

# AGENDA

**Thursday, July 27, 2017 - 10:00 AM**  
**BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2017-93

**CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

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

**II. READING AND ADOPTION OF PREVIOUSLY APPROVED LAND USE ORDINANCE**

*(No public testimony on this item)*

1. Adoption of Zoning & Development Ordinance 264, Amendments to the Zoning & Development Ordinance to Implement Changes to the County's Marijuana Related Land Use Regulations (Nathan Boderman, County Counsel) *previously approved May 17, 2017*

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

**A. Health, Housing & Human Services**

1. Approval of a Federal Sub-recipient Grant Agreement with CODA, Inc. for Housing Assistance and Services for Residents in Alcohol and Drug Recovery – *Behavioral Health*
2. Approval of an Agency Service Contract with Cascadia Behavioral Healthcare for Assertive Community Treatment Programs – *Behavioral Health*
3. Approval of a Federal Sub-recipient Grant Agreement with CODA, Inc. for Housing Assistance and Services for Residents in Alcohol and Drug Recovery – *Behavioral Health*
4. Approval of an Intergovernmental Sub-recipient Agreement with City of Sandy/Sandy Senior & Community Center to Provide Social Services for Clackamas County Residents age 60 and over – *Social Services*
5. Approval of a Local Grant Agreement with Children's Center for Child Abuse Medical Assessments – *Children, Youth & Families*

6. Approval of Amendment No.1 of the Intergovernmental Agreement with Gladstone School District for Kindergarten Partnership Innovation Services – *Children, Youth & Families*
7. Approval of Amendment No.2 of the Sub-recipient Agreement with Metropolitan Family Services for Family Resource Coordination Services – *Children, Youth & Families*
8. Approval of Amendment No.1 of the Sub-recipient Agreement with Northwest Family Services for Kindergarten Partnership Innovation Services – *Children, Youth & Families*
9. Approval of Amendment No. 2 of the Sub-recipient Agreement with Northwest Family Services for Family Resource Coordination Services – *Children, Youth & Families*
10. Approval of Amendment No.1 of the Sub-recipient Agreement with Todos Juntos for Kindergarten Partnership Innovation Services – *Children, Youth & Families*
11. Approval of Amendment No. 2 of the Sub-recipient Agreement with Todos Juntos for Family Resource Coordinator Services – *Children, Youth & Families*

**B. Department of Transportation & Development**

1. Approval of Amendment No. 1 to the Intergovernmental Agreement No. 30447 with Oregon Department of Transportation for the OR-213 at Union Mills Road Project
2. Approval of Supplemental Project Agreement No. 31952 with Oregon Department of Transportation for the Trolley Trail Bridge Gladstone to Oregon City Project
3. Approval of a Goods and Services Contract with Moore Excavation, Inc., for Trenchless Technology - *Procurement*
4. Approval of a Goods and Services Contract with Armadillo Boring, Inc., for Trenchless Technology - *Procurement*

**C. Finance Department**

1. Approval of the Contract Documents with Johnson Controls, Inc., for Planned Services to Central Cooling system on the Red Soils Campus - *Procurement*

**D. Community Corrections**

1. Approval of an Intergovernmental Agreement between Clackamas County Community Corrections and the Housing Authority of Clackamas County for Work Crew Services

**E. County Counsel**

1. Transfer of a Surplus Parcel of Land Located on Salmonberry Drive in the Vicinity of South End Road

**IV. DEVELOPMENT AGENCY**

1. Approval of an Intergovernmental Agreement with CCSD No. 1 to Transfer Easements for Wetland Mitigation Services and Option to Purchase Property

**V. WATER ENVIRONMENT SERVICES**

*(Service District No. 1)*

1. Approval of Amendment No. 2 to the Intergovernmental Agreement between Clackamas County Service District No. 1 and Water Environment Services and Clackamas County for Facilities Management and Maintenance (CCSD#1)
2. Approval of Amendment No. 2 to the Intergovernmental Agreement between Clackamas County Service District No. 1 and Water Environment Services and Clackamas County for Facilities Management and Maintenance (WES)
3. Approval of an Intergovernmental Agreement between Clackamas County Service District No. 1 and Oak Lodge Water Services District for Sanitary Sewer and Surface Water Management Services
4. Approval of an Intergovernmental Agreement with the Clackamas County Development Agency to Provide Wetland Mitigation as a Component of the Carli Creek Enhancement and Water Quality Project in Return for Easements and Land Transfer
5. Approval of a Public Improvement Contract between Clackamas County Service District No. 1, the Tri-City Service District, Water Environment Services and Stettler Supply Company for the Tri-City Blower System Upgrades Project – *Procurement*
6. Approval of a Public Improvement Contract between Clackamas County Service District No. 1 and Elting Northwest, Inc., for the Carli Creek Enhancement and Water Quality Project - *Procurement*

**VI. COUNTY ADMINISTRATOR UPDATE**

**VII. COMMISSIONERS COMMUNICATION**

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



**OFFICE OF COUNTY COUNSEL**

**PUBLIC SERVICES BUILDING**  
 2051 KAEN ROAD OREGON CITY, OR 97045

July 27, 2017

Board of County Commissioners  
 Clackamas County

Members of the Board:

Adoption of Zoning and Development Ordinance 264, Amendments to the  
 Zoning and Development Ordinance to Implement Changes to the County's  
Marijuana-Related Land Use Regulations

**Stephen L. Madkour**  
 County Counsel

**Kathleen Rastetter**  
**Chris Storey**  
**Scott C. Ciecko**  
**Alexander Gordon**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Christina Thacker**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
 Assistants

<b>Purpose/Outcomes</b>	Amend the ZDO
<b>Dollar Amount and Fiscal Impact</b>	None
<b>Funding Source</b>	Not Applicable
<b>Duration</b>	Indefinitely
<b>Previous Board Action</b>	The Board of County Commissioners held policy sessions on September 27, 2016, November 22, 2016, and July 11, 2017; held a public hearing on March 22, 2017, and May 17, 2017; and discussed it at a business meeting on June 8, 2017.
<b>Strategic Plan Alignment</b>	Build public trust through good government.
<b>Contact Person</b>	Jennifer Hughes, 503-742-4518
<b>Contract No.</b>	Not Applicable

**BACKGROUND:**

In November 2014, Oregon voters legalized recreational marijuana. (Medical marijuana has been legal since 1998.) The Oregon Liquor Control Commission (OLCC) was required to begin accepting license applications to produce, process, wholesale and retail recreational marijuana on January 4, 2016. In anticipation of this, the county undertook a six-month program of stakeholder and public outreach to develop land use regulations for marijuana businesses. Following several public hearings, the Board of County Commissioners (BCC) adopted those regulations in December 2015, with effective dates in January (recreational marijuana) and March (medical marijuana) 2016.

It was anticipated that implementation would result in ideas for refinement of the regulations. Accordingly, the BCC included in this year's Planning and Zoning Division work program a project to consider additional ZDO amendments related to marijuana. The BCC held two study sessions on this topic last fall and directed staff to proceed with a narrowly defined set of amendments:

- Add fence design standards



- Allow the processing of marijuana concentrates and extracts in the EFU and AG/F zones, subject to a 100-foot minimum building setback, 150-foot offsite structure separation standard, 1,000-foot buffer from residential zones and 20-acre minimum lot size
- Amend as needed to conform to changes in state law/regulations
- Make minor edits to increase clarity of existing regulations

The Planning Commission conducted a public hearing on this matter on February 13, 2017. By a vote of 7-0, the Planning Commission recommended approval to the BCC of the fence design standards and the amendments to conform to changes in state law/regulations and increase clarity. By a vote of 5 – 1 with 1 abstention, the Planning Commission recommended approval to the BCC of the original proposal regarding marijuana processing in the EFU and AG/F zones with the following changes:

- Continue to prohibit marijuana extract processing in the EFU and AG/F zones
- Do not apply a 150-foot offsite structure separation standard, 1,000-foot buffer from residential zones or 20-acre minimum lot size to processing of marijuana concentrates, edibles or topicals

The result would be to add processing of marijuana concentrates as a permitted use and to apply a 100-foot minimum setback for buildings used to process marijuana concentrates, edibles and topicals.

The Board conducted a public hearing on this matter on March 22, 2017. By a vote of 5-0, the Board voted to approve the amendment package as recommended by the Planning Commission except that the Board deferred consideration of amendments related to processing of marijuana extracts and concentrates in the EFU and AG/F zones until May 17, 2017. Ordinance ZDO-263—adding fence design standards, implementing changes to conform to changes in state law and regulations, and containing edits to increase the clarity of existing regulations—was adopted by the Board on April 27, 2017. Under a new file number assigned for tracking purposes, ZDO-264, the Board took up deliberation on the processing of marijuana extracts and concentrates in the EFU and AG/F zones at a continued public hearing on May 17, 2017. By a vote of 3-0, the Board voted to approve the amendment package as recommended by the Planning Commission, which allows marijuana concentrate processing in the EFU and AG/F zones and adds a 100-foot setback standard for structures used for marijuana edible, topical and concentrate processing in the EFU and AG/F zones. In addition, the Board added a 10-acre minimum lot size for marijuana processing in the EFU and AG/F zones and limited the number of processors to one per lot in the EFU and AG/F zones. Ordinance ZDO-264 does not change the current prohibition on marijuana extract processing in the EFU and AG/F zones.

The one-processor limit would allow either one processor licensed by the Oregon Liquor Control Commission or one processor registered by the Oregon Health Authority, but not both. Also, language has been added to include any successor entity to the OLCC or OHA where references to those agencies are made. This will ensure that ZDO Section 841 remains consistent with possible changes to the names of these agencies or with any state-implemented changes in the agency with licensing/registration authority.

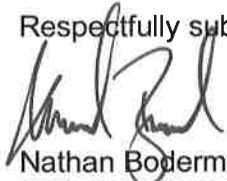
At the June 8, 2017, business meeting, the Board considered adoption of Ordinance ZDO-264. At that time, staff proposed that for consistency with the amendments adopted by the Board under Ordinance ZDO-263, the new minimum lot size, one-license limitation and minimum

setback standards be applied to the subject tract, rather than to each individual lot of record. This would have permitted an applicant to aggregate contiguous lots under the same ownership for the purpose of complying with the standards. The Board expressed concern with this approach and tabled Ordinance ZDO-264 until a policy session could be held to further discuss the issue. On July 11, 2017, the policy session was held, and the Board directed staff to revise Ordinance ZDO-264 to provide that the standards for processing in the EFU and AG/F zones apply to a lot of record, rather than a tract. Staff has made the revisions.

**RECOMMENDATION:**

Staff recommends the Board adopt the attached ordinance.

Respectfully submitted,



Nathan Boderman  
Assistant County Counsel

**ORDINANCE NO. ZDO-264**

**An Ordinance Amending Sections 401, 407 and 841 of the  
Clackamas County Zoning and Development Ordinance**

WHEREAS, in November 2014, Oregon voters voted to permit the production, sale and use of recreational marijuana; and

WHEREAS, in order to comply with the state law mandate, in December 2015, the Board of County Commissioners adopted regulations for marijuana-related land uses and placed certain restrictions on development and activities that would have otherwise been permitted under state law; and

WHEREAS, those regulations took effect on January 4, 2016, and March 1, 2016, for recreational and medical marijuana, respectively; and

WHEREAS, recognizing that amendments to these regulations might be warranted, the Board of County Commissioners included an update project in the Planning and Zoning Division's work program and initiated proposed amendments at a policy session in November 2016; and

WHEREAS, the proposed amendments included fence design standards, changes to conform to changes in state law and regulations, edits to increase the clarity of existing regulations, and allowing the processing of marijuana concentrates and extracts in the Exclusive Farm Use and Ag/Forest zones; and

WHEREAS, after a duly-noticed public hearing on February 13, 2017, the Clackamas County Planning Commission recommended approval of amendments to the Zoning and Development Ordinance, except for allowing marijuana extract processing in the EFU and AG/F zones; and

WHEREAS, after a duly-noticed public hearing on March 22, 2017, the Board of County Commissioners orally approved the Planning Commission's recommendation for amendments including fence design standards, changes to conform to changes in state law and regulations, and edits to increase the clarity of existing regulations but deferred consideration of amendments related to concentrate and extract processing in the EFU and AG/F zones; and

WHEREAS, on April 27, 2017, the Board of County Commissioners adopted Ordinance ZDO-263 to implement the amendments orally approved on March 22, 2017; and



WHEREAS, at a continued public hearing on May 17, 2017, the Board of County Commissioners took up deliberation on the processing of marijuana extracts and concentrates in the EFU and AG/F zones and orally approved the processing of marijuana concentrates in the EFU and AG/F zones and the following standards for marijuana edible, topical, and concentrate processing in the EFU and AG/F zones: 100-foot minimum setbacks for structures used for processing, 10-acre minimum lot size, and no more than one processor per lot; now therefore

The Board of Commissioners of Clackamas County ordains as follows:

**Section 1:** Sections 401, 407 and 841 of the Clackamas County Zoning and Development Ordinance are hereby amended as shown in Exhibit A, hereto attached.

**Section 2:** This ordinance shall be effective on August 22, 2017.

ADOPTED this 27<sup>th</sup> day of JULY, 2017

BOARD OF COUNTY COMMISSIONERS

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Chair

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Recording Secretary



**Ordinance ZDO-264**  
**Zoning and Development Ordinance Amendments**

Text to be added is underlined. Text to be deleted is ~~strikethrough~~.

**401 EXCLUSIVE FARM USE DISTRICT (EFU)**

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401.01 PURPOSE

Section 401 is adopted to implement the policies of the Comprehensive Plan for Agriculture areas.

401.02 APPLICABILITY

Section 401 applies to land in the Exclusive Farm Use (EFU) District.

401.03 DEFINITIONS

Unless specifically defined in Subsection 401.03 or in Section 202, *Definitions*, words or phrases used in Section 401 shall be interpreted to give them the same meaning as they have in common usage and to give Section 401 its most reasonable application.

- A. Accessory Farm Dwelling: Includes all types of residential dwellings allowed by the applicable state building code and the number of dwelling units is determined by a land use decision.
- B. Agricultural Land: As defined in Oregon Administrative Rules (OAR) 660-33-0020.
- C. Commercial Farm: A farm unit with all of the following characteristics:
  - 1. The land is used for the primary purpose of obtaining a profit in money from farm use;
  - 2. The net income derived from farm products is significant; and
  - 3. Products from the farm unit contribute substantially to the agricultural economy, to agricultural processors, and to farm markets.
- D. Date of Creation and Existence: When a lot of record or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot of record or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot of record or tract.



- E. Dwelling: Unless otherwise provided in Section 401, a dwelling is a detached single-family dwelling or a manufactured dwelling.
- F. Farm Operator: A person who resides on and actively manages a “farm unit”.
- G. Farm Stand: A structure located on a part of the farm operation owned by the farm operator that is designed and used for the sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of the incidental items and fees from promotional activity do not make up more than 25 percent of the total sales of the farm stand; and the farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings, or public entertainment.
- H. Farm Unit: The contiguous and noncontiguous tracts within the County or a contiguous county held in common ownership and used by the farm operator for farm use.
- I. Farm Use: As defined in Oregon Revised Statutes (ORS) 215.203.
- J. Fee-based Activity to Promote the Sale of Farm Crops or Livestock: A common farm-dependent accessory activity directly related to the sale of farm crops or livestock sold at the farm stand, such as, but not limited to, hay rides, corn mazes, and educational how-to-farm workshops, but not including activities with no direct relationship to the farm crops or livestock sold at the farm stand, such as, but not limited to, quilting classes, dance lessons, jewelry making, or crafts that are only intended to bring customers to the farm stand.
- K. Golf Course: As defined in OAR 660-033-0130(20).
- L. High Value Farmland: As defined in ORS 215.710 and OAR 660-033-0020(8).
- M. Irrigated: Agricultural land watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is “irrigated” if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. An area or tract within a water or irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract.
- N. Low Value Farmland: All land not defined as High Value Farmland in ORS 215.710 and OAR 660-033-0020(8).
- O. Noncommercial Farm: A parcel where all or part of the land is used for production of farm products for use or consumption by the owners or residents of the property, or which provides insignificant income.

