000 for Sandy SBHC

CCHCD shall submit monthly expenditure reimbursement interfund transfer request invoices by the tenth day of the month following that in which service was performed for true and verifiable costs and expenses related to implementation of the services outlined in this agreement. The invoice must be itemized and reference contract # 9294, dates of service, number of hours billed, and the total amount due for all service provided during the month. Invoices shall be submitted to:

Clackamas County Public Health Division
Attn: Accounts Payable
2051 Kaen Road, # 367
Oregon City, Oregon 97045
PublicHealthFiscalAP@clackamas.us

When submitting electronically, designate CCHCD name and contract # 9294 in the subject of the e-mail.

Within thirty (30) days after receipt of the bill, provided COUNTY has approved the service specified on the invoice, COUNTY shall pay the amount requested to CONTRACTOR.

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

V. Reporting Requirements

A. Fiscal Reports

1. CCHCD shall submit year to date expense reports to CCPHD on January 15th and July 15th.
2. Reports will be itemized and will include all operational expenses to include, but not limited to: staff, supplies, lease, and maintenance.
3. Based on year end reconciliation, all monies not allocated by expense reports shall be returned to CCPHD.
4. CCHCD will submit Fiscal Reports to:

Clackamas County Public Health Division

Attn: Sherry Olson
2051 Kaen Road, #367
Oregon City, Oregon 97045

OR

SOlson4@clackamas.us

B. Performance Reporting

1. Submit annual Client encounter data in a form acceptable to the OHA SPO and in accordance with the 2017 Certification Standards at two times during the year, no later than January 31, 2020 for the previous calendar year (July 1, 2019 – December 31, 2019) and no later than July 15, 2020 for the preceding service year (July 1, 2019 – June 30, 2020).
2. Submit annual SBHC Key Performance Measure (KPM) data in a form acceptable to the OHA SPO and in accordance with the certification standards no later than October 1, 2020 for the preceding service year (July 1, 2019 – June 30, 2020).
3. Submit annual SBHC Billing, Revenue and Funding data in the form acceptable to the OHA SPO no later than October 1, 2020 for the preceding service year (July 1, 2019 – June 30, 2020).
4. Submit annual SBHC hours of operation and staffing in the form acceptable to the OHA SPO no later than October 1, 2020 for the current service year (July 1, 2019 – June 30, 2020).
5. Submit completed annual patient satisfaction survey data no later than January 31, 2020 and June 30, 2020.
6. Complete online national census survey every year.
7. CCHCD will submit Performance Reports to:

Clackamas County Public Health Division
Attn: Aria Baker
999 Library Ct
Oregon City, OR 97045
ABaker@clackamas.us

And

School-Based Health Center Program
800 NE Oregon, Suite 805
Portland, OR 97232
E-mail: SBHC_program@state.or.us
Phone: (971) 673-0871

VI. Amendments

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

VII. Term of Agreement

This agreement becomes effective July 1, 2019 and is scheduled to terminate June 30, 2020.

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

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

If sufficient funds are not provided in future approved budgets of County (or from applicable federal, state, or other sources) to permit County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

This agreement consists of seven (7) sections.

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

**CLACKAMS COUNTY
HEALTH CENTERS DIVISION**

Deborah Cockrell, Director

Date

**HEALTH, HOUSING AND HUMAN
SERVICES DEPARTMENT**

Richard Swift, Director

Date

COPY

Richard Swift
Director

October 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Amendment to a Sub-recipient Agreement with
Northwest Housing Alternatives and the Community Development Division for
Tenant-Based Rental Assistance funding

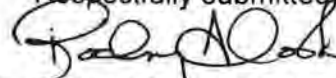
| | |
|--|---|
| Purpose/ Outcome | The HOME program is designed to provide formula grants to states and localities that communities use - often in partnership with local nonprofit groups - to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent or homeownership or providing direct rental assistance to low-income people. Tenant Based Rental Assistance (TBRA) |
| Dollar Amount and Fiscal Impact | HOME Grant funds of \$75,000 added to the original agreement for a new total amount of \$175,000 as a grant. No County General Funds are included in this Agreement |
| Funding Source | U.S. Department of Housing and Urban Development HOME funds |
| Duration | September 1, 2017 to June 30, 2020 |
| Previous Board Action/ Review | Board Order 022218-A7, February 22, 2018 approval of the NHA TBRA sub-recipient agreement. May 2, 2019 approval of the 2019 One-Year Action Plan which included a funding recommendation of \$75,000 of HOME funds to be available for TBRA. |
| Strategic Plan Alignment | Increase self-sufficiency for our clients. Ensure safe, healthy and secure communities. |
| County Review | The Sub-recipient agreement was reviewed and approved by County Counsel on February 5, 2018. |
| Contact Person | Mark Sirois, Project Coordinator - Community Development: 503-650-5664 |
| Contract No. | H3S 8670 |

BACKGROUND: The Community Development Division of the Health, Housing and Human Services Department requests the approval of an Amendment to Sub-recipient Agreement to add \$75,000 of HOME funds for a new total of \$175,000 for a Tenant-Based Rental Assistance Program ("TBRA") as authorized under HOME to help individual households in Clackamas County afford housing costs such as rent and security deposits.

PROJECT OVERVIEW: The TBRA program is operated by Northwest Housing Alternatives and has assisted 5 families remain in safe stable housing. Additional funding will prevent allow for more families to secure safe, stable housing.

RECOMMENDATION: We recommend the approval of this Amendment and that Richard Swift H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,

 H3S Deputy Director/FOX

Richard Swift, Director
Health, Housing 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 TO
HOME SUB-RECIPIENT GRANT AGREEMENT 18-029
BETWEEN
CLACKAMAS COUNTY, OREGON
AND
NORTHWEST HOUSING ALTERNATIVES, INC.

H3S Contract #: 8670
CDD Project#: 53595

Board Order #: 022218-A7

Amendment Requested by: Northwest Housing Alternatives

Changes: Scope of Work Contract Budget
 Contract Time Other

Justification: The Northwest Housing Alternatives non-profit housing development agency has requested that additional HOME Investment Partnerships Program (HOME) funds to provide additional tenant-based rental assistance (TBRA) to very low-income homeless families with children that are at risk of homelessness, have persistent housing instability or are currently experiencing homelessness. The TBRA funds may be used to assist with utility deposits, rental deposits, and rent costs for up to 12 months. The HOME Sub-recipient Agreement is amended to include the increase in HOME funds to the project.

This amendment provides an additional \$75,000.00 of HOME funds to the initial allocation of \$100,000. The revised total HOME allocation is \$175,000.00. There are no other revisions to the HOME Agreement.

TO AMEND

4. **Grant Funds.** COUNTY's funding for this Agreement is the **Home Investment Partnerships Program (Catalogue of Federal Domestic Assistance [CFDA] #: 14.239)** issued to the COUNTY by HUD (Federal Award Identification #[s]: M17-UC410201). The maximum, not to exceed, grant amount that the COUNTY will pay is **\$100,000.00**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibits A: Statement of Program Objectives and Performance Requirements and D: Reimbursement Request. Failure to comply with the terms of this Agreement may result in withholding of payment. The use of funds shall be expressly limited to the activities described in this Agreement.

TO READ


4. **Grant Funds.** COUNTY's funding for this Agreement is the **Home Investment Partnerships Program (Catalogue of Federal Domestic Assistance [CFDA] #: 14.239)** issued to the COUNTY by HUD (Federal Award Identification #[s]: M17-UC410201). The maximum, not to exceed, grant amount that the COUNTY will pay is **\$175,000.00**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibits A: Statement of Program Objectives and Performance Requirements and D: Reimbursement Request. Failure to comply with the terms of this Agreement may result in withholding of payment. The use of funds shall be expressly limited to the activities described in this Agreement.

Northwest Housing Alternatives, Inc

CLACKAMAS COUNTY

Commissioner Jim Bernard, Chair
Commissioner Sonya Fischer
Commissioner Ken Humberston
Commissioner Paul Savas
Commissioner Martha Schrader

Signing on Behalf of the Board



Trell Anderson, Executive Director
Northwest Housing Alternatives, Inc.

Richard Swift, Director
Health, Housing and Human Services
Department

10/8/19

Date

Date

Contract Approved to Form
By County Counsel, Chris Story
February 5, 2018

October 17, 2019

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Agency Services Agreement #8345, Amendment #5 with Mt. Hood Home Care Services, LLC to provide Oregon Project Independence In-home care for Clackamas County Residents

| | |
|--|--|
| Purpose/Outcomes | Amendment No. 5 to the Agency Services Agreement with Mt. Hood Home Care Services, LLC for Oregon Project Independence (OPI) in-home care services to Clackamas County residents. These services enable residents to remain in their homes in their own communities. |
| Dollar Amount and Fiscal Impact | The maximum contract value is increased by \$37,500 for a revised contract maximum of \$313,030. The contract is funded through the Social Services Division agreement with the Oregon Department of Human Services, Community Services & Supports Unit. |
| Funding Source | OPI allocated State General Funds - no County General Funds are involved. |
| Duration | Effective July 1, 2017 and terminates on December 31, 2019 |
| Previous Board Action | 060718-A1, 071119-A4 |
| Strategic Plan Alignment | 1. This funding aligns with the strategic priority to increase self sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community. |
| Counsel Review | Format approved by County Counsel as part of the H3S contract standardization project. |
| Contact Person | Brenda Durbin, Director, Social Services Division 503-655-8641 |
| Contract No. | 8345 |

Background

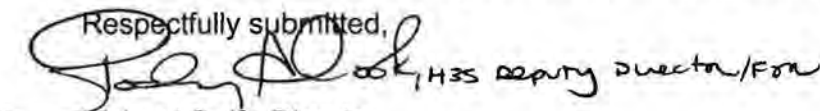
The Social Services Division of the Health, Housing & Human Services Department (H3S) requests the approval of Agency Services Agreement #8345, Amendment #5 with Mt. Hood Home Care Services, LLC. This amendment adds \$37,500 to the maximum compensation and extends the contract term through December 31, 2019.

This amended agreement maximum is \$313,030. This amendment provides funding for an additional three months of service under this agreement while Procurement completes the current RFP process. This agreement is in the format approved by County Counsel as part of the H3S contract standardization project. No County General Fund dollars are involved. This amendment is effective upon execution and continues through December 31, 2019.

Recommendation

Staff recommends the Board approval of this agreement and that Richard Swift, H3S Director; or his designee, be authorized to sign on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, Director
 Health Housing & Human Services

Professional Services Agreement Amendment
Health, Housing and Human Services

H3S Contract#: 8345 SubReipient #: N/A Board Agenda #: _____

Division: Social Services Amendment Number: 5

Contractor Mt Hood Home Care Services, LLC

Amendment Requested By: Brenda Durbin, CCSS Director

Changes: (X) Agreement Budget & Language

Justification for Amendment:

This is a budget adjustment that increases the total OPI funded agreement amount and extends the agreement termination date to December 31, 2019. This results in an increase to the agreement budget of \$37,500.

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

This Amendment #5, when signed by the Mt Hood Home Care Services, LLC; formerly Sandy Home Care Services, Inc, ("AGENCY") and the Human Health and Housing Services Department on behalf of Clackamas County will become part of the agreement documents, superseding the original to the applicable extent indicated. This Amendment complies with Local Contract Review Board Rules.

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

WHEREAS, the AGENCY and County desire to amend the Agreement pursuant to this Amendment; and

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

I. AMEND: I. SCOPE OF SERVICES, B. Term

B. Services required under the terms of this agreement shall commence July 1, 2017 and shall terminate September 30, 2019.

TO READ: I. SCOPE OF SERVICES, B. Term

B. Services required under the terms of this agreement shall commence July 1, 2017 and shall terminate December 31, 2019.



DAN JOHNSON
DIRECTOR

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

October 17, 2019

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of a contract with the National Safety Council for the purposes of
Safe Systems Approach to Rural Road to Zero**

| | |
|--|---|
| Purpose/ Outcomes | The funds will support our Drive to Zero work focused on two Health Equity Zones: Molalla and Canby. This project will showcase how a holistic Safe Systems Approach to traffic safety can be effective in reducing crashes, particularly serious and fatal crashes in a rural community. |
| Dollar Amount and Fiscal Impact | The grant awarded is \$132,280.00. There is no match requirement. |
| Funding Source | National Highway Traffic Safety Administration and National Safety Council |
| Duration | Effective September 1, 2019 and terminates on August 31, 2020 |
| Previous Board Action | Lifecycle form was approved by County Administrator on January 23, 2019. The Board approved the award acceptance on July 11, 2019 |
| Strategic Plan Alignment | - Ensure safe, healthy and secure communities. |
| Counsel Review | Reviewed and approved by County Counsel on 10/18/19 |
| Contact Person | Rob Sadowsky- Transportation Safety Outreach Coordinator 742-4776 |

BACKGROUND:

The Department of Transportation and Development (DTD) requests the authorization to enter into a contract with the National Safety Council to accept a grant award of \$132,280. DTD will showcase how a holistic Safe Systems Approach to traffic safety can be effective in making strides in reducing crashes, particularly serious and fatal crashes in a rural community. This Safe Systems Approach will combine low-cost engineering using proven countermeasures along with education focused on behavioral change followed with targeted enforcement in collaboration with regional towns. Layered throughout the project will be the intentional collaboration with partners in public health and schools to

tackle issues of alcohol and drug use, build new opportunities with rural transit for teens and older adults, and to work hard to bring affordable driver's education and child protection to those who can least afford access.

The County's Drive to Zero initiative is an inspiring goal. To be successful, we need active partners throughout the county that will engage in the implementation of various elements and work toward the behavioral change that is necessary. The Transportation Safety Action Plan and the embodiment of Drive to Zero needs effective communications that is centered on county stories told by county people. We hope that target audiences see themselves in these stories and add to the collection of stories of how together, as a county, we can achieve this inspiring vision. Ultimately, the problem we are trying to impact is the number of fatalities and serious injuries due to traffic crashes in the county.

Staff respectfully recommends the Board approve and sign the contract with National Safety Council.

Respectfully submitted,

Joe Marek, Traffic Engineering Supervisor
Department of Transportation and Development

SUBAWARD
between
NATIONAL SAFETY COUNCIL ("NSC")
and
County of Clackamas ("Subrecipient")

Subaward Number:
NSC Cost Center: 750-8765
Subaward Effective Date: September 1, 2019
Subaward Expiration Date: August 31, 2020
Subaward Title: Safe System Approach to Rural Road to Zero
Subaward Amount: \$132,280.00
Subrecipient Match: \$0.00
Subrecipient Indirect Rate Allowed: 0%
Subrecipient DUNS: 096992656
Subrecipient Address: 2051 Kaen Rd, Oregon City, OR 97045-1819
Federal Award Identification Number: DTNH2215H00473-0002
Federal Award Project Description: Road to Zero Support
Federal Award Date: January 11, 2017
Federal Awarding Agency: National Highway Traffic Safety Administration
Amount of Federal Funds Obligated by this Subaward: \$132,280.00
Total Amount of Federal Funds Obligated to the Subrecipient by NSC: \$132,280.00
Total Amount of the Federal Award Committed to Subrecipient: \$132,280.00
CFDA Number and Name: 20.614 NHTSA Discretionary Safety Grants
FFATA Reportable: Yes
Research and Development (R&D): No

| | |
|--|--|
| <p>The NSC representatives for this project are:</p> <p>Jane Mellow for Project Manager/Technical Direction: Senior Program Manager, Road to Zero 1121 Spring Lake Dr. Itasca, IL 60143 jane.mellow@nsc.org (630) 487-9326</p> <p>Anne Hughes for financial/administrative matters: Director, Grant Monitoring and Compliance 1121 Spring Lake Dr. Itasca, IL 60143 anne.hughes@nsc.org (630) 775-2251</p> | <p>The Subrecipient representatives for this project are:</p> <p>Rob Sadowsky for Project Manager/Technical Direction: Transportation Safety Outreach Coordinator 150 Beaver Creek Road Oregon City, OR 97045 RSadowsky@clackamas.us (503) 742-4776</p> <p>Michael Morasko for financial/administrative matters: Senior Accountant Public Services Building 2051 Kaen Road Oregon City, OR 97045 MMorasko@clackamas.us (503) 742-5435</p> |
|--|--|

SUBAWARD AGREEMENT

This subaward agreement (the "**Agreement**") is entered into by and between **NSC** and **Subrecipient**, each of which may be referred to individually as a "Party" and collectively as "Parties," in order for Subrecipient to develop a holistic Safe Systems approach to traffic safety within a rural community in order to reduce fatal and serious injury (the "**Project**"), in accordance with the "General Terms and Conditions" attached as **Attachment A** and any other attachments to this Agreement.

BACKGROUND

NSC and National Highway Traffic Safety Administration ("**NHTSA**" or "**Prime Funder**") entered into a cooperative agreement project for the purpose of stimulating near-term implementation of proven countermeasures to reduce motor vehicle crash deaths across the Nation through a competitive traffic safety research and evaluation grant program (the "**Prime Award**"). Under the terms of the Prime Award, NSC is able to make a subaward to Subrecipient for use in carrying out the Project. Subrecipient shall be subject to and comply with the terms and conditions contained in the Prime Award that are applicable to Subrecipient, which are attached hereto as **Attachment B**.

NSC is a federally-chartered 501(c)(3) non-profit that advocates for safety at work, in homes and communities, and on the road. NSC desires to enter into an agreement with Subrecipient for Subrecipient to perform certain tasks in furtherance of the objectives set forth in the Prime Award.

The Subrecipient, a governmental entity organized under the laws of Oregon wishes to perform, and has represented to NSC that it is capable of performing and is willing to perform the work described herein in support of NSC's performance of the objectives under the Prime Award.

In consideration of the promises contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. Period of Performance

Performance under this Agreement will commence on the Subaward Effective Date stated on the first page (the "**Effective Date**") and, unless terminated as described below, will automatically expire on the Subaward Expiration Date (the "**Expiration Date**") stated on the first page ("**Period of Performance**"). The Period of Performance may be changed by written agreement of the Parties. Unless otherwise stated, costs incurred outside of the Period of Performance will be disallowed.

2. Scope of Work

- A. Subrecipient shall provide the necessary personnel, services, equipment, and facilities to conduct the work on the Project as described in the scope of work ("**Scope of Work**") which is attached hereto as **Attachment C**.
- B. Subrecipient shall not deviate in any material way from the Scope of Work without the prior written approval of NSC.

3. Payment Provisions

- A. The total amount paid under this Agreement will not exceed the Subaward Amount, which will be disbursed in accordance with the budget which is attached hereto as **Attachment D** (the "**Budget**"). Subrecipient acknowledges that the Budget does not include all necessary funds for completion of the tasks described in the Scope of Work. Subrecipient has secured the funds necessary for completion from other sources, and the Subaward will fund the tasks only up to the budgeted amount. NSC shall not be obligated to pay Subrecipient for any amounts not shown in the Budget. The Subaward Amount may be increased only through mutual written amendment of this Agreement.

- B. Notwithstanding the above, Subrecipient may reallocate funds between direct-cost categories, subject to the restrictions in this subsection. If the Subrecipient desires to reallocate 10% or more of the total approved budget, Subrecipient shall obtain prior written approval of the reallocation from NSC. If the Subrecipient desires to reallocate less than 10% of the total approved budget, Subrecipient may proceed with the reallocation but shall notify NSC's Project Manager and Administrator in writing of the reallocation.
- C. NSC shall have no obligation to disburse funds to Subrecipient under this Agreement, except to the extent that funds are actually disbursed to NSC under Prime Award.
- D. None of the Subaward Amount may be used as match to other U.S. Federal awards.
- E. To be eligible for reimbursement under this Agreement, a cost must be
 - a. incurred in accordance with the Budget;
 - b. incurred within the Period of Performance;
 - c. attributable to work covered by this Agreement;
 - d. incurred for work that has been completed in a manner satisfactory and acceptable to NSC;
 - e. reasonable; and
 - f. allowable per the cost principles outlined in 2 CFR Part 200.
- F. Subrecipient shall notify NSC of any negotiations with the Federal Government regarding its current or future indirect rates. Subrecipient shall provide NSC with documentation reflecting any changed or new indirect rate within 30 days of finalizing the rate with the Federal Government, and the Parties shall negotiate the inclusion and applicability of the rate to this Agreement. If Subrecipient fails to reach an agreement with the Federal Government on a new indirect rate that will apply upon the expiration of the current rate, the Parties may negotiate a change to the indirect rate. Upon closeout of the Agreement, NSC shall have no further obligations to pay Subrecipient for costs incurred as indirect rates not paid prior to closeout.
- G. In the event NSC determines that it has paid Subrecipient more than Subrecipient is or was entitled to receive under this Agreement, NSC will inform Subrecipient of the discrepancy and the amount of the discrepancy. If there will be future payments due to Subrecipient, NSC may adjust the future payment as necessary. If no future payments are due to be made to Subrecipient, Subrecipient shall promptly refund the amount of the discrepancy.

4. Disbursement and Accounting:

Subrecipient shall separately account for payments received under this Agreement in its accounting records. NSC shall disburse funds to Subrecipient monthly upon NSC's receipt of a complete and accurate Financial Report for the applicable period as set forth in Section 5 below.

5. Required Reports

Subrecipient shall furnish NSC with the following written reports of findings, progress, and status under this Agreement in accordance with the following schedules:

| REPORTING DUE DATES | |
|--------------------------------------|--|
| Interim Performance Reports | Monthly, due no later than 20 calendar days after the end of the month. |
| Final Performance Report | Due no later than 45 days after the Expiration or Termination Date |
| Interim Financial Reports & Invoices | Monthly, due no later than 20 calendar days after the end of the month. For June 2020, an estimate of expenditures, due no later than July 5. |
| Final Financial Report and Invoice | Due no later than 45 days after the Expiration or Termination Date |

Reports shall include:

A. Interim Performance Reports shall describe activities conducted during the reporting period using the Performance Report Form provided electronically as **Attachment E** and shall address, at a minimum:

- (i) a comparison of actual accomplishments compared to the objectives established for the reporting period;
- (ii) reasons why established objectives and performance measures were not met, if appropriate;
- (iii) favorable developments or alternatives that could result in meeting the objectives sooner or at less cost than anticipated; and
- (iv) other pertinent information, including, where appropriate an analysis and explanation of cost underruns, overruns, or high unit costs.

B. Final Performance Report The final report shall cover the entire period of performance and shall document the results of the project. The report shall describe the problem addressed, project goal, research methodology, problem solution and all project impacts and outcomes as well as recommendations for future replication or use.

C. Interim Financial Reports/Requests for Reimbursement: Subrecipient shall use the report format provided electronically as **Attachment F** and shall include, at a minimum:

- (i) the monthly reimbursement request (the "**Request for Reimbursement**") using Subrecipient's standard invoice format;
- (ii) a download from Subrecipient's general ledger which ties to the monthly reimbursement request;
- (iii) an analysis and explanation of variance to budget, when appropriate; and
- (iv) other pertinent information to describe the financial status of the program or change in the financial status of Subrecipient.

D. Detailed Requests for Reimbursement: From time to time, NSC may request that additional supporting documentation accompany a Request for Reimbursement. In each case, NSC shall provide Subrecipient with 30 days' notice of such request. In addition to the information required under 5.C. above, Subrecipient shall provide:

- (a) supporting documentation that includes: time reports; detailed/itemized receipts for all transactions which include a statement of the business purpose and, for travel, individual's names;
- (b) copies of subcontracts and subawards, and documentation of procurement process for subcontracts, as applicable.

E. Final Financial Report/Request for Reimbursement: Subrecipient shall use the format provided electronically as **Attachment F**, marked as "Final."

F. Significant Developments Reports shall be submitted promptly, as needed, regarding events that will have a significant impact upon this Agreement. Such reports shall describe:

- (i) Unfavorable Conditions such as problems, delays, or adverse conditions, including a change of project director or other changes in Subrecipient personnel that will materially affect the ability to attain objectives and performance measures, prevent the meeting of time schedules and objectives, or preclude the attainment of project objectives or performance measures by the established time periods. This report shall be accompanied by a statement of the action taken or contemplated and any NSC or Federal assistance Subrecipient needs to resolve the situation.
- (ii) Favorable developments that enable Subrecipient to meet time schedules and objectives sooner than anticipated or achieving greater performance measure output than originally projected.

All Performance Reports, Financial Reports, Requests for Reimbursement and supporting materials shall be submitted to NSC's Project Manager and Administrator at the email addresses specified above. Subrecipient's appropriate financial officer shall certify all Financial Reports and Requests for Reimbursement.

6. Awarding Official

The following is the NSC awarding official for this Agreement:

Nick Smith
Chief Operating Officer
National Safety Council
1121 Spring Lake Dr.
Itasca, IL 60143
Phone: (630) 775-2239
E-mail: nick.smith@nsc.org

7. Notices

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement must be in writing and (i) delivered personally or by a nationally recognized overnight courier service with delivery charges prepaid, (ii) mailed by certified or registered mail, postage prepaid, return receipt requested, or (iii) sent via email, to the receiving Party's administrative representative at its address above or to such other person or address as either Party may specify by notice in writing to the other Party. All notices, requests, demands, waivers and communications are received on date of delivery.

8. Agreement Documents

This Agreement consists of the following, listed by the documents' order of precedence:

- A. The provisions of 2 CFR 200 that are applicable to Subrecipient, whether or not explicitly stated herein.

- B. The Prime Award terms and conditions that are applicable to Subrecipient; and
- C. This Agreement, including any attachments thereto.

The undersigned parties bind themselves to the faithful performance of this Agreement:

COUNTY OF CLACKAMAS

By: _____

Name: _____

Title: _____

Date: _____

NATIONAL SAFETY COUNCIL

By:  _____
Nick Smith

Chief Operating Officer

Date: 10/3/19 _____

Attachment A

General Terms and Conditions

Definitions: All terms defined in the Agreement shall have the same meaning in this **Attachment A**.

ARTICLE 1. COMPLIANCE WITH LAWS

Subrecipient shall comply with all applicable Federal statutes, regulations, and policies, and all applicable state and local laws, ordinances, rules, and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement. When NSC requests satisfactory proof of compliance, Subrecipient shall furnish such proof.

- A. **Whistleblower Protections.** Subrecipient certifies, by signing this Agreement, that it complies with the Federal whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712 and 10 U.S.C. 2324, 41 U.S.C. 4304, and 41 U.S.C. 4310.
- B. **Debarment and Suspension.** Subrecipient certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any Federal department or agency or listed on the Government-wide exclusions list.
- C. **Trafficking in Persons.** Subrecipient, Subrecipient's employees and any lower-tier subrecipient, subcontractor, or their employees shall not:
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.

Subrecipient shall inform NSC immediately of any information Subrecipient receives from any source alleging a violation of a prohibition in this section. NSC may terminate this Agreement for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to NSC.

For purposes of this Article 1, Section C, "award" refers to this Agreement.

- D. **DUNS Number and SAM Registration.** Subrecipient certifies that it has a current Data Universal Numbering System (DUNS) number, which is shown on the first page of this Agreement, and a current System for Award Management (SAM) registration at www.sam.gov. Subrecipient also certifies that it will maintain current and up-to-date information in SAM for the duration of the Agreement. No entity may receive a subaward unless the entity has provided its unique entity identifier (the identifier required for SAM registration to uniquely identify business entities) to NSC.
- E. **Protection of Personally Identifiable Information.** Subrecipient shall take reasonable measures to safeguard protected personally identifiable information and other information the Prime Funder or NSC designates as sensitive or that NSC considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

ARTICLE 2. STANDARD ASSURANCES

The Subrecipient assures and certifies that:

- A. It possesses legal authority to apply for and receive the subaward; and that, if necessary, a resolution, motion, or similar action has been duly adopted or passed as an official act of the Subrecipient's governing body, authorizing receipt of this subaward, including all understandings and assurances contained in it.

Attachment A

General Terms and Conditions

- B. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- C. It will conduct the due diligence required by 2 CFR 200 prior to awarding any subaward to a lower-tier subrecipient and will provide the necessary oversight of the subaward.

ARTICLE 3. VALIDITY AND FUNDING OF AGREEMENT

- A. **Validity and Enforcement of Agreement.** Funds will be paid to Subrecipient only to the extent sufficient funds are made available to NSC by the Prime Funder for the Project. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Prime Funder that may affect the provisions, terms, or funding of this Agreement in any manner.
- B. **Appropriations.** If at any time during the Period of Performance, expected Federal funds become reduced or eliminated, NSC may immediately terminate the Agreement or reduce the Subaward Amount. The decision of whether to terminate the Agreement or reduce the Subaward Amount is solely within the determination of NSC, as may be directed by the Prime Funder. Such decision shall be effective upon a thirty (30) day written notice to the Subrecipient.
- C. **Determination of Funding.** If at any time during the Period of Performance NSC determines that there is insufficient funding to continue the project, NSC shall notify the Subrecipient, giving notice of intent to terminate this Agreement, as specified in Article 11. If at the end of the Period of Performance, NSC determines that it would like to have Subrecipient continue performance and there is sufficient funding to allow Subrecipient to continue performance under this Agreement, NSC may notify the Subrecipient of its intent to continue this Agreement. The Parties shall then enter into a written amendment to this Agreement that modifies the funding amount, scope of work, and period of performance, as applicable.
- D. **Payments Contingent on Receipt of Appropriated Funds.** Notwithstanding any other term of this Agreement, all payments to Subrecipient, including reimbursement payments, are contingent upon the (i) availability of appropriated funds; and (ii) NSC's receipt of those funds.

ARTICLE 4. INSURANCE

Subrecipient has an ongoing self-insured program established under ORS 30.272 and will use the self-insurance program to process claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Agreement by Subrecipient, its agents, representatives, employees, subcontractors, or lower-tier subrecipients. Subrecipients shall require all of its subcontractors and lower-tier subrecipients to procure and maintain insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of their agreements. This requirement is in addition to the insurance required by 2 CFR 200.310.

ARTICLE 5. AMENDMENTS

This Agreement may be amended by mutual written agreement.

ARTICLE 6. CORRECTION OF WORK AND ADDITIONAL WORK

- A. **Correction of Work.** If the Subrecipient submits work that does not comply with the terms of this Agreement or has errors or omissions, NSC may instruct the Subrecipient to make any revisions that are necessary to bring the work into compliance with this Agreement or to correct the error(s) or omission(s). Subrecipient shall make the revisions and corrections, and no additional compensation shall be paid for this work.
 - i. If the Subrecipient has submitted work in accordance with the terms of this Agreement but NSC requests changes to the completed work or parts of the work that involve changes to the original scope of services or character of work under this Agreement, the Subrecipient shall make those

Attachment A

General Terms and Conditions

revisions as requested and directed by NSC. These revisions will be considered changed work and will be paid for as specified in Article 7.

- B. **Additional Work.** Any work that Subrecipient performs or costs that Subrecipient incurs are reimbursable only to the extent expressly stated in this Agreement. NSC shall not pay Subrecipient for any work or costs not directly associated with this Agreement or performed outside of the Period of Performance.

ARTICLE 7. CHANGED WORK

- A. **Changed Work.** If the Subrecipient is of the opinion that any assigned work is beyond the scope of this Agreement and constitutes additional work, the Subrecipient shall promptly notify NSC in writing. If NSC finds that such work does constitute additional work, NSC shall advise the Subrecipient, and the Parties may enter into a written amendment to this Agreement. The Amendment shall provide for compensation on the same basis as the original work.
- B. **Authorization Required.** No payments will be made for any unauthorized supplies or services or for any unauthorized changes to the work specified herein. This includes any services performed by the Subrecipient of their own volition or at the request of an individual other than a duly appointed NSC representative. Only a duly appointed NSC representative is authorized to change the specifications, terms, and conditions under this effort.

ARTICLE 8. RECORDS AND RIGHT TO ACCESS RECORDS

- A. Subrecipient shall preserve its fiscal records and supporting documentation, documents, papers, or other records that are pertinent to the Project (the "**Records**") until June 30 2024 (the "**Retention Period**") or until such later time as required under applicable regulations, which includes without limitation, if:
- i. any litigation, claim or audit is started before the expiration of the Retention Period. In that instance, Subrecipient shall retain the Records until all litigation, claims, or audit findings involving the Records have been resolved and final action has been taken.
 - ii. NSC or the Government notifies Subrecipient in writing to extend the Retention Period. In that instance, Subrecipient shall retain the Records as instructed.
 - iii. the Records involve real property and equipment acquired with Federal funds. In that instance, Subrecipient shall retain the Records for three years after final disposition.
 - iv. the Records are transferred to or maintained by the Prime Funder or NSC. In that instance, Subrecipient has no obligation to retain the Records.
 - v. the Records involve program income transactions after the Period of Performance. In that instance, Subrecipient shall retain the Records pursuant to 2 CFR 200.333(e).
 - vi. the Records involve indirect cost rate proposals and cost allocation plans. In that instance, Subrecipient shall retain the Records per 2 CFR 200.333(f).
- B. In accordance with Federal regulations at 2 CFR 200, Subrecipient shall permit NSC, the Prime Funder, the Comptroller General of the United States of America, and any of their authorized representatives access to audit, inspect, examine, excerpt, and copy books, records, memoranda, correspondence, personnel staff records, independent audit work papers, and any other documents (the "**Documents**") during normal business hours or at any reasonable time. Such right of access shall also include timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to the Documents.

Attachment A
General Terms and Conditions

- C. The right of access described above, includes the right to access and audit both Documents and Records. The right of access continues as long as the Documents or Records are retained and does not expire on the expiration or termination of this Agreement or the expiration of the Retention Period.

ARTICLE 9. INDEMNIFICATION

- A. To the extent permitted by law, the Subrecipient, if other than a government entity, shall indemnify, hold, and save harmless NSC and its officers and employees from all claims and liability due to the acts or omissions of the Subrecipient, its agents, or employees. The Subrecipient also agrees, to the extent permitted by law, to indemnify, hold, and save harmless NSC from any and all expenses, including but not limited to attorneys' fees, all court costs and awards for damages incurred by NSC in litigation or otherwise resisting claims or liabilities as a result of any activities of the Subrecipient, its agents, or employees.
- B. To the extent permitted by law, the Subrecipient, if other than a government entity, agrees to protect, indemnify, and save harmless NSC from and against all claims, demands, and causes of action of every kind and character brought by any employee of the Subrecipient against NSC due to personal injuries to or death of any employee resulting from any alleged negligent act, by either commission or omission on the part of the Subrecipient.
- C. If the Subrecipient is a government entity, both Parties agree that no Party is an agent, servant, or employee of the other Party, and each Party agrees it is responsible for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.

ARTICLE 10. DISPUTES AND REMEDIES

- A. **Dispute Resolution.** In the event there is a dispute between the Parties arising out of the interpretation or application of this Agreement, the Parties shall attempt in good faith to resolve the dispute promptly by negotiations between designated representatives of the Parties who have the authority to settle the dispute. If the matter has not been resolved within sixty (60) days of a Party's request for negotiation, either Party may initiate arbitration by providing written notice to the other Party or may institute an action in a court of competent jurisdiction.
- B. **Remedies.** This Agreement requires compliance with certain Federal statutes, regulations and terms and conditions of the Prime Award, some of which are set forth in this Agreement. If Subrecipient violates any Federal statute, regulation, or a term or condition of the Prime Award, notwithstanding anything to the contrary in this Agreement, NSC may elect to do any of the following, which should not be considered exclusive remedies: (a) impose conditions described in 2 CFR 200.207, Specific Conditions; (b) temporarily withhold cash payments pending compliance; (c) disallow all or part of the cost of the activity or action not in compliance; (d) wholly or partly suspend or terminate the Agreement; or (e) take any other remedy available under this Agreement or a remedy otherwise legally available. NSC's rights and remedies stated in this Section are in addition to any rights or remedies that the Federal Government may exercise or impose.
- C. **Cumulative Remedies.** All rights and remedies of the Parties are in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance for the enforcement of this Agreement, and temporary and permanent injunctive relief.

ARTICLE 11. TERMINATION

- A. This Agreement shall expire as of the last day of the Period of Performance, unless otherwise terminated below:
 - i. This Agreement is terminated in writing with the mutual consent of both Parties;
 - ii. There is a written thirty (30) day notice by either Party;

Attachment A
General Terms and Conditions

- iii. NSC determines that the performance of the Project is not in the best interest of NSC and informs the Subrecipient that the Project is terminated, which termination shall be effective as stated in the notice; or
 - iv. NSC may terminate this Agreement, or any severable portion of this Agreement, for cause based upon Subrecipient's material breach of a term of this Agreement, by giving written notice to the Subrecipient. The notice will include a statement of the reason for the termination for cause and provide Subrecipient fifteen (15) days to cure the breach or default under the Agreement (the "**Cure Period**"). If Subrecipient fails to cure the breach or default to the reasonable satisfaction of NSC within the Cure Period, NSC may terminate this Agreement. NSC may obtain, in the manner NSC considers appropriate, any remaining services or items necessary to perform this Agreement, and Subrecipient shall be liable for and pay to NSC any costs incurred by NSC in the procurement process of such services or items, including the cost for additional managerial and administrative services, that are in excess of the Subaward Amount.
- B. The Subrecipient shall not incur nor be reimbursed for any new obligations after the Agreement expires or is otherwise terminated.

ARTICLE 12. INSPECTION OF WORK

- A. NSC has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement and the premises in which it is being performed.
- B. If any inspection or evaluation is made on the premises of the Subrecipient or a subawardee of Subrecipient, the Subrecipient shall provide and require its subawardee to provide access to all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in a manner that will not unduly delay the work.
- C. Review of Announcement of Publications. The Subrecipient agrees that neither the Subrecipient, nor any of its subawardees, shall make public releases of information or any matter pertaining to this Agreement, including, but not limited to, advertising in any medium, or presentation before technical, scientific, or industry groups, without the prior written approval of the duly appointed NSC representative. The provisions of this clause shall survive the expiration or termination of the Agreement. The provisions of this clause shall be included in all subawards at any tier. Any approved publication shall bear the appropriate legend, as may be provided by the Prime Funder.

ARTICLE 13. SUBAWARDS

Except as otherwise described in the Scope of Work, Subrecipient shall not enter into a subaward, including a subcontract, under this Agreement without prior written approval by NSC. Such approval shall not make NSC a party to the subaward. Subawards shall contain all applicable terms and conditions, as required by this Agreement and 2 CFR 200. Such terms and conditions include, but are not limited to, all Federal regulations and compliance requirements of this Agreement. Subrecipient shall remain responsible for performance of its obligations under this Agreement, regardless of any subaward.

ARTICLE 14. GIFT POLICY

- A. NSC policy mandates that employees of NSC shall not solicit or accept any benefit, gratuity, gift, favor, or anything of monetary value from any person doing business with or who, reasonably speaking, may do business with NSC under this Agreement. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of NSC's Executive Director.
- B. Any person doing business with or who, reasonably speaking, may do business with NSC under this Agreement may not make any offer of benefit, gratuity, gift, favor, or anything of monetary value to NSC

Attachment A

General Terms and Conditions

employees, except as mentioned above. Failure on the part of the Subrecipient to adhere to this policy may result in termination of this Agreement.

ARTICLE 15. PROHIBITION ON CONTINGENT FEES

The Subrecipient warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Subrecipient, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. If the Subrecipient breaches or violates this warranty, NSC shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, contingent fee, or gift.

ARTICLE 16. PROHIBITION ON CONFLICT OF INTEREST

- A. **Personal Conflict of Interest.** The Subrecipient represents that it and its employees (and members of their immediate family) have no conflict of interest that would in any way interfere with its or its employees' performance or that would in any way conflict with the interests of NSC.
- B. **Organizational Conflict of Interest.** The Subrecipient represents that neither it nor any of its affiliates (including a parent or subsidiary) has a real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the Subrecipient is unable, or potentially unable, to provide impartial and objective assistance or advice to NSC due to the Subrecipient's other activities, relationships, contractors, or circumstances.
- C. **Performance of the Agreement.** The Subrecipient shall exercise reasonable care and diligence to prevent any actions or conditions that could result in either a personal or organizational conflict of interest. If at any time during the Period of Performance, the Subrecipient discovers either type of conflict of interest that could not reasonably have been known to it prior to award of this Agreement, the Subrecipient shall make an immediate and full disclosure to NSC.
- D. **Remedies for Conflict of Interest.** If a nondisclosure or misrepresentation of or concerning a conflict of interest is discovered after award of this Agreement, NSC may terminate this Agreement for cause.

ARTICLE 17. SUBRECIPIENT'S RESOURCES

- A. The Subrecipient certifies that it presently has adequate qualified personnel in its employment to perform the work required under this Agreement, or will be able to obtain such personnel from sources other than NSC.
- B. All employees of the Subrecipient shall have the knowledge and experience that will enable them to perform the duties assigned to them. Any employee of the Subrecipient who, in the opinion of NSC, is incompetent or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Project.
- C. Unless otherwise specified, the Subrecipient shall furnish all equipment, materials, supplies, and other resources required to perform the work.

ARTICLE 18. PROCUREMENT AND PROPERTY MANAGEMENT

Equipment and supplies purchased with funds received pursuant to this Agreement are governed by 2 CFR 200.

Subrecipient shall ensure that in performing this Agreement, its procurement and property-management procedures comply with (1) the Subrecipient's own documented procurement and property management standards and (2) the federal procurement and property management standards provided by 2 CFR §§ 200.310-.316, 200.318-.324.

Attachment A
General Terms and Conditions

ARTICLE 19. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Government Regulations: The Prime Funder and the Parties have certain rights to intangible property, as set forth in 2 CFR 200.315 and 37 CFR 400.14 (modified as necessary to reflect the arrangement between the Parties). The Parties shall comply with the obligations described in the aforementioned regulations. Additionally, the Subrecipient shall provide, upon request by NSC, a periodic listing of all subject inventions in accordance with these regulations and prior to the closeout of the Agreement. Any rights to intangible property not set forth in those regulations or a clause specified in Attachment B, are determined as follows.

Upon expiration or termination of this Agreement and NSC's request, Subrecipient shall provide to NSC copies of all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, sketches, calculation, or other data prepared by the Subrecipient without restriction or limitation of their further use.

Information made available to the Subrecipient or employee(s) of the Subrecipient by NSC for the performance or administration of this effort shall be used only for those purposes and shall not be used in any other way without NSC's express written approval.

The Subrecipient agrees to assume responsibility for protecting the confidentiality of NSC's records, which are not public information. Each contractor or employee of the Subrecipient to whom information may be made available or disclosed shall be notified in writing by the Subrecipient that such information may be disclosed only for a purpose and to the extent authorized herein.

- A. **Intellectual Property Defined.** Intellectual property consists of copyrights, patents, and any other form of intellectual property rights covering any databases, software, inventions, training manuals, systems design, or other proprietary information in any form or medium.
- B. **Subrecipient Rights.** Subject to the rights set forth in the Government Regulations, intellectual property initially developed by the Subrecipient without any type of funding or resource assistance from NSC ("Subrecipient Classes and Materials") shall remain the Subrecipient's intellectual property.
- C. **NSC Rights.** Notwithstanding the any other provision in this Agreement, NSC shall have the right to use and disclose, and to authorize others to use and disclose, for any lawful purpose all intellectual property, data, and information, and all versions thereof, that Subrecipient and its subawardees develop under this Agreement, whether independently or jointly. Subrecipient further agrees to provide NSC with a license to use any such intellectual property solely for the purposes of satisfying NSC's obligations under its Prime Agreement.

Subrecipient is prohibited from using NSC's name, logo, or images in Subrecipient's promotional materials, written or oral endorsements, customer profiles, online information, or sales collateral unless specifically authorized in writing by NSC.

ARTICLE 20. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the successors, executors, approved assigns, and administrators of NSC and the Subrecipient. The Subrecipient shall not assign, sublet, or transfer interest and obligations in this Agreement without written consent of NSC.

ARTICLE 21. CIVIL RIGHTS COMPLIANCE

- A. **Nondiscrimination:** Subrecipient shall comply with all Federal statutes and implementing regulations relating to nondiscrimination. The Subrecipient also agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by the U.S. Department of Labor regulations (41 CFR, Part 60).

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General Terms and Conditions

- B. Solicitations for subawards, including procurement of materials and equipment: In all solicitations either by competitive bidding or negotiation made by the Subrecipient for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential Subrecipient or supplier shall be notified by the Subrecipient of the Subrecipient's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, age, religion, or disability.
- C. Information and reports: The Subrecipient shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NSC to be pertinent to ascertain compliance with the Regulations or directives. Where any information required of the Subrecipient is in the exclusive possession of another who fails or refuses to furnish this information, the Subrecipient shall certify that to NSC and shall set forth what efforts the Subrecipient has made to obtain the requested information.
- D. Actions for noncompliance: In the event of the Subrecipient's noncompliance with the nondiscrimination provision of this Agreement, NSC may terminate this Agreement in accordance with Article 11 and/or pursue any other legal remedies available to it, whether or not specifically identified in this Agreement.
- E. Incorporation of provisions: The Subrecipient shall include the provisions of Sections A through D of this Article in every subaward, including procurements of materials and leases of equipment, unless exempt by the regulations or directives. The Subrecipient shall take any action with respect to any subaward or procurement that NSC may direct as a means of enforcing those provisions, including remedies for noncompliance. However, in the event a Subrecipient becomes involved in, or is threatened with litigation with a subawardee as a result of such direction, the Subrecipient may request NSC to enter into litigation to protect the interests of NSC; and in addition, the Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 22. CERTIFICATION REGARDING FEDERAL LOBBYING

In entering into this this Agreement, Subrecipient certifies 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 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. Subrecipient 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) and that all subawardees 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.

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General Terms and Conditions

ARTICLE 23. RESTRICTION ON STATE AND LOCAL LOBBYING

None of the funds under this program 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 prohibition does not preclude a state official whose salary is supported with Prime Award 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.

ARTICLE 24. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT REQUIREMENTS

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A.
- B. The Subrecipient agrees that it shall report the total compensation and names of its top five (5) executives if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission or reports filed pursuant to the Internal Revenue Code.

ARTICLE 25. AUDIT REPORT

- A. In accordance with the provisions of 2 CFR 200, Subpart F – Audit Requirements, non-Federal entities that expend financial assistance of \$750,000 or more in Federal awards in the entity's fiscal year will have a single or a program-specific audit conducted for that year. Non-Federal entities expend less than \$750,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503. For direct procurement contracts, audits will be conducted in accordance with the Federal Acquisition Regulation.
- B. If threshold expenditures of \$750,000 or more are met during the Subrecipient's fiscal year, the Subrecipient must submit a Single Audit Report and Management Letter (if applicable) to NSC within 30 calendar days of report finalization or nine months after the end of the audit period, whichever is earlier.
- C. If expenditures are less than \$750,000 during the Subrecipient's fiscal year, the Subrecipient must submit a statement to NSC's Audit Office as follows: "We did not meet the \$750,000 expenditure threshold and therefore, are not required to have a single audit performed for FY_____."
- D. For each year the Project remains open for Federal funding expenditures, the Subrecipient will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

ARTICLE 26. NO WAIVER

The failure of NSC or the Subrecipient to enforce one or more of the terms or conditions of the Agreement or to exercise any of its rights or privileges, or the waiver by NSC of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

ARTICLE 27. INTERPRETATION, JURISDICTION, AND VENUE

This Agreement is governed by and should be construed in accordance with Federal statutes and regulations and Federal common law of Government grants and contracts, as enunciated and applied by Federal judicial bodies,

Attachment A
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boards of contract appeals and quasi-judicial agencies of the Federal Government where questions of Federal law arise, and otherwise with the laws of the State of Illinois, without giving effect to its conflict-of-law provisions. The Subrecipient hereby consents and submits to the jurisdiction of the appropriate courts of Illinois or of the United States having jurisdiction in Illinois for adjudication of any suit or cause of action arising under or in connection with the Agreement documents, or the performance of such Agreement, and agrees that any such suit or cause of action may be brought in any such court.

ARTICLE 28. CAPTIONS

The captions of the various Articles and Sections are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

ARTICLE 29. NO THIRD-PARTY BENEFICIARIES

There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

ARTICLE 30. SEVERABILITY

In the event a court of competent jurisdiction determines that any provision of the Agreement is unlawful, invalid, or unconstitutional, such determination shall not affect, in any manner, the legality of the remaining provisions of the Agreement, and each provision of the Agreement will be and is deemed separate and severable from each other provision.

ARTICLE 31. COMMUNICATIONS WITH PRIME FUNDER

All communications with the Prime Funder regarding the Project shall be made by NSC, unless NSC has approved a communication with the Prime Funder by the Subrecipient in advance.

ARTICLE 32: CLOSEOUT REQUIREMENTS

All Subrecipient closeout requirements set forth in this Agreement will apply even after the Period of Performance expires or terminates. To closeout this Agreement, Subrecipient shall, as applicable, provide all reports required by this Agreement, liquidate all obligations incurred, and account for any real or personal property acquired with Subaward Funds no later than 90 calendar days after the Period of Performance expires or terminates. Subrecipient will be notified and instructed by NSC if they must complete any additional forms for closeout of this Subaward.

ARTICLE 33. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements.

Attachment B

Prime Award Provisions for NSC Subawards

1. **Seat Belt Use Policies and Programs.** In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Subrecipient is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles.
2. **Encouraging policies to ban text messaging while driving.**
 1. As used in this Agreement: "Driving" –
 - a. Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise
 - b. Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.
 2. "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.
 3. The Subrecipient is encouraged to –
 - a. Adopt and enforce policies that ban text messaging while driving –
 - i. Subrecipient-owned or –rented vehicles or government-owned vehicles; or
 - ii. Privately-owned vehicles while performing under this Agreement.
 - b. Conduct initiatives in a manner commensurate with the size of the Subrecipient, such as –
 - i. Establishment of new rules and programs or re-evaluations of existing programs to prohibit text messaging while driving; and
 - ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
3. **Human Subjects.** The Subrecipient shall not conduct any research activity involving human subjects covered by 49 CFR 11.101 unless the research is approved in advance by NSC, which will coordinate approval with Prime Funder, as necessary. Such Prime Funder approval will require approval by an Institutional Review Board, amongst other requirements.
4. **Rights in Data.** In addition to Article 19 of the General Terms and Conditions of this Subaward, the following terms govern the Parties' and Government's rights to data.
 - A. Definitions.
 - i. "Proprietary Information or Data" means information, data, or technology developed or being developed by or for the Grantee or its affiliates, subcontractors, or agents entirely outside of the Agreement, regardless of the source of funding.

