

AGENDA

Thursday, July 19, 2018 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2018-71

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. PRESENTATION

1. Equity, Diversity and Inclusion Council Presentation of Youth Artwork Awards (Maria Magallon, H3S - Children, Youth and Families)

II. HOUSING AUTHORITY CONSENT AGENDA

1. Approval of Professional Services Contract with Scott Edwards Architecture (SEA) for Master Planning Services at Hillside Park

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 to Sign an Intergovernmental Agreement for Rent Guarantee Funding through Oregon Housing & Community Services (OHCS) – *Social Services*
2. Approval of an Intergovernmental Agreement with the City of Oregon City for System Diversion, Homelessness Prevention and Rapid Re-Housing – *Social Services*
3. Approval of a Professional, Technical, and Personal Services Contract with Cascadia Behavioral Healthcare, Inc., for Supported Employment Services – *Behavioral Health*
4. Approval of an Agreement with Clackamas Women’s Services for Shelter/Advocacy/Crisis/Rural Domestic Violence Services – *Children, Youth & Families*
5. Approval of an Agreement with Los Niños Cuentan for Culturally-Specific Domestic Violence Emergency Shelter and Supportive Services – *Children, Youth & Families*

B. Department of Transportation & Development

1. Approval of a Maintenance Agreement with the State of Oregon for the US Hwy. 26: SE 282nd Ave (Boring Rd.) Project
2. Approval of a Contract with Conway Construction Company for Foster Creek (at Bakers Ferry Road) Crossing Scout Repair Project - *Procurement*

C. Finance Department

1. Approval of a Five-Year Cooperative Service Agreement with United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Wildlife Services (WS) for Predator Management – County Trapper
2. Approval of a FY 18/19 Work and Financial Plan with United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Wildlife Services (WS) for Predator Management – County Trapper

D. Elected Officials

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

E. County Counsel

1. Approval of an Intergovernmental Agreement with Multnomah County for HIPAA and Part 2 Privacy Officer

F. Business & Community Services

1. Approval of an Infrastructure and Additional Shared Cost Funding Agreement with the Clackamas Workforce Partnership (CWP)

G. Technology Services

1. Approval of a Service Level Agreement Amendment No. 2 between Clackamas Broadband eXchange and Clackamas Fire District No. 1 for a New Dark Fiber Connection on 130th Ave.

V. COUNTY ADMINISTRATOR UPDATE

VI. 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>

Presentation to the Board of County Commissioners
Thursday, July 19, 2018

1. Equity, Diversity and Inclusion Council Presentation of Youth Artwork Awards

Clackamas County works to promote an inclusive and welcoming workplace and community. The County's purpose is to reflect the growing diversity represented in its communities.

The Equity, Diversity, and Inclusion Council (EDIC) reached out to youth in Clackamas County for help in designing artwork that brings to mind artistically the County's commitment to equity, diversity, and inclusion. Selected artwork was displayed in the lobby of the County's Public Service Building in Oregon City during the months of April through June. The winning piece was prominently displayed on the EDIC banner at Oregon's PRIDE Festival.

EDIC would like to recognize and honor the youth that participated in this County sponsored activity.

María
H3S- Equity Services Coordinator

503-650-5693



“Learning to appreciate and love the differences we all have is a path that leads toward a more equitable future”

Sara Ladron de Guevara, Universidad Veracruzana de Mexico

EDIC Art Contestant's 2018

- 1. Emma**
 "United In Love"
 Clackamas High School
 17 years old
 Watercolor & Ink Pen



- 2. Lucy Lynn**
 "Oregon, Home Sweet Home"
 Athey Creek Middle School
 11 years old but I will turn 12



- 3. Mayah**
 "We Are One"
 Lakeridge junior high school
 14 Years old
 Pencil & Crayon



- 4. Melanie**
 "Split Together"
 Lakeridge High School
 15 years old
 Mixed media acrylic paint



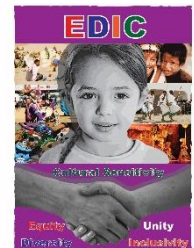
- 5. Akaisha "One Big Family"**
 13 years old
 Alder Creek Middle School
 Colored pencils, anime characters



- 6. Deanna**
 "All are Welcome"
 12 years old
 Colored Pens



- 7. Megan**
 "The Culture Beyond Skin Color"
 18 years old
 Digital art



- 1. Shawn**
 "Tree of Life"
 17 years old
 Clackamas ESD
 LEEP program



July 19, 2018

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval of Professional Services Contract with Scott Edwards Architecture (SEA) for
Master Planning Services at Hillside Park

Purpose/Outcomes	Approve Contract between Housing Authority of Clackamas County and Scott Edwards Architecture Contract for Master Planning Services
Dollar Amount and Fiscal Impact	Not to exceed \$203,000
Funding Source(s)	Metro 2040 Planning and Development Grant No County General Funds
Duration	June 21 st , 2018 - June 30 th , 2020
Previous Board Action	On March 15 th , 2018 the Board approved an Intergovernmental Government Agreement with Metro to fund the Master Plan of Hillside Park.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Efficient & effective services 2. Ensure safe, healthy and secure communities
Contact Person	Chuck Robbins, HACC Executive Director (503) 650-5666

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department, requests approval to execute a Contract with Scott Edwards Architecture (SEA) to provide Master Planning Services for Hillside Park, a 16 acre public housing community in Milwaukie, Oregon. This team was selected from a pool of qualified responses resulting from a competitive Request for Proposal (RFP) process.

HACC was awarded funding from Metro in November of 2017 to complete a community plan for the Hillside. The Plan will include:

- Outreach/Communications (public involvement) Strategy
- Detailed site analysis
- Development capacity and market analysis
- Preferred Concept Design
- Financial Feasibility and Pro Forma Analysis
- Financing Plan for Federal, State, and local funding applications
- Economic Impact Analysis for job creation and economic opportunities
- Health Impact Analysis

SEA will provide and coordinate Master Planning services for the redevelopment plan. The final product will be a plan that establishes the preferred concept design for the future of the site. The Housing Authority seeks to redevelop the site to provide greater housing opportunities in a

mixed income, mixed use community. The plan will provide the foundation for seeking funding from the State of Oregon and the U.S. Department of Housing and Urban Development (HUD).

This was review and approved by Counsel on July 9, 2018.

RECOMMENDATION:

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Swift", is written over the typed name and title.

Richard Swift, Director
Health, Housing and Human Services

Healthy Families. Strong Communities.

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

www.clackamas.us

PROFESSIONAL SERVICES CONTRACT

FOR
Scott Edwards Architecture LLP
For Master Planning Services

BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF CLACKAMAS COUNTY

Jim Bernard, Chair

Sonya Fischer, Commissioner

Ken Humberston, Commissioner

Martha Schraeder, Commissioner

Paul Savas, Commissioner

Paul Reynolds, Resident Commissioner

PROFESSIONAL SERVICES CONTRACT FOR MASTER PLANNING SERVICES

This "Contract" for professional services is entered into by and between the Housing Authority of Clackamas County, hereinafter referred to as HACC, and Scott Edwards Architecture LLP, hereinafter called the CONTRACTOR. HACC and CONTRACTOR, in consideration of the mutual promises, terms and conditions provided herein, agree to the following:

I. SCOPE OF WORK and TERM OF CONTRACT:

This Contract covers the services as described in Attachment "A" which by this reference is hereby incorporated into and made a part of this contract. Work shall be performed in accordance with a schedule approved by the HACC. The term of the contract shall commence upon Contract Execution and continue through July 1st, 2020. Passage of the Contract expiration date shall not extinguish or prejudice HACC's right to enforce this Contract with respect to any default or defect in performance that has not been cured.

II. COMPENSATION:

A. HACC agrees to compensate the CONTRACTOR on a fee-for-services basis as provided for in Attachment "B" which by this reference is hereby incorporated into and made a part of this contract. Invoices submitted for payment in connection with this contract shall be properly documented and shall indicate pertinent HACC contract and/or purchase order numbers. All charges shall be billed monthly and will be paid net 30 days from receipt of invoice. The maximum compensation authorized under this contract shall be \$203,000.

B. CONTRACTOR bears the risk of non-payment for services in excess of the amount stated above without prior HACC approval; but HACC reserves the right to ratify and pay for such services in its sole discretion.

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

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

2. This contract is not intended to entitle the CONTRACTOR to any benefits generally granted to HACC employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this contract to the CONTRACTOR are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the CONTRACTOR is presently a member of the Public Employees Retirement System).

3. If the CONTRACTOR has the assistance of other persons in the performance of this contract, and the CONTRACTOR is a subject employer, the CONTRACTOR shall qualify and remain qualified for the term of this contract as an insured employer under ORS 656.

4. CONTRACTOR represents and warrants that CONTRACTOR is not an employee of HACC or of the Federal Government, meets the independent contractor standards of ORS 670.600, and is not an "officer", "employee", or "agent" of HACC, as those terms are used in ORS 30.260 et.

seq.

III. CONSTRAINTS

The CONTRACTOR agrees:

A. CONTRACTOR shall not delegate the responsibility for providing services under this contract to any other individual or agency without the express written permission of HACC.

1. CONTRACTOR shall:

- a. Make payments promptly, as due, to all persons supplying to the CONTRACTOR labor or materials for the prosecution of the work provided for in this agreement.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such CONTRACTOR or subcontractor incurred in the performance of this agreement.
- c. Not permit any lien or claim to be filed or prosecuted against the HACC on account of any labor or material furnished.
- d. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

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

3. Tax Laws

- a. The CONTRACTOR represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Agreement, has faithfully complied with:
 - i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318;
 - ii. 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;
 - iii. 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
 - iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

4. CONTRACTOR must, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Agreement. Further, any violation of the CONTRACTOR's warranty in this Agreement that CONTRACTOR has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Agreement. Any violation shall entitle HACC to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all remedies available under this Agreement, at law, or in equity, including but not limited to:
 - a. Termination of this Agreement, in whole or in part;
 - b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to CONTRACTOR, in an amount equal to HACC's setoff right, without penalty; and
 - c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. HACC shall be entitled to recover any and all damages suffered as the result of CONTRACTOR's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.
 - d. These remedies are cumulative to the extent that remedies are not inconsistent, and HACC may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.
5. The CONTRACTOR shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which are 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.
6. The CONTRACTOR shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or 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.
7. The CONTRACTOR shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this contract.
8. The CONTRACTOR shall indemnify, save harmless and defend the HACC, its officers, commissioners, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the negligent acts, errors, omissions, or fault of the CONTRACTOR or the CONTRACTOR'S employees, subcontractors, or agents.
9. Services performed by CONTRACTOR shall be performed in a comparable manner and with the same degree of care, skill, diligence, competency, and knowledge which is ordinarily exhibited and possessed by other professionals in good standing in the same or similar field in

the same community as CONTRACTOR.

IV. INSURANCE REQUIREMENTS

CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the CONTRACTOR, its agents, representatives, employees, or sub-contractors.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0 01 10 01).
2. Insurance Services Office Additional Insured form (CG 20 37 or CG 20 26).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, Code 1 (*any auto*) [*require if scope of work includes driving on HACC property*].
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.
5. Professional Errors and Omissions Liability insurance appropriate to the CONTRACTOR's profession.

B. MINIMUM LIMITS OF INSURANCE

CONTRACTOR shall maintain insurance limits of no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. (*including coverages for discrimination, ADA violations, and sexual molestation*). If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Professional Errors and Omissions Liability insurance: \$1,000,000 per occurrence.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by HACC. At the option of HACC, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects HACC, its officers, officials, employees, and volunteers; or the CONTRACTOR shall provide a financial guarantee satisfactory to HACC guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. OTHER INSURANCE PROVISIONS

The General Liability and Automobile Liability policies are to contain, or endorsed to contain, the following provisions:

1. HACC, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR; or automobiles owned, leased, hired, or borrowed by the CONTRACTOR.
2. The CONTRACTOR's insurance coverage shall be primary insurance as respects HACC, its

officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by HACC, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance.

3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to HACC.

4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the CONTRACTOR.

E. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than B+; CONTRACTOR must provide written verification of their insurer's rating.

F. VERIFICATION OF COVERAGE

CONTRACTOR shall furnish HACC with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by HACC in sufficient time before the agreement commences to permit CONTRACTOR to remedy any deficiencies. HACC reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

G. SUB-CONTRACTORS' INSURANCE

CONTRACTOR shall include all sub-contractors as insured's under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit HACC to approve them before sub-contractors' work begins. All insurance coverages for sub-contractors shall be subject to all of the requirements stated above.

Notwithstanding this provision, CONTRACTOR shall indemnify HACC for any claims resulting from the performance or non-performance of the CONTRACTOR's sub-contractors and/or their failure to be properly insured.

V. SUBCONTRACTORS:

Use of sub-contractors must be pre-approved in writing by HACC. The CONTRACTOR shall be responsible to HACC for the actions of persons and firms performing subcontract work. The CONTRACTOR certifies that the CONTRACTOR has not discriminated and will not discriminate against any minority, women or emerging small business enterprise in obtaining any subcontract.

VI. OTHER TERMS:

Termination. A. 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 is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the 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.

A.

B. Amendments. This contract and any amendments to this contract will not be effective until approved in writing by an authorized representative of HACC.

C. Governing Law/Venue. This contract shall be governed by the laws of the State of Oregon. Any action or suit commenced in connection with this contract shall be commenced in the Circuit Court of Clackamas County. Provided, however, that if any 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.

D. Third Party Beneficiaries. HACC and CONTRACTOR are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives, or is intended to give, any right or benefit to any third persons unless such third persons are identified individually by name herein and expressly identified as intended beneficiaries of this contract.

E. Force Majeure. Neither HACC nor CONTRACTOR shall be held responsible for delay or default caused by fire, riot, terrorism, strikes, acts of god, or war, where such cause was beyond their reasonable control. The parties shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of their obligations under this contract.

F. Survival. The terms, conditions, representations, and all warranties contained in this contract shall survive the termination or expiration of this contract.

G. Records. CONTRACTOR shall maintain all fiscal records relating to this contract in accordance with generally accepted accounting principles. In addition, CONTRACTOR shall maintain any other records pertinent to this contract in such a manner as to clearly document CONTRACTOR'S performance hereunder. Contractor shall maintain any such records for a minimum of three years following final payment and termination of this contract, and CONTRACTOR shall allow HACC and its duly authorized representative's access to such records during that time or until the conclusion of any audit, controversy or litigation arising out of or related to this contract, whichever date is later. All subcontracts shall also comply with these provisions.

H. Ownership and Use of Documents. All work products of CONTRACTOR which result from this contract (the "work products"), except material previously and mutually identified as confidential, shall be provided to HACC upon request and shall be considered exclusive property of HACC. In addition, if any of the work products contain intellectual property of CONTRACTOR that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, CONTRACTOR hereby grants HACC a perpetual, royalty-free, fully paid-up, nonexclusive and irrevocable license to copy, reproduce, perform, dispose of, use and re-use, in whole or in part, and to authorize others to do so for HACC purposes, all such work products, including but not limited to any information, designs, plans or works provided or delivered to HACC or produced by CONTRACTOR under this contract.

I. Whole Contract. This contract constitutes the complete and exclusive statement of the contract

between the parties relevant to the purpose described herein and supersedes and cancels any prior contracts or proposals, oral or written, and all other communication between the parties relating to the subject matter of this contract. No waiver, consent, modification or change of terms of this contract will be binding on either party except as a written addendum signed by authorized agents of both parties.

J. Representations and warranties. Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

K. 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.

L. Severability. If any provision of this Contract is declared by a court to be unenforceable, 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 provision held to be invalid.

M. Waiver. Failure of the Owner to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

N. Time is of the Essence. Time is of the essence for this Contract.

O. Counterparts. This Contract may be executed in several counterparts, all of which when taken together shall constitute an 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.

By their signatures below, the parties to this contract agree to the terms, conditions, and content expressed herein.



Authorized Signature

Lisa McClellan, Principal
Scott | Edwards Architecture, llp

Name / Title Printed

July 9, 2018

Date

503.226.3617 / 503.226.3715

Telephone / Fax Number

93-1255267

Federal Tax ID Number

**HOUSING AUTHORITY OF
CLACKAMAS COUNTY BOARD**

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

Signing on Behalf of the Housing Authority Board

Richard Swift, Director
Health, Housing and Human Services Department

Date

July 19, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to Sign an Inter-Governmental Agreement for
Rent Guarantee Funding through
Oregon Housing & Community Services (OHCS)

Purpose/Outcomes	The purpose of the Rent Guarantee program is to provide incentives and financial assistance to landlords that rent or lease to low income households by guaranteeing payments to landlords for unpaid rent and for eviction and property damage costs.
Dollar Amount and Fiscal Impact	Funding will come from a statewide pool of \$125,000
Funding Source	Oregon Housing & Community Services (OHCS), Rent Guarantee funds.
Duration	January 1, 2018 through June 30, 2019
Previous Board Action	None.
Strategic Plan Alignment	1. This aligns with the Social Service Division's strategic priority to provide housing stabilization and supportive services to people who are homeless or at risk of becoming homeless so they can obtain and maintain permanent housing. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	8912

BACKGROUND:

The Social Services Division (SSD) of the Health, Housing and Human Services Department requests approval to sign an Inter-Governmental Agreement with Oregon Housing & Community Services (OHCS). OHCS was directed by the 79th Oregon Legislative Assembly to develop and implement the Rent Guarantee Program. The purpose of the funding is to provide incentives and financial assistance to landlords that rent or lease to low income households by guaranteeing payments to landlords for unpaid rent and for eviction and property damage costs.

Funding will come from a statewide pool of \$125,000 on a first come, first served basis. County General Funds are not involved and there is no match requirement. The agreement was approved by County Counsel on 6-26-18 and is effective January 1, 2018 and expires on June 30, 2019.

Healthy Families. Strong Communities.

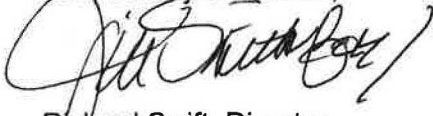
2051 Kaen Road, Oregon City, OR 97045 • Phone (503) 650-5697 • Fax (503) 655-8677

www.clackamas.us

RECOMMENDATION:

Staff recommends approval of the agreement and that Richard Swift, Director of Health, Housing and Human Services, be authorized to sign all documents on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, Director
Health, Housing and Human Services Department

INTERGOVERNMENTAL AGREEMENT

Rent Guarantee Program Provider

Agreement No. 4687

This Agreement is between the State of Oregon acting by and through its **Oregon Housing and Community Services Department** (“Agency”) and **Clackamas County, acting by and through it’s Health, Housing and Human Services Department, Social Services Division** (“Clackamas County”), each a “Party” and, together, the “Parties”.

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110.

SECTION 2: BACKGROUND AND PURPOSE

Agency was directed by the 79th Legislative Assembly to develop and implement the Rent Guarantee Program.

Agency is entering into this Agreement with Clackamas County for the purpose of providing incentives and financial assistance to landlords that rent or lease to low income households by guaranteeing payments to landlords for unpaid rent and for eviction and property damage costs through the Rent Guarantee Program.

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement is effective on **January 1, 2018** (“Effective Date”), and terminates **June 30, 2019**, unless terminated earlier in accordance with Section 16.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 Agency’s Authorized Representative is:

Sheila Parkins, Program Analyst
725 Summer Street NE, Suite B
Salem, OR 97301
(503) 986-2062 Office
Sheila.Parkins@oregon.gov

4.2 Local Government’s Authorized Representative is:

Erika Silver, Human Services Manager
PO Box 2950

(503) 650-5725 Office
esilver@clackamas.us

- 4.3 A Party may designate a new Authorized Representative by written notice to the other Party without the need for formal amendment.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

- 5.1 Local Government shall perform the following:

Local Government shall perform all activities as described in Exhibit A, which hereto attached and incorporated by reference, and in accordance with the terms and conditions of this Agreement and other applicable law whether or not described in this Agreement. Local Government shall perform its obligations hereunder efficiently, effectively and within applicable grant timelines, all to the satisfaction of Agency.

- 5.2 Agency will perform the following:

Agency will ensure Local Government performs all activities as described in Exhibit A, which is hereto attached and incorporated by reference, and in accordance with the terms and conditions of this Agreement and other applicable law whether or not described in this Agreement.

SECTION 6: COMPENSATION

- 6.1 **Consideration.** Agency agrees to make a conditional award of funds to Local Government on a statewide, first come first served basis, not-to-exceed \$125,000. Agency reserves the right to target funding to those populations or areas of the state with the greatest need as Agency so determines. Grant funding can only be used in accordance with the terms and conditions of this Agreement.

- 6.2 **Request for Funds; Claim Submission.**

Local Government shall request Grant funds in such form and manner as is satisfactory to or required by Agency (Exhibit D, Claim Submission Form). All forms are due no later than 30 days from the quarter end date. Supporting documentation satisfactory to Agency must be provided with each form.

Further, in accordance with U.S. Department of Treasury Regulations, 31 CFR Part 205, implementing the Cash Management Improvement Act, Grantee shall limit any request for funds to the minimum amount needed to accomplish its described purposes and to time the request in accordance with the actual, immediate requirements in carrying out Grant programs to be funded through the Request for Funds.

SECTION 7: REPRESENTATIONS AND WARRANTIES

Local Government represents and warrants to Agency that:

- 7.1** Local Government is a Domestic Nonprofit Corporation duly organized and validly existing. Local Government has the power and authority to enter into and perform this Agreement;
- 7.2** The making and performance by Local Government of this Agreement (a) have been duly authorized by Local Government, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Local Government's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Local Government is party or by which Local Government may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Local Government of this Agreement, other than those that have already been obtained;
- 7.3** This Agreement has been duly executed and delivered by Local Government and constitutes a legal, valid and binding obligation of Local Government enforceable in accordance with its terms;
- 7.4** Local Government shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by Local Government.

SECTION 8: GOVERNING LAW, CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Agency or any other agency or department of the State of Oregon, or both, and Local Government that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. LOCAL GOVERNMENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 9: OWNERSHIP OF WORK PRODUCT

9.1 As used in this Section 9 and elsewhere in this Agreement, the following terms have the meanings set forth below:

9.1.1 "**Local Government Intellectual Property**" means any intellectual property owned by Local Government and developed independently from the work under this Agreement.

9.1.2 "**Third Party Intellectual Property**" means any intellectual property owned by parties other than Local Government or Agency.

9.1.3 "**Work Product**" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item that Local Government is required to deliver to Agency under this Agreement, and all intellectual property rights therein.

9.2 All Work Product created by Local Government under this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. Agency and Local Government agree that any Work Product that is an original work of authorship created by Local Government under this Agreement is a "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created by Local Government under this Agreement is not "work made for hire," Local Government hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created by Local Government under this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Local Government shall execute such further documents and instruments necessary to fully vest such rights in Agency. Local Government forever waives any and all rights relating to Work Product created by Local Government under this Agreement, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

If the Work Product created by Local Government under this Agreement is a derivative work based on Local Government Intellectual Property, or is a compilation that includes Local Government Intellectual Property, Local Government hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Local Government Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

If the Work Product created by Local Government under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Local Government shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and

display the pre-existing element of the Third party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

- 9.3 If Work Product is Local Government Intellectual Property, Local Government hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Local Government Intellectual Property, and to authorize others to do the same on Agency's behalf.
- 9.4 If Work Product is Third Party Intellectual Property, Local Government shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Agency's behalf.
- 9.5 If state or federal law requires that Agency or Local Government grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Agency or the United States own the intellectual property in the Work Product, then Local Government shall execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

SECTION 10: CONTRIBUTION

- 10.1 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 10 with respect to the Third Party Claim.
- 10.2 With respect to a Third Party Claim for which Agency is jointly liable with Local Government (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Local Government in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of Local Government on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of Local Government on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the

circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

- 10.3** With respect to a Third Party Claim for which Local Government is jointly liable with Agency (or would be if joined in the Third Party Claim), Local Government shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of Local Government on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Local Government on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Local Government's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

SECTION 11: LOCAL GOVERNMENT DEFAULT

Local Government will be in default under this Agreement upon the occurrence of any of the following events:

- 11.1** Local Government fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- 11.2** Any representation, warranty or statement made by Local Government in this Agreement or in any documents or reports relied upon by Agency to measure the delivery of services, the expenditure of funds or the performance by Local Government is untrue in any material respect when made;
- 11.3** Local Government (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or
- 11.4** A proceeding or case is commenced, without the application or consent of Local Government, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Local Government, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Local Government or of all or any

substantial part of its assets, or (c) similar relief in respect to Local Government under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Local Government is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

SECTION 12: AGENCY DEFAULT

Agency will be in default under this Agreement if Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 13: REMEDIES

- 13.1** In the event Local Government is in default under Section 11, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 16, (b) reducing or withholding payment for work or Work Product that Local Government has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Local Government to perform, at Local Government's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 14 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 13.2** In the event Agency is in default under Section 12 and whether or not Local Government elects to exercise its right to terminate this Agreement under Section 16.3.3, or in the event Agency terminates this Agreement under Sections 16.2.1, 16.2.2, 16.2.3, or 16.2.5, Local Government's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by Agency, for work completed and accepted by Agency within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less any claims Agency has against Local Government, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by Agency, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims that Agency has against Local Government. In no event will Agency be liable to Local Government for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Local Government exceed the amount due to Local Government under this Section 13.2, Local Government shall promptly pay any excess to Agency.

SECTION 14: RECOVERY OF OVERPAYMENTS

If payments to Local Government under this Agreement, or any other agreement between Agency and Local Government, exceed the amount to which Local Government is entitled, Agency may, after notifying Local Government in writing, withhold from payments due Local Government under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 15: LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 10, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

SECTION 16: TERMINATION

16.1 This Agreement may be terminated at any time by mutual written consent of the Parties.

16.2 Agency may terminate this Agreement as follows:

16.2.1 Upon 30 days advance written notice to Local Government;

16.2.2 Immediately upon written notice to Local Government, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;

16.2.3 Immediately upon written notice to Local Government, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;

16.2.4 Immediately upon written notice to Local Government, if Local Government is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Local Government; or

16.2.5 As otherwise expressly provided in this Agreement.

16.3 Local Government may terminate this Agreement as follows:

16.3.1 Immediately upon written notice to Agency, if Local Government fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Local

Government's reasonable administrative discretion, to perform its obligations under this Agreement;

16.3.2 Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Local Government's performance under this Agreement is prohibited or Local Government is prohibited from paying for such performance from the planned funding source;

16.3.3 Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Agency; or

16.3.4 As otherwise expressly provided in this Agreement.

16.4 Upon receiving a notice of termination of this Agreement, Local Government will immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice. Upon termination, Local Government will deliver to Agency all documents, information, works-in-progress, Work Product and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, Local Government will surrender all documents, research or objects or other tangible things needed to complete the work that was to have been performed by Local Government under this Agreement.

SECTION 17: INSURANCE

The Local Government shall insure, or self-insure, and be independently responsible for the risk of its own liability for claims within the scope of the Oregon Tort Claims Act (ORS 30.260 through 30.300).

SECTION 18: NONAPPROPRIATION

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.

SECTION 19: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties unless otherwise expressly provided within this agreement.

SECTION 20: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 20. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

SECTION 21: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 9, 10, 14, 15 and 21 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 22: SEVERABILITY

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 23: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

SECTION 24: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

SECTION 25: INDEPENDENT CONTRACTORS

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that Local Government is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

SECTION 26: INTENDED BENEFICIARIES

Agency and Local Government are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

SECTION 27: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Agency may terminate this Agreement upon written notice to Local Government after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 28: ASSIGNMENT AND SUCCESSORS IN INTEREST

Local Government may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Local Government to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Local Government's assignment or transfer of its interest in this Agreement will not relieve Local Government of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

SECTION 29: SUBCONTRACTS

Local Government shall not, without Agency's prior written consent, enter into any subcontracts for any of the work required of Local Government under this Agreement. Agency's consent to any subcontract will not relieve Local Government of any of its duties or obligations under this Agreement.