- P. Owner: For purposes of a Lot of Record Dwelling, owner includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, niece, stepparent, stepchild, grandparent, or grandchild of the owner, or a business entity owned by any one or a combination of these family members.
- Q. Ownership: Holding fee title to a lot of record, except in those instances when the land is being sold on contract, the contract purchaser shall be deemed to have ownership. Ownership shall include all contiguous lots of record meeting this definition.
- R. Private Park: Land that is used for low impact casual recreational uses such as picnicking, boating, fishing, swimming, camping, and hiking or nature oriented recreational uses such as viewing and studying nature and wildlife habitat and may include play areas and accessory facilities that support the activities listed above but does not include tracks for motorized vehicles or areas for target practice or the discharge of firearms.
- S. Relative: For purposes of a Temporary Dwelling for Care, relative means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew, or first cousin.
- T. Tract: One or more contiguous lots of record under the same ownership, including lots of record divided by a county or public road, or contiguous at a common point. Lots of record divided by a state highway are not considered contiguous.

401.04 USES PERMITTED

Uses permitted in the EFU District are listed in Table 401-1, *Permitted Uses in the EFU District*.

A. As used in Table 401-1:

1. "A" means the use is allowed.
2. "Type I" means the use requires review of a Type I application, pursuant to Section 1307, *Procedures*.
3. "Type II" means the use requires review of a Type II application, pursuant to Section 1307, *Procedures*.
4. "Type III" means the use requires review of a Type III application, pursuant to Section 1307, *Procedures*.
5. "C" means the use is a conditional use, approval of which is subject to Section 1203, *Conditional Uses*.

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6. The “Subject To” column identifies any specific provisions of Subsection 401.05 to which the use is subject.
  7. “N” means not applicable.
  8. “\*NA1” means the use is not allowed except as set forth in Subsection 401.05(J)(1).
  9. “\*NA2” means the use is not allowed except as set forth in Subsection 401.05(J)(1) or 401.05(J)(2) and (3).
  10. “HV” means High Value Farmland.
  11. “LV” means Low Value Farmland.
  12. Numbers in superscript correspond to the notes that follow Table 401-1.
- B. Permitted uses are subject to the applicable provisions of Subsection 401.07, *Dimensional Standards*; Subsection 401.08, *Development Standards*; Section 1000, *Development Standards*; and Section 1100, *Development Review Process*.

**Table 401-1: Permitted Uses in the EFU District**

	HV	LV	Use	Subject To
<b>FARM AND FOREST USES</b>	A	A	Propagation or harvesting of a forest product.	
	A	A	Farm use as defined in ORS 215.203. Marijuana production is subject to Section 841.	
	A	A	Other buildings customarily provided in conjunction with farm use.	
	TYPE II	TYPE II	A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141. Marijuana processing is subject to Section 841. <sup>1</sup>	401.05(B)(1)
	C	C	A facility for the primary processing of forest products.	401.05(B)(2)
<b>NATURAL RESOURCE USES</b>	HV	LV	Use	Subject To
	A	A	Creation of, restoration of, or enhancement of wetlands.	
	TYPE II	TYPE II	The propagation, cultivation, maintenance, and harvesting of aquatic species that are not under the jurisdiction of the Oregon Fish and Wildlife Commission.	401.05(A)(1)
<b>RESIDENTIAL USES</b>	HV	LV	Use	Subject To
	A	A	Uses and structures customarily accessory and incidental to a dwelling, only if a lawfully established dwelling exists.	
	A	A	Alteration, restoration, or replacement of a lawfully established dwelling, subject to OAR 660-033-0130(8) excluding (d).	401.05(A)(3) & (C)(1)
	TYPE II	TYPE II	Alteration, restoration, or replacement of a lawfully established dwelling, subject to OAR 660-033-0130(8)(d).	401.05(A)(3) & (C)(2)

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	HV	LV	Use	Subject To
<b>RESIDENTIAL USES (cont.)</b>	TYPE II	TYPE II	Replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a County inventory as historic property and listed on the National Register of Historic Places. <sup>2</sup>	401.05(A)(3)
	N	TYPE II	Lot of Record Dwelling on Low Value Farmland.	401.05(A)(2), (3), (4) & (C)(3)
	TYPE II	N	Lot of Record Dwelling on Class III or IV High Value Farmland.	401.05(A)(2), (3), (4) & (C)(4)
	TYPE III	N	Lot of Record Dwelling on Class I or II High Value Farmland.	401.05(A)(2), (3), (4) & (C)(5)
	TYPE II	N	Dwelling customarily provided in conjunction with a farm use on High Value Farmland. <sup>2</sup>	401.05(A)(3) & (C)(6)
	N	TYPE II	Dwelling customarily provided in conjunction with a farm use on Low Value Farmland. <sup>2</sup>	401.05(A)(3) & (C)(7)
	TYPE II	TYPE II	Dwelling customarily provided in conjunction with a commercial dairy farm.	401.05(A)(3) & (C)(8)
	N	TYPE II	160 acre test for a dwelling. <sup>2</sup>	401.05(A)(3), (4) & (C)(9)
	N	TYPE II	Capability test for a dwelling. <sup>2</sup>	401.05(A)(3), (4) & (C)(10)
	TYPE II	TYPE II	A single-family dwelling not provided in conjunction with farm use; a nonfarm dwelling.	401.05(A)(3), (4) & (C)(11)
	TYPE II	TYPE II	Accessory farmworker dwelling for a relative. <sup>2</sup>	401.05(A)(3) & (C)(12)
	TYPE II	TYPE II	Accessory farmworker dwelling for year-round and seasonal farm workers. <sup>2</sup>	401.05(A)(3) & (C)(13)
	TYPE II	TYPE II	Dwelling on Low or High Value Farmland to be operated by a different farm operator on at least 80 acres. <sup>2</sup>	401.05(A)(3) & (C)(14)
	TYPE II	TYPE II	Temporary dwelling for care, subject to Subsection 1204.03.	401.05(A)(1), (3) & (C)(15)
	TYPE II	TYPE II	Room and board arrangements for a maximum of five unrelated persons in existing dwellings.	401.05(A)(1) & (3)
	TYPE II	TYPE II	Residential home or facility as defined in ORS 197.660, in existing dwellings.	401.05(A)(1) & (3)
<b>COMMERCIAL USES</b>	HV	LV	Use	Subject To
	A	A	Family daycare provider.	
	A	A	Dog training classes.	401.05(D)(8)
	A	A	Dog testing trials.	401.05(D)(9)
	TYPE I	TYPE I	A license for a winery to carry out the first six of 18-day agri-tourism and other commercial events, subject to ORS 215.237 and 215.452(6)(a)	
	TYPE II	TYPE II	Farm stands, subject to OAR 660-033-0130(23) and ORS 215.283(1)(o). <sup>3</sup>	
	TYPE II	TYPE II	Home occupations, subject to Section 822.	401.05(A)(1) & (D)(1)
	TYPE II	TYPE II	A landscape contracting business.	401.05(A)(1) & (D)(2)
TYPE II	TYPE II	Agri-tourism single event.	401.05(A)(1) & (D)(3)	

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	HV	LV	Use	Subject To
<b>COMMERCIAL USES (cont.)</b>	TYPE II	TYPE II	Agri-tourism for up to 6 events or activities.	401.05(A)(1) & (D)(4)
	TYPE II	TYPE II	A winery as described in and subject to ORS 215.452 or 215.453, whichever is applicable, but not a restaurant open more than 25 days per calendar year.	
	TYPE II	TYPE II	A bed and breakfast facility as a home occupation in association with a winery, subject to ORS 215.448, as provided in ORS 215.452 or 215.453, whichever is applicable.	401.05(A)(1) & (D)(5)
	TYPE II	TYPE II	A large winery with a restaurant in conjunction with a winery as described in ORS 215.453 that is open to the public for more than 25 days in a calendar year or; agri-tourism or other commercial events in conjunction with a winery as described in ORS 215.453 that occur on more than 25 days in a calendar year.	401.05(A)(1)
	TYPE II	TYPE II	Winery agri-tourism or other commercial events for days seven through 18 of the 18-day limit, subject to ORS 215.237 and 215.452(6)(c).	
	C	C	Home occupation to host events, subject to Section 806.	401.05(A)(1) & (D)(1)
	C	C	Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel that exceeds the standards of ORS 215.203(2)(b)(K) or Subsection 401.05(B)(1). <sup>4</sup>	401.05(A)(1)}
	C	C	Agri-tourism additional events not to exceed 18 events on a minimum of 80 acres.	401.05(A)(1) & (D)(6)
	C	C	An aerial fireworks display business.	401.05(A)(1) & (D)(7)
	C	C	Commercial dog boarding kennels.	401.05(A)(1)
	C	C	Dog training classes or testing trials that cannot be established under Subsection 401.05(D)(8) or (9).	401.05(A)(1)
	HV	LV	Use	Subject To
<b>MINERAL, AGGREGATE, OIL, AND GAS USES</b>	A	A	Operations for the exploration for, and production of, geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators, and other customary production equipment for an individual well adjacent to a wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).	
	A	A	Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).	
	C	C	Operations conducted for mining, crushing, or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.	401.05(A)(1), (E)(1) & (E)(1)(a)
	C	C	Processing as defined by ORS 517.750 of aggregate into asphalt or Portland cement.	401.05(A)(1), (E)(1) & (E)(1)(b)

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<u>MINERAL, AGGREGATE, OIL, AND GAS USES (cont.)</u>	C	C	Processing of other mineral resources and other subsurface resources.	401.05(A)(1), (E)(1) & (E)(1)(c)
	C	C	Operations conducted for mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under Section 401.	401.05(A)(1), (E)(1) & (E)(1)(d)
	<b>HV</b>	<b>LV</b>	<b>Use</b>	<b>Subject To</b>
<u>TRANSPORTATION USES</u>	A	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.	
	A	A	Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.	
	A	A	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.	
	A	A	Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations, and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.	
	TYPE II	TYPE II	Parking of no more than seven log trucks, subject to ORS 215.311	401.05(A)(1)
	TYPE II	TYPE II	Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels.	401.05(A)(1)
	TYPE II	TYPE II	Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.	401.05(A)(1)
	TYPE II	TYPE II	Improvement of public road and highway related facilities, such as maintenance yards, weigh stations, and rest areas, where additional property or right-of-way is required but not resulting in the creation of new land parcels.	401.05(A)(1)
	C	C	Roads, highways and other transportation facilities, and improvements not otherwise allowed under Section 401.	401.05(F)(1)
	C	C	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance, and service facilities.	401.05(A)(1) & (F)(2)
	C	C	Transportation improvements on rural lands, subject to OAR 660-012-0065.	

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	HV	LV	Use	Subject To
<b>UTILITY AND SOLID WASTE DISPOSAL FACILITY USES</b>	A	A	Irrigation reservoirs, canals, delivery lines, and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.	
	A	A	Solar energy system as an accessory use.	
	A	A	Rainwater collection systems as an accessory use.	
	A	A	Electric vehicle charging stations for residents and their non-paying guests.	
	A	A	Meteorological towers.	
	A	A	Collocation of antennas with associated equipment on a previously approved wireless telecommunication facility, subject to Subsection 835.04(A).	
	A	A	Placement of telecommunication antennas with associated equipment on an existing utility pole, subject to Subsection 835.04(B).	
	A	A	Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and are located on one or more of the following: a public right-of-way; land immediately adjacent to a public right-of-way provided the written consent of all adjacent property owners has been obtained; and/or the property to be served by the utility.	
	TYPE II	TYPE II	Wind energy power production systems as an accessory use.	401.05(G)(1)
	TYPE II	TYPE II	Essential public communication services, as defined in Subsection 835.03(D). The use is subject to ORS 215.275, if it includes a transmission tower less than or equal to 200 feet in height.	
	TYPE II	TYPE II	Collocation of wireless telecommunication facilities as identified in Subsection 835.05(A)(2), subject to Subsection 835.05(A), provided such facilities include a transmission tower that is over 200 feet in height.	
	TYPE II	TYPE II	Utility facilities necessary for public service, including wireless telecommunication facilities not otherwise provided for in Section 401, associated transmission lines subject to ORS 215.283(1)(c)(A) or (B) and 215.276, and wetland waste water treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height.	401.05(G)(2)
	TYPE II	N	Composting operations and facilities on high value farmland.	401.05(A)(1) & (G)(3)
	N	TYPE II	Composting operations and facilities on low value farmland.	401.05(A)(1) & (G)(4)
	*NA1	C	Composting operations and facilities, subject to Section 834.	401.05(A)(1) & (G)(5)
C	C	Transmission towers over 200 feet in height, except as otherwise provided in Section 401 for essential public communication services. Towers supporting wireless telecommunication facilities are subject to Section 835.	401.05(A)(1)	
C	C	Commercial utility facilities for the purpose of generating power for public use by sale, not including wind or photovoltaic solar power generation facilities.	401.05(A)(1) & (G)(6)	



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UTILITY AND SOLID WASTE DISPOSAL FACILITY USES (cont.)	C	C	Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, subject to OAR 660-033-0130(37).	401.05(A)(1)	
	C	C	Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, subject to OAR 660-033-0130(38).	401.05(A)(1)	
	*NA1	C	A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities, or buildings necessary for its operation.	401.05(A)(1)	
		HV	LV	Use	Subject To
PARKS, PUBLIC, AND QUASI-PUBLIC USES	A	A	Land application of reclaimed water, agricultural process or industrial process water, or biosolids for agricultural, horticultural, or forest production, or for irrigation in connection with a use allowed in the EFU zoning district, subject to the issuance of a license, permit, or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053, or 468B.055, or in compliance with rules adopted under ORS 468(B).095.		
	A	A	Onsite filming and activities accessory to onsite filming for 45 days or less.		
	TYPE II	TYPE II	A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary.	401.05(H)(1)	
	TYPE II	TYPE II	Public parks and playgrounds.	401.05(A)(1), (5) & (H)(2)	
	TYPE II	TYPE II	Fire service facilities providing rural fire protection services.		
	TYPE II	TYPE II	Community centers.	401.05(A)(1), (5) & (H)(3)	
	TYPE II	TYPE II	Living history museum.	401.05(A)(1), (5) & (H)(4)	
	TYPE II	TYPE II	Firearms training facility as provided in ORS 197.770(2).	401.05(A)(5)	
	TYPE II	TYPE II	Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.	401.05(A)(1)	
	TYPE II	TYPE II	A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.	401.05(A)(1)	
	*NA1	TYPE II	Churches and cemeteries in conjunction with churches, consistent with ORS 215.441, which does not include private or parochial school education for prekindergarten through grade 12 or higher education.	401.05(A)(5)	

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<b>PARKS, PUBLIC, AND QUASI-PUBLIC USES (cont.)</b>	C	C	Operations for the extraction and bottling of water.	401.05(A)(1)	
	C	C	Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.	401.05(A)(1)	
	*NA2	C	Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.	401.05(A)(1) & (5)	
	*NA1	C	Private parks, playgrounds, hunting and fishing preserves, and campgrounds.	401.05(A)(1), (5) & (H)(5)	
	*NA1	C	Golf courses.	401.05(A)(1), (5) & (H)(6)	
		<b>HV</b>	<b>LV</b>	<b>Use</b>	<b>Subject To</b>
<b>OUTDOOR GATHERINGS</b>	A	A	An outdoor mass gathering or other gathering described in ORS 197.015(10)(d).	401.05(I)(1)	
	C	C	Any outdoor gathering subject to review of the Planning Commission under ORS 433.763.	401.05(I)(2)	

- 1 The processing, compounding, or conversion of marijuana into ~~cannabinoid concentrates or~~ cannabinoid extracts is prohibited.
- 2 Farming of a marijuana crop shall not be used to demonstrate compliance with the approval criteria for a dwelling. (See ORS 475B.370.)
- 3 A farm stand shall not be used for the sale, or to promote the sale, of marijuana items. (See ORS 475B.370.)
- 4 A commercial activity carried on in conjunction with a marijuana crop is prohibited. (See ORS 475B.370.)