Attachment B

Prime Award Provisions for NSC Subawards

- ii. "Program Developed Information" means information, data, or technology developed under this Agreement that may make use of, either in whole or in part, but does not otherwise contain Proprietary Information or Data.
 - iii. These definitions and this clause are not intended to affect any right that the Government, NSC, or the Subrecipient has been granted in another funding instrument in information, data, or technology developed with Federal funds under another program, and all of such rights, if any, are retained.
- B. Except as provided in the Prime Funder's Standard Patent Rights (as modified herein), (Government Rights) rights to all Proprietary Information or Data are retained by the Party responsible for the Data, and the Government does not have rights thereto. With respect to Program Developed Information, NSC and the Subrecipient has the right to use, release to others, reproduce, prepare derivative works, distribute, or publish any such information, and the Prime Funder (and others acting on its behalf) has the right to reproduce, prepare derivative works, distribute copies to the public, and perform publicly or display publicly, in any manner and for any purpose, any such information, and to have or permit others to do so.
- C. Any Proprietary Information or Data submitted by Subrecipient to NSC must be submitted in accordance with 49 CFR Part 512, including the Certificate in Support of Request for Confidentiality.
- D. Subrecipient shall not, without prior permission of NSC, incorporate in any deliverables required under this Agreement any Proprietary Information or Data that has not been granted confidentiality by NSC and the Government and which contains a copyright notice of 17 U.S.C. § 401 or 402.
- E. The Prime Funder's Standard Patent Rights are modified as follows: the Government will have march-in rights and Government-purpose license rights with respect to any and all patents arising out of this Agreement. If the Prime Funder and all Parties expressly agree in writing not to seek title to an invention arising out of this Agreement, the Recipient or Subrecipient shall publish the invention in the public domain within 60 days of such written agreement. The publication must be in a documented searchable fashion.
- F. Project results are releasable per the Public Release Schedule that NSC negotiates with the Prime Funder.
- G. If the Prime Funder provides limited-rights information or data to NSC that NSC provides to Subrecipient for the performance of this Agreement, the Subrecipient may use the information or data during the performance of the Agreement, provided that any such information or data, including any copies of the information or data, are returned at the end of the Agreement or destroyed, per directions from NSC. Subrecipient and its employees are prohibited from divulging to the public any limited-rights information or data without the express written permission from NSC and the Prime Funder, which permission NSC will coordinate.
- 5. Conflict of Interest with Prime Funder's Activities.** By signing this Agreement, Subrecipient certifies that it does not have an interest that may be substantially affected by U.S. Department of Transportation activities and which is related to the work specified in this Agreement. If, after award, the Subrecipient discovers any such conflict of interest, it shall make an immediate and full disclosure to NSC.
- 6. Drug-Free Workplace.** Subrecipient shall comply with the Drug-Free Workplace requirements set forth in 2 CFR Part 182, Subpart B.
- 7. Subrecipient Tax Liability or Felony Conviction.** By signing this Agreement, Subrecipient certifies that it does not have a Tax Delinquency (an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability) or a Felony Conviction (a

Attachment B

Prime Award Provisions for NSC Subawards

conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559). For all Covered Transactions (a transaction that uses any Federal Award funds that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee) that Subrecipient enters into:

- A. Before entering into the Covered Transaction, Subrecipient shall check the System for Award Management (SAM) for an entry describing that entity.
 - B. Before entering into the Covered Transaction, Subrecipient shall require the other party to:
 - i. certify whether the party has a Tax Delinquency; and
 - ii. certify whether the party has a Felony Conviction.
 - C. If (1) the SAM entry for the other party indicates that it has a Tax Delinquency or a Federal Conviction; (2) the other party provides an affirmative response to either certification in 7.B.; or (3) the other party's certification under 7.B was inaccurate when made or becomes inaccurate after it was made, Subrecipient shall not enter into or continue the Covered Transaction unless it notifies NSC of the discrepancy and NSC obtains Prime Funder's written determination that suspension or debarment of that entity is not necessary to protect the interests of the Prime Funder.
 - D. If the SAM entry for a Participant (an entity that submits a proposal to Subrecipient for a Covered Transaction or an entity that enters into a Covered Transaction with Subrecipient) indicates that the Participant has a Tax Delinquency or a Felony Conviction, Subrecipient shall notify NSC in writing of that entry. If a Participant provides an affirmative response regarding either certification in this clause, the Subrecipient shall notify NSC in writing of that response. If the Subrecipient knows that a Participant's certification was inaccurate when made or becomes inaccurate after being made, the Subrecipient shall notify NSC in writing of the inaccuracy.
 - E. For all Covered Transactions, the Subrecipient shall flow down the contents of this clause.
- 8. Section 508 Compliance.** The Subrecipient shall ensure that electronic documents and HTML deliverables it prepares meet the requirements of Section 508 of the Rehabilitation Act. The Subrecipient should review Section 508 of the Rehabilitation Act (<https://www.access-board.gov/508/508standards.htm>) and the Federal IT Accessibility Initiative Home Page (<https://section508.gov/>) for further information on these requirements. Subrecipient shall further ensure the documents and deliverables comply with the accessibility standards found in 36 CFR 1194.22.
- 9. Audit Requirements.** If Subrecipient awards a contract for more than \$10,000 to a commercial organization under this Agreement, it shall include the following requirements, defining such terms as necessary:
- A. **Examination of Costs.** The contractor shall maintain—and NSC and the Prime Funder shall have the right to examine and audit—books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine-readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this agreement. This right of examination includes inspection at all reasonable times of the contractor's facilities, or parts of them engaged in performing the agreement.
 - B. **Reports.** If the contractor is required to furnish cost, funding, or performance reports, NSC and the Prime Funder shall have the right to examine and audit books, records, or other documents and supporting materials for the purpose of evaluating (a) the effectiveness of contractor's policies and procedures to produce data compatible with the objectives of these reports and (b) the data reported.

Attachment B

Prime Award Provisions for NSC Subawards

- C. **Availability.** The contractor shall make available at its office at all reasonable times the materials described in paragraph A. above for examination, audit, or reproduction, until the later of 3 years after final payment or any resulting final settlement of a termination, appeal, litigation, or claim, or for any shorter period specified in FAR Subpart 4.7, Records Retention, or for any longer period required by statute.
- D. Except as otherwise provided in FAR Subpart 4.7, Records Retention, the contractor may transfer computer data in machine-readable form from one reliable computer medium to another. The contractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The contractor's choice of form or type of materials described in this clause does not affect the contractor's obligations nor does it affect NSC's or the Prime Funder's rights under this clause.
- 10. Data Collection.** If Subrecipient believes the Agreement will involve the collection of information as defined in 5 CFR Part 1320, it shall immediately notify NSC and obtain NSC and Government approval, which will be coordinated by NSC. If such collection is approved and performed by Subrecipient, it shall not represent to respondents that the data is being collected for or in association with Prime Funder or any Federal agency, unless it has received specific written approval.
- 11. Privacy Act.** If Subrecipient believes the Agreement will involve a system of records on individuals designed, developed, or operated on behalf of the Federal Government, it shall immediately notify NSC. In such instances, Subrecipient shall comply with the Privacy Act of 1974.
- 12. Required Format of Products and Publications.** If Subrecipient prepares publications under this Agreement, they shall submit them in accordance with Government Printing Office guidelines and shall submit them so they can be posted on the Prime Funder's website.
- 13. Additional NHTSA Guidance.** The Subrecipient is encouraged to review materials available on NHTSA's Highway Safety Program Resources Guide (<https://www.nhtsa.gov/highway-safety-grants-program/resources-guide>) for additional guidance on administering funding provided by NHTSA. Specifically, Subrecipient should be aware of, and comply with NHTSA guidance related to:
- Use of NHTSA Highway Safety Grant Funds for Certain Purchases
 - Buy America Act Guidance

Attachment C **Scope of Work**

Clackamas County Department of Transportation and Development **Safe System Approach to Rural Road to Zero**

This project will showcase how a holistic Safe Systems approach to traffic safety can be effective in reducing fatal and serious injury crashes in a rural community. A Safe Systems approach will combine proven low-cost engineering countermeasures with behavioral change- focused education, followed with targeted enforcement in collaboration with regional law enforcement partners. Layered throughout the project is collaboration with public health and schools to tackle issues of alcohol and drug use, build new opportunities with rural transit options to move teens and older adults, and work with the Oregon DOT to create more and affordable driver's education and child protection to those who can least afford access. This project will include:

1. Rapid deployment of proven low-cost safety countermeasures on rural roadways based on the County's Transportation Safety Action Plan projects and local road safety audits where applicable. Such low-cost countermeasures may include enhanced delineation for horizontal curves and intersections, longitudinal rumble strips, recessed raised reflective pavement markers and creation of all-way stop-control at intersections.
2. Utilization of behavioral and cultural change education using micro-targeting in order to effectively reach the targeted rural area. Professional behavior and culture change experts will be utilized to build the internal capacity to conduct micro-targeting using social media, social media ad buys, and direct email campaigns. The focus will be on common behaviors that cause the most serious and fatal crashes in the County as well as the results of a 2017 survey by Montana State University regarding Aggressive Driving, Beliefs and Attitudes among Adults in the Molalla Area.
3. Enhance existing and build new partnerships with locally based community organizations and business leaders to help amplify messaging and gain buy-in for countermeasures, tapping into the importance of storytelling in rural communities.
4. Build opportunities for community residents who have less financial resources so that they can afford access to both driver's education for teen household members and child protection equipment. This will build on our current partnership with the non-profit Oregon Impact, who is currently conducting an environmental scan of child protection equipment services and programs in the County. This includes partnering with social service agencies that serve Latinx families in the County.
5. Engage rural transportation agencies in building new access for both teens and older adults to ensure good mobility options.

Clackamas County forms the southern County of the Portland, Oregon, metropolitan area. The county encompasses 1,879 square miles, a population of 413,000 and a 1,400 mile County-owned and maintained roadway system. The county's heavily timbered geographical features include the 11,235-foot Mt. Hood, the Mt. Hood National Forest, the Bull Run Watershed and numerous rivers - including the Willamette, Clackamas, Sandy, Pudding, Molalla and Salmon. Some of Oregon's richest farmland is located in areas surrounding the communities of Canby, Sandy, Boring, Wilsonville and Molalla.

Drive to Zero Clackamas County has set a goal to eliminate fatal and serious injury crashes on its roads by 2035. Their Drive to Zero Safety Action Plan, first adopted in 2012 and updated in early 2019, represents an evidence-based approach to reduce fatal and serious injury crashes. The emphasis areas align with those of Toward Zero Deaths: A National Strategy on Highway Safety, of which the County is proud partner; and the Oregon Transportation Safety Action Plan, 2016. Successful implementation of the plan depends on everyone, including emergency medical services, personnel, activists, educators, local leaders, law enforcement, business, engineers, and most importantly, the traveling public.

From 2009 to 2015, 183 people were killed in traffic crashes in Clackamas County. Another 795 people suffered serious, potentially life-altering injuries. People must drive further in rural areas to reach destinations, and emergency response times can be longer than in urban areas. Speeds are also higher than in urban areas and there are fewer transportation options. As a result, rural areas are more susceptible to severe crashes than urban areas. 45% of reported severe crashes in the County occurred in rural areas, while 20% of the County's population lives in rural areas. The most contributing factors in reported crashes in the county are:

- 36% inexperienced drivers (25 years of age or younger)

Attachment C Scope of Work

- 34% roadway departures
- 31% aggressive driving
- 22% motorcycles
- 21% alcohol/drug related crashes
- 17% senior drivers
- 16% pedestrians and bicyclists

Drive to Zero embraces the importance of creating a positive safety culture using the tools within the Positive Culture Framework. The County has worked with the Center for Health and Safety Culture at Montana State University on a local collaboration with a not-for-profit in the Molalla, Oregon area. This project will use best practices from the pilot project to increase community engagement throughout the rest of the County. Additionally, staff with the Drive to Zero Program have worked with public health professionals in development of the Clackamas County Blueprint for a Healthy Clackamas County, 2017-2020, which includes a goal of eliminating roadway fatalities. This collaboration is helping to build the health and safety in all policies, particularly as different plans from the Public Health Division and the Department of Transportation and Development are adopted

Task 1

Investment in low-cost proven safety countermeasures to significantly reduce fatal and serious injury crashes on the rural roadway network.

The infrastructure phase of the project will be managed by Christian Snuffin, Senior Traffic Engineer. The County's Transportation Safety Action Plan (found at <http://bit.ly/2CHV78c>) will guide investments based on a roadway network screening and safety priorities developed in collaboration with the Oregon Department of Transportation. County staff will implement low-cost safety countermeasures on approximately 50 miles of the following arterial roadways:

- Canby-Marquam Highway – Canby City Limits to Hwy 211 (7 miles)
- Barlow Road – Hwy 99E to County Line (11.21 miles)
- Lone Elder Road – Hwy 99E to Canby-Marquam Hwy (3.32 miles)
- Macksburg Road – Canby-Marquam Hwy to OR 213 (5.32 miles)
- Barnards Road – Barlow Rd to Hwy 213 (6.21 miles)
- Whiskey Hill Road – County Line to Barlow Rd (1.74 miles)
- Mulino Road – Haines Rd to Hwy 213 (6.72 miles)
- Union Mills Road – Hwy 213 to Hwy 211 (3.9 miles)
- Knights Bridge Road – Arndt Rd to Canby City Limits (1.57 miles)
- Arndt Road – Airport Rd to Barlow Rd (2.07 miles)
- Township Road – Central Point Rd to Mulino Rd (1.6 miles)

In keeping with the County's emphasis on systemic application of proven low-cost safety countermeasures, Clackamas County DOT will implement a number of countermeasures with proven track records of reducing serious injury and fatal crashes. All of the proposed countermeasures are associated with significant crash reduction factors (CRF), and are listed in the Crash Modification Factors Clearinghouse (www.CMFClearinghouse.org), which is a FHWA-funded web-based repository of CMFs. Additionally, most of the proposed countermeasures have been calibrated by the Oregon Department of Transportation and used as part of their All Roads Transportation Safety Program.

Example Countermeasures:

- Wider edge lines. This countermeasure will increase the width of white edge lines from four inches to six inches on high-traffic arterials and collectors. Research has shown that this countermeasure is proven to reduce road departure crashes.
- Centerline rumble strips. This countermeasure consists of milled-in transverse grooves that follow the centerline. They alert inattentive drivers who have crossed the centerline by causing a tactile vibration and audible rumbling. This countermeasure is proven to significantly reduce sideswipe and head-on crashes.
- Centerline recessed raised pavement markers. This countermeasure consists of installing reflective raised pavement markers (RPMs) in a milled-in channel. The RPMs provide enhanced visual and tactile guidance for nighttime dry or wet weather conditions. Installing the RPMs in the channel prevents them

Attachment C Scope of Work

from being destroyed by snowplows, thus extending their useful service life. The milled-in channels also provide additional visual guidance and tactile feedback that helps drivers stay in their lanes.

Additional treatments may include one or more of the following:

- Converting two-way stop controlled intersections to all-way stop control;
- High-friction surface treatments;
- Enhanced signing on curves;
- Enhanced roadside delineation; and
- Post-mounted solar flashing beacons at stop-controlled intersections.

County staff will conduct a thorough engineering analysis of each roadway that will include a review of crash history, roadway geometry, traffic speeds and volumes to determine the most appropriate and effective safety countermeasure(s) for each roadway segment.

County Engineering staff will be responsible for design of the systemic safety countermeasures listed above, which will occur in the first three to six months. Installation will be provided by County maintenance staff or a qualified contractor, and this work will take place in months six through 12.

Timeline: **Design** **September – December 2019**
 Installation **January - August 2020**

Task 2

Holistic systems approach to culture and behavior change, enforcement and education to reduce serious and fatal crashes due to common driver behavior.

The safety outreach work will be managed by Rob Sadowsky, the Drive to Zero Outreach Coordinator.

Aggressive driving, such as speeding, distracted driving and driving under the influence will be the key behaviors targeted using a combination of efforts as follows. A key element of this strategy is Clackamas County DOT's partnership with the County's Department of Health, Housing and Human Services and the Public Health Division. This partnership seeks to combine efforts where strategies align, particularly around alcohol/drug and injury prevention. Components will include:

Young Adult Education

In school presentations, in driver's education presentations, encouragement of driver's education, scholarships and investments, and exploration of partnerships with ride sharing and transit. Micro-targeting social media approaches and peer-to-peer based programming. Prevention work with the County's Health, Housing and Human Services Department. The work will carry throughout the year.

Young Children Education and Outreach

Early education on issues of traffic safety is important to establish cultural norms and good driving, walking and bicycling behavior. The outreach team will promote safety through "Safety Street" and other in-school activities focusing on basic traffic safety and helmet use. Safety Street is a mobile trailer filled with pedal cars, traffic signals and signs that allow the team to set up a mobile traffic course. Children under nine years old, accompanied by an adult, learn about basic traffic safety and receive a safety coloring book when complete. Safety Street will be deployed at community fairs and events including the one week County Fair in August. Safety Street reached more than 2000 kids in 2018.

Teen Education and Outreach

More than 36% of crashes in the County involved a driver that was 25 years or younger. Additionally, 21% of crashes involved a driver under the influence of drugs or alcohol. For this reason, this program will incorporate a variety of programs targeting young adults through direct outreach and educational events and through partnerships around alcohol and drug prevention. Direct education programming will include presentations at high school health classes and area drivers' education classes focusing on the most common behaviors that result in serious and fatal crashes. Drivers' education is not required in Oregon and only 30% of the young adults take drivers' education. However, 90% of fatal crashes involving a young adult involve a driver that did not take drivers' education. This work will include a three-tiered approach to increase the level of teens in these programs.

Attachment C

Scope of Work

- The first step is to encourage more enrollment by engaging parents at PTA events, school open houses and other opportunities.
- The second step is working with the Oregon Department of Transportation – Transportation Safety Division and drivers' education providers to bring low-cost subsidized classes to the targeted region. Currently there is one course for the targeted region and students in the most eastern parts of the targeted area have many barriers to attending these classes.
- The third tier of this work will be partnering with nonprofit organizations and the County's Public Health department on prevention strategies including working with local transit agencies and ride sharing companies to explore ways to provide mobility options for teens.

General Education and Outreach

The project increase the county's skills and abilities in micro-targeting outreach. The County DOT will contract with professionals in the field of culture and behavioral change marketing to develop a long term strategy that will include targeting advertising and direct messaging using social media, email, and web/app sites such as Next Door. The County DOT will partner with community organizations, local businesses (including insurance brokers and companies), event tabling, religious institutions, schools and neighborhood associations. The County DOT will leverage its active partnership with the local community college, Clackamas Community College, to help the team target outreach and education efforts to students who live and work in the targeted areas of the County. This effort seeks to build the County's capacity and skills that could be sustained long term by current staff. This work will occur throughout the year. Outreach funding from the NSC grant will primarily support this strategy.

Older Adult Education and Outreach

17% of the County's crashes involve a driver who was 65 years or older. This segment of the population is rapidly growing within the County. This project will incorporate proven measures in partnership with the local AARP chapter to provide additional and targeted safe driving programs to seniors. The County DOT will also partner with public health professionals to incorporate safe driving and multimodal trip planning for case workers who serve older adults. Additionally, the micro-targeting strategy mentioned above will also be integrated here. The County DOT, in partnership with AARP, will be working with local transit agencies and ride sharing companies to explore ways to provide mobility options for older adults.

Targeted enforcement of driving behavior and sale of alcohol and marijuana to minors

A vital component of the Drive to Zero strategy is stepping up targeted traffic enforcement by partnering with the County Sheriff and local police departments. These strategies focus on the most common behaviors that cause serious and fatal crashes and reinforce community norms. The County DOT will leverage state safety funds to conduct traffic enforcement operations along with minor decoy operations targeting alcohol and marijuana sales to minors. This work will involve partnership with the County Sheriff's Office, Canby and Molalla Police Departments and the Oregon Liquor Control Commission.

Getting Child Passenger Seat education and seats for young children into the hands of low-income residents

The County has seen some high profile crashes in the targeted rural area that involved passengers who were not properly restrained, particularly children. We will partner with Oregon Impact, a statewide nonprofit, to implement strategies to increase compliance with car restraint laws. Oregon Impact is conducting environmental scan under contract with the County that will provide a current state of providers and services in the area along with recommendations for moving forward with services. This work is coordinated by Oregon Impact in partnership with Clackamas County DOT. The work will occur throughout the year.

Timeline: September 2019 – August 2020

Attachment C
Scope of Work

Task 3

Develop and present a webinar in conjunction with the Road to Zero Coalition on the project. The Road to Zero Coalition is hosting a series of webinars featuring the RTZ grant recipients. This webinar will explain the project and share results of what was learned. It might also discuss issues like challenges encountered and how they were resolved, and how this project could be replicated elsewhere.

Timeline: Develop in July and August 2020. Work with RTZ Coalition on when to present it.

Attachment D Budget

National Safety Council Subrecipient Monthly Budget

Subrecipient name: Clackamas County Department of Transportation and Development
Project Title: Safe Systems Approach to Rural Road to Zero
Project Start Date: 9/1/2019
Project End Date: 8/31/2020

| Month | Rate | Sep-19 | Oct-19 | Nov-19 | Dec-19 | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Total by Budget Category |
|------------------------------|------|------------------|------------------|------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|------------------|------------------|--------------------------|
| 1 Personnel | | | 2,000.00 | 2,000.00 | 2,000.00 | 1,229.32 | | | | | | | | 7,229.32 |
| 2 Fringe Benefits* | 0% | | | | | | | | | | | | | - |
| 3 Travel | | | | | | | | | | | | | | - |
| 4 Events | | | | | | | | | | | | | | - |
| 5 Equipment | | | | | | | | | | | | | | - |
| 6 Supplies | | | | | | | | | | | | | | - |
| 7 Contractual | | 13,995.89 | 13,995.89 | 13,995.89 | 6,495.89 | 6,495.89 | 6,495.89 | 6,495.89 | 6,495.89 | 6,495.89 | 16,495.89 | 16,495.89 | 11,095.89 | 125,050.68 |
| 8 Other | | | | | | | | | | | | | | - |
| 9a Total Direct Costs | | 13,995.89 | 15,995.89 | 15,995.89 | 8,495.89 | 7,725.21 | 6,495.89 | 6,495.89 | 6,495.89 | 6,495.89 | 16,495.89 | 16,495.89 | 11,095.89 | 132,280.00 |
| 10 Indirect Cost** | 0% | | | | | | | | | | | | | - |
| 11 Total Budget | | 13,995.89 | 15,995.89 | 15,995.89 | 8,495.89 | 7,725.21 | 6,495.89 | 6,495.89 | 6,495.89 | 6,495.89 | 16,495.89 | 16,495.89 | 11,095.89 | 132,280.00 |

* The County of Clackamas has elected to not bill for fringe benefits related to salaries charged to this award.

** The County of Clackamas has elected to waive indirect costs on this award.

Attachment E
Performance Report Formant

Subaward Number:

Reporting Period Covered:

Project Manager:

Each report should provide enough information for NSC to understand the current status, potential challenges, and anticipated changes in timing and or funding. The Subrecipient shall provide:

- a comparison of actual accomplishments compared to the objectives established for the reporting period;
- reasons why established objectives and performance measures were not met, if appropriate;
- favorable developments or alternatives that could result in meeting the objectives sooner or at less cost than anticipated; and
- other pertinent information, including, where appropriate an analysis and explanation of cost underruns, overruns, or high unit costs.

Address each question, as applicable:

Project Summary:

1. Is the project work on schedule?

Response...

2. Will the project take longer than the approved project period? If so, have you formally requested an amendment in writing?

Response...

3. Are there any issues with funding sources other than those included in this agreement?

Response...

4. Is there a change in key personnel?

Response...

Task 1: Investment in low-cost proven safety countermeasures.

1. What work was accomplished for this reporting period? How does the work compare to the objectives for the reporting period. NOTE: The report should quantify results as measurable products, i.e. numbers, contacts, trainings, meetings, etc.

Response...

2. Provide reasons why established objectives and performance measures were not met, if appropriate; what corrective action was taken?

Response...

Attachment E
Performance Report Formant

3. Describe any favorable developments or alternatives that could result in meeting the objectives sooner or at less cost than anticipated.

Response...

4. Is the project work on schedule?

Response...

5. Provide other pertinent information, including, where appropriate an analysis and explanation of cost underruns, overruns, or high unit costs.

Response...

6. What work is projected for the new reporting period?

Response...

Task 2: Holistic systems approach to culture and behavior change, enforcement and education

1. What work was accomplished for this reporting period? How does the work compare to the objectives for the reporting period. NOTE: The report should quantify results as measurable products, i.e. numbers, contacts, trainings, meetings, etc.

Response...

2. Provide reasons why established objectives and performance measures were not met, if appropriate; what corrective action was taken?

Response...

3. Describe any favorable developments or alternatives that could result in meeting the objectives sooner or at less cost than anticipated.

Response...

4. Is the project work on schedule?

Response...

Attachment E
Performance Report Formant

5. Provide other pertinent information, including, where appropriate an analysis and explanation of cost underruns, overruns, or high unit costs.

Response...

6. What work is projected for the new reporting period?

Response...

Task 3: Develop and present a webinar in conjunction with the Road to Zero Coalition on the project

1. What work was accomplished for this reporting period? How does the work compare to the objectives for the reporting period. NOTE: The report should quantify results as measurable products, i.e. numbers, contacts, trainings, meetings, etc.

Response...

2. Provide reasons why established objectives and performance measures were not met, if appropriate; what corrective action was taken?

Response...

3. Describe any favorable developments or alternatives that could result in meeting the objectives sooner or at less cost than anticipated.

Response...

4. Is the project work on schedule?

Response..

5. Provide other pertinent information, including, where appropriate an analysis and explanation of cost underruns, overruns, or high unit costs.

Response...

6. What work is projected for the new reporting period?

Response...

Attachment F Financial Report

National Safety Council Subrecipient Financial Report
Summary Financial Report w/ Comparison to Time Elapsed

Subawardee Name: Clackamas County Department of Transportation and Development
 Project Title: Safe Systems Approach to Rural Road to Zero
 Subaward Number: NSC - XXXXX
 Project Start Date: 9/1/2019
 Project End Date: 8/31/2020
 Report Through (Short Date Format): 9/30/2019
 Report Date:

Prior Period Adjustments require a detailed explanation in the notes section provided below.
 Fill in the yellow shaded areas only.

| Categories | Rate | Budget (A) | Prior Period Expenses (B) | Prior Period Adjustments (C) | Current Period Expenses (D) | Total LOP Expenses to Date (E=B+C+D) | Balance (F=A-E) |
|------------------------------|------|-------------------|---------------------------|------------------------------|-----------------------------|--------------------------------------|-------------------|
| 1 Personnel | | 7,229.32 | | | | - | 7,229.32 |
| 2 Fringe Benefits* | 0% | | | | | - | - |
| 3 Travel | | | | | | - | - |
| 4 Events | | | | | | - | - |
| 5 Equipment | | | | | | - | - |
| 6 Supplies | | | | | | - | - |
| 7 Contractual | | 125,050.68 | | | | - | 125,050.68 |
| 8 Other | | | | | | - | - |
| 9a Total Direct Costs | | 132,280.00 | - | - | - | - | 132,280.00 |
| 10 Indirect Cost** | 0% | | | | | - | - |
| 11 Total Costs | | 132,280.00 | - | - | - | - | 132,280.00 |

| | |
|-----------------------------------|-------------|
| Percentage of Budget Spent | 0.00% |
| Percentage of Time Elapsed | 7.95% Under |

| | |
|--|---|
| Total NSC Funds Requested this Period | - |
| Total NSC Funds Received to Date | |

Explanation of Prior Period Adjustments

Name and Title - Authorized Official

Signature - Authorized Official

Signature Date

- * The County of Clackamas has elected to not bill for fringe benefits related to salaries charged to this award.
- ** The County of Clackamas has elected to waive indirect costs on this award.

Attachment F Financial Report

National Safety Council Subrecipient Financial Report
Detailed Monthly Report w/ Comparison to Budget

Subawardee Name: Clackamas County Department of Transportation and Development
 Project Title: Safe Systems Approach to Rural Road to Zero
 Subaward Number: NSC -XXXXX
 Project Start Date: 9/1/2019
 Project End Date: 8/31/2020
 Report Through (Short Date Format): 9/30/2019
 Report Date: 1/0/1900

Fill in actual expenses in the yellow shaded area for the relevant month

| Month | Rate | Sep-18 | Oct-18 | Nov-18 | Dec-18 | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Total by Budget Category |
|-----------------------------------|------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|--------------|--------------|--------------------------|
| 1 Personnel | | | | | | | | | | | | | | - |
| 2 Fringe Benefits* | 0% | | | | | | | | | | | | | - |
| 3 Travel | | | | | | | | | | | | | | - |
| 4 Events | | | | | | | | | | | | | | - |
| 5 Equipment | | | | | | | | | | | | | | - |
| 6 Supplies | | | | | | | | | | | | | | - |
| 7 Contractual | | | | | | | | | | | | | | - |
| 8 Other | | | | | | | | | | | | | | - |
| 9a Total Direct Costs | | | | | | | | | | | | | | - |
| 10 Indirect Cost** | 0% | | | | | | | | | | | | | - |
| 11 Total Actual Expenses by Month | | | | | | | | | | | | | | - |
| 12 Budgeted Amount | | 13,995.89 | 15,995.89 | 15,995.89 | 8,495.89 | 7,725.21 | 6,495.89 | 6,495.89 | 6,495.89 | 6,495.89 | 16,495.89 | 16,495.89 | 11,095.89 | 132,280.00 |
| 13 Over/(Under) Monthly Budget | | (13,995.89) | (15,995.89) | (15,995.89) | (8,495.89) | (7,725.21) | (6,495.89) | (6,495.89) | (6,495.89) | (6,495.89) | (16,495.89) | (16,495.89) | (11,095.89) | (132,280.00) |
| 14 Cumulative Over/(Under) | | (13,995.89) | (29,991.78) | (45,987.67) | (54,483.56) | (62,208.77) | (68,704.66) | (75,200.55) | (81,696.44) | (88,192.33) | (104,688.22) | (121,184.11) | (132,280.00) | (132,280.00) |

Explanation of Significant Deviations from Monthly Budget

Name and Title - Authorized Official Signature - Authorized Official Signature Date

* The County of Clackamas has elected to not bill for fringe benefits related to salaries charged to this award.
 ** The County of Clackamas has elected to waive indirect costs on this award.



DAN JOHNSON
DIRECTOR

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

October 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement Between Clackamas County and the City of Oregon City Related to Plan Review, Permitting, and Inspection Services, Including Clarification of Inspection Roles During Times of Emergencies

| | |
|--|---|
| Purpose/Outcomes | This Agreement updates a previous Intergovernmental Agreement (IGA) between the County and the City of Oregon City to renew the agreement, adjust the billing structure and provide clarification of inspection roles during times of emergencies. |
| Dollar Amount and Fiscal Impact | Inspection services shall be calculated hourly, using the active charge out rate of labor plus over head for the employee providing the services and shall include travel time between jurisdictions. Plan review services shall be paid at 70% of the plan check fee charged by the borrowing party. |
| Funding Source | Permit fees – no County general funds are involved. |
| Duration | The IGA is effective upon signing and execution. |
| Previous Board Action/Review | The Board executed Intergovernmental Agreements on March 9, 1995 (95-185), June 26, 2003 (Resolution No. 03-19) |
| Strategic Plan Alignment | Ensure safe, healthy and secure communities |
| Counsel Review | Reviewed and approved by County Counsel on 10/1/19 |
| Contact Person | Matt Rozzell, Building Codes Administrator, Transportation & Development, 503-742-4748 |

BACKGROUND:

On March 9, 1995 the City of Oregon City and Clackamas County entered into an IGA for the County to provide for the City of Oregon City the service of continued processing of the State of Oregon Structural Specialty Code (Fire and Life Safety Plan Review only); and plan review, inspection and enforcement of the Oregon State Plumbing Specialty Code, State of Oregon One- and Two-Family Dwelling Specialty Code-Plumbing Section, and the State of Oregon Electrical Code. The IGA was updated on

July 1, 2003 to include an amendment to adjust the fees the County received from 88% for the permit and plan review fees to 70% of the permit and plan review fees to account for the City issuing all plumbing and electrical permits.

This IGA updates the billing methodology to an hourly rate including the active charge out rate, plus overhead, including travel time for inspection services. For plan review services, the IGA billing methodology is set for the Borrowing party to pay 70% of the plan check fee, therefore capturing the cost of staff salaries and other associated employment costs.

This updated IGA will provide each party the ability to call the other to perform needed inspection or plan review service for all Oregon Specialty Codes. The IGA also provides the County the ability to inspect their own buildings located within the City of Oregon City during times of emergencies.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners approve this Intergovernmental Agreement between Clackamas County and the City of Oregon City related to Plan Review, Permitting, and Inspection Services, including the clarification of inspection roles during times of emergencies.

Respectfully submitted,

Matthew Rozzell
Building Codes Administrator
Department of Transportation and Development

RECORD COPY

Intergovernmental Agreement for Provisions of
Building Inspection/Plan Review (BI/PR) Services Mechanical Inspection/ Plan Review, Plumbing Inspection/Plan Review, Electrical
Inspection/Plan Review and
Clarification of Inspection Roles during Times of Emergencies

This Agreement is entered into by and between the City of Oregon City, an Oregon municipal corporation (the "City"), and Clackamas County, a political subdivision of the State of Oregon (the "County"), (each a "Party" or collectively the "Parties").

RECITALS

- A. ORS 190.010 authorizes and allows the parties to this Agreement to perform the functions and activities that another party to this Agreement has authority to perform.
- B. Each of the parties has staff that provides BI/PR services, as defined below, for their respective jurisdictions.
- C. With the fluctuations in development and construction activity in Oregon the Parties have experienced variations in demand for BI/PR services over the course of the last few fiscal years; and the Parties believe it may be more cost effective and better serve the public to share experienced staff of another jurisdiction rather than independently hiring additional staff.
- D. During times of emergency including but not limited to earthquake, flood, and high-wind events, demands for timely BI/PR services can increase significantly.
- E. Post-disaster, each Party must respond to their respective communities as quickly and efficiently as possible.
- F. Each of the Parties has a desire to serve their respective communities in the swiftest and most efficient way possible during an emergency.
- G. Many of the County's buildings and facilities are located within the City's jurisdiction.

AGREEMENT

Now, therefore, based on the foregoing, the Parties agree as follows:

- 1. Definitions. As used herein, the following words and phrases mean:
 - 1.1. "Borrowing Party" is the governmental entity requesting and obtaining staff assistance from another signatory to this Agreement.
 - 1.2. "Building Inspection/Plan Review Services" (BI/PR) are services related to the issuance of permits under the provisions of ORS Chapters 197.215, 227 or 455.
 - 1.3. "Originating Party" is the entity loaning one or more of its employees to the Borrowing Party for staff assistance related to BI/PR.
 - 1.4. "Reimbursement Costs" are those charges related to a Shared Employee as set forth in a fee schedule

adopted by an Originating Party. The charges shall be set out as an hourly rate for inspection services, and a percentage of the plan review fee for plan review services.

- 1.5. "Shared Employee" is the Originating Party's employee loaned to a Borrowing Party under this Agreement.
 2. Requested Use of Shared Employees. Each Party to this Agreement shall make available its employees providing BI/PR, to the extent these employees are (in the opinion of the Originating Party) available for loan. The Borrowing Party shall inform the Originating Party that it desires staff assistance related to BI/PR from the Originating Party and stating the number of positions and the minimum qualifications of the staff requested. The request shall also set out when the Shared Employee would be needed and an estimate of the duration for the need.
 3. Response to Request for Use. The Originating Party shall promptly provide Borrowing Party with the name(s) of employee(s) that are available and a brief description of the employees' qualifications. It shall be in the sole discretion of the Originating Party to select the employees subject to this Agreement. This process is to be quick and responsive such that a Borrowing Party may make a request in the morning and be lent a Shared Employee that same day.
 4. Payment for Use of Shared Employee and Revenue Sharing.
 - 4.1 Inspections services shall be calculated hourly, using the active charge out rate of labor, plus overhead, for the employee providing the service and shall include travel time between jurisdictions. Charge out rates are updated each fiscal year, and invoices will reflect the current rate for services performed.
 - 4.2 Plan review services shall be paid at 70% of the plan check fee charged by the Borrowing Party. The Originating party shall provide copies of all permit receipts for projects which received plan review services.
 5. Accounting for Shared Employee. The Originating Party shall provide to the Borrowing Party an accounting of hours spent performing inspection services and accounting for plan review services for the Borrowing Party. This information shall be provided within 30-days of the end of each calendar month and may be provided via US mail, e-mail or fax. The Borrowing Party shall pay all Reimbursement Costs within 30-days of receipt of the accounting described in this paragraph.
 6. Status of Shared Employee. A Shared Employee shall:
 - 6.1. Account for the number of hours in service to a Borrowing Party;
 - 6.2. Remain an employee of the Originating Party continuing to be paid and receiving employee benefits therefrom without entitlement or claim to any salary, compensation or other benefits from the Borrowing Party;
 - 6.3. Continue working the number of hours specified in his or her contract of employment with the Originating Party while loaned to a Borrowing Party, unless the Originating Party, Borrowing Party and the Shared Employee agree otherwise;
 - 6.4. In the event of any dispute between the Shared Employee and Borrowing Party about the performance of services under this Agreement, Shared Employee shall be subject to the exclusive direction and control (including personnel actions and discipline) of the Originating Party.
 - 6.5. Administer the building code and the adopted policies of the Borrowing Party, and shall defer to the direction of the building official of the Borrowing Party on matters relating to the BI/PR services and the issuance of permits. It is agreed by and between the parties that the Shared Employee is carrying out a function on behalf of the Borrowing Party, and the Borrowing Party has the right of direction or control of the manner in which the Borrowing Party delivers services under this Agreement and exercises control over the activities of the Shared Employee when providing agreed upon services
 7. Obligations of Borrowing Party. If the Shared Employee does not meet the needs or is otherwise not satisfactory to Borrowing Party, Borrowing Party's sole recourse shall be the return of Shared Employee to Originating Party. The Borrowing Party shall provide a written explanation to the Originating Party for the return of the Shared Employee(s). Borrowing Party shall provide a Shared Employee with all material(s) and work space necessary to perform the requested BP/PR.
-

8. Obligations of Originating Party. In addition to its other obligations set out elsewhere in this Agreement, the Originating Party shall be responsible for provision of any official motor vehicle necessary for performance of services by a Shared Employee.

9. Authorization to perform inspections on County Buildings and Facilities.

9.1. During times of emergency, as defined in ORS 401.025 and as duly declared by either the governing body of the City or the County or as mutually agreed by the Parties, the City authorizes the County to perform inspections on County-owned or operated facilities for the purpose of determining whether they are structurally sound and/or otherwise suitable for safe occupancy.

9.2. The County shall use only certified personnel to evaluate buildings and facilities.

9.3. The County shall utilize the ATC-20 and ATC-45 or other equivalent methodologies and standard, rational engineering practices in the determination of suitability for occupancy.

9.4. The County shall provide copies to the City of all reports and findings as soon as is practical after the inspections are performed.

9.5. If during an emergency it is the desire of the City to utilize County inspection personnel in the evaluation of its own facilities, terms shall be as outlined in this agreement.

10. General Provisions.

- 10.1 Compliance with Laws. Every party shall comply with all applicable federal, state and local laws, including those related to discrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, marital status, age, medical condition or disability and all applicable laws and regulations regarding the handling and expenditure of public funds.
- 10.2 Oregon Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon without giving effect to the conflicts of laws provisions thereof.
- 10.3 Time is of the Essence. Time is of the essence in the performance of this Agreement.
- 10.4 System Access. The Borrowing Party agrees to provide the Originating Party access to the Borrowing Party's permitting system.
- 10.5 Default. A Party shall be deemed in default if it fails to comply with any provision of this Agreement. The non-defaulting party shall provide the defaulting party written notice of the default and an explanation thereof and allow the defaulting party thirty (30) days within which to cure.
- 10.6 Indemnification. Each Party in its capacity as an Originating Party hereby agrees to indemnify, defend and hold harmless the Borrowing Party (including their elected officials, officers, employees and agents) from and against all claims, demands and causes of actions and suits of any kind or nature made by a third party for personal injury, death or damage to property arising out of the service(s) performed by the Originating Party its elected officials, officers, employees (including Shared Employees) and agents pursuant to the terms of this Agreement. Each Party shall give the other Party to this Agreement notice of any claim made or case filed that relates to this Agreement or services performed hereunder.
- Each Party in its capacity as a Borrowing Party hereby agrees to indemnify, defend and hold harmless the Originating Party (including their elected officials, officers, employees and agents) from and against all claims, demands and causes of actions and suits of any kind or nature made by a third party for personal injury, death or damage to property arising out of the service(s) performed by the Borrowing Party its elected officials, officers, employees and agents pursuant to the terms of this Agreement. Each Party shall give the other Party to this Agreement notice of any claim made or case filed that relates to this Agreement or services performed hereunder.
- 10.7 Insurance. Each Party agrees to maintain liability and workers compensation insurance in accordance with statutory requirements at levels necessary to protect against liabilities allowed by law. Each Originating Party shall maintain workers compensation coverage for any Shared Employee loaned under this Agreement.
- 10.8 Modification. This agreement may be amended in writing as may be mutually agreed to between the Parties.
- 10.9 Dispute Resolution. The Parties shall first attempt to informally resolve any dispute concerning this Agreement. A neutral party may be used to facilitate those negotiation in the event of an impasse, the issue shall be submitted to the governing bodies for a recommendation or resolution.
- 10.10 Enforcement. Subject to the provisions in section 10.7, any Party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement.
- 10.11 Excused Performance. In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control of the Party to be excused.
- 10.12 Termination. A Party may terminate its participation in this Agreement, with or without cause and at any time, by providing thirty (30) days written notice to the other Party to this Agreement.
- 10.13 Severability. If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the

Agreement will not be affected or impaired in any way.

10.14 Entire Agreement. This Agreement is the entire agreement of the Parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

11. Term of Agreement. This Agreement shall take effect on the date that both Parties have signed the agreement and continue thereafter from year to year in perpetuity unless terminated by the Parties consistent with section 10 above.

12. Contact Persons. Communications about this Agreement and any notice sent under its terms shall be sent by and to the following contact persons for the respective parties:

| <u>Jurisdiction</u> | <u>Contact Person</u> | <u>Address</u> |
|---------------------|-----------------------|---------------------|
| City of Oregon City | Mike Roberts | 698 Warner Parrott |
| Clackamas County | Matt Rozzell | 150 Beaver creek Rd |

12. Appropriations Clause. The obligations of the parties are subject to appropriations by their governing bodies. This Agreement is subject to the debt limitations in Oregon Constitution, Article XI, section 10 and any debt limitations contained in a city charter.

IN WITNESS WHEREOF, the respective parties have caused to be signed in their behalf to make and enter into this Agreement this _____ day of _____, 2019.

CLACKAMAS COUNTY

By _____
Chair, Board of County Commissioners

Date _____

Approved as to Form:

By _____
Mary Raethke, Recording Secretary

Date _____

CITY OF OREGON CITY

By Anthony J. Konkol III
Anthony Konkol III, City Manager

Date 10-2-19

Approved as to Form:

By [Signature]
City Attorney

Date 10-3-19



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with Murraysmith, Inc. for the
Jennings Ave: OR99E to Oatfield Rd Project**

| | |
|--|---|
| Purpose/Outcomes | Execution of the contract allows Clackamas County to proceed with the design of sidewalk and bicycle improvements to Jennings Avenue between OR99E and Oatfield Rd. |
| Dollar Amount and Fiscal Impact | The contract amount is not to exceed \$848,665.07. |
| Funding Source | Federal Surface Transportation Program (STP) and County Road Funds. |
| Duration | June 30, 2022. |
| Previous Board Action | 01/01/17: BCC Approval of Master Certification Agreement No. 30923 for County implementation of federally funded projects. |
| Strategic Plan Alignment | This project will "Build a strong infrastructure" and "Ensure safe, healthy and secure communities" by constructing sidewalks and bicycle lanes. |
| Counsel Review | October 8, 2019 |
| Contact Person | Robert Knorr, Project Manager 503-742-4680 |

Background:

The County obtained Federal Surface Transportation Program funding to construct improvements along Jennings Avenue from OR99E (McLoughlin Blvd) to Oatfield Road. The improvements include constructing a curb tight sidewalk on the north side of the road and constructing bike lanes on both sides of the road for enhanced bicycle and pedestrian connectivity. The total length of improvements is approximately three quarters (3/4) of a mile (approximately 3860 feet).

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on March 13, 2019. Proposals were opened on April 16, 2019. The County received two (2) Proposals: Murraysmith, Inc., and Harper Houf Peterson Righellis. An evaluation committee of four DTD personnel scored Murraysmith, Inc.'s proposal the highest. Upon Contract award, the final statement of work was negotiated and finalized. Project fees were negotiated and based upon existing Oregon Department of Transportation ("ODOT") Negotiated Billing Rates.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Engineering and Related Services Contract with Murraysmith, Inc. for the Jennings Ave: OR 99E to Oatfield Rd Project.

Sincerely,

Joel Howie,
Civil Engineering Supervisor

Placed on the BCC Agenda _____ by Procurement and Contract Services

ENGINEERING AND RELATED SERVICES CONTRACT
Contract Number: 1831 (RFP 22234-01/2019-14)

| | |
|---|--|
| Project Title: Jennings Ave: OR99E to Oatfield Rd | County Project Number: 22234 |
| Project Location: Clackamas County | Associated RFP Number: 2019-14/22234-01 |
| Federal Aid Number: C005 (103); Key #19276 | DBE Goal: 8.5% (see Exhibit E) |
| Total Not-to-Exceed (“NTE”) amount for this Contract. This total includes: a) all allowable non-contingency costs, expenses and profit/ fixed-fee amount; and b) \$101,045.47 for all allowable costs, expenses and profit/fixed-fee amount for contingency tasks, each of which must be separately authorized by County. | \$ 848,665.07 |

This Contract is between Clackamas County, hereafter called “County” or “Agency” and **Murraysmith, Inc.**, an Oregon corporation, hereafter called “Consultant.” County and Consultant together are also referred to as “Parties” and individually referred to as “Party.” The primary contacts for this Contract are identified in Exhibit J, Contact Information and Key Persons.

This Contract includes Federal Highway Administration (“FHWA”) funding coordinated through the Oregon Department of Transportation (“ODOT”). See Section 18 - Compliance with Applicable Law.

For purposes of this Contract:

- a) “business days” means calendar days, excluding Saturdays, Sundays and all State of Oregon recognized holidays;
- b) “calendar days” means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State of Oregon holiday or other day;
- c) “Engineering” Services means architectural, engineering, photogrammetric mapping, transportation planning or land surveying services that must be procured using qualifications based selection procedures [see ORS 279C.100 and ORS 279C.110]; and
- d) “Related Services” has the meaning provided in ORS 279C.100.

TERMS AND CONDITIONS

Contract Effective Date and Term. This Contract is effective on the date it has been signed by the parties and all required approvals have been obtained. No work or compensation under the Contract is authorized until notice to proceed has been issued in writing (email acceptable) by the County. Unless otherwise amended or terminated, this Contract shall expire June 30, 2022.

2. Statement of Work. Consultant shall perform all Services and deliver all deliverables as described in Exhibit A, Statement of Work (the “Services”). The required schedule for performance under the Contract is specified in the Statement of Work.

3. Compensation. The maximum NTE amount, which includes the total of all allowable and reimbursable costs and expenses (and contingency tasks, if any) payable to Consultant under this Contract, is set forth in the table above and detailed further in Exhibit B, Compensation. County reserves the right, in its sole discretion, to amend this Contract to increase this amount for additional Services within the scope of the procurement. If this Contract was awarded as a Direct Appointment/Small Purchase, amendments to increase the maximum amount payable are subject to limitations and additional requirements as set forth in applicable Federal, State and local laws. The payment methodology and basis for payment to Consultant is described in

Exhibit B, Compensation. Consultant and any subconsultants are subject to the requirements and limitations of 48 CFR Part 31 - Contract Cost Principles and Procedures.

4. Contract Exhibits. This Contract includes the following exhibits, each of which is incorporated into this Contract as though fully set forth herein:

- Exhibit A - Statement of Work
- Exhibit B - Compensation
- Exhibit C - Insurance
- Exhibit D - Title VI Non-Discrimination Provisions
- Exhibit E - Disadvantaged Business Enterprise (“DBE”) Provisions
- Exhibit F -Special Terms & Conditions
- Exhibit G - RESERVED
- Exhibit H - RESERVED
- Exhibit I - Errors & Omissions (“E&O”) Claims Process
- Exhibit J - Contact Information and Key Persons

5. Order of Precedence. Unless a different order is required by law, this Contract shall be interpreted in the following order of precedence: this Contract (including all amendments, if any) less all Exhibits, attachments and other documents/information incorporated into this Contract, then the Statement of Work and Payment Schedule, then all other Exhibits, then any other attachments or documents/information incorporated into this Contract by reference.

6. Independent Contractor; Conflict of Interest; Responsibility for Taxes and Withholding; Consultant Oversight.

- a. Consultant, by its signature on the Contract, certifies that it is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779, which is available at the following link: <https://www.irs.gov/pub/irs-pdf/p1779.pdf>. Consultant shall perform all required Services as an independent contractor. Although County reserves the right (i) to determine the delivery schedule (as mutually acceptable to County and Consultant) for the Services to be performed and (ii) to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant is not an "officer", "employee", or "agent" of County, as those terms are used in ORS 30.265.
- b. Consultant, by its signature on the Contract, certifies that: (i) Consultant and, to the best of its information, knowledge and belief, its Associates have made any disclosures required under the COI Disclosure Form (available at: https://www.oregon.gov/ODOT/Business/Procurement/DocsLPA/COI_LPA.docx) or any applicable law; and (ii) if a conflict of interest is discovered during the term of the Contract, Consultant shall timely submit a COI Disclosure Form to County disclosing the conflict(s).
- c. Consultant shall be responsible for all Federal or State of Oregon (“State”) taxes applicable to compensation or payments paid to Consultant under the Contract and, unless Consultant is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Consultant's Federal or State tax obligations. Throughout the duration of the Contract, Consultant shall submit an updated W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) to County whenever Consultant's backup withholding status or any other information changes. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from

compensation or payments paid to Consultant under the Contract, except as a self-employed individual.

- d. Consultant shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other consultants or contractors under contract with County, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 6.d. provisions do not in any way revise or adjust Consultant's professional responsibility to report to County any information that comes to Consultant's attention (during performance of this Contract) pertaining to a project, or to performance by other consultants or contractors on a project, that would adversely affect County or a particular project.