SECTION 30: TIME IS OF THE ESSENCE

Time is of the essence in Local Government's performance of its obligations under this Agreement.

SECTION 31: MERGER, WAIVER

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 32: RECORDS MAINTENANCE AND ACCESS

Local Government shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Local Government shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Local Government's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Local Government acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Local Government shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, Local Government shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

SECTION 33: HEADINGS

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

SECTION 34: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (the Statement of Work), Exhibit B (Insurance), Exhibit C (Quarterly Report Template), Exhibit D (Claim Submission Form), and Exhibit E (Rent Guarantee Program Manual).

Signatures continued on following page

SECTION 35: SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

STATE OF OREGON acting by and through its Oregon Housing and Community Services Department

OHCS Director or delegate

Date

Clackamas County signing on behalf of the Board:

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Ken Humberston

Commissioner: Paul Savas

Commissioner: Martha Schrader

Richard Swift, Director
Health, Housing & Human Services Department

Date

July 19, 2018

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Inter-Governmental Agreement with
The City of Oregon City for
System Diversion, Homelessness Prevention and Rapid Re-Housing

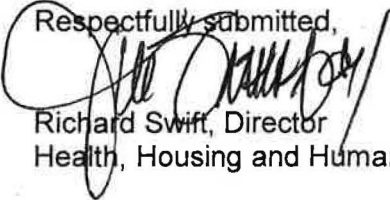
Purpose/Outcomes	Contractor will provide homeless system diversion, homelessness prevention, and rapid re-housing services to families and individuals who are homeless or at risk of being homeless.
Dollar Amount and Fiscal Impact	\$50,000. No County General Funds are required.
Funding Source	State of Oregon Housing and Community Services, Emergency Housing Assistance (EHA) funds.
Duration	Upon signature through June 30, 2019
Previous Board Action	None.
Strategic Plan Alignment	1. This funding aligns with the Social Services Division's strategic priority to provide housing stabilization and supportive services to people who are homeless or at risk of becoming homeless so they can obtain and maintain permanent housing. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	8698

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services Department requests approval of an Inter-Governmental Agreement with the City of Oregon City acting through its Police Department (OCPD). OCPD responded to a Notice of Funding Opportunity (NOFO) in January 2018 for system diversion, homelessness prevention, and rapid re-housing services. OCPD was recommended as one of three agencies to be awarded funding. The agreement provides funding to OCPD to serve families and individuals who are homeless or at risk of being homeless. This agreement is effective upon signature through June 30, 2019. The funding source for this agreement is Emergency Housing Assistance (EHA) funds from the State of Oregon Housing and Community Services. There are no County General Funds required.

RECOMMENDATION:

Staff recommends the approval of this agreement, and that Richard Swift, H3S Director, be authorized to sign all documents necessary on behalf of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing and Human Services Department

Healthy Families. Strong Communities.

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

www.clackamas.us

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY, OREGON
AND
CITY OF OREGON CITY, OREGON
Contract # 8698**

1. PURPOSE

This agreement is entered into between Clackamas County (COUNTY) and City of Oregon City through its police department (CITY) for the cooperation of units of local government under the authority of ORS 190.010. This agreement provides the basis for a cooperative working relationship for the purpose of providing System Diversion, Homelessness Prevention, and Rapid Re-Housing services for homeless persons and persons at imminent or high risk of homelessness in Clackamas County.

2. SCOPE OF WORK AND COOPERATION

- 2.1 CITY agrees to provide System Diversion, Homelessness Prevention, and Rapid Re-Housing services for homeless persons and persons at imminent or high risk of homelessness through its police department staff. CITY will provide services as outlined in *Exhibit A: Scope of Work and Performance Standards*.
- 2.2 COUNTY agrees to provide the following:
- 2.2.1 Provide Emergency Housing Assistance (EHA) funds to support services provided by CITY as outlined in Section III: Compensation and Records and in *Exhibit C: Budget and Output*. Changes in funding requiring changes in service levels will be communicated to CITY when notification is received from the funder.
 - 2.2.2 Complete and submit required reports to funders in a timely manner.
 - 2.2.3 Participate in ongoing planning and coordination efforts as needed.
 - 2.2.4 Provide training and technical support as needed.

3. COMPENSATION AND RECORD KEEPING

- 3.1 Compensation. COUNTY shall compensate the CITY for satisfactorily performing the services identified in Section I and as described in *Exhibit A Scope of Work and Performance Standards* attached hereto. \$50,000 on a cost reimbursement basis for all eligible program costs as outlined in *Exhibits A, B and C*. Total maximum compensation under this contract shall not exceed **\$50,000**.
- 3.2 Method of Payment. To receive payment, CITY shall submit invoices and accompanying progress reports as required in *Exhibit B: Reporting Requirements and Exhibit E: Invoice Template*.

- 3.3 Withholding of Contract Payments. Notwithstanding any other payment provision of this agreement, should CITY 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, COUNTY may immediately withhold payments hereunder. The COUNTY may continue to withhold payment until CITY submits required reports, performs required services, or establishes COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of CITY.
- 3.4 Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained as specified in *Exhibit F: Oregon Housing and Community Services State Homeless Funds Program (OHCS) Operations Manual, Emergency Housing Assistance Program.*
- 3.5 Access to Records. COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of CITY which are directly pertinent to this agreement for the purpose of making audits, examinations, excerpts, and transcripts. Likewise, CITY, the State of Oregon and the federal government and their duly authorized representatives shall have access to the books, documents, papers, and records of COUNTY that are directly pertinent to this agreement for the purpose of making audits, examinations, excerpts, and transcripts.

4. MANNER OF PERFORMANCE

- 4.1 Compliance with Applicable Laws and Regulations, and Special Federal Requirements. CITY and COUNTY shall comply with all federal laws and regulations, Oregon laws and regulations, local ordinances and rules applicable to this agreement, including, but not limited to, all applicable federal and Oregon civil rights and rehabilitation statutes, rules and regulations, and as listed in *Exhibit D: Special Requirements*, attached and incorporated into this agreement.
- 4.2 Precedence. When a requirement is listed both in the agreement and in an exhibit to it, the exhibit shall take precedence.
- 4.3 Subcontracts. CITY shall not enter into any subcontracts for any of the work scheduled under this agreement without obtaining prior written approval from COUNTY.
- 4.4 Remedies for Failure to Perform. Any failure of the CITY to comply with the terms of this agreement shall entitle the COUNTY to:
1. Terminate the agreement;
 2. Exercise the right of setoff and withhold amounts otherwise due and owing to CITY, in an amount equal to COUNTY's setoff right, without penalty; and

3. Exercise any other rights COUNTY has under law.

These remedies are cumulative to the extent the remedies are not inconsistent, and COUNTY may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

5. GENERAL PROVISIONS

5.1 Contact. All routine correspondence and communication regarding this agreement, as well as requests for written acknowledgment, shall be directed to the following representatives:

For COUNTY: Erika Silver, Human Services Manager, Social Services Division, 2051 Kaen Rd, Oregon City, OR 97045
(esilver@co.clackamas.or.us) (503-650-5725)

For CITY: Kelly Dilbeck, Executive Assistant, Oregon City Police Department, 320 Warner Milne Road, Oregon City, OR 97045
(Kdilbeck@orccity.org) (503-496-1682)

Either party may change contact information by giving prior written notice to the other party.

5.2 Indemnification. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, commissioners, councilors, agents and employees, against all claims, demands, actions and suits of any kind or nature for personal injury, death or damage to property arising out of this agreement where the loss or claim is attributable to the negligent acts or omissions of the indemnitor or the indemnitor's officers, commissioners, councilors, employees, agents, subcontractors, or anyone over which the party has a right to control. Each party shall give the other party immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this agreement. CITY agrees to defend, save, hold harmless, and indemnify (consistent with ORS Chapter 180) the State of Oregon and Oregon Housing and Community Services Department (OHCS) and their officers, employees and agents, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, resulting from, arising out of, or relating to the activities of CITY, or its officers, employees, or agents under this agreement.

5.3 Insurance & Worker's Compensation. CITY will provide all necessary General Liability, Automotive, and Worker's Compensation insurance required by Oregon Law to perform services under this agreement, and provide proof of coverage upon request by COUNTY or OHCS.

5.3.1 Commercial General Liability Insurance

Required by COUNTY Not required by COUNTY

CITY shall obtain, at CITY's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

5.3.2 Commercial Automobile Insurance

Required by COUNTY Not required by COUNTY

CITY shall also obtain, at CITY's expense, and keep in effect during the term of the contract, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.

5.3.3 Professional Liability Insurance

Required by COUNTY Not required by COUNTY

CITY agrees to furnish COUNTY evidence of Professional Liability Insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this contract. COUNTY, at its option, may require a complete copy of the above policy.

5.3.4 Tail Coverage. If 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 CITY's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this contract.

- 5.3.5 Additional Insured Provision. The insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured.
- 5.3.6 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days' written notice COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days' notice of cancellation provision shall be physically endorsed on to the policy.
- 5.3.7 Insurance Carrier Rating. Coverages provided by CITY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 5.3.8 Certificates of Insurance. As evidence of the insurance coverage required by this contract, CITY shall furnish a Certificate of Insurance to county. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
- 5.3.9 Primary Coverage Clarification. CITY's coverage will be primary in the event of a loss.
- 5.3.10 Cross-Liability Clause. A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.
- 5.3.11 Worker's Compensation. CITY shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). AGENCY shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.
- 5.4 Severability. If any provision of this agreement is found to be unconstitutional, illegal or otherwise unenforceable by a Court or authority of competent jurisdiction, 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 intentions of the parties to the maximum extent possible.

- 5.5 Modifications. Any modification or change to the terms of this agreement shall be effective only when reduced to writing and approved by the governing bodies of both parties. Any modification or change, including any additional agreement providing descriptions of tasks, standards of performance or costs, shall be in writing, shall refer specifically to this agreement and shall be valid only when approved by the governing bodies of both parties.
- 5.6 Integration. This agreement contains the entire agreement between the parties concerning its subject matter.
- 5.7 Third-Party Beneficiaries. The CITY and COUNTY are the only parties to this agreement and are the only parties entitled to enforce its terms.
- 5.8 Applicable Law. The laws of the State of Oregon govern this agreement without respect to conflict of laws principles. Any litigation between the parties arising out of or related to this agreement will be conducted exclusively in the Circuit Court for the State of Oregon, Clackamas County. The parties accept the personal jurisdiction of this court.
- 5.9 Waiver. The failure of either party to enforce any provision of this agreement shall not constitute a waiver of that or any other provision.
- 5.10 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.
- 5.11 Oregon Constitutional Limitations. This agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein that would conflict with law are deemed inoperative to that extent.
- 5.12 Dispute Resolution.
- 5.12.1 Subject to mutually agreed upon extensions of time in writing, failure or unreasonable delay by any party to substantially perform any material provision of this agreement shall constitute default. In the event of an alleged default or breach of any term or condition of this agreement, the party alleging such default or breach shall give the other party not less than 30 days written notice specifying the nature of the alleged default and the manner in which the default may be cured satisfactorily. During this 30-day period, the party shall not be considered in default for purposes of termination or instituting legal proceedings.

5.12.2 The parties shall negotiate in good faith to resolve any dispute arising under this agreement. Should any dispute arise between the parties concerning this agreement that cannot be resolved by mutual agreement, the parties may mutually agree to mediate the dispute prior to a party commencing litigation. The mediation shall take place in Clackamas County, Oregon. The parties will equally bear the mediator's fees and costs.

5.13 Term and Termination.

5.13.1 Term. This agreement is effective upon signature of both parties and will terminate on **June 30, 2019**, unless the parties agree in writing to extend the agreement.

5.13.2 Termination For Convenience. Either party may terminate this agreement by providing at least 30 days prior written notice to the other party.

5.13.4 Termination For Cause. Either party may immediately terminate this agreement if that party complied with Section 5.12.1 of this agreement and the other party did not cure its default within the time provided by Section 5.12.1.

5.13.5 Termination Upon Directive by OHCS. This agreement may be subject to termination upon directive to COUNTY from OHCS, and OHCS shall not be to any of the parties of agreement or to other persons for directing agreement to be terminated.

5.14 Independent Contractor. Each of the parties hereto shall be deemed an independent contractor for purposes of this agreement. No representative, agent, employee, or contractor of one party shall be deemed to be a representative, agent, employee or contractor of the other party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the parties, any relationship or principal agent, partnership, joint venture or any similar relationship, and each party hereby specifically disclaims any such relationship.

5.15 Effective Date. This agreement will only become effective upon approval by the governing bodies of COUNTY and CITY.

This agreement consists of five (5) sections plus the following attachments which by this reference are incorporated herein:

- Exhibit A: Scope of Work & Performance Standards
- Exhibit B: Reporting Requirements
- Exhibit C: Budget and Output
- Exhibit D: Special Requirements
- Exhibit E: Invoice Template

Exhibit F: Oregon Housing and Community Services State Homeless Funds
Program (OHCS) Operation Manual, Emergency Housing
Assistance Program

Exhibit G: Notice of Funding Opportunity Announcement

Exhibit H: Notice of Funding Opportunity Addendum & FAQ Addendum

Exhibit I: Notice of Funding Opportunity Application

[SIGNATURES ON FOLLOWING PAGE]

CITY OF OREGON CITY

Dan Holladay, Mayor

Signing on Behalf of the Mayor & Council:

Anthony J. Konkol III, City Manager

Date

Approved as to Content:

Bill Kabeiseman, City Attorney
Bateman Seidel Miner Blomgren Chellis & Gram, P.C.

Date

CLACKAMAS COUNTY

Signing on behalf of the Board:

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Ken Humberston

Commissioner: Paul Savas

Commissioner: Martha Schrader

Richard Swift, Director
Health, Housing & Human Services Departm

Date

Approved as to Content:



Brenda Durbin
Social Services Division Director

6-13-18

Date

Approved as to Form:



Kathleen Rastetter, Senior County Counsel

6/13/18

Date

July 19, 2018

COPY

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of a Professional, Technical, and Personal Services Contract with Cascadia Behavioral Healthcare, Inc., for Supported Employment Services

Purpose/Outcomes	Provide Supported Employment services to uninsured and indigent residents of Clackamas County.
Dollar Amount and Fiscal Impact	Contract maximum payment for two years is \$100,000.
Funding Source	No County General Funds are involved. Funding provided through State of Oregon, Community Mental Health Program (CMHP).
Duration	Effective upon signature and terminates June 30, 2020
Previous Board Action	No previous Board action.
Strategic Plan Alignment	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division (503) 742-5305
Contract No.	#8769

BACKGROUND:

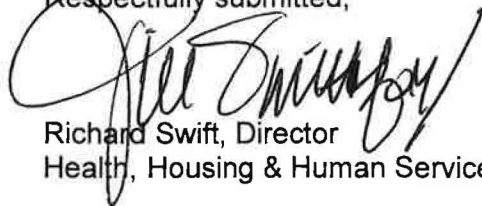
The Behavioral Health Division (BHD) of the Health, Housing & Human Services Department (H3S) request the approval of Professional, Technical and Personal Services Contract #8769 with Cascadia Behavioral Healthcare, Inc., to provide Supported Employment services to uninsured and indigent residents of Clackamas County. Supported Employment is an evidence-based practice with services intended to promote rehabilitation and return to productive employment.

This contract, with a maximum value of \$100,000, is effective upon signature and terminates on June 30, 2020, and was reviewed and approved by County Counsel on May 7, 2018.

RECOMMENDATION:

Staff recommends Board approval of this contract and authorization for Richard Swift, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, Director
 Health, Housing & Human Services Department

Healthy Families. Strong Communities.

PROFESSIONAL, TECHNICAL, AND CONSULTANT SERVICES CONTRACT
CONTRACT # 8769

This Professional, Technical, and Consultant Services Contract (this "Contract") is between the County of Clackamas acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY" and **Cascadia Behavioral Healthcare, Inc.**, hereinafter called "CONTRACTOR".

CONTRACT

1.0 Engagement

COUNTY hereby engages CONTRACTOR to provide **Supported Employment Services to uninsured and indigent residents of Clackamas County** as more fully described in **Exhibit B**, Scope of Work, attached hereto and incorporated herein (the "Services").

2.0 Term

Services provided under the terms of this Contract shall **commence upon signature and shall terminate June 30, 2020** unless terminated earlier by one or both parties as provided for in paragraph 6.0.

3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate CONTRACTOR as specified in **Exhibit C**, Compensation, for satisfactorily performing contracted services as specified in **Exhibit B**, Scope of Work, as follows:

Total payment to CONTRACTOR shall not exceed **\$100,000.00**.

Payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, travel expenses, mileage, and incidentals necessary to perform the work and services.

3.2 Method of Payment. To receive payment, CONTRACTOR shall submit invoices as described in **Exhibit C**, Compensation.

3.3 Withholding of Contract Payments. Notwithstanding any other payment provision of this Contract, should CONTRACTOR fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding payment for cause may continue until CONTRACTOR performs required services or establishes to COUNTY'S satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of CONTRACTOR.

3.4 Financial Records. CONTRACTOR shall maintain complete and legible financial records pertinent to payments received. Such records shall be maintained in accordance with Generally Accepted Accounting Principles. Financial records shall be retained for at least six (6) years after final payment is made under this Contract or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to CONTRACTOR were in excess of the amount to which CONTRACTOR was entitled, CONTRACTOR shall repay the amount of the excess to COUNTY.

3.4.1 CONTRACTOR shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. CONTRACTOR shall make reports and fiscal data generated under and for this Contract available to COUNTY upon request.

3.4.2 COUNTY may conduct a fiscal compliance review of CONTRACTOR as part of compliance monitoring of this Contract. CONTRACTOR agrees to provide, upon reasonable notice, access to all financial

books, documents, papers and records of CONTRACTOR which are pertinent to this Contract to ensure appropriate expenditure of funds under this Contract. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

3.4.3 CONTRACTOR may be subject to audit requirements. CONTRACTOR agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over CONTRACTOR.

3.4.4 CONTRACTOR shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. CONTRACTOR shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

4.0 Manner of Performance

4.1 Compliance with Applicable Laws and Regulations, and Special Federal Requirements. CONTRACTOR shall comply with all Federal and State regulations and laws, Oregon Administrative Rules, local laws and ordinances applicable to work performed under this Contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, which by this reference are incorporated herein.

CONTRACTOR must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of CONTRACTOR'S warranty, in this Contract that CONTRACTOR has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle COUNTY to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- i. Termination of this Contract, in whole or in part;
- ii. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to CONTRACTOR, in an amount equal to COUNTY'S setoff right, without penalty; and
- iii. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. COUNTY shall be entitled to recover any and all damages suffered as the result of CONTRACTOR'S breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and COUNTY may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

4.2 Subcontracts. CONTRACTOR shall not enter into any subcontracts for any of the work scheduled under this Contract without written consent of COUNTY.

4.3 Independent Contractor. CONTRACTOR certifies that it is an independent contractor and not an employee or agent of COUNTY, State of Oregon or Federal government. CONTRACTOR is not an officer, employee or agent of COUNTY as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of CONTRACTOR.

4.4. Tax Laws. The CONTRACTOR represents and warrants that, for a period of no fewer than six (6) calendar years preceding the effective date of this Contract, has faithfully complied with:

- i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- ii. 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;
- iii. 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
- iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

5.0 General Conditions

5.1 Indemnification. CONTRACTOR agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of CONTRACTOR, and CONTRACTOR's officers, agents, and employees, in performance of this Contract.

CONTRACTOR shall defend, save, hold harmless and indemnify the State of Oregon, Oregon Health Authority and their officers, agents and employees from and against all claims, suits, actions, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities or omissions of CONTRACTOR, or its agents or employees under this Contract.

If CONTRACTOR is a public body, CONTRACTOR's liability under this Contract is subject to the limitations of the Oregon Tort Claims Act.

5.2 Insurance. COUNTY shall enforce CONTRACTOR compliance with the insurance requirements outlined herein, and shall take all reasonable steps to enforce such compliance. Examples of reasonable steps include issuing stop work orders until the insurance is in full force, terminating the Contract as permitted herein, or pursuing legal action to enforce such requirements. During the term of this Contract, CONTRACTOR shall maintain in force, at its own expense, each insurance required in **Exhibit D**.

5.3 Governing Law; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Any claim, action, or suit between COUNTY and CONTRACTOR that arises out of or relates to performance under this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR by execution of this Contract consents to the in personal jurisdiction of said courts.

5.4 Amendments. The terms of this Contract shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by CONTRACTOR and COUNTY.

5.5 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 or 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.

5.6 Waiver. The failure of either party to enforce any provision of this Contract shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this Contract.

5.8 Oregon Public Contracting Requirements. Pursuant to the requirements of Oregon law, the following terms and conditions are made a part of this Contract:

5.8.1 Workers' Compensation. All subject employers working under this Contract must either maintain workers' compensation insurance as required in **Exhibit D**.

5.8.2 Oregon Constitutional Limitations. 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 such law, are deemed inoperative to that extent.

5.8.3 Oregon Public Contracting Conditions. Pursuant to the terms of ORS 279B.220, CONTRACTOR shall:

- i. Make payments promptly, as due, to all persons supplying to CONTRACTOR labor or materials for the performance 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 performance of this Contract.
- iii. Not permit any lien or claim to be filed or prosecuted against Clackamas County on account of any labor or material furnished.
- iv. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

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

5.8.5 As required by ORS 279B.230, CONTRACTOR shall promptly, as due, make payment to any person or partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention incident to sickness and injury, to the employees of CONTRACTOR, of all sums that CONTRACTOR agrees to pay for the services and all monies and sums that CONTRACTOR collected or deducted from the wages of its employees pursuant to any law, Contract or Agreement for the purpose of providing or paying for such services.

5.9 Integration. This Contract contains the entire Contract between COUNTY and CONTRACTOR and supersedes all prior written or oral discussions or Agreements.

5.10 Ownership of Work Product. All work products of CONTRACTOR which result from this Contract are the exclusive property of COUNTY.

6.0 Termination

6.1 Termination Without Cause. This Contract may be terminated by mutual consent of both parties, or by either party upon thirty (30) business days' notice, in writing, and delivered by certified mail or in person.

6.2 **Termination With Cause.** COUNTY, by written notice of default (including breach of Contract) to CONTRACTOR, may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or at such later date as may be established by COUNTY, under any of the following conditions:

- i. If COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services, the Contract may be modified to accommodate a reduction in funds.
- ii. If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding authorized by this Contract.
- iii. If any license or certificate required by law or regulation to be held by CONTRACTOR to provide the services required by this Contract is for any reason denied, revoked, or not renewed.
- iv. If CONTRACTOR fails to provide services, outcomes, reports as specified by COUNTY in this Contract.
- v. If 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 written notice from COUNTY, fails to correct such failures within ten (10) days or such longer period as COUNTY may authorize.

6.3 **Transition.** Any such termination of this Contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination. CONTRACTOR and COUNTY shall continue to perform all duties and obligations under this Contract with respect to individuals under care of CONTRACTOR to the date of termination.

7.0 Notices

Any notice under this Contract shall be deemed received the earlier of the time of delivery of two (2) business days after mailing certified and postage prepaid through the U.S. Postal Service addressed as follows:

If to CONTRACTOR:
Cascadia Behavioral Healthcare, Inc.
PO Box 8459
Portland, OR 97207

If to COUNTY:
Clackamas County Behavioral Health Division
2051 Kaen Road, Suite #154
Oregon City, OR 97045

This contract consists of seven (7) sections plus the following exhibits which by this reference are incorporated herein:

- Exhibit A – Definitions
- Exhibit B – Scope of Work
- Exhibit C – Compensation
- Exhibit D – Insurance
- Exhibit E – CMHP Required Provider Contract Provisions
- Exhibit F – CMHP Required Federal Terms & Conditions
- Exhibit G – CMHP Service Element(s)
- Exhibit H – Business Associate Agreement (BAA)

- Exhibit I – Qualified Service Organization Business Associate Agreement (QSOBAA)
- Exhibit J – Certification Statement for Independent Contractor
- Exhibit K – Performance Standards

[Signature Page Follows]

SIGNATURE PAGE

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

**CASCADIA BEHAVIORAL
HEALTHCARE, INC.**

Authorized Signature Date

Name / Title (Printed)

146332-18
Oregon Business Registry #

Domestic Nonprofit Corporation / Oregon
Entity Type / State of Formation

**COUNTY OF CLACKAMAS
BOARD OF COMMISSIONERS**

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

Signing on behalf of the Board:

Richard Swift, Director Date
Health, Housing and Human Services

Approved as to form:

Kathleen Rastetter via email May 7, 2018
County Counsel Date

July 19, 2018

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Agreement with Clackamas Women's Services
for Shelter/Advocacy/Crisis/Rural domestic violence services

Purpose/Outcomes	Provides domestic violence services including shelter, crisis services, advocacy, and services to rural survivors. Outcomes include: <ul style="list-style-type: none"> • Shelter for 60 households – 85% will report new options to stay safe • Rural advocacy services to 50 survivors with 85% reporting they are more aware of resources through safety planning; • Crisis support for 300 individuals; • Support groups serving minimum of 100 survivors.
Dollar Amount and Fiscal Impact	\$190,426 (\$168,426 for Shelter/Crisis; \$22,000 for Rural Services). No county staff are funded through this agreement.
Funding Source	County General Fund
Duration	July 1, 2018 – June 30, 2019
Previous Board Action	N/A
Strategic Plan Alignment	<ul style="list-style-type: none"> • Improve community safety and health • Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook, 503-650-5677
Contract No.	Contract database # 8816

BACKGROUND:

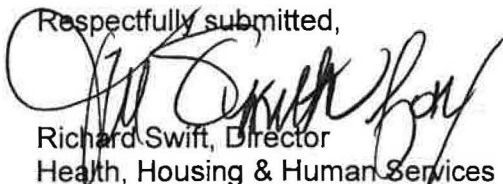
The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of an Agreement with Clackamas Women's Services for: safe shelter and supportive services to survivors of violence and their children; advocacy and support to survivors in rural Clackamas County; survivor support groups; 24-hour crisis line support.

Funding source for this Agreement is County General Fund and has a maximum value of \$190,426. The Agreement is effective July 1, 2018 and terminates June 30, 2019. It has been 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,


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

CLACKAMAS COUNTY, OREGON LOCAL RECIPIENT GRANT AGREEMENT CYF- 8816	
Program Name: Clackamas Women's Services Shelter, Advocacy, Crisis, and Rural Services Program/Project Number: 8816	
This Agreement is between <u>Clackamas County, Oregon</u> , acting by and through its Children, Youth & Families Division (COUNTY) and <u>Clackamas Women's Services</u> (RECIPIENT), an Oregon Non-profit Organization.	
COUNTY Data	
Grant Accountant: Stephanie Radford Children, Youth & Families 150 Beaver Creek Rd. Oregon City, OR 97045 503-650-5678 sradford@clackamas.us	Program Manager: Korene Mather Children, Youth & Families Domestic Violence Systems Coordinator/Planner 150 Beaver Creek Rd. Oregon City, OR 97045 503-650-5683 (phone) korenemat@clackamas.us
SUBRECIPIENT Data	
Finance/Fiscal Representative: Carla Batcheller Clackamas Women's Services 256 Warner Milne Road Oregon City, OR 97045 503-557- 5801 carlab@cwsor.org FEIN: 93-0900119	Program Representative: Melissa Eribaum Clackamas Women's Services 256 Warner Milne Road Oregon City, OR 97045 503-557-5810 melissae@cwsor.org

RECITALS

- Domestic violence is defined as a pattern of coercive behavior used by one person to control another in an intimate relationship. The violence can be mental, emotional, physical, sexual, financial, and other types of abuse perpetrated to gain and maintain power and control. Domestic violence, sexual assault, stalking, dating violence, and elder abuse have significant impact on the health and welfare of the residents of Clackamas County.
- Clackamas Women's Services has been providing services to families since 1985. Their innovative and ground-breaking approach to serving survivors includes a "Village Model" of shelter care, housing first to approaching housing needs of participants, and the utilization of trauma informed practices throughout their organization. The organization is a leader in the effort to improve the quality of interventions for survivors and their families, as well as attempts to hold offenders accountable for their abuse. Clackamas Women's Services believes that violence is a result of attitudes, power and control, and that violence results when people unjustly exercise power over others. Therefore, all oppressive behaviors must be simultaneously addressed. To that end, Clackamas Women's Services works to ensure that individuals and families have equal access to community resources. The organization provides support, advocacy and opportunity for self-empowerment, assisting survivors to exercise free and informed life choices free of violence and oppression.