401.05 APPROVAL CRITERIA FOR SPECIFIC USES

The following criteria apply to some of the uses listed in Table 401-1. The applicability of a specific criterion to a listed use is established by Table 401-1.

A. General Criteria

1. Uses may be approved only where such uses:
  - a. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
  - b. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
2. The Natural Resources Conservation Service (NRCS) Web Soil Survey for Clackamas County shall be used to determine the soil classification

and soil rating for a specific lot of record for a dwelling, with the following exception:

- a. For purposes of evaluating a Lot of Record Dwelling application on high value farmland, the applicant may submit a report from a professional soils classifier whose credentials are acceptable to the Oregon Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and submits a statement from the Oregon Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report and finds the analysis in the report to be soundly and scientifically based.
3. The landowner for the dwelling shall sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.
  4. An approval to construct a dwelling may be transferred to any other person after the effective date of the land use decision.
  5. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.
    - a. Any enclosed structures or group of enclosed structures described in Subsection 401.05(A)(5) within a tract must be separated by at least one-half mile. For purposes of Subsection 401.05(A)(5), "tract" means a tract as defined by Subsection 401.03(U) that was in existence as of June 17, 2010.
    - b. Existing facilities wholly within a farm use zone may be maintained, enhanced, or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of Subsection 401.05(A)(5).

B. Farm and Forest Uses

1. A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141 or an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038 shall be

located on a farm that provides at least one-quarter of the farm crops processed at the facility. If a building is established or used for the processing facility or establishment, the farm operator may not devote more than 10,000 square feet of floor area to the processing facility or establishment, exclusive of the floor area designated for preparation, storage, or other farm use. A processing facility or establishment must comply with all applicable siting standards but the standards may not be applied in a manner that prohibits the siting of the processing facility. Any division of a lot of record that separates a processing facility or establishment from the farm operation on which it is located is prohibited.

2. A facility for the primary processing of forest products shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period that is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in Subsection 401.05(B)(2), means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in Subsection 401.05(B)(2) means timber grown upon a tract where the primary processing facility is located.

C. Residential Uses

1. A lawfully established dwelling may be altered, restored, or replaced if substantial evidence is provided that shows:
  - a. The dwelling to be altered, restored, or replaced has:
    - i. Intact exterior walls and roof structure;
    - ii. Indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system;
    - iii. Interior wiring for interior lights; and
    - iv. A heating system; and
  - b. The dwelling was assessed as a dwelling for at least the previous five property tax years or less; and
  - c. Replacement dwellings that currently have the features described in (1)(a) and assessment in (1)(b) above may be sited on any part of the same lot or parcel.
  - d. The dwelling to be replaced must, by building permit, be removed, demolished or converted to an allowable nonresidential use:

- i. Within one year from the certified occupancy of the new dwelling;  
or
    - ii. If the dwelling to be replaced is in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, the dwelling to be replaced must be removed within 90 days from the date a replacement permit is issued; and
    - iii. If a dwelling is removed to another off-site location, the applicant must obtain approval for the new location.
  - e. A replacement dwelling must comply with applicable building, plumbing, sanitation and other requirements relating to health and safety and to setbacks at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.
  - f. The owner of the dwelling to be replaced shall record in the deed records of the parcel that the replaced dwelling has been removed, demolished or converted.
  - g. If the dwelling to be replaced is located on a portion of the parcel that is not zoned EFU, the owner may place the new dwelling on EFU land but must record in the deed records an irrevocable deed statement prohibiting the siting of another dwelling on the non EFU portion of the parcel.
2. Separately from Subsection 401.05(C)(1), a lawfully established dwelling may be altered, restored, or replaced if, when a land use application permit is submitted and substantial evidence is provided that shows:
  - a. The dwelling to be altered, restored, or replaced formerly had:
    - i. Intact exterior walls and roof structure;
    - ii. Indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system;
    - iii. Interior wiring for interior lights; and
    - iv. A heating system; and
  - b. Under this subsection a replacement dwelling permit is a land use decision which is not subject to expiration. The replacement dwelling must have been assessed as a dwelling until the value of the dwelling was eliminated and if the value was eliminated it must be as a result of either of the following circumstances:

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- i. The destruction (i.e., by fire or natural hazard), or demolition in the case of restoration of the dwelling; or
    - ii. The applicant establishes the dwelling was improperly removed from the tax rolls. "Improperly removed" means the dwelling has taxable value in its present state, or had taxable value when the dwelling was first removed from the tax roll or was destroyed by fire or natural hazard and the County stopped assessing the dwelling even though the current or former owner did not request removal of the dwelling from the tax roll.
  - c. The following siting standards shall apply when the dwelling qualifies for replacement under this subsection the replacement dwelling must be sited on the same parcel:
    - i. Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another boundary of the parcel; and
    - ii. If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.
  - d. The dwelling to be replaced is also subject to Subsections 401.05(C)(1)(d) through (g).
3. Lot of Record Dwelling when determined to be located on Low Value Farmland, subject to the following criteria:
- a. The lot of record on which the dwelling will be sited was lawfully created prior to January 1, 1985.
  - b. The lot of record has been under the continuous ownership of the present owner who either,
    - i. Acquired the lot of record prior to January 1, 1985, or
    - ii. Acquired the lot of record by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985.
  - c. The tract on which the dwelling will be sited does not include a dwelling;
  - d. The lot of record on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993.

- e. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law.
  - f. When the lot of record on which the dwelling will be sited is part of a tract, all remaining portions of the common ownership shall remain in common ownership as long as the dwelling remains as approved.
  - g. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or can be adequately mitigated. Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. The Oregon Department of Fish and Wildlife (ODFW) suggests to the County that in the absence of mitigation measures, winter range is seriously impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet.
4. Lot of Record Dwelling when determined to be located on High Value Farmland consisting predominantly of Class III and IV Soil, subject to the following criteria:
- a. The lot of record on which the dwelling will be sited was lawfully created prior to January 1, 1985.
  - b. The lot of record has been under the continuous ownership of the present owner who either,
    - i. Acquired the lot of record prior to January 1, 1985, or
    - ii. Acquired the lot of record by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985.
  - c. The tract on which the dwelling will be sited does not include a dwelling.
  - d. The lot of record on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993.
  - e. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law.



- f. When the lot of record on which the dwelling will be sited is part of a tract, all remaining portions of the common ownership land shall remain in common ownership as long as the dwelling remains as approved.
  - g. The tract is no more than 21 acres.
  - h. The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or, the tract is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary.
  - i. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or the impacts can be adequately mitigated so as not to interfere. Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. ODFW suggests to the County that in the absence of impact mitigation measures, winter range is seriously considered impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet.
5. Lot of Record Dwelling when determined to be located on High Value Farmland consisting predominantly of Prime, Unique, Class I or II Soils, subject to the following criteria:
- a. The lot of record on which the dwelling will be sited was lawfully created prior to January 1, 1985.
  - b. The lot of record has been under the continuous ownership of the present owner who either,
    - i. Acquired the lot of record prior to January 1, 1985, or
    - ii. Acquired the lot of record by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985.
  - c. The tract on which the dwelling will be sited does not include a dwelling;

- d. The lot of record on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993.
  - e. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law.
  - f. When the lot of record on which the dwelling will be sited is part of a tract, all remaining portions of the common ownership land shall remain in common ownership as long as the dwelling remains as approved.
  - g. The lot of record cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. Extraordinary circumstances include very steep slopes, deep ravines, rivers, streams, roads, railroads or utility lines or other similar natural or physical barriers that by themselves or in combination, separate the subject property from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use.
  - h. The dwelling will not materially alter the stability of the overall land use pattern in the area.
  - i. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or can be adequately mitigated. (Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. ODFW suggests to the County that in the absence of mitigation measures, winter range is seriously impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet).
6. Dwelling in conjunction with a farm use on High Value Farm Land: A primary farm dwelling for the farm operator may be allowed subject to the following criteria:
- a. The subject tract is currently employed in farm use on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years;

- b. Lots of record in Eastern Oregon shall not be used to qualify a dwelling under this criterion.
  - c. Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on lands designated for exclusive farm use or for mixed farm/forest use owned by the farm or ranch operator or on the farm or ranch operation.
  - d. The lot of record on which the dwelling will be sited was lawfully created;
  - e. The dwelling will be occupied by a person or persons who produced the commodities which generated the income;
  - f. In determining the gross income requirement, the cost of purchased livestock shall be deducted from the total gross annual income attributed to the tract.
  - g. Only gross income from land owned, not leased or rented, shall be counted.
  - h. Gross farm income earned from a lot of record which has been used previously to qualify another lot of record for the construction or siting of a primary farm dwelling may not be used.
  - i. Only a lot of record zoned for farm use in Clackamas County or a contiguous county may be used to meet the gross income requirements.
  - j. An irrevocable deed restriction shall be recorded with the County Clerk's Office acknowledging that all future rights to construct a dwelling on other properties used to qualify the primary farm dwelling is precluded except for accessory farm dwellings, accessory relative farm dwellings, temporary hardship dwelling or replacement dwellings, and that any gross farm income used to qualify the primary farm dwelling cannot be used again to qualify any other parcel for a primary farm dwelling.
7. Dwelling in conjunction with a farm use on Low Value Farmland: A primary farm dwelling for the farm operator may be allowed on low value farmland subject to the following criteria:
- a. The subject tract is currently employed in farm use on which the farm operator earned at least \$32,500 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years;

- b. Lots of record in Eastern Oregon shall not be used to qualify a dwelling under this criterion.
  - c. Except as permitted in Subsection 401.05(C)(13), there is no other dwelling on the subject tract;
  - d. The lot of record on which the dwelling will be sited was lawfully created;
  - e. The dwelling will be occupied by a person or persons who produced the commodities which generated the income;
  - f. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.
  - g. Only gross income from land owned, not leased or rented, shall be counted.
  - h. Gross farm income earned from a lot of record which has been used previously to qualify another lot of record for the construction or siting of a primary farm dwelling may not be used.
  - i. Only lots of record zoned for farm use in Clackamas County or a contiguous county may be used to meet the gross income requirements.
  - j. An irrevocable deed restriction shall be recorded with the County Clerk's Office acknowledging that all future rights to construct a dwelling on other properties used to qualify the primary farm dwelling is precluded except for accessory farm dwellings, accessory relative farm dwellings, temporary hardship dwelling or replacement dwellings, and that any gross farm income used to qualify the primary farm dwelling cannot be used to qualify any other parcel for a primary farm dwelling.
8. A dwelling customarily provided in conjunction with a commercial dairy farm, which is a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income as required by Subsection 401.05(C)(6)(a) or 401.05(C)(7)(a), whichever is applicable, from the sale of fluid milk, if;
- a. The subject tract will be employed as a commercial dairy; and
  - b. The dwelling is sited on the same lot of record as the buildings required by the commercial dairy; and

- c. Except for a replacement of a lawfully established dwelling, there is no other dwelling on the subject tract; and
  - d. The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm use activities necessary to the operation of the commercial dairy farm; and
  - e. The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and
  - f. The Oregon Department of Agriculture has approved the following:
    - i. A permit for a “confined animal feeding operation” under ORS 468B.050 and 468B.200 to 468B.230; and
    - ii. A Producer License for the sale of dairy products under ORS 621.072.
9. 160 Acre Test, subject to the following criteria:
- a. The parcel on which the dwelling will be located is at least 160 acres.
  - b. The subject tract is currently employed in a farm use.
  - c. The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock at a commercial scale.
  - d. Except as permitted in Subsection 401.05(C)(13), there is no other dwelling on the subject tract; or
10. Capability Test, subject to the following criteria:
- a. The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area which includes all tracts wholly or partially within one mile from the perimeter of the subject tract.
  - b. Lots of record in Eastern Oregon shall not be used to qualify a dwelling under this criterion.

- c. The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in Subsection 401.05(C)(10)(a).
  - d. The subject tract is currently employed for a farm use at a level capable of producing the annual gross sales required in Subsection 401.05(C)(10)(a).
  - e. The subject lot of record on which the dwelling is proposed is not less than 10 acres.
  - f. Except as permitted in Subsection 401.05(C)(13), there is no other dwelling on the subject tract.
  - g. The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale.
  - h. If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by Subsection 401.05(C)(10)(d).
11. Dwelling not in Conjunction with a Farm Use: A dwelling for a nonfarm use may be allowed subject to the following criteria:
- a. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;
  - b. The dwelling will be sited on a lot of record that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils;
  - c. The dwelling will be sited on a lot of record lawfully created before January 1, 1993.
  - d. The dwelling shall not materially alter the stability of the overall land use pattern of the area. The County shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots of record in the area similarly situated, subject to:
    - i. Identify a study area for the cumulative impacts analysis. The study area shall include at least 2,000 acres or a smaller area not

less than 1,000 acres, if the smaller area is a “distinct agricultural area” based on topography, soils types, land use pattern, or the type of farm operations or practices that distinguish it from other adjacent agricultural areas. Findings shall describe the study area, its boundaries, and the location of the subject parcel with this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area; and to the extent OAR 660-033-0130(4)(a)(D)(ii) is applicable.

- ii. Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture, or grazing lands), the number, location, and type of existing dwellings (farms, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under Subsections 401.05(C)(3) through (5) and (11), including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area, including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings.
- iii. Determine whether approval of the proposed nonfarm dwelling together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.
- e. The dwelling shall comply with such other conditions as the County considers necessary.
- f. Prior to Planning Director approval for issuance of a building or manufactured dwelling permit, the applicant shall notify the County Assessor that the lot of record is no longer being used for farmland and; request the County Assessor to disqualify the lot of record for special assessment under ORS 308.370, 308.765, 321.257 to 321.381,



321.730 or 321.815 and; pay any additional tax imposed upon disqualification from special assessment. A lot of record that has been disqualified pursuant to Subsection 401.05(C)(11)(f) shall not requalify for special assessment unless, when combined with another contiguous lot of record, it constitutes a qualifying parcel.

12. Accessory Farm Dwelling – Relative: A relative farm help dwelling for a relative of the farm operator may be allowed subject to the following criteria:

- a. A relative farm help dwelling shall be located on the same lot of record as the dwelling of the farm operator and must be on real property used for farm use;
- b. The accessory farm dwelling shall be located on a lawfully created lot of record;
- c. The accessory farm dwelling shall be occupied by child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin, of the farm operator or the farm operator's spouse, whose assistance in the management and farm use of the existing commercial farming operation, such as planting, harvesting, marketing or caring for livestock, is required by the farm operator.
- d. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decision about such things as planting, harvesting, feeding and marketing.
- e. The size, type, and intensity of the farm operation shall be used to evaluate the need for the dwelling.
- f. The net income derived from the farm products shall be significant and products from the farm unit shall contribute substantially to the agricultural economy, to agricultural processors and farm markets.
- g. There are no other dwellings on the lot of record that are vacant or currently occupied by persons not working on the subject farm unit that could reasonably be used as an accessory farm dwelling.
- h. At any time the accessory farm dwelling is not used for farm help or the farm management plan is not implemented and maintained as approved in the land use application, the dwelling shall be removed, demolished or if not a manufactured dwelling, converted to a

nonresidential accessory structure (change of occupancy permit) within 90 days.

- i. Any lot of record land division or property line adjustment which results in the location of any accessory farm dwelling on a lot of record separate from the farm use property for which it has been established is prohibited.
13. Accessory Farmworker Dwellings – Year-round and Seasonal Farm Workers: An accessory farm dwelling for a nonrelative, and their immediate family unless otherwise specified, of the farm operator may be allowed subject to the following criteria:
- a. The accessory farm dwelling shall be occupied by a person or persons who will be principally engaged in the farm use of the land and on other commercial farms in the area, whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator on the farm unit.
  - b. The accessory farm dwelling shall be located on a lawfully created lot of record;
  - c. The accessory farm dwelling shall be located:
    - i. On the same lot of record as the primary farm dwelling; or
    - ii. On the same tract as the primary farm dwelling when the lot of record on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots of record in the tract; or
    - iii. On a lot of record on which the primary farm dwelling is not located, when the accessory farm dwelling is a manufactured dwelling and a deed restriction is filed with the County Clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot of record is conveyed to another party. The manufactured dwelling may remain if it is re-approved pursuant to Section 401; or
    - iv. On any lot of record, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farmworker housing as that existing on the farm operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. All

accessory farm dwellings approved under Subsection 401.05(C)(13)(c)(iv) shall be removed, demolished, or converted to a nonresidential use when farm worker housing is no longer required.