7. Subcontracts and Assignment; Successors and Assigns

- a. Consultant shall obtain County's written consent prior to entering into any subcontracts for any of the Services required by the Contract, or in any manner assigning, selling or transferring any of its rights or interest under the Contract or delegate any of its duties or performance under the Contract. In addition to any other provisions County may require, Consultant shall include, in any permitted subcontract under the Contract, contractual provisions that shall require any subcontractor (which may also be referred to as "subconsultant") to comply with Sections 9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 27 and 29 of these Contract provisions, the limitations of **Exhibit B** - Compensation, Exhibit D - Title VI Nondiscrimination Provisions, and the requirements and sanctions of ORS Chapter 656, Workers' Compensation, in the performance of the subcontractor's Services on the project that is the subject of the Contract, as if the subcontractor were the Consultant. County's consent to any subcontract shall not relieve Consultant of any of its duties or obligations under the Contract, including with respect to any Services, whether performed or to be performed by Consultant or a subcontractor.
- b. The provisions of the Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.
- c. Any purported assignment, delegation or disposition in violation of subsection "a." above is void.

8. Third Party Beneficiaries. The State of Oregon, the Oregon Transportation Commission (OTC) and ODOT, are intended third-party beneficiaries of the Contract with express independent authority to enforce the terms and conditions of the Contract. Otherwise, there are no third-party beneficiaries of the Contract.

9. Representations and Warranties. Consultant represents and warrants to County that (i) Consultant has the power and authority to enter into and perform the Contract, (ii) the Contract, when executed and delivered is a valid and binding obligation of Consultant, enforceable in accordance with its terms, (iii) the Services under the Contract will be performed in accordance with the professional standard of care set forth in Section 10 below; (iv) Consultant is duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, is duly qualified and professionally competent to perform the Services; and (v) Consultant is an experienced firm having the skill, legal capacity, professional ability and resources necessary to perform all the Services required under the Contract. The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

10. Professional Standard of Care; Responsibility of Consultant; Design Within Funding Limit

a. Professional Standard of Care.

Consultant shall perform all Services under the Contract in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional

discipline when performing similar services under similar circumstances, taking into consideration the contemporary state of the practice and the project conditions.

b. Responsibility of Consultant.

- (i) Consultant shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services furnished by Consultant under the Contract. Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications and other Services.
- (ii) County's review, approval or acceptance of, or payment for, the Services required under the Contract shall not be construed to operate as a waiver of any rights under the Contract or of any cause of action arising out of the performance of the Contract, and Consultant shall be and remain liable to County in accordance with applicable law for all damages to County caused by Consultant's negligent performance of any of the Services furnished under the Contract or negligent failure to perform any of the Services under the Contract.
- (iii) The rights and remedies of County provided for under the Contract are in addition to any other rights and remedies provided by law.
- (iv) If Consultant is comprised of more than one legal entity (for example, a joint-venture or partnership), each such entity shall be jointly and severally liable under the Contract.

c. Design Within Funding Limit.

When the Services under the Contract include preparation of design plans for the project:

- (i) Consultant shall accomplish the design Services required under the Contract so as to permit construction of the project within County's budget for construction. **County's budget for construction of the project is \$2,640,000.00.** Consultant shall promptly advise County's Contract Administrator if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable project within these limitations. Upon receipt of such information, the Contract Administrator will review Consultant's revised estimate of construction cost. County may, if it determines that the estimated construction contract price set forth in this Section is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in this Section, or County may adjust such estimated construction contract price.
- (ii) Prior to releasing the bid for the construction contract, County will prepare an estimate of constructing the design submitted. If County's estimator(s) determines Consultant's design exceeds County's budget for the construction contract as set forth in Section (i) above {and as may be revised per Section (i) above}, then Consultant shall perform such redesign and other Services as are necessary to permit contract award within the funding limitation. These additional Services shall be performed at no increase in the price of the Contract. However, Consultant shall not be required to perform such additional Services at no cost to County if Consultant's design exceeds County's budget {as set forth in Section (i) above} as a result of conditions beyond Consultant's reasonable control.

11. Ownership of Work Product

a. Definitions. The following terms have the meanings set forth below:

- (i) "Consultant Intellectual Property" means any intellectual property owned by Consultant and developed independently from the Contract.

- (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than County or Consultant.
 - (iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item, and all intellectual property rights therein, that Consultant is required to deliver to County pursuant to the Contract.
- b. **Work Product.** All Work Product created by Consultant pursuant to the Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of County. County and Consultant agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire" of which County is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the Contract is not "work made for hire," Consultant hereby irrevocably assigns to County any and all of its rights, title, and interest in all Original Work Product created pursuant to the Contract, whether arising from copyright, patent, trademark, trade secret, or any other State or Federal intellectual property law or doctrine. Upon County's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Original Work Product in County. Consultant forever waives any and all rights relating to Original Work Product created pursuant to the Contract, 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. However, see Sections 11.c and 11.d immediately below, for provisions applicable to Consultant Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works and Third Party Intellectual Property derivative works.
- c. **Consultant and Third Party Intellectual Property.** In the event that any Work Product is Consultant Intellectual Property or Third Party Intellectual Property (Consultant Intellectual Property or Third Party Intellectual Property that is applicable to the Services being performed by Consultant under the Contract or included in Work Product deliverable to County under the Contract), or in the event any Consultant Intellectual Property or Third Party Intellectual Property is needed by County to reasonably enjoy and use any Work Product, Consultant hereby agrees that it will grant to, or obtain for, the County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Consultant Intellectual Property and or Third Party Intellectual Property, including the right of County to authorize contractors, consultants and others to do the same on County's behalf. This obligation of the Consultant does not apply to a situation involving a third party who enters a license agreement directly with the County. At the request of Consultant, County shall take reasonable steps to protect the confidentiality and proprietary interests of Consultant in any Consultant Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).
- d. **Consultant and Third Party Intellectual Property-Derivative Work.** In the event that Work Product created by Consultant under the Contract is a derivative work based on Consultant Intellectual Property or Third Party Intellectual Property, or is a compilation that includes Consultant Intellectual Property or Third Party Intellectual Property, Consultant hereby agrees to grant to, or obtain for, County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Consultant Intellectual Property or Third Party Intellectual Property employed in the Work Product, including the right of County to authorize others to do the same on County's behalf.

- e. **Consultant Use of Work Product.** Notwithstanding anything to the contrary in this Section 11, Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless specified otherwise in Exhibit A - Statement of Work, County hereby grants to Consultant a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display County-owned Work Product on other unrelated projects, except for any "Confidential Information" protected from disclosure under the provisions of Section 12 below, pertaining to Confidentiality and Non-Disclosure.

12. Confidentiality and Non-Disclosure. Consultant and its subcontractors, and their respective employees and agents, shall keep confidential all information, in whatever form, produced, prepared, observed or received to the extent that such information is designated as confidential by the County, by law, or by this Contract. In the event Consultant is required to disclose Confidential Information pursuant to a subpoena or other legal process, Consultant shall immediately notify County of such subpoena or other legal process, provide County with copies of any subpoena, other legal process and any other written materials supporting the subpoena or other legal process, and otherwise cooperate with County in the event County decides to oppose the disclosure of the Confidential Information. In the event County decides not to oppose such subpoena or other legal process or County's decision to oppose the subpoena or legal process has not been successful, Consultant shall be excused from the confidentiality provisions of this Section, to the extent necessary to meet the requirements of the subpoena or other legal process controlling the required disclosure.

13. Indemnity

- a. **Claims for Other Than Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless the County, State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the acts or omissions of Consultant or its subcontractors, or their respective agents or employees, under the Contract.
- b. **Claims for Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless the County, State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the professionally negligent acts, errors or omissions of Consultant or its subcontractors, or their respective agents or employees, in the performance of Consultant's professional services under the Contract.
- c. **Indemnity for Infringement Claims.** Without limiting the generality of section 13(a) or 13(b), Consultant expressly agrees to indemnify, defend, save and hold harmless the County, State of Oregon, the OTC and ODOT, and their respective officers, members and their agencies, subdivisions, officers, directors, agents, and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, arising out of or relating to any claims that Consultant's services, the Work Product or any other tangible or intangible items delivered to the County by Consultant that may be the subject of protection under any state or federal intellectual property law or doctrine, or the County's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, County shall provide Consultant with prompt written notice of any infringement claim. Provided, however, Consultant shall not be obligated to indemnify, defend, save and hold harmless the County (or other entities identified above) under this section 13(c), based solely on the following: Consultant's compliance with County

specifications or requirements, including, but not limited to the required use of tangible or intangible items provided by County.

- d. **Defense Qualification.** Neither Consultant nor any attorney engaged by Consultant shall defend or purport to defend a claim in the name of the County, the State of Oregon, the OTC or ODOT without first receiving from the applicable entity, authority to act as legal counsel, nor shall Consultant settle any claim on behalf of the foregoing entities without the approval of these entities. The County, the State of Oregon, the OTC or ODOT may, at their election and expense, assume their own defense and settlement.
- e. **County's Acts or Omissions.** This section 13 does not include indemnification by Consultant of the County, the State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees, for the acts or omissions of these entities and their respective officers, members, agents and employees, whether within the scope of the Contract or otherwise.

14. **Insurance.** Consultant shall carry insurance as required on **Exhibit C**.

15. **Termination**

- a. **Termination by Mutual Consent.** The Contract may be terminated at any time, in whole or in part, by mutual written consent of the Parties.
- b. **County's Right to Terminate for Convenience.** County may, at its sole discretion, terminate the Contract, in whole or in part, upon 30 calendar day's prior written notice to Consultant.
- c. **County's Right to Terminate for Cause.** County may terminate the Contract, in whole or in part, immediately upon written notice to Consultant or at such later date as County may establish in such notice, upon the occurrence of any of the following events:
 - (i) County fails to receive appropriations, limitations or other expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to make payments for Consultant's Services. Payments under this Contract and continuation of this Contract beyond the current biennium are subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available from current funding sources. The County may terminate this Contract, and Consultant waives any and all claims for damages, effective immediately upon receipt of written notice, or any date specified therein, if for any reason the County's funding from local, state and/or federal sources is not appropriated or is withdrawn, limited or impaired;
 - (ii) Federal, State or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under the Contract are prohibited or County is prohibited from paying for such Services from the planned funding source;
 - (iii) Consultant no longer holds any license or certificate that is required to perform the Services; or
 - (iv) Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform the Services under the Contract within the time specified or any extension thereof, or so fails to perform the Services as to endanger Consultant's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after County's notice to Consultant, or such longer period as County may specify in such notice.
- d. **Consultant's Right to Terminate for Cause.**
 - (i) Consultant may terminate the Contract by giving written notice to County if County fails to pay Consultant pursuant to the terms of the Contract and if County fails to cure within 14 calendar days after receipt of Consultant's written notice, or such longer period of cure as Consultant may specify in such notice.

- (ii) Consultant may terminate the Contract, for reasons other than nonpayment, if County commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Consultant's performance under the Contract, and such breach, default or failure is not cured within 14 calendar days after Consultant's notice to County, or such longer period as Consultant may specify in such notice.

e. Remedies.

- (i) In the event of termination pursuant to Sections 15(a), 15(b), 15(c)(i), 15(c)(ii) or 15(d), Consultant's sole remedy (except as otherwise required by applicable State or Federal law) shall be a claim for payment of the satisfactory Services actually rendered up to the time of termination, less previous amounts paid and any claim(s) which State has against Consultant, except in the event of a termination under Section 15(c)(i) where no payment will be due and payable for Services performed or costs incurred after the last day of the current biennium. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall pay all excess to County upon demand.
- (ii) In the event of termination pursuant to Section 15(c)(iii) or 15(c)(iv), County shall have any remedy available to it in law or equity. If it is determined for any reason that Consultant was not in default under Section 15(c)(iii) or 15(c)(iv), the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 15(b).

- f. Consultant's Tender Upon Termination/Retained Remedies of County.** Upon receiving a notice of termination of the Contract, Consultant shall immediately cease all activities under the Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of the Contract, Consultant shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon County's request, Consultant shall surrender to anyone County designates, all documents, information, research, works-in-progress, Work Product and other property, that are deliverables or would be deliverables had the Contract been completed, that are in Consultant's possession or control and may be needed by County to complete the Services.

16. Records Maintenance; Access. Consultant, and its subconsultants, shall maintain all fiscal records relating to the Contract in accordance with generally accepted accounting principles. In addition, Consultant shall maintain all other records pertinent to the Contract and the project and shall do so in such a manner as to clearly document Consultant's performance. The County, ODOT, the Oregon Secretary of State's Office (OSS), FHWA and the Comptroller General of the United States (CGUS) and their respective, duly authorized representatives shall have access, and Consultant shall permit the aforementioned entities and individuals access, to such fiscal records and other books, documents, papers, plans and writings of Consultant that are pertinent to the Contract to perform examinations and audits and make excerpts and transcripts. Consultant shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Any cost data submitted by Consultant pursuant to this Contract may be shared with ODOT, FHWA, OSS and CGUS, as necessary, for audit purposes. County, ODOT and FHWA shall have the right to review or examine the work in progress for any Services performed under the Contract.

17. Performance Evaluations. County will conduct performance evaluation(s) on the Consultant and its subconsultants during the term of the Contract, which will be compiled and maintained by County, and become a written record of Consultant's performance. Generally, the performance evaluations will include criteria related to, but not limited to, quality and technical performance, adherence to contract scope and budget, schedule performance, and business relations (including communications and negotiations performance). County will provide a copy of the performance evaluation results to Consultant within 14 calendar days following completion. Consultant may respond, in writing, or may request a meeting to address any or all findings contained in the completed performance evaluation within 30 calendar days following receipt. County may adjust evaluation score(s) upon County's finding of good cause. County may provide copies of any performance evaluation documentation to ODOT, FHWA, and other parties unless lawfully exempt from disclosure. County may use performance evaluation findings and conclusions in any way deemed necessary, including, but not limited to, corrective action, requiring submittal of performance improvement plan by Consultant and withholding of retainage. County and ODOT may use Consultant performance under previous contracts as a selection criterion for future contracts.

18. Compliance with Applicable Law. Consultant shall comply with all Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, in effect at the time the Contract is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the Contract may or may not be the basis for modifications to Consultant's schedule, scope and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was anticipated by Consultant or the Parties, and other circumstances then existing. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659a.142; (iv) the Clean Air Act (42 U.S.C. 7401-7671q); (v) the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387); (vi) Executive Order 11738; (vii) Environmental Protection Agency regulations (40 CFR part 15); (viii) and all applicable standards, orders, regulations and administrative rules established pursuant to the foregoing laws. County's performance under the Contract is conditioned upon Consultant's compliance with, and Consultant shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.505 through 279C.580, the terms of which are incorporated by reference herein. All rights and remedies available to County under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the Contract. If Consultant discovers a conflict among Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, Consultant shall in writing request County to resolve the conflict (in collaboration with ODOT and FHWA as applicable). Consultant shall specify if the conflict(s) create a problem for the design or other Services required under the Contract. If County concludes there is a conflict among the applicable laws, Federal laws shall govern among the others; State laws shall govern over the others except Federal. The resolution of the conflict of the applicable laws by County shall be final and not subject to further review or challenge.

19. Permits and Licenses

- a. Permits and licenses to conduct business.** Unless otherwise specified in **Exhibit A**, Statement of Work, Consultant shall obtain, hold, maintain and fully pay for during the term of the Contract all permits and licenses required by law for Consultant to conduct its business and perform the Services under the Contract.

- b. **Permits and licenses required for the project.** Unless otherwise specified in **Exhibit A**, Statement of Work, Consultant shall obtain, hold and maintain during the term of the Contract all permits and licenses required for the project (for example, permits from regulatory authorities and use permits or licenses from owners of real and personal property), but County shall pay for such permits and licenses. Consultant shall review the project site, if applicable, and the nature of the Services that Consultant shall perform under the Contract. Consultant shall advise County throughout the course of the project as to the necessity of obtaining all project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.

20. Foreign Contractor. If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the Contract.

21. Force Majeure. Neither County nor Consultant shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including, but not limited to, fire, riot, acts of God, terrorist acts or other acts of political sabotage, or war where such cause was beyond the reasonable control of County or Consultant, respectively. Consultant 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 the Contract.

22. Survival. All rights and obligations shall cease upon termination or expiration of the Contract, except for the rights and obligations set forth in Sections 5, 9, 10, 11, 12, 13, 15(e), 15(f), 16, 22, 23, 26, 27 and 29 and all other rights and obligations which by their context are intended to survive.

23. Time is of the Essence. Consultant agrees that time is of the essence in Consultant's performance of its obligations under the Contract.

24. Notice. Except as otherwise expressly provided in the Contract, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by e-mail, by personal delivery, facsimile, or mailing the same, postage prepaid, to Consultant or County at the e-mail address, the delivery address or facsimile number set forth in the Contract, or to such other addresses or numbers as either Party may hereafter indicate in writing to the other. Any notice or day-to-day communication sent by e-mail shall be deemed received when it is sent. **The recipient of any notice sent by e-mail shall reply by e-mail to confirm receipt of such notice.** Any communication or notice made by personal delivery shall be deemed to be received when actually delivered. Any communication or notice properly addressed and mailed shall be deemed received 5 calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received on the date of the notice of successful transmission generated by the transmitting machine. To be effective, such facsimile transmission must be confirmed by telephone notice to County's Contract Administrator or Consultant's representative, as applicable.

25. Severability. The Parties agree that if any term or provision of the 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.

26. Dispute Resolution and Errors & Omissions Claims Process. In the event of a dispute between the Parties regarding any aspect of the Contract or performance under the Contract, the Parties agree to attempt in good faith to investigate and resolve any such dispute through direct communications and negotiations.

- a. **Errors & Omissions Related.** In the event those good faith efforts do not resolve disputes related to potential Errors and Omissions, the Parties agree to make good faith efforts to resolve the matter pursuant to **Exhibit I**, Errors & Omissions Claims Process.
- b. **Other Disputes.** In the event good faith efforts do not resolve disputes unrelated to Errors & Omissions, the Parties agree to make a good faith effort to resolve any such dispute through fact finding and non-binding mediation prior to resorting to litigation. The mediator shall be selected by mutual agreement of the Parties. If the Parties fail to agree on a mediator, each Party shall select a mediator and those two persons shall agree on a third-party, who will be the sole mediator. The cost of the mediator shall be split equally between the Parties.
- c. **Notification to ODOT.** County shall immediately notify ODOT of any disputes that seek resolution with the Errors & Omissions Claims Process or mediation.

27. Governing Law; Venue; Consent to Jurisdiction. The Contract shall be governed by, and construed and enforced 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 County (or any agency or department of the State of Oregon) and Consultant that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court located in the County in which the Project is located; 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 or State of Oregon of any form or defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise. **CONSULTANT, BY EXECUTION OF THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

28. Amendments. County may amend the Contract to the extent permitted by applicable statutes, administrative rules and ordinances and as mutually agreed upon by County and Consultant. County may agree to appropriate increases in the maximum compensation payable under the Contract, should any County-approved increase occur in the scope, character, schedule or complexity of Services as outlined in the Statement of Work. Consultant shall not commence any Services authorized under an amendment, and the amendment is not effective, unless it is in writing, signed by the Parties and all approvals required by applicable law have been obtained.

29. False Claims

- a. Consultant understands and acknowledges it is subject to the Oregon False Claims Act ([ORS 180.750 to 180.785](#)) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Contract, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Contract or the Project for which the Services are being performed, including but not limited to Consultant's statement of proposal and any invoices, reports, or other deliverables.
- b. Consultant shall immediately disclose (in writing) to County whenever, in connection with the award, performance or closeout of the Contract, or any subcontract thereunder,

Consultant has credible evidence that a principal, employee, agent, or subcontractor of Consultant has committed—

- (i) A violation of the Oregon False Claims Act; or
 - (ii) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.
- c. Consultant must include subsections (a) and (b) of this section in each subcontract Consultant may award in connection with the performance of the Contract. In doing so, Consultant may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

30. Certified Small Businesses. Respecting certification as a disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or an emerging small business under ORS 200.055, as and when applicable, the Consultant shall maintain the certifications, and require in its subcontracts that subcontractors maintain the certifications required by Section 2, Chapter 325, Oregon Laws 2015, as amended by Section 26, Chapter 565, Oregon Laws 2015 as a material condition of the Contract. If the Consultant or subcontractor was awarded the Contract or subcontract, as applicable, in the course of County carrying out an affirmative action goal, policy or program under ORS 279A.100, and fails to maintain the required certification, County may terminate the Contract, require the Consultant to terminate the subcontractor, or exercise any of remedies reserved for breach of the Contract.

31. Merger Clause; Waiver; Interpretation. The Contract, including everything incorporated by reference, 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 the Contract. No waiver, consent, modification or change of terms of the Contract shall bind either Party, unless such waiver, consent, modification or change of terms is in writing and signed by the Parties, and all necessary State of Oregon governmental approvals have been obtained. Such a waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Either Party's failure to enforce any provision of the Contract shall not constitute a waiver by that Party of that or any other provision. The characterization of provisions of the Contract as material provisions or the failure to comply with certain provisions as a material breach of the Contract shall in no way be construed to mean that any other provisions of the Contract are not material or that failure to comply with any other provisions is not a material breach of the Contract.

CONSULTANT CERTIFICATIONS

A. Any individual signing on behalf of Consultant hereby certifies under penalty of perjury:

- Consultant has provided its correct TIN to County;
- Consultant is not subject to backup withholding because (a) Consultant is exempt from backup withholding, (b) Consultant has not been notified by the IRS that Consultant is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified Consultant that Consultant is no longer subject to backup withholding; and
- S/he is authorized to act on behalf of Consultant, s/he has authority and knowledge regarding Consultant's payment of taxes, and to the best of her/his knowledge, Consultant is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a State tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321, and 323; and local taxes administered by the Department of Revenue under ORS 305.620.

B. Any individual signing on behalf of Consultant hereby certifies they are authorized to sign this Contract and that:

- **Consultant has read this Contract, understands it, and agrees to be bound by its terms and conditions.**
- Consultant understands and agrees that various documents are not physically attached, but are incorporated by reference and have the same force and effect as if fully set forth herein.
- Consultant understands and has provided to all Associates the COI Disclosure Form available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx>. Consultant and (to the best of the undersigned's information, knowledge and belief) Consultant's Associates are in compliance with the disclosure requirements of the COI Disclosure Form and have no conflicts of interest to disclose. If disclosures regarding this Contract or the related Project are required per the COI Disclosure Form, Consultant has made such disclosures to County on a properly prepared and submitted form and, if determined necessary by County or ODOT, a mitigation plan has been approved by County and ODOT.
- **(a)** No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
(c) 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.
(d) Consultant shall require that the language of this certification be included in all subcontracts in excess of \$100,000 at all tiers and that all such subcontractors shall certify and disclose accordingly.
- Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779.
- In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this Contract constitutes certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Contract.

No Payment shall be made for Services that are performed before all necessary governmental approvals have been obtained, the Contract is fully executed, and Notice-To-Proceed has been issued by County.

Counterparts: The Contract may be executed in several counterparts, 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 the Contract so executed shall constitute an original.

CONSULTANT SIGNATURE(s)

Signature: _____

Date: _____

Name: _____

Title: _____

COUNTY SIGNATURES

Chair: _____

Date: _____

Recording Secretary: _____

COUNTY LEGAL REVIEW:

Signature: _____

Date: _____

EXHIBIT A - STATEMENT OF WORK

RFP 22234-01/ #2019-14

STATEMENT of WORK and DELIVERY SCHEDULE

Jennings Ave: OR 99E to Oatfield Rd

A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

Clackamas County (the “County” or “Agency”) is contracting with Consultant for Services in connection with the following project (the “Project”): Jennings Ave: OR 99E to Oatfield Rd Project.

County obtained \$3,625,283 in Federal-Aid Surface Transportation Program Urban (STP-U) funds to make improvements to Jennings Avenue. Jennings Avenue is a minor arterial in a densely populated residential area and the length of improvements is approximately $\frac{3}{4}$ of a mile (approximately 3,860 feet). These improvements include constructing a curb tight sidewalk on the north side of the road and constructing bike lanes on both sides of the road for enhanced bicycle and pedestrian connectivity. The total estimated Project cost is \$4,040,213.

County is contracting with Consultant for Services to prepare preliminary and final roadway and stormwater designs, construction cost estimates, identify all necessary environmental permits, identify right-of-way and easement acquisitions, and perform all services necessary to acquire environmental permits and right-of-way and easements.

The tasks associated with this Statement of Work (SOW) include providing project management, surveying, geotechnical, hydraulic analysis, stormwater design, roadway design, right-of-way acquisition, environmental (wetlands, archaeological and historical), and final engineering design services for the Project. The work covered by this SOW includes the preparation of reports, and final engineering documents. All documents and other deliverables are to be completely described in the English system unit of measure. A Project Location Map is included as Attachment A.

General Expectation

Consultant commits to provide Services (and oversee and direct the design of the Project, if applicable) to obtain the greatest long-term value for the government, and to promote prudent expenditure of public funds within the constraints of the Project, program, context, budget and cost-effective sustainability principles. Consultant shall: (i) avoid expenditures for aesthetic effect which are disproportionate to the Project as a whole; (ii) use recycled/recyclable products to the maximum extent economically feasible in the performance of this Contract, and (iii) apprise County throughout the Project concerning any issues or decisions with potential economic impact to the Project.

Project Phasing

This Project is divided into 2 phases:

- Preliminary Engineering/Design Acceptance Package (DAP), Right of Way, Final Design and Bid Assistance Phase
- Construction Engineering, Inspection and Construction Contract Administration Phase

This statement of work (“SOW”) addresses the first phase of the Project. Following completion of a given phase, County may, at its discretion:

- Amend this Contract to add the next phase (or various elements), or
- Elect to complete subsequent phase tasks with in-house staff, or
- Assign subsequent phase tasks to another consulting firm.

County and Consultant shall negotiate the detailed tasks, deliverables, schedule and costs for each phase County elects to add. Each added phase will be authorized only by written Contract amendment with all required approvals and signatures.

County Responsibilities

- County review periods do not exceed 3 weeks.
- County will be primary point of contact with ODOT regarding CONTRACT and design aspects of this Project.
- Unless otherwise stated within a specific task, the County will be responsible for payment of any associated permit, processing, application or other fees necessary for the Project.

Acronyms and Definitions

| | | | |
|--------|---|---------|--|
| AASHTO |American Association of State Highway and Transportation Officials | FHWA |Federal Highway Administration |
| APM |Agency Project Manager (Clackamas County) | HAER |Historic American Engineering Record |
| APWA |American Public Works Association | HEC |Hydraulic Engineering Circular |
| BA |Biological Assessment | HEC-RAS | ...Hydrologic Engineering Center – River Analysis System |
| BO |Biological Opinion | LAL |ODOT Local Agency Liaison |
| CADD |Computer Automated Drafting and Design | NE |No Effects |
| CFR |Code of Federal Regulations | NEPA |National Environmental Policy Act |
| Corps |US Army Corps of Engineers | NMFS |National Marine Fisheries Service |
| DAP |Design Acceptance Package | ODA |Oregon Department of Agriculture |
| DEQ |Department of Environmental Quality | ODFW |Oregon Department of Fish and Wildlife |
| DOE |Determination of Eligibility | ODOT |Oregon Department of Transportation |
| DSL |Department of State Lands | OHWM |Ordinary High Water Mark |
| DTM |Digital Terrain Model | | |
| EFH |Essential Fish Habitat | | |
| ESA |Endangered Species Act | | |

ONHD.....Oregon Natural Heritage
Database
ORBICOregon Biodiversity
Information Center
PCEProgrammatic Categorical
Exclusion
ROE.....Right of Entry
ROWRight of Way
SHPOState Historic Preservation
Office
SLOPES IV.Standard Local Operating
Procedures for Endangered
Species (SLOPES) IV
SOW.....Statement of Work
T&E.....Threatened & Endangered
USACEU.S. Army Corps of Engineers
USFS.....United States Forest Service

B. STANDARDS and GENERAL REQUIREMENTS

1. Standards

The following standards and general requirements shall apply to this SOW:

General

- Oregon Standard Specifications for Construction, ODOT 2018 Standard Specifications
- ODOT Local Agency Guidelines

Environmental

- Wetland Delineation Manual, United States Corp of Engineers/Environmental Protection Agency (USCOE/EPA) 1987

Geotechnical

- Soil and Rock Classification Manual, ODOT 1986
- Geotechnical Design Manual, ODOT April 2011

Hydraulic

- Hydraulic Manual, Part I & II, ODOT 2008

Roadway

- AASHTO A Policy on Geometric Design of Highways and Streets
- Clackamas County Roadway Standards
- Manual of Uniform Traffic Control Devices
- Standards Manual of the Oregon Utilities Coordinating Council

Structural

- ODOT Geotechnical Design Manual

Right-of-Way

- ODOT Right of Way Manual
- Real Estate Acquisition Guide for Local Public Agencies
- Uniform Standards of Professional Appraisal Practice (USPAP)
- Uniform Appraisal Standards for Federal Land Acquisition

2. Software and Format Requirements

Software standards and formats include but are not limited to the following:

- Each draft and final text-based or spreadsheet-based deliverable shall be provided in MS Office file formats (i.e., MS Word, Excel, etc.) and must be fully compatible with version used by County.
- Consultant shall submit draft and final deliverables in electronic format via e-mail (and hard copy if requested).
- Consultant shall also submit any graphic files accompanying reports separately in .jpg or .tif formats unless specified differently by County.
- The Contractor shall develop the design concepts utilizing AutoCAD Civil 3D version 2015 or later.

3. **Professional Licenses, Registrations and Qualifications**

- Consultant and its subconsultants must be duly licensed where required by law to perform the Services, and must be under the "responsible charge" (as that term is defined under ORS Chapter 672) of a person so licensed, as required by the applicable Oregon Revised Statutes and Oregon Administrative Rules, and other applicable laws (or must be otherwise exempt from any licensing requirements applicable to the Services being performed).
- County may require Consultant's Personnel to demonstrate a competency in the particular area/discipline to which they are assigned. This may include, but is not limited to, submittal of license number, resume, and work samples from previously completed projects.

4. **General Requirements**

- **Endorsement of Data.** Consultant shall place their official Oregon Registered Engineer seal and signature on all engineering design drawings and specifications furnished to County, as well as any other materials where professional standards require such seal and signature.
- **Safety Equipment.** Consultant shall provide and use all safety equipment including (but not limited to) hard hats, safety vests and clothing if required by State and Federal regulations and County policies and procedures for the Services under the Contract.
- **Quality Plan.** Consultant shall perform QC reviews prior to submittal of plans, design revisions and computations, estimates, and other deliverables in conformance with Consultant's approved Quality Plan on file with Agency.

5. **RESERVED**

6. **ADA Compliance – Assessment, Design, Inspection.** When the Services under this Contract include **assessment or design (or both)** for curb ramps, sidewalks or pedestrian-activated signals (new, modifications or upgrades), Consultant shall:

- a. Utilize ODOT standards to assess and ensure Project compliance with the Americans with Disabilities Act of 1990 ("ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards; and shall
- b. Follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form.

When the Services under this Contract include **inspection** of curb ramps, sidewalks or pedestrian-activated signals (new, modifications or upgrades), all such inspections shall include inspection for compliance with the standards and requirements in a. and b. above. In addition, at Project completion, Consultant shall send an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to ODOT's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/Forms/Pages/default.aspx>

Above references to curb ramps, sidewalks or pedestrian-activated signals also include, when applicable, shared use paths, transit stops, park-and-rides and on-street parking.

C. REVIEW, COMMENT and SCHEDULE OVERVIEW

- Consultant shall submit all deliverables to APM or designee unless otherwise noted in specific tasks.
- Consultant shall make revisions to address County review comments and submit revised deliverable(s) to APM within 10 business days of receipt of County review comments, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by County.

D. PROJECT COOPERATION

Consultant shall only be responsible for those obligations and deliverables identified as being assigned to Consultant (or its subconsultants) in this Contract and the Statement of Work. All work assigned to other entities, other than subconsultants, is not subject to this Contract, but shall be the subject of separate Intergovernmental Agreements or contracts which will contain the obligations of those entities. Any tasks or deliverables assigned to a subconsultant shall be construed as being the responsibility of Consultant. Any Consultant tasks or deliverables which are contingent upon receiving information, resources, assistance, or cooperation in any way from another entity (other than subconsultants) as described in this Statement of Work shall be subject to the following guidelines:

- a. At the first indication of non-cooperation, Consultant shall provide written notice to County's Contract Administrator of the specific acts or inaction indicating non-cooperation and of any deliverables that may be delayed due to such lack of cooperation by other entities referenced in the Statement of Work.
- b. County's Contract Administrator shall contact the non-cooperative entity/s to discuss the matter and attempt to correct the problem and expedite items determined to be delaying Consultant/Project.

If Consultant has followed the notification process described in section "a", and delinquency or delay of any deliverable is found to be a result of the failure of other referenced entities to provide information, resources, assistance, or cooperation, as described in the Statement of Work, Consultant will not be found in breach or default with respect to delinquencies beyond any reasonable control of Consultant; nor shall Consultant be assessed or liable for any damages arising as a result of such delinquencies. Neither shall County be responsible or liable for any damages to Consultant as the result of such non-cooperation by other entities. County's Contract Administrator will negotiate with Consultant in the best interest of the government, and may revise the delivery schedule to allow for delinquencies beyond any reasonable control of Consultant. Revised delivery dates beyond the expiration date require an amendment to the Contract.

E. TASKS, DELIVERABLES and SCHEDULE

Consultant shall complete all tasks and provide all deliverables (collectively, the "Services") included in this SOW, unless specifically stated otherwise in a particular task. Consultant shall provide all labor, equipment and materials to manage, coordinate, and complete the work in accordance with the performance and delivery schedules identified in this SOW.

The tasks associated with this SOW are anticipated to occur from September of 2019 to June of 2021, or approximately twenty-two (22) months.

Task Numbering: For purposes of standardization, task numbers in this SOW may be non-sequential and do not necessarily begin with "1" on the first task.

TASK 1 – PROJECT MANAGEMENT

Consultant shall provide management and coordination of Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule and the level of effort defined by this SOW.

1.1 Administration & Record Keeping

Consultant shall:

- Prepare a Project design schedule using the Critical Path Method (“CPM”). The Project schedule must include, but is not limited to: all major authorized tasks as agreed upon by the Parties, Project design team meetings, and milestones (type and date) specified in this SOW and required to complete all Services under this Contract. Updates to the Project schedule shall be made during the course of the Project if milestone dates are modified. For budgeting purposes, it is assumed that up to two (2) Project schedule updates will be necessary;
- Prepare invoices and progress reports according to the Invoice Requirements Guide referenced in the Contract under Section H.5 - Invoices. Each progress report must:
 - Include a summary of previous period’s activities and the planned activities for the upcoming period;
 - Identify percentage completed of each Task/Deliverable;
 - Reconcile the budget with the actual amount billed to date;
 - Identify unresolved issues and concerns that may affect the SOW, schedule and/or budget for Services.

For budgeting purposes, it is assumed that up to 22 progress reports will be necessary.

- Develop and maintain a Project file to include survey and engineering computations, assumptions, meeting agendas and minutes, working drawings, quality control and review documentation, correspondence, and memoranda. (See Terms & Conditions No. 16 Records Maintenance; Access).

1.1 Consultant Deliverables and Schedule

Consultant shall provide:

- Project Design Schedule submitted within 7 calendar days of NTP. Submit electronically to the APM (PDF) and provide an electronic file MS Project format to the APM.
- Updated Project Design Schedule, as necessary, via timeline agreed to by APM. Submit electronically to the APM (PDF) and provide an electronic file (MS Project format to the APM.
- Progress reports and invoices submitted electronically to APM no later than the 20th calendar day of the month following the reporting period.

1.2 Coordination

Consultant shall:

- Coordinate with the APM as the main point of contact for coordination and management of Consultant Services under the Contract;
- Contact other County staff, other LPA staff, and regulatory agency staff, if necessary throughout the Contract, to gather any additional information needed for the Project, Project site, regulations and guidance;
- Provide overall management, direction and coordination of staff (including sub-consultants, if any) to include any necessary internal Consultant staff meetings;

1.2 Consultant Deliverables and Schedule

Consultant shall provide:

- On-going coordination and communication as needed to appropriately manage the Services under this Contract (no tangible deliverables for this task).

1.3 Project Meetings

1.3.1 Project Kickoff Meeting

Consultant shall organize, conduct, prepare for and attend a Project kickoff meeting. The Project kickoff meeting will be held at Clackamas County's Office (150 Beavercreek Road, Oregon City) with County, ODOT LAL, Consultant's PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with input from the County. The purpose of the Project kickoff meeting is to review Project issues such as SOW; work products and deliverables; schedules; budgets; right of way; utility coordination/design; design criteria; guidance documents and standards, and quality control. Consultant shall schedule Project kickoff meeting within 10 business days of Notice to Proceed (NTP). Consultant shall prepare draft meeting minutes for review. For budgeting purposes, it is assumed that up to 6 Consultant staff shall attend the 1.5 hour Project kickoff meeting.

1.3.2 Project Development Team Meetings

Consultant shall organize, conduct, prepare for and attend up to 2 Project Development Team (PDT) Meetings in-person. Each in-person PDT meeting will be held at Clackamas County's Office (150 Beavercreek Road, Oregon City) with County, Consultant's PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with input from the County. Consultant shall prepare draft and final meeting minutes to be distributed to County, and all other meeting participants. For budgeting purposes, it is assumed that up to (3) Consultant staff shall attend each in-person PDT meeting.

1.3 Consultant Deliverables and Schedule

For each meeting, Consultant shall provide:

- Meeting agenda submitted electronically to APM, and all other meeting participants 2 business days prior to meeting.
- Draft meeting minutes submitted electronically to APM, and all other meeting participants within 2 business days of meeting.
- Final meeting minutes submitted electronically to APM, and all other meeting participants within 7 business days of meeting.

TASK 2 SURVEY

Consultant shall survey this Project for the areas as described in Section A of this SOW unless otherwise noted in specific tasks. Deliverables are to be scheduled as per Task 1 Project Management.

Specific to County standards, Consultant shall follow Ground Confidence Point Analysis and Report standards as defined in the *2015 ODOT Survey Policy and Procedure Manual* to ensure DTM accuracy along the entire project corridor.

All other project survey methods must adhere to Clackamas County Survey Standards and Procedures.

Right of Entry ("ROE")

County will obtain the ROE's required for Consultant's field reconnaissance work, estimated to be needed for 50 to 60 properties. County and Consultant acknowledge that once requests to owners are

sent out, it can take up to 3 to 4 weeks to receive the ROE authorization back from the landowners due to schedules and availability.

If ROEs are required for geotechnical boring outside the right of way, Consultant shall provide a map (see Task 6.2) identifying the approximate location of the proposed boring(s) on the parcel. This map will be included in the County's mailing to the affected property owner to assist the owner in understanding the proposed work. Consultant shall allow adequate time for the County to obtain this additional ROE.

In addition to the Project ROE referenced above, Consultant shall notify land owners as required by ORS 672.047 (Right of Entry by Land Surveyor). Entry notifications by mail require 7 days advance notice from time of mailing.

2.1 Research

Consultant shall obtain the research data for the area as described in Section A of this SOW.

Consultant shall perform data research as necessary to prepare for and support Project activities, and to produce Project maps and reports as called for in subsequent tasks. The typical records required for research are, but not limited to; vesting deeds, land sales contracts, County assessor plats and road records, subdivision plats, General Land Office plats, ODOT ROW drawings, railroad maps, county surveys, road dedications and vacations.

Existing Vesting Deeds and Property Ownerships

Consultant shall obtain a "Trio listing kit" (typically provided by a title company). Consultant shall identify property ownership within and adjacent to the Project site by investigating property deeds and county tax records. Consultant shall itemize and report property ownership and owner contact information to APM. Consultant shall submit each deed in its own electronic file. Consultant shall include all vesting deeds referenced in the property vesting deeds if needed to resolve the property boundary.

Consultant shall also obtain up to fifty (50) preliminary title reports for properties within the Project area to identify easements, dedications, ownership vesting, and other items affecting the ROW location. Consultant shall submit each preliminary title report in its own electronic file.

Existing Right of Way Records

Consultant shall research and obtain copies of surveys, subdivision plats, and land partition plats filed in the county surveyor's office related to the properties potentially impacted by the Project. This information is used to find monuments that might be impacted from the Project and establish property lines for area calculations when new ROW is acquired.

Consultant shall research and obtain copies of county assessor maps, General Land Office plats, and county road records related to the properties potentially impacted by the Project.

Consultant shall research and obtain available data about Government Public Lands Survey Corners and their references in the Project area as defined in the SOW.

Existing Horizontal/Vertical Control Stations

Consultant shall research and obtain data about horizontal and vertical control points as required for the Project area including triangulation stations, GPS stations, benchmarks, and prior Project control surveys from County, Federal, county, city, and other governmental agencies.

Existing Utility Records

Consultant shall research and obtain available facility maps and as-built construction plan data pertaining to utilities in or near the Project area from the County, One-Call Service, county, city, or other governmental agencies and utility companies.

Existing Water Way Data

Consultant shall research and obtain publicly available maps and data about Boardman Creek, springs or flowing water in or near the Project area from County, Federal, and other governmental agencies. Consultant shall include items such as but not limited to: FEMA Flood maps, tide gage data and stream navigability per Division of State Lands designation.

2.1 Consultant Deliverables and Schedule

Consultant shall incorporate information from this task into the deliverables listed in Tasks 2.4, 2.5, and 14.2 as required for delivery of documents in subsequent tasks.

2.2 Horizontal And Vertical Control Network

The purpose of this task is to provide the means by which the Project can be located relative to horizontal and vertical datum, map projection, and coordinate systems. Consultant shall establish a horizontal and vertical control network using the datum associated with the Project area or as approved by the County.

Consultant shall establish horizontal control according to County standards using Terrestrial (Theodolite and EDM), GPS (Static or Rapid Static) or a combination of both. Consultant shall set and adjust control points in conformance with County guidelines.

Consultant shall use 5/8" Rebar with plastic caps, or other County approved control point, for the GPS and network points. Consultant shall establish a minimum of 3 GPS control points through the length of the survey.

Consultant shall establish vertical control using differential leveling. Consultant shall get County approval before using other methods such as trigonometric leveling and elevations derived from GPS.

2.2 Consultant Deliverables and Schedule

Consultant shall:

- Place control points in the ground at the Project location.
- Incorporate the information listed below into the deliverables listed in Tasks 2.4 and 2.5 as required for delivery of documents in subsequent tasks.
 - An adjustment report for one or more of the following, Least Squares adjustment for networks, an approved traverse adjustment method for traverses and/or a GPS adjustment report when using GPS.
 - An ASCII file containing the coordinates for every network point set and found.
 - If the levels were electronically processed then one copy each of the following: original raw level file as collected in the field, ASCII file showing level closure data,

- ASCII file with point number, northing, easting, elevations, and descriptions on all network points and/or an ASCII file showing the level rod readings.
- Original field notes for the control network and one scanned copy of the original field notes in “.pdf” format.
 - An AutoCAD design file (*.dwg) containing all the set and tied control points to show elevations.
 - An AutoCAD file (*.dwg) containing all vertical and horizontal control points stored as Autodesk Civil 3D points to show elevations.

2.3 Monument Recovery

The purpose of this task is to address the requirements of ORS 209.150 and 209.155, and other survey related statutes for construction Projects.

Consultant shall survey for but not limited to: Government corners, geodetic control stations, bench marks, ROW monuments, property boundary markers, and roadway alignment markers.

Identify, Search and Recover Monuments

Consultant shall recover existing monuments to preserve the locations of any monuments of record that are endangered by any activity related to the Project and to resolve roadways and property lines. Consultant shall provide a record (field notes) of monuments searched for, the date of the search and the results of the search.

Field Survey of Recovered Monuments

Consultant shall locate, measure and document the location of survey markers and monuments of record for property boundaries and/or ROW needed within the areas.

2.3 Consultant Deliverables and Schedule

Consultant shall incorporate the information gathered in this task including field notes into the deliverables listed in Tasks 2.4 and 2.5 as required for delivery of documents in subsequent tasks.

2.4 Topographic Data, Detailed Base Map And Digital Terrain Model (DTM)

The purpose of this task is to collect the existing topographic features and create a detailed basemap and DTM for the Project area as described in Section A of this SOW.

Topographic Data Collection

Consultant shall collect topographic data between the boundaries described in Section A of this SOW. Consultant shall collect and tie topographic data of man-made and/or natural features using a variety of County approved methods. These methods include but are not limited to: collecting the data using terrestrial (Theodolite and EDM), GPS (RTK), 3D Laser Scanning, or station and offset.

Consultant shall contact Oregon Utility Notification Center to request a pre-survey utility locates. Consultant shall keep the locate request number and ticket information within the Project file.

Consultant shall record in the field notes the utility ownership when describing the line data points. Consultant shall record all visible utility identifications in the field notes, such as numbers shown on power and/or telephone poles, vault tags, telephone pedestals (aka risers), cabinets, meters, fences or screened enclosures for gas regulators, and sanitary sewer pump stations. This data is needed for the County or Consultant to communicate where the facility may be in conflict with the Project.

Consultant shall measure and record all utility facility structures (e.g. concrete pads, top slab of vaults, pump station housing, barrier screens or fenced enclosures). Consultant shall make a request to the utility owner to pull the cover whenever a manhole is found locked or bolted.

Consultant shall collect any hydraulic or culvert information in accordance with the “ODOT Hydraulics Manual” on streams and rivers that pass under or are parallel to any roadways in the area.

Consultant shall tie environmental and archaeological features that have been identified within the Project area. These features include, but are not limited to, wetlands, high water mark, T&E species, hazmat sites, archaeology sites and sensitive plants.

Consultant shall tie improvements or vegetation within proposed easement boundaries or within close proximity of proposed easement boundaries when the proximity to the improvement has the potential to cause the improvement to suffer damage.

Consultant shall tie and record utility test hole information under Task 5.4.4.

Detailed Basemap

Consultant shall take applicable topographic data collected in this subtask and create a detailed basemap file. A detailed basemap has all features drafted to County provided criteria.

Digital Terrain Model (DTM)

Consultant shall create a 3 dimensional digital terrain surface using all relevant topographical data collected in this subtask.

Consultant shall collect the topographical data to create points and break lines in adequate quantity and in proper placement, to accurately represent the surface of the ground. Consultant shall collect confidence points in the field and generate a confidence point report that conforms with the **2015 ODOT Survey Policy and Procedure Manual**. The topographical data and confidence points must meet County Criteria. Consultant shall generate 0.5 foot minor contours and 1 foot major contours throughout the DTM for a QC analysis of the surface.

2.4 Consultant Deliverables and Schedule

Consultant shall provide:

- The following deliverables and submit them electronically (.PDF) to the APM within 60 calendar days of NTP:
 - 1 copy of field notes
 - Copy of the AutoCAD Files (*.dwg) Detailed Base Map with Civil 3D DTM
 - All files for the network control points in (ASCII) format
 - Files of listing kits
 - Files of survey research
 - Files of tax maps
 - Confidence Point Report
 - Control Point Worksheet with datum used and descriptions of control points found and set

2.5 Existing ROW & Boundary Resolution

The purpose of this task is to identify the location of the existing Centerline(s), ROW lines and property line(s) as necessary, to perpetuate the location of the monuments found, to document the control used for

this Project area, and establish property lines for area calculations when new ROW is acquired. This task addresses the requirements of ORS 209.150 and 209.155 and other survey related statutes.

Resolve ROW and Property Boundaries

Consultant shall resolve the location of the ROW within the present limits as described in this SOW.

Consultant shall resolve identified ROW centerlines alignments, ROW lines and property boundaries abutting the roadway and along the proposed route of construction, using accepted concepts and rationale methods of survey professional judgment. Consultant shall evaluate the available evidence for relevance, adequacy, and reliability; use professional judgment in determining the type and quantity of evidence available, and the influence given each factor; and determine a best-fit with the evidence and probable location of ROW alignments and property boundaries for the area as described. Consultant shall provide a detailed narrative of available evidence, desirable evidence not available, rationale for decisions made, and a summary of the conclusions in the establishment of the ROW centerline, ROW lines (including all jogs) and property boundary lines.

Control, Recovery, Retracement Record of Survey

If the Project will impact property or existing survey monuments, Consultant shall create a Record of Survey (ROS) which meets County and ORS requirements. The survey(s) must be prepared for 18-inch by 24-inch sheet plots. The “**Control**” survey must consist of Geodetic and Terrestrial points set for the Project. The “**Recovery**” is the documentation of the monuments recovered for the Project. The “**Retracement**” is a record of resolved ROW centerlines, ROW lines and/or property boundaries. These surveys may be combined or separate surveys as directed by County.

Consultant shall submit a draft ROS to LPA for review. Consultant shall address comments received from the LPA and submit the final ROS for filing to the appropriate County in the format required. Consultant shall pay for County ROS filing fee, up to \$600.

2.5. Consultant Deliverables and Schedule

Consultant shall provide:

- Draft ROS to APM (transmittal letter only to APM) within 6 months of NTP.
- Copy of Final ROS to APM upon submittal to County for filing within 14 calendar days of Surveyor Office’s comments.

Task 2.6 Staking (CONTINGENCY – See Section F)

Consultant shall place stakes during Project development to demarcate existing ROW, proposed ROW, and proposed easements to support Task 14 activities. A Notice to Proceed is required from the County to perform this task.

2.6 Consultant Deliverables and Schedule

Consultant shall physically place stakes and/or paint marks, supported by:

- Original data collector printout field notes in .pdf format per the schedule developed in Task 1 Project Management.
- Text file of ‘as-staked’ points with associated exhibit map in .pdf format per the schedule developed in Task 1 Project Management.
- Provide staking services for up to 39 parcels.

TASK 3 ENVIRONMENTAL SERVICES

Consultant shall complete necessary field and literature investigations to provide the County environmental documentation and permits required for completion of this Project. Consultant shall complete the following environmental investigations, documentation, and permits for this Project, unless marked as a CONTINGENCY TASK, which Consultant shall complete only following County and Consultant's written agreement on cost and receipt of NTP from County (see Section F for additional contingency task requirements):

- Final NEPA CE and PCE Documentation
- Archaeological Resources Literature Review/Field Reconnaissance/Baseline Report
- Phase 1 Archaeological Investigation with Technical Report (CONTINGENCY)
- Historic Resources Baseline Report
- Hazardous Materials Study and Services
- Surface and Subsurface Soil Samples (CONTINGENCY)
- Endangered Species Act (ESA) No Effect Memorandum
- Federal-Aid Highway Program ("FAHP") ESA Programmatic Documentation
- Wetland/Waters of the U.S./State Fieldwork and Determination Memo
- Wetland/Waters of the U.S./State Delineation Report (CONTINGENCY)
- USACE/DSL Joint Permit Application and DEQ 401 Certification (CONTINGENCY)

For all of Task 3, the Project Area is the same as described in Section A of this SOW unless otherwise noted and described in specific Task 3 subtasks.