3. County General Fund dollars will be used to finance this Local Recipient Grant Agreement.
4. This Agreement of financial assistance sets forth the terms and conditions pursuant to which RECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Local Grant Agreement the COUNTY and RECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse RECIPIENT for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2018** and not later than **June 30, 2019**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program requirements are described in Exhibit A-1: Scope of Work and Exhibit A-2: Work Plan Quarterly Report. RECIPIENT agrees to perform the Program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** RECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations.
4. **Grant Funds.** The COUNTY's funding for this Agreement is **County General Funds**. The maximum, not to exceed, grant amount that the COUNTY will pay is **\$190,426**.
5. **Disbursements.** This is a cost reimbursement grant and disbursements will be made monthly in accordance with the requirements contained in Exhibit D-1: Request for Reimbursement.

Failure to comply with the terms of this Agreement may result in withholding of payment and termination of the Agreement.

6. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **RECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty-five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully effective before RECIPIENT performs work subject to the amendment.
7. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other. This notice may be transmitted in person, by mail, facsimile, or by email, with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed.
8. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this Agreement.
9. **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.

- 10. Funds Available and Authorized.** The COUNTY certifies that it has been awarded funds sufficient to finance the costs of this Agreement. RECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
- 11. Administrative Requirements.** RECIPIENT agrees to its status as a RECIPIENT, and accepts among its duties and responsibilities the following:
- a) **Financial Management.** RECIPIENT shall comply with Generally Accepted Accounting Principles (GAAP) or another equally accepted basis of accounting, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned". All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
 - c) **Budget.** RECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: RECIPIENT Program Budget. RECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modifications change the scope of the original grant application or agreement.
 - d) **Allowable Uses of Funds.** RECIPIENT shall use funds only for those purposes authorized in this Agreement.
 - e) **Period of Availability.** RECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the term and effective date. Cost incurred prior or after this date will be disallowed.
 - f) **Match.** Matching funds are not required for this Agreement.
 - g) **Payment.** Routine requests for reimbursement should be submitted monthly by the 15th of the following month using the forms and instructions outlined in Exhibit D-1: Request for Reimbursement. RECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement.
 - h) **Performance Reporting.** RECIPIENT must submit Performance Reports on a quarterly basis according to the schedule specified in Exhibit C: Performance Reporting Schedule. Quarterly Reports include Exhibits A-2: Work Plan Quarterly Report, A-3: Demographic Report, and A-4: Client Feedback Survey and Report. All reports must be submitted on templates provided, must reference this agreement number, and be signed and dated by an authorized official of RECIPIENT.
 - i) **Audit.** RECIPIENT shall comply with the audit requirements prescribed by State and Federal law.
 - j) **Monitoring.** RECIPIENT agrees to allow access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring. The COUNTY, and its duly authorized representatives shall have access to such records and other books, documents, papers, plans, records of shipments and payments and writings of RECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and

make excerpts, copies and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion.

- k) **Record Retention.** RECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years following the Project End Date (June 30, 2019), or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- l) **Failure to Comply.** RECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and RECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original contract and this Agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold RECIPIENT grant funds until compliance is met, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, or to terminate this relationship including the original contract and all associated amendments.

12. Compliance with Applicable Laws.

- a) **Public Policy.** RECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and as applicable to RECIPIENT.
- b) **State Statutes.** RECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- c) **Conflict Resolution.** If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Agreement, RECIPIENT shall in writing request COUNTY resolve the conflict. RECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement.

13. General Agreement Provisions.

- a) **Indemnification.** RECIPIENT agrees to indemnify and hold COUNTY harmless with respect to any claim, cause, damage, action, penalty or other cost and its elected officials, officers, and employees and agents arising from or related to RECIPIENT's negligent or willful acts or those of its employees, agents or those under RECIPIENT's control. RECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to RECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- b) **Insurance.** During the term of this Agreement, RECIPIENT shall maintain in force, at its own expense, each insurance noted below:

- 1) **Commercial General Liability.** RECIPIENT shall obtain, at RECIPIENT's expense, and keep in effect during the term of this agreement, Commercial General Liability Insurance covering bodily injury, death, and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
- 2) **Commercial Automobile Liability.** If the Agreement involves the use of vehicles, RECIPIENT shall obtain at RECIPIENT expense, and keep in effect during the term of this agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.
- 3) **Professional Liability.** If the Agreement involves the provision of professional services, RECIPIENT shall obtain and furnish the COUNTY evidence of Professional Liability Insurance covering any damages caused by an error, omission, or negligent act related to the services to be provided under this agreement, with limits not less than \$2,000,000 per occurrence for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this agreement. COUNTY, at its option, may require a complete copy of the above policy.
- 4) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability Insurance coverage limits of not less than \$1,000,000.
- 5) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured, but only with respect to RECIPIENT's activities under this agreement.
- 6) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 day notice of cancellation provision shall be physically endorsed on to the policy.
- 7) **Insurance Carrier Rating.** Coverage provided by RECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any Insurance carrier(s) with an unacceptable financial rating.
- 8) **Certificates of Insurance.** As evidence of the insurance coverage required by this agreement, RECIPIENT shall furnish a Certificate of Insurance to COUNTY. No agreement shall be in effect until the required certificates have been received, approved, and accepted

by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

- 9) **Primary Coverage Clarification.** RECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional Insureds listed above.
 - 10) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the agreement.
 - 11) **Waiver of Subrogation.** RECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.
- c) **Assignment.** RECIPIENT shall not enter into any subcontracts or subawards for any of the Program activities required by the Agreement without prior written approval. This Agreement may not be assigned in whole or in part with the express written approval of the COUNTY.
 - d) **Independent Status.** RECIPIENT is independent of the COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. RECIPIENT is not an agent of the COUNTY and undertakes this work independent from the control and direction of the COUNTY excepting as set forth herein. RECIPIENT shall not seek or have the power to bind the COUNTY in any transaction or activity.
 - e) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.
 - f) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between the COUNTY and RECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
 - g) **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
 - h) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
 - i) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
 - j) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.

- k) Integration.** This agreement contains the entire agreement between COUNTY and RECIPIENT and supersedes all prior written or oral discussions or agreements.

(Signature Page Follows)

SIGNATURE PAGE TO RECIPIENT AGREEMENT

(CLACKAMAS COUNTY)

AGREED as of the Effective Date.

RECIPIENT

Clackamas Women's Services
256 Warner Milne Rd.
Oregon City, OR 97045

CLACKAMAS COUNTY

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

By: 
Melissa Erlbaum, Executive Director

Dated: 7/9/2018

Signing on behalf of the Board:

By: _____
Richard Swift, Director
Health, Housing & Human Services

Dated: _____

By: 
Rodney A. Cook, Director
Children, Youth & Families Division

Dated: 7-10-18

- Exhibit A-1: Scope of Work
- Exhibit A-2: Work Plan Quarterly Report
- Exhibit A-3: Demographic Report
- Exhibit A-4: Client Feedback Survey and Report
- Exhibit B: Program Budget
- Exhibit C: Performance Reporting Schedule
- Exhibit D-1: Request for Reimbursement
- Exhibit D-2: Monthly Activity Report

July 19, 2018

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Agreement with Los Niños Cuentan for Culturally-Specific
Domestic Violence Emergency Shelter and Supportive Services

Purpose/Outcomes	Provides domestic violence services to Latina survivors of domestic violence and their children, including emergency shelter, support groups, and information and referral. <ul style="list-style-type: none"> • 38 survivors will be sheltered with 85% reporting that they have a safety plan, know of options to stay safe, and exit to safe and stable housing; • 38 survivors will participate in support group with 85% responding to exit survey that they have an increased understanding of domestic violence and available resources; • 100% of new staff and board members will complete training;
Dollar Amount and Fiscal Impact	\$130,000 No County Staff are funded through this Agreement
Funding Source	County General Funds
Duration	Effective July 1, 2018 and terminates June 30, 2019
Previous Board Action	N/A
Strategic Plan Alignment	<ul style="list-style-type: none"> • Improve community safety and health • Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook, 503-650-5677
Contract No.	8818

BACKGROUND:

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of an Agreement with Los Niños Cuentan. Funding will provide: safe shelter and supportive services (support groups, information and referral, safety planning and individualized assessment, housing assistance and referrals) to Latina survivors of domestic violence and their children as well as support organizational development.

Funding for this Agreement is County General Funds. It has been reviewed by County Counsel. It is effective upon signature for services starting July 1, 2018 and terminating June 30, 2019. The agreement has a maximum value of \$130,000.

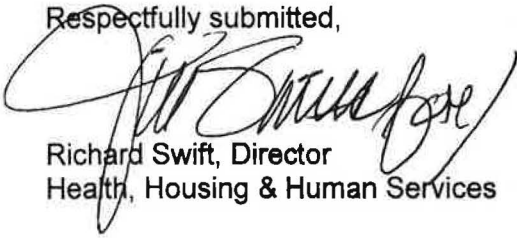
Healthy Families. Strong Communities.

Y900

RECOMMENDATION:

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Swift", written over the typed name below.

Richard Swift, Director
Health, Housing & Human Services

**CLACKAMAS COUNTY, OREGON
LOCAL RECIPIENT GRANT AGREEMENT CYF- 8818**

Program Name: *Los Niños Cuentan*
Program/Project Number: 8818

This Agreement is between Clackamas County, Oregon, acting by and through its Department of Health, Housing & Human Services (COUNTY) and Los Niños Cuentan (RECIPIENT), an Oregon Non-profit Organization.

COUNTY Data

Grant Accountant: <i>Stephanie Radford</i>	Program Manager: <i>Korene Mather</i>
Clackamas County Children, Youth & Families Division 150 Beaver Creek Rd. Suite 305 Oregon City, OR 97045 503-650-5678 sradford@clackamas.us	Clackamas County Children, Youth & Families Division Domestic Violence Systems Coordinator/Planner 150 Beaver Creek Rd. Suite 305 Oregon City, OR 97045 503-650-5683 korenemat@clackamas.us

RECIPIENT Data

Finance/Fiscal Representative: <i>Lucia Reynolds</i>	Program Representative: <i>Lucia Reynolds</i>
Los Niños Cuentan P.O. Box 1172 Clackamas, OR 97045 503-888-4088 boardchair@losninocuentan.org	Los Niños Cuentan P.O. Box 1172 Clackamas, OR 97045 503-888-4088 boardchair@losninocuentan.org
FEIN: 83-0434390	

RECITALS

1. Domestic violence is defined as a pattern of coercive behavior used by one person to control another in an intimate relationship. The violence can be mental, emotional, physical, sexual, financial, and other types of abuse perpetrated to gain and maintain power and control. Domestic violence, sexual assault, stalking, dating violence, and elder abuse have significant impact on the health and welfare of the residents of Clackamas County.

Latina victims of domestic violence face significant barriers to safety and access to resources. Research demonstrates that Latinas experience intimate partner violence differently from their non-Latina counterparts. Barriers that include social isolation, language, discrimination, fear of deportation, dedication to family, and the cultural stigma of divorce mean that Latina victims are less likely to report domestic violence and seek protection. They are also less likely to utilize domestic violence shelters.

2. Los Niños Cuentan (RECIPIENT) is a non-profit organization that provides culturally-specific services to survivors of domestic violence, sexual assault, stalking, and other forms of violence. Founded in 2000, Los Niños Cuentan is based in Clackamas County and works to eliminate barriers to existing

resources through culturally responsive emergency shelter, advocacy, information, referrals, case-management, housing assistance, support groups, and other supportive services.

3. Clackamas County (COUNTY) desires to have its citizens share in the benefits of RECIPIENT resources to enhance victim safety through the provision of culturally-specific services in cases of domestic violence, sexual assault, and stalking. The funded staff are stationed in the shelter house and provide direct services to residents and their children as they seek safety from abuse. Primary services include an emergency shelter residence and advocacy services that deal with immediate safety concerns as well as long-term self-sufficiency for families. In addition, funding provides support to the organization through an Executive Director position.
4. County General funds will be used to finance this grant agreement as part of its commitment to ending domestic violence and insure that those most vulnerable to continued violence due to language and/or cultural barriers have access to appropriate and specially designed advocacy and shelter.
5. This Grant Agreement of financial assistance sets forth the terms and conditions pursuant to which RECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Local Grant Agreement the COUNTY and RECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse RECIPIENT for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2018** and not later than **June 30, 2019**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program requirements are described in Exhibit A-1: Scope of Work and Exhibit A-2: Work Plan Quarterly Report. RECIPIENT agrees to perform the Program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** RECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the County General Funds. The maximum, not to exceed, grant amount that the COUNTY will pay is **\$130,000**.
5. **Disbursements.** This is a cost reimbursement grant and disbursements will be made monthly in accordance with the schedule and requirements contained in Exhibit D-1: Request for Reimbursement.

Failure to comply with the terms of this Agreement may result in withholding of payment and termination of the agreement.

6. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **RECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration

date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully effective before RECIPIENT performs work subject to the amendment.

7. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other. This notice may be transmitted in person, by mail, facsimile, or by email, with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed.
8. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this Agreement.
9. **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.
10. **Funds Available and Authorized.** The COUNTY certifies that it has been awarded funds sufficient to finance the costs of this Agreement. RECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
11. **Administrative Requirements.** RECIPIENT agrees to its status as a RECIPIENT, and accepts among its duties and responsibilities the following:
 - a) **Financial Management.** RECIPIENT shall comply with Generally Accepted Accounting Principles (GAAP) or another equally accepted basis of accounting, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned". All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
 - c) **Budget.** RECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: RECIPIENT Program Budget. RECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modifications change the scope of the original grant application or agreement.
 - d) **Allowable Uses of Funds.** RECIPIENT shall use funds only for those purposes authorized in this Agreement.
 - e) **Period of Availability.** RECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the term and effective date. Cost incurred prior or after this date will be disallowed.
 - f) **Match.** Matching funds are not required for this Agreement.
 - g) **Payment.** Routine requests for reimbursement should be submitted monthly by the 15th of the following month using the forms and Instructions outlined in Exhibit D-1: Request for

Reimbursement. RECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement.

- h) **Performance and Financial Reporting.** RECIPIENT must submit Performance Reports on a quarterly basis according to the schedule specified in Exhibit C: Performance Reporting Schedule. Quarterly Reports include Exhibits A-2: Work Plan Quarterly Report, A-3: Demographic Report, and A-4: Client Feedback Survey and Report. All reports must be submitted on templates provided, must reference this agreement number, and be signed and dated by an authorized official of RECIPIENT.
- i) **Audit.** RECIPIENT shall comply with the audit requirements prescribed by State and Federal law.
- j) **Monitoring.** RECIPIENT agrees to allow access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring. COUNTY and their duly authorized representatives shall have access to such records and other books, documents, papers, plans, records of shipments and payments and writings of RECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, copies and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion.
- k) **Record Retention.** RECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years following the Project End Date (June 30, 2019), or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- l) **Failure to Comply.** RECIPIENT acknowledges and agrees that this agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and RECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original contract and this agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold RECIPIENT grant funds until compliance is met, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, or to terminate this relationship including the original contract and all associated amendments.

12. Compliance with Applicable Laws

- a) **Public Policy.** RECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and as applicable to RECIPIENT.
- b) **State Statutes.** RECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the agreement.

- c) **Conflict Resolution.** If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Agreement, RECIPIENT shall in writing request COUNTY resolve the conflict. RECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement.

13. General Agreement Provisions.

- a) **Indemnification.** RECIPIENT agrees to indemnify and hold COUNTY harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to RECIPIENT's negligent or willful acts or those of its employees, agents or those under RECIPIENT's control. RECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to RECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- b) **Insurance.** During the term of this agreement, RECIPIENT shall maintain in force, at its own expense, each insurance noted below:
- 1) **Commercial General Liability.** RECIPIENT shall obtain, at RECIPIENT's expense, and keep in effect during the term of this agreement, Commercial General Liability Insurance covering bodily injury, death, and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
 - 2) **Commercial Automobile Liability.** If the Agreement involves the use of vehicles, RECIPIENT shall obtain at RECIPIENT expense, and keep in effect during the term of this agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.
 - 3) **Professional Liability.** If the Agreement involves the provision of professional services, RECIPIENT shall obtain and furnish the COUNTY evidence of Professional Liability Insurance covering any damages caused by an error, omission, or negligent act related to the services to be provided under this agreement, with limits not less than \$2,000,000 per occurrence for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this agreement. COUNTY, at its option, may require a complete copy of the above policy.
 - 4) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.
 - 5) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, officers, and employees" as an

additional insured, as well as the but only with respect to RECIPIENT's activities under this agreement.

- 6) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 day notice of cancellation provision shall be physically endorsed on to the policy.
 - 7) **Insurance Carrier Rating.** Coverage provided by RECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
 - 8) **Certificates of Insurance.** As evidence of the insurance coverage required by this agreement, RECIPIENT shall furnish a Certificate of Insurance to COUNTY. No agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
 - 9) **Primary Coverage Clarification.** RECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.
 - 10) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the agreement.
 - 11) **Waiver of Subrogation.** RECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.
- c) **Assignment.** RECIPIENT shall not enter into any subcontracts or subawards for any of the Program activities required by the Agreement without prior written approval. This Agreement may not be assigned in whole or in part with the express written approval of the COUNTY.
 - d) **Independent Status.** RECIPIENT is independent of the COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. RECIPIENT is not an agent of the COUNTY and undertakes this work independent from the control and direction of the COUNTY excepting as set forth herein. RECIPIENT shall not seek or have the power to bind the COUNTY in any transaction or activity.
 - e) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.
 - f) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state. Any litigation between the COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement

shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.

- g) **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- h) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
- i) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
- j) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- k) **Integration.** This agreement contains the entire agreement between COUNTY and RECIPIENT and supersedes all prior written or oral discussions or agreements.

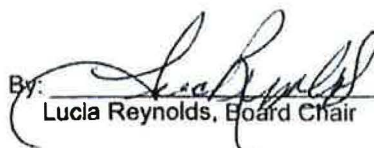
(Signature Page Follows)

**SIGNATURE PAGE TO SUBRECIPIENT AGREEMENT
(CLACKAMAS COUNTY)**

AGREED as of the Effective Date.

SUBRECIPIENT
Los Niños Cuentan
P.O. Box 1172
Clackamas, OR 97045

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


By: 
Lucia Reynolds, Board Chair

Dated: 7/10/2018

Signing on behalf of the Board:

By: _____
Richard Swift, Director
Health, Housing & Human Services

Dated: _____

By: 
Rodney A. Cook, Director
Children, Youth & Families Division

Dated: 7-10-18

- Exhibit A-1: Scope of Work
- Exhibit A-2: Work Plan Quarterly Report
- Exhibit A-3: Demographic Report
- Exhibit A-4: Client Feedback Survey and Report
- Exhibit B: Program Budget
- Exhibit C: Performance Reporting Schedule
- Exhibit D-1: Request for Reimbursement
- Exhibit D-2: Monthly Activity Report



RANDALL A. HARMON
MANAGER

TRANSPORTATION MAINTENANCE DIVISION

McCoy Building

902 ABERNETHY ROAD | OREGON CITY, OR 97045

July 19, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Maintenance Agreement with the State of Oregon
US26: SE 282nd Ave (Boring Rd) OXING

Purpose/ Outcomes	ODOT is raising the SE 282 nd Ave, Boring Rd, bridge which crosses over US26 at milepoint 17.54 by two and a half feet. The County has been maintaining the road surface of the SE 282 nd Ave, Boring Rd, bridge. This maintenance agreement would specifically outline who would be responsible for each facility in this area.
Dollar Amount and Fiscal Impact	Transportation Maintenance will use available funds under its maintenance budget to fund any maintenance required.
Funding Source	Transportation Maintenance 215-7433
Duration	This agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance (and power if applicable) responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Helps keep a strong infrastructure and ensures safe communities 2. Provides maintenance to the traveling public so they can experience a clean, attractive and healthy community. 3. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
Previous Board Action	None
Contact Person	Vince Hall, Project Manager, 503-650-3210

BACKGROUND:

The State of Oregon and Clackamas County agree to abide by the maintenance responsibilities listed in this Agreement at SE 282nd Ave, Boring Rd, where the bridge crosses over US26 at milepoint 17.54.

Clackamas County shall, upon completion of the project and at their own expense, maintain the approach and bridge roadway surfaces and sidewalks. Said maintenance includes paving, plowing, sanding, patching, sweeping, striping and graffiti removal.

The State of Oregon shall, upon completion of the project, maintain the structural portion of the bridge crossing over US26, and shall, to the extent necessary, be responsible for maintenance of drainage, landscaping, bridge-railing on structure (including painting), retaining walls and fencing.

RECOMMENDATION:

Staff recommends Board Approval of Maintenance Agreement No. 31699 between the State of Oregon and Clackamas County.

Respectfully submitted,

Randall A. Harmon
Transportation Operations Manager
Transportation Maintenance Division

**MAINTENANCE AGREEMENT
US26: SE 282ND AVE (Boring Rd) OXING**

THIS MAINTENANCE AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and Clackamas County, acting by and through its elected officials, hereinafter referred to as "County," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. Mt. Hood Highway (US26) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OC). SE 282nd Ave, Boring Rd bridge crosses over US26 at milepoint 17.54 and is located entirely within the right of way of the Mt. Hood Highway (US 26).
2. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
3. State is raising the SE 282nd Ave, Boring Rd, bridge which crosses over US26 at milepoint 17.54 by two and a half feet. This will result in raising the road approach on either side of the bridge and adding two swales along the NW bound roadbed, one on either side of the bridge structure.
4. The County has been maintaining the road surface of the SE 282nd Ave, Boring Rd, bridge and the Parties desire that the County continue to maintain the road surface area in the same manner and that the State would specifically be responsible for maintenance of the bridge structure and all other facilities which are beyond the scope of the road surface maintenance that is specifically delegated to the County. This Agreement is to establish the responsibilities of the Parties for maintenance of the bridge structure, and roadway.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and County agree to abide by the maintenance responsibilities listed in this Agreement at SE 282nd Ave, Boring Rd, where the bridge crosses over US26 at milepoint 17.54, hereinafter referred to as "Project." The location of the Project is located entirely within the right of way of the Mt. Hood Highway (US 26) and is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.

2. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance (and power if applicable) responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years.

COUNTY OBLIGATIONS

1. County shall, upon completion of the project and at own expense, maintain the approach and bridge roadway surfaces and sidewalks. Said maintenance includes paving, plowing, sanding, patching, sweeping, striping and graffiti removal.
2. County shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS [279C.505](#), [279C.515](#), [279C.520](#), [279C.530](#) and [279B.270](#) incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, County expressly agrees to comply with (i) [Title VI of Civil Rights Act of 1964](#); (ii) [Title V and Section 504 of the Rehabilitation Act of 1973](#); (iii) the [Americans with Disabilities Act of 1990](#) and ORS [659A.142](#); (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
3. If County chooses to assign its maintenance responsibilities to a consultant or contractor, County shall inform the consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws with ORS Chapters 279A, 279B, and 279C are followed.
4. County shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
5. All employers, including County, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and provide the required Workers' Compensation coverage unless such employers are exempt under ORS [656.126](#). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. County shall ensure that each of its contractors complies with these requirements.
6. County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind County.
7. County's Project Manager for this Project is Vince Hall, Senior Civil Engineer, 902 Abernethy Road, Oregon City, OR 97045, 503-650-3210, vincehal@clackamas.us, or

County/State
Agreement No. 31699

assigned designee upon individual's absence. County shall notify the other Party in writing of any contact information changes during the term of this Agreement.

8. County's Maintenance Manager for this facility is the Transportation Operations Manager, 902 Abernathy Rd, Oregon City, OR 97045, 503-650-3262.

STATE OBLIGATIONS

1. State shall, upon completion of the project, maintain the structural portion of the bridge crossing over US26, and shall, to the extent necessary, be responsible for maintenance of drainage, landscaping, bridge-railing on structure (including painting), retaining walls and fencing.
2. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
3. State's Project Manager for this Project is Kelly Hawley, Project Leader, 123 NW Flanders Street, Portland, OR 97209-4012, 503-731-3001, Kelly.R.HAWLEY@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
4. State's Maintenance Manager for this facility is the District 2C Manager, 9200 SE Lawnfield Rd, Clackamas, OR 97015-8685, 971-673-6200.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to County, or at such later date as may be established by State, under any of the following conditions:
 - a. If County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If County fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If County fails to provide payment of its share of the cost of the Project.
 - d. If State or County fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow the State or County, in the

- exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
- e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State or County are prohibited from paying for such work from the planned funding source.
3. County may terminate this Agreement effective upon delivery of written notice to State, or at such later date as may be established by County, under any of the following conditions:
 - a. If State fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If State fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from County fails to correct such failures within ten (10) days or such longer period as County may authorize.
 - c. If State fails to provide payment of its share of the cost of the Project.
 - d. If State or County fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow the State or County, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State or County are prohibited from paying for such work from the planned funding source.
 4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or County with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

6. With respect to a Third Party Claim for which State is jointly liable with County (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of County on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
7. With respect to a Third Party Claim for which County is jointly liable with State (or would be if joined in the Third Party Claim), County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of County on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. State and County agree to notify each other's respective Maintenance Manager whenever facilities are found to be in need of maintenance as defined in this agreement.
10. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
11. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either

County/State
Agreement No. 31699

Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

County/State
Agreement No. 31699

CLACKAMAS COUNTY, by and through
its elected officials

By _____
County Commissioner, Chair

Date _____

By _____

Date _____

LEGAL REVIEW APPROVAL
(If required in Agency's process)

By _____
County Legal Counsel

Date _____

County Contact:
Randall A. Harmon, Transportation
Operations Manager
902 Abernethy Road
Oregon City, OR 97045
(503) 650-3246
randyhar2@clackamas.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 1 Maintenance & Operations
Manager

Date _____

APPROVAL RECOMMENDED

By _____
District 2C Manager

Date _____

State Contact:
Dan Bacon, District 2C Manager
999 NW Frontage Rd, Suite 250
Troutdale, OR 97060
(503) 655-4193
Dan.W.BACON@odot.state.or.us

EXHIBIT A – PROJECT LOCATION MAP
US26: SE 282ND AVE (Boring Rd) OXING





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 Conway Construction Company for Foster Creek (at Bakers Ferry Road) Crossing Scour Repair Project

Purpose/Outcomes	This project is required to protect the foundation and retaining walls of the existing Bebo-style concrete arch bridge that provides crossing on Bakers Ferry Road over Foster Creek.
Dollar Amount and Fiscal Impact	Contract value is \$310,171.00
Funding Source	County Road Funds
Duration	Contract execution through October 12, 2018
Previous Board Action	None
Strategic Plan Alignment	This project will provide strong infrastructure and ensure safe communities by constructing revetment structures to stabilize Foster Creek at the Bakers Ferry Road Crossing.
Contact Person	Devin Patterson, Project Manager 503-742-4666

Background:

DTD is recommending a construction contract with Conway Construction Company for construction of the Foster Creek (at Bakers Ferry Road) Crossing Scour Repair Project. This project is required to protect the foundation and retaining walls of the existing Bebo-style concrete arch bridge that provides crossing on Bakers Ferry Road over Foster Creek. This project will include the installation of six streamflow deflector structures comprised of Douglas fir logs and large boulders, upstream of the bridge to direct the streamflow to the center of the bridge. Additionally, nine full-spanning grade-control structures will be constructed and made of large boulders to minimize stream velocities and subsequent head-cut on Foster Creek in the vicinity of the bridge. Both upstream retaining walls will be lined with large boulders, sized appropriately for peak flows.