- v. On a lot of record on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot of record at least the size of the applicable minimum lot size and the lot of record complies with the gross farm income requirements of Subsection 401.05(C)(13)(f)(i) or 401.05(C)(13)(f)(ii), whichever is applicable.
- d. There are no other dwellings on lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.
- e. All multi-unit accessory dwellings shall be consistent with the intent of the Legislative Assembly as provided in ORS 215.243.
- f. The primary farm dwelling to which the proposed dwelling would be accessory shall meet one of the following:
  - i. On Low Value Farmland, the primary farm dwelling is located on a farm operation that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned the lower of at least \$32,500 in gross annual income from the sale of farm products or at least the midpoint of the median income range of gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon, in each of the last two years or three of the last five years or in an average of three of the last five years, or
  - ii. On land identified as High Value Farmland, the primary farm dwelling is located on a farm operation that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years or in an average of three of the last five years.
- g. In determining the gross annual income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.
- h. Only gross annual income from land owned, not leased or rented, shall be counted.

- i. Any proposed land division or property line adjustment of a lot of record for an accessory farm dwelling approved pursuant to Subsection 401.05(C)(13) shall not be approved. If it is determined that an accessory farm dwelling satisfies the requirements for a dwelling in conjunction with a farm use under Subsection 401.05(C)(6) or (7), a parcel may be created consistent with the minimum parcel size requirements in Subsection 401.07(A).
  - j. An accessory farm dwelling approved pursuant to Subsection 401.05(C)(13) shall not later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to Subsection 401.05(C)(11).
  - k. At any time the dwelling is not used for farm help or the farm management plan is not implemented and maintained as approved in the land use application, the dwelling shall be removed, demolished or if not a manufactured dwelling, converted to a nonresidential accessory structure (change of occupancy permit) within 90 days.
  - l. “Farmworker”, means an individual who, for an agreed remuneration or rate of pay, performs labor, temporarily or on a continuing basis, for a person in the production of farm products, planting, cultivating or harvesting of seasonal agricultural crops; or forestation or reforestation of land, including but not limited to planting, transplanting, tubing, precommercial thinning and thinning of trees or seedlings, the clearing, piling and disposal of brush and slash and other related activities.
  - m. “Farmworker Housing”, means housing limited to occupancy by farmworkers and their immediate families, and no dwelling unit of which is occupied by a relative of the owner or operator of the farmworker housing.
  - n. “Relative”, for the purposes of Subsection 401.05(C)(13), means an ancestor, lineal descendant, or whole or half sibling of the owner or operator or the spouse of the owner or operator.
  - o. “Farmworker Housing Owner”, means a person that owns farmworker housing. It does not mean a person whose interest in the farmworker housing is that of a holder of a security interest in the housing.
14. Dwelling in conjunction with a farm use on Low or High Value Farmland, whichever is applicable: A primary farm dwelling for the farm operator may be allowed subject to the following criteria:

- a. Within the previous two years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income as provided in 401.05(C)(6)(a) or 401.05(C)(7)(a), whichever is applicable, in each of the last five years or four of the last seven years.
  - b. The subject parcel on which the dwelling will be located is:
    - i. Currently employed for the farm use, that produced in each of the last two years or three of the last five years, or in an average of three of the last five years the gross farm income as provided in 401.05(C)(6)(a) or 401.05(C)(7)(a); and
    - ii. The parcel is at least 80 acres.
  - c. Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract.
  - d. The dwelling will be occupied by a person or persons who produced the commodities that grossed the income as provided in subsection 401.05(C)(14)(a).
  - e. In determining the gross income the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.
  - f. Only gross income from land owned, not leased or rented, shall be counted.
15. One manufactured dwelling, residential trailer, or recreational vehicle, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling, residential trailer, or recreational vehicle shall be removed or demolished. A temporary residence approved under Subsection 401.05(C)(15) is not eligible for replacement under Subsection 401.05(C)(1) and (2) as a permanent dwelling. On-site sewage disposal system review and removal requirements through the Septic and Onsite Wastewater Program also apply.

D. Commercial Uses

1. The home occupation shall not unreasonably interfere with other uses permitted in the EFU zoning district and shall not be used as justification for a zone change.
2. A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS

671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

3. A single agri-tourism or other commercial event or activity in a calendar year that is personal to the applicant and is not transferrable by sale of the tract, subject to ORS 215.239, 215.283(4)(a), and (6) and the following:
  - a. Agri-tourism events shall not include any mass gatherings or other outdoor gatherings; and
  - b. Agri-tourism events shall be “incidental and subordinate” to existing farm use on the tract. Incidental and subordinate means that the event or activity is strictly secondary and ancillary to on-site commercial farm uses or the commercial agricultural enterprises in the area in terms of income generated, area occupied, and off-site impacts; and
  - c. “Agri-tourism”, means a commercial event or activity that is logically, physically, and/or economically connected to and supports an existing on-site farm operation and promotes the practice of agriculture.
4. Agri-tourism for up to six events or other commercial events or activities in a calendar year that is personal to the applicant and is not transferrable by sale of the tract, subject to ORS 215.239, 215.283(4)(c), and (6) and the following:
  - a. Agri-tourism events shall not include any mass gatherings or other outdoor gatherings; and
  - b. Agri-tourism events shall be “incidental and subordinate” to existing farm use on the tract. Incidental and subordinate means that the event or activity is strictly secondary and ancillary to on-site commercial farm uses or the commercial agricultural enterprises in the area in terms of income generated, area occupied, and off-site impacts; and
  - c. “Agri-tourism”, means a commercial event or activity that is logically, physically, and/or economically connected to and supports an existing on-site farm operation and promotes the practice of agriculture.
5. A winery bed and breakfast facility as provided for in ORS 215.452 and 215.453 as a home occupation subject to ORS 215.448, on the same tract as a winery and in association with the winery, and the following:
  - a. May prepare and serve two meals per day to registered guests of the bed and breakfast facility; and
  - b. Meals may be served at the bed and breakfast facility or at the winery.

6. Up to 18 agri-tourism or other commercial events or activities in a calendar year, on a minimum 80 acre lot of record, subject to ORS 215.239, 215.283(4)(d), (5), and (6) and the following:
  - a. Agri-tourism events shall not include any mass gatherings or other outdoor gatherings, and
  - b. Agri-tourism events shall be “incidental and subordinate” to existing farm use on the tract. Incidental and subordinate means that the event or activity is strictly secondary and ancillary to on-site commercial farm uses or the commercial agricultural enterprises in the area in terms of income generated, area occupied, and off-site impacts; and
  - c. “Agri-tourism”, means a commercial event or activity that is logically, physically and/or economically connected to and supports an existing on-site farm operation and promotes the practice of agriculture.
7. An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler’s permit to sell or provide fireworks.
  - a. As part of the conditional use approval process, for the purpose of verifying the existence, continuity, and nature of the business, representatives of the business may apply to the County and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies. Alteration, restoration, or replacement of an aerial fireworks display business may be altered, restored, or replaced pursuant to Section 1206.
8. Dog training classes, which may be conducted outdoors or in preexisting farm buildings that existed on January 1, 2013, when:
  - a. The number of dogs participating in training does not exceed 10 dogs per training class; and
  - b. The number of training classes to be held on-site does not exceed six per day.
9. Dog testing trials, which may be conducted outdoors or in preexisting farm buildings that existed on January 1, 2013, when:
  - a. The number of dogs participating in a testing trial does not exceed 60; and

- b. The number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

E. Mineral, Aggregate, Oil, and Gas Uses

1. Mineral, Aggregate, Oil and Gas Uses: Pursuant to ORS 215.298 a land use permit is required for mining more than 1000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre. A permit for mining of aggregate shall be issued only for a site included on an inventory acknowledged in the Comprehensive Plan for the following:
  - a. Operations conducted for mining, crushing, or stockpiling of aggregate and other mineral and other subsurface resources, subject to ORS 215.298.
  - b. Processing as defined by ORS 517.750 of aggregate into asphalt or Portland cement; and
    - i. New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.
  - c. Processing of other mineral resources and other subsurface resources.
  - d. Operations conducted for mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under Section 401.

F. Transportation Uses

1. Roads, highways and other transportation facilities, and improvements not otherwise allowed under Section 401 may be established, subject to the adoption of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.
2. A personal-use airport means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of



the airstrip. Exceptions to the activities allowed under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be allowed subject to any applicable rules of the Oregon Department of Aviation.

G. Utility and Solid Waste Disposal Facility Uses

1. Wind energy power production systems as an accessory use, provided:
  - a. The system is not a commercial power generating facility;
  - b. No turbine has an individual rated capacity of more than 100kW, nor does the cumulative total rated capacity of the turbines comprising the installation exceed 100 kW;
  - c. The system complies with the Oregon Department of Environmental Quality noise standards otherwise applicable to commercial and industrial uses for quiet areas, measured at the nearest property line of the noise-sensitive use. This may be demonstrated through information provided by the manufacturer;
  - d. The system is prohibited if tower lighting for aviation safety is required;
  - e. The system will be located outside an urban growth boundary on a minimum of one acre;
  - f. The system does not exceed 150 feet in height from base to the height of the tower plus one blade;
  - g. The system is set back a distance not less than the tower height plus one blade from all property lines; and
  - h. Roof mounted system towers shall extend no more than an additional five feet above the highest ridge of a building's roof or 15 feet above the highest eave, whichever is higher, but shall not exceed 150 feet in height from finished grade.
2. A utility facility necessary for public service may be established as provided in ORS 215.275 and 215.276. A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided. An associated transmission line for a utility facility is subject to OAR 660-033-0130(16)(b).
3. Composting operations and facilities allowed on high-value farmland, subject to the following:

- a. Composting operations and facilities on high value farmland must:
  - i. Compost only on-farm produced compostable materials; or
  - ii. Compost only off-site materials and use all on-site generated compost for on-farm production in conjunction with, and auxiliary to, the farm use on the subject tract; or
  - iii. Compost any off-site materials with on-farm produced compostables and use all on site generated compost for on-farm production in conjunction with, and auxiliary to, the farm use on the subject tract; and
  - iv. Be an accepted farming practice in conjunction with and auxiliary to farm use on the subject tract; meaning that if off-site materials are added to on-farm produced compostables, the total amount of compost generated by the operation or facility does not exceed the amount of compost reasonably anticipated to be used on the subject tract; and
  - v. Limit buildings and facilities used in conjunction with the composting operation to those required for the operation of the subject facility; and
  - vi. Meet the performance and permitting requirements of the Department of Environmental Quality (DEQ) under OAR 340-093-0050 and 340-096-0060.b. Excess compost from operations and facilities on high value farmland may only be sold or transported if:
    - i. The operation or facility does not use off-site materials; and
    - ii. It is sold or transported to neighboring farm operations within two and one-half miles of the subject tract; and
    - iii. It is sold or transported in bulk loads of not less than one unit (7.5 cubic yards) in size that are transported in one vehicle.
4. Composting operations and facilities allowed on low-value farmland that constitute accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, subject to Subsection 401.05(G)(3).
5. Composting operations and facilities allowed on low value farmland that do not constitute accepted farming practices and are not in conjunction with and auxiliary to an on-site farm use on the subject tract shall be subject to Section 834.

6. Commercial utility facilities for the purpose of generating power for public use by sale, but not including wind power or photovoltaic solar power generation. A power generation facility shall not preclude more than 12 acres on High Value Farmland, or more than 20 acres on Low Value Farmland, from use as a commercial agricultural enterprise unless an exception is taken pursuant to Oregon Administrative Rule 660, Division 4; and
  - a. Permanent features of a power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) (a private campground) or other statute or rule when the project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to 401.05(A)(1) and shall have no effect on the original approval.

H. Parks, Public, and Quasi-public Uses

1. Buildings and facilities associated with a site for the takeoff and landing of model aircraft shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under Subsection 401.05(H)(1). The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under Subsection 401.05(H)(1). An owner of property used for the purpose authorized in Subsection 401.05(H)(1) may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in Subsection 401.05(H)(1), "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines, or design by a person on the ground.
2. Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable. A public park may be established consistent with the provisions of ORS 195.120.
3. Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center authorized under Subsection 401.05(H)(3) may provide services to veterans, including but not limited

to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

4. "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in Subsection 401.05(H)(4), a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.
5. Private parks, playgrounds, hunting and fishing preserves, and campgrounds. A campground is an area devoted to overnight temporary use for vacation, recreational, or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.
  - a. Except on a lot of record contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4.
  - b. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.
  - c. Campsites may be occupied by a tent, travel trailer, yurt, or recreational vehicle.
  - d. Separate sewer, water, or electric service hook-ups shall not be provided to individual campsites except that electrical service may be provided to yurts allowed for by Subsection 401.05(H)(6)(g).

- e. Campgrounds authorized by Subsection 401.05(H)(6) shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores, or gas stations.
  - f. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.
  - g. A private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. As used in Subsection 401.05(H)(6), "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up, or internal cooking appliance.
6. Golf courses, on land determined not to be high value farmland, as defined in ORS 195.300, subject to OAR 660-033-0130(20).

I. Outdoor Gatherings

1. An outdoor mass gathering as defined in ORS 433.735 or other gathering of 3,000 or fewer persons that is not anticipated to continue for more than 120 hours in any three-month period. Agri-tourism and other commercial events or activities may not be permitted as mass gatherings under ORS 215.283(4).
2. Any outdoor gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month planning period is subject to review by the Planning Commission under the provisions of ORS 433.763. Outdoor gatherings may not include agri-tourism events or activities.

J. Nonconforming Uses

1. Existing facilities wholly within a farm use zone may be maintained, enhanced, or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of Subsection 401.05(A)(1) and OAR 660-033-0130(20), but shall not be expanded to contain more than 36 total holes.
2. In addition to and not in lieu of the authority in Section 1206 to continue, alter, restore, or replace a nonconforming use, schools as formerly allowed pursuant to ORS 215.283(1)(a), as in effect before January 1, 2010, the effective date of 2009 Oregon Laws, chapter 850, section 14, may be expanded subject to:

- a. The requirements of Subsection 401.05(J)(3); and
  - b. Conditional approval as provided in Subsection 401.05(A)(1).
3. A nonconforming use described in Subsection 401.05(J)(2) may be expanded if:
- a. The use was established on or before January 1, 2009; and
  - b. The expansion occurs on:
    - i. The lot of record on which the use was established on or before January 1, 2009; or
    - ii. A lot of record that is contiguous to the lot of record described in Subsection 401.05(J)(3)(b)(i) and that was owned by the applicant on January 1, 2009.

401.06 PROHIBITED USES

Uses of structures and land not specifically permitted are prohibited.

401.07 DIMENSIONAL STANDARDS

- A. Minimum Lot Size: New lots of record shall be a minimum of 80 acres in size, except as provided in Subsection 401.09 or as modified by Section 902. For the purpose of complying with the minimum lot size standard, lots of record that front on existing county or public roads may include the land area between the front property line and the middle of the road right-of-way.
- B. Minimum Front Yard Setback: 30 feet.
- C. Minimum Side Yard Setback: 10 feet.
- D. Minimum Rear Yard Setback: 30 feet; however, accessory structures shall have a minimum rear yard setback of 10 feet.
- E. Exceptions: Dimensional standards are subject to modification pursuant to Section 900.
- F. Variances: The requirements of Subsections 401.07(B) through (D) may be modified pursuant to Section 1205.