County is responsible for obtaining all Rights-of Entry ("ROE"). Consultant shall not conduct any fieldwork outside of County ROW and/or property until all ROEs for private property have been obtained and are in field staff's possession.

3.1 NEPA Categorical Exclusion ("CE") and Programmatic CE ("PCE") and Supporting Documentation

Consultant shall provide technical assistance and services necessary to meet FHWA NEPA classification documentation requirements for NEPA Categorical Exclusion projects ("Class 2 Projects").

3.1.1 RESERVED

3.1.2 RESERVED

3.1.3 Final NEPA CE and PCE Documentation

Consultant shall compile data completed in tasks 3.2 through 3.7 to complete a draft PCE Approval or CE Closeout Document and submit to County for review and approval. Consultant shall coordinate with County on compiling data completed during Project development to deliver the draft PCE Approval or CE Closeout Document to County to finalize and approve.

Only after all relevant tasks 3.2 through 3.7 have been completed and approved by County can this task be completed. In the draft PCE Approval or CE Closeout document, Consultant shall follow the specific protocols in the CE/PCE Procedures to complete drafts of the following:

- After County has accepted tasks 3.2 through 3.7, complete each of the resource narrative sections using protocols and standard language contained in the "Procedures for Completing NEPA for

Categorical Exclusion and Programmatic Categorical Exclusion Projects with Oregon Division Federal-Aid Highway Program Nexus” (known as the CE/PCE Procedures, available here: http://www.oregon.gov/ODOT/GeoEnvironmental/Docs_NEPA/NEPA_CE-PCE-Procedures.pdf

- Include the supporting documents required as per the CE/PCE Procedures, as applicable to the Project (e.g. Endangered Species Act (“ESA”) approvals, cultural resources documentation, hazardous materials, etc.). If submittal of the draft PCE or CE document requires supporting documentation not developed under this SOW, it will be provided by APM.

County and ODOT Environmental staff will review all draft PCE Approval and CE Closeout documents, send back to Consultant for any revisions needed. ODOT staff will approve, on behalf of FHWA, the accepted PCE Approval document as per the PCE Agreement, or ODOT will submit the accepted CE Closeout Document to FHWA Oregon Division for FHWA review and approval.

3.1.3 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- One electronic copy of the Draft PCE Approval or CE Closeout Document and supporting documentation to APM for review per Task 1 Project Design Schedule.
- One electronic copy of the Final County accepted Draft PCE Approval or CE Closeout Document and supporting documentation to APM 2 weeks following receipt of draft review comments.

3.2 Archaeological Resources

All archaeological sub tasks must be completed by registered professional archaeologists who meet the Secretary of the Interior's professional standards for Archaeology ([36 CFR 61, Appendix A](#)) and who have been “qualified” through the [Agency Cultural Resources Consultant Qualification Training Program](#).

3.2.1 Literature Review/Field Reconnaissance/Baseline Report

The purpose of this task is for the Consultant to conduct archival and background research in combination with field reconnaissance to determine the presence or absence of high probability landforms or archaeological sites within the Area of Potential Effect (“APE”) and to make recommendations for further archaeological review.

Consultant shall conduct a Literature Review for the APE, and include a description of the APE, detailed historic context and ethno-historic information, methodology, recommendations for future work, detailed bibliography, maps, and photos. Consultant shall provide the APM with a minimum of 5 business days advance notice prior to Field Reconnaissance.

Consultant shall examine the following data bases and/or documents:

- the State Historic Preservation Office (“SHPO”) database in Salem, OR; appropriate Tribal Historic Preservation Office (“THPO”) database if APE is within a recognized reservation boundary;
- General Land Office (“GLO”) maps;
- Sanborn Fire Insurance Maps;
- other records archives (i.e. historical societies; tribal archives) for known/potential prehistoric and historic archaeological resources within a one mile radius of the APE.

Field Reconnaissance must include a pedestrian survey. Consultant shall conduct pedestrian surveys within the APE and must include areas where ground will be disturbed by Project construction including temporary access roads, as well as staging areas, material sources, disposal sites, detours, etc.

Pedestrian survey methods must be consistent with the latest updated [SHPO guidelines](#). The recommended maximum spacing of transects is 20 meters apart and may vary depending on terrain features and/or ground visibility. Consultant shall determine transect spacing based on professional judgment to ensure that all probable site locations are discovered. All cultural resources observable on the surface and in exposed subsurface profiles must be identified and recorded. Field Reconnaissance must enable Consultant to identify areas of high and low probability for archaeological resources and to determine the appropriate level of survey or subsurface exploratory probing. Up to 24 discovery probes shall be excavated if requested by County, and shall be conducted under Contingency Task 3.2.2.

Consultant shall prepare a Baseline Report that must contain the following:

- A completed Oregon SHPO Archaeological Report Cover Page
- A purpose statement and full Project description including:
 1. ODOT Key Number and Federal Aid Number
 2. Location and legal description
 3. General environmental description
 4. Historic context
 5. Proposed construction activities
 6. Defined APE and APE map
 7. Total acreage of impact
- Results of SHPO/THPO database search including:
 1. Brief summary of previous archaeological research completed within one mile of APE
 2. Brief summary of recorded archaeological features within one mile of APE; include eligibility discussion if available.
- Results of GLO and Sanborn map review including:
 1. Brief summary of features (trails, buildings, etc.) depicted on maps and within APE; include eligibility discussion if available.
- Description of pedestrian survey methods including date of survey, types of transects used, and names and duties of personnel conducting the survey
- Findings of pedestrian survey including ground conditions (percent visibility) and difficulties encountered, if any
- Identification of areas of high and low probability for archaeological resources within APE
- Recommendations for appropriate level of additional survey and/or subsurface exploratory probing, if any
- Site and isolate forms (hard copies) for newly discovered archaeological sites and isolates. Consultant shall also complete the SHPO online site form.
- List of references cited
- Location map at 1:24,000 scale; aerial image (Google map acceptable) showing APE; and representative digital images of current conditions within APE

3.2.1 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- One electronic copy (in WORD format) of the Draft Baseline Report to APM and LAPM for review per Task 1 Project Design Schedule.

- One electronic copy (in Word and PDF format) of the Final Baseline Report to APM and LAPM 2 weeks following receipt of draft review comments.

3.3 Historic Resources

All historic sub tasks must be completed by professional historians who meet the Secretary of the Interior's professional standards for architectural history and/or history ([36 CFR 61, Appendix A](#)) and who have been “qualified” through the [ODOT Cultural Resources Consultant Qualification Training Program](#).

3.3.1 Historic Resources Baseline Report

The purpose of the Historic Resource Baseline Report is to identify and characterize the historic resource issues using APE to determine what may be impacted by a transportation project. The Historic Resource Baseline Report is a scoping report that is not intended to be a comprehensive technical report. As part of developing the Historic Resource Baseline Report, Consultant shall review the SHPO Statewide Inventory and conduct an on-site reconnaissance of the Project area.

The Historic Resources Baseline Report must include, but is not limited to:

- Project description and a description of the APE;
- Photographs of resources that are 45 years old or older;
- Descriptions of historic resources that are 45 years old or older, including a discussion of each potential NRHP eligibility (A-D); and
- Map that identifies the location of each potential historic resource within the APE

It is anticipated that up to 15 historic resources will be identified in the baseline report.

3.3.1 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- One electronic copy (in WORD format) of the Draft Historic Resources Baseline Report to APM and LAPM for review per Task 1 Project Design Schedule.
- One electronic copy (in WORD and PDF format) of the Final Historic Resources Baseline Report to APM and LAPM 2 weeks following receipt of draft review comments.

3.3.2 Section 106 Determination of Eligibility (DOE) (CONTINGENCY – See Section F)

A DOE is a finding that a property meets the eligibility criteria (A-D) for inclusion in the NRHP. A DOE shall include a brief physical description, history, context, significance, map (the historic boundary included) and photographs of resources that possess integrity of one or all of the following: location, design, setting, materials, workmanship, feeling, and association. If requested by County staff, then Consultant shall prepare draft and final DOE Reports for each historic resource (up to 2) that is considered potentially eligible for the NRHP. For authorized DOE Report(s), Consultant shall also prepare a Project Submittal Letter in ODOT-approved format.

Consultant shall prepare each DOE using the most recent Agency form. Each DOE must include but is not limited to:

- Physical description of the resource and contributing and non-contributing features, including the history and context of the resource, the design, setting, materials, workmanship, feeling, and association;
- Map showing the location and orientation of the resource and its historic boundary; and
- Photographs of the resource, including historic photographs and current photographs.

ODOT Cultural/Historic Resource Specialist will transmit the final DOE(s) to SHPO and will obtain the necessary concurrence documentation from SHPO.

3.3.2 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- Draft DOE(s) (in electronic WORD format) for each resource that is potentially eligible for the NRHP to APM and LAPM for review per Task 1 Project Design Schedule.
- Final DOE(s) (in electronic PDF format) for each resource that is potentially eligible for the NRHP to APM and LAPM 2 weeks following receipt of draft review comments.

3.3.3 Section 106 Finding of Effect (“FOE”) (CONTINGENCY – See Section F)

Following coordination with County and ODOT staff, Consultant shall prepare a FOE Report for each resource (up to 2) that is listed or has been determined eligible for the NRHP following the format provided by ODOT (including coordination of public outreach). The FOE Report must include a narrative assessment of the potential effects of the Project to the historic resource’s qualities that make it significant and/or eligible or listed. Consultant shall include in the FOE Report a discussion of the alternatives to avoid or minimize adverse effects. When requested by County, Consultant shall coordinate with the ODOT Project Designer or Project Team Leader to discuss available options to avoid or minimize adverse effects to listed or eligible historic resources. Consultant shall coordinate with ODOT to ensure that FHWA concurs with the proposed FOE on the resources prior to transmittal to SHPO. A Project Submittal Letter must be submitted with an FOE Report.

Consultant shall coordinate with ODOT to obtain FHWA concurrence with the proposed FOE on the resource(s), prior to submittal to SHPO.

Consultant shall prepare FOE(s) using the most current Agency form. The FOE(s) must:

- Assess the Project’s effects on the historic resource including: physical destruction or damage; alteration or rehabilitation; removal; change of setting; introduction of visual, atmospheric or audible elements; neglect of a property; or transfer or sale of ownership; and
- Discuss alternatives to avoid or minimize adverse effects to the resource.

ODOT Historic Resource Specialist will transmit the final FOE(s) to SHPO and will obtain the necessary concurrence documentation from SHPO.

3.3.3 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- Draft FOE(s) (in electronic WORD format) with Project Submittal Letter for each effected resource that is listed or eligible for the NRHP to APM and LAPM for review per Task 1 Project Design Schedule.
- Final FOE(s) (in electronic WORD and PDF format) with Project Submittal Letter for each effected resource that is listed or eligible for the NRHP to APM and LAPM 2 weeks following receipt of draft review comments.

Task 3.4 Hazardous Materials Study and Services

The purpose of this task is to facilitate County compliance with environmental regulations pertaining to site cleanup and waste management. The services to be provided shall include:

- Conduct a Hazardous Materials Corridor Study to identify potential sources of contamination that could impact property acquisition or construction.

- Review available existing information to evaluate historic land use.
- Conduct geophysical surveys to identify potential underground storage tanks or buried debris.
- Screen and collect soil and water samples from geotechnical borings which may be drilled in areas with known or suspected subsurface contamination.
- Collect surface material samples from road shoulders to determine if the material meets Oregon Department of Environmental Quality (DEQ) standards for clean fill.
- Conduct site-specific subsurface investigations to determine if soil or groundwater is contaminated within the project corridor.
- Prepare contract bid documents for handling and disposal of contaminated materials.

Consultant shall conduct all tasks in accordance with ODOT’s HazMat Program Procedures Guidebook (March 2010) and applicable industry standards. Consultant shall submit deliverables in an electronic format (native file and *.pdf) version using Microsoft® Word.

Task 3.4.1 Hazardous Materials Corridor Study

Consultant shall conduct a Hazardous Materials Corridor Study (HMCS) according to the following standards and guides:

- “Hazardous Waste Guide for Project Development” (1990), by the American Association of State Highway and Transportation Officials (AASHTO) Special Committee on Environment, Archaeology and Historic Preservation.
- “ODOT Hazmat Program Procedures Guidebook,” 2010, Oregon Department of Transportation.
- “Level 1 Corridor Study” report template, Oregon Department of Transportation.
- And the requirements listed below.

Consultant shall conduct a site reconnaissance to identify potential sources of contamination that could impact construction or result in County acquiring contaminated property.

Consultant shall review available federal and State environmental databases to identify sites that could potentially impact the project, using the minimum search radii listed below.

| Environmental Database | Search Radius |
|--|--------------------|
| State-Equivalent NPL List (ECSIS) | 0.25 mile |
| Oregon Permitted Landfill List | 0.25 mile |
| State Leaking (L)UST List | 0.25 mile |
| Federal RCRA Generators List | Site and Adjoining |
| State Fire Marshal’s Spill Response List | Site and Adjoining |
| State Certified UST List | Site and Adjoining |

Consultant shall use commercially available database reports such as provided by EDR (Environmental Data Resources) to determine whether contamination from adjacent facilities is likely to impact project construction.

Consultant shall review the Oregon Water Resources Department on-line database at [OWRD Well Database](#) to determine if water wells or monitoring wells are located on or adjacent to the project corridor.

Consultant shall review project files at the DEQ Northwest Region office in Portland, OR for all facilities considered to be high risk for impacting project construction. Consultant shall use DEQ file information to delineate contaminated areas within the project corridor and identify if that information is sufficient to develop construction plans and specifications without additional sampling.

Consultant shall conduct historical research to identify past uses of the project corridor and adjacent properties, using one or more of the following resources:

- Sanborn Fire Insurance Maps
- Aerial Photographs
- Reverse City Directories
- Historic property ownership/occupancy records or building permits

The resource(s) selected must, if possible, provide historic information regarding land use back to 1935 at 10 year intervals, or the Consultant must demonstrate that such information is not readily available.

Consultant shall review pertinent records that may be made available by the County as they relate to the environmental condition of the project corridor.

Consultant shall assess if soil sampling is necessary to determine if soil excavated from the project corridor shall meet DEQ clean fill screening levels for contaminants-of-concern including pesticides, herbicides, metals, polynuclear aromatic hydrocarbons, petroleum hydrocarbons, and solid waste.

Consultant shall prepare a HMCS report summarizing the information obtained through the activities listed above, using ODOT's Corridor Report Template available at [ODOT Report Template](#).

The report must include photographs documenting project corridor observations. The report must include conclusions that identify specific sources of contamination that could impact project construction and recommendations for further investigation, if needed.

Deliverables/Schedule:

Consultant shall provide:

- Draft HMCS report to the County within eight weeks following Notice to Proceed (NTP).
- Final HMCS report within one week following receipt of County comments.

Task 3.4.2 Geotechnical Drilling Support (CONTINGENCY – See Section F)

If recommended by Task 3.4.1, Consultant shall monitor for hazardous materials during geotechnical drilling (see Task 6.2). Consultant shall field screen drill spoils and collect soil and groundwater samples sufficient to adequately determine whether or not subsurface materials are contaminated. The results shall be presented in a technical memorandum. The memorandum shall discuss soil and groundwater sample methods, analytical results, and conclusions regarding the presence or absence of subsurface contamination.

Task 3.4.2.1 Work Plan and Health and Safety Plan (CONTINGENCY – See Section F)

Consultant shall prepare a Work Plan and Health and Safety Plan (HASP) describing how samples shall be collected from geotechnical borings under Task 3.4.2.2. The Work Plan shall describe the number of borings, sample collection, sampling equipment, equipment decontamination, and handling and shipment of samples. The HASP shall be completed in accordance with 29 CFR 1910.120 and OAR

437-02-100 et seq., and all other state and Federal worker health and safety regulations applicable for Task 3.4.2.2. The HASP should reflect the sampling and characterization activities described in the Work Plan. The HASP should cover the activities of all Consultant, sub-consultant, and County employees.

Consultant shall submit the draft Work Plan/HASP to the County for review and comment. No field work activities under Task 3.4.2.2 shall proceed until the Consultant has received written authorization (e-mail) from the County.

Deliverables/Schedule:

Consultant shall provide:

- Draft Work Plan/HASP within two weeks following NTP.
- Final Work Plan/HASP within one week following receipt of County comments.

Task 3.4.2.2 Sample Collection and Reporting (CONTINGENCY – See Section F)

Consultant shall collect soil and groundwater samples from up to four (4) geotechnical borings to determine whether or not contaminants-of-concern are present. Samples shall be collected as described in the approved Work Plan. As many as three soil samples and one water sample shall be collected from each boring recommended for monitoring. Soil samples shall be field screened for volatile organic compounds using a photoionization detector (PID).

Investigation derived waste (IDW) generated from borings monitored under Task 3.4.2.2 shall be placed in 55-gallon drums and temporarily stored on County property pending the results of laboratory analyses. The contents and date of accumulation must be marked on each drum. The Consultant shall be responsible for disposal of all IDW.

Soil samples shall be analyzed for:

- NWTPH-Gx, NWTPH-Dx, Method 8260B VOCs, Method 8270 SIM PAHs, RCRA 8 total metals, and total antimony, copper, and zinc.

Groundwater samples shall be analyzed for:

- NWTPH-Gx, NWTPH-Dx, Method 8260B VOCs, Method 8270 SIM PAHs, and dissolved RCRA 8 metals.

Samples shall be shipped to Pace Analytical in Mt. Juliet, TN. Consultant shall submit samples using the State chain of custody form, indicating the laboratory must bill the County directly and requesting a turn-around time of five business days. Consultant shall be responsible for shipping samples under chain-of-custody procedures, such that the samples arrive at the laboratory undamaged. County will pay all shipping costs directly to the laboratory.

Consultant shall prepare a technical memorandum summarizing the results of Task 3.4.2.2. The report shall include:

- Field observations, photographs, description of sampling, laboratory reports, and data tables summarizing analytical results.
- Evaluation of the laboratory results versus DEQ's clean fill screening levels and risk-based

concentrations for construction and excavation workers.

- Conclusions that identify specific sources of contamination that could impact project construction.
- Recommendations for handling and disposal of contaminated soil or groundwater that may be generated during construction activities.

Deliverables/Schedule:

Consultant shall provide:

- Draft technical memorandum within four weeks following completion of Task 6.2.
- Final technical memorandum within one week following receipt of County comments.

Task 3.4.3 Reserved

Task 3.4.4 Reserved

Task 3.4.5 Shoulder Material Investigation (CONTINGENCY – See Section F)

Consultant shall collect surface soil samples within the limits of the project corridor for laboratory analysis. The results of those analyses must be compared with Oregon Department of Environmental Quality (DEQ) guidelines to determine if surface material excavated for project construction can be handled and disposed as clean fill.

Task 3.4.5.1 Work Plan and Health and Safety Plan (CONTINGENCY – See Section F)

Consultant shall prepare a Work Plan and HASP describing sample collection for Task 3.4.5.2. The Work Plan must describe sample collection methods, sampling equipment, equipment decontamination, and handling and shipment of samples. The HASP must be completed in accordance with 29 CFR 1910.120, OAR 437-02-100 et seq., and all other state and Federal worker health and safety regulations applicable for Task 3.4.5.2. The HASP should reflect the sampling and characterization activities described in the Work Plan. The HASP should cover the activities of all Consultant, sub-consultant, and County employees. The HASP should include a traffic control plan, if needed.

The Consultant shall obtain all required permits from the County District Permit Office prior to initiating fieldwork activities. The District contact person is listed in B.4, General Requirements

Consultant shall submit the draft Work Plan/HASP to the County for review and comment. No field work activities under Task 3.4.5.2 shall proceed until after the Consultant has received written authorization (e-mail) from the County.

Deliverables/Schedule:

Consultant shall provide:

- Draft Work Plan/HASP to the County within four weeks following NTP for this contingency.
- Final Work Plan/HASP within one week following receipt of County comments.

Task 3.4.5.2 Sample Collection and Reporting (CONTINGENCY – See Section F)

Consultant shall collect surface soil samples from up to sixteen (16) locations. Consultant shall provide flagging and traffic control as needed to complete sample collection. At each location, samples must be collected at 0 to 6 feet from edge of pavement. Soil samples shall be obtained from 0 to 0.5 feet and 1 to 1.5 feet below ground surface. Consultant shall mark the proposed sample locations in white paint and

obtain utility locates for all locations. Consultant shall provide flagging and traffic control as needed to complete sample collection. Sample locations must be backfilled with excavation spoils; there must be no investigation derived waste (IDW). Equipment decontamination water can be disposed on-site.

Consultant shall ship the samples to Pace Analytical in Mt. Juliet, TN where they will be composited into as many as four (4) groups based on depth and distance from edge of pavement. The composite samples must be analyzed for the following:

- NWTPH-Dx, Method 8270 SIM PAHs, Method 8151 herbicides, Method 8081 pesticides, Method 8082 PCBs, and total metals according to Methods 6020 and 7471A.
- Total metals analyses will include antimony, arsenic, barium, cadmium, chromium, copper, lead, selenium, zinc, and mercury.

Consultant shall submit samples using the State chain of custody form, indicating the laboratory must bill the County directly and requesting a turn-around time of five business days. Consultant shall be responsible for shipping samples under chain-of-custody procedures, such that the samples arrive at the laboratory undamaged. County will pay all shipping costs directly to the laboratory.

Consultant shall prepare a Surface Material Investigation (SMI) report summarizing the results of Task 3.4.5.2. The report must include the following:

- Field observations, photographs, description of sampling methods, laboratory reports, and tables summarizing the analytical results.
- Evaluation of the laboratory results compared to DEQ's clean fill screening levels.
- Conclusions that identify specific sources of contamination that could impact project construction.
- Recommendations for handling and disposal of contaminated surface soil generated during construction.

Deliverables/Schedule:

Consultant shall provide:

- Draft SMI report within six weeks following completion of Task 3.4.5.1.
- Final SMI report within one week following receipt of County comments.

Task 3.4.6 Site-Specific Investigations (CONTINGENCY – See Section F)

If recommended by Task 3.4.1, Consultant shall collect subsurface soil and groundwater samples in the project corridor or on as many as one (1) adjacent private property. Soil and groundwater samples must be collected for contaminant analysis and the results presented in a Preliminary Site Investigation (PSI) report. The report must discuss soil and groundwater sample methods, laboratory analytical results, and conclusions regarding the presence or absence of subsurface contamination.

Task 3.4.6.1 Work Plan and Health and Safety Plan (CONTINGENCY – See Section F)

Consultant shall prepare a Work Plan and Health and Safety Plan describing sample collection for Task 3.4.6.2. The Work Plan must describe the number of borings, sample collection, sampling equipment, equipment decontamination, and handling and shipment of samples. The Health and Safety Plan (HASP) must be completed in accordance with 29 CFR 1910.120 and OAR 437-02-100 et seq., and all other state and Federal worker health and safety regulations applicable for Task 3.4.6.2. The HASP must reflect the sampling and characterization activities described in the Work Plan. The HASP should cover

the activities of all Consultant, sub-consultant, and County employees. The HASP must include a traffic control plan, if needed.

The Consultant shall obtain all required permits from the County prior to initiating fieldwork activities. The County contact person is listed in B.4, General Requirements

Consultant shall submit the draft Work Plan/HASP to the Agency for review and comment. Consultant shall not proceed with field work activities under Task 3.4.6.2 until they have received written authorization (e-mail) from the County.

Deliverables/Schedule:

Consultant shall provide:

- Draft Site-Specific Investigation Work Plan/HASP within four weeks following NTP.
- Final Site-Specific Investigation Work Plan/HASP within one week following receipt of County comments.

Task 3.4.6.2 Sample Collection and Reporting (CONTINGENCY – See Section F)

The Consultant shall conduct subsurface investigations within the project corridor or on as many as one (1) adjacent private property. Consultant shall collect surface soil samples from up to four (4) direct push borings on each adjacent private property as described in the approved Work Plan. The borings must each be drilled depths ranging from ten (10) to fifteen (15) feet below ground surface. Two soil samples must be collected from each boring. If groundwater is encountered, then a groundwater sample must be collected. Samples collected from boreholes will be field screened for volatile organic compounds using a photoionization detector (PID). Consultant shall provide flagging and traffic control as needed to complete drilling and sampling. County shall obtain right-of-entry permit for private property access if needed.

All test bore holes must be backfilled according to Oregon Water Resources Department regulations immediately following sample collection. The top six inches of each borehole must be filled with asphalt or concrete to match the existing pavement condition. IDW generated from drilling and testing must be placed in 55-gallon drums and temporarily stored on County property pending the results of laboratory analyses. The contents and date of accumulation must be marked on each drum. The Consultant shall be responsible for disposal of all IDW.

Soil shall be analyzed for:

- NWTPH-Gx, NWTPH-Dx, Method 8260B VOCs, Method 8270 SIM PAHs, and total cadmium, chromium, and lead.

Groundwater samples shall be analyzed for:

- NWTPH-Gx, NWTPH-Dx, Method 8260B VOCs, and Method 8270 SIM PAHs.

Consultant shall ship samples to Pace Analytical in Mt. Juliet, TN using the State chain of custody form, indicating the laboratory must bill the County directly and requesting a turn-around time of five business days. Consultant shall be responsible for shipping samples under chain-of-custody procedures, such that the samples arrive at the laboratory undamaged. County will pay all shipping costs directly to the laboratory.

Consultant shall prepare a PSI report summarizing the results of Task 3.4.6.2. The report must include the following:

- Field observations, photographs, description of sampling, laboratory reports, and data tables summarizing analytical results.
- Evaluation of the laboratory results versus DEQ's clean fill screening levels and risk-based concentrations for construction and excavation workers.
- Conclusions that identify specific sources of contamination that could impact project construction.
- Recommendations for handling and disposal of contaminated soil or groundwater that may be generated from construction activities.

Deliverables/Schedule:

Consultant shall provide:

- Draft PSI report within four weeks following completion of Task 3.4.6.1.
- Final PSI within one week following receipt of County comments.

Task 3.4.7 Design Acceptance Narrative and Contract Documents (CONTINGENCY – See Section F)

Consultant shall prepare and include in the Design Acceptance Package (DAP) (Task 11), a narrative and plans, specifications, and estimates (PS&E) for all construction activities impacted by contaminated materials. The DAP Narrative summarizes the results, conclusions, and recommendations provided in the Hazardous Materials Corridor Study and other studies completed prior to the DAP project milestone.

Consultant shall provide plans specifications and estimates for managing hazardous materials to be submitted with the major project milestones: Preliminary, Advance, and Final Plans (as covered in Task 14). Each milestone will be reviewed by the Region 1 Hazardous Material unit.

Comments received during the technical review shall be addressed by the Consultant and incorporated into PS&E deliverables prior to the Project Team Review for each major project milestone. Comments received during Project Team Reviews shall be addressed by the Consultant, documented in the project review comment log, and incorporated in the deliverables for the next milestone.

Consultant shall prepare the PS&E using the ODOT's existing templates. Boilerplate special provisions templates for contaminated media (Sections 00290 through 00299) are available at [ODOT Special Provisions](#).

The special provisions shall include health and safety, sampling, waste management, and reporting requirements. Associated plans shall indicate the locations of contamination and hazardous materials that might impact project construction.

Deliverables/Schedule: Consultant shall provide:

- Draft DAP Narrative two weeks prior to DAP Completion milestone
- Final DAP Narrative within one week following receipt of County comments.
- PS&E documents for technical review no later than two weeks prior to each of the major project milestones: Preliminary, Advance, and Final Plans
- PS&E documents for Project Development Team review no later than two business days prior to each of the major project milestones: Preliminary, Advance, and Final Plans

- Responses to review comments shall be added to the Project Comment Log within one week following receipt of County comments
- Final, stamped PS&E documents within one week following receipt of County Final Plans comments.

3.5 Biological Resources Compliance and Permitting

Consultant shall complete the appropriate biological resources tasks presented below based on the 60% construction plans. General biological work shall be executed by a qualified biologist who meets the following minimum qualifications: 3 full years of environmental analysis or resource Project management experience and a Bachelor’s degree that included 30-quarter or 20-semester hours in biology, environmental science, natural science, or closely related field. An individual who makes determinations of effect under the ESA and prepares ESA documentation must also be an ESA qualified biologist as per ODOT Technical Services Bulletin GE14-03(B) or most current (http://www.oregon.gov/ODOT/Engineering/Doc_TechnicalGuidance/GE14-03b.pdf).

3.5.1 Endangered Species Act (ESA) No Effect Memorandum

When ODOT determines or approves Consultant’s determination that a proposed action will not affect state or federal ESA listed or proposed species or critical habitat, a No Effects Memorandum (“NE Memo”) is prepared to document compliance with the state and federal ESAs. The NE Memo must be completed by an ESA qualified biologist as described above.

Consultant shall:

- Use a qualified ESA biologist(s) to conduct 1 field survey of the area of API at the appropriate time for each ESA listed plant and wildlife species with the potential to be present in the API and their potential suitable habitats following standard/appropriate field survey techniques.
- Conduct Oregon Department of Agriculture (“ODA”), Oregon Department of Fish and Wildlife (“ODFW”), National Marine Fisheries Service (“NMFS”), and U.S. Fish and Wildlife Service (“USFWS”) database searches to acquire ESA information for the Project area.
- Contact the ODOT and/or Oregon Biodiversity Information Center (“ORBIC”) to obtain data regarding listed threatened and endangered species as well as those proposed for listing under the federal and state ESA that may occur within the API. Consultant shall determine if Federally-listed species and their habitat will be affected by the Project.
- Make ESA effects determinations following the analysis of gathered ESA information. If a determination is No Effect for at least one listed or proposed species, obtain ODOT concurrence on the No Effects determination.
- Coordinate with design staff and County to develop appropriate measures (i.e., construction special provisions) to avoid impacting listed species proposed for coverage in the NE Memo if avoidance measures are necessary to obtain the No Effect determination.
- Prepare draft NE Memo for the Project area using the most recent ODOT provided form; provide to ODOT and APM for review and comment.
- Prepare final NE Memo for ODOT and County acceptance.
- Notify ODOT and County immediately if Consultant determines that an ESA determination of No Effect is no longer appropriate.

3.5.1 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- One electronic PDF copy of the Draft No Effect Memo to APM for review per Task 1 Project Design Schedule.
- One electronic PDF copy of the Final No Effect Memo to APM within 2 weeks following receipt of draft review comments.
- One electronic PDF copy of the Draft construction special provisions relevant to NE determination to APM and LAPM for review per Task 1 Project Design Schedule.
- Final construction special provisions relevant to NE determination to APM and LAPM within 2 weeks following receipt of draft review comments.

3.5.2 Federal-Aid Highway Program (“FAHP”) ESA Programmatic Documentation

Consultant shall coordinate and document compliance with the federal ESA for NMFS trust species and USFWS trust species using the FAHP Programmatic. The FAHP ESA Programmatic is appropriate for most Projects with Federal-Aid funding. ESA documentation must be completed by a qualified biologist (as per Section B.3 of this SOW). All documentation for the Project design phase must follow procedures contained in the most recent version of the ODOT FAHP Programmatic User’s Guide available on the ODOT Biology ESA website: (<http://www.oregon.gov/ODOT/GeoEnvironmental/Pages/ESA.aspx>). FAHP ESA programmatic documentation must be completed by an ESA qualified biologist as described above.

Consultant shall:

- Facilitate early coordination with NMFS and/or USFWS according to Section 2.3 of the FAHP Programmatic User’s Guide.
- Coordinate with the APM and ODOT biologist to complete the FAHP Project Stakeholder list as shown in Table 4 of the FAHP Programmatic User’s Guide.
- Utilizing the latest template available on the FAHP Programmatic website, prepare and submit the Project Initiation Form to the REC for the Project.
- Contact the ODOT biologist via phone or email for site-specific information on ESA species including but not limited to background reports and ORBIC special status species lists.
- Contact via phone or email ODA, ODFW, NMFS and/or USFWS for additional site-specific information on ESA species.
- Review all ESA information provided or obtained.
- Facilitate and attend 1 site visit with the County, ODOT and USFWS and/or NMFS to discuss Project impacts, applicable FAHP Programmatic standards, and possible modifications to the Project to meet FAHP Programmatic standards; Consultant shall prepare site visit meeting notes that include topics discussed and recommendations.
- Prepare and submit all required FAHP Programmatic forms to the County and ODOT REC for the Project, utilizing the latest templates available on the ODOT ESA website. In addition to the Stakeholder List and Initiation Form detailed above, the following forms are required as part of the FAHP Project Notification documents:
 - Notification Form
 - Additional Info as required
 - Additional Stormwater Information
 - Change Form

3.5.2 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- Draft Site Visit Meeting Notes within 1 week of the meeting to APM and ODOT REC
- Final Site Visit Meeting Notes within 1 week of receiving comments to APM and ODOT REC
- Draft FAHP Programmatic Project Initiation Form within 2 weeks of Kickoff Meeting to APM and ODOT REC
- Final FAHP Programmatic Project Initiation Form within 1 week of receiving comments to APM and ODOT REC
- Draft FAHP Programmatic Project Notification documents per Task 1 Project Design Schedule to APM and ODOT REC
- Final FAHP Programmatic Project Notification documents 2 weeks of receiving comment to APM and ODOT REC

3.6 WETLAND AND WATER RESOURCES

Consultant shall research and prepare documentation necessary to satisfy the requirements of Section 404 of the Clean Water Act and Oregon's Removal Fill Law (ORS 196.795-196.990).

3.6.1 Wetland/Waters of the U.S./State Determination

Consultant shall complete a wetland field determination and ordinary high water mark "(OHWM)" demarcation for the Project Study Area ("PSA").

Consultant shall use available data (including but not limited to: soil surveys, aerial photos, National/Local Wetland Inventory maps ("NWI/LWI")) as well as data gathered in the field to document the presence or absence of wetlands within the PSA.

Consultant shall:

- Determine wetland boundaries within the PSA in accordance with the criteria and methods described in the *1987 Corps of Engineers Wetland Delineation Manual (Environmental Laboratory Technical Report Y-87-1)* and appropriate Regional Supplements.
- Ensure that field methods used and data collected meet the U.S. Army Corps of Engineers ("USACE") and DSL technical requirements for wetland delineations and ordinary high water demarcations. Collect and record wetland delineation data on approved wetland determination data sheets for possible inclusion with a wetland delineation report.
- Place flags in the field to show the Wetland Boundary and OHWM elevation of all jurisdictional surface waters. Coordinate with survey team to locate flagging. Use of handheld GPS is allowed if it has the accuracy necessary for the regulatory agencies and the staff are willing to escort County representatives on a field site tour.
- Conduct a pebble count at two (2) locations and collect two (2) streambed sediment samples in the vicinity of the bridge for grain size analysis.

Consultant shall prepare one (1) Wetland/Waters of the U.S./Delineation Report (Wetland Delineation Report) in accordance with DSL and USACE requirements and standards. The Wetland Delineation Report shall include all required information outlined in Oregon Administrative Rules (OAR) 141-090-035.

Consultant shall prepare appropriate graphics required by USACE and DSL to accompany the Wetland Delineation Report. This shall include a site location map, tax lot map, National Wetland Inventory or Local Wetland Inventory map (if available), soil survey map, and aerial overlay map. Consultant's

Wetland Delineation Report must also include wetland delineation boundary mapping (figures) as finalized by Consultant and as per the requirements of DSL, and a color photographic record depicting existing conditions.

Consultant shall also complete the appropriate DSL cover page for submitting the Wetland Delineation Report to for review and approval. Consultant shall attend one site visit with County representatives if determined necessary by USACE and/or DSL, and shall respond to their comments.

Consultant shall submit the Wetland Delineation Report to DSL and USACE. Consultant shall be responsible for signing the wetland delineation report cover page. Consultant shall be responsible for payment of associated fees, anticipated to total \$454. County and ODOT shall review the draft Wetland Delineation Report and shall provide comments to Consultant within three weeks of receipt of the draft. Consultant shall make appropriate modifications to the draft Wetland Delineation Report in response to the comments and shall prepare the final for submittal.

3.6.1 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- Electronic copies of the Draft Wetland Delineation Report to County for review per the schedule in Task 1.
- Electronic copy (PDF) of the Final Wetland Delineation Report to County two weeks following receipt of draft review comments per the schedule in Task 1.
- Final Wetland Delineation Report to DSL and the USACE per the schedule in Task 1.
- Sketch map of approximate wetland and waters boundaries to County (if present) per the schedule in Task 1.
- Notification to County (via email) if wetlands are present and will be impacted per the schedule in Task 1.
- Electronic copy (Word) of the draft Wetland Determination to APM for review per the schedule in Task 1.
- Electronic copy (PDF) of the Final Wetland Determination to APM 2 weeks following receipt of draft review comments.

3.6.2 Functional Assessments (CONTINGENCY – See Section F)

Consultant shall prepare Stream and Wetland Functional Assessments, as appropriate for the expected project impacts, in accordance with DSL and USACE requirements and standards. The functional assessments shall be conducted following the *Stream Function Assessment Method* (SFAM), *Oregon Rapid Wetland Assessment Protocol* (ORWAP), *Hydrogeomorphic (HGM)-based Assessment of Oregon Wetland and Riparian Sites* or best professional judgment, as appropriate for the site conditions and level of impact.

Consultant shall submit the Functional Assessments with the Joint Permit Applications to DSL and USACE. County and ODOT will review the draft Functional Assessments and will provide comments to Consultant within three weeks of receipt of the draft. Consultant shall make appropriate modifications to the draft Functional Assessments in response to the comments and shall prepare the final for submittal.

3.6.2 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- Electronic copy of the Draft Functional Assessments to County for review per the schedule in Task 1.

- Electronic copy (PDF) of the Final Functional Assessments to County two weeks following receipt of draft review comments per the schedule in Task 1.
- Final Functional Assessments to DSL and the USACE per the schedule in Task 1.

3.7 Environmental Permits and Clearances

Consultant shall research and prepare state and federal permit applications required for the Project as described in the subtasks listed below.

3.7.1 USACE/DSL Joint Permit Application (“JPA”) and DEQ Section 401 Certification (CONTINGENCY – See Section F)

Consultant shall prepare a complete JPA meeting all the applicable requirements of the most recent version of the Oregon Department of State Lands Removal-Fill Guide and USACE permit application standards. Consultant shall submit the JPA and Stormwater Management Plan to the Oregon Department of Environmental Quality (DEQ) to obtain Section 401 Water Quality Certification.

LPA will select the preferred design for the Project prior to the preparation of the JPA. Consultant shall:

- Prepare JPA for a USACE Section 404 Nationwide Permit and a DSL General Permit or General Authorization, to authorize work within the jurisdictional waters and any wetlands found in the Project area.
- Provide pre submittal coordination with DEQ to inform them of the Project and verify requirements and documentation necessary to apply for Section 401 Water Quality Certification.
- Provide pre-submittal coordination with representatives of the USACE and DSL to confirm permitting requirements and application procedures. Consultant shall coordinate and attend one pre-submittal site visit with DSL and the USACE to discuss the Project and address the resource agencies concerns.
- Verify that features and impacts are correctly identified for the permit application.
- Prepare all JPA required drawings, maps, photographs, site descriptions, and any additional information required by DSL or the USACE for inclusion in the JPA.
- Prepare narratives and descriptions on Project purpose and need and Project alternatives using Project development information provided by LPA as necessary to complete the JPA.
- Respond to questions or comments raised by the USACE and DSL following the submission of the JPA. This task may include correspondence and clarification of the JPA in the form of telephone calls, letters, or e-mails, to clarify regulatory County concerns and to facilitate the issuance of the USACE and DSL permits for this Project. No regulatory County site visit or in person meetings will be required.
- Submit to DEQ a copy of the complete Joint Permit Application, Stormwater Management Plan, and provide a transmittal letter to DEQ requesting Section 401 Water Quality Certification for the Project.

All required wetland and/or waters mitigation will be satisfied with Payment-to-Provide or purchase of mitigation bank credits. On-site or off-site compensatory wetland/waters mitigation coordination and planning will not be required.

Due to the varied nature of post-submittal coordination, it is expected that the Consultant shall not expend more than eight hours for office review and coordination time for post-submittal coordination with DSL, USACE, and DEQ. APM will be responsible for obtaining Land Use Planning Signature on the JPA.

3.7.1 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- Electronic copy of the Draft JPA Submittal Package to County and LAPM for review per Task 1 Project Design Schedule.
- Electronic copy (PDF) of the Final JPA Submittal Package to County and LAPM 2 weeks following receipt of draft review comments.

3.7.2 Oregon Department of Environmental Quality (DEQ) 1200-C Permit Application (CONTINGENCY – See Section F)

If the Project design results in an overall ground disturbance that is greater than one acre, a DEQ 1200-C Permit will be required.

Consultant shall provide pre-submittal coordination with representatives of the DEQ and LPA to confirm permitting requirements and application procedures. Consultant coordination includes correspondence in the form of telephone calls, e-mail, letters, and memos to document permit needs. Consultant shall assemble permit application materials including the application forms, plans, drawings, memos, details, and specifications to support the permit application.

Consultant shall provide support to successfully transfer the 1200-C permit to the eventual construction contractor by providing a detailed technical memorandum to LPA fully describing all steps, processes, and timeline to transfer the Permit to the Contractor.

County will acquire Planning Department Signature and LPA will be listed as applicant on the 1200-C application.

3.7.2 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- Electronic copy of the Draft 1200-C Permit Application Package to County and LAPM for review per Task 1 Project Design Schedule.
- Electronic copy (PDF) of the Final 1200-C Permit Application Package to County and LAPM 2 weeks following receipt of draft review comments.
- 1200-C Permit Transfer Technical Memorandum to LAPM per Task 1 Project Design Schedule

TASK 4 PUBLIC INVOLVEMENT SUPPORT

County will have responsibility for the Project public involvement and outreach program. Project information and status will be provided on the County's website.

4.1 Public Involvement Plan (Reserved)

4.2 Public Involvement Meetings

Consultant shall attend up to 4 meetings, as listed below, to provide Project information and address specific questions and concerns related to the Project.

- 1 public involvement coordination meeting (1 hour length)
- 1 stakeholder meetings
- 2 public open house meetings

County shall document input received from the meetings and prepare written summaries.

Consultant shall prepare fact sheets and exhibits for the meetings and County intends to display these fact sheets and exhibits on its website. Consultant shall prepare:

- Project fact sheets,
- Aerial graphics of the proposed project,
- Roll maps.

County will schedule, coordinate the location and advertise the meeting. For budgeting purposes, it is assumed that up to 2 Consultant staff shall attend each 2 hour public meeting.

4.2 Consultant Deliverables and Schedule:

Consultant shall:

- Provide up to 2 fact sheets, 1 aerial graphic and 1 aerial graphic of the proposed project 10 business days prior to each scheduled meeting. The files must be provided in draft and final forms in PDF. The County will place the PDFs on the County's website.

TASK 5 - UTILITIES

Consultant shall perform the coordination of all utility facilities within the Project limits. If any utility is nonresponsive or uncooperative, Consultant shall notify County upon completing the level of effort defined by the BOC, and County will communicate with the utility to affect a solution.

5.1 Utility Location and Coordination

Consultant shall perform utility coordination and liaison activities with utility owners/operators for the Project. Consultant shall comply with the current version of the Utility coordination policy requirements as described in the ODOT Right of Way Manual. This work includes reviewing utilities that may be in conflict with the Project work and utility relocation coordination with the utility owners to resolve those potential conflicts. Additionally, Consultant shall obtain system mapping from utilities located within the Project limits and shall conduct a utility reconnaissance of the project areas to determine visual evidence of underground and aboveground utility facilities. The Consultant shall use this information to confirm the survey map as developed under Task 2, Surveying.

The utilities with potential facilities within the Project limits are:

- Portland General Electric (PGE)
- Clackamas County
- NW Natural Gas
- Clackamas River Water District
- Oak Lodge Water Services District
- Frontier
- Verizon
- AT&T
- MCI
- Comcast Cable

5.1 Consultant Deliverables and Schedule

Consultant shall provide:

- Existing utility information gathered in Task 5.1 to be included in the survey map/base map

- Record of communications with each utility within the Project limits. Copies of communication record must be provided to APM and LAPM within 3 business days of request.

5.2 Utility Report

Consultant shall prepare a draft and final “Utility Report” for those utilities located within the Project limits. The “Utility Report” should include as many of the following items that are known and applicable:

- Description of utilities located within the Project limits
- Utility facility’s structure dimension
- Probable buried depth of cover or aerial lowest height of wire
- General description of utility facility structure material
- Reliance upon other utilities in the vicinity (joint use facility)
- Description of the means used to verify facility location and limits of conflict (test hole data a.k.a. “pothole” verification)
- Proposed project construction requirements
- Potential utility conflicts
- Probable conflict resolution (relocation or adjustment concept)

5.2 Consultant Deliverables and Schedule

Consultant shall provide:

- Draft Utility Report to be submitted with DAP Package under Task 13.
- Final Utility Report to be submitted to APM within 10 business-days receipt of comments on draft document.

5.3 Utility Coordination Meetings

To facilitate the development of each utility relocation plan, Consultant shall organize, conduct, prepare for and attend the following utility coordination meetings with utilities within the Project limits:

- One (1) on-site group utility meeting with potentially affected utilities, to coordinate relocation plan, construction constraints, means and methods, work sequence and schedule limitations.

Consultant shall prepare a meeting agenda, and meeting minutes summarizing the discussions at the group meeting.

For budgeting purposes it is assumed that up to two (2) Consultant staff shall attend each 2 hour meeting, including travel time.

5.3 Consultant Deliverables and Schedule

For each meeting Consultant shall provide to APM:

- Meeting Agenda and Meeting Minutes for each meeting; agenda due within two (2) business days prior to meeting; meeting minutes due within five (5) business days after meeting

5.4 Utility Relocations

Consultant shall coordinate the efforts of the utility agencies in developing and executing a plan for relocating utilities to resolve conflicts with the Project design. As part of that effort, Consultant shall complete the following:

- Preparation of Project Notification Letter(s)/Utility Conflict Notices
- Review of Utility Relocation Plans and Preparation of Relocation Time Requirement Letters

5.4.1 Utility Conflict Analysis and Conflict Notices

Consultant shall produce a Conflict Map or Conflict Plan Sheets that corresponds to the Conflict List, color-coding each type of conflict.

For those Utilities where no conflict is anticipated, Consultant shall provide a Project Notification (first notice per OAR 734-055-045). Consultant shall use County Project Notification letter templates. The Project Notification letter must include plan sheets indicating location of existing utilities in relationship to proposed project.

For those Utilities where a conflict is anticipated, Consultant shall provide a Conflict Notice (first notice per OAR 734-055-045). Consultant shall use County Project Conflict letter templates.

Consultant's coordination schedule must allow each utility a 30-day calendar period to respond with a proposal from date of the notice. Multiple notices or revised notices must be created and delivered to a utility owner when additional facility conflicts become apparent and the utility owner's response time may be shortened to seven (7) calendar days.

5.4.1 Consultant Deliverables and Schedule

Consultant shall provide:

- Project Notification letter(s) and Conflict Notice(s) with enclosures to Utilities; due within 10 business days after submittal of DAP plans to County.
- Revised Conflict Analysis (Advance Plans) within ten (10) business days of submittal of Advance Plans.
- List of Utility Conflicts, and Conflict Plan Sheets within ten (10) business days of submittal of Advance Plans.
- Revised Conflict Notice(s) within ten (10) business days of submittal of Advance Plans.
- One (1) *.pdf of Project Notification/ Utility Conflict letters with enclosures to APM, LAPM and, State Utility Liaison (SUL).

5.4.2 RESERVED

5.4.3 Review Utility Relocation Plans and Relocation Time Requirement Letters

Consultant shall examine all received utility relocation plans for completeness and accuracy. If relocation plans do not resolve utility conflict, Consultant shall provide comments to Utility for correction and re-submittal. Utilities are anticipated to relocate into a proposed utility easement on the north side of Jennings Avenue.

Consultant shall negotiate with each utility a utility construction work schedule that conforms to the project construction schedule. Consultant shall deliver a Time Requirement Letter (second notice) to each utility owner accepting or modifying the required utility facility construction time.

5.4.3 Consultant Deliverables and Schedule

Consultant shall provide:

- The final utility relocation plan(s) submitted to the County within ten (10) business days after acceptance.
- Time Requirement Letter(s) submitted to each utility and SUL within twenty (20) business days after submittal of Advance Plans to County.

Task 5.4.4 Reserved

5.5 RESERVED

5.6 Utility Certification

Consultant shall complete and sign the Utility Certification verifying that all utility work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedule.

If an exception is required, Consultant shall prepare, for the APM's signature, a Public Interest Finding as part of the Utility Certification including facts regarding the cause for the exception, an action plan and time table in securing a utility agreement (a.k.a. Time Requirements letter).

5.6 Consultant Deliverables and Schedule

Consultant shall provide:

- One (1) *.pdf copy of the Utility Certification sent to SUL for co-signature due 10 business days prior to PS&E.
- One (1) hard copy of signed Utility Certification form to be incorporated into PS&E package.

TASK 6 GEOTECHNICAL / PAVEMENT SERVICES

Consultant shall conduct geotechnical and pavement field investigation to explore the following:

- Surface and subsurface conditions in proposed improvement areas, including roadway subgrade and existing roadway structural section.
- Area of new pavement construction.
- Surface and subsurface conditions in areas of highly saturated soils or existing steep slopes and up to one (1) proposed retaining wall.
- Existing soil types and characteristics, including infiltration test results

Consultant shall provide documentation which summarizes and presents the results of the investigation, analyses, and recommendations.

6.1 Data Review / Reconnaissance

Data Review:

Consultant shall review available existing information to evaluate the following:

- Geologic conditions and hazards along the proposed Project alignment, such as geologic units, and fill materials
- Pavement construction history

Consultant shall review available information from the following sources (as applicable):

- Existing published and unpublished literature from County records

- Previous geology and/or geotechnical reports from County, federal, or other officials, consultants, groups or individuals pertinent to the Project
- As-built roadway plans (as available)
- Maintenance records

Reconnaissance:

Consultant shall conduct a pavement, geologic, and geotechnical reconnaissance of the site consisting of one site visit. Consultant shall identify the following:

- Geologic conditions at the Project site, any geologic hazards present and their impacts to the proposed Project elements.
- Perform a general pavement condition survey and delineate areas where full depth pavement repair is necessary.