This project is funded by County Road Funds. The project work is anticipated to begin immediately following contract signing and be substantially complete by October 12, 2018.

Procurement Process:

This project advertised in accordance with ORS and LCRB Rules on May 16, 2018. Bids were opened on June 13, 2018. The County received two (2) bids: Conway Construction Company, \$310,220.00; and Elk Mountain Construction, Inc., \$334,550.00. After review of the bids, Conway Construction Company was determined to be lowest responsive bidder.

This contract has been reviewed and approved by County Counsel.

Recommendation:

Staff respectfully recommends that the Board approves and signs this construction services contract with Conway Construction Company for the Foster Creek (at Bakers Ferry Road) Crossing Scour Repair Project.

Sincerely,

Mike Bezner
Assistant Director of Transportation

Placed on the BCC Agenda _____ by Procurement



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and **Conway Construction Company**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: #2018-50 Foster Creek (at Bakers Ferry Road) Crossing Scour Repair Project

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **three hundred ten thousand one hundred seventy-one Dollars (\$310,171.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the project specifications) referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Public Improvement Contract Form
- Prevailing Wage Rates
- Plans, Specifications and Drawings
- Instructions to Bidders
- Bid Bond
- Performance Bond and Payment Bond
- Payroll and Certified Statement Form
- Addendum #1

The Plans, Specifications and Drawings expressly incorporated by reference into this Contract includes, but is not limited to, the Special Provisions for Highway Construction (the "Specifications"), together with the provisions of the Oregon Standard Specifications for Construction (2015) referenced therein.

2. Representatives.

Contractor has named David Conway as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Joel Howie as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further

replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: David Conway shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

Project Manager: Ken Conway shall be the Contractor's project manager and will participate in all meetings throughout the project term.

Job Superintendent: Greg Ross shall be the Contractor's on-site job superintendent throughout the project term.

Project Engineer: McKenzie Baker shall be the Contractor's project engineer, providing assistance to the project manager, and subcontractor and supplier coordination throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed ("NTP")

SUBSTANTIAL COMPLETION DATE: August 31, 2018 except for seeding, planning, seeding establishment and planting establishment

FINAL COMPLETION DATE: October 12, 2018 except for seeding establishment, and planting establishment

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

5. Insurance Certificates and Required Performance and Payment Bonds.

5.1 In accordance with Section 00170.70 of the Specifications, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.

5.2 Primary Coverage: Insurance carried by Contractor under the Contract shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

5.2.1 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

5.3 Builder's Risk Insurance: During the term of the Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk forms, including earthquake and flood, for an amount equal to the full amount of the Contract, plus any changes in values due to modifications, Change Orders and loss of materials added. Such Builder's Risk shall include, in addition to earthquake and flood, theft, vandalism, mischief, collapse, transit, debris removal, and

architect's fees "soft costs" associated with delay of Project due to insured peril. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible which shall not exceed 2 percent of each loss or \$50,000, whichever is greater. The deductible shall be paid by Contractor. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear.

5.4 Builder's Risk Installation Floater: For Work other than new construction, Contractor shall obtain and keep in effect during the term of the Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear. Owner may waive this requirement at its sole and absolute discretion.

5.4.1 Such insurance shall be maintained until Owner has occupied the facility.

5.4.2 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner as loss payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

5.5 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 36 months or the maximum time period available in the marketplace if less than 36 months. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 36 months following Final 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 the Contract. Owner's receipt of the policy endorsement evidencing such coverage shall be a condition precedent to Owner's obligation to make final payment and to Owner's final acceptance of Work or services and related warranty (if any).

5.6 Notice of Cancellation or Change: If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify Owner by fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Contractor agrees to stop Work pursuant to the Contract at Contractor's expense, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its institutions, divisions, officers, and employees.

Owner shall have the right, but not the obligation, of prohibiting Contractor from entering the Project Site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Contractor agrees that Owner reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to Owner.

5.7 Before execution of the Contract, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Revised Statutes, Chapter 279C.830 and 279C.836, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless

otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to start Work.

5.8 When the Contract Price is \$50,000 or more, the Contractor shall furnish and maintain in effect at all times during the Contract Period a performance bond in a sum equal to the Contract Price and a separate payment bond also in a sum equal to the Contract Price. Contractor shall furnish such bonds even if the Contract Price is less than the above thresholds if otherwise required by the Contract Documents.

5.9 Bond forms furnished by the Owner and notarized by Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

6. Responsibility for Damages/Indemnity.

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

6.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner and its elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay described in this Section 6.1; (b) any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 6.2.

6.3 In claims against any person or entity indemnified under Section 6.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 6.2 shall not be limited on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7. Tax Compliance.

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the

right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

8. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

9. Counterparts.

This Contract may be executed in several counterparts, all of which when taken together shall constitute an 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.

10. Integration.

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

11. Liquidated Damages

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

- 11.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:

11.1.1. \$ 600.00 per Calendar day past the Substantial Completion date.

12. Permit Compliance

Owner has applied for and been issued one or more permits from state and/or federal agencies, copies of which are expressly included in the Contract Documents. These permits include, but may not be limited to, a Section 404 fill permit from the U.S. Army Corps of Engineers. Contractor shall perform the Work subject to all terms and conditions contained in the enclosed permits. Contractor is responsible for compliance with all other federal, state, or local laws including, but not limited to, obtaining all additional permits or authorizations as may be necessary to complete the Work

Signature page to follow.

In witness whereof, Clackamas County executes this Contract and the Contractor does execute the same as of the day and year first above written.

Contractor DATA:

**Conway Construction Company
414 Pioneer Street, Suite 201
Ridgefield, WA 98642**

Contractor CCB # 61667 Expiration Date: 10/26/2019

Oregon Business Registry # 100211-86 Entity Type: DBC State of Formation: Oregon

Payment information will be reported to the IRS under the name and taxpayer ID# provided by the Contractor. Information must be provided prior to contract approval. Information not matching IRS records could subject Contractor to 28 percent backup withholding.

Conway Construction Company

Clackamas County Board of County Commissioners

Authorized Signature Date

Chair Date

Name / Title Printed

Recording Secretary

APPROVED AS TO FORM

County Counsel Date



MARC GONZALES
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

July 19, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Five-Year Cooperative Service Agreement with United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Wildlife Services (WS) for
Predator Management

Purpose/Outcome	Cooperative Service Agreement for predator control.
Dollar Amount and fiscal Impact	A Work and Financial Plan is submitted each fiscal year and is included in the annual General Fund budget and approved by the County.
Funding Source	General Fund in conjunction with state, federal and private partners
Duration	July 1, 2018 through June 30, 2023
Previous Board Action/Review	May 2, 2013 the five year Cooperative Service Agreement with the USDA APHIS WS for Predator Management was approved and signed
Strategic Plan Alignment	Aligns with County strategic priority by helping to ensure safe, healthy and secure communities.
Contact Person	Marc Gonzales, 503-742-5405
Contract No.	Agreement 18-7341-5111-RA

BACKGROUND: Clackamas County's intergovernmental agreement with the federal agencies listed above for County Trapper Services was adopted and signed May 2, 2013. The agreement provides predator control where wild animals and birds may carry disease or threaten injury to County public and private resources.

Each year a separate Work Plan and Proposed Budget, representing the next fiscal year portion of this predator control program, is presented to the Board of County Commissioners for approval. The Cooperative Service Agreement under consideration was initiated by the federal agency in cooperation with its partners. An opportunity is provided each fiscal year for the Wildlife Services, in cooperation with the County, to adjust service delivery to accommodate County budgetary constraints.

This document has been reviewed and approved by County Counsel.

RECOMMENDATION: Staff respectfully recommends the Board approve the attached Five-Year Cooperative Service Agreement for County predator control and wildlife damage management in order to meet the federal deadline and maintain County services. Thank you.

Sincerely,

Marc Gonzales
Finance Director

COOPERATIVE SERVICE AGREEMENT
between
CLACKAMAS COUNTY
and
UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
WILDLIFE SERVICES (APHIS-WS)

ARTICLE 1 – PURPOSE

The purpose of this Agreement is to conduct wildlife damage management (WDM) activities to manage coyotes and other predatory and/or nuisance species in and around Clackamas County property to reduce damage and mitigate human health and safety threats.

ARTICLE 2 - AUTHORITY

APHIS-WS has statutory authority under the Act of March 2, 1931, as amended (7 USCA 8351), and the Act of December 22, 1987 (7 USCA 8353), the Secretary of Agriculture may conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary considers necessary in conducting the program. Additionally, the Secretary of Agriculture, except for management of urban rodents, is authorized to conduct activities to manage nuisance mammals and birds and those mammal and bird species that are reservoirs for zoonotic diseases. In carrying out a program of wildlife services involving injurious and/or nuisance animal species or involving mammal and bird species that are reservoirs for zoonotic diseases, the Secretary is authorized to cooperate with States, local jurisdictions, individuals, public and private agencies, organizations, and institutions.

Under the Consolidated Appropriations Act, 2017, (Pub. L. No. 115-31, 131 Stat. 144, H.R. 244 — 115th Congress (2017-2018), APHIS is authorized to collect fees to cover the total costs of providing technical assistance, goods, or services requested by States, other political subdivisions, domestic and international organizations, foreign governments, or individuals, provided that such fees are structured such that any entity’s liability for such fees is reasonably based on the technical assistance, goods, or services provided to the entity by the Agency, and such fees shall be credited to this account, to remain available until expended, without further appropriation, for providing such assistance, good, or services.

Pursuant to ORS 190.110, Clackamas County (“County” or “Cooperator”), in exercising a power conferred upon it or in administering a policy or program delegated to it, has statutory authority to cooperate and enter into an agreement with a United States governmental agency.

ARTICLE 3 - MUTUAL RESPONSIBILITIES

The cooperating parties mutually understand and agree to/that:

- a. Confer and plan a WDM program that addresses the need for managing conflicts caused by nuisance coyotes in Clackamas County. Based on this consultation, WS will formulate, in writing, the program work plan and associated budget and present them to the Cooperator for approval.
- b. Develop a mutually agreed upon Work Plan and Financial Plan which are incorporated into this Agreement by reference. It is understood and agreed that any monies allocated for the purpose of this Agreement shall be expended only towards the activities and related expenses outlined therein.
- c. When either of the Cooperating parties address the media or incorporate information into reports and/or publications, both Cooperating parties must agree to have their identities disclosed when receiving due credit related to the activities covered by this agreement.

- d. APHIS-WS has advised the Cooperator that other private sector service providers may be available to provide wildlife management services and notwithstanding these other options, Cooperator requests that APHIS-WS provide wildlife management services as stated under the terms of this Agreement.
- e. All equipment with a purchase price of \$5,000 or more per unit, purchased directly with funds from the cooperator for use solely on this project shall be subject to disposal according to APHIS policy, and shall be specifically listed in the Work and Financial Plan. Property title/disposal shall be determined when the project (including all continuations and revisions of this agreement) terminates, or when the equipment is otherwise directed to other projects, whichever comes first. If the equipment is sold prior to the project end, the proceeds should be allocated according to APHIS Policy. Continuations and revisions to this agreement shall list any equipment with a purchase price of \$5,000 or more per unit, carried over from a purchase directly with funds from the cooperator for use solely for this project.
- f. APHIS-WS will provide overall direction and control of the program.

ARTICLE 4 - COOPERATOR RESPONSIBILITIES

The Cooperator agrees to/that:

- a. Designate _____, Clackamas County Phone: (____) ____ - _____ as the authorized representative who shall be responsible for collaboratively administering the activities conducted in this Agreement.
- b. Reimburse APHIS-WS for costs, not to exceed the annually approved amount specified in the Work and Financial Plan. If costs are projected to exceed the amount reflected in the Financial Plan, the Work and Financial Plan shall be formally revised and signed by both parties before services resulting in additional costs are performed. The Cooperator agrees to pay all costs of service submitted via an invoice within 30 days of the date of the submitted invoice or invoices as submitted by APHIS-WS. Late payments are subject to interest, penalties, and administrative charges and costs as set forth under the Debt Collection Improvement Act of 1996. If the Cooperator is delinquent in paying the full amount of the due service costs submitted by APHIS-WS, and/or is delinquent in paying the due late payments, and/or is delinquent in paying the interest, penalties, and/or administrative costs on any delinquent due service costs, APHIS-WS will immediately cease to provide the respective service associated with the submitted service costs. APHIS-WS will not reinstate or provide the respective service until all due service costs, and/or due late payments, and/or due interest, penalty, and/or administrative costs are first paid in full.
- c. To provide a Tax Identification Number or Social Security Number in compliance with the Debt Collection Improvement Act of 1996.
- d. As a condition of this Agreement, The Cooperator ensures and certifies that it is not currently debarred or suspended and is free of delinquent Federal debt.

ARTICLE 5 – WS RESPONSIBILITIES

WS agrees:

- a. To designate David Williams, State Director, 6135 NE 80th Avenue Suite A8 Portland, Oregon, (503) 326-2346, david.e.williams@aphis.usda.gov as the authorized representative who shall be responsible for collaboratively administering the activities conducted in this Agreement.

- b. The performance of wildlife damage management actions by WS under this agreement is contingent upon a determination by WS that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable federal statutes. WS will not make a final decision to conduct requested wildlife damage management actions until it has made the determination of such compliance.
- c. To provide qualified personnel and other resources necessary to implement the approved WDM activities delineated in the Work and Financial Plan referenced in 3.a of this Agreement.
- d. To bill the Cooperator for costs incurred in performing WDM activities as authorized in the approved annual Work and Financial Plan as may be amended.
- e. To notify the Cooperator if costs are projected to exceed the amounts estimated and agreed upon in the Financial Plan. WS will cease providing goods or services until a revision to the Work and Financial Plan, as appropriate, have been agreed to and signed by both parties to this Agreement.
- f. Authorized auditing representatives of the Cooperator shall be accorded reasonable opportunity to inspect the accounts and records of WS pertaining to such claims for reimbursement to the extent permitted by Federal law and regulations.

ARTICLE 6 – CONTINGENCY STATEMENT

For costs borne by WS, this agreement is contingent upon the passage of the Agriculture, Rural Development, and Related Agencies Appropriation Act for the current fiscal year from which expenditures may be legally met and shall not obligate APHIS upon failure of Congress to so appropriate. This Agreement also may be reduced or terminated if Congress provides APHIS funds only for a finite period under a Continuing Resolution.

ARTICLE 7 – NON-EXCLUSIVE SERVICE CLAUSE

Nothing in this agreement shall prevent any other country, State government or its political subdivisions, local government, university, or college, organization, association, or individual from entering into separate agreements with WS for same or similar activities provided under the terms of this Agreement.

ARTICLE 8 – CONGRESSIONAL RESTRICTIONS

All WDM activities will be conducted in accordance with applicable Federal, State, and local laws and regulations. This agreement is not a procurement contract (31 U.S.C. 6303), nor is it considered a grant (31 U.S.C. 6304). In this agreement, APHIS provides goods or services on a cost recovery basis to nonfederal recipients.

ARTICLE 9 – APPLICABLE REGULATIONS

All WDM activities will be conducted in accordance with applicable Federal, State, and local laws and regulations. This agreement is not a procurement contract (31 U.S.C. 6303), nor is it considered a grant (31 U.S.C. 6304). In this agreement, APHIS provides goods or services on a cost recovery basis to nonfederal recipients

ARTICLE 10 – LIABILITY

APHIS assumes no liability for any actions or activities conducted under this agreement except to the extent the recourse or remedies are provided by Congress under the Federal Tort Claims Act (28 USC 1346(b), 2401(b), 2671-2680).

County's liability under 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.

ARTICLE 11 – NON-DISCRIMINATION CLAUSE

The United States Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual’s income is derived from any public assistance program. Not all prohibited bases apply to all programs.

ARTICLE 12 – AGREEMENT EFFECTIVE DATE

This Agreement shall become effective July 1, 2018 and shall continue to June 30, 2023 Further, this Agreement may be amended or extended at any time by mutual agreement of the parties in writing. The Cooperator must submit a written request to extend at least 30 days prior to expiration of the agreement. It may be terminated by either party upon 60 days notice in writing to the other party.

AUTHORIZATION:

Clackamas County
2051 Kaen Rd.
Oregon City, OR 97045
Tax ID # 93-6002286

Representative, Clackamas County

Date

UNITED STATES DEPARTMENT OF AGRICULTURE ANIMAL AND PLANT HEALTH INSPECTION
SERVICE WILDLIFE SERVICES

Tax ID # 41-0696271

State Director, Oregon

Date

Director, Western Region

Date

Public Law 104-134
104th Congress

An Act

Making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 101. For programs, projects or activities in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996, provided as follows, to be effective as if it had been enacted into law as the regular appropriations Act:

AN ACT

Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1996, and for other purposes

* * *

CHAPTER 10

DEBT COLLECTION IMPROVEMENTS

SEC. 31001. DEBT COLLECTION IMPROVEMENT ACT OF 1996.

(a)(1) This section may be cited as the “Debt Collection Improvement Act of 1996”.

(2)(A) **IN GENERAL.**—The provisions of this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(B) **OFFSETS FROM SOCIAL SECURITY PAYMENTS, ETC.**—Subparagraph (A) of section 3716(c)(3) of title 31, United States Code (as added by subsection (d)(2) of this section), shall apply only to payments made after the date which is 4 months after the date of the enactment of this Act.

(b) The purposes of this section are the following:

(1) To maximize collections of delinquent debts owed to the Government by ensuring quick action to enforce recovery of debts and the use of all appropriate collection tools.

(2) To minimize the costs of debt collection by consolidating related functions and activities and utilizing interagency teams.

(3) To reduce losses arising from debt management activities by requiring proper screening of potential borrowers, aggressive monitoring of all accounts, and sharing of information within and among Federal agencies.

(4) To ensure that the public is fully informed of the Federal Government’s debt collection policies and that debtors are cog-

Debt Collection Improvement Act of 1996.

31 USC 3701 note.

Effective date. 31 USC 3322 note.

Applicability. 31 USC 3716 note.

31 USC 3701 note.

nizant of their financial obligations to repay amounts owed to the Federal Government.

(5) To ensure that debtors have all appropriate due process rights, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

(6) To encourage agencies, when appropriate, to sell delinquent debt, particularly debts with underlying collateral.

(7) To rely on the experience and expertise of private sector professionals to provide debt collection services to Federal agencies.

(c) Chapter 37 of title 31, United States Code, is amended—

(1) in each of sections 3711, 3716, 3717, and 3718, by striking “the head of an executive or legislative agency” each place it appears and inserting “the head of an executive, judicial, or legislative agency”; and

(2) by amending section 3701(a)(4) to read as follows:

“(4) ‘executive, judicial, or legislative agency’ means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of Government, including government corporations.”.

(d)(1) PERSONS SUBJECT TO ADMINISTRATIVE OFFSET.—Section 3701(c) of title 31, United States Code, is amended to read as follows:

“(c) In sections 3716 and 3717 of this title, the term ‘person’ does not include an agency of the United States Government.”.

(2) REQUIREMENTS AND PROCEDURES.—Section 3716 of title 31, United States Code, is amended—

(A) by amending subsection (b) to read as follows:

“(b) Before collecting a claim by administrative offset, the head of an executive, judicial, or legislative agency must either—

“(1) adopt, without change, regulations on collecting by administrative offset promulgated by the Department of Justice, the General Accounting Office, or the Department of the Treasury; or

“(2) prescribe regulations on collecting by administrative offset consistent with the regulations referred to in paragraph (1).”;

(B) by amending subsection (c)(2) to read as follows:

“(2) when a statute explicitly prohibits using administrative offset or setoff to collect the claim or type of claim involved.”;

(C) by redesignating subsection (c) as subsection (e); and

(D) by inserting after subsection (b) the following new subsections:

“(c)(1)(A) Except as otherwise provided in this subsection, a disbursing official of the Department of the Treasury, the Department of Defense, the United States Postal Service, or any other government corporation, or any disbursing official of the United States designated by the Secretary of the Treasury, shall offset at least annually the amount of a payment which a payment certifying agency has certified to the disbursing official for disbursement, by an amount equal to the amount of a claim which a creditor agency has certified to the Secretary of the Treasury pursuant to this subsection.

“(B) An agency that designates disbursing officials pursuant to section 3321(c) of this title is not required to certify claims

arising out of its operations to the Secretary of the Treasury before such agency's disbursing officials offset such claims.

“(C) Payments certified by the Department of Education under a program administered by the Secretary of Education under title IV of the Higher Education Act of 1965 shall not be subject to administrative offset under this subsection.

“(2) Neither the disbursing official nor the payment certifying agency shall be liable—

“(A) for the amount of the administrative offset on the basis that the underlying obligation, represented by the payment before the administrative offset was taken, was not satisfied; or

“(B) for failure to provide timely notice under paragraph (8).

“(3)(A)(i) Notwithstanding any other provision of law (including sections 207 and 1631(d)(1) of the Social Security Act (42 U.S.C. 407 and 1383(d)(1)), section 413(b) of Public Law 91-173 (30 U.S.C. 923(b)), and section 14 of the Act of August 29, 1935 (45 U.S.C. 231m)), except as provided in clause (ii), all payments due to an individual under—

“(I) the Social Security Act,

“(II) part B of the Black Lung Benefits Act, or

“(III) any law administered by the Railroad Retirement Board (other than payments that such Board determines to be tier 2 benefits),

shall be subject to offset under this section.

“(ii) An amount of \$9,000 which a debtor may receive under Federal benefit programs cited under clause (i) within a 12-month period shall be exempt from offset under this subsection. In applying the \$9,000 exemption, the disbursing official shall—

“(I) reduce the \$9,000 exemption amount for the 12-month period by the amount of all Federal benefit payments made during such 12-month period which are not subject to offset under this subsection; and

“(II) apply a prorated amount of the exemption to each periodic benefit payment to be made to the debtor during the applicable 12-month period.

For purposes of the preceding sentence, the amount of a periodic benefit payment shall be the amount after any reduction or deduction required under the laws authorizing the program under which such payment is authorized to be made (including any reduction or deduction to recover any overpayment under such program).

“(B) The Secretary of the Treasury shall exempt from administrative offset under this subsection payments under means-tested programs when requested by the head of the respective agency. The Secretary may exempt other payments from administrative offset under this subsection upon the written request of the head of a payment certifying agency. A written request for exemption of other payments must provide justification for the exemption under standards prescribed by the Secretary. Such standards shall give due consideration to whether administrative offset would tend to interfere substantially with or defeat the purposes of the payment certifying agency's program. The Secretary shall report to the Congress annually on exemptions granted under this section.

Reports.

“(C) The provisions of sections 205(b)(1) and 1631(c)(1) of the Social Security Act shall not apply to any administrative offset

executed pursuant to this section against benefits authorized by either title II or title XVI of the Social Security Act, respectively.

“(4) The Secretary of the Treasury may charge a fee sufficient to cover the full cost of implementing this subsection. The fee may be collected either by the retention of a portion of amounts collected pursuant to this subsection, or by billing the agency referring or transferring a claim for those amounts. Fees charged to the agencies shall be based on actual administrative offsets completed. Amounts received by the United States as fees under this subsection shall be deposited into the account of the Department of the Treasury under section 3711(g)(7) of this title, and shall be collected and accounted for in accordance with the provisions of that section.

Rules,
regulations, and
procedures.

“(5) The Secretary of the Treasury in consultation with the Commissioner of Social Security and the Director of the Office of Management and Budget, may prescribe such rules, regulations, and procedures as the Secretary of the Treasury considers necessary to carry out this subsection. The Secretary shall consult with the heads of affected agencies in the development of such rules, regulations, and procedures.

Notification.

“(6) Any Federal agency that is owed by a person a past due, legally enforceable nontax debt that is over 180 days delinquent, including nontax debt administered by a third party acting as an agent for the Federal Government, shall notify the Secretary of the Treasury of all such nontax debts for purposes of administrative offset under this subsection.

Notification.

“(7)(A) The disbursing official conducting an administrative offset with respect to a payment to a payee shall notify the payee in writing of—

“(i) the occurrence of the administrative offset to satisfy a past due legally enforceable debt, including a description of the type and amount of the payment otherwise payable to the payee against which the offset was executed;

“(ii) the identity of the creditor agency requesting the offset; and

“(iii) a contact point within the creditor agency that will handle concerns regarding the offset.

“(B) If the payment to be offset is a periodic benefit payment, the disbursing official shall take reasonable steps, as determined by the Secretary of the Treasury, to provide the notice to the payee not later than the date on which the payee is otherwise scheduled to receive the payment, or as soon as practical thereafter, but no later than the date of the administrative offset. Notwithstanding the preceding sentence, the failure of the debtor to receive such notice shall not impair the legality of such administrative offset.

“(8) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over requests for administrative offset pursuant to other laws.

“(d) Nothing in this section is intended to prohibit the use of any other administrative offset authority existing under statute or common law.”.

(3) NONTAX DEBT OR CLAIM DEFINED.—Section 3701 of title 31, United States Code, is amended in subsection (a) by adding at the end the following new paragraph:

“(8) ‘nontax’ means, with respect to any debt or claim, any debt or claim other than a debt or claim under the Internal Revenue Code of 1986.”

(4) TREASURY CHECK WITHHOLDING.—Section 3712 of title 31, United States Code, is amended by adding at the end the following new subsection:

“(e) TREASURY CHECK OFFSET.—

“(1) IN GENERAL.—To facilitate collection of amounts owed by presenting banks pursuant to subsection (a) or (b), upon the direction of the Secretary, a Federal reserve bank shall withhold credit from banks presenting Treasury checks for ultimate charge to the account of the United States Treasury. By presenting Treasury checks for payment a presenting bank is deemed to authorize this offset.

“(2) ATTEMPT TO COLLECT REQUIRED.—Prior to directing offset under subsection (a)(1), the Secretary shall first attempt to collect amounts owed in the manner provided by sections 3711 and 3716.”

(e) Section 3716 of title 31, United States Code, as amended by subsection (d)(2) of this section, is further amended by adding at the end the following new subsections:

“(f) The Secretary may waive the requirements of sections 552a(o) and (p) of title 5 for administrative offset or claims collection upon written certification by the head of a State or an executive, judicial, or legislative agency seeking to collect the claim that the requirements of subsection (a) of this section have been met.

“(g) The Data Integrity Board of the Department of the Treasury established under 552a(u) of title 5 shall review and include in reports under paragraph (3)(D) of that section a description of any matching activities conducted under this section. If the Secretary has granted a waiver under subsection (f) of this section, no other Data Integrity Board is required to take any action under section 552a(u) of title 5.”

(f) Section 3716 of title 31, United States Code, as amended by subsections (d) and (e) of this section, is further amended by adding at the end the following new subsection:

“(h)(1) The Secretary may, in the discretion of the Secretary, apply subsection (a) with respect to any past-due, legally-enforceable debt owed to a State if—

“(A) the appropriate State disbursing official requests that an offset be performed; and

“(B) a reciprocal agreement with the State is in effect which contains, at a minimum—

“(i) requirements substantially equivalent to subsection (b) of this section; and

“(ii) any other requirements which the Secretary considers appropriate to facilitate the offset and prevent duplicative efforts.

“(2) This subsection does not apply to—

“(A) the collection of a debt or claim on which the administrative costs associated with the collection of the debt or claim exceed the amount of the debt or claim;

“(B) any collection of any other type, class, or amount of claim, as the Secretary considers necessary to protect the interest of the United States; or

“(C) the disbursement of any class or type of payment exempted by the Secretary of the Treasury at the request of a Federal agency.

“(3) In applying this section with respect to any debt owed to a State, subsection (c)(3)(A) shall not apply.”.