401.08 DEVELOPMENT STANDARDS

- A. Manufactured Dwelling Parks: Redevelopment of a manufactured dwelling park with a different use shall require compliance with Subsection 825.03.

## 401.09 LAND DIVISIONS

- A. Land divisions that are prohibited under OAR 660-033-0100(8) and (9):
1. A land division that separates a temporary dwelling for care, relative farm help dwelling, home occupation or processing facility from a parcel on which the primary residential or other primary use exists is prohibited.
  2. A land division of a parcel created before January 1, 1993, on which a nonfarm dwelling was approved is prohibited.
- B. Land divisions are permitted, if consistent with one of the following options and Oregon Revised Statutes (ORS) Chapter 92. A land division pursuant to Subsection 401.09(C) shall require review of a Type I application pursuant to Section 1307. A land division pursuant to Subsection 401.09(D), (E), (F), (G), or (H) shall require review of a Type II application pursuant to Section 1307.
- C. 80-Acre Minimum Lot Size Land Divisions: A land division may be approved, if each new lot of record is a minimum of 80 acres in size, as established by Subsection 401.07(A).
- D. Nonfarm Use Land Divisions: A land division creating parcels less than 80 acres in size may be approved for a fire service facility and for nonfarm uses, except dwellings, set out in ORS 215.283(2), if the parcel for the fire service facility or nonfarm use is not larger than the minimum size necessary for the use.
- E. Nonfarm Dwelling Land Divisions: Lots of record less than 80 acres in size may be approved, subject to the following criteria:
1. The originating lot of record is at least 80 acres, and is not stocked to the requirements under ORS 527.610 to 527.770;
  2. The lot of record is composed of at least 95% Class VI through Class VIII agricultural soils, and composed of at least 95% soils not capable of producing 50 cubic feet per acre per year of wood fiber;
  3. The new lot of record for a dwelling will not be smaller than 20 acres; and
  4. No new lot of record may be created until the criteria in Subsections 401.05(C)(11)(a), (b), (d), (e), and (f) for a dwelling are satisfied.
- F. Parks/Open Space/Land Conservation Land Divisions: A land division for a provider of public parks or open space, or a not-for-profit land conservation organization, may be approved subject to ORS 215.263(10) and Subsection 401.05(A)(1).

- G. Historic Property Land Divisions: A land division may be approved to create a parcel with an existing dwelling to be used for historic property that meets the requirements of a Replacement Dwelling under Subsection 401.05(C)(1)(a) and the dwelling has been listed in county inventory as described in ORS 358.480.
- H. A division of a lot of record may occur along an urban growth boundary where the parcel remaining outside the urban growth boundary is zoned for agricultural uses and is smaller than the minimum parcel size, provided that:
- a. If the parcel contains a dwelling, the parcel must be large enough to support continued residential use.
  - b. If the parcel does not contain a dwelling, it:
    - i. Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120 for state and local parks.
    - ii. May not be considered in approving or denying an application for any other dwelling; and
    - iii. May not be considered in approving a redesignation or rezoning of agricultural lands, except to allow a public park, open space or other natural resource use.

#### 401.10 SUBMITTAL REQUIREMENTS

In addition to the submittal requirements identified in Subsection 1307.07(C), an application for any use requiring review of a Type I, II, or III application shall include an accurate site plan drawn to scale on eight-and-one-half-inch by 11-inch or eight-and-one-half-inch by 14-inch paper, showing the subject property and proposal. In addition, applications for farm dwellings requiring a justification of income shall include tax forms, farm receipts, or other appropriate documentation demonstrating the income produced from the subject property.

#### 401.11 APPROVAL PERIOD AND TIME EXTENSION

- A. Approval Period: Approval of a Type I, II, or III application is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented. "Implemented" means:
- 1. For a land division, the final plat shall be recorded with the County Clerk. If a final plat is not required under Oregon Revised Statutes Chapter 92, deeds with the legal descriptions of the new parcels shall be recorded with the County Clerk; or



2. For all other applications, a building or manufactured dwelling placement permit for a new primary structure that was the subject of the application shall be obtained and maintained. If no building or manufactured dwelling placement permit is required, all other necessary County development permits shall be obtained and maintained.
- B. Time Extension: If the approval of a Type I, II, or III application is not implemented within the initial approval period established by Subsection 401.11(A), a two-year time extension may be approved pursuant to Section 1310.
- C. Subsections 401.11(A) and (B) do not apply to home occupations or conditional uses, which shall be subject to any applicable approval period and time extension provisions of Sections 822 or 1203, respectively.

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11; Amended by Ord. ZDO-234, 6/7/12; Amended by Ord. ZDO-241, 1/1/13; Amended by Ord. ZDO-247, 3/1/14; Amended by Ord. ZDO-248, 10/13/14; Amended by Ord. ZDO-254, 1/4/16; Amended by Ord. ZDO-262, 5/23/17; Amended by Ord. ZDO-263, 5/23/17]



**407 AG/FOREST DISTRICT (AG/F)**

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407.01 PURPOSE

Section 407 is adopted to implement the policies of the Comprehensive Plan for Forest and Agriculture areas.

407.02 APPLICABILITY

Section 407 applies to land in the Ag/Forest (AG/F) District.

407.03 DEFINITIONS

The definitions set forth in Subsections 401.03 and 406.03 apply to Section 407. Unless specifically defined in Subsection 401.03, Subsection 406.03, or Section 202, *Definitions*, words or phrases used in Section 407 shall be interpreted to give them the same meaning as they have in common usage and to give Section 407 its most reasonable application.

407.04 USES PERMITTED

Uses permitted in the Ag/Forest District are listed in Table 407-1, *Permitted Uses in the AG/F District*.

A. As used in Table 407-1:

1. "A" means the use is allowed.
2. "Type I" means the use requires review of a Type I application, pursuant to Section 1307, *Procedures*.
3. "Type II" means the use requires review of a Type II application pursuant to Section 1307, *Procedures*.
4. "Type III" means the use requires review of a Type III application, pursuant to Section 1307, *Procedures*.
5. "C" means the use is a conditional use, approval of which is subject to Section 1203, *Conditional Uses*.
6. The "Subject To" column identifies any specific provisions of Subsection 401.05 or 406.05 to which the use is subject.
7. Numbers in superscript correspond to the notes that follow Table 407-1.

B. Permitted uses are subject to the applicable provisions of Subsection 406.07, *Dimensional Standards*; Subsection 406.08, *Development Standards*; Section 1000, *Development Standards*; and Section 1100, *Development Review Process*.

**Table 407-1: Permitted Uses in the AG/F District**

	Type	Use	Subject To
<b>FARM AND FOREST USES</b>	A	Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash where such uses pertain to forest uses and operations. Inside the Portland Metropolitan Urban Growth Boundary, refer to Subsection 1002.03 regarding a development restriction that may apply if excessive tree removal occurs.	
	A	Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation.	
	A	Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for the purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction, or recreational facilities.	
	A	Farm use as defined in ORS 215.203. Marijuana production is subject to Section 841.	
	A	Uses and structures customarily accessory and incidental to a farm or forest use, only if the primary farm or forest use exists.	
	TYPE II	Temporary portable facility for the primary processing of forest products.	406.05(B)(1)
	TYPE II	A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141. Marijuana processing is subject to Section 841. <sup>1</sup>	401.05(B)(1)
	C	Permanent facility for the primary processing of forest products.	406.05(A)(1), (6) & (B)(2)
	C	Permanent facilities for logging equipment repair and storage.	406.05(A)(1) & (6)
	C	Log scaling and weigh stations.	406.05(A)(1) & (6)
	<b>Type</b>	<b>Use</b>	<b>Subject To</b>
<b>NATURAL RESOURCE USES</b>	A	Uninhabitable structures accessory to fish and wildlife enhancement.	
	A	Creation of, restoration of, or enhancement of wetlands.	
	TYPE II	The propagation, cultivation, maintenance, and harvesting of aquatic species that are not under the jurisdiction of the Oregon Fish and Wildlife Commission.	401.05(A)(1)
	C	Forest management research and experimentation facilities.	406.05(A)(1) & (C)(1)
	<b>Type</b>	<b>Use</b>	<b>Subject To</b>
<b>RESIDENTIAL USES</b>	A	Uses and structures customarily accessory and incidental to a dwelling, only if a lawfully established dwelling exists.	
	A	Alteration, restoration, or replacement of a lawfully established dwelling.	406.05(D)(1)

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

	Type	Use	Subject To
<b>RESIDENTIAL USES (cont.)</b>	TYPE II	Replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a County inventory as historic property and listed on the National Register of Historic Places. <sup>2</sup>	401.05(A)(3)
	TYPE II	Forest Lot of Record Dwelling on land that was predominantly forest on January 1, 1993.	406.05(A)(3), (4), (5) & (D)(2)
	TYPE II	Agricultural Lot of Record Dwelling on Low Value Farmland that was predominantly agriculture on January 1, 1993.	401.05(A)(2), (3), (4) & (C)(3)
	TYPE II	Agricultural Lot of Record Dwelling on Class III or IV High Value Farmland that was predominantly agriculture on January 1, 1993.	401.05(A)(2), (3), (4) & (C)(4)
	TYPE III	Agricultural Lot of Record Dwelling on Class I or II High Value Farmland that was predominantly agriculture on January 1, 1993.	401.05(A)(2), (3), (4) & (C)(5)
	TYPE II	Agricultural Dwelling in conjunction with a farm use on High Value Farmland that was predominantly agriculture on January 1, 1993. <sup>2</sup>	401.05(A)(3) & (C)(6)
	TYPE II	Agricultural Dwelling in conjunction with a farm use on Low Value Farmland on land that was predominantly agriculture on January 1, 1993. <sup>2</sup>	401.05(A)(3) & (C)(7)
	TYPE II	Agricultural Dwelling customarily provided in conjunction with a commercial dairy farm on land that was predominantly agriculture on January 1, 1993.	401.05(A)(3) & (C)(8)
	TYPE II	Agricultural 160 acre test on low value farmland for a dwelling on land that was predominantly agriculture on January 1, 1993. <sup>2</sup>	401.05(A)(3), (4) & (C)(9)
	TYPE II	Agricultural Capability test on low value farmland for a dwelling on land that was predominantly agriculture on January 1, 1993. <sup>2</sup>	401.05(A)(3), (4) & (C)(10)
	TYPE II	Agricultural Nonfarm dwelling on land that was predominantly agriculture on January 1, 1993.	401.05(A)(3), (4) & (C)(11)
	TYPE II	Agricultural Accessory farmworker dwelling for a relative on land that was predominantly agriculture on January 1, 1993. <sup>2</sup>	401.05(A)(3) & (C)(12)
	TYPE II	Agricultural Accessory farmworker dwelling for year-round and seasonal farm workers on land that was predominantly agriculture on January 1, 1993. <sup>2</sup>	401.05(A)(3) & (C)(13)
	TYPE II	Agricultural Dwelling on Low or High Value Farmland to be owned and operated by a different farm operator on at least 80 acres.	401.05(A)(3) & (C)(14)
	TYPE II	Forest Template Test Dwelling on land that was predominantly forest on January 1, 1993.	406.05(A)(3), (4), (5) & (D)(3)
	TYPE II	160 Acre Forest Dwelling on land that was predominantly forest on January 1, 1993.	406.05(A)(3), (4), (5) & (D)(4)
	TYPE II	200 Acre Noncontiguous Tract Forest Dwelling on land that was predominantly forest on January 1, 1993.	406.05(A)(3), (4), (5) & (D)(5)
	TYPE II	Caretaker residences for public parks and public fish hatcheries.	406.05(A)(2) & (5)

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<b>RESIDENTIAL USES (cont.)</b>	TYPE II	Temporary forest labor camp, subject to Subsection 1204.01, for a period not to exceed one year.		
	TYPE II	Temporary dwelling for care, subject to Subsection 1204.03.	406.05(A)(1), (2) & (D)(6)	
	TYPE II	Room and board arrangements for a maximum of five unrelated persons in existing dwellings.	401.05(A)(1) & (3)	
	TYPE II	Residential home or facility as defined in ORS 197.660, in existing dwellings.	401.05(A)(1) & (3)	
		<b>Type</b>	<b>Use</b>	<b>Subject To</b>
<b>COMMERCIAL USES</b>	A	Family daycare provider.		
	A	Dog training classes.	401.05(D)(8)	
	A	Dog testing trials.	401.05(D)(9)	
	TYPE I	A license for a winery to carry out the first six of 18-day agri-tourism and other commercial events, subject to ORS 215.237 and 215.452(6)(a).		
	TYPE II	Farm stands, subject to OAR 660-033-0130(23) and ORS 215.283(1)(o). <sup>3</sup>		
	TYPE II	Home occupation, subject to Section 822.	406.05(A)(1), (2), (5) & (E)(1)	
	TYPE II	A landscape contracting business.	401.05(A)(1) & (D)(2)	
	TYPE II	Agri-tourism single event.	401.05(A)(1) & (D)(3)	
	TYPE II	Agri-tourism for up to 6 events or activities.	401.05(A)(1) & (D)(4)	
	TYPE II	A winery as described in and subject to ORS 215.452 or 215.453, whichever is applicable, but not a restaurant open more than 25 days per calendar year.		
	TYPE II	A bed and breakfast facility as a home occupation in association with a winery, subject to ORS 215.448, as provided in ORS 215.452 or 215.453, whichever is applicable.	401.05(A)(1) & (D)(5)	
	TYPE II	A large winery with a restaurant in conjunction with a winery as described in ORS 215.453 that is open to the public for more than 25 days in a calendar year or; agri-tourism or other commercial events in conjunction with a winery as described in ORS 215.453 that occur on more than 25 days in a calendar year.	401.05(A)(1)	
	TYPE II	Winery agri-tourism or other commercial events for days seven through 18 of the 18-day limit, subject to ORS 215.237 and 215.452(6)(c).		
	C	Home occupation to host events, subject to Section 806.	406.05(A)(1), (2), (5) & (E)(1)	
	C	Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel that exceeds the standards of ORS 215.203(2)(b)(K) or Subsection 401.05(B)(1). <sup>4</sup>	401.05(A)(1)	
	C	Agri-tourism additional events not to exceed 18 events on a minimum of 80 acres.	401.05(A)(1) & (D)(6)	
C	Private accommodations for fishing on a temporary basis.	406.05(A)(1), (2), (5) & (E)(2)		

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<b>COMMERCIAL USES (cont.)</b>	C	Private seasonal accommodations for fee based hunting.	406.05(A)(1), (5) & (E)(3)
	C	An aerial fireworks display business.	401.05(A)(1) & (D)(7)
	C	Commercial dog boarding kennels.	401.05(A)(1)
	C	Dog training classes or testing trials that cannot be established under Subsection 401.05(D)(8) or (9).	401.05(A)(1)
	<b>Type</b>	<b>Use</b>	<b>Subject To</b>
<b>MINERAL, AGGREGATE, OIL, AND GAS USES</b>	A	Exploration for mineral and aggregate resources as defined in ORS Chapter 517 and subject to the requirements of the Department of Geology and Mineral Industries.	
	A	Operations for the exploration for, and production of, geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to a wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).	
	A	Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).	
	C	Operations conducted for mining, crushing, or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.	401.05(A)(1), (E)(1) & (E)(1)(a)
	C	Processing as defined by ORS 517.750 of aggregate into asphalt or Portland cement.	401.05(A)(1), (E)(1) & (E)(1)(b)
	C	Processing of other mineral resources and other subsurface resources.	401.05(A)(1), (E)(1) & (E)(1)(c)
	C	Operations conducted for mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under Section 407.	401.05(A)(1), (E)(1) & (E)(1)(d)
	C	Mining and processing of oil, gas, or other subsurface resources.	406.05(A)(1), (6) & (F)(1)
	C	Exploration for and production of geothermal, gas, and oil.	406.05(A)(1), (6) & (F)(2)