As part of the site reconnaissance work, Consultant shall

- Observe surface conditions that may be indicative of subsurface conditions of concern, as well as past or ongoing geologic processes (e.g., areas of seeps or springs, erosion, unstable slopes, shallow groundwater, roadway settlement, offsets and depressions, existing earthwork performance, exposed soil and bedrock units).
- Identify site constraints, staging concerns (for exploration and construction), and environmental considerations
- Identify potential exploration and/or monitoring locations.
- Locate potential pavement core explorations and paint on the ground proposed core locations.
- Locate borings and stake or paint on the ground proposed boring locations.

6.1 Consultant Deliverables and Schedule:

Information from this task shall be incorporated into deliverables for Tasks 6.2, 6.5 and 6.6.

6.2 Exploration and Testing Work Plan (ETWP)

Consultant shall prepare an Exploration and Testing Work Plan (ETWP) prior to beginning field work. The ETWP will follow an example format provided by the County. No field work is to be performed, other than initial site reconnaissance, before review and approval by County of the ETWP.

The ETWP must address the proposed drilling (borings, test pits and cores); site access; exploration and sampling procedures; preliminary laboratory testing plan; safety plan; and the traffic control plans. The traffic control plan must address minor road encroachments as well as lane and/or shoulder closures for activities associated with cores, borings, and restoration of pavements, shoulders, and other areas disturbed due to subsurface exploration activities, including erosion control measures.

County will furnish required Right-of-Entry (ROE) Permits to the Consultant for exploration locations prior to beginning field work. Consultant shall provide a map to County identifying the approximate location of the proposed boring(s) on the parcel to support the ROE process.

County will obtain required Right-of-Entry Agreements from the property owners under Task 14.1.

6.2 Consultant Deliverable and Schedule:

Consultant shall provide:

- ETWP in MS Word format at least 5 business days prior to beginning field work to APM.

6.3 Geotechnical and Pavement Explorations

Consultant shall conduct field investigation work in accordance with the most current versions of the ODOT Geotechnical Design Manual and the ODOT Pavement Design Guide.

All field explorations shall be performed in conformance with the approved ETWP developed in Task 6.2. When possible, Consultant shall coordinate traffic control and other subcontractors, such as drillers, to provide exploration services for both pavement and geotechnical explorations concurrently.

Consultant shall perform subsurface explorations to estimate and characterize the in situ soils for the purposes of addressing foundation support and other geotechnical or geological considerations for the following:

- Retaining wall design and construction
- Embankment widening
- Onsite infiltration of stormwater

Consultant shall use data from the subsurface explorations to provide retaining wall design soil parameters, and to provide soil bearing and settlement information to support the design of anticipated structures and embankments. The anticipated retaining wall, embankment and infiltration subsurface explorations to be performed for the Project are shown in the following table:

| TEST METHOD | EST # OF TESTS | DEPTH(S) OF EXPLORATION(S) |
|--------------------|-----------------------|-----------------------------------|
| Drilled Borings | 3 | 10-ft to 25-ft |
| Infiltration Tests | 2 | 1.5-ft to 5-ft |

Consultant shall provide an experienced engineer or geologist to supervise the field operations for in situ data gathering. Consultant shall perform pavement explorations and/or tests in order to estimate the following:

- In-site Subgrade Resilient Modulus values for widening and patching design
- Thickness of the existing pavement section

The pavement field investigation program will include:

- Pavement core recovery
- Subgrade sampling and in-site Dynamic Cone Penetration (DCP) testing to depths on the order of 3 feet
- Visual condition survey of the existing pavement

The anticipated pavement tests and/or explorations to be performed for the Project are shown in the following table:

| TEST METHOD | EST # | TEST INTERVAL(S) |
|---|--------------|-------------------------|
| Shallow Borings (4ft minimum or refusal) with pavement coring and DCP testing | 10 | |

Consultant shall provide an experienced engineer or geologist, as applicable, to supervise the field operations and conduct a detailed visual pavement condition survey to identify the type, extent and severity of the distress present.

Consultant shall perform the exploration work while following additional requirements as follows:

- Boring locations that have restrictions must be performed in conformance with the permit requirements.
- Collect the drill cuttings and drilling mud in sealable steel drums and remove from the site, unless otherwise coordinated with County.
- The borings must be abandoned and backfilled according to Oregon Water Resources Department (OWRD) regulations.
- All borings and core holes through pavement must be patched with cold patch asphalt emulsion, quick set PCC, or as approved by County.
- Core samples of the pavement must be retrieved using a diamond bit core drill.
- Pavement cores must be logged according to the ODOT Pavement Design Guide and photographed for inclusion in the report.

Classified traffic count and growth rate data (traffic data) is furnished under Task 8. Consultant shall utilize traffic data in order to compute the 18-kip equivalent single axle loads (ESALs) within the project limits, as required by the ODOT Pavement Design Guide.

6.3 Consultant Deliverables and Schedule:

Information from this task shall be incorporated into deliverables for Tasks 6.5 and 6.6.

6.4 Laboratory Testing

Consultant shall perform laboratory tests on disturbed and/or undisturbed soil samples obtained from the explorations in order to:

- Characterize the subgrade and subsurface soils
- Develop engineering soil parameters for retaining wall design
- Assist with determining engineering geologic unit boundaries
- Check field soil classification.

The laboratory testing program shall be performed in accordance with standard ASTM and County practices to include the following mandatory items:

- Moisture/density of SPT/Shelby tube samples;
- Atterberg limits;
- Organic content;
- Consolidation;
- Soil unconfined compressive strength;
- Triaxial resilient modulus test;
- Torvane shear strength test for Shelby tube samples;
- Soil corrosion tests (pH and resistivity) for corrosion potential evaluation.

The laboratory testing program may include the optional items contingent upon field conditions encountered in accordance with standard ASTM and County practices:

- Organic content;
- Consolidation;
- Direct shear strength test

6.4 Consultant Deliverables and Schedule:

Information from this task shall be incorporated into deliverables for Tasks 6.5 and 6.6.

6.5 Pavement Design Report

Consultant shall prepare a Pavement Design Report indicating pavement design criteria, design parameters, and pavement design recommendations to be used for the Project. Consultant shall provide alternative pavement design recommendations for up to a total of 2 pavement sections for:

- New pavement for areas of widening or reconstruction;

Unless otherwise specified, the pavement designs shall be developed for design periods as provided in the current version of the ODOT Pavement Design Guide. Pavement section design shall be performed in accordance with the most current versions of the ODOT Pavement Design Guide and AASHTO Guide for Design of Pavement Structures.

6.5 Consultant Deliverables and Schedule:

Consultant shall provide:

- Draft Pavement Design Report in MS Word and PDF format to be incorporated into DAP delivered under Task 13.
- Final Pavement Design Report in PDF format to APM within 2 weeks of receipt of comments from County.

6.6 Geotechnical Report and Foundation/Geotechnical Data Sheets

Consultant shall prepare a Geotechnical Report according to the ODOT Geotechnical Design Manual criteria for submittal to County and LPA for review. The Geotechnical Report must:

- Summarize the geotechnical design and construction recommendations.
- Identify general specification criteria for the construction contract and provide recommendations for special provisions, if required.
- Summarize the results of the geotechnical analyses.
- Provide design recommendations for the retaining walls, and embankment design.
- Provide content, review and sealing for the development of two (2) Geotechnical Data Sheets

6.6 Consultant Deliverables and Schedule:

Consultant shall provide:

- Draft Geotechnical Report in MS Word and PDF format to be incorporated into DAP delivered under Task 13.
- Final Geotechnical Report in PDF format to APM within 2 weeks of receipt of comments from County.
- Geotechnical Data Sheet content and review to accompany Task 15.1.

TASK 7 HYDRAULICS RELATED SERVICES

Consultant shall provide stormwater management and hydraulic related design services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

7.1 Hydraulic Site Investigation

The purpose of this subtask is to identify existing information and field conditions.

Consultant shall:

- Obtain the Flood Insurance Study (“FIS”) report and if available the Flood Insurance Rate Map using the Federal Emergency Management Agency (“FEMA”) web site.
- Review local floodplain ordinances to determine if there are any applicable to this water body.
- Determine channel and floodplain hydraulic roughness values (document with photographs).
- Visit the bridge/culvert site and record observations with respect to the following:
 - Lateral channel stability.
 - Stream channel hydraulic roughness.
 - Aggradation or degradation of bed material.
 - Existing evidence of scour and/or erosion.
- Coordinate with Geotechnical Engineer and review geotechnical report with regard to lateral stream stability and scour potential and coordinate geotechnical.
- Review the *Preliminary Engineering Analysis of Surface Water Management Options for the South Boardman Basin*, prepared for the Oak Lodge Sanitary District by URS Greiner Woodward Clyde (August 1999).
- Review the *Hydrologic and Hydraulic Modeling Technical Appendix to the Oak Lodge Sanitary District Surface Water Management Program Master Plan*, prepared by Montgomery Watson Engineers (October 1997)

7.1 Consultant Deliverables and Schedule:

Consultant shall incorporate the information from this task into deliverables for Task 7.4

7.2 Hydrologic Analysis

The purpose of this subtask is to perform hydrologic analysis to determine appropriate flow rates for design of various Project elements.

Consultant shall:

- Review ODOT Hydraulic Manual and available hydrologic data sources to determine the most appropriate 2-, 10-, 25-, 50-, 100-, and 500-year design flow for the proposed Project.
- Analyze available stream gauge records to calculate flood frequency and flow duration values to support hydraulic analysis and design.

In the absence of stream specific data, Consultant shall utilize prior studies to characterize upstream tributary areas.

7.2 Consultant Deliverables and Schedule:

Consultant shall incorporate information from this task into deliverables for Task 7.4

7.3 Reserved

7.4 Reserved

7.5 Stormwater Management Design

The purpose of this subtask is to design stormwater systems for the conveyance and treatment of drainage in the Project.

Storm Sewer Conveyance

The purpose of this subtask is to provide design of stormwater conveyance facilities that collect and carry highway runoff per local agency, ODOT Hydraulics Manual, and/or Federal Aid Highway Program Programmatic Biological Opinion, whichever standard is most strict.

Consultant shall:

- Determine the locations of flow entering and leaving the Project right-of-way.
- Review existing conditions downstream of locations where flow is leaving the Project right-of-way for deficiencies and document observations.
- Delineate on-site drainage basins, calculate peak flow rates for design, model the proposed pipe network, and calculate hydraulic grade line to check that proper freeboard design requirements are being met.
- Check inlet capacity and inlet spacing, calculate gutter flow to check spread, and provide design recommendations for inlet locations.
- Provide design recommendations for pipe network, associated pipe sizes, pipe material recommendations, and manhole access design recommendations (i.e.-spacing, location within a travel lane, etc.).
- Provide manhole diameter design recommendations based upon analysis of pipe connections at each manhole.
- Compare pipe network against known utilities in the Project area and provide design recommendations to minimize utility conflicts or to adjust existing utilities.
- Provide Stormwater Outfall design and energy dissipator design recommendations in compliance with applicable Project permits.

Roadside Channel Conveyance

Consultant shall model ditches to calculate water surface elevation, depth, and velocity and provide channel lining design recommendations per HEC-15, Design of Roadside Channels with Flexible Linings.

Stormwater Quality Design

The purpose of this subtask is to provide design of stormwater management facilities that provide water quality treatment of highway runoff per local agency standards, ODOT Hydraulics Manual, and/or Federal Aid Highway Program Programmatic Biological Opinion, whichever standard is most strict.

Consultant shall:

- Define Contributing Impervious area.
- Delineate on-site drainage subbasins.
- Identify treatment Best Management Practice (“BMP”) types applicable for the site.
- Identify potential locations to site facilities within and outside the existing right-of-way.
- Estimate facility size, type and space needs at each of the potential locations.
- Evaluate constraints to siting a stormwater facility (i.e.-drainage area, adjacent grades, roadway safety, presence of existing utilities, protected resource areas, etc.)
- Prepare up to three stormwater management strategies that combine potential stormwater facilities into a comprehensive solution for meeting the needs of the Project.
- Compare alternative stormwater management strategies and recommend a preferred strategy.

Stormwater Quantity Design

The purpose of this subtask is to provide design of stormwater management facilities that control quantity and flow rate of highway runoff per local agency standards, ODOT Hydraulics Manual, and/or Federal Aid Highway Program Programmatic Biological Opinion, whichever standard is most strict.

Consultant shall:

- Define Contributing Impervious Area (“CIA”).
- Delineate on-site drainage subbasins.
- Identify potential locations to site facilities within and outside the existing right-of-way.
- Estimate facility size, type and space needs at each of the potential locations.
- Evaluate constraints to siting a stormwater facility (i.e. drainage area, adjacent grades, roadway safety, presence of existing utilities, protected resource areas, etc.).
- Prepare up to three stormwater management strategies that combine potential stormwater facilities into a comprehensive solution for meeting the needs of the Project.
- Compare alternative stormwater management strategies and recommend a preferred strategy.
- Provide written design recommendations in the Stormwater Design report (Task 7.6) for:
 - Pipe network and associated pipe sizes
 - Manhole diameter
 - Pipe material recommendations
 - Channel Lining
 - Stormwater outfall
 - Energy dissipator
- Provide documentation in the Stormwater Design report (Task 7.6) for up to three stormwater management strategies and include a recommended preferred strategy.

7.5 Consultant Deliverables and Schedule:

Information from this task shall be incorporated into deliverables for Tasks 7.6.

7.6 Stormwater Design Report

The purpose of this subtask is to provide preliminary stormwater design recommendations and document the final stormwater facility design recommendations.

Consultant shall prepare a preliminary version of the Project Stormwater Design Report per Federal-Aid Highway Program (FAHP) guidelines containing preliminary stormwater facility design recommendations.

Consultant shall prepare a final Stormwater Design Report to reflect County review comments on stormwater facility design recommendations, changes to stormwater facility design due to advancement of the overall Project design, and supporting documentation of the final stormwater facility design.

7.6 Consultant Deliverables and Schedule:

Consultant shall provide:

- Draft Stormwater Design Report in PDF file format, along with an MS Word file containing the report narrative, and 3 hard copies, due with the Design Acceptance Package.
- Final Stormwater Design Report, PDF file of complete report, and 3 hard copies, due with the Final Plans.

7.7 Stormwater Operation and Maintenance (O&M) Manual

The purpose of this subtask is to provide Operations and Maintenance Manual documentation of all proposed stormwater management facilities so that the County has a record of the stormwater facilities that need to be as-built, operated and how to maintain them after the Project is constructed.

Consultant shall prepare up to 1 Draft Operation and Maintenance (“O&M”) Manuals, one for each stormwater facility anticipated for the Project, per Chapter 4, Section 4.6.6 of the Hydraulics Manual (latest edition).

Consultant shall prepare operational plans as outlined in Technical Bulletin GE 16-01 (B) titled “Stormwater Control Facility Operation and Maintenance Plan Development Drafting Guidance”.

7.7 Consultant Deliverables and Schedule:

Consultant shall provide:

- One copy of each Draft O&M manual in MS Word and Adobe “pdf” format to the APM with Advanced Plans.
- One copy of each draft operational plan in Microstation format (CAD file) to the APM with Advanced Plans.

TASK 8 TRAFFIC ENGINEERING & MANAGEMENT

Consultant shall provide traffic analysis and design Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

8.1 Traffic Analysis

Consultant shall conduct an evaluation of the potential inclusion of a Rectangular Rapid Flashing Beacon (RRFB) and/or Driver Speed Feedback Sign as part of the project. The evaluation must be based on field observations, input from County staff, and current industry practices (NCHRP Report 562).

Consultant shall collect the following traffic data as part of this task:

- Two (2) bi-directional 24-hour traffic volume, speed, and vehicle classification counts along Jennings Avenue
- Two (2) AM peak period turn-movement counts at locations to be agreed upon with the County
- Two (2) PM peak period turn-movement counts at locations to be agreed upon with the County
- Accident data for the past five (5) years within the Project limits
- Estimate the traffic growth rate based on available forecasts provided by the County and complement with classified traffic counts to facilitate ESAL calculations under Task 6

Further design and/or installation of RRFB or Driver Speed Feedback Signs are excluded from the project.

8.1 Consultant Deliverables and Schedule

Consultant shall provide:

- Consultant shall submit a Draft Traffic Analysis Memo included in DAP (Task 13)
- Consultant shall submit a Final Traffic Analysis Memo included with Preliminary PS&E submittal (Task 15.1)

8.2 Traffic Signal Design

Consultant shall prepare plans, specifications and construction cost estimate (“PS&E”) for the construction of traffic signal improvements to meet ADA requirements at Jennings Avenue and OR 99E. Further design and/or installation of traffic signals or supporting poles are excluded from the project.

As part of the DAP, Consultant shall evaluate the feasibility of installing conduits for future intelligent transportation system (ITS) improvements along the project corridor. Consultant shall meet with County staff under Task 1 to identify future needs and summarize the findings in the DAP narratives. A DAP

level cost estimate will accompany the improvements. Further design and/or installation of ITS components are excluded from the project.

All traffic signal plans and specifications must conform to Manual on Uniform Traffic Control Devices (“MUTCD”), ODOT, County, and National Electric Code (“NEC”) standards as applicable. Consultant shall coordinate with the utility for service connections.

Plans and specifications shall include locating pedestrian push buttons to meet current MUTCD and ADA standards, in accordance with the ODOT Signal Design Manual, the ODOT Signal Policy and Guidelines, and applicable ODOT standard drawings.

Consultant shall meet with ODOT staff prior to DAP at a ‘Pre-Design Verification Meeting’ to confirm design assumptions and project requirements. Consultant shall work with ODOT Region Traffic to prepare Traffic Signal Approval Request Form.

8.2 Consultant Deliverables and Schedule

Consultant shall provide:

- ODOT Pre-Design Verification Meeting agenda submitted electronically to APM, and all other meeting participants 2 business days prior to meeting.
- ODOT Pre-Design Verification Meeting draft meeting minutes submitted electronically to APM, and all other meeting participants within 2 business days of meeting.
- ODOT Pre-Design Verification Meeting final meeting minutes submitted electronically to APM, and all other meeting participants within 7 business days of meeting.
- 30% Traffic Signal plans and cost estimate included in DAP (Task 13)
- Preliminary Traffic Signal plans, specifications, and cost estimate included in Preliminary PS&E submittal (Task 15.1)
- Advance Traffic Signal plans, specifications, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final Traffic Signal plans, specifications, and cost estimate included in Final PS&E Package submittal (Task 15.3)

8.3 Illumination Analysis

PGE will lead/complete a lighting analysis to evaluate existing intersection and segment light levels within the project corridor and compare those light levels to the anticipated light levels upon completion of their utility pole relocation/removal work.

Consultant shall perform the coordination of illumination improvements within the Project limits. If PGE is nonresponsive or uncooperative, Consultant shall notify County upon completing the level of effort defined by the BOC, and County will communicate with PGE to affect a solution.

8.3 Consultant Deliverables and Schedule

Consultant shall provide:

- Record of communications with PGE within the Project limits. Copies of communication record must be provided to APM and LAPM within 3 business days of request.

8.4 Permanent Signing and Pavement Markings

Consultant shall prepare combined plans, specifications, and construction cost estimates for the permanent signing and pavement markings associated with the proposed improvements. The design must be completed in accordance with applicable MUTCD and County standards.

8.4 Consultant Deliverables and Schedule

Consultant shall provide:

- 30% Permanent Signing and Pavement Marking plans and cost estimate included in DAP (Task 13)
- Preliminary Permanent Signing and Pavement Marking plans, specifications, and cost estimate included in Preliminary PS&E submittal (Task 15.1)
- Advance Permanent Signing and Pavement Marking plans, specifications, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final Permanent Signing and Pavement Marking plans, specifications, and cost estimate included in Final PS&E Package submittal (Task 15.3)

8.5 Reserved

8.6 Reserved

8.7 Reserved

8.8 Traffic Control Plans (TCPs)

Consultant shall prepare and submit PS&E for temporary traffic control to accommodate the public during construction. Plans and specifications shall be developed to accommodate vehicle, bicycle and pedestrian traffic during construction. ODOT standard plans must be referenced where possible.

Consultant's TCPs shall indicate such elements as traffic control sequencing, work zone limits, transitions, traffic control devices, signage, detours and staging cross sections (where applicable), and work zone details for vehicles, bicycles and pedestrians.

8.8 Consultant Deliverables and Schedule

Consultant shall provide:

- 30% TCPs and cost estimate included in DAP (Task 13)
- Preliminary TCPs, specifications, and cost estimate included in Preliminary PS&E submittal (Task 15.1)
- Advance TCPs, specifications, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final TCPs, specifications, and cost estimate included in Final PS&E Package submittal (Task 15.3)

TASK 9 RESERVED

TASK 10 ROADWAY DESIGN

Consultant shall provide roadway design Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

10.1 Design Criteria

Consultant shall prepare draft and final design criteria. Design criteria shall be consistent with Clackamas County Roadway Standards. Consultant shall present the design criteria in a table or matrix format listing all conditions, assumptions and minimum standards for the roadway design elements of the Project. This includes the following:

- Obtain functional classification facility based on current TSP
- Determine design vehicles
- Obtain existing and design year ADT from traffic report or Project Prospectus
- Determine design speed
- Review crash data / history
- Determine roadside design requirements (clear zone)
- Determine sight distance considerations
- Determine cross slope, horizontal curves, and super-elevation
- Determine maximum grade, vertical curves
- Determine cross section elements:
 - Number and width of travel lanes
 - Shoulders
 - Curbs
 - Side slopes
 - Ditches or swales (drainage facilities)

10.1 Consultant Deliverables and Schedule:

Consultant shall provide:

- Draft design criteria electronically to APM within 4 weeks from Notice to Proceed (NTP).
- Final design criteria electronically to APM within 2 weeks from receipt of County comments.

10.2 Concept Plans/Alternative Analysis

The Consultant shall work with the County to develop up to 2 alternatives for the roadway alignment and cross section based on initial solutions from the scoping notes and project prospectus, suggestions from the County, and current County and AASHTO design standards.

Consultant shall develop each alternative to concept level design sufficient to establish construction limits, quantities and major construction activities. Each alternative shall have horizontal and vertical alignment developed that meets minimum design standards. Consultant shall prepare a conceptual drawing for each alternative. The drawing shall utilize a GIS or topographic survey base map or corridor roll plot on an aerial map at a scale of 1"=30'. Geometric design elements that do not meet design standards shall be identified as needing a design exception.

Consultant shall analyze each alternative and determine the potential benefits and impacts associated with construction of the proposed alternative. Potential benefits and impacts to be considered include, but are not limited to, right way, access, safety, utilities, permitting and environmental.

Consultant shall prepare a construction cost estimate for each alternative that includes the major construction items and quantities that can be identified at this level of design detail.

Consultant shall prepare an Alternative Analysis technical memorandum that summarizes the results of analysis for each alternative. The memo must include a summary of the identified impacts and cost estimate associated with each alternative to allow County to determine which alternative to move forward to DAP.

10.2 Consultant Deliverables and Schedule:

Consultant shall provide:

- Alternatives Analysis technical memorandum and drawings to APM and LAPM electronically (PDF) within 3 months of NTP.

10.3 Roadway Design Exceptions (CONTINGENCY – See Section F)

Consultant shall prepare up to 4 draft Roadway Design Exception Request(s) for the Project. The Design Exception Request(s) must be prepared using the County’s standard Design Exception Request form or, if ADA related, the standard form defined in the Highway Design Manual. The final Design Exception Request(s) for the Project must be stamped and signed by the engineer of record. The County will coordinate final approval of the Design Exception Request(s).

10.3 Consultant Deliverables and Schedule:

Consultant shall provide:

- 1 electronic copy in WORD format to APM of draft Design Exception Request(s) within 2 weeks of DAP or TS&L or Approved Alternative from Task 10.2
- 1 hard copy and 1 electronic copy in WORD and PDF format to APM of final Design Exception Request(s) no later than 2 weeks of receipt of comments from County.

TASK 11 RESERVED

TASK 12 LOCAL PERMITS (CONTINGENCY – See Section F)

Consultant shall provide local agency permitting Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

12.1 Permit Research (CONTINGENCY – See Section F)

Consultant shall evaluate permit requirements for the Project. Consultant’s evaluation shall include permit requirements from local agencies for the Project.

Based on Project information and available County’s zoning and land use information, Consultant shall determine the required land use or environmental permits and processes. The proposed Project activities shall occur entirely within the jurisdiction of Clackamas County. Anticipated permits include:

- Clackamas County Floodplain Development
- ODOT TPARP

Consultant shall prepare a technical memorandum detailing permits required, County staff contacted, and the cited respective code sections that require them. Consultant’s permitting technical memorandum shall outline the procedure for obtaining these permits and approximate timeframes associated with them. Consultant’s permitting technical memorandum shall include specific conditions listed in those code sections which may apply to the Project. Consultant shall contact by phone or email County planning staff members to verify the required permits, processes, standards, and criteria.

12.1 Consultant Deliverables and Schedule

Consultant shall provide:

- Draft Permitting Technical Memorandum due with DAP, Task 13 per Task 1 Project Schedule in electronic (MS Word) format.
- Final Permitting Technical Memorandum submitted in electronic format. Consultant shall perform 1 set of revisions due 10 business days after receiving County comments on draft Technical Memorandum.

12.2 Local Permit Acquisition (CONTINGENCY – See Section F)

Consultant shall initiate and attend one pre-application conference with County planning staff to determine the scope of drawings and supporting documentation required for County permit application for required local permits, which are anticipated to be Floodplain Development, and ODOT TPARP.

Consultant shall prepare a draft County permit type including drawings, narrative, calculations, etc. addressing Project compliance with relevant standards of the Clackamas County ZDO. Consultant shall submit the development permit applications, drawings and any other support documentation for County review. Consultant shall modify the permit application, drawings and/or supporting documentation in response to County comments and submit a final local Floodplain Development and Natural Resource Area development application package to the County.

Upon submittal of permit application materials to County, County PM shall answer questions on the application during the permit review period.

Consultant shall provide coordination with County. Consultant shall monitor permit application completeness review process, provide supplemental information as required, and revise the application in response to review comments and conditions of approval.

Notes:

- County/LPA will provide all required signatures on application forms.

12.2 Consultant Deliverables and Schedule

Consultant shall provide:

- Draft Permit Applications; electronic copies for County review due per Task 1 Project Schedule.
- Final Permit Applications; 2 hard copies filed with the permitting County due 14 days after receiving County comments.

TASK 13 - DESIGN ACCEPTANCE PACKAGE (30%)

The objective of the DAP is to identify the size of the Project footprint, required design exceptions and any required environmental permits prior to preparing the Preliminary, Advance and Final Plans.

Consultant shall prepare a DAP that includes design plans (30%), cost estimate and a design narrative that addresses the following:

- Description of the purpose, need, and design solution for the Project;
- Summary of existing conditions, (i.e., Project location, roadway classification, lanes, ADT, posted speed, and other design standards pertinent to the Project);
- Summary of design exceptions that will be necessary

- Summary of roadway alignment and typical section alternatives considered, including recommendations;
- Outline of Project constraints such as topography, environmental, permits, ROW, utilities and cost (NOTE: these may be executive summaries prepared by Consultant for other deliverables associated with this Project);
- Environmental impacts and mitigation measures;
- Environmental permitting requirements;
- Utility conflicts;
- Public Involvement efforts;
- Description of geotechnical subsurface conditions;
- Draft Geotechnical Report;
- Draft Stormwater Management Plan;
- Description of drainage features;
- ROW needs;
- Local permit needs;
- Construction staging, temporary detours, and temporary protection and direction of traffic during construction;

Consultant shall prepare DAP plan sheets according to the following table:

| Name of Sheet | Estimated # of Sheets |
|--|------------------------------|
| Title sheet | 1 |
| Typical sections | 1 |
| Details | 2 |
| TP&DT (including bicycle and pedestrian) | 4 |
| Roadway plans | 4 |
| Roadway profiles | 4 |
| Roadway cross sections | 1 |
| Drainage/stormwater plan/profiles | 4 |
| Drainage/water quality details | 2 |
| Retaining wall #1 plans and details | 3 |
| Sign and striping plans | 4 |
| Signal plans | 2 |

Consultant shall summarize and reference in the DAP all of the reports and technical memoranda pertinent to the Project. Consultant shall prepare and submit design plans and a cost estimate as appendices to the DAP. Drawings submitted with the DAP must be marked as "Design Acceptance Plans for Review." Both the DAP and the design plans must bear the responsible engineer's seal. Consultant shall prepare the Title sheet in accordance with County standards and provide an index to the drawing set.

County will provide comments on the DAP. Consultant shall address County comments. Consultant shall attend a DAP Plan Review Meeting to communicate and discuss resolution to County review comments. Consultant shall provide written responses to address review comments received from County after attending the DAP Plan Review Meeting.

For budgeting purposes it is assumed that Consultant staff shall attend the DAP Plan Review Meeting, including travel time, per Task 1.3.2.

13 Consultant Deliverables and Schedule:

Consultant shall provide:

- 1 electronic copy of DAP in PDF format to APM within 20 weeks of NTP.
- 1 electronic copy of written responses to DAP review comments to APM within 1 week of the DAP Plan Review Meeting.

TASK 14 RIGHT OF WAY (ROW)

Consultant shall conduct the ROW activities for all properties in accordance with the most current version of the following:

- Right of Way Services Agreement specific to the Project
- “*ODOT Right of Way Manual*”
- “*ODOT Guide to Appraising Real Property*”
- “*ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide*”
- ORS 35, with reference to the “*Uniform Appraisal Standards for Federal Land Acquisitions*”
- County ROW acquisition policies and procedures

Consultant shall use County versions of all forms, spreadsheets, brochures and pamphlets referenced in the “*ODOT Right of Way Manual*” and needed to complete work associated with Task 14. These forms, spreadsheets, brochures and pamphlets shall not be altered without written permission from the County. They may be obtained through the County Right of Way Manager or Designee.

Consultant shall track status for all parcel files to be acquired for ROW purposes in the format provided by County. Consultant should coordinate the details of this process with the County Right of Way Manager or Designee at the project kickoff meeting.

For estimating purposes, up to 39 files are anticipated for this project on the north side of Jennings Avenue.

14.1 Right-Of-Way Coordination Meeting

Consultant shall attend up to 1 meeting, as listed below, to provide Project information and address specific questions and concerns related to the Project.

- 1 right-of-way coordination meeting (2 hours in length)

Consultant shall document input received from the meeting and prepare a written summary. For budgeting purposes, it is assumed that up to one (1) Consultant staff shall attend the 2 hour meeting.

14.2 Title Reports and Document Requests

Consultant shall prepare and assemble all title documents, including vesting deeds, necessary to accomplish acquisition of ROW to County and/or ODOT standards for each impacted property.

Consultant shall obtain preliminary title reports for each impacted property, up to fifty (50) in total under Task 2.1. Consultant shall obtain all title reports from one Title Company.

14.2 Consultant Deliverables and Schedule

Consultant shall provide:

- Digital copies of Preliminary Title Reports and Title Documents per the schedule developed in Task 1 Project Management.

14.3 Right of Way Engineering, Maps & Descriptions

Consultant shall perform ROW data research as necessary to prepare for and support all Project activities; and to produce Project maps and reports as called for in subsequent tasks. Consultant shall complete a thorough search for all recorded survey monuments and features pertaining to the establishment of property lines and ROW boundaries and shall perform a survey to locate, identify, measure and document all such monuments and features that are found. Consultant shall collect and review general Project background documentation, recorded surveys and conveyance documents, and shall follow all statutes.

Consultant shall develop and provide a centerline description from one end of the project limits to the other to be used by County with their Resolution of Necessity for the project. County will provide an example if needed. County will review and provide feedback to Consultant if needed. Consultant shall make any necessary changes requested by County.

For each file, Consultant shall prepare ROW Maps and Descriptions based upon centerline stationing and in accordance with the current ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide and the Right of Way Engineering Manual. County will review and provide feedback to Consultant if needed. If any acquisitions are on a State highway, the preliminary and final versions of the property descriptions and maps will be reviewed and approved by the State. Consultant shall make any necessary changes requested by County and State.

For each file, Consultant shall prepare a ROW Impact Map, developed to County standards. County will provide an example if needed. County will review and provide feedback to Consultant if needed. Consultant shall make any necessary changes requested by County.

14.3 Consultant Deliverables and Schedule

Consultant shall provide:

- A centerline description of the project in PDF format to APM per the schedule developed in Task 1 Project Management.
- ROW Impact Map(s) in PDF format to APM per the schedule developed in Task 1 Project Management.
- ROW real property description(s) Exhibits A and B in PDF format to APM per the schedule developed in Task 1 Project Management.
- A copy of the Title Report and vesting documents for each property owner and ROW file in PDF format to APM per the schedule developed in Task 1 Project Management.

14.4 Right of Way Programming Estimate

Consultant shall prepare a ROW programming estimate for use by ODOT and County Right of Way Sections to program funds for property acquisition. Consultant shall obtain the most current version of the Programming Estimate form to be used from the County Right of Way Manager or designee. The programming estimate shall include the Project name and county in which the Project is located and all

Project ROW costs, including separate Consultant, County, and ODOT ROW costs as outlined in the Right of Way Services agreement with the Local Public Agency. The ROW programming estimate shall include dollar amounts for the following items: Land & Improvements; Damages/Cost to Cure; Relocation; Demolition; Personnel & Administration; Legal & Contingencies and totals for all Items. The programming estimate shall be submitted to the County Right of Way Manager or Designee for review.

Consultant shall revise and re-submit programming estimate, incorporating comments received from County and ODOT.

14.4 Consultant Deliverables and Schedule

Consultant shall provide:

- 1 draft Programming Estimate for delivery electronically to County Right of Way Manager or Designee and APM per the schedule developed in Task 1 Project Management.
- 1 final Programming Estimate for delivery electronically to County Right of Way Manager or Designee and APM per the schedule developed in Task 1 Project Management.

PLEASE NOTE: Consultant shall not perform any Services described in Tasks 14.5 through 14.10 below until County issues NTP for the ROW phase of the Project.

14.5 Preliminary Activities

Upon receipt of authorization to proceed with ROW Acquisition, Consultant shall set up ROW parcel files and deliver a General Information Notice (GIN), acquisition and relocation brochures, and a copy of the applicable portion of the ROW Acquisition map (marked Preliminary and showing the parcel(s) to be purchased) to all owners and occupants of affected properties. Consultant shall send GIN via certified mail with return receipt request. Proof of delivery must be kept in the parcel file. Consultant shall use County GIN form.

Consultant shall prepare and maintain a Diary of Personal Contact for each file. The Diary of Personal Contact must include dates associated with the mailing and receipt of delivery of the GIN in addition to the date, place of contact, parties contacted, what was delivered and explained, and a summary of what was discussed, for all contact with affected property owners and/or their representatives.

14.5 Consultant Deliverables and Schedule

Consultant shall provide:

- GINs, 1 hard copy and 1 digital copy of each GIN and attached map for each file to County ROW Manager and APM within 20 business days following NTP for the ROW acquisition phase.
- 1 digital copy of the certified mail receipt and returned receipt request for each property with the Final Report Package or RC Package.

14.6 Appraisal and Appraisal Review

The County intends to acquire most permanent and temporary construction easements through an Administrative Determination of Just Compensation (ADJC) process for files that are valued less than \$10,000. ADJC will be determined through analysis and review of the sales used in the appraisal of the similar zoned properties.

Consultant shall use appraisers who are licensed or certified in the State of Oregon, experienced and competent in eminent domain appraising, and on ODOT's Qualified Appraisers List.

An initial analysis will be made to determine which files will need appraisals. The analysis will be based on the property impact maps. Consultant shall bring the results of the analysis to County ROW Manager and APM for discussion and decision. Consultant shall provide an appraisal for all files that are estimated to be valued above \$10,000. At least one appraisal will be needed for each of the properties in the four following zoning designations: R8.5/R7/R10, MR-1, HL, and C-3.

All real estate appraisals provided by the Consultant shall be prepared using forms or formats of, or approved by, the County's ROW Section. The types of appraisal reports shall fall into the following categories:

- Taking and Damages appraisals for simple takings.
- Detailed (before/after) appraisals for complex takings.

Consultant shall prepare all reports and estimates necessary to value specialty items to be acquired or to support cost-to-cure estimates.

Consultant shall provide not fewer than 15 days written notice to owners of the planned appraisal inspections. The property owner and designated representative, if any, shall be invited to accompany the appraiser on any inspection of the property for appraisal purposes. Consultant shall provide field markings of property boundaries to facilitate the inspection under Task 2.6. Consultant shall send this notice via certified mail with return receipt request. Proof of delivery must be kept in the parcel file.

Special Benefits, if any, must be quantified by the appraiser whether or not there are any compensable damages to the property.

Tenant owned improvements included in the acquisition must be identified and segregated in the appraisal.

Consultant shall perform independent reviews of appraisals. Consultant shall forward both appraisal and review to County for final approval.

County will establish just compensation for each property owner and will notify the Consultant.

Consultant shall continue documentation in the Diary of Personal Contact for each file. The Diary of Personal Contact must include dates associated with the delivery of the written notice of appraisal inspection, and a record of other personal contacts conducted during the appraisal process.

14.6 Consultant Deliverables and Schedule

Consultant shall provide:

- 15 Day Notice of Appraisal Inspection to each property owner and electronic copy to County's ROW Section and APM per the schedule developed in Task 1 Project Management.
- A photo copy of certified mail receipt and signed return receipt request for each 15-Day Notice
- Up to six (6) appraisals. One hard copy and one digital copy of each Appraisal and one digital copy of each Appraisal Review and Specialty Report for each file to County ROW Section and APM as per Project Design Schedule developed under Task 1.

14.7 Acquisition Services

All ROW shall be acquired in the name of the County as easement if a partial acquisition and as fee if a whole acquisition is required. Consultant shall conduct negotiations, on behalf of the County, in good faith and in compliance with all federal and state laws and regulations and County policies and procedures. Consultant shall conduct negotiations for acquisition of real property based on just compensation issued by County. Consultant shall use Acquisition Agents who are licensed in the State of Oregon to conduct real estate transactions, experienced and competent in negotiating for eminent domain acquisitions, and approved by ODOT to conduct ROW acquisitions for Federally Funded projects.

Consultant shall consult with County to determine the extent to which Consultant shall be responsible for clearing title encumbrances identified on the Preliminary Title Report or making the offer subject to clearing title encumbrances. Consultant shall present any requests for taking title subject to one or more outstanding interests to County for approval. Fee owners' and contract purchasers' ownership interests must be addressed. When impacted by the taking, lessees' interests must also be addressed.

Consultant shall prepare and present to County the draft Offer Packets for review before any offers are made. All offers shall be made by Consultant as County's buyer's agent. These Offer Packets shall include, but are not limited to, acquisition and relocation brochures, offer-benefit letter, acquisition and relocation summary statements, County's Obligations Agreement if appropriate, copy of appraisal or ADJC, map of acquisition, instruments of conveyance and W-9 form (if money is exchanged).

To every reasonable extent possible, Consultant shall make offers in person, especially where the acquisition involves either a major impact to the property or the displacement of persons occupying the property. If this is deemed not possible, Consultant shall send offer package via certified mail with return receipt request. Dates of delivery must be documented in the Diary of Personal Contact and the file.

Consultant shall make every reasonable effort to acquire the ROW expeditiously by negotiation. Consultant shall give property owners reasonable opportunity to consider the offer (statutorily 40 calendar days) and to present material the owner believes is relevant to determining the value of the property. Consultant shall attempt to negotiate an approved administrative settlement, but shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property (49 CFR 24.102(h)).

- IF the OFFER is ACCEPTED, Consultant shall present a Final Report Packet covering the acquisition of ROW to County for final approval, acceptance, payment, conveyance of title and recording. The Final Report Packet shall include County's Final Report and Transmittal of Documents form and all other documentation associated with the ROW activities conducted for this file. Consultant shall include satisfactory documentation of signer's authority to sign if Grantor is a Trust, Corporation, Partnership, or Non-Profit.
- IF a COUNTER OFFER is received, Consultant shall submit the proposed COUNTER OFFER (exceeding the estimate of just compensation) with a justification letter and owner supplied supporting documentation to County for approval. If accepted see above.
- IF an acceptable agreement is not reached within the timeframe set by County, Consultant shall prepare and submit a Recommendation for Condemnation Packet. The RC Packet shall include County's RC form and all other documentation associated with the ROW activities conducted for this file.

Consultant shall continue documenting the Diary of Personal Contact for each file. The Diary of Personal Contact must include a dated record in chronological order of all contact with property owners and or their representatives and all occupants and or their representatives, including but not limited to the means by which the communication took place (email, fax, telephone, in person, etc.), the location of the contact, efforts to achieve amicable settlements, owners' suggestions for changes in plans, responses to owners' counterproposals, etc.

No communications with property owners or occupants and or their representatives are to be made via text.

14.7 Consultant Deliverables and Schedule:

Consultant shall provide the following per the Project Design Schedule developed under Task 1:

- Draft Offer Packet for review for each file to County ROW Manager and APM.
- Final Offer Packet for review to County ROW Manager (if deemed necessary by County on a case by case basis).
- Final Report Packets one for each file, containing the file contents and a Final Report (County form) to County ROW Manager.
- If applicable, proposed counter offers with justification information to County ROW Manager.
- If applicable, Recommendation for Condemnation to County ROW Manager and APM.

Assumptions:

- Consultant to secure and pay for all title reports under Task 2.1.
- County will provide conveyance document forms.
- County will approve GIN and Offer documents.
- County will disperse payment to property owners and record all documents.
- Number of parcels/files 39 is based on County’s preliminary assessment and is subject to change. If more or less, payment for this scope of services may be adjusted up or down by negotiation.
- Consultant will provide a project centerline description, legal descriptions and exhibits, property impact maps, and other drawings as needed.
- Consultant will provide the most up-to-date plan sheets as needed for the ROW process.

TASK 15 - PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)

Consultant shall prepare plan sheets according to the following table:

Table 15

| Name of Sheet | Estimated # of Sheets | 60% PS&E Submittal | Advanced Submittal | Final Submittal |
|------------------------|------------------------------|-------------------------------|---------------------------|------------------------|
| Title sheet | 1 | X | X | X |
| Layout of sheets | 1 | X | X | X |
| General notes | 1 | X | X | X |
| | | | | |
| Legend & Abbreviations | 1 | X | X | X |
| Typical sections | 1 | X | X | X |

| | | | | |
|---|---|---|---|---|
| Civil details | 5 | X | X | X |
| Roadway plan and profiles (1"=30') | 8 | X | X | X |
| Roadway cross sections | 4 | X | X | X |
| Driveway profiles/elevations | 5 | X | X | X |
| ADA ramp/intersection details | 5 | X | X | X |
| Drainage /stormwater plan/profiles (1"=30') | 8 | X | X | X |
| Drainage & water quality details | 4 | X | X | X |
| Erosion control cover & notes | 1 | X | X | X |
| Erosion control plans (1"=40') | 5 | X | X | X |
| Erosion control details | 1 | | | |
| Retaining wall #1 plan and profile | 1 | X | X | X |
| Retaining wall #1 sections | 1 | X | X | X |
| Retaining wall details | 2 | X | X | X |
| Temporary traffic control plan (1"=40') | 5 | X | X | X |
| Temporary protection and direction of traffic (including bicycle and pedestrian traffic) (1"=40') | 6 | X | X | X |
| Signal legend | 1 | X | X | X |
| Signal plans | 4 | X | X | X |
| Signal details | 1 | X | X | X |
| Sign and striping plans (1"=40') | 5 | X | X | X |
| Sign and striping details | 1 | X | X | X |
| Sign and post data table | 2 | X | X | X |

15.1 Preliminary PS&E (60%)

Consultant shall prepare preliminary (60%) documents for the Project incorporating comments from DAP review (Task 13).

Consultant shall prepare drawings, per Table 15 above and:

- Reference County and ODOT standard drawings and details;
- Prepare the 2018 Bid Booklet and Special Provisions Document Assembly form;
- Prepare construction cost estimate quantities and unit costs utilizing ODOT standard bid items. Consultant shall prepare the estimate to include mobilization, contingency, and construction engineering (the percentages will be agreed to by both parties). The estimate must be based on unit prices utilizing Agency and Consultant's historical bid information and considering a Spring of 2021 bid letting.

The APM will submit a Preliminary PS&E Review Comment Log as a single electronic file to Consultant.

Consultant shall address comments received and communicate with the APM the proposed resolution to the comments. Consultant shall provide written response to address review comments received from the APM and LAPM on the Preliminary PS&E.

15.1 Consultant Deliverables and Schedule

Consultant shall submit the following to the APM within 8 weeks of the APM written approval (e-mail acceptable) of the final DAP (Task 13):

- Preliminary Plans (PDF)
- Special Provisions Document Assembly Form (PDF)
- Preliminary Construction Cost Estimate in Excel/Table format (PDF)

Consultant shall submit Preliminary PS&E Review Comment Log with initial responses to the APM within 2 weeks of receipt of comments.

15.2 Advance PS&E (90%)

This task includes preparation of advance plans, Special Provisions, construction cost estimate, risk assessment, and quality control reviews, as well as incorporating comments from previous reviews.

Advance Plans:

Consultant shall prepare drawings, per Table 15 above and reference County and ODOT standard drawings and details, and other related drawings.

Advance Special Provisions:

Consultant shall update Project Special Provisions based on changes and clarifications to the Project design, as determined at DAP and in accordance with 2018 *Oregon Standard Specifications for Construction as amended* and ODOT *Specification and Writing Style Manual*. Consultant shall prepare the Special Provisions to the 90% level (the “Advance Special Provisions”) in MS Word utilizing “Track Changes”.

The Advance Special Provisions must incorporate the County’s boilerplate Special Provisions corresponding with the Project Bid Date. If a bid date has not been identified, Consultant shall use the most current boilerplate Special Provisions. Boilerplates, by bid date, can be found at the following website:

https://www.oregon.gov/ODOT/Business/Pages/Standard_Specifications.aspx

Consultant shall obtain concurrence from the proper County technical resource for any unique special provisions or changes made to the boilerplate special provisions, beyond fill-in-the-blank changes. Consultant shall document the changes made to the Special Provisions and technical resource concurrence using ODOT’s Special Provision Summary Form. The list of ODOT technical resources and corresponding special provision can be found at the following website:

<http://www.oregon.gov/ODOT/HWY/SPECS/Pages/index.aspx>

Consultant shall submit the ODOT Civil Rights Request for Goals Worksheet to the ODOT Office of Civil Rights and incorporate the appropriate Disadvantaged Business Enterprise (“DBE”) goals,

Minority, Women, and Emerging Small Business (“MWESB”) aspirational target values, and On the Job Training (OJT) hours into the Project Special Provisions;

Consultant shall submit the ODOT risk assessment form to the APM and incorporate the resulting insurance information into the Special Provisions.

Advance Cost Estimate:

Consultant shall update the construction cost estimate quantities and unit costs utilizing ODOT standard bid items to support the Advance Plans (the “Advance Cost Estimate”). Consultant shall prepare the estimate to include mobilization, contingencies, and construction engineering. The estimate must be based on unit prices utilizing ODOT, County and Consultant historic bid information and anticipating a Spring of 2021 bid letting. Consultant shall prepare the final cost estimate using an electronic format (native file and *.pdf) version using Microsoft® Excel software.

Construction Schedule:

Consultant shall prepare a construction schedule, using the Critical Path Method (MS Project and PDF format) that outlines a reasonable Project construction sequence and time frames. The schedule must include anticipated material lead times, Project milestones and anticipated construction phasing and staging.

Advance PS&E Revisions/Corrections:

The APM will submit a single electronic file of Advance PS&E Comment Log review comments to Consultant.

Consultant shall address comments received and communicate with the APM the proposed resolution to the comments. Consultant shall provide written response to address review comments received from the APM on the Advance PS&E.

15.2 Consultant Deliverables and Schedule

Consultant shall submit the following to the APM within 8 weeks of the APM’s written approval (e-mail acceptable) of the Preliminary PS&E (60%) (Task 15.1):

- Advance Plans (PDF)
- Advance Special Provisions in electronic format (MS Word, utilizing “Track Changes”)
- Advance Construction Cost Estimate in electronic format (Excel and PDF)
- Construction schedule in electronic format (MS Project format and PDF)
- Comment response log for plans and specifications (In an Excel document)
- ODOT risk assessment form
- Special Provisions summary form
- Civil Rights request for goals worksheet

Consultant shall submit Advance PS&E Review Comment Log with initial responses to the APM and LAPM within 2 weeks of receipt of comments.

15.3 Final PS&E Package (100%)

This task includes preparation of the Final PS&E package for bidding purposes. The final plans, Special Provisions, and construction cost estimate must incorporate all revisions agreed to and documented on the Advance PS&E Comment Log (Task 15.2).

Consultant shall coordinate with the APM to ensure all deliverables listed on the most current Final PS&E Submittal and Completeness checklists are satisfied. Refer to the latest version of the Final PS&E checklists at: http://www.oregon.gov/odot/hwy/opl/pages/manuals_forms_etc.aspx

County will review final plan sheets and note any final revisions needed prior to preparation and submittal of Professional of Record (POR)-signed Final Plans within 2 weeks of receipt of documents from Consultant. Consultant shall incorporate final revisions into POR-signed Final Plans.

Upon request from County, Consultant shall resolve comments from ODOT.

15.3 Consultant Deliverables and Schedule

Consultant shall submit the following, 4 weeks prior to the PS&E Due Date to the County:

| Description | To APM | | To ODOT LAL | |
|--|------------------|-------|---------------|-------|
| | Electronic | Paper | Electronic | Paper |
| Un-signed Final Design Plans (11 x 17) | PDF | X | PDF | X |
| Project Special Provisions | Word & PDF | X | PDF | X |
| POR Certification with all Special Provisions sections stamped | PDF | | PDF | |
| Signed Special Provision Integrity Certification | PDF | | PDF | |
| Email from Civil Rights noting Applicable DBE goals, MWESB targets and OJT hours | | | | |
| Cost Estimate | Excel and PDF | | Excel and PDF | X |
| CPM Construction Schedule (11 x 17 in color) | MS Project & PDF | | PDF | X |
| Fuel Escalation Worksheet | Excel | | Excel | |
| Steel Escalation Worksheet | Excel | | Excel | |
| Project Risk Assessment Summary | PDF | | PDF | |
| NEPA Approval Documentation (delivered under Task 3) | PDF | X | PDF | |
| Utilities Certification (delivered under Task 5) | PDF | X | PDF | |

Consultant shall submit the following to APM, no later than 1 week prior to the PS&E Due Date to the ODOT LAL:

- POR-signed Final Plans printed on 11 x 17 paper, 4 copies
- POR-signed Final Plans in PDF format

Consultant shall submit the following to APM, no later than 1 week prior to the PS&E Due Date to the County:

- POR-signed Final Plans printed on 11 x 17 paper, 2 copies

- POR-signed Final Plans in PDF format

TASK 16 BID AND AWARD ASSISTANCE

This task includes the preparation of addenda, as needed, and responding to questions during the bidding phase. Consultant shall respond to questions from County and Construction Contractors about the plans and specifications during the bidding process. Duties of the PM in the Bid and Award phase are summarized in the ODOT Construction Manual, Chapter 6 – Examination of Project Site or Data by Bidders. This document can be found at

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/CAIndex.aspx>. This document is revised and updated from time to time. Review this chapter to ensure that the scope of work adequately reflects the responsibilities of the PM as detailed in Chapter 6 of the ODOT Construction Manual and revise the scope of work as necessary to fit the needs of the project.