(g)(1) TITLE 31.—Title 31, United States Code, is amended—

(A) in section 3322(a), by inserting “section 3716 and section 3720A of this title and” after “Except as provided in”;

(B) in section 3325(a)(3), by inserting “or pursuant to payment intercepts or offsets pursuant to section 3716 or 3720A of this title,” after “voucher”; and

(C) in each of sections 3711(e)(2) and 3717(h) by inserting “, the Secretary of the Treasury,” after “Attorney General”.

(2) INTERNAL REVENUE CODE OF 1986.—Subparagraph (A) of section 6103(l)(10) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(10)) is amended by inserting “and to officers and employees of the Department of the Treasury in connection with such reduction” after “6402”.

(h) Section 5514 of title 5, United States Code, is amended—
(A) in subsection (a)—

(i) by adding at the end of paragraph (1) the following:
“All Federal agencies to which debts are owed and which have outstanding delinquent debts shall participate in a computer match at least annually of their delinquent debt records with records of Federal employees to identify those employees who are delinquent in repayment of those debts. The preceding sentence shall not apply to any debt under the Internal Revenue Code of 1986. Matched Federal employee records shall include, but shall not be limited to, records of active Civil Service employees government-wide, military active duty personnel, military reservists, United States Postal Service employees, employees of other government corporations, and seasonal and temporary employees. The Secretary of the Treasury shall establish and maintain an interagency consortium to implement centralized salary offset computer matching, and promulgate regulations for this program. Agencies that perform centralized salary offset computer matching services under this subsection are authorized to charge a fee sufficient to cover the full cost for such services.”;

(ii) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively;

(iii) by inserting after paragraph (2) the following new paragraph:

“(3) Paragraph (2) shall not apply to routine intra-agency adjustments of pay that are attributable to clerical or administrative errors or delays in processing pay documents that have occurred within the four pay periods preceding the adjustment and to any adjustment that amounts to \$50 or less, if at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.”; and

(iv) by amending paragraph (5)(B) (as redesignated by clause (ii) of this subparagraph) to read as follows:

“(B) ‘agency’ includes executive departments and agencies, the United States Postal Service, the Postal Rate Commission, the United States Senate, the United States

Records.

House of Representatives, and any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government, and government corporations.”;

(B) by adding after subsection (c) the following new subsection:

“(d) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section.”.

(i)(1) IN GENERAL.—Section 7701 of title 31, United States Code, is amended by adding at the end the following new subsections:

“(c)(1) The head of each Federal agency shall require each person doing business with that agency to furnish to that agency such person’s taxpayer identifying number.

“(2) For purposes of this subsection, a person shall be considered to be doing business with a Federal agency if the person is—

“(A) a lender or servicer in a Federal guaranteed or insured loan program administered by the agency;

“(B) an applicant for, or recipient of, a Federal license, permit, right-of-way, grant, or benefit payment administered by the agency or insurance administered by the agency;

“(C) a contractor of the agency;

“(D) assessed a fine, fee, royalty or penalty by the agency;

and
“(E) in a relationship with the agency that may give rise to a receivable due to that agency, such as a partner of a borrower in or a guarantor of a Federal direct or insured loan administered by the agency.

“(3) Each agency shall disclose to a person required to furnish a taxpayer identifying number under this subsection its intent to use such number for purposes of collecting and reporting on any delinquent amounts arising out of such person’s relationship with the Government.

“(4) For purposes of this subsection, a person shall not be treated as doing business with a Federal agency solely by reason of being a debtor under third party claims of the United States. The preceding sentence shall not apply to a debtor owing claims resulting from petroleum pricing violations or owing claims resulting from Federal loan or loan guarantee/insurance programs.

“(d) Notwithstanding section 552a(b) of title 5, United States Code, creditor agencies to which a delinquent claim is owed, and their agents, may match their debtor records with Department of Health and Human Services, and Department of Labor records to obtain names (including names of employees), name controls, names of employers, taxpayer identifying numbers, addresses (including addresses of employers), and dates of birth. The preceding sentence shall apply to the disclosure of taxpayer identifying numbers only if such disclosure is not otherwise prohibited by section 6103 of the Internal Revenue Code of 1986. The Department of Health and Human Services, and the Department of Labor shall release that information to creditor agencies and may charge reasonable fees sufficient to pay the costs associated with that release.”.

(2) INCLUDED FEDERAL LOAN PROGRAM DEFINED.—Subparagraph (C) of section 6103(1)(3) of the Internal Revenue Code of 1986 (relating to disclosure that applicant for Federal loan has tax delinquent account) is amended to read as follows:

“(C) INCLUDED FEDERAL LOAN PROGRAM DEFINED.— For purposes of this paragraph, the term ‘included Federal loan program’ means any program under which the United States or a Federal agency makes, guarantees, or insures loans.”.

(3) CLERICAL AMENDMENTS.—

(A) The chapter title to chapter 77 of subtitle VI of title 31, United States Code, is amended to read as follows:

“CHAPTER 77—ACCESS TO INFORMATION FOR DEBT COLLECTION”.

(B) The table of chapters for subtitle VI of title 31, United States Code, is amended by inserting before the item relating to chapter 91 the following new item:

“77. Access to information for debt collection 7701”.

(j)(1) IN GENERAL.—Title 31, United States Code, is amended by inserting after section 3720A the following new section:

“§ 3720B. Barring delinquent Federal debtors from obtaining Federal loans or loan insurance guarantees

Standards.

“(a) Unless this subsection is waived by the head of a Federal agency, a person may not obtain any Federal financial assistance in the form of a loan (other than a disaster loan) or loan insurance or guarantee administered by the agency if the person has an outstanding debt (other than a debt under the Internal Revenue Code of 1986) with any Federal agency which is in a delinquent status, as determined under standards prescribed by the Secretary of the Treasury. Such a person may obtain additional loans or loan guarantees only after such delinquency is resolved in accordance with those standards. The Secretary of the Treasury may exempt, at the request of an agency, any class of claims.

“(b) The head of a Federal agency may delegate the waiver authority under subsection (a) to the Chief Financial Officer of the agency. The waiver authority may be redelegated only to the Deputy Chief Financial Officer of the agency.”

(2) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 37 of title 31, United States Code, is amended by inserting after the item relating to section 3720A the following new item:

“3720B. Barring delinquent Federal debtors from obtaining Federal loans or loan insurance guarantees.”.

(k) Section 3711(f) of title 31, United States Code, is amended—

(1) by striking “may” the first place it appears and inserting “shall”;

(2) by striking “an individual” each place it appears and inserting “a person”;

(3) by striking “the individual” each place it appears and inserting “the person”; and

(4) by adding at the end the following new paragraphs:

“(4) The head of each executive agency shall require, as a condition for insuring or guaranteeing any loan, financing, or other extension of credit under any law to a person, that the lender provide information relating to the extension of credit to consumer reporting agencies or commercial reporting agencies, as appropriate.

“(5) The head of each executive agency may provide to a consumer reporting agency or commercial reporting agency information from a system of records that a person is responsible for a claim which is current, if notice required by section 552a(e)(4)

of title 5 indicates that information in the system may be disclosed to a consumer reporting agency or commercial reporting agency, respectively.”

(l) Section 3718 of title 31, United States Code, is amended—

(1) in subsection (a), by striking the first sentence and inserting the following: “Under conditions the head of an executive, judicial, or legislative agency considers appropriate, the head of the agency may enter into a contract with a person for collection service to recover indebtedness owed, or to locate or recover assets of, the United States Government. The head of an agency may not enter into a contract under the preceding sentence to locate or recover assets of the United States held by a State government or financial institution unless that agency has established procedures approved by the Secretary of the Treasury to identify and recover such assets.”; and

(2) in subsection (d), by inserting “, or to locate or recover assets of,” after “owed”.

(m)(1) IN GENERAL.—Section 3711 of title 31, United States Code, is amended by adding at the end the following new subsections:

“(g)(1) If a nontax debt or claim owed to the United States has been delinquent for a period of 180 days—

“(A) the head of the executive, judicial, or legislative agency that administers the program that gave rise to the debt or claim shall transfer the debt or claim to the Secretary of the Treasury; and

“(B) upon such transfer the Secretary of the Treasury shall take appropriate action to collect or terminate collection actions on the debt or claim.

“(2) Paragraph (1) shall not apply—

“(A) to any debt or claim that—

“(i) is in litigation or foreclosure;

“(ii) will be disposed of under an asset sales program within 1 year after becoming eligible for sale, or later than 1 year if consistent with an asset sales program and a schedule established by the agency and approved by the Director of the Office of Management and Budget;

“(iii) has been referred to a private collection contractor for collection for a period of time determined by the Secretary of the Treasury;

“(iv) has been referred by, or with the consent of, the Secretary of the Treasury to a debt collection center for a period of time determined by the Secretary of the Treasury; or

“(v) will be collected under internal offset, if such offset is sufficient to collect the claim within 3 years after the date the debt or claim is first delinquent; and

“(B) to any other specific class of debt or claim, as determined by the Secretary of the Treasury at the request of the head of an executive, judicial, or legislative agency or otherwise.

“(3) For purposes of this section, the Secretary of the Treasury may designate, and withdraw such designation of debt collection centers operated by other Federal agencies. The Secretary of the Treasury shall designate such centers on the basis of their performance in collecting delinquent claims owed to the Government.

“(4) At the discretion of the Secretary of the Treasury, referral of a nontax claim may be made to—

“(A) any executive department or agency operating a debt collection center for servicing, collection, compromise, or suspension or termination of collection action;

“(B) a private collection contractor operating under a contract for servicing or collection action; or

“(C) the Department of Justice for litigation.

“(5) Nontax claims referred or transferred under this section shall be serviced, collected, or compromised, or collection action thereon suspended or terminated, in accordance with otherwise applicable statutory requirements and authorities. Executive departments and agencies operating debt collection centers may enter into agreements with the Secretary of the Treasury to carry out the purposes of this subsection. The Secretary of the Treasury shall—

“(A) maintain competition in carrying out this subsection;

“(B) maximize collections of delinquent debts by placing delinquent debts quickly;

“(C) maintain a schedule of private collection contractors and debt collection centers eligible for referral of claims; and

“(D) refer delinquent debts to the person most appropriate to collect the type or amount of claim involved.

“(6) Any agency operating a debt collection center to which nontax claims are referred or transferred under this subsection may charge a fee sufficient to cover the full cost of implementing this subsection. The agency transferring or referring the nontax claim shall be charged the fee, and the agency charging the fee shall collect such fee by retaining the amount of the fee from amounts collected pursuant to this subsection. Agencies may agree to pay through a different method, or to fund an activity from another account or from revenue received from the procedure described under section 3720C of this title. Amounts charged under this subsection concerning delinquent claims may be considered as costs pursuant to section 3717(e) of this title.

“(7) Notwithstanding any other law concerning the depositing and collection of Federal payments, including section 3302(b) of this title, agencies collecting fees may retain the fees from amounts collected. Any fee charged pursuant to this subsection shall be deposited into an account to be determined by the executive department or agency operating the debt collection center charging the fee (in this subsection referred to in this section as the ‘Account’). Amounts deposited in the Account shall be available until expended to cover costs associated with the implementation and operation of Governmentwide debt collection activities. Costs properly chargeable to the Account include—

“(A) the costs of computer hardware and software, word processing and telecommunications equipment, and other equipment, supplies, and furniture;

“(B) personnel training and travel costs;

“(C) other personnel and administrative costs;

“(D) the costs of any contract for identification, billing, or collection services; and

“(E) reasonable costs incurred by the Secretary of the Treasury, including services and utilities provided by the Secretary, and administration of the Account.

“(8) Not later than January 1 of each year, there shall be deposited into the Treasury as miscellaneous receipts an amount equal to the amount of unobligated balances remaining in the Account at the close of business on September 30 of the preceding year, minus any part of such balance that the executive department or agency operating the debt collection center determines is necessary to cover or defray the costs under this subsection for the fiscal year in which the deposit is made.

“(9) Before discharging any delinquent debt owed to any executive, judicial, or legislative agency, the head of such agency shall take all appropriate steps to collect such debt, including (as applicable)—

“(A) administrative offset,

“(B) tax refund offset,

“(C) Federal salary offset,

“(D) referral to private collection contractors,

“(E) referral to agencies operating a debt collection center,

“(F) reporting delinquencies to credit reporting bureaus,

“(G) garnishing the wages of delinquent debtors, and

“(H) litigation or foreclosure.

“(10) To carry out the purposes of this subsection, the Secretary of the Treasury may prescribe such rules, regulations, and procedures as the Secretary considers necessary and transfer such funds from funds appropriated to the Department of the Treasury as may be necessary to meet existing liabilities and obligations incurred prior to the receipt of revenues that result from debt collections.

“(h)(1) The head of an executive, judicial, or legislative agency acting under subsection (a)(1), (2), or (3) of this section to collect a claim, compromise a claim, or terminate collection action on a claim may obtain a consumer report (as that term is defined in section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a)) or comparable credit information on any person who is liable for the claim.

“(2) The obtaining of a consumer report under this subsection is deemed to be a circumstance or purpose authorized or listed under section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b).”.

(2) RETURNS RELATING TO CANCELLATION OF INDEBTEDNESS BY CERTAIN ENTITIES.—

(A) IN GENERAL.—Subsection (a) of section 6050P of the Internal Revenue Code of 1986 (relating to returns relating to the cancellation of indebtedness by certain financial entities) is amended by striking “applicable financial entity” and inserting “applicable entity”.

26 USC 6050P.

(B) ENTITIES TO WHICH REQUIREMENT APPLIES.—Subsection (c) of section 6050P of such Code is amended—

(i) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively, and inserting before paragraph (2) (as so redesignated) the following new paragraph:

“(1) APPLICABLE ENTITY.—The term ‘applicable entity’ means—

“(A) an executive, judicial, or legislative agency (as defined in section 3701(a)(4) of title 31, United States Code), and

“(B) an applicable financial entity.”, and

(ii) in paragraph (3), as so redesignated, by striking “(1)(B)” and inserting “(1)(A) or (2)(B)”.

26 USC 6050P.

(C) ALTERNATIVE PROCEDURE.—Section 6050P of such Code is amended by adding at the end the following new subsection:

“(e) ALTERNATIVE PROCEDURE.—In lieu of making a return required under subsection (a), an agency described in subsection (c)(1)(A) may submit to the Secretary (at such time and in such form as the Secretary may by regulations prescribe) information sufficient for the Secretary to complete such a return on behalf of such agency. Upon receipt of such information, the Secretary shall complete such return and provide a copy of such return to such agency.”

(D) CONFORMING AMENDMENTS.—

(i) Subsection (d) of section 6050P of such Code is amended by striking “applicable financial entity” and inserting “applicable entity”.

(ii) The heading of section 6050P of such Code is amended to read as follows:

“**SEC. 6050P. RETURNS RELATING TO THE CANCELLATION OF INDEBTEDNESS BY CERTAIN ENTITIES.**”

(iii) The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by striking the item relating to section 6050P and inserting the following new item:

“Sec. 6050P. Returns relating to the cancellation of indebtedness by certain entities.”

Effective date.
31 USC 3711
note.

(n) Effective October 1, 1995, section 11 of the Administrative Dispute Resolution Act (Public Law 101-552, 5 U.S.C. 571 note) shall not apply to the amendment made by section 8(b) of such Act.

(o)(1) IN GENERAL.—Chapter 37 of title 31, United States Code, is amended in subchapter II by adding after section 3720C, as added by subsection (t) of this section, the following new section:

“**§ 3720D. Garnishment**

“(a) Notwithstanding any provision of State law, the head of an executive, judicial, or legislative agency that administers a program that gives rise to a delinquent nontax debt owed to the United States by an individual may in accordance with this section garnish the disposable pay of the individual to collect the amount owed, if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual.

“(b) In carrying out any garnishment of disposable pay of an individual under subsection (a), the head of an executive, judicial, or legislative agency shall comply with the following requirements:

“(1) The amount deducted under this section for any pay period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted with the written consent of the individual.

Notification.

“(2) The individual shall be provided written notice, sent by mail to the individual’s last known address, a minimum of 30 days prior to the initiation of proceedings, from the head of the executive, judicial, or legislative agency, informing the individual of—

“(A) the nature and amount of the debt to be collected;

“(B) the intention of the agency to initiate proceedings to collect the debt through deductions from pay; and

“(C) an explanation of the rights of the individual under this section.

“(3) The individual shall be provided an opportunity to inspect and copy records relating to the debt. Records.

“(4) The individual shall be provided an opportunity to enter into a written agreement with the executive, judicial, or legislative agency, under terms agreeable to the head of the agency, to establish a schedule for repayment of the debt. Contracts.

“(5) The individual shall be provided an opportunity for a hearing in accordance with subsection (c) on the determination of the head of the executive, judicial, or legislative agency concerning—

“(A) the existence or the amount of the debt, and

“(B) in the case of an individual whose repayment schedule is established other than by a written agreement pursuant to paragraph (4), the terms of the repayment schedule.

“(6) If the individual has been reemployed within 12 months after having been involuntarily separated from employment, no amount may be deducted from the disposable pay of the individual until the individual has been reemployed continuously for at least 12 months.

“(c)(1) A hearing under subsection (b)(5) shall be provided prior to issuance of a garnishment order if the individual, on or before the 15th day following the mailing of the notice described in subsection (b)(2), and in accordance with such procedures as the head of the executive, judicial, or legislative agency may prescribe, files a petition requesting such a hearing.

“(2) If the individual does not file a petition requesting a hearing prior to such date, the head of the agency shall provide the individual a hearing under subsection (a)(5) upon request, but such hearing need not be provided prior to issuance of a garnishment order.

“(3) The hearing official shall issue a final decision at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing.

“(d) The notice to the employer of the withholding order shall contain only such information as may be necessary for the employer to comply with the withholding order.

“(e)(1) An employer may not discharge from employment, refuse to employ, or take disciplinary action against an individual subject to wage withholding in accordance with this section by reason of the fact that the individual’s wages have been subject to garnishment under this section, and such individual may sue in a State or Federal court of competent jurisdiction any employer who takes such action.

“(2) The court shall award attorneys’ fees to a prevailing employee and, in its discretion, may order reinstatement of the individual, award punitive damages and back pay to the employee, or order such other remedy as may be reasonably necessary. Courts.

“(f)(1) The employer of an individual—

“(A) shall pay to the head of an executive, judicial, or legislative agency as directed in a withholding order issued in an action under this section with respect to the individual, and

“(B) shall be liable for any amount that the employer fails to withhold from wages due an employee following receipt by such employer of notice of the withholding order, plus attorneys’ fees, costs, and, in the court’s discretion, punitive damages.

“(2)(A) The head of an executive, judicial, or legislative agency may sue an employer in a State or Federal court of competent jurisdiction to recover amounts for which the employer is liable under paragraph (1)(B).

“(B) A suit under this paragraph may not be filed before the termination of the collection action, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period.

“(3) Notwithstanding paragraphs (1) and (2), an employer shall not be required to vary its normal pay and disbursement cycles in order to comply with this subsection.

“(g) For the purpose of this section, the term ‘disposable pay’ means that part of the compensation of any individual from an employer remaining after the deduction of any amounts required by any other law to be withheld.

Regulations.

“(h) The Secretary of the Treasury shall issue regulations to implement this section.”.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 37 of title 31, United States Code, is amended by inserting after the item relating to section 3720C (as added by subsection (t) of this section) the following new item:

“3720D. Garnishment.”.

(p) Section 3711 of title 31, United States Code, as amended by subsection (m) of this section, is further amended by adding at the end the following new subsection:

“(i)(1) The head of an executive, judicial, or legislative agency may sell, subject to section 504(b) of the Federal Credit Reform Act of 1990 and using competitive procedures, any nontax debt owed to the United States that is delinquent for more than 90 days. Appropriate fees charged by a contractor to assist in the conduct of a sale under this subsection may be payable from the proceeds of the sale.

“(2) After terminating collection action, the head of an executive, judicial, or legislative agency shall sell, using competitive procedures, any nontax debt or class of nontax debts owed to the United States, if the Secretary of the Treasury determines the sale is in the best interests of the United States.

“(3) Sales of nontax debt under this subsection—

“(A) shall be for—

“(i) cash, or

“(ii) cash and a residuary equity or profit participation, if the head of the agency reasonably determines that the proceeds will be greater than sale solely for cash,

“(B) shall be without recourse, but may include the use of guarantees if otherwise authorized, and

“(C) shall transfer to the purchaser all rights of the Government to demand payment of the nontax debt, other than with respect to a residuary equity or profit participation under subparagraph (A)(ii).

Reports.

“(4)(A) Within one year after the date of enactment of the Debt Collection Improvement Act of 1996, each executive agency with current and delinquent collateralized nontax debts shall report to the Congress on the valuation of its existing portfolio of loans,

notes and guarantees, and other collateralized debts based on standards developed by the Director of the Office of Management and Budget, in consultation with the Secretary of the Treasury.

“(B) The Director of the Office of Management and Budget shall determine what information is required to be reported to comply with subparagraph (A). At a minimum, for each financing account and for each liquidating account (as those terms are defined in sections 502(7) and 502(8), respectively, of the Federal Credit Reform Act of 1990) the following information shall be reported:

“(i) The cumulative balance of current debts outstanding, the estimated net present value of such debts, the annual administrative expenses of those debts (including the portion of salaries and expenses that are directly related thereto), and the estimated net proceeds that would be received by the Government if such debts were sold.

“(ii) The cumulative balance of delinquent debts, debts outstanding, the estimated net present value of such debts, the annual administrative expenses of those debts (including the portion of salaries and expenses that are directly related thereto), and the estimated net proceeds that would be received by the Government if such debts were sold.

“(iii) The cumulative balance of guaranteed loans outstanding, the estimated net present value of such guarantees, the annual administrative expenses of such guarantees (including the portion of salaries and expenses that are directly related to such guaranteed loans), and the estimated net proceeds that would be received by the Government if such loan guarantees were sold.

“(iv) The cumulative balance of defaulted loans that were previously guaranteed and have resulted in loans receivables, the estimated net present value of such loan assets, the annual administrative expenses of such loan assets (including the portion of salaries and expenses that are directly related to such loan assets), and the estimated net proceeds that would be received by the Government if such loan assets were sold.

“(v) The marketability of all debts.

“(5) This subsection is not intended to limit existing statutory authority of agencies to sell loans, debts, or other assets.”.

(q) Section 3717 of title 31, United States Code, is amended by adding at the end of subsection (h) the following new subsection:

“(i)(1) The head of an executive, judicial, or legislative agency may increase an administrative claim by the cost of living adjustment in lieu of charging interest and penalties under this section. Adjustments under this subsection will be computed annually.

“(2) For the purpose of this subsection—

“(A) the term ‘cost of living adjustment’ means the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the claim was determined or last adjusted; and

“(B) the term ‘administrative claim’ includes all debt that is not based on an extension of Government credit through direct loans, loan guarantees, or insurance, including fines, penalties, and overpayments.”.

(r)(1) IN GENERAL.—Chapter 37 of title 31, United States Code, is amended in subchapter II by adding after section 3720D, as added by subsection (o) of this section, the following new section:

“§ 3720E. Dissemination of information regarding identity of delinquent debtors

“(a) The head of any agency may, with the review of the Secretary of the Treasury, for the purpose of collecting any delinquent nontax debt owed by any person, publish or otherwise publicly disseminate information regarding the identity of the person and the existence of the nontax debt.

Regulations.

“(b)(1) The Secretary of the Treasury, in consultation with the Director of the Office of Management and Budget and the heads of other appropriate Federal agencies, shall issue regulations establishing procedures and requirements the Secretary considers appropriate to carry out this section.

“(2) Regulations under this subsection shall include—

“(A) standards for disseminating information that maximize collections of delinquent nontax debts, by directing actions under this section toward delinquent debtors that have assets or income sufficient to pay their delinquent nontax debt;

“(B) procedures and requirements that prevent dissemination of information under this section regarding persons who have not had an opportunity to verify, contest, and compromise their nontax debt in accordance with this subchapter; and

“(C) procedures to ensure that persons are not incorrectly identified pursuant to this section.”.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 37 of title 31, United States Code, is amended by adding after the item relating to section 3720D (as added by subsection (o) of this section) the following new item:

“3720E. Dissemination of information regarding identity of delinquent debtors.”.

(s)(1) IN GENERAL.—The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, 104 Stat. 890; 28 U.S.C. 2461 note) is amended—

(A) by amending section 4 to read as follows:

“SEC. 4. The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996, and at least once every 4 years thereafter—

Regulations.

“(1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970, or the Social Security Act, by the inflation adjustment described under section 5 of this Act; and

Federal Register, Publication.

“(2) publish each such regulation in the Federal Register.”;

(B) in section 5(a), by striking “The adjustment described under paragraphs (4) and (5)(A) of section 4” and inserting “The inflation adjustment under section 4”; and

(C) by adding at the end the following new section:

“SEC. 7. Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.”.

28 USC 2461 note.

(2) LIMITATION ON INITIAL ADJUSTMENT.—The first adjustment of a civil monetary penalty made pursuant to the amendment made by paragraph (1) may not exceed 10 percent of such penalty.

(t)(1) IN GENERAL.—Title 31, United States Code, is amended by inserting after section 3720B (as added by subsection (j) of this section) the following new section:

“§ 3720C. Debt Collection Improvement Account

“(a)(1) There is hereby established in the Treasury a special fund to be known as the ‘Debt Collection Improvement Account’ (hereinafter in this section referred to as the ‘Account’). Nomenclature.

“(2) The Account shall be maintained and managed by the Secretary of the Treasury, who shall ensure that agency programs are credited with amounts transferred under subsection (b)(1).

“(b)(1) Not later than 30 days after the end of a fiscal year, an agency may transfer to the Account the amount described in paragraph (3), as adjusted under paragraph (4).

“(2) Agency transfers to the Account may include collections from—

“(A) salary, administrative, and tax refund offsets;

“(B) the Department of Justice;

“(C) private collection agencies;

“(D) sales of delinquent loans; and

“(E) contracts to locate or recover assets.

“(3) The amount referred to in paragraph (1) shall be 5 percent of the amount of delinquent debt collected by an agency in a fiscal year, minus the greater of—

“(A) 5 percent of the amount of delinquent nontax debt collected by the agency in the previous fiscal year, or

“(B) 5 percent of the average annual amount of delinquent nontax debt collected by the agency in the previous 4 fiscal years.

“(4) In consultation with the Secretary of the Treasury, the Office of Management and Budget may adjust the amount described in paragraph (3) for an agency to reflect the level of effort in credit management programs by the agency. As an indicator of the level of effort in credit management, the Office of Management and Budget shall consider the following:

“(A) The number of days between the date a claim or debt became delinquent and the date which an agency referred the debt or claim to the Secretary of the Treasury or obtained an exemption from this referral under section 3711(g)(2) of this title.

“(B) The ratio of delinquent debts or claims to total receivables for a given program, and the change in this ratio over a period of time.

“(c)(1) The Secretary of the Treasury may make payments from the Account solely to reimburse agencies for qualified expenses. For agencies with franchise funds, such payments may be credited to subaccounts designated for debt collection.

“(2) For purposes of this section, the term ‘qualified expenses’ means expenditures for the improvement of credit management, debt collection, and debt recovery activities, including—

“(A) account servicing (including cross-servicing under section 3711(g) of this title),

“(B) automatic data processing equipment acquisitions,

“(C) delinquent debt collection,

“(D) measures to minimize delinquent debt,

“(E) sales of delinquent debt,

“(F) asset disposition, and

“(G) training of personnel involved in credit and debt management.

“(3)(A) Amounts transferred to the Account shall be available to the Secretary of the Treasury for purposes of this section to

the extent and in amounts provided in advance in appropriations Acts.

“(B) As soon as practicable after the end of the third fiscal year after which amounts transferred are first available pursuant to this section, and every 3 years thereafter, any uncommitted balance in the Account shall be transferred to the general fund of the Treasury as miscellaneous receipts.

“(d) For direct loans and loan guarantee programs subject to title V of the Congressional Budget Act of 1974, amounts credited in accordance with subsection (c) shall be considered administrative costs.