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	Type	Use	Subject To
<b>TRANSPORTATION USES</b>	A	Widening of roads within existing rights-of-way in conformance with Chapter 5 of the Comprehensive Plan.	
	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.	
	A	Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.	
	A	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.	
	A	Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations, and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.	
	TYPE II	Parking of up to seven dump trucks and seven trailers, subject to ORS 215.311.	406.05(A)(1)
	TYPE II	Parking of no more than seven log trucks, subject to ORS 215.311.	401.05(A)(1)
	TYPE II	Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels.	406.05(A)(1)
	TYPE II	Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.	406.05(A)(1)
	TYPE II	Improvement of public roads and highway-related facilities, such as maintenance yards, weigh stations, and rest areas, where additional property or right-of-way is required but not resulting in the creation of new land parcels.	406.05(A)(1)
	C	Aids to navigation and aviation.	406.05(A)(1) & (6)
	C	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance, and service facilities.	401.05(A)(1) & (F)(2)
	C	Expansion of existing airports.	406.05(A)(1)
	C	Temporary asphalt and concrete batch plants as accessory uses to specific highway projects.	406.05(A)(1)
	C	Roads, highways, and other transportation facilities and improvements not otherwise allowed under this Ordinance.	401.05(F)(1)



CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

	Type	Use	Subject To
<b>UTILITY AND SOLID WASTE DISPOSAL FACILITY USES</b>	A	Collocation of antennas with associated equipment on a previously approved wireless telecommunication facility, subject to Subsection 835.04(A).	
	A	Placement of telecommunication antennas with associated equipment on an existing utility pole, subject to Subsection 835.04(B).	
	A	Essential public communication services, subject to Subsection 835.04(C).	
	A	Local distribution lines (i.e., electric, telephone, natural gas) and accessory equipment (i.e., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups.	
	A	Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.	
	A	Water intake facilities, canals and distribution lines for farm irrigation and ponds.	
	A	Solar energy systems as an accessory use.	
	A	Rainwater collection systems as an accessory use.	
	A	Electric vehicle charging stations for residents and their non-paying guests.	
	A	Meteorological towers.	
	TYPE II	Wind energy power production systems as an accessory use.	406.05(H)(1)
	TYPE II	Collocation of antennas with associated equipment on a previously approved wireless telecommunication facility that exceed Subsection 835.04(A), subject to Subsection 835.05(A).	
	TYPE II	Placement of telecommunication antennas with associated equipment on replacement utility pole that exceeds the replaced pole by no more than 20 feet, subject to Subsection 835.05(A).	
	TYPE II	Composting operations and facilities on high value farmland.	401.05(A)(1) & (G)(3)
	C	Wireless telecommunication facilities listed in Subsection 835.06, subject to Section 835.	406.05(A)(1)
	C	Composting facilities on low value farmland.	401.05(A)(1) & (G)(4)
	C	Water intake facilities, related treatment facilities, pumping stations, and distribution lines.	406.05(A)(1) & (6)
	C	Reservoirs and water impoundments.	406.05(A)(1),(2) & (6)
	C	A disposal site for solid waste for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities, or buildings necessary for its operation.	406.05(A)(1) & (6)
	C	Commercial utility facilities for the purpose of generating power.	406.05(A)(1), (6) & (H)(2)
	C	New electric transmission lines.	406.05(A)(1) & (H)(3)
	C	Television, microwave, and radio communication facilities.	406.05(A)(1), (6) & (H)(4)

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	Type	Use	Subject To
<b>PARKS, PUBLIC, AND QUASI-PUBLIC USES</b>	A	Private hunting and fishing operations without any lodging accommodations.	
	A	Towers and fire stations for forest fire protection.	
	A	Land application of reclaimed water, agricultural process or industrial process water, or biosolids for agricultural, horticultural, or forest production, or for irrigation in connection with a use allowed in the EFU zoning district, subject to the issuance of a license, permit, or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053, or 468B.055, or in compliance with rules adopted under ORS 468(B).095.	
	A	Onsite filming and activities accessory to onsite filming for 45 days or less.	
	TYPE II	A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary.	401.05(H)(1)
	TYPE II	Community centers.	401.05(A)(1), (5)&(H)(3)
	TYPE II	Living history museum.	401.05(A)(1), (5)&(H)(4)
	TYPE II	Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.	401.05(A)(1)
	TYPE II	A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.	401.05(A)(1)
	TYPE II	Churches and cemeteries in conjunction with churches, consistent with ORS 215.441, which does not include private or parochial school education for prekindergarten through grade 12 or higher education.	401.05(A)(5)
	TYPE II	Fire service facilities providing rural fire protection services.	
	C	Operations for extraction and bottling of water.	401.05(A)(1)
	C	Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.	401.05(A)(1)
	C	Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.	401.05(A)(1) & (5)
	C	Golf courses.	401.05(A)(1), (5)&(H)(6)

<b>PARKS, PUBLIC, AND QUASI-PUBLIC USES (cont.)</b>	C	Youth camps on 40 acres or more, subject to OAR 660-006-0031.	406.05(A)(1) & (3)
	C	Cemeteries.	406.05(A)(1) & (6)
	C	Firearms training facility as provided in ORS 197.770(2).	406.05(A)(1) & (6)
	C	Private parks and campgrounds.	406.05(A)(1),(2),(6) & (1)(1)
	C	Public parks including only those uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.	406.05(A)(1) & (6)
	<b>Type</b>	<b>Use</b>	<b>Subject To</b>
<b>OUTDOOR GATHERINGS</b>	A	An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period.	406.05(J)(1)
	C	An outdoor mass gathering of more than 3,000 persons that continues or can reasonably be expected to continue for more than 120 hours within any three-month period and any part of which is held in open spaces.	406.05(A)(1) & (J)(2)

- 1 The processing, compounding, or conversion of marijuana into ~~cannabinoid concentrates or~~ cannabinoid extracts is prohibited.
- 2 Farming of a marijuana crop shall not be used to demonstrate compliance with the approval criteria for a dwelling. (See ORS 475B.370.)
- 3 A farm stand shall not be used for the sale, or to promote the sale, of marijuana items. (See ORS 475B.370.)
- 4 A commercial activity carried on in conjunction with a marijuana crop is prohibited. (See ORS 475B.370.)

**407.05 PROHIBITED USES**

Uses of structures and land not specifically permitted are prohibited.

**407.06 DIMENSIONAL STANDARDS**

Subsection 406.07, which establishes dimensional standards in the Timber District, shall apply in the Ag/Forest District.

**407.07 DEVELOPMENT STANDARDS**

Subsection 406.08, which establishes development standards in the Timber District, shall apply in the Ag/Forest District.

**407.08 LAND DIVISIONS**

Subsection 406.09, which establishes land division standards in the Timber District, shall apply in the Ag/Forest District.

407.09 SUBMITTAL REQUIREMENTS

Subsection 406.10, which establishes submittal requirements in the Timber District, shall apply in the Ag/Forest District.

407.10 APPROVAL PERIOD AND TIME EXTENSION

Subsection 406.11, which establishes approval period and time extension standards in the Timber District, shall apply in the Ag/Forest District.

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11; Amended by Ord. ZDO-234, 6/7/12; Amended by Ord. ZDO-241, 1/1/13; Amended by Ord. ZDO-245, 7/1/13; Amended by Ord. ZDO-247, 3/1/14; Amended by Ord. ZDO-248, 10/13/14; Amended by Ord. ZDO-254, 1/4/16; Amended by Ord. ZDO-262, 5/23/17; Amended by Ord. ZDO-263, 5/23/17]

**841 MARIJUANA PRODUCTION, PROCESSING, AND RETAILING**

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**841.01 APPLICABILITY**

Section 841 applies to:

- A. Marijuana production in the AG/F, EFU, FF-10, RRFF-5, and TBR Districts;
- B. Marijuana processing in the AG/F and EFU Districts; and
- C. Marijuana retailing in the C-2, C-3, CC, NC, OC, PMU, RC, RCC, RCO, RTC, RTL, and SCMU Districts.

**841.02 PROCEDURE**

Marijuana production and marijuana retailing require review as Type I applications pursuant to Section 1307, *Procedures*. Marijuana processing requires review as a Type II application pursuant to Section 1307.

**841.03 MARIJUANA PRODUCTION**

Marijuana production shall be subject to the following standards and criteria:

**A. Outdoor Production.**

1. Outdoor production means producing marijuana:
  - a. In an expanse of open or cleared ground; or
  - b. In a greenhouse, hoop house, or similar non-rigid structure that does not utilize any artificial lighting on mature marijuana plants, including but not limited to electrical lighting sources. A mature marijuana plant is a marijuana plant that is flowering.
2. Outdoor production is prohibited in the FF-10 and RRFF-5 Districts but is permitted in the AG/F, EFU, and TBR Districts. Where permitted, outdoor production is subject to the same standards and criteria as indoor production, except where specifically noted.

**B. Minimum Tract Size. A minimum tract size standard shall apply as follows:**

1. In the FF-10 and RRFF-5 Districts, the subject tract shall be a minimum of five acres, except that if the majority of abutting lots of record are equal to or greater than two acres, the subject tract shall be a minimum of two acres. Abutting lots of record include lots of record that are contiguous to the subject tract, as well as lots of record directly across any access drive, or private, public, or county road, provided the functional classification of the road is below that of a collector.

2. In the AG/F, EFU, and TBR Districts, the subject tract shall be a minimum of two acres, except that if outdoor production is proposed, the subject tract shall be a minimum of five acres.

C. Minimum Yard Depth/Distance from Lot Lines. The following standards shall apply:

1. In the FF-10 and RRFF-5 Districts, the minimum front, rear, and side yard depths for any structure used for marijuana production shall be 50 feet.
  - a. Pursuant to Oregon Revised Statutes (ORS) 475B.340(2)(b), these yard depth standards do not apply to an agricultural building used to produce marijuana located on a premises for which a license has been issued under ORS 475B.070 if the agricultural building:
    - i. Was constructed on or before July 1, 2015, in compliance with all applicable land use and building code requirements at the time of construction;
    - ii. Is located at an address where a marijuana grow site first registered with the Oregon Health Authority<sup>1</sup> (OHA) under ORS 475B.420 on or before January 1, 2015;
    - iii. Was used to produce marijuana pursuant to the provisions of ORS 475B.400 to 475B.525 on or before January 1, 2015; and
    - iv. Has four opaque walls and a roof.
2. In the AG/F, EFU, and TBR Districts:
  - a. Outdoor production shall be a minimum of 100 feet from all lot lines.
  - b. Structures used for indoor production shall comply with the yard depth standards of the subject zoning district.
3. If the subject property is a tract that includes more than one lot of record, Subsections 841.03(C)(1) and (2)(a) do not apply to the lot line(s) that only separate these lots of record from one another. However, the yard depth standards of the subject zoning district still apply.

D. Enclosed Buildings. In the FF-10 and RRFF-5 Districts, marijuana production shall be located entirely within one or more completely enclosed buildings.

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<sup>1</sup> The Oregon Health Authority is referred to herein as "OHA." References to OHA shall include any successor entity that may be created by the State of Oregon to assume the responsibility of administering the state's medical marijuana program.

E. Maximum Building Floor Space. The following standards apply in the FF-10 and RRF-5 Districts:

1. A maximum of 5,000 square feet of building floor space may be used for marijuana production and all activities associated with marijuana production (hereinafter referred to as marijuana production space) on the subject tract.
2. If only a portion of a building is authorized as marijuana production space, a partition wall at least seven feet in height, or a height as required by the County Building Codes Division, whichever is greater, shall separate the marijuana production space from the remainder of the building. A partition wall may include a door, capable of being closed, for ingress and egress between the marijuana production space and the remainder of the building.

F. Access. The subject tract shall have frontage on, and direct access from, a constructed public, county, or state road, or take access on an exclusive road or easement serving only the subject tract. However, this standard will be waived if the subject tract takes access via a private road or easement which also serves other properties and evidence is provided by the applicant, in the form of a petition, that all other property owners who have access rights to the private road or easement agree to allow the specific marijuana production described in the application. Such evidence shall include any conditions stipulated in the agreement.

G. Lighting. Lighting shall be regulated as follows:

1. Light cast by light fixtures inside any building used for marijuana production shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.
2. Marijuana grow lights located outside a building shall not be illuminated from 7:00 p.m. to 7:00 a.m. the following day.
3. Light cast by exterior light fixtures other than marijuana grow lights (e.g., security lights, driveway lights) shall not be directed skyward and shall be directed within the boundaries of the subject tract.

H. Odor. As used in Subsection 841.03(H), building means the building, or portion thereof, used for marijuana production. However, Subsection 841.03(H) does not apply to a building approved as part of outdoor production pursuant to Subsection 841.03(A)(1)(b).

1. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
2. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute

(CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.

3. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
  4. Negative air pressure shall be maintained inside the building.
  5. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
  6. The filtration system shall be designed by a mechanical engineer licensed in the State of Oregon. The engineer shall stamp the design and certify that it complies with Subsection 841.03(H).
  7. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required.
- I. Noise. The applicant shall submit a noise study by an acoustic engineer licensed in the State of Oregon. The study shall demonstrate that generators as well as mechanical equipment used for heating, ventilating, air conditioning, or odor control will not produce sound that, when measured at any lot line of the subject tract, exceeds 50 dB(A).
- J. Security Cameras. If used, security cameras shall be directed to record only the subject tract and may be directed to public rights-of-way as applicable, except as required to comply with licensing requirements of the Oregon Liquor Control Commission<sup>2</sup> (OLCC) or registration requirements of the OHA.
- K. Water. The applicant shall submit proof of a legal source of water as evidenced by:
1. A copy of a water right permit, certificate, or other water use authorization from the Oregon Water Resources Department (OWRD);
  2. A statement from a public or private water provider that water is supplied by that water provider. The statement shall include the name and contact information of the water provider; or
  3. Proof from the OWRD that the water to be used for marijuana production is from a source that does not require a water right.

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<sup>2</sup> The Oregon Liquor Control Commission is referred to herein as "OLCC." References to OLCC shall include any successor entity that may be created by the State of Oregon to assume the responsibility of administering the state's recreational marijuana program.



- L. Waste Management. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.
- M. Residency. In the FF-10 and RRFF-5 Districts, a minimum of one of the following shall reside in a dwelling unit on the subject tract:
  1. An owner of the subject tract;
  2. A holder of an OLCC license for marijuana production, provided that the license applies to the subject tract; or
  3. A person registered with the OHA as a person designated to produce marijuana by a registry identification cardholder, provided that the registration applies to the subject tract.
- N. Fencing. The maximum height of any fencing on the subject tract shall be 10 feet. Fences, walls, or other barriers shall not be electrified, or use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security feature designed to discourage ingress through the potential of causing bodily harm.
- O. Exceptions. Marijuana production, provided such production is done pursuant to registration with the OHA, is not required to comply with Subsections 841.03(G)(3) and (H) through (N), provided that the minimum front, rear, and side yard depths for any structure used for marijuana production shall be 100 feet.

841.04 MARIJUANA PROCESSING

Marijuana processing shall be subject to the following standards and criteria:

- A. Maximum Number of Processing Licenses. Only one marijuana processor licensed by the OLCC or one medical marijuana processing site registered by the OHA may be located on the subject lot of record.
- B. Minimum Lot of Record Size. The subject lot of record shall be a minimum of 10 acres.
- CA. Minimum Yard Depth. The minimum front, rear, and side yard depths for any structures used for marijuana processing shall be 100 feet comply with the yard depth standards of the subject zoning district.
- DB. Enclosed Buildings. Marijuana processing shall be located entirely within one or more completely enclosed buildings.
- EC. Access. The subject lot of record shall have frontage on, and direct access from, a constructed public, county, or state road, or take access on an exclusive road or easement serving only the subject lot of record. However, this standard will be waived if the subject lot of record takes access via a

private road or easement which also serves other properties and evidence is provided by the applicant, in the form of a petition, that all other property owners who have access rights to the private road or easement agree to allow the specific marijuana processing described in the application. Such evidence shall include any conditions stipulated in the agreement.