Consultant shall prepare all required Contract addenda to provide clarification to the bid documents. Consultant shall submit the addenda to County for distribution to bidders.

16.1 Questions During Bidding

Consultant’s Project Manager, or Consultant’s designee(s) approved by County, shall assist County with questions regarding the bid documents and bid process. Consultant shall respond to all questions in writing within 3 day(s) to County Project Manager.

Consultant shall, during the bidding process, assist the County with the communications with Construction Contractors and suppliers in a manner that assures that no Construction Contractor or supplier is provided with information not in the bidding documents and that could provide a bidding advantage or disadvantage. Consultant shall prepare a written log to document conversations and questions asked by construction contractors or suppliers and the answers provided to the County. Consultant shall maintain the written log in the project file and provide upon request of the APM or County.

16.1 Consultant Deliverables and Schedule

- Written log of conversations, questions and answers, provided to APM upon request.

F. CONTINGENCY TASKS

The table below is a summary of contingency tasks that County, at its discretion, may authorize Consultant to perform. Details of the contingency tasks and associated deliverables are stated in the Task section of the SOW. Consultant shall complete only the specific contingency task(s) identified and authorized via written (email acceptable) Notice-to-Proceed (“NTP”) issued by County's Project Manager. If requested by County, Consultant shall submit a detailed cost estimate for the agreed-to contingency Services (up to the NTE amount(s) in the Contingency Task Summary Table) within the scope of the contingency task.

If County chooses to authorize some or all of these tasks, Consultant shall complete the authorized tasks and deliverables per the schedule identified for each task. The NTP will include the contingency task name and number, agreed-to due date for completion and NTE for the authorized contingency task.

Each contingency task is only billable (up to the NTE amount identified for the task) if specifically authorized per NTP. In the table below, the “NTE for Each” amount for a contingency task includes all

labor, overhead, profit, and expenses for the task. The funds budgeted for contingency tasks may not be applied to non-contingency tasks without an amendment to the Contract. The total amount for all contingency tasks authorized shall not exceed the maximum identified in the table below. Each authorized contingency task must be billed as a separate line item on Consultant's invoice.

CONTINGENCY TASK SUMMARY

| Contingency Task Description | NTE for Each | Max Quantity | Method of Compensation | Total NTE Amount |
|--|--------------|--------------|------------------------|---------------------|
| 2.6 Staking | | 1 | T&M | \$8451.34 |
| 3.3.2 Section 106 Determination of Eligibility | | 1 | T&M | \$6744.73 |
| 3.3.3 Section 106 Finding of Effect | | 1 | T&M | \$5378.73 |
| 3.4.2.1 Work Plan and Health and Safety Plan | | 1 | T&M | \$2312.59 |
| 3.4.2.2 Sample Collection and Reporting | | 1 | T&M | \$7289.59 |
| 3.4.5.1 Shoulder Material Investigation/Work Plan and Health and Safety Plan | | 1 | T&M | \$3807.59 |
| 3.4.5.2 Sample Collection and Reporting | | 1 | T&M | \$10269.59 |
| 3.4.6.1 Site-Specific Investigations/Work Plan and Health and Safety Plan | | 1 | T&M | \$3807.59 |
| 3.4.6.2 Sample Collection and Reporting | | 1 | T&M | \$13794.59 |
| 3.4.7 Design Acceptance Narrative | | 1 | T&M | \$2093.24 |
| 3.6.2 Functional Assessments | | 1 | T&M | \$8222.68 |
| 3.7.1 USACE/DSL Joint Permit Application and DEQ Section 401 Certification | | 1 | T&M | \$16084.86 |
| 3.7.2 Oregon DEQ 1200-C Permit Application | | 1 | T&M | \$1783.85 |
| 10.3 Roadway Design Exceptions | | 1 | T&M | \$4326.11 |
| 12.1 Permit Research | | 1 | T&M | \$2288.99 |
| 12.2 Local Permit Acquisition | | 1 | T&M | \$4389.41 |
| Total NTE For All Contingency Tasks: | | | | \$101,045.47 |
| | | | | |
| | | | | |

EXHIBIT B - COMPENSATION

Definitions:

CPFF - Cost Plus Fixed Fee

FCCM - Facilities Capital Cost of Money

NBR - Negotiated Billing Rates. NBRs are fully loaded billing rates used by firms that do not have an audited, approved overhead rate. NBRs are inclusive of direct salary, indirect expenses and profit.

NTE - Not to Exceed Amount

T&M - Time and Materials

A. METHOD of COMPENSATION for NON-CONTINGENCY TASKS

Payment will be made for completion of, or acceptable monthly progress on, tasks and deliverables in conformance with Contract requirements and all applicable standards. Consultant shall complete all Services and provide all deliverables as defined in the Contract. If the applicable compensation is exhausted, but Services and deliverables are not complete, Consultant shall complete the Services and provide the deliverables to County's satisfaction without additional compensation.

The amount payable under the Contract may be adjusted by County or renegotiated to:

- Reduce the NTE, Fixed-Price or Fixed-Fee amount associated with Tasks/Deliverables that were not authorized by County or not performed by Consultant;
- Reduce the NTE, Fixed-Price or Fixed-Fee amount commensurate with deductive amendments to reduce the risk associated with the project or to reduce the scope of work required under the Contract;
- Increase the NTE, Fixed-Price or Fixed-Fee amount for additional Tasks/Deliverables added to the scope of work via amendment to the Contract.

1. Cost Plus Fixed Fee with Not-To-Exceed (CPFF)

County will pay Consultant actual costs plus the negotiated fixed fee, up to the NTE established in the Contract, to complete the Services required under the Contract.

Actual Costs. Actual costs are limited to:

- **Direct Salary Costs** -the direct salary rate (up to the maximum rate approved in the Contract for the employee's classification) paid to the specific employee(s) productively engaged in work to complete the Services required under the Contract.
- **Allowable Indirect Costs** - (See section I, Indirect Costs)
- **Direct Non-Labor Costs** (without mark-up) - Approved travel costs (up to the rates established in Section B of this Exhibit) and other approved direct-non labor expenses that are not included in overhead.
- **Subconsultant Costs** (without mark-up) - the actual labor costs, direct non-labor costs (as described above) and indirect costs that have been billed to Consultant and recognized by Consultant as valid, undisputed and payable.

Fixed-Fee. A profit rate will be negotiated. The Fixed-Fee amount will be developed by multiplying the negotiated profit rate by the Labor Costs (excluding labor costs from NBRs) plus Allowable Indirect Costs for the project. The cost basis for calculating the Fixed Fee must not include:

- direct non-labor expenses,
- labor costs for firms using NBRs (these rates already include profit),
- FCCM

- costs for contingency tasks, if any. Cost and profit for contingency tasks will be included in the amount negotiated for each contingency task and will not be included in the Fixed-Fee for non-contingency tasks.

**The total not-to-exceed amount for allowable, actual costs for non-contingency tasks is:
\$ 694,772.30**

The total dollar amount for the Fixed Fee for non-contingency tasks is: \$ 52,847.30

(The non-contingency costs and fixed-fee amounts for Consultant and each subconsultant is set forth in the Summary page of the BOC incorporated into this Contract.)

Consultant acknowledges and agrees that the Fixed-Fee is only due and payable for work authorized by County and satisfactorily completed by Consultant.

B. PAYMENT OPTIONS

Payments will occur only after County has determined that Consultant has completed, and County has accepted, the required Services (including defined deliverables) for which payment is sought via a properly submitted and correct invoice.

(For CPFF and T&M) - Progress Payments for Acceptable Progress. County will pay Consultant monthly progress payments for actual costs, up to the Contract NTE amount, for Consultant's acceptable (and verifiable) progress on tasks and deliverables included in the invoice.

Basis of Payment or Fixed Fee (for CPFF only)

The Basis of Payment for Fixed Fee is as follows:

- The Fixed-Fee will be paid for accepted and verified progress based on an estimated percentage of completion of the Services and deliverables required under the Contract.
- The Fixed-Fee will be paid as a single lump sum payment following completion and acceptance of all Services and deliverables required under the Contract.
- The Fixed-Fee will be paid in the amounts identified for each completed and accepted milestone: _____ **[Identify milestones and dollar amount for each.]**

C. TRAVEL

Travel costs are allowable only if they are authorized under the Contract and if the travel is essential to the normal discharge of County's responsibilities and is related to official County business. **All travel shall be conducted in the most efficient and cost-effective manner that results in the best value for the State.** Personal expenses shall not be authorized at any time. The following guidelines shall apply to the Contract:

- The travel, lodging, and per diem rates referenced in this Section C are the maximums that Consultant's estimate (or reimbursement, if applicable) may be based on. Travel rates other than those referenced in this Section C may be negotiated in the Contract, however, under no circumstance shall travel, lodging and per diem rates exceed the maximums set forth by the State Controller at <https://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> .
- Mileage - For compensation based on Cost-Plus-Fixed-Fee or Time and Materials (or Fixed Price or Price Per Unit when travel reimbursement is approved and mileage is compensated separately), all mileage approved by County will be reimbursed according to the rates set forth by the State Controller at

<https://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> that are in effect on the date when the travel occurs.

- For compensation based on Cost-Plus-Fixed-Fee or Time and Materials, Consultant shall submit receipts for travel-related expenses billed to County, such as but not limited to, lodging, rental vehicles, and air fare. If lodging is shared by two or more travelers, the lodging receipt must indicate the names of any travelers on official State business who shared the room.

D. INVOICES

Consultant shall submit invoices in the format required by County (and with supporting documentation to substantiate charges on the invoice, including a detailed line-item breakdown of labor and direct non-labor costs by task/subtask) no more frequently than once per month. The address for invoice submittal is set forth in Exhibit J. In addition to all other applicable invoice requirements in this section D, each invoice must include the following information:

- The County's Contract number
- The County's project number

Progress Reports: Each monthly invoice must include a progress report. The monthly progress report must cover the period invoiced and, at minimum, must:

- Describe the previous month's project activities and the planned activities for the next month;
- For each task/deliverable identify the percentage completed during the month and the cumulative percentage completed;
- Reconcile progress of each task/deliverable with the schedule identified for each.
- Identify issues/concerns that may affect the project Statement of Work, schedule or budget.

"Paid Summary Report"

Consultant shall complete and submit to APM [Paid Summary Report\(s\)](#) [form 734-2882] per the instructions on the form. Consultant must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. **This reporting is required for all Contracts that include subs, regardless of funding or whether or not a DBE goal or Certified Small Business Aspirational Target is assigned.**

CPFF and T&M Compensation:

- Consultant shall prepare invoices based on the actual hourly rates, up to the maximums for each respective classification approved in the Contract, of the employees (or subconsultants) that performed the Services.
- Consultant shall provide documentation in each invoice to itemize all reimbursable actual labor costs and direct non-labor expenses for which Consultant seeks reimbursement, including a breakdown by task of the number of labor hours for each employee, employee names and classifications. Include receipts for any items purchased or equipment rentals for the Project that exceed \$100. Include copies of all invoices, similarly detailed, from authorized subconsultants.
- County will reimburse Consultant for approved travel expenses incurred in accordance with **Exhibit B**, Section C of the Contract, if County has agreed to reimburse Consultant for travel expenses. For travel expense claims include receipts for lodging; rental cars, airfare.

Fixed-Price Compensation. Consultant shall prepare invoice(s) based on the payment option identified in Section B of this Exhibit:

- For Contracts using "Payment upon Full Completion" payment option, Consultant shall submit a single invoice requesting payment for the full Fixed-Price amount after all Services have been completed and all Deliverables have been accepted by County.

- For Contracts using “Progress Payments for Percentage of Services Completed” payment option, Consultant invoices shall be limited to an amount commensurate with the percentage of the total Services (including Deliverables) that were completed in the month invoiced.

County may request a full written itemization of and receipts for, but not limited to, any or all labor and direct costs billed by Consultant. Consultant shall provide written itemization and receipts to County within 5 business days of County’s request. County will not make payment to Consultant under the applicable invoice until County has received all requested supporting documentation from Consultant and County has approved the invoiced amounts. Any overdue payments to Consultant by County for an approved invoice are subject to ORS 293.462.

E. PAYMENT TERMS

Payment will be made to Consultant no later than 45 calendar days from receipt of invoice completed in conformance with all contractual requirements. County will endeavor to notify Consultant within 10 business days of receipt of invoice regarding any necessary revisions or corrections to the invoice. If revisions are necessary, payment will be made no later than 45 calendar days from receipt of the revised invoice. Any interest for overdue payment will be in conformance with Oregon law.

F. CORRECTIVE WORK

Consultant shall complete all Services, including Deliverables, as required in the Contract to County’s satisfaction. If County, using reasonable discretion, determines that the Services or associated deliverables, or both, are unacceptable, County shall notify Consultant in writing of the deficiency. Within 7 calendar days (unless a different timeframe is agreed to by the Parties) of receipt of the deficiency notification Consultant shall respond to County outlining how the deficiency shall be corrected. Consultant shall correct any deficiencies in the Services and Deliverables to County’s satisfaction without further compensation. County will not unreasonably withhold payment.

G. WITHHOLDING/RETAINAGE

County reserves the right to initiate, at any time during the Contract, withholding of payment equal to 5% of the amount of each invoice submitted to County under the Contract. County will make final payment of any balance due to Consultant promptly upon verification of completion and acceptance of all Services by County and will pay interest as required on retainage.

H. PAYMENT REDUCTION

County, or its duly authorized agents, may audit Consultant’s fiscal records, including certified payroll and overhead records at any time. If County finds previously undisclosed inaccurate or improper costs have been invoiced and paid, County will notify Consultant and seek clarification. County, in its sole discretion, may reduce the payment for Services by withholding the inaccurate or improper amounts from any future payment to Consultant, withhold the inaccurate or improper amounts from final payment to Consultant, or may use any other means to seek recovery of already paid but improperly calculated amounts.

I. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES

Specific Limitations

For cost reimbursement compensation such as CPFF or T&M, Consultant shall invoice County only for actual productive time Consultant personnel spend on Services by any level of Consultant’s staff (up to the established not-to-exceed amount). Consultant’s general supervisors or personnel who are responsible for more than one County project shall charge only for actual productive time spent directly on the project identified in the Contract.

County will pay Consultant only up to the hourly rates set forth in the Contract that are commensurate with the type of Services performed regardless of the classification, title, or level of experience of the

individual performing those Services. However, under no circumstances shall Consultant invoice County based on higher direct salary rates than the actual amount paid to its employees.

Discriminatory Pricing. Direct and indirect costs as applied to work performed under County contracts and subcontracts may not be discriminatory against the County. It is discriminatory against the County if employee (or owner/sole proprietor) compensation (in whatever form or name) is in excess of that being paid for similar non-County work under comparable circumstances.

Discriminatory Wage Rates. Pursuant to ORS 279C.520, Consultant shall comply with the prohibitions set forth in ORS 652.220. Failure to comply is a breach that entitles the County to terminate the Contract for cause.

Employee Discussions Regarding Compensation. Consultant shall not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person {see ORS 279C.520(1)}.

Unallowable Charges

County will not pay for direct or indirect costs that are unallowable under the provisions of [48 CFR Part 31](#).

Costs or direct charges for, but not limited to, the following are not reimbursable:

- Costs for negotiation of the Contract or Contract amendments, including but not limited to proposal preparation, BOC preparation, preparation for negotiations, and negotiation of level of effort/budget.
- Costs related to disputes or E&O Claims, including but not limited to discussions, meetings and preparation of any dispute or claim related documentation.
- Mark-up on subcontractors or direct non-labor costs.
- Transfer of knowledge and information related to Key Person replacements.
- Correcting or making adjustments to incorrect or improper invoices.
- Direct compensation for items included in firm's indirect costs (unless properly credited back to indirect cost).
- Premium costs incurred as a result of working overtime or holidays. (Premium time should normally be charged to overhead. In accordance with ORS 279C.520, employees shall be paid at not less than time and one-half for all overtime worked and for work on legal holidays, except for individuals who are excluded from receiving overtime under personal services contracts pursuant to ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209.)

J. INDIRECT COSTS; SALARY and BILLING RATE SCHEDULES

1. Approved cost data on file with ODOT - If Consultant or its subconsultants have current, approved overhead, salary, or NBR rate schedules on file at ODOT, Consultant and its subconsultants will submit those approved rate schedules and any required certifications (or County may obtain rate schedules from ODOT) as required in subsections 2 and 3 below for use under the Contract.

2. Overhead Schedule - If Consultant or subconsultants calculate overhead as part of their normal business practice, the overhead schedules shall be prepared and submitted in accordance with ODOT's Billing Rate Policy (as may be revised from time to time by ODOT) available at: <https://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/brPolicy.pdf>. Consultant Certification of compliance with Federal Cost Principles is required per FHWA directive 4470.1a: <https://www.fhwa.dot.gov/legsregs/directives/orders/44701a.htm>. A signed [Certification of Final Indirect Costs form](#) must be submitted with the overhead schedule.

In order to assess the adequacy of an audited overhead rate for use in fair and reasonable price negotiation, County and/or ODOT may evaluate a firm's financial capability, internal control structure, and overhead schedule. This includes a determination as to the applicability of historical overhead rates to the anticipated future contract period, performing financial ratio analysis, evaluating overhead account trends and utilization rates for reasonableness.

3. Salary and Billing Rate Schedules

Consultant shall, and shall cause all of its subconsultants to submit electronically to County the applicable rate schedules described below.

Direct Salary Rate Schedule - includes the name, classification and actual direct salary rate as approved for each employee that may be used under the Contract. This schedule is required for firms that calculate an overhead rate. This schedule will not be included in the Contract but will be retained by County.

Negotiated Billing Rate Schedule - may be required for Consultants or subconsultants that do not have a cognizant or acceptable independent audit for overhead rates (or do not calculate overhead as part of their normal accounting practice) and County determines it is in the public's best interest to negotiate specific billing rates. Instead of calculating a billing rate using a formula that applies overhead, profit, and FCCM to the direct salary rate, this schedule lists negotiated rates that are fully inclusive of profit, overhead and any cost of living or merit raises. The billing rates invoiced under the Contract must not exceed the rates per classifications listed in the schedule and may be no greater than the lowest rates charged to other public or private clients.

Direct Non-Labor Rate Schedule - is an optional schedule used to list actual costs of reimbursable items that are not included in the firm's overhead rate (or that are properly applied as a credit in overhead calculation).

Approved Rate Schedules - The rate schedules approved for the Contract and the BOC are incorporated into this Contract by this reference. Prior to approval of additional subconsultants, Consultant shall provide to County any requested documentation of qualifications and experience of the prospective subconsultant and its staff.

K. RATE REVISIONS

The hourly rates (including escalations, if any) approved for use under this Contract shall remain in effect throughout the duration of the Contract unless revisions are approved by County. Any approved revisions to the hourly rates allowable under the Contract shall not cause an increase in the Contract NTE amount (exceptions may be approved by County on a case by case basis).

L. BREAKDOWN OF COSTS (BOC)

Prior to execution of the Contract or any amendments that add Services, Consultant shall prepare and submit a BOC based on the approved overhead and actual direct salary rates (and approved NBRs as applicable) for each classification to be used under the Contract. Consultant shall include names of proposed staffing in the BOC.

The BOC must include a detailed breakdown of the costs for each element of the work regardless of compensation method. The BOC must identify:

- a) the proposed staff assignments (classifications and names) and hours per task and sub-task;
- b) an itemization with documentation (estimates from vendors shall be provided upon request) to support rental equipment, flaggers, travel and other direct non-labor expenses; and
- c) the estimate for Services as provided by each subconsultant that shows the assigned staff and hours per task and sub-task and itemized direct non-labor costs. County may ask for qualifications

of any staff assigned to work on a project if they were not included in Statement of Proposal originally submitted for solicitation.

- d) the certification status of any disadvantaged business enterprise, minority-owned business, woman-owned business, service-disabled veteran-owned business or emerging small business subcontractors included in the BOC.
- e) **Contingency Tasks.** Amounts for any contingency tasks must be shown as a separate line-item for each task. The amount for a contingency task must include all labor, overhead, profit, and expenses for the task. Expenses for contingency tasks must not be included in an overall amount for direct non-labor expenses applied to the budget for the non-contingency tasks. Enter the agreed to unit and extended amounts for contingency tasks in the Contingency Task Summary table.

The final BOC agreed to by the Parties is incorporated by this reference.

EXHIBIT C - INSURANCE

All insurance required by this Contract shall be maintained with insurers with an A.M. Best Financial Strength Rating of no less than A-. Insurers must be legally authorized to transact the business of insurance and issue coverage in the State of Oregon. Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions and self-insurance. Prior to beginning work and during the term of this Contract, including any extensions or warranty period, Consultant shall maintain in force at its own expense each insurance set forth below:

1. **Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (Consultants with one or more employees, unless exempt under ORS 656.027).
2. **Required by County** **Not required by County.**
Professional Liability insurance with a per claim, incident or occurrence limit, or the equivalent, of not less than **\$1,000,000**, or **\$2,000,000**. Any annual aggregate limits must not be less than **\$1,000,000**, or **\$2,000,000**. This insurance must cover damages caused by negligent acts, errors or omissions of Consultant and Consultant's subcontractors, agents, officers or employees related to the professional Services to be provided under the Contract. If this insurance is provided on a "claims made" basis, Consultant shall continue the same coverage for **2 years**, **3 years**, or **6 years** after completion of the Services or acquire "tail" coverage or an Extended Reporting Period endorsement for the foregoing extended period beyond Contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the Contract.
3. **Required by County** **Not required by County.**
Commercial General Liability insurance must be issued on an occurrence basis with per occurrence limit, or the equivalent, of not less than \$1,000,000 covering "bodily injury" and "property damage." Any annual aggregate limits shall not be less than \$2,000,000.
4. **Required by County** **Not required by County.**
Automobile Liability insurance covering Consultant's business-related automobile use, with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for "bodily injury" and "property damage," including coverage for all owned, non-owned, rented or hired vehicles.
5. **Notice of change or cancellation.** There shall be no cancellation, material change (one that would adversely impact the protection of County provided through the insurance coverages required in this **Exhibit C**), reduction of limits or intent not to renew the insurance coverage(s) without 30 calendar days prior written notice from Consultant or its insurer(s) to County. **All policies and certificates of insurance, including Workers' Compensation, must include a notice of cancellation or nonrenewal clause as required under ORS 742.700 to 742.710.**
6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Contract, Consultant shall furnish acceptable insurance certificates to County prior to Contract execution. Throughout the life of this Contract, Consultant shall submit updated certificates of insurance prior to the policy expiration date(s) indicated for the required coverages. If requested by County, Consultant shall either: a) provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to County; or b) make such insurance policies, endorsements, self-insurance documents and related insurance documents available for inspection by County's representatives at a location in the State of Oregon that is reasonably convenient for County's representatives responsible for verification of the insurance coverages required under the Contract.
7. **Additional Insureds.** Insurance certificates for Automobile and Commercial General Liability must include an endorsement physically attached to the certificate specifying the County, the State of Oregon, the OTC, the Oregon Department of Transportation, and their respective officers, members, agents and employees as Additional Insureds and must expressly provide that the interest of the Additional Insureds shall not be affected by Consultant's breach of policy provisions.
8. **Subcontractors.** Consultant shall: (i) obtain proof of the above insurance coverages, as applicable, from any subcontractor providing Services related to this Contract, or (ii) include subcontractors within Consultant's coverage for the duration of the subcontractor's Services related to this Contract.

EXHIBIT D - TITLE VI NON-DISCRIMINATION PROVISIONS

During the performance of this Contract, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

- a. **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- b. **Nondiscrimination:** Consultant, with regard to the work performed by it during the Contract, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- d. **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County, ODOT, FHWA or the Federal Transit Administration (FTA) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to County, ODOT, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this Contract, County shall impose such Contract sanctions as it, ODOT, FHWA or FTA may determine to be appropriate, including, but not limited to:
 - (i) Withholding of payments to Consultant under the Contract until Consultant complies, and/or
 - (ii) Cancellation, termination or suspension of the Contract, in whole or in part.
- f. **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as County, ODOT, FHWA or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request County, ODOT, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT E - DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROVISIONS (Goal)

The DBE program is administered by the ODOT Office of Civil Rights (“OCR”). As the County is entering into this Contract under authority granted by ODOT, the DBE Provisions apply the same as if ODOT were the contracting agency.

“Consultant” and “Contractor” are hereinafter referred to as “Contractor”. **See sections d and i for specific documentation and reporting requirements of Contractor.**

- a. **Policy and Program Authorities:** ODOT and Contractor agree to abide by and take all necessary and reasonable steps to comply with these DBE Provisions and the following, which are incorporated in this Contract with the same force and effect as though fully set forth in this Contract:

- o [ODOT DBE Policy Statement](#)
- o [ODOT DBE Program Plan](#), and
- o Requirements of [Title 49, Code of Federal Regulations, Part 26](#) - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

ODOT’s DBE Program authorities are set forth in the ODOT DBE Program Plan.

- b. **DBE Goals:** ODOT’s overall goal for DBE participation is 11.6% for FHWA funded contracting and 6% (proposed) for FTA funded contracting. For FHWA funded contracting, ODOT may assign DBE Contract goals to increase participation by DBEs. For any Contract with an assigned DBE goal, Contractor shall select a portion of work available under the Contract for DBE participation. Contractor may use DBE subcontractors, suppliers, manufacturers, or Professional Services and Related Services providers to fulfill the assigned DBE Contract goal as long as the DBE is certified in the types of work selected. The assigned DBE Contract goal remains in effect throughout the life of the Contract. Dollar values of participation shall be credited toward meeting the assigned DBE Contract goal based on DBE gross earnings.

- | |
|--|
| <ul style="list-style-type: none">• A separate DBE Contract goal, as set forth on page 1 of the Contract, has been assigned for this procurement. |
|--|

- c. **Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR § 26.13(b)).

- d. **Documentation of Proposed Participation:** Contractor shall document sufficient DBE participation to meet an assigned Contract goal or, alternatively, document adequate good faith efforts to do so (see 49 CFR § 26.53). All work committed to a DBE firm toward meeting the assigned participation goal must be performed under a written subcontract. The subcontract must fully describe any work committed to be performed by the DBE and shall include all required flow-down provisions of the primary Contract. Contractor must complete and submit the following documentation, as applicable:

1. **Subcontractor Solicitation and Utilization Report (SSUR)** - submitted with proposal in response to formal and informal Requests for Proposals (RFPs).
2. **Breakdown of Costs (“BOC”) or (“BOC-NBR”), as applicable** - submitted prior to negotiation and execution of the Contract and each amendment that changes the scope of work and costs under the Contract. The BOC forms and BOC Requirements are available

from the Internet at:

<https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>. The BOC or BOC-NBR must clearly list any tasks or subtasks to be performed by subcontractors (DBEs and non-DBEs), each subcontractor's Federal Tax ID and identification of any required personnel. Include in the Expense Detail tab any required equipment and supplies furnished by the DBE, any of the prime contractor's resources that will be provided for the DBE's use, and identification of any second or lower tier subcontractors with the dollar amounts for each.

3. **Committed DBE Breakdown and Certification Form(s)-AE.** Required for all Contracts with assigned goals and completed prior to Contract execution and any proposed substitution. See submittal instructions on the Instructions tab of the form.
 4. **Subcontractor Reporting:** Complete and submit an initial **Paid Summary Report** [form 734-2882] per the instructions on the form.
- e. **Good Faith Efforts:** Contractor shall make good faith efforts, as set forth in 49 CFR § 26.53, Appendix A to Part 26, and ODOT DBE Program Plan, to obtain and support DBE participation that could reasonably be expected to produce and maintain a level of DBE participation sufficient to meet the Contract goal. Good faith efforts are required during solicitation, upon Contract award, and continue throughout the performance of the Contract to maximize DBE participation. The County (or local agency when applicable) Project Manager ("APM") may request Contractor to submit evidence of good faith efforts prior to Contract execution or at any time during the course of the Contract and Contractor shall promptly submit such evidence. Contractor shall use the specific DBEs listed in the Committed DBE Breakdown and Certification form(s) to perform the work and supply the materials for which each is listed unless the contractor obtains ODOT's prior written consent to terminate and replace a DBE as provided in section j. below. Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBEs as required by this provision.
- f. **Commercially Useful Function ("CUF"):** Contractor is responsible to ensure the DBE performs a commercially useful function on the Contract. A DBE performs a CUF when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in 49CFR § 26.55. The APM will review the proposed DBE participation and may provide written comments as to whether the activities and type of work identified for DBEs complies with program regulations. In those instances where proposed activity and type of work violates applicable regulations, written comments will be offered as to corrective action required in order to comply with the regulations. ODOT may perform a CUF review at any time during the performance of the Contract.
- g. **Changes in Work Committed to DBE:** ODOT will consider the impact on DBE participation in instances where the prime Contract is amended to reduce, or delete work committed to the DBE. In such instances, Contractor shall not be required to replace the work but is encouraged to do so to the maximum extent practicable.
- h. **Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory performance under its contract no later than 10 calendar days from receipt of each payment Contractor receives from ODOT (or local agency when applicable) for the subcontracted work. In addition, within 10 calendar days of receipt of retainage from ODOT (or local agency when applicable), Contractor shall pay to each subcontractor the retainage that pertains to the work of that subcontractor.
- i. **Reporting Requirements:** Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. Contractor shall complete and submit initial, interim and final Paid Summary Report(s) [form 734-2882] per the instructions included on the form.

- j. **Termination of DBE Notification Requirement:** Contractor shall comply with all requirements set forth in 49 CFR § 26.53 regarding termination of DBEs including, without limitation, documentation of good cause, 5-day notice to the DBE subcontractor and ODOT, DBE responses, ODOT’s prior written consent of DBE termination, and replacement of DBEs. ODOT will provide such written consent only if it agrees the prime contractor has good cause to terminate the DBE in accordance with 49 CFR 26.53(f)(3).
- k. **Remedies:** Contractor’s failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by ODOT: non-compliance documented in ODOT evaluation of Contractor performance, a corrective action plan prepared by Contractor, ODOT (or local agency when applicable) withholding of retainage, suspension of work, reporting of non-compliance to the federal System for Award Management (“SAM”) available at <https://sam.gov/SAM/>, any other remedies provided under the Contract.
- l. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights (“OCR”). Questions related to the DBE Program may be sent via email to ocrinforequest@odot.state.or.us or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 3930 Fairview Industrial Drive SE (MS 23), Salem, OR 97302; Phone: 503-986-4350 Fax: 503-986-6382.
- m. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.

Related Web Sites:

All forms, documents and CFR citations referenced or linked in these DBE Provisions are available on line at:

- o **Forms:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>
- o **Documents:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx>
- o **49 CFR Part 26:** <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=34ea04c7ed3d45b0e41f82a5646f1c15&rgn=div5&view=text&node=49:1.0.1.1.20&idno=49>

Acronyms & Definitions Applicable to Exhibit E

| | |
|---------|---|
| APM | ODOT’s or local agency’s Project Manager |
| BOC | Breakdown of Costs |
| BOC-NBR | Breakdown of Costs for Negotiated Billing Rates |
| CFR | Code of Federal Regulations |
| CUF | Commercially useful function |
| DBE | Disadvantaged Business Enterprise |
| OCR | ODOT Office of Civil Rights |
| ODOT | Oregon Dept. of Transportation |
| RFP | Request for Proposals |
| SSUR | Subcontractor Solicitation and Utilization Report |
| USDOT | United States Department of Transportation |

EXHIBIT F - SPECIAL TERMS & CONDITIONS

Provisions in this Exhibit F are in addition to and do not supersede the terms and conditions set forth in the Contract.

NEPA Decision Documents and Final Design. County is not obligated to proceed with final design for any alternative; all reasonable alternatives will be evaluated and given appropriate consideration, and the Consultant under the Contract may not proceed with final design until the relevant NEPA decision documents have been issued.

EXHIBIT G - RESERVED

EXHIBIT H - RESERVED

EXHIBIT I - ERRORS & OMISSIONS ("E&O") CLAIMS PROCESS

Exhibit I is not physically attached but is incorporated into this Contract with the same force and effect as though fully set forth herein. For purposes of this Contract, the term "Agency" or "County", as used in the E&O Claims Process, means "local public agency". The E&O Claims Process (as may be revised from time to time by ODOT) is available at the following Web address as Exhibit I:

<http://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/xbti.pdf>

EXHIBIT J - CONTACT INFORMATION and KEY PERSONS

1. Party Contact Information.

a.1 * County's Project Manager (APM)

| | |
|----------------|---------------------|
| Name: | Robert Knorr |
| Ph: | 503-742-4680 |
| E-mail: | rknorr@clackamas.us |

a.2 *: County Contract Administrator for contractual matters:

| | |
|----------------|--|
| Name: | |
| Ph: | |
| E-mail: | |

a.3 County's address for invoicing:

| | |
|-------------------------|--|
| Mailing Address: | 150 Beaver Creek Road, Oregon City, OR 97045 |
| E-mail: | rknorr@clackamas.us |

b. **Consultant's Project Manager (PM) for this Contract is:

| | |
|----------------|--|
| Name: | Troy Bowers, PE |
| Ph: | 503-225-9010 |
| E-mail: | Troy.bowers@murraysmith.us |

c. Consultant's remit address for payments and contact for billings:

| | |
|-----------------|--|
| Name: | Murraysmith, Inc. |
| Address: | 88 SW 5 th Ave, Suite 1170 Portland, Oregon 97204 |
| Ph: | 503-225-9010 |
| E-mail: | Troy.bowers@murraysmith.us |

* County may change the Contract Administrator or Project Manager designation by promptly sending written notice (e-mail acceptable) to Consultant, with a copy to ODOT Procurement Office.

**Any changes to Consultant's Project Manager must be approved in writing (e-mail acceptable) by County.

2. Key Persons

Consultant acknowledges and agrees that County selected Consultant, and is entering into the Contract because of the special qualifications of Consultant's key personnel ("Key Persons" or "Key Personnel"), which may include specific staff agreed to during Contract negotiations. In particular, County, through the

Contract is engaging the expertise, experience, judgment and personal attention of the Key Persons identified in the Contract.

Each Key Person shall not delegate performance of any management powers or other responsibilities he or she is required to provide under the Contract to another of Consultant's or subconsultant's personnel without first obtaining the written consent of County. Further, Consultant shall not re-assign or transfer any Key Person to other duties or positions such that the Key Person is no longer available to provide County with his or her expertise, experience, judgment, and personal attention according to any schedule established under the Contract without first obtaining County's prior written consent to such re-assignment or transfer. Notification of request to change a Key Person shall be in writing (via e-mail or other form as may be required by County.) Throughout the term of the Contract, Consultant shall provide updated information (if requested by County) to demonstrate the continuing qualifications of any staff working on County projects, including those approved as Key Persons.

In particular, County, through the Contract is engaging the expertise, experience, judgment and personal attention of the following Key Persons:

| Name | Role |
|--------------------|---------------------------------------|
| Nicholas McMurtrey | Registered Professional Engineer |
| Troy Bowers | Registered Professional Engineer |
| Terry Goodman | Registered Professional Land Surveyor |
| | |
| | |

3. Reassignment or Transfer of Key Person

In the event Consultant requests that County approve a reassignment or transfer of a Key Person:

- Consultant shall provide a resume for the proposed substitute demonstrating that the proposed replacement has qualifications that are equal to or better than the qualifications of the person being replaced.
- County shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person.
- Any substitute or replacement for a Key Person must be approved in writing (e-mail acceptable) and shall be deemed to be a Key Person under the Contract.

Consultant agrees that the time/costs associated with the transfer of knowledge and information for a Key Person replacement is not a cost borne by County and shall not be billed to County. This includes labor hours spent reviewing project documentation, participation in meetings with personnel associated with the Contract/project, and participating in site visits to become familiar with the project.



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Personal Services Contract with David Evans and Associates,
Inc., to provide Design Services for
Canby Marquam Highway Bear Creek Bridge**

| | |
|--|--|
| Purpose/ Outcomes | Execution of the contract between Department of Transportation and Development and David Evans and Associates, Inc., for the Canby Marquam Highway: Bear Creek Bridge Design Services. |
| Dollar Amount and Fiscal Impact | The contract amount is not to exceed \$529,737.26. |
| Funding Source | State Funded Local Project Program (SFLP) Funds and County Road Funds. 215-7432-02105-481180-22257 & 215-7432-02105-481206-22257 |
| Duration | December 31, 2021 |
| Previous Board Action | 3/21/19: BCC Approval of Local Agency Agreement No. 33216 with Oregon Department of Transportation for the Canby Marquam Hwy: Bear Creek Bridge #06027 |
| Strategic Plan Alignment | This project will “Build a strong infrastructure” and “Ensure safe, healthy and secure communities” by replacing a functionally obsolete and structurally deficient bridge. |
| Counsel Review | September 25, 2019 |
| Contact Person | Joel Howie, 503-742-4697 |

BACKGROUND:

The existing Canby Marquam Highway Bridge over Bear Creek was constructed in 1960 and is showing signs of decay as a result of heavy truck traffic. The bridge is considered functionally obsolete (narrow) and structurally deficient, with a sufficiency rating of 27.2 out of 100. The bridge is composed of undersized timber members that have shear and flexure damage, which were temporarily repaired until the bridge can be replaced. The asphalt pavement wearing surface requires constant repair due to the bridge vibrating and shaking when trucks travel on the bridge.

The County obtained federal Highway Bridge Program funds from the ODOT Local Bridge Program and requested to exchange the federal funds for state funds. The federal funds are to be exchanged at a 1:1 fund ratio up to \$2,076,172.74. The state funds will be matched by up to \$237,627.26 in County Road Funds for a total project cost of \$2,313,800.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS and LCRB Rules on April 3, 2019. Proposals were opened on May 2, 2019, one (1) proposal was received: David Evans and Associates, Inc. After review of the proposal and all necessary documentation, David Evans and Associates, Inc., was determined to be the successful proposer.

The contract was reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, approve and execute the Contract between Department of Transportation and Development and David Evans and Associates, Inc., for the Design Services for Canby Marquam Highway Bear Creek Bridge project for a total contract amount not to exceed \$529,737.26.

Respectfully submitted,

Joel Howie,
Civil Engineering Supervisor

Placed on the Agenda of _____ by the Procurement Division



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #1868**

This Personal Services Contract (this “Contract”) is entered into between **David Evans and Associates, Inc.**, (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of Department of Transportation and Development.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **December 31, 2021**.
- 2. Scope of Work.** Contractor shall provide the following personal services: Design Services for Canby Marquam Highway Bear Creek Bridge (“Work”), further described in **Exhibit A**.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **Five hundred twenty nine thousand seven hundred thirty-seven dollars and twenty six cents (\$529,737.26)**, 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 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: Joel Howie.

- 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: <http://www.clackamas.us/bids/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: Joel Tubbs Phone: 503-499-0410 Email: jbt@deainc.com | Administrator: Joel Howie Phone: 503-742-4658 Email: JHowie@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. 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 – 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 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 21 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. If this Contract is terminated prior to completion, and the County is not in default, County, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.
- 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 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.
- 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 and 21, 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.** A) 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. Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. (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 termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 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. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
- f. 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.
- g. 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. 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.

28. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR,

**EXHIBIT A
PERSONAL SERVICES CONTRACT
STATEMENT OF WORK
DESIGN SERVICES FOR CANBY MARQUAM HIGHWAY: BEAR CREEK BRIDGE**

**EXHIBIT B
FEE SCHEDULE**



CHRISTA BOSSERMAN WOLFE, CPA
DIRECTOR

DEPARTMENT OF FINANCE

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

October 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment No. 3 to the Intergovernmental Agreement Between
Water Environment Services and Clackamas County
For Facilities Management and Maintenance

| | |
|--|--|
| Purpose/Outcomes | Approval of Amendment No. 3 to the Intergovernmental Agreement Between Water Environment Services and Clackamas County for facilities management and maintenance. |
| Dollar Amount and Fiscal Impact | The Agreement proposes an annual not to exceed value of \$300,000 with a total not exceed amount of \$900,000 for the full term of the contract. |
| Funding Source | FY18/19 – FY 20/21 WES Budget as approved. No general fund dollars. |
| Duration | The Agreement ratifies all work occurring from the previous agreements expiration of June 30, 2018 and would continue until June 30, 2021. |
| Previous Board Action/Review | Board approved original Intergovernmental Agreement – 051514 VIII. 1. Amendment 1 approved – 060916 IV. 1 & 2 Amendment 2 approved – 072717 V. 1 & 2 |
| Counsel Review | This IGA was reviewed and approved by County Counsel on July 31, 2019. |
| Strategic Plan Alignment | 1) This Agreement supports the County's goal of building trust through good government by supporting efficient use of funds and resources. 2) The Agreement supports WES's strategic goal of investment in Infrastructure Strategy and Performance. Specially, our Plant Operations and Maintenance goal of increasing the percentage of WES Maintenance activities that will be planned efforts to address performance deficiencies or enhancements. |
| Contact Person | Jeff Jorgensen, 503-557-6414, Greg Eyerly, 503-557-2802 |
| Contract No. | N/A |

BACKGROUND:

In 2014, Clackamas County Service District No. 1 ("CCSD#1"), the Tri-City Service District ("TCSD") (collectively "Districts") and Clackamas County ("County") entered into an Intergovernmental Agreement for Facilities Management and Maintenance ("Agreement") for an annual total of \$270,000 that covered all the facilities excluding pump stations within the two Districts. The Agreement was amended and extended in June of 2016, and scope negotiated for an annual contract amount of \$200,000.

In 2016, the Districts renewed the Agreement, including an updated scope that added the Training Center modular trailer at the Tri-City Water Resource Recovery Facility and the chemical building locker room and facility lunchroom at the Kellogg Creek Water Resource Recovery Facility for the receipt of services. These additions increased the annual agreement by \$10,000 for a total contract amount of \$210,000. The Agreement also clarified that Water Environment Services had assumed the duties of TCSD under the Agreement.

Amendment 2 of the Agreement expired June 30, 2018. This Amendment ratifies all work performed since that date pursuant to the terms of the Agreement and extends the term of the Agreement to June 30, 2021. The Scope of Work is increased to improve clarity, increase coordination, and improve procurement efficiencies for shared service needs while reserving the rights of Water Environment Services to utilize outside resources for work described in the Scope, if necessary. These additions increased the annual agreement by \$90,000, for a total contract amount of \$900,000. The Agreement also clarifies that Water Environment Services has assumed the duties of TCSD and CCSD#1 under the Agreement.

RECOMMENDATION:

Finance-Facilities Management and WES staff recommends the Board of County Commissioners of Clackamas County, approve the Amendment No. 3 to the Intergovernmental Agreement between Water Environment Services and Clackamas County for Facilities Management and Maintenance.

Respectfully submitted,



Christa Bosserman Wolfe
Finance Director

**AMENDMENT No. 3
TO THE INTERGOVERNMENTAL AGREEMENT
WATER ENVIRONMENT SERVICES
AND CLACKAMAS COUNTY FOR
FACILITIES MANAGEMENT AND MAINTENANCE**

This AMENDMENT NO. 3 to the INTERGOVERNMENTAL AGREEMENT (this “Amendment No. 3”) is made and entered into on the ____ of _____, 2019, by and between WATER ENVIRONMENT SERVICES, an intergovernmental partnership formed under ORS Chapter 190 (“WES”), and CLACKAMAS COUNTY, a political subdivision of the State of Oregon (“County”), for providing facilities management and maintenance services, hereinafter referred to as the “Services.”

WHEREAS, the County, Clackamas County Service District No. 1 and the Tri-City Service District entered into that certain Intergovernmental dated May 15, 2014 for providing facilities management and maintenance services (the “Agreement”); and

WHEREAS, Water Environment Services (“WES”) assumed ownership over the contracts and assets of the Tri-City Service District as of July 1, 2017, and over the contracts and assets of Clackamas County Service District No. 1 as of July 1, 2018; and

WHEREAS, the parties have continued to perform under the conditions of the Agreement after the expiration of the Agreement’s term on June 30, 2018; and

WHEREAS, the parties desire to ratify the work completed since the expiration of the original Agreement term and continue the arrangement with a modified scope of Services by extending the term of the Agreement, modifying Exhibit A and increasing the maximum compensation contained therein;

NOW, THEREFORE, for good and sufficient consideration, the parties hereby agree that:

1. Water Environment Services assumed all obligations under this Agreement on behalf of the Tri-City Service District as of July 1, 2017 and on behalf of Clackamas County Service District No. 1 as of July 1, 2018. All references to the Tri-City Service District, Clackamas County Service District No. 1 or “Districts” in the Agreement between the parties shall be replaced with Water Environment Services or WES.

2. To reflect an extension of the term, the Agreement’s Paragraph 2.1 is hereby replaced in its entirety with:

2.1 Term. Unless earlier terminated, this Agreement shall commence July 1, 2018 and remain in full force and effect until June 30, 2021.

3. To reflect a change in the Scope, the Agreement’s Exhibit A is hereby replaced in its entirety with the following, which shall be effective as of July 1, 2018:

See Exhibit A attached hereto and incorporated therein.

4. Add the following language to the end of Article 1, Section 1 Scope of Services:

At any time, County is unable to provide services requested by WES under this Agreement within a necessary timeframe, WES reserves the right to utilize outside resources for said work, as it deems necessary and expedient, within WES' sole discretion. WES agrees to notify County in a timely manner of any change in services requested. Notwithstanding the above, WES agrees to provide 90 days' notice prior to discontinuing the use of County services for landscaping or janitorial work. The parties may review and update Exhibit A annually to ensure an accurate description of the services to be provided by the County. Any changes that increase the total maximum compensation allowed under this Agreement shall occur through the amendment process specified in Section 4.8.

5. To reflect an increase in the total annual compensation by \$90,000, the Agreement's Article 3.1 is hereby replaced in its entirety with:

3.1 Compensation. WES agrees to pay the County an amount not to exceed THREE HUNDRED THOUSAND and 00/100 Dollars (\$300,000.00) annually in accordance with the Scope of Services, with a total not to exceed amount of NINE HUNDRED THOUSAND and 00/100 Dollars (\$900,000.00) for the term established in this Amendment No. 3. Notwithstanding anything else to the contrary herein, no changes in the not-to-exceed amount shall be made without prior written approval of WES. The costs shall be apportioned to WES based on the scope and frequency of services provided by the County. The exact level of compensation for services performed during fiscal year 2018-2019 shall be determined after the parties evaluate the detailed accounting provided in section 3.2.2 of this Agreement.

6. To reflect a shift from monthly billing to quarterly, Section 3.2.1 is replaced in its entirety with the following:

3.2.1 The County shall provide quarterly invoices to WES. WES shall pay quarterly payments to County within thirty (30) days of WES' receipt of the quarterly invoice. The County shall maintain detailed billing records and such records shall be available to WES for audit and copying. No interest shall be paid on disputed amounts.

7. The parties acknowledge that work has been completed since the expiration of the Agreement term on June 30, 2018, and hereby ratify all work occurring during that time that was performed pursuant to the terms of the Agreement.

8. WES and the County ratify the remainder of the Agreement and affirm that no other changes are made hereby.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 3 to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

WATER ENVIRONMENT SERVICES:

Chair

Date

CLACKAMAS COUNTY:

Chair

Date

Recording Secretary

EXHIBIT A – SCOPE OF SERVICES

As of Oct. 17, 2019, the scope of services shall be limited to maintenance and the facilities management of the three facilities identified below. The scope of services does not include the costs associated with any capital improvements to any facility.

WATER ENVIRONMENT SERVICES

TRI-CITY WASTEWATER TREATMENT PLANT - ADMINISTRATION AND WATER QUALITY LABORATORY BUILDINGS, TRAINING CENTER MODULAR TRAILER

- Facilities overhead
- Select security system product updates
- Security system repairs & maintenance
 - process buildings upon request
 - security fencing, perimeter and gates
- Janitorial
- Janitorial paper products
- General building maintenance supplies
- Building repairs & maintenance
 - including but not limited to electrical systems and lighting (interior and exterior)
- Plumbing repairs & maintenance
- HVAC repair & maintenance
- Painting, cleaning and sealing – interior and exterior
- Grounds maintenance (hard scape)
- Landscape
- Vandalism/graffiti removal & repair
- Work as requested. Additional project costs not included in the allocated budget

KELLOGG CREEK WATER RESOURCE RECOVERY FACILITY - ADMINISTRATION BUILDING, CHEMICAL BUILDING (INCLUDING LOCKER ROOM AND LUNCHROOM)

- Facilities overhead
- Select security system product updates
- Security system repairs & maintenance
 - process buildings upon request
 - security fencing, perimeter and gates
- Janitorial
- Janitorial paper products
- General building maintenance supplies
- Building repairs & maintenance
 - including but not limited to electrical systems and lighting (interior and exterior)
- Plumbing repairs & maintenance
- HVAC repair & maintenance
- Painting, cleaning and sealing – interior and exterior
- Grounds maintenance (hard scape)
- Landscape
- Vandalism/graffiti removal & repair
- Work as requested. Additional project costs not included in the allocated budget

HOODLAND

- Select security system product updates
- Security system repairs & maintenance
 - process buildings upon request
 - security fencing, perimeter and gates
- Work as requested. Additional project costs not included in the allocated budget.

BORING

- Work as requested. Additional project costs not included in the allocated budget.

82ND DRIVE BRIDGE (GLADSTONE & OREGON CITY BRIDGE)

- Vandalism/graffiti removal & repair
- Work as requested. Additional project costs not included in the allocated budget.

PUMP STATIONS

- Work as requested. Additional project costs not included in the allocated budget.



GEORGE MARLTON, JD
PROCUREMENT DIVISION DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Purchase of Annual Technical Support Services from Oracle America, Inc.

| | |
|--|---|
| Purpose/ Outcomes | To authorized continued software support services for the County finance and human resource software. |
| Dollar Amount and Fiscal Impact | \$348,356.02 |
| Funding Source | 747-0228-00-437231 |
| Duration | September 30, 2019 to September 29, 2020 |
| Previous Board Action | Approval of original contract in 1998 and subsequent annual renewals thereafter. |
| Strategic Plan Alignment | Build Public Trust through Good Government |
| Counsel Review | 10/8/19 |
| Contact Person | George Marlton, x5442 |

BACKGROUND:

In 1998, the County purchased licenses and technical support services from PeopleSoft USA, Inc. for its Enterprise Resource Planning and Human Resources Information Management software. Subsequently, Oracle America, Inc. purchased PeopleSoft USA along with the County’s contract. To continue receiving software maintenance services for the software, the County pays an annual technical support service fee. The current technical support service term expired on September 29, 2019 and the County would like to continue the services for an additional annual term.