Rules,
regulations, and
procedures.

“(e) The Secretary of the Treasury shall prescribe such rules, regulations, and procedures as the Secretary considers necessary or appropriate to carry out the purposes of this section.”

(2) CLERICAL AMENDMENT.—The table of sections for chapter 37 of title 31, United States Code, is amended by inserting after the item relating to section 3720B (as added by subsection (j) of this section) the following new item:

“3720C. Debt Collection Improvement Account.”

(u)(1) DISCRETIONARY AUTHORITY.—Section 3720A of title 31, United States Code, is amended by adding after subsection (h) the following new subsection:

“(i) An agency subject to section 9 of the Act of May 18, 1933 (16 U.S.C. 831h), may implement this section at its discretion.”

(2) FEDERAL AGENCY DEFINED.—Section 6402(f) of the Internal Revenue Code of 1986 (26 U.S.C. 6402(f)) is amended to read as follows:

“(f) FEDERAL AGENCY.—For purposes of this section, the term ‘Federal agency’ means a department, agency, or instrumentality of the United States, and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code).”

(v)(1) NOTIFICATION OF SECRETARY OF THE TREASURY.—Section 3720A(a) of title 31, United States Code, is amended to read as follows:

Notification.

“(a) Any Federal agency that is owed by a person a past-due, legally enforceable debt (including debt administered by a third party acting as an agent for the Federal Government) shall, and any agency subject to section 9 of the Act of May 18, 1933 (16 U.S.C. 831h), owed such a debt may, in accordance with regulations issued pursuant to subsections (b) and (d), notify the Secretary of the Treasury at least once each year of the amount of such debt.”

(2) IMPLEMENTATION OF SUPPORT COLLECTION BY SECRETARY OF THE TREASURY.—Section 464(a) of the Social Security Act (42 U.S.C. 664(a)) is amended—

(1) in paragraph (1), by adding at the end the following: “This subsection may be executed by the disbursing official of the Department of the Treasury.”; and

(2) in paragraph (2)(A), by adding at the end the following: “This subsection may be executed by the Secretary of the Department of the Treasury or his designee.”

(w) Section 3720A(h) of title 31, United States Code, is amended to read as follows:

“(h)(1) The disbursing official of the Department of the Treasury—

Notification.

“(1) shall notify a taxpayer in writing of—

“(A) the occurrence of an offset to satisfy a past-due legally enforceable nontax debt;

“(B) the identity of the creditor agency requesting the offset; and

“(C) a contact point within the creditor agency that will handle concerns regarding the offset;

“(2) shall notify the Internal Revenue Service on a weekly basis of— Notification.

“(A) the occurrence of an offset to satisfy a past-due legally enforceable non-tax debt;

“(B) the amount of such offset; and

“(C) any other information required by regulations; and

“(3) shall match payment records with requests for offset by using a name control, taxpayer identifying number (as that term is used in section 6109 of the Internal Revenue Code of 1986), and any other necessary identifiers.”. Records.

“(h)(2) The term ‘disbursing official’ of the Department of the Treasury means the Secretary or his designee.”

(x)(1) AMENDMENTS RELATING TO ELECTRONIC FUNDS TRANSFER.—Section 3332 of title 31, United States Code, popularly known as the Federal Financial Management Act of 1994, is amended—

(A) by redesignating subsection (e) as subsection (h), and inserting after subsection (d) the following new subsections:

“(e)(1) Notwithstanding subsections (a) through (d) of this section, sections 5120 (a) and (d) of title 38, and any other provision of law, all Federal payments to a recipient who becomes eligible for that type of payment after 90 days after the date of the enactment of the Debt Collection Improvement Act of 1996 shall be made by electronic funds transfer.

“(2) The head of a Federal agency shall, with respect to Federal payments made or authorized by the agency, waive the application of paragraph (1) to a recipient of those payments upon receipt of written certification from the recipient that the recipient does not have an account with a financial institution or an authorized payment agent.

“(f)(1) Notwithstanding any other provision of law (including subsections (a) through (e) of this section and sections 5120 (a) and (d) of title 38), except as provided in paragraph (2) all Federal payments made after January 1, 1999, shall be made by electronic funds transfer.

“(2)(A) The Secretary of the Treasury may waive application of this subsection to payments—

“(i) for individuals or classes of individuals for whom compliance imposes a hardship;

“(ii) for classifications or types of checks; or

“(iii) in other circumstances as may be necessary.

“(B) The Secretary of the Treasury shall make determinations under subparagraph (A) based on standards developed by the Secretary.

“(g) Each recipient of Federal payments required to be made by electronic funds transfer shall—

“(1) designate 1 or more financial institutions or other authorized agents to which such payments shall be made; and

“(2) provide to the Federal agency that makes or authorizes the payments information necessary for the recipient to receive

electronic funds transfer payments through each institution or agent designated under paragraph (1).”; and

(B) by adding after subsection (h) (as so redesignated) the following new subsections:

“(i)(1) The Secretary of the Treasury may prescribe regulations that the Secretary considers necessary to carry out this section.

“(2) Regulations under this subsection shall ensure that individuals required under subsection (g) to have an account at a financial institution because of the application of subsection (f)(1)—

“(A) will have access to such an account at a reasonable cost; and

“(B) are given the same consumer protections with respect to the account as other account holders at the same financial institution.

“(j) For purposes of this section—

“(1) The term ‘electronic funds transfer’ means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Fed Wire transfers, transfers made at automatic teller machines, and point-of-sale terminals.

“(2) The term ‘Federal agency’ means—

“(A) an agency (as defined in section 101 of this title); and

“(B) a Government corporation (as defined in section 103 of title 5).

“(3) The term ‘Federal payments’ includes—

“(A) Federal wage, salary, and retirement payments;

“(B) vendor and expense reimbursement payments; and

“(C) benefit payments.

Such term shall not include any payment under the Internal Revenue Code of 1986.”

(2) AMENDMENTS RELATING TO SUBSTITUTE CHECKS.—Section 3331 of title 31, United States Code, is amended—

(A) in subsection (b), by striking “subsection (c)” and inserting “subsection (c) or (f)”;

(B) by redesignating subsection (f) as subsection (g); and

(C) by inserting after subsection (e) the following new subsection:

“(f) The Secretary may waive any provision of this section as may be necessary to ensure that claimants receive timely payments.”

(3) PERMANENT FUNDING OF THE CHECK FORGERY INSURANCE FUND.—Section 3343 of title 31, United States Code, is amended—

(A) in subsection (a), by amending the second sentence to read as follows: “Necessary amounts are hereafter appropriated to the Fund out of any moneys in the Treasury not otherwise appropriated, and shall remain available until expended to make the payments required or authorized under this section.”;

(B) in subsection (b)—

(i) by inserting “in the determination of the Secretary the payee or special endorse establishes that” after “without interest if”;

(ii) in paragraph (2), by inserting “and” after the semicolon;

(iii) in paragraph (3), by striking “; and” and inserting a period; and

(iv) by striking paragraph (4);

(C) in subsection (d), by inserting after the first sentence the following new sentence: “The Secretary may use amounts in the Fund to reimburse payment certifying or authorizing agencies for any payment that the Secretary determines would otherwise have been payable from the Fund, and may reimburse certifying or authorizing agencies with amounts recovered because of payee nonentitlement.”;

(D) by redesignating subsection (e) as subsection (g); and

(E) by inserting after subsection (d) the following new subsections:

“(e) The Secretary may waive any provision of this section as may be necessary to ensure that claimants receive timely payments.

“(f) Under such conditions as the Secretary may prescribe, the Secretary may delegate duties and powers of the Secretary under this section to the head of an agency. Consistent with a delegation from the Secretary under this subsection, the head of an agency may redelegate those duties and powers to officers or employees of the agency.”.

(y) Section 3325 of title 31, United States Code, is amended by adding at the end the following new subsection:

“(d) The head of an executive agency or an officer or employee of an executive agency referred to in subsection (a)(1)(B), as applicable, shall include with each certified voucher submitted to a disbursing official pursuant to this section the taxpayer identifying number of each person to whom payment may be made under the voucher.”.

(z)(1) IN GENERAL.—Section 3701 of title 31, United States Code, is amended—

(A) by amending subsection (a)(1) to read as follows:

“(1) ‘administrative offset’ means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.”;

(B) by amending subsection (b) to read as follows:

“(b)(1) In subchapter II of this chapter and subsection (a)(8) of this section, the term ‘claim’ or ‘debt’ means any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency. A claim includes, without limitation—

“(A) funds owed on account of loans made, insured, or guaranteed by the Government, including any deficiency or any difference between the price obtained by the Government in the sale of a property and the amount owed to the Government on a mortgage on the property,

“(B) expenditures of nonappropriated funds,

“(C) over-payments, including payments disallowed by audits performed by the Inspector General of the agency administering the program,

“(D) any amount the United States is authorized by statute to collect for the benefit of any person,

“(E) the unpaid share of any non-Federal partner in a program involving a Federal payment and a matching, or cost-sharing, payment by the non-Federal partner,

“(F) any fines or penalties assessed by an agency; and

“(G) other amounts of money or property owed to the Government.

“(2) For purposes of section 3716 of this title, each of the terms ‘claim’ and ‘debt’ includes an amount of funds or property owed by a person to a State (including any past-due support being enforced by the State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.”;

(C) by adding after subsection (d) the following new subsection:

“(e) In section 3716 of this title—

“(1) ‘creditor agency’ means any agency owed a claim that seeks to collect that claim through administrative offset; and

“(2) ‘payment certifying agency’ means any agency that has transmitted a voucher to a disbursing official for disbursement.

“(f) In section 3711 of this title, ‘private collection contractor’ means private debt collectors under contract with an agency to collect a nontax debt or claim owed the United States. The term includes private debt collectors, collection agencies, and commercial attorneys.”; and

(D) by amending subsection (d) to read as follows:

“(d) Sections 3711(f) and 3716-3719 of this title do not apply to a claim or debt under, or to an amount payable under—

“(1) the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.),

“(2) the Social Security Act (42 U.S.C. 301 et seq.), except to the extent provided under section 204(f) of such Act and section 3716(c) of this title, or

“(3) the tariff laws of the United States.”.

(2) SOCIAL SECURITY.—

(A) APPLICATION OF AMENDMENTS MADE BY THIS ACT.—Subsection (f) of section 204 of the Social Security Act (42 U.S.C. 404) is amended to read as follows:

“(f)(1) With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, 3717, and 3718 of title 31, United States Code and in section 5514 of title 5, United States Code, as in effect immediately after the enactment of the Debt Collection Improvement Act of 1996.”

(B) PERMANENT APPLICATION.—Subsection (c) of section 5 of the Social Security Domestic Reform Act of 1994 (Public Law 103-387) is amended by striking “and before” and all that follows and inserting a period.

(aa)(1) GUIDELINES.—The Secretary of the Treasury, in consultation with concerned Federal agencies, may establish guidelines, including information on outstanding debt, to assist agencies in the performance and monitoring of debt collection activities.

(2) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary of the Treasury shall report to the Congress on collection services provided by Federal agencies or entities collecting debt on behalf of other Federal agencies under the

31 USC 3701
note.

31 USC 3711
note.

31 USC 3711
note.

authorities contained in section 3711(g) of title 31, United States Code, as added by subsection (m) of this section.

(3) AGENCY REPORTS.—Section 3719 of title 31, United States Code, is amended—

(A) in subsection (a)—

(i) by amending the first sentence to read as follows: “In consultation with the Comptroller General of the United States, the Secretary of the Treasury shall prescribe regulations requiring the head of each agency with outstanding nontax claims to prepare and submit to the Secretary at least once each year a report summarizing the status of loans and accounts receivable that are managed by the head of the agency.”; and

Regulations.

(ii) in paragraph (3), by striking “Director” and inserting “Secretary”; and

(B) in subsection (b), by striking “Director” and inserting “Secretary”.

(4) CONSOLIDATION OF REPORTS.—Notwithstanding any other provision of law, the Secretary of the Treasury may consolidate reports concerning debt collection otherwise required to be submitted by the Secretary into one annual report.

31 USC 3719 note.

(bb) The Director of the Office of Management and Budget shall—

31 USC 3711 note.

(1) review the standards and policies of each Federal agency for compromising, writing-down, forgiving, or discharging indebtedness arising from programs of the agency;

(2) determine whether those standards and policies are consistent and protect the interests of the United States;

(3) in the case of any Federal agency standard or policy that the Director determines is not consistent or does not protect the interests of the United States, direct the head of the agency to make appropriate modifications to the standard or policy; and

(4) report annually to the Congress on—

(A) deficiencies in the standards and policies of Federal agencies for compromising, writing-down, forgiving, or discharging indebtedness; and

(B) progress made in improving those standards and policies.

(cc)(1) ELIMINATION OF MINIMUM NUMBER OF CONTRACTS.—Section 3718(b)(1)(A) of title 31, United States Code, is amended by striking the fourth sentence.

(2) REPEAL.—Sections 3 and 5 of the Act of October 28, 1986 (popularly known as the Federal Debt Recovery Act; Public Law 99-578, 100 Stat. 3305) are hereby repealed.

31 USC 3718 notes.

FEDERAL ADMINISTRATIVE AND PERSONAL SERVICES EXPENSES

(RECISSIONS)

SEC. 31002. (a) Of the funds available to the agencies of the Federal Government, \$500,000,000 are hereby rescinded: *Provided*, That rescissions pursuant to this paragraph shall be taken only from administrative and personal services and contractual services and supplies accounts: *Provided further*, That rescissions shall be taken on a pro rata basis from funds available to every Federal

Records. agency, department, and office in the Executive Branch, including the Office of the President.

(b) Within 30 days of enactment of this Act, the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House and Senate a listing of the amounts by account of the reductions made pursuant to the provisions of subsections (a) and (b) of this section.

This Act may be cited as the “Omnibus Consolidated Rescissions and Appropriations Act of 1996”.

Approved April 26, 1996.

LEGISLATIVE HISTORY—H.R. 3019 (S. 1594):

HOUSE REPORTS: No. 104–537 (Comm. of Conference).

SENATE REPORTS: No. 104–236 accompanying S. 1594 (Comm. on Appropriations).

CONGRESSIONAL RECORD, Vol. 142 (1996):

Mar. 7, considered and passed House.

Mar. 11–15, 18, 19, considered and passed Senate, amended.

Apr. 25, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):

Apr. 26, Presidential statement.





Notice of your billing rights and responsibilities

The United States Treasury sets the requirements that all Federal agencies must follow in managing debts. Treasury requires agencies to provide this information along with the invoices, so that our customers are aware of the steps that we and/or Treasury must take if debts are not paid 60 days or more after the date of the invoice.

Our Agency's Rights and Responsibilities

- **Mail invoices** directly to customers immediately following creation
- **Suspend all services** to you and/or your agency, as applicable
- **Refer the debt to US Treasury by 120 days delinquent** (31 USC 3716(c)(6)). US Treasury may pursue the following actions:
 - Add agency interest, penalties, and administrative fees to the principle debt amount (31 USC 3717)
 - Add Treasury interest, penalties, and administrative fees to the total debt amount (up to 32% in additional fees, plus interest and penalties)
 - Offset the debtor's Federal payments, including income tax refunds, salary, certain benefit payments (such as Social Security), retirement, vendor, and travel reimbursements and advances
 - Refer the debt to a private collection agency (additional fees will apply)
 - Report the debt to a credit bureau
 - Garnish the debtor's wages through administrative wage garnishment (no court order required)
 - Refer the debt to the Department of Justice for litigation (comply with Executive Order 12988 - additional fees will apply)

Your Rights and Responsibilities

To avoid US Treasury referral and incurring additional debts, you must do one of the following:

- **Pay your debt.** For payment options, see the enclosed document titled "Payments to USDA APHIS Instructions".
- **Agree to a payment plan.** If you are unable to pay your debt in full, you must contact USDA, APHIS, Accounts Receivable at the below listed contacts, agree to a payment plan acceptable to the USDA, and make payments required in the payment plan.
- **Dispute the debt.** If you believe that all or part of the outstanding debt is not owed, you must submit your dispute in writing to the email address listed below within 30 days.
- **Notify of bankruptcy status.** If you have filed bankruptcy and an automatic stay is in effect, you are not subject to Treasury referral. Please notify us and submit evidence of your bankruptcy status.

Additional rights and responsibilities (these do not stop referral to US Treasury):

- **Notify us** if your address or contact information has changed via the below listed contacts.
- **False or frivolous claims.** If you make or provide any knowingly false or frivolous statements, representations, or evidence, you may be liable for penalties under the False Claims Act 31 USC 3729-3731, and/or criminal penalties under 18 USC 286, 287, 1001, and 1002.
- **Excess collections** will be refunded to you, unless prohibited by law.





Payments to USDA APHIS Instructions

The procedures below are for payments to the USDA APHIS. Payments are accepted via Check, Money Order, ACH, Wire Transfer, PayPal, Debit Card, and Credit Card. Debit Card, Credit Card, PayPal, or ACH payments can be made at www.pay.gov

Check or Money Order: Make payable to “**USDA, APHIS.**” Checks drawn from a foreign bank must say “**Payable in US Dollars**”. Mail your payment to the lockbox address

Regular Mail:
USDA, APHIS, Miscellaneous
P.O. Box 979043
St. Louis, MO 63197-9000

Overnight mail only:
US Bank
Attn: Govt Lockbox
1005 Convention Plaza
St. Louis, MO 63197-9000
Phone 314-418-6635

Bank ACH: are processed through Remittance Express by the Federal Reserve Bank of Richmond.

You will need the following information to remit a payment via ACH, if not using pay.gov:

ABA: 051036706
Name on Account: USDA, MRP, APHIS Account
Number: 540021

Wire Transfers: are processed through the Federal Reserve Bank of New York.

You will need the following information to remit a payment via Wire Transfer:

ABA: 021030004
Name on Account: USDA, APHIS
Account Number: 12403400

DO NOT USE THE BANK SWIFT CODE for any Wire Transfers.

This may cause your payment to be rejected.

International Wire Transfers: Must be sent through a US correspondent bank (i.e. third party or intermediary bank) before going to the Federal Reserve Bank of New York. The US correspondent bank information should be in **bold**.

****NOTE:** Any fees associated with the financial transaction chosen (i.e., Bank funds transfer, credit card, etc.) are the responsibility of the remitter. Please check with your financial institution for fee considerations.

Questions: Contact the ABS Helpline for any assistance in making a payment to the USDA APHIS either by phone at 612-336-3400 or 877-777-2128 or by email at ABShelpline@usda.gov. You must leave a voicemail message when calling the phone number and the correct account manager will return the call.



MARC GONZALES
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

July 19, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a FY 18/19 Work and Financial Plan with United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Wildlife Services (WS) for Predator Management

Purpose/Outcome	FY 18/19 Work and Financial Plan for predator control.
Dollar Amount and fiscal Impact	The maximum contract value of \$73,418.49 for the County portion of these activities is included in the Clackamas County fiscal year 2018-2019 budget.
Funding Source	General Fund in conjunction with state, federal and private partners
Duration	July 1, 2018 through June 30, 2019
Previous Board Action/Review	May 2, 2013 the five year Cooperative Service Agreement with the USDA APHIS WS for Predator Management was approved and signed, new 5 year CSA submitted for Approval at July 19, 2018 meeting.
Strategic Plan Alignment	Aligns with County strategic priority by helping to ensure safe, healthy and secure communities.
Contact Person	Marc Gonzales, 503-742-5405
Contract No.	Agreement 18-7341-5111-RA

BACKGROUND: Clackamas County's intergovernmental agreement with the federal agencies listed above for County Trapper Services was adopted and signed May 2, 2013, and a new 5 year agreement is being submitted for approval at the July 19th, 2018 meeting. The agreement provides predator control where wild animals and birds may carry disease or threaten injury to County public and private resources.

Each year a separate Work Plan and Proposed Budget, representing the next fiscal year portion of this predator control program, is presented to the Board of County Commissioners for approval. The FY 18/19 Work and Financial Plan under consideration was initiated by the federal agency in cooperation with its partners. An opportunity was provided for the Wildlife Services, in cooperation with the County, to adjust service delivery to accommodate County budgetary constraints.

This document has been reviewed and approved by County Counsel.

RECOMMENDATION: Staff respectfully recommends the Board approve the attached FY 18/19 Work and Financial Plan for County predator control and wildlife damage management in order to meet the federal deadline. This contract is consistent with the County's anticipated budget for the FY 2018-2019. Thank you.

Sincerely,

Marc Gonzales
Finance Director



United States
Department of
Agriculture

Friday, June 22, 2018

Animal and
Plant Health
Inspection
Service

Clackamas County
2051 Kaen Rd.
Oregon City, OR, 97045

Dear Clackamas County,

Wildlife
Services

Enclosed are three copies of the documents needed for wildlife damage prevention and management services for Clackamas County from July 01, 2018 through June 30, 2019.

Oregon State Office

6135 NE 80th Ave.
Suite A-8
(503) 326-2346

If the documents are agreeable to Clackamas County please have an authorized representative sign all three copies and send all three copies back to our office. A fully executed copy will be sent to Clackamas County when completed. Please note: that a new CSA is included as it has been 5 years since it was last signed. Please ensure that it is signed and included with the WFP.

I welcome the opportunity to address your questions or concerns. Please contact me by email at Kizma.L.Button@aphis.usda.gov or by phone 503-326-2346

Thank you for the opportunity to serve you,

A handwritten signature in blue ink that reads "Kizma L. Button". The signature is written in a cursive style and is positioned above a long, thin, horizontal blue line that extends across the width of the page.

Kizma L. Button
Supervisory Budget Analyst

Enclosure

CC: Brian Thomas in Salem, Oregon (503) 399-5814



Safeguarding American Agriculture

APHIS is an agency of USDA's Marketing and Regulatory Programs

An Equal Opportunity Provider and Employer

ACMS Agreement Activity Codes Distribution Worksheet

AGREEMENT NUMBER

18-7341-5111-RA

COOPERATOR

Clackamas County

Performance Period

July 1, 2018

June 30, 2019

Instructions: Use the following worksheet to distribute estimated funds among the appropriate ACMS Activity Codes by entering the percentage in the Funds Distribution Column. The worksheet will automatically calculate the dollar value.

ACMS Agreements Activity Description	Funds Distribution Percentage	Estimated Fund Allocation
Agriculture/Aquaculture	0%	\$ -
Agriculture/Crops	0%	\$ -
Agriculture/Livestock	40%	\$ 29,367.40
Airport Wildlife Hazards	0%	\$ -
Aviation Training and Ops	0%	\$ -
Beaver Management	0%	\$ -
Dble Crested Cormorant Dmg to Aquaculture and Natural Resources	0%	\$ -
Feral Swine	0%	\$ -
Feral Swine/Aerial Operation	0%	\$ -
Feral Swine/Special	0%	\$ -
Forest & Range	0%	\$ -
General	0%	\$ -
Human Health & Safety	30%	\$ 22,025.55
Invasive Species	0%	\$ -
Invasive Species/Brown Tree Snake	0%	\$ -
Invasive Species/Nutria	0%	\$ -
Methods Development	0%	\$ -
Migratory Bird Mgmt	0%	\$ -
Migratory Bird Mgmt/Gulls	0%	\$ -
Migratory Bird Mgmt/Vultures	0%	\$ -
Migratory Bird Mgmt/Waterfowl	0%	\$ -
Migratory Birds/Blackbirds	0%	\$ -
Natural Resources/Endangered Species	0%	\$ -
Predator Control	0%	\$ -
Protection of Property	30%	\$ 22,025.55
Rabies	0%	\$ -
Rabies/Oral Rabies Vaccine	0%	\$ -
Rabies/Trap-Vaccinate-Release, Field	0%	\$ -
Research	0%	\$ -
Surveillance Avian Health	0%	\$ -
Symposium	0%	\$ -
Threatened and Endangered Species	0%	\$ -
Wildlife Disease Monitoring	0%	\$ -
AGREEMENT AMOUNT	100%	\$ 73,418.49

**USDA APHIS WILDLIFE SERVICES
WORK AND FINANCIAL PLAN**

COOPERATOR:	CLACKAMAS COUNTY
COOPERATIVE AGREEMENT NO.:	18-7341-5111-RA
ACCOUNT NO.:	AP.RA.RX41.73.0550
AGREEMENT DATES:	July 1, 2018 – June 30, 2019
AGREEMENT AMOUNT:	\$73,418.49

Pursuant to Cooperative Service Agreement No. 18-7341-5111-RA between Clackamas County and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (APHIS-WS), this Work and Financial Plan defines the objectives, plan of action, resources and budget for cooperative wildlife services program.

OBJECTIVES/GOALS

APHIS-WS objective is to provide professional wildlife management assistance to reduce or manage damage caused by coyotes and other nuisance wildlife to protect property and human health and safety.

Specific goals are:

1. To provide direct assistance for Clackamas County from wildlife conflicts or damage.
2. To provide assistance in the form of educational information.

PLAN OF ACTION

The objectives of the wildlife damage management program will be accomplished in the following manner:

1. APHIS-WS will provide technical assistance and or direct management at times and locations for where it is determined there is a need to resolve problems caused by wildlife. Lethal management efforts will be directed towards specific offending individuals or local populations. Method selection will be based on an evaluation of selectivity, humaneness, human safety, effectiveness, legality, and practicality. Technical Assistance: APHIS-WS personnel may provide verbal or written advice, recommendations, information, demonstrations or training to use in managing wildlife damage problems. Generally, implementation of technical assistance recommendations is the responsibility of the resource/property owner.
Direct Management: Direct management is usually provided when the resource/property owner's efforts have proven ineffective and or technical assistance alone is inadequate. Direct management methods/ techniques may include trap equipment, shooting, and other methods as mutually agreed upon.
2. APHIS-WS District Supervisor Brian Thomas in Salem, Oregon (503) 399-5814 will supervise this project. This project will be monitored by David E. Williams, State Director, Portland, Oregon (503) 326-2346.
3. APHIS-WS will bill Clackamas County quarterly for actual costs incurred in providing service, not to exceed \$73,418.49 annually.
4. In accordance with the Debt Collection Improvement Act (DCIA) of 1996, bills issued by APHIS-WS are due and payable within 30 days of the invoice date. The DCIA requires that all debts older than 120 days be forwarded to debt collection centers or commercial collection agencies for more aggressive action Debtors have the option to verify, challenge and compromise claims, and have access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

STIPULATIONS AND RESTRICTIONS:

1. All operations shall have the joint concurrence of APHIS-WS and Clackamas County and shall be under the direct supervision of APHIS-WS. APHIS-WS will conduct the program in accordance with its established operating policies and all applicable state and federal laws and regulations.
2. APHIS-WS will cooperate with the Oregon Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, Oregon Department of Transportation, Oregon Fire marshal's Office, county and local city governments, and other entities to ensure compliance with Federal, State, and local laws and regulations.
3. Control on Non-Private Lands: An agreement for Control of Animal Damage on Non-Private Property (WS Form 12A) will be executed between APHIS-WS and the landowner, lessee, or administrator before any APHIS-WS work is conducted and will need to be renewed.

COST ESTIMATE FOR SERVICES:

Salary including possible overtime, benefits, vehicle, supplies and material costs charged at actual cost. The distribution of the budget for this work plan may vary as necessary to accomplish the purpose of this Agreement.