FD.        Lighting. Lighting shall be regulated as follows:

1. Light cast by light fixtures inside any building used for marijuana processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.
2. Light cast by exterior light fixtures (e.g., security lights, driveway lights) shall not be directed skyward and shall be directed within the boundaries of the subject lot of record tract.

GE.        Odor. As used in Subsection 841.04(GE), building means the building, or portion thereof, used for marijuana processing.

1. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
2. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
3. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
4. Negative air pressure shall be maintained inside the building.
5. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
6. The filtration system shall be designed by a mechanical engineer licensed in the State of Oregon. The engineer shall stamp the design and certify that it complies with Subsection 841.04(GE).
7. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required.

HF.        Noise. The applicant shall submit a noise study by an acoustic engineer licensed in the State of Oregon. The study shall demonstrate that generators as

well as mechanical equipment used for heating, ventilating, air conditioning, or odor control will not produce sound that, when measured at any lot line of the subject ~~lot of record~~~~tract~~, exceeds 50 dB(A).

IG. Security Cameras. If used, security cameras shall be directed to record only the subject ~~lot of record~~~~tract~~ and may be directed to public rights-of-way as applicable, except as required to comply with licensing requirements of the ~~Oregon Liquor Control Commission (OLCC)~~ or registration requirements of the ~~Oregon Health Authority (OHA)~~.

JH. Water. The applicant shall submit proof of a legal source of water as evidenced by:

1. A copy of a water right permit, certificate, or other water use authorization from the Oregon Water Resources Department (OWRD);
2. A statement from a public or private water provider that water is supplied by that water provider. The statement shall include the name and contact information of the water provider; or
3. Proof from the OWRD that the water to be used for marijuana processing is from a source that does not require a water right.

KI. Waste Management. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.

LJ. Fencing. The maximum height of any fencing on the subject ~~lot of record~~~~tract~~ shall be 10 feet. Fences, walls, or other barriers shall not be electrified, or use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security feature designed to discourage ingress through the potential of causing bodily harm.

MK. Exceptions. Marijuana processing, provided such processing is done pursuant to registration with the OHA, is not required to comply with Subsections 841.04(~~FD~~)(2) and (~~GE~~) through (~~LJ~~).

## 841.05 MARIJUANA RETAILING

Marijuana retailing shall be subject to the following standards and criteria:

- A. Hours. A marijuana retailer may only sell to consumers between the hours of 10:00 a.m. and 9 p.m. and may only permit consumers to be present in the building space occupied by the marijuana retailer between the hours of 10:00 a.m. and 9 p.m.
- B. Odor. As used in Subsection 841.05(B), building means the building, or portion thereof, used for marijuana retailing.

1. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
  2. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
  3. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
  4. Negative air pressure shall be maintained inside the building.
  5. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
  6. The filtration system shall be designed by a mechanical engineer licensed in the State of Oregon. The engineer shall stamp the design and certify that it complies with Subsection 841.05(B).
  7. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required.
- C. Window Service. The use shall not have a walk-up window or drive-thru window service.
- D. Waste Management. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the ~~Oregon Liquor Control Commission (OLCC)~~ licensee or ~~Oregon Health Authority (OHA)~~ registrant.
- E. Minors. No one under the age of 21 shall be permitted to be present in the building space occupied by the marijuana retailer, except as allowed by state law.
- F. Co-Location of Related Activities and Uses. Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by the marijuana retailer. In addition, marijuana retailing shall not be co-located on the same lot of record or within the same building with any marijuana social club or marijuana smoking club.
- G. Minimum Separation Distances. Minimum separation distances shall apply as follows:
1. The use shall be located a minimum of:

- a. 2000 feet from a public elementary or secondary school for which attendance is compulsory under Oregon Revised Statutes (ORS) 339.020, including any parking lot appurtenant thereto and any property used by the school; or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a), including any parking lot appurtenant thereto and any property used by the school;
  - b. 1500 feet from a public park, public playground, government-owned recreational use, public library, substance use disorder service provider licensed by the OHA under Oregon Administrative Rules Chapter 415, Division 12, light rail transit station, or a multifamily dwelling owned by a public housing authority.
  - c. 500 feet from a licensed daycare facility or licensed preschool, including any parking lot appurtenant thereto and any property used by the daycare facility or preschool;
  - d. 100 feet from a zoning district listed in Section 300, *Urban and Rural Residential Districts*; however, this provision shall not apply if the subject property has street frontage on a principal interstate, principal expressway, principal arterial, or major arterial, as identified on Comprehensive Plan Map 5-4a, *Road Functional Classification Urban*, or 5-4b, *Road Functional Classification Rural*.
2. If the use is licensed by the OLCC pursuant to ORS 475B.110, it shall be located a minimum of 1,000 feet from any other marijuana retailer so licensed by the OLCC.
  3. If the use is registered with the OHA pursuant to ORS 475B.450, it shall be located a minimum of 1,000 feet from any other marijuana retailer so registered with the OHA.
  4. For purposes of Subsection 841.05(G)(1), distance shall be measured from the lot line of the affected property (e.g., a school) to the closest point of the building space occupied by the marijuana retailer. For purposes of Subsections 841.05(G)(2) and (3), distance shall be measured from the closest point of the building space occupied by one marijuana retailer to the closest point of the building space occupied by the other marijuana retailer.
  5. A change in use (including a zone change) to another property to a use identified in Subsection 841.05(G) after a complete Type I application for marijuana retailing has been filed shall not result in the marijuana retailer being in violation of Subsection 841.05(G).
  6. Subsection 841.05(G) does not apply to any marijuana retailer that obtained full, unconditional approval of a registration from the OHA on or before March 31, 2015, that is operating in a building space where marijuana retailing activities approved by the OHA have been continuously occurring in

that building space since May 31, 2014, except during the effective dates of the Medical Marijuana Facility Moratorium adopted pursuant to Clackamas County Ordinance 01-2014.

7. In case of a conflict under Subsection 841.05(G)(2) or (3), any person who has received approval of a Type I land use permit for marijuana retailing, shall be deemed to have established marijuana retailing at the approved location, so long as the marijuana retailer begins operation within one year of the date of the County's final decision on the Type I land use permit application. If more than one Type I application is in process with the County at one time, the County shall issue decisions in the order in which complete applications were filed.

841.06 APPROVAL PERIOD

- A. Approval of a permit under Subsection 841.03 or 841.04 is valid for four years from the date of the final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.
  1. Implemented means all major development permits shall be obtained and maintained for the approved marijuana production or marijuana processing, or if no major development permits are required to complete the development contemplated by the approved marijuana production or marijuana processing, implemented means all other necessary County development permits (e.g., grading permit, building permit for an accessory structure) shall be obtained and maintained. A major development permit is:
    - a. A building permit for a new primary structure that was part of the approved development; or
    - b. A permit issued by the County for parking lot or road improvements required by the approved development.
- B. Approval of a permit under Subsection 841.05 is valid for one year from the date of the County's final decision. During this one-year period, the approval shall be implemented, or the approval will become void. Implemented means that the marijuana retailer has begun operation. Notwithstanding this one-year implementation period, a complete application for a marijuana retailing license shall be filed with the ~~OLCC Oregon Liquor Control Commission~~, or a complete application for a medical marijuana dispensary registration shall be filed with the ~~OHA Oregon Health Authority~~, within three months of the date of the County's final decision, or the approval will become void.

[Added by Ord. ZDO-254, 1/4/16; Amended by Ord. ZDO-254, 3/1/16; Amended by Ord. ZDO-263, 5/23/17]

July 27, 2017

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of a Federal Subrecipient Grant Agreement with CODA, Inc. for  
Housing Assistance and Services for Residents in Alcohol and Drug Recovery

<b>Purpose/Outcomes</b>	Provides housing assistance and services for Clackamas County residents in alcohol and drug recovery to assist them in becoming self-sufficient and obtaining permanent housing placements.
<b>Dollar Amount and Fiscal Impact</b>	Amount maximum is \$577,634.98 for two years.
<b>Funding Source</b>	\$554,033.16 in federal funds are provided through the Intergovernmental Agreement for the Financing of Community Addictions and Mental Health Services (CFDA 93.959) issued by the State of Oregon acting by and through its Oregon Health Authority. \$23,601.82 in state general funds. No County general funds are involved.
<b>Duration</b>	Effective upon signature and terminates June 30, 2019.
<b>Previous Board Action</b>	This is a renewal of subrecipient grant #7725/17-034 which the Board approved April 13, 2017, agenda item # 041317-A1
<b>Strategic Plan Alignment</b>	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.
<b>Contact Person</b>	Mary Rumbaugh, Director, Behavioral Health Division 503-722-5305
<b>Contract No.</b>	8199/18-017

**BACKGROUND:**

The Clackamas County Behavioral Health Division (“BHD”), Housing & Human Services Department requests the approval of this Federal Subrecipient Grant Agreement with CODA, Inc. to provide housing assistance and services program for Clackamas County residents in alcohol and drug recovery. CODA will support the substance abuse treatment and early recovery efforts of the participants while also focusing on participants becoming self-sufficient and obtaining permanent housing placements.

This subrecipient grant agreement is effective upon signature and terminates on June 30, 2019 with a maximum expenditure of \$577,634.98 over two years. County Counsel reviewed and approved this document on July 13, 2017.



**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing & Human Services

**7844CLACKAMAS COUNTY, OREGON  
SUBRECIPIENT GRANT AGREEMENT 18-017**

Project Name: ***A&D Supported Housing Program***  
Project Number: 36006 – A&D Block Grant

This Agreement is between **Clackamas County**, Oregon, acting by and through its Department of Health, Housing and Human Services, and **CODA, Inc.**, an Oregon Non-profit Organization.

**Clackamas County Data**

Grant Accountant: <b><i>Ed Jones</i></b>	Program Manager: <b><i>Elise Thompson</i></b>
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 (503) 742-5410 ejones@clackamas.us	Clackamas County – Behavioral Health Division 2051 Kaen Road, Suite 154 Oregon City, OR 97045 (503) 742-5353 ethompson@clackamas.us

**Subrecipient Data**

Finance/Fiscal Representative: <b><i>Eric Knopf</i></b>	Program Representative: <b><i>Flori Hall</i></b>
CODA, Inc. 1027 E Burnside Portland, OR 97214 503-239-8400 ericknopf@codainc.org	CODA, Inc. 1027 E Burnside Portland, OR 97214 503-239-8400 florihall@codainc.org
DUNS: 093490142	

**RECITALS**

WHEREAS, Clackamas County ("COUNTY"), is a political subdivision of the State of Oregon;

WHEREAS, COUNTY holds an Intergovernmental Agreement ("IGA") for the Financing of Community Addictions and Mental Health Services (Agreement No. 153117) with the State of Oregon acting by and through its Oregon Health Authority ("OHA") for the biennium term of 2017-2019;

WHEREAS, ORS 430.610(4) and 430.640(1) authorize OHA to assist Oregon counties and groups of Oregon counties in the establishment and financing of community addictions and mental health programs operated or contracted for by one or more counties;

WHEREAS, COUNTY has established and proposes, during the term of the IGA, to operate or contract for the operation of community addictions and mental health programs in accordance with the policies, procedures and administrative rules of OHA;

WHEREAS, COUNTY has requested financial assistance from OHA to operate or contract for the operation of its community addictions and mental health programs;

WHEREAS, OHA is willing, upon the terms of and conditions of the aforementioned IGA, to provide financial assistance to COUNTY to operate or contract for the operation of its community addictions and mental health programs;

WHEREAS, various statutes authorize OHA and COUNTY to collaborate and cooperate in providing for basic community addictions and mental health programs and incentives for community-based care in a manner that ensures appropriate and adequate statewide service delivery capacity, subject to availability of funds;

WHEREAS, CODA, Inc. ("SUBRECIPIENT") is a not-for-profit behavioral health agency founded in 1969. CODA, Inc. provides a wide range of opioid-addictions treatment services as well as both inpatient and outpatient evidence-based alcohol and drug treatment services.

THEREFORE, the parties seek to provide **housing assistance and services** for Clackamas County residents in alcohol and drug recovery through this Subrecipient Grant Agreement of federal financial assistance, which sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

According to the terms of this Subrecipient Grant Agreement (this "Agreement") the COUNTY and SUBRECIPIENT agree as follows:

### AGREEMENT

1. **Term and Effective Date.** This Agreement 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 subrecipient for expenses approved in writing by COUNTY relating to the project incurred no earlier than **July 1, 2017** 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 is described in attached **Exhibit A**. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the Community Mental Health Program ("CMHP") IGA No. 153117 awarded on July 1, 2017 which is/are the source of the grant funding, in addition to compliance with requirements of Title 42 of the *Code of Federal Regulations* (CFR), Part 6A, Sub-Part II & III. A copy of the relevant sections of that grant award have been provided to SUBRECIPIENT by the COUNTY, which are attached to and made a part of this Agreement by reference.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the 2017-2019 Intergovernmental Agreement for the Financing of Community Service Addictions and Mental Health Services (Agreement No. 153117) and Clackamas County General funds. The maximum, not to exceed, grant amount that the COUNTY will pay is **\$577,634.98** (maximum of \$288,817.49 per year of this Agreement). This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in **Exhibit D** and **Exhibit E**. Failure to comply with the terms of this Agreement may result in withholding of payment. Funding for this Agreement is from the following sources:
  - 4.1. **Federal Funds: \$554,033.16** in federal funds are provided through the Intergovernmental Agreement for the Financing of Community Addictions and Mental Health Services (Agreement No. 153117) (**CFDA 93.959**) issued to the COUNTY by the State of Oregon acting by and through its OHA. The State of Oregon receives Block Grants for Substance Abuse Services ("SAPT") funds from the U.S. Department of Health and Human Services, Office of Substance Abuse and Mental Health Services Administration.
    - 4.1.1. Year 1 federal funding: \$277,016.58
    - 4.1.2. Year 2 federal funding: \$277,016.58

- 4.2. **Other Funds: \$23,601.82** in State funds are provided for funding of other items in the program budget.
- 4.2.1. Year 1 other funds: \$11,800.91
- 4.2.2. Year 2 other funds: \$11,800.91
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. SUBRECIPIENT must submit a written request including a justification for any amendment to COUNTY in writing at least **forty-five (45) calendar days** before this Agreement expires. No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement except for the final payment. The final request for payment must be submitted to COUNTY no later than fifteen (15) days after the end date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.
6. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other upon **thirty (30) business days** notice. This notice may be transmitted in person, by certified mail, facsimile, or by email.
7. **Funds Available and Authorized.** COUNTY certifies that funds sufficient to pay for this Agreement have been obligated to COUNTY. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
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 Section 7.
9. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
- a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
- b) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within **thirty (30) days** of becoming aware of the likely or actual changes and a statement of whether or not the SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
- c) **Cost Principles.** The SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal Government shall be the liability of the SUBRECIPIENT.
- d) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
- e) **Match.** Matching funds are not required for this Agreement.
- f) **Budget.** The SUBRECIPIENT's use of funds may not exceed the amounts specified in the **Exhibit B**. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.

- g) **Indirect Cost Recovery.** As outlined in **Exhibit B**, SUBRECIPIENT selects the *de minimis* indirect cost recovery rate of 10% of modified total direct costs ("MTDC"). For the items in **Exhibit B** that are excluded from MTDC, SUBRECIPIENT will receive an indirect cost recovery rate of 4.26% of expenditures, funded from non-federal sources.
- h) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
- i) **Payment.** The SUBRECIPIENT must submit a final request for payment no later than **fifteen (15) days** after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in **Exhibit D**.
- j) **Performance Reporting.** The SUBRECIPIENT must submit Performance Reports as specified in **Exhibit E** during the term of this Agreement.
- k) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance with Treasurer Regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed **Exhibit D** requirements on a monthly basis.
- l) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (**Exhibits F, G & H**), performance, and other reports as required by the terms and conditions of the federal award and/or COUNTY, no later than 90 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for all equipment with remaining value over \$5,000 and residual supplies valued over \$5,000 in the aggregate that were purchased with federal funds authorized by this Agreement. Compensation to the federal agency may be required for equipment or residual supplies valued over \$5,000 per 2 CFR 200.313 & 314.
- m) **Universal Identifier and Contract Status.** The SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System ("DUNS") as required for receipt of funding. In addition, the SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- n) **Suspension and Debarment.** The SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- o) **Lobbying.** SUBRECIPIENT certifies (**Exhibit C**) that no portion of the federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, the SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (4) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

- p) **Audit.** The SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. SUBRECIPIENTS of federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse ("FAC") within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb>. At the time of submission to the FAC, the SUBRECIPIENT will also submit a copy of the audit to the COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- q) **Monitoring.** The SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring in accordance with 2 CFR 200.331. The COUNTY, the Federal Government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.
- r) **Record Retention.** The SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by the federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.
- s) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for Intergovernmental Agreement for the Financing of Community Addictions and Mental Health Services Agreement No. 153117, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as grantee, under those grant documents.
- t) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original Agreement and all associated amendments.