The original procurement process contemplated the license fees and the ongoing technical support services, therefore an additional procurement process is not required. This request is to obtain the Board’s approval for expenditure authority for a new one year continuation of services.

County Counsel has reviewed and approved the documents associated with the transaction.

RECOMMENDATION:

Staff recommends the Board of County Commissioners authorize the Chief Procurement Officer to execute any necessary contracts required to continue technical support services with Oracle America, Inc. for an additional annual term.

Respectfully submitted,

Chief Procurement Officer

Placed on the Agenda of _____ by Procurement and Contract Services



Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

October 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County Behalf of the Clackamas County Sheriff's Office and the Oregon State Police for use of the Public Safety Training Center (PSTC) - Bowman Training Complex


| | |
|--|--|
| Purpose/Outcome | Approval of the IGA to authorize use of the PSTC-Bowman Training Complex and purchase of training related items including ammunition |
| Dollar Amount and Fiscal Impact | Cost for facility use will be billed to the Oregon State Police based upon actual cost as outlined in County Code Appendix A - Fee |
| Funding Source | Facilities Rental, training supplies and ammunition sales |
| Duration | Oct. 15, 2019 – Oct. 15, 2024 |
| Previous Board Action/Review | None |
| Strategic Plan Alignment | Furtheres the County's focus to keeping our residents safe, healthy and secure |
| Counsel Review | Andrew Naylor, via email 10/1/19 |
| Contact Person | Nancy Artmann, CCSO Finance Manager 503.785.5012 |

BACKGROUND:

The purpose of this IGA is to enhance working relationship with law enforcement agencies surrounding Clackamas County through sharing resources. This provides the means for agency partners to train in the local facility. This enhances their opportunity to keep skills up to date and have meaningful, practical application.

RECOMMENDATION: Sheriff's Office respectfully requests that the Board of County Commissioners approves this intergovernmental agreement between Clackamas County by and through its Sheriff's Office and Oregon State Police by and through the Oregon State Police for the safety of its citizens of both the County and the State of Oregon.

Respectfully submitted,


Craig Roberts
Sheriff

INTERGOVERNMENTAL AGREEMENT

Between Clackamas County on Behalf of the Clackamas County Sheriff's Office

and

Oregon State Police

For Use of Public Safety Training Center - Bowman Training Complex

This intergovernmental agreement ("Agreement") is entered into as of the 15th day of October, 2019 by and between Clackamas County, a political subdivision of the State of Oregon, by and through its Sheriff's Office (either "County" or "CCSO"), and Oregon State Police, a state agency. This Agreement is authorized pursuant to ORS 190 *et. seq.* and becomes effective upon full execution by the parties.

RECITALS

Whereas, ORS 190 *et. seq.* authorizes County, a unit of local government, and Agency, a local, state, or federal agency, to enter into this Agreement for the performance of any and all activities that a party to the Agreement has authority to perform;

Whereas, County owns and the Clackamas County Sheriff's Office operates the Public Safety Training Center (PSTC) Complex ("Complex"), which includes the Bowman Building, located at 12700 SE 82nd Ave Clackamas, OR 97015;

Whereas the Complex is an ideal facility for various law enforcement training activities and exercises;

Whereas Agency wishes to utilize the Complex, obtain training from CCSO staff, purchase ammunition for use at the PSTC Bowman Training Complex shooting range, or otherwise utilize the Complex for uses approved by the CCSO;

NOW THEREFORE, pursuant to ORS 190.003 *et. seq.*, and for good and valuable consideration, the receipt of which is hereby acknowledged, County and Agency agree as follows:

1. **Term:** this Agreement shall remain in effect until the 15th day of October, 2024 or until terminated by one or more of the parties hereto.
2. **Scope:** Subject to the terms and conditions of this agreement, Agency may use the Complex for law enforcement education, training, and development purposes.
3. **Consideration:** Agency shall compensate County for use of the Complex pursuant to the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to using the Complex. County shall provide Agency an invoice for all amounts due and owing for use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
4. **County Responsibilities:**
County agrees to the following:
 - a. County will maintain the Complex in a clean and functional manner, consistent with the general maintenance and care of other County facilities.
 - b. County will make available the Complex, including its classrooms, training rooms, and shooting range, to Agency subject to the terms and conditions of this Agreement.
 - c. CCSO will sell to Agency ammunition, as supplies allow, for use by the Agency at the Complex's shooting range. The sales price of the ammunition shall be in an amount determined by CCSO, which is subject to change due to market fluctuations.
5. **Agency Responsibilities:**
 - a. Agency shall ensure timely arrival and departure from the Complex in accordance with an approved reservation.
 - b. Agency shall ensure use of the Complex is limited only to those activities approved by the CCSO.
 - c. Agency will return any portion of the Complex used by the Agency to its original, clean condition.
 - d. Agency shall promptly report to CCSO any incident caused by Agency and resulting in injury or property damage to or within the Complex.

- e. An executed waiver and release, in a form approved and provided by the County, is required for each employee of Agency that will use the Complex. Agency shall ensure all of its employees intending to use the Complex sign the waiver and release prior to using the Complex.
- f. Agency shall timely pay any invoice for use of the Complex.
- g. Agency shall complete all trainings, instructions, or certifications required by CCSO prior to use of the Complex.
- h. Agency shall, upon request by the County, immediately cease use and vacate the Complex if the County determines, in its sole discretion, that Agency's use of the Complex conflicts with County's intended use of the Complex.
- i. Agency shall comply with all other terms and conditions of this Agreement.

6. Reservations and Conflicting Use: Agency's use of the Complex is conditioned upon submission of a timely, written reservation identifying the dates, times, and intended use of the Complex. Agency shall pay a reservation fee in the amount set forth in the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to making a reservation. All reservations shall be for a minimum of 4 hours of use unless CCSO consents, in writing, to a lesser period. For reservations cancelled between seven (7) days and four (4) weeks prior to the intended date of use, Agency shall pay 50% of the reservation fee. For reservations cancelled less than seven (7) days before the date of intended use, Agency shall pay the full reservation fee. If Agency intends to use the Complex's shooting range, Agency shall notify CCSO of its intent to purchase ammunition as part of its written reservation. Agency shall, to the maximum extent possible, submit a written reservation request at least one (1) month in advance of the intended use.

Notwithstanding any other provision of this Agreement, the undersigned parties expressly agree and acknowledge that Agency's use of the Complex is subordinate and subject to CCSO use of the Complex. Agency may not use the Complex if such use conflicts with the CCSO use of the Complex. The CCSO may, for any reason and in CCSO's sole discretion, deny Agency's requested use of the Complex, or revoke and rescind a previously authorized use of the Complex.

7. Afterhours Access: CCSO may, in its sole discretion, permit Agency access to the Complex outside of normal business hours, including weekends and holidays. Agency's access to the Complex outside of normal business hours is subject to, and contingent upon, Agency's successful completion of any and all trainings, instructions, or certifications CCSO determines, in its sole discretion, are required to permit such access. CCSO may condition Agency's access to the Complex outside of normal business hours upon Agency's acceptance of any additional

terms and conditions CCSO determines, in its sole discretion, may be required to permit such access.

- 8. Condition of PSTC Bowman Complex:** County makes no representations or warranties, express or implied, as to the condition of the Complex or its fitness for any particular use by Agency.
- 9. Cleaning and Repair Costs:** Prior to leaving the Complex, Agency will return any portion of the Complex used by the Agency to its original, clean condition. Agency shall be responsible for any cleaning, repair, or remediation costs arising from or related to Agency's use of the Complex. County shall provide Agency an invoice for any cleaning, repair, or remediation costs incurred by County as a result of Agency's use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
- 10. Gun Handling.** Gun handling or other use outside of the Complex's shooting range is not permitted. All guns must be holstered, cased, or slung muzzle-down when transferred from the parking lot into the Complex.
- 11. Targets and Shooting Lane Use.** When using the Complex's shooting range, targets should be placed at the appropriate height and orientation to avoid shooting the ground, ceiling, or carrier components. Whenever possible, shooting lanes near the walls should not be used to avoid wall strikes.
- 12. Compliance with Applicable Law.** Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to Agency's use of the Complex.
- 13. Express Assumption of Risk.** By signing this agreement, Agency appreciates the risks involved in Agency's use of the Complex and hereby expressly assumes any and all risks arising out of or relating to Agency's use of the Complex.
- 14. Indemnification.** Agency 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, Agency's use of the Complex, or from any act, omission, or neglect of Agency, its agents, or employees.

Subject to the Oregon Tort Claims Act and the Oregon Constitution including, but not limited to, the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, the County shall defend, indemnify and save harmless Agency and its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the negligent or willful acts or omissions of the County, its officers, deputies, employees, or agents associated with this Agreement and over which the County has a right to control.

Subject to the Oregon Tort Claims Act and the Oregon Constitution, Agency shall defend, indemnify and save harmless the County, its officers, deputies, employees and agents from any and all costs, claims, judgments or awards of damages, resulting from the negligent or willful acts or omissions of Agency, its officers, employees or agents associated with this Agreement and over which the Agency has a right to control.

15. Termination. This Agreement may be terminated as follows:

- a. Termination for Convenience. This Agreement may be terminated at any time by mutual consent of the parties, or by County for convenience upon thirty (30) days written notice to Agency.
- b. Termination for Cause. Either Agency or County may terminate this Agreement at any time if that party (the “terminating Party”) has determined, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default (the “defaulting Party”). The terminating Party shall promptly notify the defaulting Party in writing of that determination and document such default as outlined herein. The defaulting Party shall have 30 days to cure the default described by the terminating Party. If the defaulting Party fails to cure the default within such 30-day period, then this Agreement shall terminate 10 days following the expiration of such 30-day period.

16. Insurance. Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$3,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$5,000,000 for bodily injury and property damage for the protection of 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 Agreement. If self-insured, Agency shall provide documentation to the County of Agency’s self-insured status.

17. 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, action, or suit that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- 18. 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.
- 19. Integration.** This Agreement contains the entire agreement between County/CCSO and Agency and supersedes all prior written or oral discussions or agreements.
- 20. Amendments.** County and Agency may amend this Agreement at any time. No amendment shall bind either party unless in writing and signed by all parties. Any such amendment shall be effective only in the specific instance and for the specific purpose given.
- 21. Waiver.** Failure of County to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by County of the right to such performance in the future nor of the right to enforce any other provision of this Agreement. Waiver of any default under this Agreement by County shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Agreement.
- 22. Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 23. No Third Party Beneficiaries.** County and Agency are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the 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 the Agreement.

24. Assignment. Agency shall not assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from County which shall be granted or denied in County's sole and absolute discretion. 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.

25. Execution and Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

26. Notifications. All notices required under this Agreement, including scheduling and reservations requests and related issues, are to be made as follows:

Agency: Oregon State Police

Training Coordinator:
Jason Perrizo, Senior Trooper
Firearms Program Coordinator
4190 Aumsville Hwy SE
Salem, OR 97317
503-798-6730
jperriz@osp.oregon.gov

Billing Contact:
Jason Perrizo, Senior Trooper
SAA

The County:
PSTC Business Manager: 503-794-8039
CCSO Lead Firearms: 503-794-8066
CCSO Training Coordinator: 503-794-8071

By their signatures below, the parties to this Agreement agree to the terms, conditions, and content expressed herein.

Clackamas County:

Agency:

By: _____ Date _____

Title: _____

By: _____ Date _____

Title: _____

Approved as to Form:

Andrew Naylor, Assistant County Counsel
via email on 10/01/2019



Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

October 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County Behalf of the Clackamas County Sheriff's Office and the City of West Linn on behalf of the West Linn Police Department for use of the Public Safety Training Center (PSTC) - Bowman Training Complex

| | |
|--|--|
| Purpose/Outcome | Approval of the IGA to authorize use of the PSTC-Bowman Training Complex and purchase of training related items including ammunition |
| Dollar Amount and Fiscal Impact | Cost for facility use will be billed to the City of West Linn based upon actually cost as outlined in County Code Appendix A - Fee |
| Funding Source | Facilities Rental, training supplies and ammunition sales |
| Duration | Oct. 15, 2019 – Oct. 15, 2024 |
| Previous Board Action/Review | None |
| Strategic Plan Alignment | Furthers the County's focus to keeping our residents safe, healthy and secure |
| Counsel Review | Andrew Naylor, via email 10/1/19 |
| Contact Person | Nancy Artmann, CCSO Finance Manager 503.785.5012 |

BACKGROUND:

The purpose of this IGA is to enhance working relationship with law enforcement agencies surrounding Clackamas County through sharing resources. This provides the means for agency partners to train in the local facility. This enhances their opportunity to keep skills up to date and have meaningful, practical application.

RECOMMENDATION: Sheriff's Office respectfully requests that the Board of County Commissioners approves this intergovernmental agreement between Clackamas County by and through its Sheriff's Office and City of West Linn by and through the West Linn Police Department for the safety of its citizens of both the County and the City.

Respectfully submitted,

Craig Roberts
Sheriff

"Working Together to Make a Difference"

INTERGOVERNMENTAL AGREEMENT

Between Clackamas County on Behalf of the Clackamas County Sheriff's Office

and

City of West Linn on Behalf of the West Linn Police Department

For Use of Public Safety Training Center - Bowman Training Complex

This intergovernmental agreement ("Agreement") is entered into as of the 15th day of October, 2019 by and between Clackamas County, a political subdivision of the State of Oregon, by and through its Sheriff's Office (either "County" or "CCSO"), and the City of West Linn on behalf of the West Linn Police Department, as a unit of local government. This Agreement is authorized pursuant to ORS 190 *et. seq.* and becomes effective upon full execution by the parties.

RECITALS

Whereas, ORS 190 *et. seq.* authorizes County, a unit of local government, and Agency, a local, state, or federal agency, to enter into this Agreement for the performance of any and all activities that a party to the Agreement has authority to perform;

Whereas, County owns and the Clackamas County Sheriff's Office operates the Public Safety Training Center (PSTC) Complex ("Complex"), which includes the Bowman Building, located at 12700 SE 82nd Ave Clackamas, OR 97015;

Whereas the Complex is an ideal facility for various law enforcement training activities and exercises;

Whereas Agency wishes to utilize the Complex, obtain training from CCSO staff, purchase ammunition for use at the PSTC Bowman Training Complex shooting range, or otherwise utilize the Complex for uses approved by the CCSO;

NOW THEREFORE, pursuant to ORS 190.003 *et. seq.*, and for good and valuable consideration, the receipt of which is hereby acknowledged, County and Agency agree as follows:

1. **Term:** this Agreement shall remain in effect until the 15th day of October, 2024 or until terminated by one or more of the parties hereto.
2. **Scope:** Subject to the terms and conditions of this agreement, Agency may use the Complex for law enforcement education, training, and development purposes.
3. **Consideration:** Agency shall compensate County for use of the Complex pursuant to the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to using the Complex. County shall provide Agency an invoice for all amounts due and owing for use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
4. **County Responsibilities:**
County agrees to the following:
 - a. County will maintain the Complex in a clean and functional manner, consistent with the general maintenance and care of other County facilities.
 - b. County will make available the Complex, including its classrooms, training rooms, and shooting range, to Agency subject to the terms and conditions of this Agreement.
 - c. CCSO will sell to Agency ammunition, as supplies allow, for use by the Agency at the Complex's shooting range. The sales price of the ammunition shall be in an amount determined by CCSO, which is subject to change due to market fluctuations.
5. **Agency Responsibilities:**
 - a. Agency shall ensure timely arrival and departure from the Complex in accordance with an approved reservation.
 - b. Agency shall ensure use of the Complex is limited only to those activities approved by the CCSO.
 - c. Agency will return any portion of the Complex used by the Agency to its original, clean condition.
 - d. Agency shall promptly report to CCSO any incident caused by Agency and resulting in injury or property damage to or within the Complex.

- e. An executed waiver and release, in a form approved and provided by the County, is required for each employee of Agency that will use the Complex. Agency shall ensure all of its employees intending to use the Complex sign the waiver and release prior to using the Complex.
- f. Agency shall timely pay any invoice for use of the Complex.
- g. Agency shall complete all trainings, instructions, or certifications required by CCSO prior to use of the Complex.
- h. Agency shall, upon request by the County, immediately cease use and vacate the Complex if the County determines, in its sole discretion, that Agency's use of the Complex conflicts with County's intended use of the Complex.
- i. Agency shall comply with all other terms and conditions of this Agreement.

6. Reservations and Conflicting Use: Agency's use of the Complex is conditioned upon submission of a timely, written reservation identifying the dates, times, and intended use of the Complex. Agency shall pay a reservation fee in the amount set forth in the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to making a reservation. All reservations shall be for a minimum of 4 hours of use unless CCSO consents, in writing, to a lesser period. For reservations cancelled between seven (7) days and four (4) weeks prior to the intended date of use, Agency shall pay 50% of the reservation fee. For reservations cancelled less than seven (7) days before the date of intended use, Agency shall pay the full reservation fee. If Agency intends to use the Complex's shooting range, Agency shall notify CCSO of its intent to purchase ammunition as part of its written reservation. Agency shall, to the maximum extent possible, submit a written reservation request at least one (1) month in advance of the intended use.

Notwithstanding any other provision of this Agreement, the undersigned parties expressly agree and acknowledge that Agency's use of the Complex is subordinate and subject to CCSO use of the Complex. Agency may not use the Complex if such use conflicts with the CCSO use of the Complex. The CCSO may, for any reason and in CCSO's sole discretion, deny Agency's requested use of the Complex, or revoke and rescind a previously authorized use of the Complex.

7. Afterhours Access: CCSO may, in its sole discretion, permit Agency access to the Complex outside of normal business hours, including weekends and holidays. Agency's access to the Complex outside of normal business hours is subject to, and contingent upon, Agency's successful completion of any and all trainings, instructions, or certifications CCSO determines, in its sole discretion, are required to permit such access. CCSO may condition Agency's access to the Complex outside of normal business hours upon Agency's acceptance of any additional

terms and conditions CCSO determines, in its sole discretion, may be required to permit such access.

- 8. Condition of PSTC Bowman Complex:** County makes no representations or warranties, express or implied, as to the condition of the Complex or its fitness for any particular use by Agency.
- 9. Cleaning and Repair Costs:** Prior to leaving the Complex, Agency will return any portion of the Complex used by the Agency to its original, clean condition. Agency shall be responsible for any cleaning, repair, or remediation costs arising from or related to Agency's use of the Complex. County shall provide Agency an invoice for any cleaning, repair, or remediation costs incurred by County as a result of Agency's use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
- 10. Gun Handling.** Gun handling or other use outside of the Complex's shooting range is not permitted. All guns must be holstered, cased, or slung muzzle-down when transferred from the parking lot into the Complex.
- 11. Targets and Shooting Lane Use.** When using the Complex's shooting range, targets should be placed at the appropriate height and orientation to avoid shooting the ground, ceiling, or carrier components. Whenever possible, shooting lanes near the walls should not be used to avoid wall strikes.
- 12. Compliance with Applicable Law.** Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to Agency's use of the Complex.
- 13. Express Assumption of Risk.** By signing this agreement, Agency appreciates the risks involved in Agency's use of the Complex and hereby expressly assumes any and all risks arising out of or relating to Agency's use of the Complex.
- 14. Indemnification.** Agency 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, Agency's use of the Complex, or from any act, omission, or neglect of Agency, its agents, or employees.

Subject to the Oregon Tort Claims Act and the Oregon Constitution including, but not limited to, the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, the County shall defend, indemnify and save harmless Agency and its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the negligent or willful acts or omissions of the County, its officers, deputies, employees, or agents associated with this Agreement and over which the County has a right to control.

Subject to the Oregon Tort Claims Act and the Oregon Constitution, Agency shall defend, indemnify and save harmless the County, its officers, deputies, employees and agents from any and all costs, claims, judgments or awards of damages, resulting from the negligent or willful acts or omissions of Agency, its officers, employees or agents associated with this Agreement and over which the Agency has a right to control.

15. Termination. This Agreement may be terminated as follows:

- a. Termination for Convenience. This Agreement may be terminated at any time by mutual consent of the parties, or by County for convenience upon thirty (30) days written notice to Agency.
- b. Termination for Cause. Either Agency or County may terminate this Agreement at any time if that party (the “terminating Party”) has determined, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default (the “defaulting Party”). The terminating Party shall promptly notify the defaulting Party in writing of that determination and document such default as outlined herein. The defaulting Party shall have 30 days to cure the default described by the terminating Party. If the defaulting Party fails to cure the default within such 30-day period, then this Agreement shall terminate 10 days following the expiration of such 30-day period.

16. Insurance. Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$3,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$5,000,000 for bodily injury and property damage for the protection of 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 Agreement. If self-insured, Agency shall provide documentation to the County of Agency’s self-insured status.

17. 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, action, or suit that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- 18. 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.
- 19. Integration.** This Agreement contains the entire agreement between County/CCSO and Agency and supersedes all prior written or oral discussions or agreements.
- 20. Amendments.** County and Agency may amend this Agreement at any time. No amendment shall bind either party unless in writing and signed by all parties. Any such amendment shall be effective only in the specific instance and for the specific purpose given.
- 21. Waiver.** Failure of County to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by County of the right to such performance in the future nor of the right to enforce any other provision of this Agreement. Waiver of any default under this Agreement by County shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Agreement.
- 22. Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 23. No Third Party Beneficiaries.** County and Agency are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the 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 the Agreement.

24. Assignment. Agency shall not assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from County which shall be granted or denied in County's sole and absolute discretion. 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.

25. Execution and Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

26. Notifications. All notices required under this Agreement, including scheduling and reservations requests and related issues, are to be made as follows:

Agency: West Linn Police Department

Training Coordinator:
Captain Oddis Rollins
1800 8th Ave.
West Linn, OR 97068
503-635-0238
Orollins@westlinnoregon.gov

Billing Contact:
Toni Swanberg
1800 8th Ave.
West Linn, OR 97068
503-742-6101
tswanberg@westlinnoregon.gov

The County:
PSTC Business Manager: 503-794-8039
CCSO Lead Firearms: 503-794-8066
CCSO Training Coordinator: 503-794-8071



Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

October 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County Behalf of the Clackamas County Sheriff's Office and the Multnomah County on behalf of the Multnomah County Sheriff's Office for use of the Public Safety Training Center (PSTC) - Bowman Training Complex

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|--|--|
| Purpose/Outcome | Approval of the IGA to authorize use of the PSTC-Bowman Training Complex and purchase of training related items including ammunition |
| Dollar Amount and Fiscal Impact | Cost for facility use will be billed to the Multnomah County based upon actually cost as outlined in County Code Appendix A - Fee |
| Funding Source | Facilities Rental, training supplies and ammunition sales |
| Duration | Oct. 15, 2019 – Oct. 15, 2024 |
| Previous Board Action/Review | None |
| Strategic Plan Alignment | Furthers the County's focus to keeping our residents safe, healthy and secure |
| Counsel Review | Andrew Naylor, via email 10/1/19 |
| Contact Person | Nancy Artmann, CCSO Finance Manager 503.785.5012 |

BACKGROUND:

The purpose of this IGA is to enhance working relationship with law enforcement agencies surrounding Clackamas County through sharing resources. This provides the means for agency partners to train in the local facility. This enhances their opportunity to keep skills up to date and have meaningful, practical application.

RECOMMENDATION: Sheriff's Office respectfully requests that the Board of County Commissioners approves this intergovernmental agreement between Clackamas County by and through its Sheriff's Office and Multnomah County by and through the Multnomah County Sheriff's Office for the safety of its citizens of both the Counties.

Respectfully submitted,

Craig Roberts
Sheriff

INTERGOVERNMENTAL AGREEMENT

Between Clackamas County on Behalf of the Clackamas County Sheriff's Office

and

Multnomah County on Behalf of the Multnomah County Sheriff's Office

For Use of Public Safety Training Center - Bowman Training Complex

This intergovernmental agreement ("Agreement") is entered into as of the 15th day of October, 2019 by and between Clackamas County, a political subdivision of the State of Oregon, by and through its Sheriff's Office (either "County" or "CCSO"), and Multnomah County on behalf of the Multnomah County Sheriff's Office, as a unit of local government. This Agreement is authorized pursuant to ORS 190 *et. seq.* and becomes effective upon full execution by the parties.

RECITALS

Whereas, ORS 190 *et. seq.* authorizes County, a unit of local government, and Agency, a local, state, or federal agency, to enter into this Agreement for the performance of any and all activities that a party to the Agreement has authority to perform;

Whereas, County owns and the Clackamas County Sheriff's Office operates the Public Safety Training Center (PSTC) Complex ("Complex"), which includes the Bowman Building, located at 12700 SE 82nd Ave Clackamas, OR 97015;

Whereas the Complex is an ideal facility for various law enforcement training activities and exercises;

Whereas Agency wishes to utilize the Complex, obtain training from CCSO staff, purchase ammunition for use at the PSTC Bowman Training Complex shooting range, or otherwise utilize the Complex for uses approved by the CCSO;

NOW THEREFORE, pursuant to ORS 190.003 *et. seq.*, and for good and valuable consideration, the receipt of which is hereby acknowledged, County and Agency agree as follows:

1. **Term:** this Agreement shall remain in effect until the 15th day of October, 2024 or until terminated by one or more of the parties hereto.
2. **Scope:** Subject to the terms and conditions of this agreement, Agency may use the Complex for law enforcement education, training, and development purposes.
3. **Consideration:** Agency shall compensate County for use of the Complex pursuant to the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to using the Complex. County shall provide Agency an invoice for all amounts due and owing for use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
4. **County Responsibilities:**
County agrees to the following:
 - a. County will maintain the Complex in a clean and functional manner, consistent with the general maintenance and care of other County facilities.
 - b. County will make available the Complex, including its classrooms, training rooms, and shooting range, to Agency subject to the terms and conditions of this Agreement.
 - c. CCSO will sell to Agency ammunition, as supplies allow, for use by the Agency at the Complex's shooting range. The sales price of the ammunition shall be in an amount determined by CCSO, which is subject to change due to market fluctuations.
5. **Agency Responsibilities:**
 - a. Agency shall ensure timely arrival and departure from the Complex in accordance with an approved reservation.
 - b. Agency shall ensure use of the Complex is limited only to those activities approved by the CCSO.
 - c. Agency will return any portion of the Complex used by the Agency to its original, clean condition.
 - d. Agency shall promptly report to CCSO any incident caused by Agency and resulting in injury or property damage to or within the Complex.

- e. An executed waiver and release, in a form approved and provided by the County, is required for each employee of Agency that will use the Complex. Agency shall ensure all of its employees intending to use the Complex sign the waiver and release prior to using the Complex.
- f. Agency shall timely pay any invoice for use of the Complex.
- g. Agency shall complete all trainings, instructions, or certifications required by CCSO prior to use of the Complex.
- h. Agency shall, upon request by the County, immediately cease use and vacate the Complex if the County determines, in its sole discretion, that Agency's use of the Complex conflicts with County's intended use of the Complex.
- i. Agency shall comply with all other terms and conditions of this Agreement.

6. Reservations and Conflicting Use: Agency's use of the Complex is conditioned upon submission of a timely, written reservation identifying the dates, times, and intended use of the Complex. Agency shall pay a reservation fee in the amount set forth in the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to making a reservation. All reservations shall be for a minimum of 4 hours of use unless CCSO consents, in writing, to a lesser period. For reservations cancelled between seven (7) days and four (4) weeks prior to the intended date of use, Agency shall pay 50% of the reservation fee. For reservations cancelled less than seven (7) days before the date of intended use, Agency shall pay the full reservation fee. If Agency intends to use the Complex's shooting range, Agency shall notify CCSO of its intent to purchase ammunition as part of its written reservation. Agency shall, to the maximum extent possible, submit a written reservation request at least one (1) month in advance of the intended use.

Notwithstanding any other provision of this Agreement, the undersigned parties expressly agree and acknowledge that Agency's use of the Complex is subordinate and subject to CCSO use of the Complex. Agency may not use the Complex if such use conflicts with the CCSO use of the Complex. The CCSO may, for any reason and in CCSO's sole discretion, deny Agency's requested use of the Complex, or revoke and rescind a previously authorized use of the Complex.

7. Afterhours Access: CCSO may, in its sole discretion, permit Agency access to the Complex outside of normal business hours, including weekends and holidays. Agency's access to the Complex outside of normal business hours is subject to, and contingent upon, Agency's successful completion of any and all trainings, instructions, or certifications CCSO determines, in its sole discretion, are required to permit such access. CCSO may condition Agency's access to the Complex outside of normal business hours upon Agency's acceptance of any additional

terms and conditions CCSO determines, in its sole discretion, may be required to permit such access.

- 8. Condition of PSTC Bowman Complex:** County makes no representations or warranties, express or implied, as to the condition of the Complex or its fitness for any particular use by Agency.
- 9. Cleaning and Repair Costs:** Prior to leaving the Complex, Agency will return any portion of the Complex used by the Agency to its original, clean condition. Agency shall be responsible for any cleaning, repair, or remediation costs arising from or related to Agency's use of the Complex. County shall provide Agency an invoice for any cleaning, repair, or remediation costs incurred by County as a result of Agency's use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
- 10. Gun Handling.** Gun handling or other use outside of the Complex's shooting range is not permitted. All guns must be holstered, cased, or slung muzzle-down when transferred from the parking lot into the Complex.
- 11. Targets and Shooting Lane Use.** When using the Complex's shooting range, targets should be placed at the appropriate height and orientation to avoid shooting the ground, ceiling, or carrier components. Whenever possible, shooting lanes near the walls should not be used to avoid wall strikes.
- 12. Compliance with Applicable Law.** Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to Agency's use of the Complex.
- 13. Express Assumption of Risk.** By signing this agreement, Agency appreciates the risks involved in Agency's use of the Complex and hereby expressly assumes any and all risks arising out of or relating to Agency's use of the Complex.
- 14. Indemnification.** Agency 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, Agency's use of the Complex, or from any act, omission, or neglect of Agency, its agents, or employees.

Subject to the Oregon Tort Claims Act and the Oregon Constitution including, but not limited to, the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, the County shall defend, indemnify and save harmless Agency and its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the negligent or willful acts or omissions of the County, its officers, deputies, employees, or agents associated with this Agreement and over which the County has a right to control.

Subject to the Oregon Tort Claims Act and the Oregon Constitution, Agency shall defend, indemnify and save harmless the County, its officers, deputies, employees and agents from any and all costs, claims, judgments or awards of damages, resulting from the negligent or willful acts or omissions of Agency, its officers, employees or agents associated with this Agreement and over which the Agency has a right to control.

15. Termination. This Agreement may be terminated as follows:

- a. Termination for Convenience. This Agreement may be terminated at any time by mutual consent of the parties, or by County for convenience upon thirty (30) days written notice to Agency.
- b. Termination for Cause. Either Agency or County may terminate this Agreement at any time if that party (the “terminating Party”) has determined, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default (the “defaulting Party”). The terminating Party shall promptly notify the defaulting Party in writing of that determination and document such default as outlined herein. The defaulting Party shall have 30 days to cure the default described by the terminating Party. If the defaulting Party fails to cure the default within such 30-day period, then this Agreement shall terminate 10 days following the expiration of such 30-day period.

16. Insurance. Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$3,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$5,000,000 for bodily injury and property damage for the protection of 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 Agreement. If self-insured, Agency shall provide documentation to the County of Agency’s self-insured status.

17. 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, action, or suit that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- 18. 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.
- 19. Integration.** This Agreement contains the entire agreement between County/CCSO and Agency and supersedes all prior written or oral discussions or agreements.
- 20. Amendments.** County and Agency may amend this Agreement at any time. No amendment shall bind either party unless in writing and signed by all parties. Any such amendment shall be effective only in the specific instance and for the specific purpose given.
- 21. Waiver.** Failure of County to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by County of the right to such performance in the future nor of the right to enforce any other provision of this Agreement. Waiver of any default under this Agreement by County shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Agreement.
- 22. Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 23. No Third Party Beneficiaries.** County and Agency are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the 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 the Agreement.

24. Assignment. Agency shall not assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from County which shall be granted or denied in County's sole and absolute discretion. 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.

25. Execution and Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

26. Notifications. All notices required under this Agreement, including scheduling and reservations requests and related issues, are to be made as follows:

Agency: Gladstone Police Department

Training Coordinator:
Sgt. John Van Houte
2955 NE 172nd Place
Portland, OR 97230
503-988-4443
John.vanhoute@mcsso.us

Billing Contact:
Gwen Tyler
2955 NE 172nd Place
Portland, OR 97230
503-988-4416
Gwen.tyler@mcsso.us

The County:
PSTC Business Manager: 503-794-8039
CCSO Lead Firearms: 503-794-8066
CCSO Training Coordinator: 503-794-8071



Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

October 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County Behalf of the Clackamas County Sheriff's Office and the City of Milwaukie on behalf of the Milwaukie Police Department for use of the Public Safety Training Center (PSTC) - Bowman Training Complex

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|--|--|
| Purpose/Outcome | Approval of the IGA to authorize use of the PSTC-Bowman Training Complex and purchase of training related items including ammunition |
| Dollar Amount and Fiscal Impact | Cost for facility use will be billed to the City of Milwaukie based upon actually cost as outlined in County Code Appendix A - Fee |
| Funding Source | Facilities Rental, training supplies and ammunition sales |
| Duration | Oct. 15, 2019 – Oct. 15, 2024 |
| Previous Board Action/Review | None |
| Strategic Plan Alignment | Furtheres the County's focus to keeping our residents safe, healthy and secure |
| Counsel Review | Andrew Naylor, via email 10/1/19 |
| Contact Person | Nancy Artmann, CCSO Finance Manager 503.785.5012 |

BACKGROUND:

The purpose of this IGA is to enhance working relationship with law enforcement agencies surrounding Clackamas County through sharing resources. This provides the means for agency partners to train in the local facility. This enhances their opportunity to keep skills up to date and have meaningful, practical application.

RECOMMENDATION: Sheriff's Office respectfully requests that the Board of County Commissioners approves this intergovernmental agreement between Clackamas County by and through its Sheriff's Office and City of Milwaukie by and through the Milwaukie Police Department for the safety of its citizens of both the County and the City.

Respectfully submitted,

Craig Roberts
Sheriff

INTERGOVERNMENTAL AGREEMENT

Between Clackamas County on Behalf of the Clackamas County Sheriff's Office

and

The City of Milwaukie on Behalf of the Milwaukie Police Department

For Use of Public Safety Training Center - Bowman Training Complex

This intergovernmental agreement ("Agreement") is entered into as of the 15th day of October, 2019 by and between Clackamas County, a political subdivision of the State of Oregon, by and through its Sheriff's Office (either "County" or "CCSO"), and the City of Milwaukie on behalf of the Milwaukie Police Department, as a unit of local government. This Agreement is authorized pursuant to ORS 190 *et. seq.* and becomes effective upon full execution by the parties.

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Whereas the Complex is an ideal facility for various law enforcement training activities and exercises;

Whereas Agency wishes to utilize the Complex, obtain training from CCSO staff, purchase ammunition for use at the PSTC Bowman Training Complex shooting range, or otherwise utilize the Complex for uses approved by the CCSO;

NOW THEREFORE, pursuant to ORS 190.003 *et. seq.*, and for good and valuable consideration, the receipt of which is hereby acknowledged, County and Agency agree as follows:

1. **Term:** this Agreement shall remain in effect until the 15th day of October, 2024 or until terminated by one or more of the parties hereto.
2. **Scope:** Subject to the terms and conditions of this agreement, Agency may use the Complex for law enforcement education, training, and development purposes.
3. **Consideration:** Agency shall compensate County for use of the Complex pursuant to the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to using the Complex. County shall provide Agency an invoice for all amounts due and owing for use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
4. **County Responsibilities:**
County agrees to the following:
 - a. County will maintain the Complex in a clean and functional manner, consistent with the general maintenance and care of other County facilities.
 - b. County will make available the Complex, including its classrooms, training rooms, and shooting range, to Agency subject to the terms and conditions of this Agreement.
 - c. CCSO will sell to Agency ammunition, as supplies allow, for use by the Agency at the Complex's shooting range. The sales price of the ammunition shall be in an amount determined by CCSO, which is subject to change due to market fluctuations.
5. **Agency Responsibilities:**
 - a. Agency shall ensure timely arrival and departure from the Complex in accordance with an approved reservation.
 - b. Agency shall ensure use of the Complex is limited only to those activities approved by the CCSO.
 - c. Agency will return any portion of the Complex used by the Agency to its original, clean condition.
 - d. Agency shall promptly report to CCSO any incident caused by Agency and resulting in injury or property damage to or within the Complex.

- e. An executed waiver and release, in a form approved and provided by the County, is required for each employee of Agency that will use the Complex. Agency shall ensure all of its employees intending to use the Complex sign the waiver and release prior to using the Complex.
- f. Agency shall timely pay any invoice for use of the Complex.
- g. Agency shall complete all trainings, instructions, or certifications required by CCSO prior to use of the Complex.
- h. Agency shall, upon request by the County, immediately cease use and vacate the Complex if the County determines, in its sole discretion, that Agency's use of the Complex conflicts with County's intended use of the Complex.
- i. Agency shall comply with all other terms and conditions of this Agreement.

6. Reservations and Conflicting Use: Agency's use of the Complex is conditioned upon submission of a timely, written reservation identifying the dates, times, and intended use of the Complex. Agency shall pay a reservation fee in the amount set forth in the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to making a reservation. All reservations shall be for a minimum of 4 hours of use unless CCSO consents, in writing, to a lesser period. For reservations cancelled between seven (7) days and four (4) weeks prior to the intended date of use, Agency shall pay 50% of the reservation fee. For reservations cancelled less than seven (7) days before the date of intended use, Agency shall pay the full reservation fee. If Agency intends to use the Complex's shooting range, Agency shall notify CCSO of its intent to purchase ammunition as part of its written reservation. Agency shall, to the maximum extent possible, submit a written reservation request at least one (1) month in advance of the intended use.

Notwithstanding any other provision of this Agreement, the undersigned parties expressly agree and acknowledge that Agency's use of the Complex is subordinate and subject to CCSO use of the Complex. Agency may not use the Complex if such use conflicts with the CCSO use of the Complex. The CCSO may, for any reason and in CCSO's sole discretion, deny Agency's requested use of the Complex, or revoke and rescind a previously authorized use of the Complex.

7. Afterhours Access: CCSO may, in its sole discretion, permit Agency access to the Complex outside of normal business hours, including weekends and holidays. Agency's access to the Complex outside of normal business hours is subject to, and contingent upon, Agency's successful completion of any and all trainings, instructions, or certifications CCSO determines, in its sole discretion, are required to permit such access. CCSO may condition Agency's access to the Complex outside of normal business hours upon Agency's acceptance of any additional

terms and conditions CCSO determines, in its sole discretion, may be required to permit such access.

- 8. Condition of PSTC Bowman Complex:** County makes no representations or warranties, express or implied, as to the condition of the Complex or its fitness for any particular use by Agency.
- 9. Cleaning and Repair Costs:** Prior to leaving the Complex, Agency will return any portion of the Complex used by the Agency to its original, clean condition. Agency shall be responsible for any cleaning, repair, or remediation costs arising from or related to Agency's use of the Complex. County shall provide Agency an invoice for any cleaning, repair, or remediation costs incurred by County as a result of Agency's use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
- 10. Gun Handling.** Gun handling or other use outside of the Complex's shooting range is not permitted. All guns must be holstered, cased, or slung muzzle-down when transferred from the parking lot into the Complex.
- 11. Targets and Shooting Lane Use.** When using the Complex's shooting range, targets should be placed at the appropriate height and orientation to avoid shooting the ground, ceiling, or carrier components. Whenever possible, shooting lanes near the walls should not be used to avoid wall strikes.
- 12. Compliance with Applicable Law.** Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to Agency's use of the Complex.
- 13. Express Assumption of Risk.** By signing this agreement, Agency appreciates the risks involved in Agency's use of the Complex and hereby expressly assumes any and all risks arising out of or relating to Agency's use of the Complex.
- 14. Indemnification.** Agency 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, Agency's use of the Complex, or from any act, omission, or neglect of Agency, its agents, or employees.

Subject to the Oregon Tort Claims Act and the Oregon Constitution including, but not limited to, the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, the County shall defend, indemnify and save harmless Agency and its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the negligent or willful acts or omissions of the County, its officers, deputies, employees, or agents associated with this Agreement and over which the County has a right to control.

Subject to the Oregon Tort Claims Act and the Oregon Constitution, Agency shall defend, indemnify and save harmless the County, its officers, deputies, employees and agents from any and all costs, claims, judgments or awards of damages, resulting from the negligent or willful acts or omissions of Agency, its officers, employees or agents associated with this Agreement and over which the Agency has a right to control.

15. Termination. This Agreement may be terminated as follows:

- a. Termination for Convenience. This Agreement may be terminated at any time by mutual consent of the parties, or by County for convenience upon thirty (30) days written notice to Agency.
- b. Termination for Cause. Either Agency or County may terminate this Agreement at any time if that party (the “terminating Party”) has determined, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default (the “defaulting Party”). The terminating Party shall promptly notify the defaulting Party in writing of that determination and document such default as outlined herein. The defaulting Party shall have 30 days to cure the default described by the terminating Party. If the defaulting Party fails to cure the default within such 30-day period, then this Agreement shall terminate 10 days following the expiration of such 30-day period.

16. Insurance. Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$3,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$5,000,000 for bodily injury and property damage for the protection of 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 Agreement. If self-insured, Agency shall provide documentation to the County of Agency’s self-insured status.

17. 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, action, or suit that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- 18. 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.
- 19. Integration.** This Agreement contains the entire agreement between County/CCSO and Agency and supersedes all prior written or oral discussions or agreements.
- 20. Amendments.** County and Agency may amend this Agreement at any time. No amendment shall bind either party unless in writing and signed by all parties. Any such amendment shall be effective only in the specific instance and for the specific purpose given.
- 21. Waiver.** Failure of County to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by County of the right to such performance in the future nor of the right to enforce any other provision of this Agreement. Waiver of any default under this Agreement by County shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Agreement.
- 22. Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 23. No Third Party Beneficiaries.** County and Agency are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the 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 the Agreement.

24. Assignment. Agency shall not assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from County which shall be granted or denied in County's sole and absolute discretion. 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.

25. Execution and Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

26. Notifications. All notices required under this Agreement, including scheduling and reservations requests and related issues, are to be made as follows:

Agency: Milwaukie Police Department

Training Coordinator:
Captain Mark Dye
3200 SE Harrison St.
Milwaukie OR, 97222
503-786-7494
Dyem@milwaukieoregon.gov

Billing Contact:
Kelli Tucker
10722 SE Main St.
Milwaukie, OR 97222
503-786-7523
Tuckerk@milwaukieoregon.gov

The County:
PSTC Business Manager: 503-794-8039
CCSO Lead Firearms: 503-794-8066
CCSO Training Coordinator: 503-794-8071



Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

October 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County Behalf of the Clackamas County Sheriff's Office and the City of Oregon City on behalf of the Oregon City Police Department for use of the Public Safety Training Center (PSTC) - Bowman Training Complex

| | |
|--|--|
| Purpose/Outcome | Approval of the IGA to authorize use of the PSTC-Bowman Training Complex and purchase of training related items including ammunition |
| Dollar Amount and Fiscal Impact | Cost for facility use will be billed to the City of Oregon City based upon actually cost as outlined in County Code Appendix A - Fee |
| Funding Source | Facilities Rental, training supplies and ammunition sales |
| Duration | Oct. 15, 2019 – Oct. 15, 2024 |
| Previous Board Action/Review | None |
| Strategic Plan Alignment | Furthers the County's focus to keeping our residents safe, healthy and secure |
| Counsel Review | Andrew Naylor, via email 10/1/19 |
| Contact Person | Nancy Artmann, CCSO Finance Manager 503.785.5012 |

BACKGROUND:

The purpose of this IGA is to enhance working relationship with law enforcement agencies surrounding Clackamas County through sharing resources. This provides the means for agency partners to train in the local facility. This enhances their opportunity to keep skills up to date and have meaningful, practical application.

RECOMMENDATION: Sheriff's Office respectfully requests that the Board of County Commissioners approves this intergovernmental agreement between Clackamas County by and through its Sheriff's Office and City of Oregon City by and through the Oregon City Police Department for the safety of its citizens of both the County and the City.

Respectfully submitted,

Craig Roberts
Sheriff

INTERGOVERNMENTAL AGREEMENT

Between Clackamas County on Behalf of the Clackamas County Sheriff's Office

and

The City of Oregon City on Behalf of the Oregon City Police Department

For Use of Public Safety Training Center - Bowman Training Complex

This intergovernmental agreement ("Agreement") is entered into as of the 15th day of October, 2019 by and between Clackamas County, a political subdivision of the State of Oregon, by and through its Sheriff's Office (either "County" or "CCSO"), and City of Oregon City on behalf of the Oregon City Police Department ("Agency"), as a unit of local government. This Agreement is authorized pursuant to ORS 190 *et. seq.* and becomes effective upon full execution by the parties.

RECITALS

Whereas, ORS 190 *et. seq.* authorizes County, a unit of local government, and Agency, a local, state, or federal agency, to enter into this Agreement for the performance of any and all activities that a party to the Agreement has authority to perform;

Whereas, County owns and the Clackamas County Sheriff's Office operates the Public Safety Training Center (PSTC) Complex ("Complex"), which includes the Bowman Building, located at 12700 SE 82nd Ave Clackamas, OR 97015;

Whereas the Complex is an ideal facility for various law enforcement training activities and exercises;

Whereas Agency wishes to utilize the Complex, obtain training from CCSO staff, purchase ammunition for use at the PSTC Bowman Training Complex shooting range, or otherwise utilize the Complex for uses approved by the CCSO;

NOW THEREFORE, pursuant to ORS 190.003 *et. seq.*, and for good and valuable consideration, the receipt of which is hereby acknowledged, County and Agency agree as follows:

1. **Term:** this Agreement shall remain in effect until the 15th of October 2024 or until terminated by one or more of the parties hereto.
2. **Scope:** Subject to the terms and conditions of this agreement, Agency may use the Complex for law enforcement education, training, and development purposes.
3. **Consideration:** Agency shall compensate County for use of the Complex pursuant to the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to using the Complex. County shall provide Agency an invoice for all amounts due and owing for use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
4. **County Responsibilities:**

County agrees to the following:

 - a. County will maintain the Complex in a clean and functional manner, consistent with the general maintenance and care of other County facilities.
 - b. County will make available the Complex, including its classrooms, training rooms, and shooting range, to Agency subject to the terms and conditions of this Agreement.
 - c. CCSO will sell to Agency ammunition, as supplies allow, for use by the Agency at the Complex's shooting range. The sales price of the ammunition shall be in an amount determined by CCSO, which is subject to change due to market fluctuations.
5. **Agency Responsibilities:**
 - a. Agency shall ensure timely arrival and departure from the Complex in accordance with an approved reservation.
 - b. Agency shall ensure use of the Complex is limited only to those activities approved by the CCSO.
 - c. Agency will return any portion of the Complex used by the Agency to its original, clean condition.
 - d. Agency shall promptly report to CCSO any incident caused by Agency and resulting in injury or property damage to or within the Complex.

- e. An executed waiver and release, in a form approved and provided by the County, is required for each employee of Agency that will use the Complex. Agency shall ensure all of its employees intending to use the Complex sign the waiver and release prior to using the Complex.
- f. Agency shall timely pay any invoice for use of the Complex.
- g. Agency shall complete all trainings, instructions, or certifications required by CCSO prior to use of the Complex.
- h. Agency shall, upon request by the County, immediately cease use and vacate the Complex if the County determines, in its sole discretion, that Agency's use of the Complex conflicts with County's intended use of the Complex.
- i. Agency shall comply with all other terms and conditions of this Agreement.

6. Reservations and Conflicting Use: Agency's use of the Complex is conditioned upon submission of a timely, written reservation identifying the dates, times, and intended use of the Complex. Agency shall pay a reservation fee in the amount set forth in the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to making a reservation. All reservations shall be for a minimum of 4 hours of use unless CCSO consents, in writing, to a lesser period. For reservations cancelled between seven (7) days and four (4) weeks prior to the intended date of use, Agency shall pay 50% of the reservation fee. For reservations cancelled less than seven (7) days before the date of intended use, Agency shall pay the full reservation fee. If Agency intends to use the Complex's shooting range, Agency shall notify CCSO of its intent to purchase ammunition as part of its written reservation. Agency shall, to the maximum extent possible, submit a written reservation request at least one (1) month in advance of the intended use.

Notwithstanding any other provision of this Agreement, the undersigned parties expressly agree and acknowledge that Agency's use of the Complex is subordinate and subject to CCSO use of the Complex. Agency may not use the Complex if such use conflicts with the CCSO use of the Complex. The CCSO may, for any reason and in CCSO's sole discretion, deny Agency's requested use of the Complex, or revoke and rescind a previously authorized use of the Complex.

7. Afterhours Access: CCSO may, in its sole discretion, permit Agency access to the Complex outside of normal business hours, including weekends and holidays. Agency's access to the Complex outside of normal business hours is subject to, and contingent upon, Agency's successful completion of any and all trainings, instructions, or certifications CCSO determines, in its sole discretion, are required to permit such access. CCSO may condition Agency's access to the Complex outside of normal business hours upon Agency's acceptance of any additional

terms and conditions CCSO determines, in its sole discretion, may be required to permit such access.

- 8. Condition of PSTC Bowman Complex:** County makes no representations or warranties, express or implied, as to the condition of the Complex or its fitness for any particular use by Agency.
- 9. Cleaning and Repair Costs:** Prior to leaving the Complex, Agency will return any portion of the Complex used by the Agency to its original, clean condition. Agency shall be responsible for any cleaning, repair, or remediation costs arising from or related to Agency's use of the Complex. County shall provide Agency an invoice for any cleaning, repair, or remediation costs incurred by County as a result of Agency's use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
- 10. Gun Handling.** Gun handling or other use outside of the Complex's shooting range is not permitted. All guns must be holstered, cased, or slung muzzle-down when transferred from the parking lot into the Complex.
- 11. Targets and Shooting Lane Use.** When using the Complex's shooting range, targets should be placed at the appropriate height and orientation to avoid shooting the ground, ceiling, or carrier components. Whenever possible, shooting lanes near the walls should not be used to avoid wall strikes.
- 12. Compliance with Applicable Law.** Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to Agency's use of the Complex.
- 13. Express Assumption of Risk.** By signing this agreement, Agency appreciates the risks involved in Agency's use of the Complex and hereby expressly assumes any and all risks arising out of or relating to Agency's use of the Complex.
- 14. Indemnification.** Agency 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, Agency's use of the Complex, or from any act, omission, or neglect of Agency, its agents, or employees.