AUTHORIZATION:

Clackamas County
Attn: Accounts Payable
2051 Kaen Rd.
Oregon City, OR 97045

Representative, Clackamas County

Date

UNITED STATES DEPARTMENT OF AGRICULTURE ANIMAL AND PLANT HEALTH INSPECTION
SERVICE WILDLIFE SERVICES

State Director, Oregon

Date

Director, Western Region

Date

FINANCIAL PLAN
 For the disbursement of funds from
 Clackamas County

to
 USDA APHIS Wildlife Services
 for

wildlife management assistance to reduce or manage damage caused by coyotes and other nuisance
 wildlife to protect property and human health and safety

from
 July 1, 2018
 to
 June 30, 2019

Cost Element		Cost to Cooperator	Cost Share (Paid by Federal Appropriations)	100% ¹ of 1 FTE(s) for FY 18-19
Personnel Compensation		\$ 44,936.97	\$ 21,945.66	\$ 66,882.62
Vehicles		\$ 8,045.58	\$ 3,929.18	\$ 11,974.76
Hires & Reimbursements		\$ 2,070.68	\$ 1,011.25	\$ 3,081.92
Supplies and Materials		\$ 1,349.36	\$ 658.98	\$ 2,008.35
Equipment/Training		\$ 1,339.05	\$ 653.95	\$ 1,992.99
Subtotal (Direct Charges)		\$ 57,741.64	\$ 28,199.02	\$ 85,940.65
Pooled Job Costs	11.00%	\$ 6,351.58	N/A	N/A
Indirect Costs	16.15%	\$ 9,325.27	N/A	N/A
Agreement Total:		\$ 73,418.49	\$ 28,199.02	\$ 101,617.51
Percentage Cost Share		67.19%	32.81%	100.00%

The distribution of the budget from this Financial Plan may vary as necessary to accomplish the purpose of this agreement, but may not exceed: \$73,418.49.

DRAFT

Approval of Previous Business Meeting Minutes:
June 21, 2018

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

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

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

Thursday, June 21, 2018 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

**PRESENT: Commissioner Jim Bernard, Chair
Commissioner Sonya Fischer
Commissioner Ken Humberston
Commissioner Paul Savas
Commissioner Martha Schrader
Housing Authority Commissioner Paul Reynolds**

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

Chair Bernard introduced Commissioner Fischer to make the following statement:

We, the Equity, Diversity and Inclusion Council of Clackamas County, Clackamas County Administration and Clackamas County Board of Commissioners stand in solidarity with the international community to denounce the inhumane and un-American treatment of immigrants and asylum seekers who seek refuge, freedom and fundamental human rights in the United States. We further denounce the immoral and unjust treatment of children and families through forced separation and incarceration. We believe families matter. In light of his executive order reversing the forced separation of children from their parents, we call upon President Donald J. Trump and his administration to cease and desist from the unconscionable treatment of children as criminals and immediately reunify affected families. We believe all men, women and children are created equal and deserve dignity.

~Board Discussion~

Chair Bernard announced the Board will recess as the Board of County Commissioners and convene as the Housing Authority Board for the next item and he introduced Housing Authority Commissioner Paul Reynolds.

I. HOUSING AUTHORITY CONSENT AGENDA

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

MOTION:

Commissioner Reynolds: I move we approve the Housing Authority consent agenda.
Commissioner Fischer: Second.
all those in favor/opposed:
Commissioner Reynolds: Aye.
Commissioner Fischer: Aye.
Commissioner Humberston: Aye.
Commissioner Schrader: Aye.
Commissioner Savas: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 6-0.

1. In the Matter of Writing off Uncollectible Accounts for the Fourth Quarter of Fiscal Year 2018
2. Resolution 1931 Approving the Housing Authority of Clackamas County's Fiscal Year 2018/2019 Budget

Chair Bernard announced the Board will Adjourn as the Housing Authority Board and Reconvene as the Board of County Commissioners.

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

1. Presentation Regarding City of Damascus Excess Fund Disbursements
David Bodway, Finance & Todd Loggan, Public & Government Affairs presented the staff report.

~Board Discussion~

III. CITIZEN COMMUNICATION

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

1. Chris Hass, Damascus – thanked the County for fund disbursements.
2. Les Poole, Gladstone – the Damascus refund is good news since he owns property in Damascus, spoke about road funding and how tolling will be a disaster and the importance of evening meetings.
3. Lisa Blue, Milwaukie – wanted to thank the Board for the statement made regarding separating children from their parents; also, she is concerned about the excessive amount of development occurring in the Milwaukie and Oak Grove area.

~Board Discussion~

IV. PUBLIC HEARING

1. Public Hearing - Proposed Section 108 Loan Pool Application to the US Department of Housing and Urban Development

Kevin Ko, Housing & Community Development presented the staff report.

Chair Bernard opened the public hearing and asked if anyone wished to speak, seeing none, he closed the public hearing and asked for a motion.

MOTION:

Commissioner Savas: I move we approve the Proposed Section 108 Loan Pool Application to the US Department of Housing and Urban Development.

Commissioner Humberston: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

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

V. CONSENT AGENDA

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

MOTION:

Commissioner Humberston: I move we approve the consent agenda as amended.

Commissioner Schrader: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Fischer: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

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

A. Health, Housing & Human Services

1. Approval of an Intergovernmental Agreement with Oregon State University for the Public Health Comprehensive Evaluation Plan – *Public Health*

2. Approval of a Renewal Intergovernmental Agreement with Washington County for the Cities Readiness Initiative Program – *Public Health*
3. Approval of a Professional, Technical & Consultant Services Contract with ColumbiaCare Services, Inc. for Supported Housing Services – *Behavioral Health*
4. Approval of an Intergovernmental Sub-recipient Agreement, Amendment No. 3 with the City of Sandy/Sandy Senior & Community Center to Provide Social Services for Clackamas County Residents age 60 and over – *Social Services*
5. Approval of an Intergovernmental Agreement with the Oregon Department of Transportation Rail and Public Transit Division, Grant Award 5339 for Mt. Hood Express Vehicle Purchase of Two Buses – *Social Services*
6. Approval of an Intergovernmental Agreement with the Oregon Department of Transportation Rail and Public Transit Division, Grant Award 5311 for Mt. Hood Express Vehicle Purchases – *Social Services*
7. **REMOVED** - Approval of an Agreement with Richart Family, Inc. for Weatherization Major Measure Construction Services - *Procurement*
8. **REMOVED** - Approval of an Agreement with Green Energy Solutions, Inc. for Weatherization Major Measure Construction Services - *Procurement*
9. **REMOVED** - Approval of an Agreement with Good Energy Retrofit LLC for Weatherization Major Measure Construction Services - *Procurement*
10. **REMOVED** - Approval of an Agreement with Energy Comfort and Construction LLC for Weatherization Major Measure Construction Services - *Procurement*

B. Department of Transportation & Development

1. Approval to Apply to the Oregon Department of Transportation for All Roads Transportation Safety Program Funding for Federal Fiscal Years 2022-2024
2. Authorization to Purchase 21 Snowplows from Pape' Machinery for the Department of Transportation and Development – *Procurement*
3. Approval of the Contract with Pacific Landscape Services, Inc. for Landscape Maintenance for DTD – *Procurement*

C. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Request by the Clackamas County Sheriff's Office to Enter into an Intergovernmental Agreement with Clackamas Community College for FY 2018-19 GED Classes at the Clackamas County Jail - *CCSO*

D. Community Corrections

1. Approval of an Intergovernmental Agreement with Oregon Metro to Provide Work Crew Services for Fiscal Year 2018-19
2. Approval of an Intergovernmental Agreement with the City of Happy Valley to Provide Work Crew Services for Fiscal Year 2018-19

3. Approval of an Intergovernmental Agreement with the City of Milwaukie to Provide Work Crew Services for Fiscal Year 2018-19
4. Approval of an Intergovernmental Agreement with the City of Molalla to Provide Work Crew Services for Fiscal Year 2018-19
5. Approval of an Intergovernmental Agreement with the City of Oregon City to Provide Work Crew Services for Fiscal Year 2018-19
6. Approval of an Intergovernmental Agreement with the City of Wilsonville to Provide Work Crew Services for Fiscal Year 2018-19
7. Approval of an Intergovernmental Agreement with Clackamas Community College to Provide Work Crew Services for Fiscal Year 2018-19
8. Approval of an Intergovernmental Agreement with Business & Community Services-Fair Grounds to Provide Work Crew Services for Fiscal Year 2018-19

E. Finance Department

1. Resolution No. 2018-55 for a Clackamas County Supplemental Budget, Less than Ten Percent for Fiscal Year 2017-2018

F. Juvenile Department

1. Approval of Amendment No. 6 to the Intergovernmental Agreement with Multnomah County for Assessment and Evaluation Beds

VI. WATER ENVIRONMENT SERVICES

(Service District No. 1)

1. Approval of Amendment to Easement 43139-EA with the Oregon Department of State Lands for the Kellogg Creek Water Resource Recovery Facility
2. Approval of Amendment No. 1 to an Intergovernmental Agreement between the City of Milwaukie and Water Environment Services for Bridge Construction

VII. COUNTY ADMINISTRATOR UPDATE

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

VIII. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED – 11:34 AM

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>



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
 2051 KAEN ROAD OREGON CITY, OR 97045

July 19, 2018

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement Between Clackamas and
 Multnomah Counties for HIPAA and Part 2 Privacy Officer

Stephen L. Madkour
 County Counsel

Kathleen Rastetter
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
 Assistants

Purpose/Outcomes	Approve Intergovernmental Agreement between Clackamas County and Multnomah County for HIPAA and Part 2 privacy officer
Dollar Amount and Fiscal Impact	Services are to be provided on an as-needed basis at the hourly rate of \$96.09 per hour
Funding Source	County general fund
Duration	July 1, 2018 through July 1, 2019
Previous Board Action	The BCC approved and signed an IGA for the initial work on 8/4/17, which expired 7/1/18.
Strategic Plan Alignment	Ensure safe, healthy and secure communities Build public trust through good government
Contact Person	Kathleen Rastetter, Assistant Senior County Counsel

BACKGROUND:

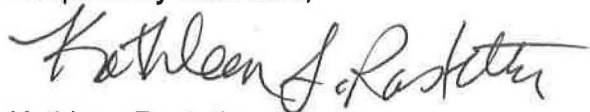
Clackamas County has engaged the services of a HIPAA compliance expert employed by Multnomah County. The Multnomah County HIPAA Privacy Officer is an attorney in the Multnomah County Attorney's Office and is experienced and knowledgeable regarding all aspects of HIPAA and 42 CFR Part 2 (governing drug and alcohol records) compliance and has established a centralized HIPAA compliance program for Multnomah County. The Multnomah County HIPAA Privacy Officer has assisted with drafting a HIPAA Privacy Policy.

Clackamas County desires to continue its consultation with the MC Privacy Officer to assist Clackamas County in establishing a robust centralized HIPAA and Part 2 compliance program in Clackamas County. The MC Privacy Officer will perform work under this contract in Clackamas County Offices onsite or remotely not to exceed 10 hours a week on an as-needed basis at an hourly rate of \$96.09. HIPAA and Part 2 regulations and compliance are relatively esoteric areas of federal law, thus the IGA will allow Clackamas County the benefit from the services of a subject matter expert.

RECOMMENDATION:

County Counsel respectfully requests that the Board of County Commissioners authorize the County to enter into an IGA with Multnomah County for the services of a HIPAA and Part 2 compliance expert.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kathleen Rastetter". The signature is written in black ink and is positioned above the printed name and title.

Kathleen Rastetter
Assistant Senior County Counsel

INTERGOVERNMENTAL AGREEMENT

This Agreement is entered into, by and between Clackamas County, a political subdivision of the State of Oregon, and Multnomah County, a political subdivision of the State of Oregon.

WHEREAS ORS 190.010 authorizes the parties to enter into this Agreement for the performance of any or all functions and activities that a party to the Agreement has authority to perform.

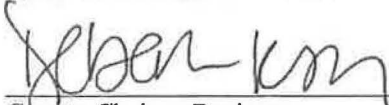
Now, therefore, the parties agree as follows:

- 1) The effective date is: July 1, 2018, or upon final signature, whichever is later.
The expiration date is: July 1, 2019; unless otherwise amended.
- 2) The parties agree to the terms and conditions set forth in Attachment A, which is incorporated herein, and describes the responsibilities of the parties, including compensation, if any.
- 3) Each party shall comply with all applicable federal, state and local laws; and rules and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or handicap.
- 4) No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- 5) This Agreement may be terminated, with or without cause and at any time, by a party by providing 30 days written notice of intent to the other party(s).
- 6) Modifications to this Agreement are valid only if made in writing and signed by all parties.
- 7) Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party.
- 8) Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to the work performed under this Agreement.
- 9) Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 through 30.274.
- 10) Each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement.

- 11) This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

WHEREAS, all the aforementioned is hereby agreed upon by the parties and executed by the duly authorized signatures below.

MULTNOMAH COUNTY:



County Chair or Designee

7/10/18

Date

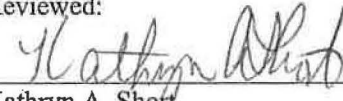
DEBORAH KATOUCKY

Printed Name

CHAIR

Title

Reviewed:



Kathryn A. Short
Deputy County Attorney

CLACKAMAS COUNTY:

Signature

Date

Printed Name

Title

Address:

2051 Kaen Road
Oregon City, OR 97045

ATTACHMENT "A"

1. **Purpose:** The Multnomah County Privacy Officer (MC Privacy Officer) is experienced and knowledgeable regarding all aspects of HIPAA and 42 CFR Part 2 ("Part 2") compliance and has established a centralized HIPAA compliance program for Multnomah County. Clackamas County desires to consult with the MC Privacy Officer to assist Clackamas County in establishing a robust centralized HIPAA and Part 2 compliance program in Clackamas County. The MC Privacy Officer will perform work under this contract in Clackamas County Offices onsite or remotely not to exceed 10 hours a week. Multnomah County agrees that Clackamas County may consult with the MC Privacy Officer for certain functions described below.

2. **Statement of Work:**

A. Multnomah County responsibilities:

Clackamas County may consult with the MC Privacy Officer on HIPAA and Part 2 compliance issues. Clackamas County shall use no more than .25 of the MC Privacy Officer's time per week. The MC Privacy Officer may be made available for consultation in person, by telephone and by email. The MC Privacy Officer may periodically or as needed be physically present at Clackamas County offices. The MC Privacy Officer may be contacted on other days in case of suspected HIPAA or Part 2 breaches. The Clackamas County Counsel shall be the primary contact for the MC Privacy Officer. In addition, the MC Privacy Officer will also work with a project team consisting of the Risk Manager, and a special projects manager with Clackamas County Health and Human Services. The primary duties to be performed by the MC Privacy Officer for Clackamas County when requested are:

(a) Review Clackamas County Departments to assess and determine correct status of covered components of Clackamas County's hybrid entity and develop a chart of covered components similar to chart developed for Multnomah County;

(b) Identify HIPAA privacy rule and Part 2 compliance issues Clackamas County needs to address in light of HITECH and new HIPAA Omnibus Rules of 2013 and the 2017 changes to the Part 2 rules;

(c) Develop a Work Plan for HIPAA privacy rule and/or Part 2 compliance issues Clackamas County needs to address;

(d) Review, revise and update Clackamas County HIPAA Privacy and Security rules (Security rules in consultation with the Clackamas County Security Officer) and Part 2 rules;

- (e) Develop written breach policy and procedures that align with current practice in Clackamas County and HIPAA and Part 2 regulations to meet Clackamas County organizational needs;
- (f) Review and revise current Clackamas County HIPAA and Part 2 training material;
- (g) Work with Clackamas County Counsel and/or the Clackamas County Privacy Officer to identify and define privacy officer performance requirements; and
- (h) Assist Clackamas County to develop and implement a process for evaluating and assisting in responding to instances of suspected HIPAA or Part 2 breaches that occur during the period of this contract.

B. Clackamas County responsibilities:

Pay for consulting services as described in the Payment Terms. If needed, provide office space and use of a computer, software, phone and network capabilities for the MC Privacy Officer while performing duties for Clackamas County. Assist in performance evaluation of MC Privacy Officer if requested by Multnomah County. Clackamas County retains all final authority and responsibility for HIPAA and Part 2 compliance and breach response.

3. Payment Terms:

Clackamas County agrees to pay for the services of Multnomah County's Privacy Officer on an hourly basis at the hourly rate of \$96.09 which reflects Multnomah County's Privacy Officer's salary and fringe benefits. Currently that annual sum is \$199,861.00. Additionally, mileage for travel to Clackamas County will be reimbursed by Clackamas County. Both parties understand that Multnomah County may request that this Agreement be amended to increase or decrease the compensation amount annually if costs are higher or lower than anticipated at the agreement commencement. Multnomah County will invoice Clackamas County Office of County Counsel quarterly. Payments will be due 30 days after invoice.

Invoice Mailing Address:

Clackamas County Counsel
2051 Kaen Road
Oregon City, OR 97045

**Health Insurance Portability and Accountability Act of 1996 (HIPAA)
Business Associate Agreement**

A. General:

For purposes of the IGA and its Attachment A ("IGA"), Multnomah County ("County") is Clackamas County's ("Covered Entity") business associate and will comply with the obligations set forth below and under HIPAA. As described in the IGA, County creates, receives, maintains or transmits PHI on behalf of Covered Entity or to provide a service to Covered Entity.

B. Definitions:

Terms used, but not otherwise defined in this Section, will have the same meaning as those terms in 45 CFR 160.103, 164.103, 164.402 and 164.501. A reference to a regulation means the section as in effect or as amended, and for which compliance is required.

- *Breach*: as defined in 45 CFR 164.402 and includes the unauthorized acquisition, access, use, or disclosure of Protected Health Information (PHI) that compromises the security or privacy of such information.
- *Designated Record Set*: as defined in 45 CFR 164.501.
- *Individual*: as defined in 45 CFR 160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- *Privacy Rule*: the standards for privacy at 45 CFR Part 160 and Part 164, subpart A and E.
- *Protected Health Information (PHI)*: means any information created for or received from County under the IGA from which the identity of an Individual can reasonably be determined, and includes, but is not limited to, all of the information within the statutory meaning of "Protected Health Information" in 45 CFR 160.103.
- *Required by Law*: as defined in 45 CFR 164.103.
- *Secretary*: the Secretary of the U.S. Department of Health and Human Services (HHS) or designee.
- *Security Rule*: the Standards for Security of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subpart A and C.
- *Unsecured Protected Health Information*: PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in 45 CFR 164.402.

C. County's Obligations:

1. County agrees to not use or disclose Protected Health Information (PHI) other than as permitted or required by the IGA or as Required or Permitted by Law. County further agrees to use or disclose PHI only on behalf of, or to provide services to, the Covered Entity in fulfilling County's obligations under the IGA, and to not make uses or disclosures that would violate the Privacy Rule if done by Covered Entity or violate the minimum necessary standard as described below.
2. When using, disclosing, or requesting PHI, County agrees to make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request, in accordance with 45 CFR 164.514(d), with the following exceptions:
 - a) disclosures to or requests by a health care provider for treatment
 - b) disclosures made to the Individual about his or her own PHI
 - c) uses or disclosures authorized by the Individual
 - d) disclosures made to the Secretary in accordance with the HIPAA Privacy Rule
 - e) uses or disclosures that are Required by Law, and
 - f) uses or disclosures that are required for compliance with the HIPAA Transaction Rule.
3. County is responsible for compliance with the applicable requirements of the HIPAA Privacy Rule and Security Rule to the same extent as Covered Entity.
4. County agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by the IGA.
5. County agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by 45 CFR 164 Subpart C.
6. County shall promptly notify Covered Entity of a Breach of Unsecured PHI of which County (or County's employee, subcontractor, officer or agent) knows or should have known of through the exercise of reasonable diligence.
7. County agrees to mitigate, to the extent practicable and without unreasonable delay, any harmful effect that is

known to Covered Entity of a use or disclosure of PHI or Breach of Unsecured PHI by County in violation of the requirements of the IGA or HIPAA.

8. County agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by County on behalf of Covered Entity, agrees in writing to the same restrictions and conditions that apply through the IGA to County with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2).
9. County agrees to provide access to PHI about an Individual contained in a Designated Record Set within the reasonable time, manner, form and format specified in Individual's or Covered Entity's request as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.524. If an Individual requests access to information directly from County, County agrees to forward the request to Covered Entity within 5 working days of receipt. Covered Entity will be responsible for any denials of requested PHI.
10. County agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 within the reasonable time and manner specified in Covered Entity's request. County shall not respond directly to requests from Individuals for amendments to their PHI in a Designated Record Set. County agrees to forward the request to Covered Entity within 5 working days of receipt.
11. County agrees to make internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created, maintained or received by County on behalf of Covered Entity available to the Secretary upon request of the Secretary, in a time and manner designated by the Secretary for purposes of the Secretary determining Covered Entity's compliance with HIPAA.
12. County agrees to document disclosures of PHI and information related to such disclosures as required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR 164.528. County agrees to provide Covered Entity or an Individual information under this Section, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR 164.528.
13. County must forward to Covered Entity within 5 working days of receipt any request for restriction or confidential communications as described under 45 CFR 164.522 received from an Individual. County must process such request in the reasonable time and manner as directed by Covered Entity.
14. County may use and disclose PHI (a) for the proper management and administration of County, (b) to carry out the legal responsibilities of County, (c) to provide Data Aggregation services relating to the health care operations of the Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B) and required by the IGA, (d) to the extent and for purposes authorized by the Individual, (e) to report violations of law to appropriate Federal and State authorities consistent with 45 CFR 164.502(j)(1) or (f) as required by law.

D. Covered Entity's Obligations:

1. Covered Entity shall obtain any consent or authorization from Individuals as necessary or required under HIPAA, other federal or state law or its own policies prior to allowing County and other provider access to an Individual's PHI.
2. Covered Entity shall notify County of:
 - (a) Its permissible uses and disclosures of PHI by providing a copy of its Notice of Privacy Practices upon request;
 - (b) Any limitation(s) in its Notice of Privacy Practices to the extent that such limitation may affect County's use or disclosure of PHI;
 - (c) Any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect County's use or disclosure of PHI; and
 - (d) Any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect County's use or disclosure of PHI.
3. The Covered Entity shall not request that County use or disclose PHI in any manner that would not be permissible under HIPAA.

E. Termination: Upon termination of the IGA for any reason, County will extend the protections of the IGA to any PHI that County is required to retain under any provision of the IGA. The terms of the IGA shall remain in effect until all of the PHI provided by Covered Entity to County, or created or received by County on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.



July 19, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Infrastructure and Additional Shared Cost Funding Agreement with the
Clackamas Workforce Partnership (CWP)

Purpose/Outcomes	Approval of an Infrastructure and Additional Shared Cost Funding Agreement as required under the federal Workforce Innovation Opportunity Act (WIOA)
Dollar Amount and Fiscal Impact	Refer to Exhibit A for Infrastructure Cost Budget
Funding Source	N/A
Duration	July 1, 2018 – June 30, 2019
Previous Board Action	July 6, 2017
Strategic Plan Alignment	1. Build Public Trust Through Good Government 2. Grow a Vibrant Economy
Contact Person	Cindy Knudsen, Business & Economic Development, 503-742-4328

BACKGROUND AND SUMMARY:

This "Infrastructure and Additional Cost Sharing Funding Agreement" (IFA) meets the requirement under the federal Workforce Innovation Opportunity Act (WIOA) that American Job Centers (called "WorkSource Clackamas" in our county) delineate allocation and payment processes for both infrastructure and other shared costs for our mandated partners. Together with the Memorandum of Understanding signed in August 2017, this document will bring WorkSource Clackamas into compliance with WIOA standards for Program Year 2018 (July 1, 2018-June 30, 2019).

This IFA was the result of conversation and negotiation between Oregon's Workforce Boards, the Oregon Employment Department, and the Higher Education Coordinating Committee. This template has been reviewed and approved by the Oregon Department of Justice for our use.

This document includes two agreements: first, it extends the current status quo for cost sharing at WorkSource Clackamas by including only current lease agreements between co-located partners. Second, it includes "The MOU/IFA Version 2.0 Action Plan" (Exhibit E) wherein partners will engage in a five-step negotiation process reaching agreement by December 15, 2018 on a more extensive Infrastructure Funding Agreement consistent with WIOA mandates to be implemented on July 1, 2019.

This Agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board approve the Infrastructure and Additional Shared Cost Funding Agreement

Respectfully submitted,

Laura Zentner, CPA
Director, Business and Community Services

INFRASTRUCTURE AND ADDITIONAL SHARED COST FUNDING AGREEMENT

This Infrastructure and Additional Shared Cost Funding Agreement (“**Agreement**”), effective on July 1, 2018 (the “**Effective Date**”), is entered into by and among Clackamas Workforce Partnership, an Oregon non-profit corporation, acting as the Local Workforce Development Board (the “**Local WDB**”) for Clackamas County (the “**Local Area**”), the Clackamas County Board of County Commissioners, the chief elected official for the Local Area (“**CEO**”), and each other party whose name and signature appears on the signature pages hereof (each, a “**Party**” and, collectively, the “**Parties**”).

RECITALS

A. The federal Workforce Innovation and Opportunity Act (the “**WIOA**”) contemplates that the Local Workforce Development Board, the chief elected official, each entity (each a “**Required One-Stop Partner**” and, collectively, the “**Required One-Stop Partners**”) that carries out a program described in Section 121(b)(1)(B) of the WIOA, and other entities, carrying out a workforce development program, that are approved by the Local Workforce Development Board and the chief elected official (the “**Other One-Stop Partners**”) (the Required One-Stop Partners and the Other One-Stop Partners, each a “**One-stop Partner**” and, collectively, the “**One-Stop Partners**”) in a local area will enter into a Memorandum of Understanding as described in Section 121(c) of the WIOA and 20 CFR 678.500 to provide for the allocation among themselves and payment of the infrastructure costs of the “**One-Stop Centers**” contemplated by the WIOA and through which the One-Stop Partners deliver their workforce development programs (the “**Programs**”).

B. Under 20 CFR 678.420(b)(2), the allocation of One-Stop Center infrastructure costs among the One-Stop Partners must be based on (1) each One-Stop Partners’ proportionate use and relative benefit received, (2) federal cost principles, and (3) any local administrative cost requirements in the Federal law authorizing the One-Stop Partner's program.

C. If the Local Workforce Development Board, the chief elected official, and the One-Stop Partners in a local area fail to enter into an agreement for the allocation and payment, among the One-stop Partners, of the infrastructure costs of the One-Stop Center in their local area, the Governor will allocate the infrastructure costs among the One-Stop Partners in accordance with the process set forth in 20 CFR 678.731.

D. The WIOA also contemplates that the Local Workforce Development Board, the chief elected official, and the One-Stop Partners will enter in an agreement to provide for the allocation and payment, among the One-stop Partners, of additional shared costs relating to the operation of the One-Stop Centers. These costs must include the costs of applicable career services and may include any other shared services that are authorized for and commonly provided through the One-Stop Partner Programs.

E. Under 20 CFR 678.760, the allocation of One-Stop Center operating costs among the One-Stop Partners must be based on the proportion of benefit received by each of the One-Stop Partners, consistent with applicable federal law.

F. The CEO, the Local WDB, and the One-Stop Partners party hereto (the “**Local One-Stop Partners**”), after completing their negotiations and discussions on the allocation of infrastructure costs and operating costs for the One-Stop Center in the Local Area, desire to enter into this agreement to implement their allocation arrangement and provide for payment of the One-Stop infrastructure costs and operating costs in accordance with the requirements of the WIOA and its implementing regulations.

NOW THEREFORE, the Parties hereby agree as follows:

AGREEMENT

ARTICLE 1

BUDGET, ALLOCATION AND PAYMENT OF INFRASTRUCTURE COSTS

Section 1.1 **Infrastructure Cost Budget.** The Infrastructure Cost Budget for the One-Stop Center in the Local Area for Program Year 2018 (July 1, 2018, to June 30, 2019) (an “**Infrastructure Cost Budget**”) is set forth on Exhibit A. The Parties may amend this Agreement to add Infrastructure Cost Budgets for future program years through preparation of a written Infrastructure Cost Budget for the year and execution thereof by each of the Parties. Upon such execution, the Infrastructure Cost Budget shall be deemed added to Exhibit A and shall serve as the Infrastructure Cost Budget for the specified year for purposes of this Agreement. Subject to earlier termination as provided herein, this Agreement shall continue to govern the Parties rights and obligations related to infrastructure costs of the One-Stop Center in the Local Area so long as Exhibit A includes an Infrastructure Cost Budget for the then-current program year. This Agreement shall automatically terminate at the beginning of the first program year lacking an Infrastructure Cost Budget in Exhibit A.

Section 1.2 **Infrastructure Cost Allocation.** The costs in an Infrastructure Cost Budget are allocated among the Local One-Stop Partners as set forth in Exhibit B (the “Infrastructure Cost Allocation”). At the request of the Local WDB from time to time, but not less frequently than once per year, the Parties shall review infrastructure costs incurred for operation of the One-Stop Center in the Local Area and the allocation of those costs under the Infrastructure Cost Allocation to confirm that the infrastructure costs actually allocated to each Local One-Stop Partner are proportionate to that Local One-Stop Partner’s use of the One-Stop Center and the relative benefit received by each Local One-Stop Partner and the Local One-Stop Partner’s programs and activities. As a result of such review, the Parties shall make any necessary adjustments to the Infrastructure Cost Allocation through amendment of this Agreement. If the Parties fail to reach agreement on the need for adjustments to the Infrastructure Cost Allocation, the Local WDB shall convene a meeting among representatives of Parties to resolve the disagreement.

Section 1.3 **Infrastructure Cost Payment.**

1.3.1 Infrastructure Cost Contributions. No later than 30 days after the end of each calendar quarter, each Local One-Stop Partner shall notify the Local WDB in writing of any cash or in-kind contributions to cover costs included in the applicable Infrastructure Cost Budget that the Local One-Stop Partner made during the prior calendar quarter, any information needed from that Local One-Stop Partner to apply the Infrastructure Cost Allocation for the quarter, and supporting documentation for such in-kind contributions and cost allocation information as the Local WDB may reasonably request. Any in-kind contributions will be valued consistent with 2 CFR 200.306; provided, however, to the extent allowed, if any, by 2 CFR 200.306, the Local One-Stop Partners will negotiate and agree upon the identification, inclusion, and value of in-kind contributions. If the Local One-Stop Partners cannot agree on whether a proposed in-kind contribution should be included, or its value, the in-kind contribution will not be applied to the calculation to determine the amount by which that Local One-Stop Partner's in-kind contributions exceed its allocation of the infrastructure costs for the quarter. A Local One-Stop Partner's failure to notify the Local WDB of such in-kind contributions and cost allocation information within 45 days of the end of the calendar quarter shall, at the discretion of the Local WDB, constitute that Local One-Stop Partner's waiver of any right to payment for any amount by which that Local One-Stop Partner's in-kind contributions exceed its allocation of the infrastructure costs for the quarter.

1.3.2 Payment of Infrastructure Costs. No later than 45 days after the end of each calendar quarter and based on the information received from the Local One-Stop Partners under Section 1.3.1, the applicable Infrastructure Cost Budget, and the Infrastructure Cost Allocation, the Local WDB shall notify each Local One-Stop Partner of the total infrastructure costs incurred during the quarter, by Infrastructure Cost Budget line item, and of the portion of those costs allocated to that Local One-Stop Partner. Such notification shall identify and reflect any cash or in-kind contributions to the infrastructure costs of the One-Stop Center received from other than a Local One-Stop Partner during the quarter (which reduce the overall costs otherwise allocated to the Local One-Stop Partners), with any in-kind contributions valued consistent with 2 CFR 200.306 and Section 1.3.1. If the portion of the infrastructure costs allocated to a Local One-Stop Partner for the quarter exceeds the Local One-Stop Partner's contributions to infrastructure costs during the quarter, that Local One-Stop Partner shall, subject to Article 3, pay the difference to the Local WDB no later than 45 days after receipt of notification from the Local WDB of the infrastructure costs for the quarter. If the portion of the infrastructure costs allocated to a Local One-Stop Partner for the quarter is less than the Local One-Stop Partner's contributions to infrastructure costs during the quarter, the Local WDB shall, subject to Article 3, pay the difference to that Local One-Stop Partner promptly after the Local WDB's receipt of sufficient funds from the other Local One-Stop Partners to make that payment.

1.3.3 Cost Overruns. If the Local WDB anticipates that future infrastructure costs for a program year will exceed the Infrastructure Cost Budget for that year (either overall or on a line-item basis), the Local WDB shall notify each Party and recommend that the Parties negotiate an adjusted Infrastructure Cost Budget for the year. If the Parties reach agreement on an adjusted Infrastructure Cost Budget for the year, the Parties may amend this Agreement to replace the existing Infrastructure Cost Budget for the year with the adjusted Infrastructure Cost Budget for the year through execution by each of the Parties of a written adjusted Infrastructure Cost Budget for the year. Upon such execution, the adjusted Infrastructure Cost Budget for that year shall be deemed to replace the existing Infrastructure Cost Budget for that year. Regardless of whether the Parties agree on an adjusted Infrastructure Cost Budget for a year, any cost (of a type included in the Infrastructure Cost Budget)

overrun incurred while this Agreement is in effect shall be allocated to each Local One-Stop Partner in the same proportion as such cost would be allocated under this Agreement if it were not a cost overrun. If the Parties agree on an adjusted Infrastructure Cost Budget after the expiration of the year for which that budget is applicable, the Parties may amend this Agreement to replace the existing Infrastructure Cost Budget for that prior year and shall otherwise adjust their cost allocations and later in time payments so as to reconcile or “true up” amounts actually received or paid with the adjusted budget. The Parties intend to limit the total amount of any infrastructure cost adjustments for a year to no more than a ten percent (10%) increase to the Infrastructure Cost Budget allocation of each Local One-Stop Partner.

ARTICLE 2

BUDGET, ALLOCATION AND PAYMENT OF ADDITIONAL SHARED COSTS

Section 2.1 **Additional Shared Cost Budget.** The Additional Shared Cost Budget for the One-Stop Center in the Local Area for Program Year 2017 (July 1, 2017, to June 30, 2018) (an “**Additional Shared Cost Budget**”) is set forth on Exhibit C. The Parties may amend this Agreement to add Additional Shared Cost Budgets for future program years through preparation of a written Additional Shared Cost Budget for the year and execution thereof by each of the Parties. Upon such execution, the Additional Shared Cost Budget shall be deemed added to Exhibit C and shall serve as the Additional Shared Cost Budget for the specified year for purposes of this Agreement. Subject to earlier termination as provided herein, this Agreement shall continue to govern the Parties rights and obligations related to additional shared costs of the One-Stop Center in the Local Area so long as Exhibit C includes an Additional Shared Cost Budget for the then-current program year. This Agreement shall automatically terminate at the beginning of the first program year lacking an Additional Shared Cost Budget in Exhibit C.

Section 2.2 **Additional Shared Cost Allocation.** The costs in an Additional Shared Cost Budget are allocated among the Local One-Stop Partners as set forth in Exhibit D (the “Additional Shared Cost Allocation”). At the request of the Local WDB from time to time, but not less frequently than once per year, the Parties shall review additional shared costs incurred for operation of the One-Stop Center in the Local Area and the allocation of those costs under the Additional Shared Cost Allocation to confirm that the additional shared costs actually allocated to each One-Stop Partner are proportionate to the benefit received by that One-Stop Partner’s use of the One-Stop Center. As a result of such review, the Parties shall make any necessary adjustments to the Additional Shared Cost Allocation through amendment of this Agreement. If the Parties fail to reach agreement on the need for adjustments to the Additional Shared Cost Allocation, the Local WDB shall convene a meeting among representatives of Parties to resolve the disagreement.

Section 2.3 **Additional Shared Cost Payment.**

2.3.1 **Additional Shared Cost Contributions.** No later than 30 days after the end of each calendar quarter, each One-Stop Partner shall notify the Local WDB in writing of any cash or in-kind contributions to cover costs included in the applicable Additional Shared Cost Budget that the One-Stop Partner made during the prior calendar quarter, any information needed from that One-Stop Partner to apply the Additional Shared Cost Allocation for the quarter, and supporting documentation for such contributions and information as the Local WDB may reasonably request. Any in-kind contributions will be valued consistent with 2 CFR 200.306; provided, however, to the extent allowed,

if any, by 2 CFR 200.306, the Local One-Stop Partners will negotiate and agree upon the identification, inclusion, and value of in-kind contributions. If the Local One-Stop Partners cannot agree on whether a proposed in-kind contribution should be included, or its value, the in-kind contribution will not be applied to the calculation to determine the amount by which that Local One-Stop Partner's in-kind contributions exceed its allocation of the infrastructure costs for the quarter. A One-Stop Partner's failure to notify the Local WDB of such contributions and information within 30 days of the end of the calendar quarter shall, at the discretion of the Local WDB, constitute that Local One-Stop Partner's waiver of any right to payment for any amount by which that Local One-Stop Partner's in-kind contributions exceed its allocation of the additional shared costs for the quarter.

2.3.2 Payment of Additional Shared Costs. No later than 45 days after the end of each calendar quarter and based on the information received from the Local One-Stop Partners under Section 2.3.1, the applicable Additional Shared Cost Budget, and the Additional Shared Cost Allocation, the Local WDB shall notify each Local One-Stop Partner of the total additional shared costs incurred during the quarter, by Additional Shared Cost Budget line item, and of the portion of those costs allocated to that Local One-Stop Partner. Such notification shall identify and reflect any cash or in-kind contributions to the additional shared costs of the One-Stop Center received from other than a Local One-Stop Partner during the quarter (which reduce the overall costs otherwise allocated to the Local One-Stop Partners), with any in-kind contributions valued consistent with 2 CFR 200.306 and Section 2.3.1. If the portion of the additional shared costs allocated to a Local One-Stop Partner for the quarter exceeds the Local One-Stop Partner's contributions to additional shared costs during the quarter, that Local One-Stop Partner shall, subject to Article 3, pay the difference to the Local WDB no later than 30 days after receipt of notification from the Local WDB of the additional shared costs for the quarter. If the portion of the additional shared costs allocated to a Local One-Stop Partner for the quarter is less than the Local One-Stop Partner's contributions to additional shared costs during the quarter, the Local WDB shall, subject to Article 3, pay the difference to that Local One-Stop Partner promptly after the Local WDB's receipt of sufficient funds from the other Local One-Stop Partners to make that payment.

2.3.3 Cost Overruns. If the Local WDB anticipates that future additional shared costs for a program year will exceed the Additional Shared Cost Budget for that year (either overall or on a line-item basis), the Local WDB shall notify each Party and recommend that the Parties negotiate an adjusted Additional Shared Cost Budget for the year. If the Parties reach agreement on an adjusted Additional Shared Cost Budget for the year, the Parties may amend this Agreement to replace the existing Additional Shared Cost Budget for the year with the adjusted Additional Shared Cost Budget for the year through execution by each of the Parties of a written adjusted Additional Shared Cost Budget for the year. Upon such execution, the adjusted Additional Shared Cost Budget for that year shall be deemed to replace the existing Additional Shared Cost Budget for that year. Regardless of whether the Parties agree on an adjusted Additional Shared Cost Budget for a year, any cost (of a type included in the Additional Shared Cost Budget) overrun incurred while this Agreement is in effect shall be allocated to each Local One-Stop Partner in the same proportion as such cost would be allocated under this Agreement if it were not a cost overrun. If the Parties agree on an adjusted Additional Shared Cost Budget after the expiration of the year for which that budget is applicable, the Parties may amend this Agreement to replace the existing Additional Shared Cost Budget for that prior year and shall otherwise adjust their cost allocations and later in time payments so as to reconcile or "true up" amounts actually received or paid with the adjusted budget. The Parties intend to limit the

total amount of any additional shared cost adjustments for a year to no more than a ten percent (10%) increase to the Additional Shared Cost Budget allocation of each Local One-Stop Partner.

ARTICLE 3 CONDITIONS TO PAYMENT OBLIGATIONS

If a Party is an agency of the State of Oregon, then such Party's payment obligations under this Agreement are conditioned on the Party receiving sufficient funding, appropriations and other expenditure authorizations to allow that Party, in the reasonable exercise of its administrative discretion, to make the payment. If a Party is a local government, then such Party's payment obligations under this Agreement are conditioned on the Party receiving from its governing body sufficient funding, appropriations and other expenditure authorizations to allow that Party, in the reasonable exercise of its administrative discretion, to make the payment. If a Party is a local workforce development board that is subject to debt limitations imposed, or expenditures or funding authorized, by law, because of its unique relationship with local governments, then such Party's obligations under this Agreement are conditioned on that Party receiving sufficient funding, appropriations or other expenditure authorizations to allow that Party, in the exercise of its reasonable administrative discretion, to make the payment.

ARTICLE 4 TERM AND TERMINATION

Section 4.1 **Term.** This Agreement shall remain in effect until the earlier of (1) its termination under Sections 1.1 or 2.1 or (2) a Party's exercise of its right to terminate this Agreement under this Article 4.

Section 4.2 **Termination.** This Agreement may be terminated as follows:

4.2.1 **Notice.** A Party may terminate this Agreement effective upon 90 days advance written notice to each other Party.

4.2.2 **Non-appropriation.** A Party may terminate this Agreement effective upon written notice to each other Party, if a Party fails to receive sufficient funding, appropriations and other expenditure authorizations to allow that Party, in the reasonable exercise of its administrative discretion, to continue making payments under this Agreement, as further described in Article 3.

4.2.3 **Change in Law.** A Party may terminate this Agreement effective upon written notice to each other Party, if federal or state laws, rules, regulations or guidelines are modified or are interpreted by the Federal Grant recipient agencies in such a way that the financing of One-Stop Center infrastructure costs as contemplated by this Agreement is no longer allowable.

4.2.4 **Non-compliance.** A Party may terminate this Agreement effective upon 30 days advance written notice to each other Party, if a Party fails to comply with its obligations under this Agreement, including a failure to make a required payment, and such failure remains uncured at the end of the 30-day period.

ARTICLE 5

EFFECT OF TERMINATION

Section 5.1 **Costs Incurred.** Termination of this Agreement shall not affect a Local One-Stop Partner's responsibility under this Agreement for infrastructure costs and additional shared costs incurred prior to the date of termination. Each Local One-Stop Partner shall continue to be responsible for its allocable portion of such costs in accordance with the terms and conditions of Articles 1 and 2.

Section 5.2 **Default Cost Allocation.** Unless the Parties have entered into a successor agreement for the allocation of infrastructure costs for the One-Stop Center in the Local Area, upon termination of this Agreement, the Local WDB shall so notify the Governor and such infrastructure costs will be allocated by the Governor among the Parties in accordance with the process set forth in 20 CFR 678.730 to 750. There is no default funding allocation for additional shared costs, in the event of termination of this Agreement.

ARTICLE 6 GENERAL

Section 6.1 **Counterparts.** This Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

Section 6.2 **Survival.** Articles 5 and 6 shall survive termination of this Agreement.

Section 6.3 **Notice.** Any notice required or permitted under this Agreement shall be in writing and shall be deemed effective (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for "next day" delivery, (3) two business days after having been deposited in the United States mail as certified or registered mail, or (4) when transmitted by email, addressed to a Party as set forth on the signature pages hereof.

Section 6.4 **Records and Inspection.** Each Local One-Stop Partner shall keep proper books of account and records on all costs in an Infrastructure Cost Budget that it incurs prior to the date of termination of this Agreement. Each Local One-Stop Partner will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records until the later of: (i) termination of this Agreement, (ii) the date that all disputes, if any, arising under this Agreement have been resolved or (iii) the period required by any applicable records retention or similar laws. Each Party will permit each other Party and/or its duly authorized representatives to inspect, review and make excerpts and transcripts of such books of account and records. Access to these records is not limited to the required retention period. The authorized representatives shall have access to the records at any reasonable time for as long as the records are maintained.

Section 6.5 **Successors and Assigns.** No Party may assign this Agreement or any right hereunder or interest herein, in whole or in part, without the prior written consent of each other Party. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.

Section 6.6 **Governing Law, Jurisdiction, Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to its conflicts of law principles. Any legal action regarding this Agreement must be brought and conducted in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in the Circuit Court in another Oregon county). Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the preceding paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

Section 6.7 **Modification; Prior Grant Agreements; Headings.** This Agreement may not be modified or amended except by an instrument in writing signed by each Party. This Agreement reflects and sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter. The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

Section 6.8 **Validity; Severability.** If any provision of this Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the Parties to the extent possible without the invalid provision.

Section 6.9 **Exhibits.** The exhibits to this Agreement are, by this reference, incorporated into and deemed a part of this Agreement as if they were fully set forth in the text hereof. If the language in an Exhibit conflicts with or is inconsistent with language not appearing in an Exhibit, the latter shall control.

Section 6.10 **Time of Essence.** Time is of the essence of this Agreement.

Section 6.11 **Relationship of the Parties.** Nothing contained in this Agreement or any acts of the Parties hereto shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture or of any other association other than that of independent contracting parties.

Section 6.12 **No Third Party Beneficiary Rights.** No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Jessica Amaya, SSP Program Manager
For Department of Human Services – Self-Sufficiency
jessica.amaya@dhsosha.state.or.us

Doug Franklin, MS CRC, VR Clackamas Branch Manager
For Department of Human Services – Vocational Rehabilitation
douglas.r.franklin@dhsosha.state.or.us

David Cheveallier, President/CEO
For Easter Seals Oregon
dcheveallier@or.easterseals.com

Holley Oglesby, Designated Procurement Officer
For Higher Education Coordinating Commission
holley.a.oglesby@state.or.us

Jim Pfarrer, Division Director Workforce Operations
For Oregon Employment Department
james.f.pfarrer@oregon.gov

Bridget Dazey, Executive Director,
For Clackamas Workforce Partnership, the Clackamas County Workforce Development Board
Bridget.dazey@clackamasworkforce.org

Jim Bernard, Chair
On Behalf of the Clackamas County Board of County Commissioners
jbernard@clackamas.or.us

Rich Nannini, Project Director
For Dynamic Educational Systems, Inc.
rnannini@nwdesi.org

Chuck Robbins, Director
For Housing Authority of Clackamas County
chuckrob@co.clackamas.or.us

Jada Rupley, Superintendent
For Clackamas Education Service District
jrupley@clackesd.k12.or.us

Dacia Johnson, Executive Director
For Oregon Commission for the Blind
dacia.johnson@state.or.us

**EXHIBIT A
INFRASTRUCTURE COST BUDGET**

On or about July 1, 2018 we will have an MOU/IFA in place covering colocated workforce partners. The financial arrangements will be reflected in one of three ways: 1) the lease, 2) partner sharing agreements, or 3) other arrangements. These arrangements will be captured in this ever-evolving exhibit. Leases, costs and allocations change and, hopefully, our partnerships will expand and there will be a higher level of co-location over time.

In the table below, partner agreements are listed based on their status of being in place, in process or anticipated.

L (Lease) P (PCSA) O (Other)	Party #1	Party #2	Annual Cost	Currently Executed	In Process	Expected Date	Anticipated New or Mod	Expected Date
L	Oregon Employment Dept	Clackamas Workforce Partnership	\$5277.60	X				
P	Oregon Employment Dept	Clackamas Workforce Partnership	\$3933.60	X				
L	Oregon Employment Dept	Dynamic Educational Systems	\$978.00		X	7/15/18		
P	Oregon Employment Dept	Dynamic Educational Systems	\$1536.00	X				
L	Oregon Employment Dept	Easter Seals	\$922.08	X				
P	Oregon Employment Dept	Easter Seals	\$842.40	X				

Next Steps.

In order to determine the infrastructure for non-colocated workforce partners (NCWP’s), the Parties agree to the process described in “MOU/IFA Version 2.0,” included in this Agreement as Exhibit E. The intent of the process described in Exhibit E is to arrive at said costs to take effect July 1, 2019 unless the Parties agree to an earlier date. Once agreement is reached, that agreement or set of agreements for infrastructure costs for NCWP’s shall be added to this Exhibit A.

EXHIBIT B
INFRASTRUCTURE COST ALLOCATION

Infrastructure cost allocation is provided through the documents identified in Exhibit A.

EXHIBIT C
ADDITIONAL SHARED COST BUDGET

The contents and structure of Exhibit C & D will be determined in accordance with the agreed upon action plan described in Exhibit E.

EXHIBIT D
ADDITIONAL SHARED COST ALLOCATION

The contents and structure of Exhibit C & D will be determined in accordance with the agreed upon action plan described in Exhibit E.

EXHIBIT E

THE MOU/IFA VERSION 2.0 ACTION PLAN

On or about July 1, 2018, a MOU/IFA will be in place covering co-located workforce partners. The financial arrangements will be reflected in one of three ways: 1) leases, 2) partner sharing agreements, or 3) other arrangements. These arrangements will be captured in an ever evolving exhibit. Leases, costs and allocations change and partnerships will expand and there will be a higher level of co-location over time.

On or about July 1, 2018, work will begin on an IFA covering non co-located workforce partners (NCWP's). The goal is to reach agreement by December 15, 2018.

There are nine workforce areas and a multitude of NCWP's. Some NCWP's are State agencies and some are local organizations. Some are public entities, some are nonprofits, and a few are private corporations (e.g. for-profit companies operate many Jobs Corps centers). Some operate on a July 1st budget cycle and others may be on a school year or a calendar year. Recognizing the complexity, the "MOU/IFA Version 2.0" process should be as simple as possible.

There are five sequential tasks:

- Step 1: Agreement on the core WSO philosophy – every partner customer is a workforce system customer. We will serve every customer utilizing all our combined resources as effectively as possible. Validating the mechanics of how this will work is the first task. WIOA requires that NCWP's offer their core services in at least one comprehensive center per workforce area. Those services may either be provided using technology or through cross training. Mere cross referral – "You need to go across town to the XYZ building" – isn't enough.
- Step 2: Estimating the infrastructure and other (mostly personnel) costs for the process agreed to in Step 1 comes next. This may involve sharing some technology, telephone, or "resource coordination" costs.
- Step 3: Once the costs to be potentially shared are identified and grouped, an allocation method can be developed which is simple and fair. Costs are to be shared based upon the estimated benefit to each partner's customers. Service numbers can be used (if available and equitable, a big "if"), the relative number of staff participating in the shared service provision process can be used or some other methodology. Sometimes the costs aggregated in Step 2 are small enough that NCWP's do not have a preference which allocation methodology is used so long as it is simple and predicable.
- Step 4: Agreement on the process for gathering and collecting costs, including periodic reconciliation. Identifying which agency will handle reconciliation. Identifying how adjustments occur and how disputes be resolved? Identifying how often the agreement is reviewed and revised?
- Step 5: Getting the MOU/IFA "terms and conditions" executed. There will be multiple agencies involved making agreement on language a challenge.

Two separate negotiation approaches would begin this July – one involving State agency NCWP's (DHS, Adult Ed, Voc Rehab, etc.) and a second at the local level for local agencies (Job Corps, Tribes, etc.). It is important to decide up front which NCWP's belong in each group.

In the “two groups” approach, the “State Agency” work group would include 1) two representatives from each State agency, one with program authority and another with budget authority; 2) three or four WDB representatives tasked with coming up with an agreement all nine can live with; 3) Karen Humelbaugh or her designee; 4) a neutral facilitator and a neutral note taker/disseminator. It is important that the group not get too big. It is equally important that the process be transparent and allow for input from partners and WDB’s not in attendance. The “MOU/IFA Version 1.0” process for co-located partners seems to have worked out so perhaps a similar workgroup should be constituted.

The second prong of the negotiation strategy – for local agencies - would happen in each of the nine workforce areas and would be led by WDB staff. Some agreements may already have been struck. Advice and technical assistance would be provided upon request. Some local workforce areas may elect to handle the “local agency” negotiation together.

Timing ...

- 1) July ... convene the State Agency work group. Convene Local Agency work groups. Care should be taken (to the extent possible) to ensure that those who attend have the authority to make commitments.
- 2) August ... Complete Step 1, agreement on the WSO philosophy and shared service delivery mechanics. If agreement cannot be reached, agree to disagree and come up with a fair and speedy way to reach resolution.
- 3) September ... Complete Steps 2 and 3, shared costs and the allocation methodology.
- 4) October ... Complete Step 4 and agree on “terms and conditions” in Step 5.
- 5) November ... Execute the agreement. It will take effect July 1, 2019 unless the parties agree to a different date. Some agencies may not have room to budget for costs until their fiscal year begins and this will be addressed when and if it comes up.
- 6) December 15th: Full and final resolution of any disputes.



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

July 10, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for Service Level Agreement Amendment #2 between
Clackamas Broadband eXchange and CCFD #1

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval for an amendment #2 of a Service Level Agreement (SLA) with the Clackamas County Fire District #1 (CCFD #1) for a new dark fiber connection to the new training facility on 130 th Ave in Clackamas.
Dollar Amount and Fiscal Impact	CCFD #1 will pay a recurring lease fee of \$3,060.00 annually.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget.
Duration	Effective upon signature by the board, the SLA is automatically renewed on a year to year basis.
Previous Board Action	Board previously approved CBX to build and maintain a dark fiber network for the CCFD #1 in CCFD #1 amendment #1.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Build public trust through good government.
Contact Person	Dave Devore (503)723-4996

BACKGROUND:

CBX is proposing to provide a new fiber lateral to extend the CBX network for CCFD #1 to connect the new training facility located on 130th Ave in Clackamas.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this new fiber connections for CCFD #1. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

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

Sincerely,

Dave Cummings
CIO Technology Services

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

Clackamas Fire District #1

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to Clackamas Fire District #1 (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

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

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

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables at each Customer premises.

3. Service Description

Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A. Each site listed in Appendix A will have a single mode fiber termination.

4. Construction and Installation Requirements

- a. County, when installing fiber optic cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the fiber optic cable from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.

- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the County's fiber optic cables used to provision the service within each site.
- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the fiber optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

5. Term of Agreement

At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated with 90 days' notice as herein provided, this agreement shall continue to July 1 following the date of commencement, and shall be automatically renewed on July 1 of each subsequent year, for a term of one year, at the County's then-current rate schedule.

6. Rates

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

7. **Payment Options**

a. **Annual Payments**

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

b. **Alternative Payment Frequency**

If Customer demonstrates that prepaid billings present a hardship, Customer may prepay quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

8. **Fiber Maintenance**

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

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

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

9. **Confidentiality**

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

10. Content Control and Privacy

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

11. Assignment and Successors

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

12. Damage

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

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

13. Force Majeure

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

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE

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

15. Public Contracting Provisions

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

This Agreement is further 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.

16. Non-Appropriation

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that any obligation of Customer to obtain services as provided herein is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

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

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.

- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

- 1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
 - b. Failure to pay any sums due under this Agreement.
- 2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

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

22. No recourse Against the Grantor

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

23. Notice

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

addressed as follows:

Notice to the County

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

with a copy to

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

Notice to the Customer

[Name or Title of Individual]
[Customer]
[Address]
[City and Zip Code]
[Fax Number]

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

24. Whole Contract

THE COUNTY AND THE CUSTOMER ARE PARTIES TO SERVICE LEVEL AGREEMENTS DATED April 19th 2012 and April 5th 2018. WITH THE EXCEPTION OF THE AGREEMENTS SPECIFIED HEREIN, THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL OTHER PRIOR AGREEMENTS OR PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

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

Clackamas County

By (signature): _____

Name: _____

Title: _____

Date: _____

Customer

_____ Clackamas Fire District #1 _____

By (signature): 

Name (print): Oscar R Hicks

Title: IT Director

Date: 7/10/2018

APPENDIX A

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

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

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A.

3. Service Changes and Conversions

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

4. Annual Recurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015	CCFD #1 15800 SE 130 th Ave Clackamas, Or 97015	One Pair (two) dark fibers	\$255.00

5. Nonrecurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015	CCFD #1 15800 SE 130 th Ave Clackamas, Or 97015	Construction	\$4,660.00

6. Late Payment Interest

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

7. **Annual Consumer Price Index (CPI) Adjustments**

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

Remainder of this page intentionally left blank.

APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

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

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

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

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
 - b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
 - c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
 - d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
 - e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.
5. Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

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

b. **Field Splice Standards**

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

c. **Span Loss**

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

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

A = Attenuation per KM at 1550 nm

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

N = Number of splices in a span

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

Remainder of this page intentionally left blank.