Subject to the Oregon Tort Claims Act and the Oregon Constitution including, but not limited to, the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, the County shall defend, indemnify and save harmless Agency and its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the negligent or willful acts or omissions of the County, its officers, deputies, employees, or agents associated with this Agreement and over which the County has a right to control.

Subject to the Oregon Tort Claims Act and the Oregon Constitution, Agency shall defend, indemnify and save harmless the County, its officers, deputies, employees and agents from any and all costs, claims, judgments or awards of damages, resulting from the negligent or willful acts or omissions of Agency, its officers, employees or agents associated with this Agreement and over which the Agency has a right to control.

15. Termination. This Agreement may be terminated as follows:

- a. Termination for Convenience. This Agreement may be terminated at any time by mutual consent of the parties, or by County for convenience upon thirty (30) days written notice to Agency.
- b. Termination for Cause. Either Agency or County may terminate this Agreement at any time if that party (the “terminating Party”) has determined, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default (the “defaulting Party”). The terminating Party shall promptly notify the defaulting Party in writing of that determination and document such default as outlined herein. The defaulting Party shall have 30 days to cure the default described by the terminating Party. If the defaulting Party fails to cure the default within such 30-day period, then this Agreement shall terminate 10 days following the expiration of such 30-day period.

16. Insurance. Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$3,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$5,000,000 for bodily injury and property damage for the protection of 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 Agreement. If self-insured, Agency shall provide documentation to the County of Agency’s self-insured status.

17. 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, action, or suit that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- 18. 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.
- 19. Integration.** This Agreement contains the entire agreement between County/CCSO and Agency and supersedes all prior written or oral discussions or agreements.
- 20. Amendments.** County and Agency may amend this Agreement at any time. No amendment shall bind either party unless in writing and signed by all parties. Any such amendment shall be effective only in the specific instance and for the specific purpose given.
- 21. Waiver.** Failure of County to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by County of the right to such performance in the future nor of the right to enforce any other provision of this Agreement. Waiver of any default under this Agreement by County shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Agreement.
- 22. Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 23. No Third Party Beneficiaries.** County and Agency are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the 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 the Agreement.

24. Assignment. Agency shall not assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from County which shall be granted or denied in County's sole and absolute discretion. 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.

25. Execution and Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

26. Notifications. All notices required under this Agreement, including scheduling and reservations requests and related issues, are to be made as follows:

Agency: Oregon City Police Department

Training Coordinator:
Sgt. Mike Kramer
320 Warner Milne Rd.
Oregon City, OR 97045
503-657-4964
Mkramer@orecity.org

Billing Contact:
Kelly Dilbeck
320 Warner Milne Rd.
Oregon City, OR 97045
503-657-4964
kdilbeck@orcitey.org

The County:
PSTC Business Manager: 503-794-8039
CCSO Lead Firearms: 503-794-8066
CCSO Training Coordinator: 503-794-8071



Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

October 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County Behalf of the Clackamas County Sheriff's Office and the City of Gladstone on behalf of the Gladstone Police Department for use of the Public Safety Training Center (PSTC) - Bowman Training Complex

| | |
|--|--|
| Purpose/Outcome | Approval of the IGA to authorize use of the PSTC-Bowman Training Complex and purchase of training related items including ammunition |
| Dollar Amount and Fiscal Impact | Cost for facility use will be billed to the City of Gladstone based upon actually cost as outlined in County Code Appendix A - Fee |
| Funding Source | Facilities Rental, training supplies and ammunition sales |
| Duration | Oct. 15, 2019 – Oct. 15, 2024 |
| Previous Board Action/Review | None |
| Strategic Plan Alignment | Furthers the County's focus to keeping our residents safe, healthy and secure |
| Counsel Review | Andrew Naylor, via email 10/1/19 |
| Contact Person | Nancy Artmann, CCSO Finance Manager 503.785.5012 |

BACKGROUND:

The purpose of this IGA is to enhance working relationship with law enforcement agencies surrounding Clackamas County through sharing resources. This provides the means for agency partners to train in the local facility. This enhances their opportunity to keep skills up to date and have meaningful, practical application.

RECOMMENDATION: Sheriff's Office respectfully requests that the Board of County Commissioners approves this intergovernmental agreement between Clackamas County by and through its Sheriff's Office and City of Gladstone by and through the Gladstone Police Department for the safety of its citizens of both the County and the City.

Respectfully submitted,

Craig Roberts
Sheriff

INTERGOVERNMENTAL AGREEMENT

Between Clackamas County on Behalf of the Clackamas County Sheriff's Office

and

City of Gladstone on behalf of the Gladstone Police Department

For Use of Public Safety Training Center - Bowman Training Complex

This intergovernmental agreement ("Agreement") is entered into as of the 15th day of October, 2019 by and between Clackamas County, a political subdivision of the State of Oregon, by and through its Sheriff's Office (either "County" or "CCSO"), and the City of Gladstone on behalf of the Gladstone Police Department ("Agency"), a unit of local government. This Agreement is authorized pursuant to ORS 190 *et. seq.* and becomes effective upon full execution by the parties.

RECITALS

Whereas, ORS 190 *et. seq.* authorizes County, a unit of local government, and Agency, a local, state, or federal agency, to enter into this Agreement for the performance of any and all activities that a party to the Agreement has authority to perform;

Whereas, County owns and the Clackamas County Sheriff's Office operates the Public Safety Training Center (PSTC) Complex ("Complex"), which includes the Bowman Building, located at 12700 SE 82nd Ave Clackamas, OR 97015;

Whereas the Complex is an ideal facility for various law enforcement training activities and exercises;

Whereas Agency wishes to utilize the Complex, obtain training from CCSO staff, purchase ammunition for use at the PSTC Bowman Training Complex shooting range, or otherwise utilize the Complex for uses approved by the CCSO;

NOW THEREFORE, pursuant to ORS 190.003 *et. seq.*, and for good and valuable consideration, the receipt of which is hereby acknowledged, County and Agency agree as follows:

1. **Term:** this Agreement shall remain in effect until 10/15/2024 or until terminated by one or more of the parties hereto.
2. **Scope:** Subject to the terms and conditions of this agreement, Agency may use the Complex for law enforcement education, training, and development purposes.
3. **Consideration:** Agency shall compensate County for use of the Complex pursuant to the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to using the Complex. County shall provide Agency an invoice for all amounts due and owing for use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
4. **County Responsibilities:** County agrees to the following:
 - a. County will maintain the Complex in a clean and functional manner, consistent with the general maintenance and care of other County facilities.
 - b. County will make available the Complex, including its classrooms, training rooms, and shooting range, to Agency subject to the terms and conditions of this Agreement.
 - c. CCSO will sell to Agency ammunition, as supplies allow, for use by the Agency at the Complex's shooting range. The sales price of the ammunition shall be in an amount determined by CCSO, which is subject to change due to market fluctuations.
5. **Agency Responsibilities:**
 - a. Agency shall ensure timely arrival and departure from the Complex in accordance with an approved reservation.
 - b. Agency shall ensure use of the Complex is limited only to those activities approved by the CCSO.
 - c. Agency will return any portion of the Complex used by the Agency to its original, clean condition.
 - d. Agency shall promptly report to CCSO any incident caused by Agency and resulting in injury or property damage to or within the Complex.
 - e. An executed waiver and release, in a form approved and provided by the County, is required for each employee of Agency that will use the

Complex. Agency shall ensure all of its employees intending to use the Complex sign the waiver and release prior to using the Complex.

- f. Agency shall timely pay any invoice for use of the Complex.
- g. Agency shall complete all trainings, instructions, or certifications required by CCSO prior to use of the Complex.
- h. Agency shall, upon request by the County, immediately cease use and vacate the Complex if the County determines, in its sole discretion, that Agency's use of the Complex conflicts with County's intended use of the Complex.
- i. Agency shall comply with all other terms and conditions of this Agreement.

6. Reservations and Conflicting Use: Agency's use of the Complex is conditioned upon submission of a timely, written reservation identifying the dates, times, and intended use of the Complex. Agency shall pay a reservation fee in the amount set forth in the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to making a reservation. All reservations shall be for a minimum of 4 hours of use unless CCSO consents, in writing, to a lesser period. For reservations cancelled between seven (7) days and four (4) weeks prior to the intended date of use, Agency shall pay 50% of the reservation fee. For reservations cancelled less than seven (7) days before the date of intended use, Agency shall pay the full reservation fee. If Agency intends to use the Complex's shooting range, Agency shall notify CCSO of its intent to purchase ammunition as part of its written reservation. Agency shall, to the maximum extent possible, submit a written reservation request at least one (1) month in advance of the intended use.

Notwithstanding any other provision of this Agreement, the undersigned parties expressly agree and acknowledge that Agency's use of the Complex is subordinate and subject to CCSO use of the Complex. Agency may not use the Complex if such use conflicts with the CCSO use of the Complex. The CCSO may, for any reason and in CCSO's sole discretion, deny Agency's requested use of the Complex, or revoke and rescind a previously authorized use of the Complex.

7. Afterhours Access: CCSO may, in its sole discretion, permit Agency access to the Complex outside of normal business hours, including weekends and holidays. Agency's access to the Complex outside of normal business hours is subject to, and contingent upon, Agency's successful completion of any and all trainings, instructions, or certifications CCSO determines, in its sole discretion, are required to permit such access. CCSO may condition Agency's access to the Complex outside of normal business hours upon Agency's acceptance of any additional terms and conditions CCSO determines, in its sole discretion, may be required to permit such access.

- 8. Condition of PSTC Bowman Complex:** County makes no representations or warranties, express or implied, as to the condition of the Complex or its fitness for any particular use by Agency.
- 9. Cleaning and Repair Costs:** Prior to leaving the Complex, Agency will return any portion of the Complex used by the Agency to its original, clean condition. Agency shall be responsible for any cleaning, repair, or remediation costs arising from or related to Agency's use of the Complex. County shall provide Agency an invoice for any cleaning, repair, or remediation costs incurred by County as a result of Agency's use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
- 10. Gun Handling.** Gun handling or other use outside of the Complex's shooting range is not permitted. All guns must be holstered, cased, or slung muzzle-down when transferred from the parking lot into the Complex.
- 11. Targets and Shooting Lane Use.** When using the Complex's shooting range, targets should be placed at the appropriate height and orientation to avoid shooting the ground, ceiling, or carrier components. Whenever possible, shooting lanes near the walls should not be used to avoid wall strikes.
- 12. Compliance with Applicable Law.** Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to Agency's use of the Complex.
- 13. Express Assumption of Risk.** By signing this agreement, Agency appreciates the risks involved in Agency's use of the Complex and hereby expressly assumes any and all risks arising out of or relating to Agency's use of the Complex.
- 14. Indemnification.** Agency 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, Agency's use of the Complex, or from any act, omission, or neglect of Agency, its agents, or employees.

Subject to the Oregon Tort Claims Act and the Oregon Constitution including, but not limited to, the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, the County shall defend, indemnify and save harmless Agency and its officers, employees and agents from any and all costs,

claims, judgments, or awards of damages, resulting from the negligent or willful acts or omissions of the County, its officers, deputies, employees, or agents associated with this Agreement and over which the County has a right to control.

Subject to the Oregon Tort Claims Act and the Oregon Constitution, Agency shall defend, indemnify and save harmless the County, its officers, deputies, employees and agents from any and all costs, claims, judgments or awards of damages, resulting from the negligent or willful acts or omissions of Agency, its officers, employees or agents associated with this Agreement and over which the Agency has a right to control.

15. Termination. This Agreement may be terminated as follows:

- a. Termination for Convenience. This Agreement may be terminated at any time by mutual consent of the parties, or by County for convenience upon thirty (30) days written notice to Agency.
- b. Termination for Cause. Either Agency or County may terminate this Agreement at any time if that party (the “terminating Party”) has determined, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default (the “defaulting Party”). The terminating Party shall promptly notify the defaulting Party in writing of that determination and document such default as outlined herein. The defaulting Party shall have 30 days to cure the default described by the terminating Party. If the defaulting Party fails to cure the default within such 30-day period, then this Agreement shall terminate 10 days following the expiration of such 30-day period.

16. Insurance. Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$3,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$5,000,000 for bodily injury and property damage for the protection of 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 Agreement. If self-insured, Agency shall provide documentation to the County of Agency’s self-insured status.

17. 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, action, or suit that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim,

action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- 18. 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.
- 19. Integration.** This Agreement contains the entire agreement between County/CCSO and Agency and supersedes all prior written or oral discussions or agreements.
- 20. Amendments.** County and Agency may amend this Agreement at any time. No amendment shall bind either party unless in writing and signed by all parties. Any such amendment shall be effective only in the specific instance and for the specific purpose given.
- 21. Waiver.** Failure of County to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by County of the right to such performance in the future nor of the right to enforce any other provision of this Agreement. Waiver of any default under this Agreement by County shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Agreement.
- 22. Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 23. No Third Party Beneficiaries.** County and Agency are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the 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 the Agreement.
- 24. Assignment.** Agency shall not assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from County which shall be granted or denied in County's sole and absolute discretion. 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.

25. Execution and Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

26. Notifications. All notices required under this Agreement, including scheduling and reservations requests and related issues, are to be made as follows:

Agency: Gladstone Police Department

Training Coordinator:
Sgt. Carl Bell
525 Portland Ave
Gladstone, OR
503-557-2797
Cbell@gladstoneoregon.us

Billing Contact:
Kristi Walls
525 Portland Ave
Gladstone, OR
503-557-2797
kwalls@gladstoneoregon.us

The County:
PSTC Business Manager: 503-794-8039
CCSO Lead Firearms: 503-794-8066
CCSO Training Coordinator: 503-794-8071



Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

October 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County Behalf of the Clackamas County Sheriff's Office and the City of Gresham on behalf of the Gresham Police Department for use of the Public Safety Training Center (PSTC) - Bowman Training Complex

| | |
|--|--|
| Purpose/Outcome | Approval of the IGA to authorize use of the PSTC-Bowman Training Complex and purchase of training related items including ammunition |
| Dollar Amount and Fiscal Impact | Cost for facility use will be billed to the City of Gresham based upon actually cost as outlined in County Code Appendix A - Fee |
| Funding Source | Facilities Rental, training supplies and ammunition sales |
| Duration | Oct. 15, 2019 – Oct. 15, 2024 |
| Previous Board Action/Review | None |
| Strategic Plan Alignment | Furthers the County's focus to keeping our residents safe, healthy and secure |
| Counsel Review | Andrew Naylor, via email 10/1/19 |
| Contact Person | Nancy Artmann, CCSO Finance Manager 503.785.5012 |

BACKGROUND:

The purpose of this IGA is to enhance working relationship with law enforcement agencies surrounding Clackamas County through sharing resources. This provides the means for agency partners to train in the local facility. This enhances their opportunity to keep skills up to date and have meaningful, practical application.

RECOMMENDATION: Sheriff's Office respectfully requests that the Board of County Commissioners approves this intergovernmental agreement between Clackamas County by and through its Sheriff's Office and City of Gresham by and through the Gresham Police Department for the safety of its citizens of both the County and the City.

Respectfully submitted,


Craig Roberts
Sheriff

INTERGOVERNMENTAL AGREEMENT

Between Clackamas County on Behalf of the Clackamas County Sheriff's Office

and

City of Gresham on behalf of the Gresham Police Department

For Use of Public Safety Training Center - Bowman Training Complex

This intergovernmental agreement ("Agreement") is entered into as of the 15th day of October, 2019 by and between Clackamas County, a political subdivision of the State of Oregon, by and through its Sheriff's Office (either "County" or "CCSO"), and City of Gresham, a unit of local government, ("Agency"). This Agreement is authorized pursuant to ORS 190 *et. seq.* and becomes effective upon full execution by the parties.

RECITALS

Whereas, ORS 190 *et. seq.* authorizes County, a unit of local government, and Agency, a local, state, or federal agency, to enter into this Agreement for the performance of any and all activities that a party to the Agreement has authority to perform;

Whereas, County owns and the Clackamas County Sheriff's Office operates the Public Safety Training Center (PSTC) Complex ("Complex"), which includes the Bowman Building, located at 12700 SE 82nd Ave Clackamas, OR 97015;

Whereas the Complex is an ideal facility for various law enforcement training activities and exercises;

Whereas Agency wishes to utilize the Complex, obtain training from CCSO staff, purchase ammunition for use at the PSTC Bowman Training Complex shooting range, or otherwise utilize the Complex for uses approved by the Sheriff's Office;

NOW THEREFORE, pursuant to ORS 190.003 *et. seq.*, and for good and valuable consideration, the receipt of which is hereby acknowledged, County and Agency agree as follows:

1. **Term:** this Agreement shall remain in effect until October 15, 2024 or until terminated by one or more of the parties hereto.
2. **Scope:** Subject to the terms and conditions of this agreement, Agency may use the Complex for law enforcement education, training, and development purposes.
3. **Consideration:** Agency shall compensate County for use of the Complex pursuant to the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to using the Complex. County shall provide Agency an invoice for all amounts due and owing for use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.
4. **County Responsibilities:**

County agrees to the following:

 - a. County will maintain the Complex in a clean and functional manner, consistent with the general maintenance and care of other County facilities.
 - b. County will make available the Complex, including its classrooms, training rooms, and shooting range, to Agency subject to the terms and conditions of this Agreement.
 - c. CCSO will sell to Agency ammunition, as supplies allow, for use by the Agency at the Complex's shooting range. The sales price of the ammunition shall be in an amount determined by CCSO, which is subject to change due to market fluctuations.
5. **Agency Responsibilities:**
 - a. Agency shall ensure timely arrival and departure from the Complex in accordance with an approved reservation.
 - b. Agency shall ensure use of the Complex is limited only to those activities approved by the CCSO.
 - c. Agency will return any portion of the Complex used by the Agency to its original, clean condition.
 - d. Agency shall promptly report to CCSO any incident caused by Agency and resulting in injury or property damage to or within the Complex.
 - e. An executed waiver and release, in a form approved and provided by the County, is required for each employee of Agency that will use the Complex. Agency shall ensure all of its employees intending to use the Complex sign the waiver and release prior to using the Complex.
 - f. Agency shall timely pay any invoice for use of the Complex.
 - g. Agency shall complete all trainings, instructions, or certifications required by CCSO prior to use of the Complex.

- h. Agency shall, upon request by the County, immediately cease use and vacate the Complex if the County determines, in its sole discretion, that Agency's use of the Complex conflicts with County's intended use of the Complex.
 - i. Agency shall comply with all other terms and conditions of this Agreement.
- 6. Reservations and Conflicting Use:** Agency's use of the Complex is conditioned upon submission of a timely, written reservation identifying the dates, times, and intended use of the Complex. Agency shall pay a reservation fee in the amount set forth in the County's then-current fees and rate schedule. It is Agency's responsibility to inquire as to the current fee and rate schedule prior to making a reservation. All reservations shall be for a minimum of 4 hours of use unless CCSO consents, in writing, to a lesser period. For reservations cancelled between seven (7) days and four (4) weeks prior to the intended date of use, Agency shall pay 50% of the reservation fee. For reservations cancelled less than seven (7) days before the date of intended use, Agency shall pay the full reservation fee. If Agency intends to use the Complex's shooting range, Agency shall notify CCSO of its intent to purchase ammunition as part of its written reservation. Agency shall, to the maximum extent possible, submit a written reservation request at least one (1) month in advance of the intended use.

Notwithstanding any other provision of this Agreement, the undersigned parties expressly agree and acknowledge that Agency's use of the Complex is subordinate and subject to CCSO use of the Complex. Agency may not use the Complex if such use conflicts with the CCSO use of the Complex. The CCSO may, for any reason and in CCSO's sole discretion, deny Agency's requested use of the Complex, or revoke and rescind a previously authorized use of the Complex.

- 7. Afterhours Access:** CCSO may, in its sole discretion, permit Agency access to the Complex outside of normal business hours, including weekends and holidays. Agency's access to the Complex outside of normal business hours is subject to, and contingent upon, Agency's successful completion of any and all trainings, instructions, or certifications CCSO determines, in its sole discretion, are required to permit such access. CCSO may condition Agency's access to the Complex outside of normal business hours upon Agency's acceptance of any additional terms and conditions CCSO determines, in its sole discretion, may be required to permit such access.
- 8. Condition of PSTC Bowman Complex:** County makes no representations or warranties, express or implied, as to the condition of the Complex or its fitness for any particular use by Agency.
- 9. Cleaning and Repair Costs:** Prior to leaving the Complex, Agency will return any portion of the Complex used by the Agency to its original, clean condition. Agency shall be responsible for any cleaning, repair, or remediation costs arising

from or related to Agency's use of the Complex. County shall provide Agency an invoice for any cleaning, repair, or remediation costs incurred by County as a result of Agency's use of the Complex. Agency shall pay all invoices within sixty (60) days upon issuance by the County. If an invoice is not timely paid, Agency will be charged a late fee of ten percent (10%) of the unpaid invoice amount. If Agency fails pay an invoice, together with the late fee, within ninety (90) days from the date the County originally issued the invoice, Agency shall be prohibited from using the Complex unless and until all unpaid amounts have been paid to the County.

10. Gun Handling. Gun handling or other use outside of the Complex's shooting range is not permitted. All guns must be holstered, cased, or slung muzzle-down when transferred from the parking lot into the Complex.

11. Targets and Shooting Lane Use. When using the Complex's shooting range, targets should be placed at the appropriate height and orientation to avoid shooting the ground, ceiling, or carrier components. Whenever possible, shooting lanes near the walls should not be used to avoid wall strikes.

12. Compliance with Applicable Law. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to Agency's use of the Complex.

13. Express Assumption of Risk. By signing this agreement, Agency appreciates the risks involved in Agency's use of the Complex and hereby expressly assumes any and all risks arising out of or relating to Agency's use of the Complex.

14. Indemnification. Agency 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, Agency's use of the Complex, or from any act, omission, or neglect of Agency, its agents, or employees.

Subject to the Oregon Tort Claims Act and the Oregon Constitution including, but not limited to, the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, the County shall defend, indemnify and save harmless Agency and its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the negligent or willful acts or omissions of the County, its officers, deputies, employees, or agents associated with this Agreement and over which the County has a right to control.

Subject to the Oregon Tort Claims Act and the Oregon Constitution, Agency shall defend, indemnify and save harmless the County, its officers, deputies, employees and agents from any and all costs, claims, judgments or awards of damages, resulting from the negligent or willful acts or omissions of Agency, its

officers, employees or agents associated with this Agreement and over which the Agency has a right to control.

15. Termination. This Agreement may be terminated as follows:

- a. Termination for Convenience. This Agreement may be terminated at any time by mutual consent of the parties, or by County for convenience upon thirty (30) days written notice to Agency.
- b. Termination for Cause. Either Agency or County may terminate this Agreement at any time if that party (the “terminating Party”) has determined, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default (the “defaulting Party”). The terminating Party shall promptly notify the defaulting Party in writing of that determination and document such default as outlined herein. The defaulting Party shall have 30 days to cure the default described by the terminating Party. If the defaulting Party fails to cure the default within such 30-day period, then this Agreement shall terminate 10 days following the expiration of such 30-day period.

16. Insurance. Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$3,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$5,000,000 for bodily injury and property damage for the protection of 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 Agreement. If self-insured, Agency shall provide documentation to the County of Agency’s self-insured status.

17. 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, action, or suit that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

18. 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.

19. Integration. This Agreement contains the entire agreement between County/CCSO and Agency and supersedes all prior written or oral discussions or agreements.

20. Amendments. County and Agency may amend this Agreement at any time. No amendment shall bind either party unless in writing and signed by all parties. Any such amendment shall be effective only in the specific instance and for the specific purpose given.

21. Waiver. Failure of County to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by County of the right to such performance in the future nor of the right to enforce any other provision of this Agreement. Waiver of any default under this Agreement by County shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Agreement.

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

23. No Third Party Beneficiaries. County and Agency are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the 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 the Agreement.

24. Assignment. Agency shall not assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from County which shall be granted or denied in County's sole and absolute discretion. 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.

25. Execution and Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

26. Notifications. All notices required under this Agreement, including scheduling and reservations requests and related issues, are to be made as follows:

Agency:
Hung Nguyen, Training Sergeant 503-793-1472

The County:
PSTC Business Manager: 503-794-8039
CCSO Lead Firearms: 503-794-8066
CCSO Training Coordinator: 503-794-8071

By their signatures below, the parties to this Agreement agree to the terms, conditions, and content expressed herein.

Clackamas County

City of Gresham

By: Date

By: Date

Title:

Title:

Approved as to Form by:

Andrew Naylor, Assistant County Counsel
via email on 10/01/2019



October 17, 2019

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Amendment #3 to an Intergovernmental Agreement
 with the City of Gladstone to Provide Library Director Services

| | |
|--|--|
| Purpose/Outcomes | Provide temporary Library Director services to the City of Gladstone until Gladstone Public Library operations are transferred to the County. |
| Dollar Amount and Fiscal Impact | \$ 6,041.08 in revenue, credited to the BCS Oak Lodge Library program |
| Funding Source | N/A - Revenue |
| Duration | Through November 30, 2019 |
| Strategic Plan Alignment | <ul style="list-style-type: none"> • Build public trust through good government |
| Previous Board Action | <ul style="list-style-type: none"> • <i>October 10, 2017 Business Meeting</i> – Approval of Settlement Agreement with City of Gladstone • <i>February 15, 2018 Business Meeting</i> – Approval of Amendment No. 1 to the Settlement Agreement with the City of Gladstone • <i>July 12, 2018 Business Meeting</i> – Approval of Intergovernmental Agreement with the City of Gladstone to Provide Library Director Services • <i>July 18, 2019 Business Meeting</i> – Approval of an Intergovernmental Agreement Amendment with the City of Gladstone to provide Library Director Services (extension through September 30, 2019) • <i>September 19, 2019 Business Meeting</i> - Approval of Amendment #2 to an Intergovernmental Agreement Amendment with the City of Gladstone to provide Library Director Services (extension through October 31, 2019) |
| County Counsel | Approved as to Form by County Counsel on September 25, 2019. |
| Contact Person | Laura Zentner, BCS Director, 503-742-4351 |

BACKGROUND:

In October 2017, the County and the City of Gladstone entered into a Settlement Agreement which contemplates the operation and construction of two new libraries, one located within the City of Gladstone and one located within the Oak Lodge Library service area. Both libraries will be managed and operated by the County. County and City staff have begun the planning process to transfer operations of the Gladstone Library to the County, and anticipate this transfer will be completed in FY 19-20.

In 2018, following the resignation of the City of Gladstone's Library Director, the City and the County entered into an intergovernmental agreement (IGA) under which the County has been providing temporary Library Director Services to the City of Gladstone. The Director of the BCS Oak Lodge Library, Mitzi Olson, has been serving as Director of the Gladstone Library since July 2018.

Under this third IGA amendment, the County will continue to provide Library Director Services to the City of Gladstone through November 30, 2019. In consideration, the City of Gladstone will pay the County \$ 6,041.08 representing one half of Director Olson's salary and benefits for the time period of the amendment.

The City of Gladstone and the County are currently working to enter into a separate IGA for the ongoing management and operation of the Gladstone Public Library starting in FY 19-20. That IGA will be presented to the Board at a later date.

RECOMMENDATION:

Staff recommend that the Board of County Commissioners approve Amendment #3 to Intergovernmental Agreement between Clackamas County and the City of Gladstone.

ATTACHMENTS:

1. Amendment #3 to Intergovernmental Agreement between Clackamas County and the City of Gladstone.

Respectfully submitted,



Dep. Dir. for L. Zentner

Laura Zentner, Director
Business and Community Services

**AMENDMENT #3 TO INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND THE CITY OF GLADSTONE**

THIS AMENDMENT ("Amendment") is entered into by and between Clackamas County ("County"), a political subdivision of the State of Oregon, and the City of Gladstone ("City") and shall become a part of that Intergovernmental Agreement entered between the parties on July 17, 2018 (the "Agreement"), as amended.

RECITALS

WHEREAS, authority is conferred upon local governments under ORS 190.010 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;

WHEREAS, the parties desire to extend the effective date of the Agreement and to provide additional compensation for the County to provide temporary library director services on behalf of the City during the extended term of the Agreement;

NOW, THEREFORE, 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 to amend the Agreement as follows:

1. **Effective Date.** Section 1, Effective Date, of the Agreement is hereby amended to extend the termination date of the Agreement from October 31, 2019 to November 30, 2019.
2. **Consideration.** Section 2, Consideration, of the Agreement is hereby amended to provide additional compensation for the extended term of the Agreement. For the period of November 1, 2019 through November 30, 2019, the City will pay the County the sum of \$6,041.08, which sum represents half of salary and benefits of the current Oak Lodge Library Director, Mitzi Olson, during the extended term of the Agreement. The City shall make payment to the County within thirty (30) days of execution of this Amendment.

Except as expressly amended above, all other terms and conditions of the Agreement shall remain in full force and effect. By signature below, the parties agree to this Amendment, effective upon the date of the last signature below.

IN WITNESS HEREOF, the Parties have executed this Amendment by the date set forth opposite their names below.

Clackamas County

City of Gladstone

Chair, Board of County Commissioners

By: 

Its: _____

Date

Date

10/18/2019



**BUSINESS AND COMMUNITY SERVICES
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

Development Services Building
150 Beaver Creek Road, Oregon City, OR 97045

Laura Zentner, BCS Director

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of a Contract between the North Clackamas Parks and Recreation District (NCRPD)
and Enviser, Inc. for District Wide Mechanical and HVAC Services

| | |
|--|---|
| Purpose/Outcomes | This contract will provide mechanical and HVAC services for the NCRPD Aquatic Park, Clackamas School Building, and Concord Building sites. |
| Dollar Amount and Fiscal Impact | Contract amount is not to exceed \$779,892.00 |
| Funding Source | FY 19/20 budgeted NCRPD funds |
| Duration | Through June 30, 2022 with the option to renew for 3 additional 1 year terms. |
| Previous Board Action | N/A |
| Strategic Plan Alignment | <ul style="list-style-type: none"> • Build a strong infrastructure • To enrich community vitality and promote healthy living through parks and recreation |
| Counsel Approval | This contract was reviewed and approved by County Counsel October 1, 2019 |
| Contact Person | Kevin Cayson, <i>NCRPD Park and Facilities Manager</i> , 503-794-8030 |

BACKGROUND:

The North Clackamas Parks and Recreation District (NCRPD), a division of Business and Community Services (BCS), seeks to enter into a contract with Enviser, Inc. to provide full coverage mechanical service and preventative maintenance to the following facilities:

- The North Clackamas Aquatic Park (“NCAP”): a regional swim Center with a lap pool, 3 waterslides, kiddie pool, and a wave pool.
- Clackamas School Building (Clackamas): a 44,000 Sq. Ft facility currently serving as a charter school.
- Concord Building: a 47,000 Sq. Ft. facility currently not in use.

The scope of work will include inspection and maintenance services for all three sites, including inspecting for worn, failed or doubtful parts; wiring; mountings; drive couplings; sheaves; pulleys; heat exchangers; oil level; rotation; soot; flame composition and shape; pilot and igniter; steam, water, oil and/or refrigerant leaks, etc. The scope will also include testing for excessive vibration; motor winding resistance; refrigerant charge; fan RPM; refrigerant oil(acid); flue gas analysis; safety controls; combustion and draft; crankcase heaters; control system(s), etc.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS and LCRB Rules on July 8, 2019. A mandatory pre-conference meeting was held on July 18, 2019 for vendors to preview the service locations. Proposals were opened on August 8, 2019. The District received two (2) Proposals: Enviser, Inc, and Hunter Davisson, Inc. An evaluation committee was assembled consisting of District staff. After evaluation of the proposals, Enviser, Inc. was determined to be the highest evaluating proposer. The total contract amount is not to exceed \$779,892.00.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners, acting as the governing body of the North Clackamas Parks and Recreation District, approve and execute the Contract between Business & Community Services - North Clackamas Parks and Recreation District and Enviser, Inc. for the North Clackamas Parks and Recreation District Facility's Equipment Maintenance.

Respectfully submitted,

Laura Zentner
Director, Business & Community Services

Placed on the Agenda of _____ by the Procurement Division



GOODS AND SERVICES CONTRACT Contract #1861

This Goods and Services Contract (this “Contract”) is entered into between **Envise, Inc.** (“Contractor”), and North Clackamas Parks and Recreation District, a political subdivision of the State of Oregon (“District”) for the purposes of providing **North Clackamas Parks and Recreation District Facility’s Equipment Maintenance.**

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **June 30, 2022** with the option for three (3) additional one (1) year renewals 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 work (“Work”) described in RFP #2019-57 North Clackamas Parks and Recreation District Facility’s Equipment Maintenance, published July 3, 2019, and the addendum #1 issued August 5, 2019, attached and hereby incorporated by reference as Exhibit “A.” The Work includes three different facility maintenance scopes of work described in Exhibit A and summarized as follows: (i) mechanical service (“Scope A”); (ii) preventative maintenance service (“Scope B”); and (iii) a twice-yearly test and inspection maintenance (“Scope C”). The facility maintenance Work will be performed on three District facilities: the North Clackamas Aquatic Park, the Clackamas School Building, and the Concord Building. The particular facility maintenance Work that will be performed at each of the District facilities is described as follows:

- North Clackamas Aquatic Park: Contractor will perform Scope A;
- Clackamas School Building: Contractor will perform Scope A;
- Concord Building: Contractor will perform Scope C.

Contractor will not, at this time, perform Scope B at any of the facilities.

The Work may also include optional equipment repairs outside of the regular maintenance work described in Scopes A, B, and C (the “Repair Work”). The Repair Work must be separately authorized by the District, in writing, and only by the District’s contract administrator.

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: Kevin Cayson.

III. COMPENSATION

1. PAYMENT. The District agrees to compensate the Contractor for performance of facility maintenance Work on a fixed fee basis as follows:

- North Clackamas Aquatic Park Scope A Work: \$73,656.00;
- Clackamas School Building Scope A Work: \$31,626.00;
- The Concord Building Scope C Work: \$5,840.00.

The maximum annual compensation authorized under this Contract for performing facility maintenance Work at all three facilities shall not exceed the sum of **\$111,122.00**.

The District agrees to compensate Contractor for Repair Work on a time and material basis in accordance with the rates and costs specified in Exhibit B. The maximum annual compensation for Repair Work shall not exceed the sum of **\$18,860.00**.

The total Contract compensation authorized under this Contract, including all facility maintenance Work and Repair Work, shall not exceed the sum of **\$779,892.00**.

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: North Clackamas Parks and Recreation, 150 Beaver Creek Road, Oregon City, Oregon 97045 or via email at kevinc@ncprd.com.

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 certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the 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 caused by the negligent acts or omissions 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 reasonable 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 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; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits; 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 written notice, in accordance with Contractor's insurance policies, 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 its 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 written notice, in accordance with Contractor's insurance policies, 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. Conditioned upon payment in full, 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, conditioned upon Contractor receiving payment in full from the District, hereby irrevocably assigns to District a limited license to use the Work Product in connection with completing this Project. 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 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, any other remedy that may be available to Contractor at law or equity. 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 handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the District except as to latent defects, fraud and Contractor's warranty obligations.

29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the District at times and places determined by the District. If the District finds goods and services furnished to be incomplete or not in compliance with the District, the District, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the District at a reduced price, whichever the District deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the District, the District may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the District's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

30. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Enviser, Inc.

North Clackamas Parks and Recreation District

Authorized Signature

Date

Chair

Date

Name / Title (Printed)

Recording Secretary

Telephone Number

1100630-96
Oregon Business Registry #

Approved as to Form:

California
Entity Type / State of Formation

County Counsel

Date

EXHIBIT A
RFP#2019-57
North Clackamas Parks and Recreation District
Facility's Equipment Maintenance
Issued July 3, 2019

EXHIBIT B
CONTRACTOR'S PROPOSAL



Gregory L. Geist
Director

October 17, 2019

Water Environment Services Board
Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment No. 3 to the Intergovernmental Agreement Between
Water Environment Services and Clackamas County
For Facilities Management and Maintenance

| | |
|--|--|
| Purpose/Outcomes | Approval of Amendment No. 3 to the Intergovernmental Agreement Between Water Environment Services and Clackamas County for facilities management and maintenance. |
| Dollar Amount and Fiscal Impact | The Agreement proposes an annual not to exceed value of \$300,000 with a total not exceed amount of \$900,000 for the full term of the contract. |
| Funding Source | FY18/19 – FY 20/21 WES Budget as approved. No general fund dollars. |
| Duration | The Agreement ratifies all work occurring from the previous agreements expiration of June 30, 2018 and would continue until June 30, 2021. |
| Previous Board Action/Review | Board approved original Intergovernmental Agreement – 051514 VIII. 1. Amendment 1 approved – 060916 IV. 1 & 2 Amendment 2 approved – 072717 V. 1 & 2 |
| Counsel Review | This IGA was reviewed and approved by County Counsel on September 24, 2019. |
| Strategic Plan Alignment | 1) This Agreement supports the County’s goal of building trust through good government by supporting efficient use of funds and resources. 2) The Agreement supports WES’s strategic goal of investment in Infrastructure Strategy and Performance. Specially, our Plant Operations and Maintenance goal of increasing the percentage of WES Maintenance activities that will be planned efforts to address performance deficiencies or enhancements. |
| Contact Person | Greg Eyerly, 503-557-2802 |
| Contract No. | N/A |

BACKGROUND:

In 2014, Clackamas County Service District No. 1 (“CCSD#1”), the Tri-City Service District (“TCSD”) (collectively “Districts”) and Clackamas County (“County”) entered into an Intergovernmental Agreement for Facilities Management and Maintenance (“Agreement”) for an annual total of \$270,000 that covered all the facilities excluding pump stations within the two Districts. The Agreement was amended and extended in June of 2016, and scope negotiated for an annual contract amount of \$200,000.

In 2016, the Districts renewed the Agreement, including an updated scope that added the Training Center modular trailer at the Tri-City Water Resource Recovery Facility and the chemical building locker room and facility lunchroom at the Kellogg Creek Water Resource

Recovery Facility for the receipt of services. These additions increased the annual agreement by \$10,000 for a total contract amount of \$210,000. The Agreement also clarified that Water Environment Services had assumed the duties of TCSD under the Agreement.

Amendment 2 of the Agreement expired June 30, 2018. This Amendment ratifies all work performed since that date pursuant to the terms of the Agreement and extends the term of the Agreement to June 30, 2021. The Scope of Work is increased to improve clarity, increase coordination, and improve procurement efficiencies for shared service needs while reserving the rights of Water Environment Services to utilize outside resources for work described in the Scope, if necessary. These additions increased the annual agreement by \$90,000, for a total contract amount of \$900,000. The Agreement also clarifies that Water Environment Services has assumed the duties of TCSD and CCSD#1 under the Agreement.

RECOMMENDATION:

WES staff recommends the Board, acting as the governing body of Water Environment Services, approve the Amendment No. 3 to the Intergovernmental Agreement between Water Environment Services and Clackamas County for Facilities Management and Maintenance.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Greg Geist", with a stylized flourish at the end.

Greg Geist
Director, Water Environment Services

Attachments:

- Amendment No. 3 to the IGA WES & Clackamas County for Facilities & Maintenance
- Exhibit A – Scope of Work

**AMENDMENT No. 3
TO THE INTERGOVERNMENTAL AGREEMENT
WATER ENVIRONMENT SERVICES
AND CLACKAMAS COUNTY FOR
FACILITIES MANAGEMENT AND MAINTENANCE**

This AMENDMENT NO. 3 to the INTERGOVERNMENTAL AGREEMENT (this “Amendment No. 3”) is made and entered into on the ____ of _____, 2019, by and between WATER ENVIRONMENT SERVICES, an intergovernmental partnership formed under ORS Chapter 190 (“WES”), and CLACKAMAS COUNTY, a political subdivision of the State of Oregon (“County”), for providing facilities management and maintenance services, hereinafter referred to as the “Services.”

WHEREAS, the County, Clackamas County Service District No. 1 and the Tri-City Service District entered into that certain Intergovernmental dated May 15, 2014 for providing facilities management and maintenance services (the “Agreement”); and

WHEREAS, Water Environment Services (“WES”) assumed ownership over the contracts and assets of the Tri-City Service District as of July 1, 2017, and over the contracts and assets of Clackamas County Service District No. 1 as of July 1, 2018; and

WHEREAS, the parties have continued to perform under the conditions of the Agreement after the expiration of the Agreement’s term on June 30, 2018; and

WHEREAS, the parties desire to ratify the work completed since the expiration of the original Agreement term and continue the arrangement with a modified scope of Services by extending the term of the Agreement, modifying Exhibit A and increasing the maximum compensation contained therein;

NOW, THEREFORE, for good and sufficient consideration, the parties hereby agree that:

1. Water Environment Services assumed all obligations under this Agreement on behalf of the Tri-City Service District as of July 1, 2017 and on behalf of Clackamas County Service District No. 1 as of July 1, 2018. All references to the Tri-City Service District, Clackamas County Service District No. 1 or “Districts” in the Agreement between the parties shall be replaced with Water Environment Services or WES.

2. To reflect an extension of the term, the Agreement’s Paragraph 2.1 is hereby replaced in its entirety with:

2.1 Term. Unless earlier terminated, this Agreement shall commence July 1, 2018 and remain in full force and effect until June 30, 2021.

3. To reflect a change in the Scope, the Agreement’s Exhibit A is hereby replaced in its entirety with the following, which shall be effective as of July 1, 2018:

See Exhibit A attached hereto and incorporated therein.

4. Add the following language to the end of Article 1, Section 1 Scope of Services:

At any time, County is unable to provide services requested by WES under this Agreement within a necessary timeframe, WES reserves the right to utilize outside resources for said work, as it deems necessary and expedient, within WES' sole discretion. WES agrees to notify County in a timely manner of any change in services requested. Notwithstanding the above, WES agrees to provide 90 days' notice prior to discontinuing the use of County services for landscaping or janitorial work. The parties may review and update Exhibit A annually to ensure an accurate description of the services to be provided by the County. Any changes that increase the total maximum compensation allowed under this Agreement shall occur through the amendment process specified in Section 4.8.

5. To reflect an increase in the total annual compensation by \$90,000, the Agreement's Article 3.1 is hereby replaced in its entirety with:

3.1 Compensation. WES agrees to pay the County an amount not to exceed THREE HUNDRED THOUSAND and 00/100 Dollars (\$300,000.00) annually in accordance with the Scope of Services, with a total not to exceed amount of NINE HUNDRED THOUSAND and 00/100 Dollars (\$900,000.00) for the term established in this Amendment No. 3. Notwithstanding anything else to the contrary herein, no changes in the not-to-exceed amount shall be made without prior written approval of WES. The costs shall be apportioned to WES based on the scope and frequency of services provided by the County. The exact level of compensation for services performed during fiscal year 2018-2019 shall be determined after the parties evaluate the detailed accounting provided in section 3.2.2 of this Agreement.

6. To reflect a shift from monthly billing to quarterly, Section 3.2.1 is replaced in its entirety with the following:

3.2.1 The County shall provide quarterly invoices to WES. WES shall pay quarterly payments to County within thirty (30) days of WES' receipt of the quarterly invoice. The County shall maintain detailed billing records and such records shall be available to WES for audit and copying. No interest shall be paid on disputed amounts.

7. The parties acknowledge that work has been completed since the expiration of the Agreement term on June 30, 2018, and hereby ratify all work occurring during that time that was performed pursuant to the terms of the Agreement.

8. WES and the County ratify the remainder of the Agreement and affirm that no other changes are made hereby.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 3 to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

WATER ENVIRONMENT SERVICES:

Chair

Date

CLACKAMAS COUNTY:

Chair

Date

Recording Secretary

EXHIBIT A – SCOPE OF SERVICES

As of October 17, 2019, the scope of services shall be limited to maintenance and the facilities management of the three facilities identified below. The scope of services does not include the costs associated with any capital improvements to any facility.

WATER ENVIRONMENT SERVICES

TRI-CITY WASTEWATER TREATMENT PLANT - ADMINISTRATION AND WATER QUALITY LABORATORY BUILDINGS, TRAINING CENTER MODULAR TRAILER

- Facilities overhead
- Select security system product updates
- Security system repairs & maintenance
 - process buildings upon request
 - security fencing, perimeter and gates
- Janitorial
- Janitorial paper products
- General building maintenance supplies
- Building repairs & maintenance
 - including but not limited to electrical systems and lighting (interior and exterior)
- Plumbing repairs & maintenance
- HVAC repair & maintenance
- Painting, cleaning and sealing – interior and exterior
- Grounds maintenance (hard scape)
- Landscape
- Vandalism/graffiti removal & repair
- Work as requested. Additional project costs not included in the allocated budget

KELLOGG CREEK WATER RESOURCE RECOVERY FACILITY - ADMINISTRATION BUILDING, CHEMICAL BUILDING (INCLUDING LOCKER ROOM AND LUNCHROOM)

- Facilities overhead
- Select security system product updates
- Security system repairs & maintenance
 - process buildings upon request
 - security fencing, perimeter and gates
- Janitorial
- Janitorial paper products
- General building maintenance supplies
- Building repairs & maintenance
 - including but not limited to electrical systems and lighting (interior and exterior)
- Plumbing repairs & maintenance
- HVAC repair & maintenance
- Painting, cleaning and sealing – interior and exterior
- Grounds maintenance (hard scape)
- Landscape
- Vandalism/graffiti removal & repair
- Work as requested. Additional project costs not included in the allocated budget

HOODLAND

- Select security system product updates
- Security system repairs & maintenance
 - process buildings upon request
 - security fencing, perimeter and gates
- Work as requested. Additional project costs not included in the allocated budget.

BORING

- Work as requested. Additional project costs not included in the allocated budget.

82ND DRIVE BRIDGE (GLADSTONE & OREGON CITY BRIDGE)

- Vandalism/graffiti removal & repair
- Work as requested. Additional project costs not included in the allocated budget.

PUMP STATIONS

- Work as requested. Additional project costs not included in the allocated budget.



Gregory L. Geist
Director

October 17, 2019

Water Environment Services Board
Board of County Commissioners
Clackamas County

Members of the Board:

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

| | |
|--|---|
| Purpose/Outcomes | Approval of a Service Connection Mortgage on the tax lot 22E12B 01700 in order for the property to connect to the public sewerage system. |
| Dollar Amount and Fiscal Impact | Contract maximum value is \$23,670.00. |
| Funding Source | Not applicable |
| Duration | Effective October 17, 2019, and terminates when paid in full, estimate date of July 1, 2029. |
| Previous Board Action/Review | None. |
| Counsel Review | This Connection Mortgage was reviewed and approved by County Counsel on September 26, 2019. |
| Strategic Plan Alignment | 1) Build public trust through good government. 2) WES Customers will continue to benefit from a well-managed utility. |
| Contact Person | Craig Anderson, WES Accountant – 503-742-4583 |
| Contract No. | N/A |

BACKGROUND:

The property owner listed on the attached service connection mortgage has applied to Water Environment Services for payment of systems development charges by semi-annual installment payments secured by a mortgage on the property owned by Thomas E. Godfrey Living Trust: Map and Tax Lot: 22E12B 01700. The mortgage is in the amount of \$23,670.00 with final payment due by July 1, 2029.

Approved as to form by County Counsel on September 26, 2019.

RECOMMENDATION:

We respectfully recommend that the Board of County Commissioners, acting as the governing body of Water Environment Services, approve the Service Connection Mortgage between Water Environment Services and Marina D. Healey Trustee of the Thomas E. Godfrey Living Trust.

Respectfully submitted,

Greg Geist
Director, Water Environment Services

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

WATER ENVIRONMENT SERVICES SERVICE CONNECTION MORTGAGE

THIS MORTGAGE ("Mortgage") is made this 17 day of October, 2019 by and between Marina D. Healey Trustee of the Thomas E. Godfrey Living Trust (herein called "Mortgagor") and Water Environment Services, an intergovernmental entity formed pursuant to ORS Chapter 190 (hereinafter called "District").

RECITAL

Mortgagor has voluntarily applied to District to connect to the public sewerage system. By its duly adopted Rules and Regulations, District has imposed system development and collection sewer charges of \$ 23,670.00 for the privilege of connecting the property described on Exhibit A, for tax lot 22E12B 01700 attached hereto and incorporated by reference ("Land"), to the District's sewerage system.

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

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

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

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

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

1.4 Indebtedness. The promissory note made by Mortgagor, payable to District, dated this date, in the amount of \$ 23,670.00, the final payment of which, if not sooner paid is due July 1st, 2029, as may be extended, renewed, modified, or amended, and including any adjustments and interest, principal and payment terms.

1.5 Land. The property described on attached Exhibit A.

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

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

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

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

3.1 Repayment of Indebtedness. Mortgagor agrees to pay to the District system development and collection sewer charges of \$23,670.00 in not less than twenty equal installments of \$1,183.50 on the first day of January and July of each year, together with and in addition to each said installment, interest on the unpaid principal balance, as of the principal payment date, at the prime rate of interest being charged on that date by the bank doing business in Oregon and having the largest deposits. Payments received shall be applied first to accrued interest and then to principal.

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

3.3 Compliance with Laws. Mortgagor will promptly and faithfully comply with, conform to, and obey all present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental authority or agency which may be applicable to it or to the

Real Property, or any part thereof, or to the use or manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Real Property, or any part thereof, whether or not such law, ordinance, rule, order, regulation or requirement necessitates structural changes or improvements or interferes with the use or enjoyment of the Real Property.

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

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

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

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

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

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

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

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

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

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

4.5 The default under any superior encumbrance to this Mortgage.

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

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

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

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

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

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

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

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

6. Miscellaneous.

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

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

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

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

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

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

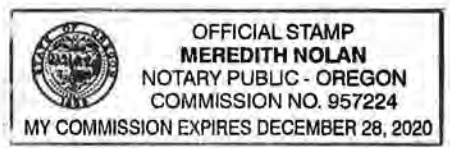
IN WITNESS WHEREOF, the Mortgagor has set his/her/their hand on the day and year first herein above written.

Marina D. Healey Trustee _____
(Legal owner) (Legal owner)

14261 SE. Chariton St. Clackamas _____
Mailing Address Oregon 97015 Mailing Address

STATE OF OREGON)
County of Clackamas) ss.

This instrument was acknowledged before me on this 3 day of October, 2019 by Marina D. Healey Trustee



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

EXHIBIT "A"

All of that portion described in deed reference Clackamas County Official Record 2012-32829

(Tax Lot 22E12B 01700)