## 10. Compliance with Applicable Laws

- a) **Public Policy.** The SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal Government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all federal law governing operation of Community Mental Health Programs, including without

limitation, all federal laws requiring reporting of Client abuse; and (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT. Additional requirements are as specified in 45 CFR Part 96; also portions of the 2 CFR Part 200/45 CFR Part 75.

- b) **Rights to Inventions Made Under a Contract or Agreement.** SUBRECIPIENT agrees that contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any further implementing regulations issued by SUBRECIPIENT.
- c) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency. SUBRECIPIENT shall include and require all Providers to include in all contracts with subcontractors receiving more than \$150,000, language requiring the subcontractor to comply with the federal laws identified in this section.
- d) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- e) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request COUNTY to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) creates a problem for the design or delivery of other Services required under the Agreement. The COUNTY shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. The SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by the COUNTY shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- f) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by the SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- g) **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of COUNTY, mileage must be paid at the rate established by SUBRECIPIENT'S written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.
- h) **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:
  - 1) Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
  - 2) Procure a commercial sex act during the period of time the award is in effect; or
  - 3) Used forced labor in the performance of the Agreement or subaward under this Agreement, as such terms are defined in such regulation.

SUBRECIPIENT must inform COUNTY immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this Agreement. COUNTY may terminate this Agreement, without penalty, for violation of these provisions. COUNTY's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must include these requirements in any subaward made to public or private entities under this Agreement.

#### 11. Federal and State Procurement Standards

- a) All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements must receive prior written approval from COUNTY in addition to any other approvals required by law applicable to the SUBRECIPIENT. Justification for sole-source procurement should include a description of the project and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
- b) COUNTY's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public contracts under the Oregon Public Contracting Code and applicable Local Contract Review Board rules, as they pertain to the purchase of goods and services under this Agreement and which are incorporated by reference herein.
- c) SUBRECIPIENT must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. If SUBRECIPIENT has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals ("RFP") for a proposed procurement must be excluded by SUBRECIPIENT from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.
- d) The SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

#### 12. General Agreement Provisions.

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into the COUNTY's next fiscal year, the COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c) **Insurance.** COUNTY shall enforce SUBRECIPIENT 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 Agreement as permitted herein, or pursuing legal action to enforce such requirements. During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:

- 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury, 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, elected officials, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement and personal injury liability, products and completed operations. 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.** SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000, or SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of the agreement, Personal auto coverage. The limits shall be no less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000 property damage.
- 3) **Professional Liability.** If this Agreement involves the delivery of professional services, SUBRECIPIENT shall obtain and furnish the 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 the COUNTY, its officers, elected officials 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) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Pollution Liability Insurance, shall include "Clackamas County, its agents, elected officials, officers, and employees" and "the State of Oregon and its officers, employees and agents" as additional insureds, but only with respect to SUBRECIPIENT's activities performed under this Agreement.
- 5) **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 days-notice of cancellation provision shall be physically endorsed on to the policy.
- 6) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 7) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. The COUNTY and its officers, and the State of Oregon and its officers, employees and agents must be named as additional insureds on the Certificate of Insurance. 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.

Certificates of Insurance should be submitted electronically to:

BHcontracts@clackamas.us

Or by mail to:

Clackamas County Behavioral Health Division  
Attn: Contracts  
2051 Kaen Road, # 154  
Oregon City, OR 97045

- 8) **Primary Coverage Clarification.** SUBRECIPIENT 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.
  - 9) **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.
  - 10) **Waiver of Subrogation.** SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.
  - 11) **"Tail Coverage."** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the SUBRECIPIENT shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the SUBRECIPIENT Agreement, for a minimum of 24 months following the later of : (i) the SUBRECIPIENT's completion and COUNTY's acceptance of all Services required under the Provider Contract; or (ii) the expiration of all warranty periods provided under the SUBRECIPIENT Agreement. Notwithstanding the foregoing 24-month requirement, if the SUBRECIPIENT elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the SUBRECIPIENT may request and OHA may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If OHA approval is granted, the SUBRECIPIENT shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
- d) **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of the COUNTY.
  - e) **Independent Status.** SUBRECIPIENT is independent of the COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT 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. SUBRECIPIENT shall not seek or have the power to bind the COUNTY in any transaction or activity.
  - f) **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.

- g) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
- h) **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.
- i) **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.
- j) **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.
- k) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- l) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.

This Agreement consists of twelve (12) sections plus the following exhibits which by this reference is incorporated herein.

- Exhibit A: Subrecipient Scope of Work
- Exhibit B: Subrecipient Program Budget
- Exhibit C: Lobbying Certificate
- Exhibit D: Required Financial Reporting and Reimbursement Request
- Exhibit E: Performance Reporting
- Exhibit F: Final Financial Report
- Exhibit G: CMHP Required State and Federal Terms and Conditions
- Exhibit H: CMHP Required Subrecipient Provisions
- Exhibit I: CMHP Service Element Requirements

*(signature page follows)*

**SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT**

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

**CODA, INC.**

By:   
\_\_\_\_\_  
(Timothy Hartnett, Executive Director)

7/18/17  
\_\_\_\_\_  
Date  
1027 E. Burnside  
\_\_\_\_\_  
Street Address  
Portland, OR 97214  
\_\_\_\_\_  
City / State / Zip  
503.239.8400                      503.239.8407  
\_\_\_\_\_  
Phone                                      / Fax

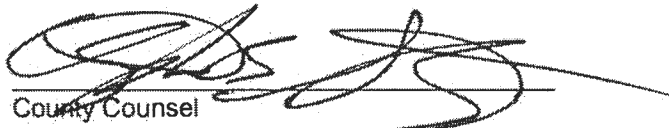
**CLACKAMAS COUNTY**

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

**Signing on Behalf of the Board:**

\_\_\_\_\_  
Richard Swift, Director  
Health, Housing & Human Service Department  
\_\_\_\_\_  
Date

**Approved to Form:**

  
\_\_\_\_\_  
County Counsel  
13 July 2017  
\_\_\_\_\_  
Date

July 27, 2017

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of an Agency Service Contract with Cascadia Behavioral Healthcare for  
Assertive Community Treatment Programs

<b>Purpose/Outcomes</b>	To provide Assertive Community Treatment programs for people who are Oregon Health Plan (OHP) member's capitated to Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	The contract maximum is \$750,000.
<b>Funding Source</b>	Oregon Health Authority - no County General Funds are involved.
<b>Duration</b>	Effective upon signature and terminates on June 30, 2018
<b>Previous Board Action</b>	The previous agreement was approved by the Board of County Commissioners on August 18, 2016- agenda item 081816-A4
<b>Strategic Plan Alignment</b>	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
<b>Contact Person</b>	Mary Rumbaugh, Director – Behavioral Health Division – (503) 742-5305
<b>Contract No.</b>	8112

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Service Contract with Cascadia Behavioral Healthcare for Assertive Community Treatment (ACT) programs. ACT programs are for adults who have not responded well to traditional outpatient mental health services. Services include assessments, psychiatric services, case management, employment and housing assistance, family support and education, substance abuse services, etc. for persons enrolled in services through Clackamas County Behavioral Health Division. The Behavioral Health Division has partnered with Cascadia Behavioral Healthcare for behavioral health services since 2007. This contract is a continuation of these services.

Cascadia Behavioral Healthcare will be paid a total of \$750,000 less any revenue from Medicare, open card or other third party payers. The contract is effective upon signature and continues through June 30, 2018. County Counsel has reviewed and approved this agreement on June 29, 2016.

**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing and Human Services Department

# AGENCY SERVICE CONTRACT

Contract # 8112

This Agency Service Contract is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and CASCADIA BEHAVIORAL HEALTHCARE hereinafter called "AGENCY." Throughout this contract and all exhibits, the term "DEPARTMENT" shall refer to and mean the State of Oregon, Oregon Health Authority.

## CONTRACT

### 1.0 Engagement

COUNTY hereby engages AGENCY to provide **Non-Fidelity Assertive Community (ACT) services** as more fully described in **Exhibit B**, Scope of Work, attached hereto and incorporated herein.

### 2.0 Term

Services provided under the terms of this contract shall commence on **July 1, 2017** and shall terminate **June 30, 2018** unless terminated by one or both parties as provided for in paragraph 6.0 below. This Contract can be amended by mutual consent of both parties.

### 3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate AGENCY as specified in Exhibit C, Compensation. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage, and incidentals necessary to perform the work and services.

Maximum contract payment shall not exceed \$750,000

3.2 Withholding of Contract Payments. Notwithstanding any other payment provision of this Contract, should AGENCY fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding payment for cause may continue until AGENCY 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 AGENCY.

3.3 Financial Records. AGENCY and its subcontractors shall maintain complete and legible financial records pertaining in whole or in part to this contract. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines. Financial records and supporting documents shall be retained for at least **six (6) years** or such period as may be required by applicable law, following final payment is made under this agreement or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, AGENCY shall repay the amount of the excess to COUNTY.

3.4 Access to Records and Facilities. COUNTY, DEPARTMENT, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of AGENCY that are directly related to this Contract, the funds paid to AGENCY hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, AGENCY shall permit authorized representatives of COUNTY and DEPARTMENT to perform site reviews of all services delivered by AGENCY hereunder.

3.4.1 AGENCY 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. AGENCY shall make reports and fiscal data generated under and for this Contract available to COUNTY upon request.

3.4.2 COUNTY conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

3.4.3 AGENCY may be subject to audit requirements. AGENCY 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 AGENCY.

3.4.4 AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY 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.**

AGENCY shall comply with all Federal, State, local laws, rules, and regulations applicable to the work to be performed under this contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit D, paragraph 9. Compliance with Applicable Law, attached hereto and incorporated herein by this reference. AGENCY shall comply with Oregon Administrative Rule (OAR) 410-120-1380, which establishes the requirements for compliance with Section 4751 of Omnibus Budget Reconciliation Act (OBRA) 1991 and ORS 127-649, Patient Self-Determination Act.

4.1.1 AGENCY 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 AGENCY'S warranty, in this Contract that AGENCY 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 AGENCY 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 AGENCY, 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 AGENCY'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.
- iv. 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 Precedence. A requirement listed both in the main boilerplate of this contract and in an exhibit, the exhibit shall take precedence.

4.3 Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from COUNTY.

4.4 Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of COUNTY, State, or Federal Government 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 AGENCY.

4.5. Tax Laws. The AGENCY 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 AGENCY, to AGENCY'S property, operations, receipts, or income, or to AGENCY'S performance of or compensation for any work performed by AGENCY;
- iii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, or to goods, services, or property, whether tangible or intangible, provided by AGENCY; 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 1 Indemnification. AGENCY agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to AGENCY's negligent or willful acts or those of its employees, agents or those under AGENCY's control. AGENCY is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to AGENCY's actions, employees, agents, volunteers, or otherwise with respect to those under its control.

AGENCY shall defend, save, hold harmless and indemnify the State of Oregon, AMH 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 AGENCY, or its agents or employees under this contract.

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

5.2 Insurance. COUNTY shall enforce AGENCY 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, AGENCY shall maintain in force, at its own expense, each insurance noted below:

### 5.2.1 Commercial General Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Contract, 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, elected officials, and employees. This coverage



shall include Contractual Liability insurance for the indemnity provided under this Contract and personal injury liability, products and completed operations. 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.

5.2.2 Commercial Automobile Liability

Required by COUNTY

Not required by COUNTY

AGENCY shall obtain at AGENCY expense, and keep in effect during the term of this Contract, **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**, or AGENCY shall obtain at AGENCY expense, and keep in effect during the term of the Contract, **Personal Auto Coverage**. The limits shall be no less than **\$250,000/occurrence, \$500,000/aggregate, and \$100,000** property damage.

5.2.3 Professional Liability

Required by COUNTY

Not required by COUNTY

If this Contract involves the delivery of professional services, AGENCY shall obtain and furnish the 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 the **COUNTY, its officers, agents, 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.

5.2.4 Additional Insured Provisions. All required insurance, other than Professional Liability, Personal Automobile Insurance and Workers' Compensation, shall include "**Clackamas County, its agents, elected officials, officers, and employees**" and "**the State of Oregon and its officers, employees and agents**" as additional insureds, but only with respect to AGENCY's activities performed under this Contract.

5.2.5 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days' notice of cancellation provision shall be physically endorsed on to the policy.

5.2.6 Insurance Carrier Rating. Coverages provided by AGENCY 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.

5.2.7 Certificates of Insurance. As evidence of the insurance coverage required by this Contract, AGENCY shall furnish a Certificate of Insurance to COUNTY. The **COUNTY and its officers must be named as an additional insured** on the Certificate of Insurance. 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 **ten (10) days** prior to coverage expiration.

Certificate holder should be:

**Clackamas County, 2051 Kaen Road, Oregon City, Oregon 97045**

Certificates of Insurance should be submitted electronically to:

**BHContracts@clackamas.us**

Or by mail to:

**Clackamas County Behavioral Health Division  
Atten: Contracts  
2051 Kaen Road, Suite 154  
Oregon City, OR 97045**

5.2.8 Primary Coverage Clarification. AGENCY 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. This must be noted on the insurance certificate.

5.2.9 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 Contract.

5.2.10 Waiver of Subrogation. AGENCY agrees to waive their rights of subrogation arising from the work performed under this Contract.

5.2.11 "Tail Coverage". If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the AGENCY shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the AGENCY Contract, for a minimum of **twenty-four (24) months** following the later of: (i) the AGENCY's completion and COUNTY's acceptance of all Services required under the Contract; or (ii) the expiration of all warranty periods provided under the AGENCY Contract. Notwithstanding the foregoing 24-month requirement, if the AGENCY elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the AGENCY may request and COUNTY may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If COUNTY approval is granted, the AGENCY shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

5.2.12 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without **sixty (60) days** written notice by the AGENCY to the COUNTY.

5.3 Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this agreement 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. AGENCY by execution of this agreement 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 AGENCY 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 of the activity contracted herein except as set forth in this contract.

5.8 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 provision herein, which would conflict with such law, is deemed inoperative to that extent.

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this contract:

5.9.1 AGENCY shall:

- i. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.
- ii. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this contract.
- iii. Not permit any lien or claim to be filed or prosecuted against 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.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due AGENCY by reason of this contract.

5.9.3 No person shall be employed for more than **ten (10) hours** in any one day, or more than **forty (40) hours** in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

- i. for all overtime in excess of **eight (8) hours** a day or **forty (40) hours** in any one week when the work week is five consecutive days, Monday through Friday;
- ii. for all overtime in excess of **ten (10) hours** in any one day or **forty (40) hours** in any one week when the work week is four consecutive days, Monday through Friday; and
- iii. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

5.9.4 AGENCY shall pay employees at least time and a half for all overtime work performed under this agreement in excess of **forty (40) hours** in any one week, except for individuals under person services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.

5.9.5 As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.9.6 Workers' Compensation. All subject employers working under this agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. 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**.

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

5.11 Integration. This contract contains the entire agreement between COUNTY and AGENCY and supersedes all prior written or oral discussions or agreements.

5.12 Successors in Interest. The provisions of this contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

## 6.0 Termination

6.1 Termination Without Cause. This contract may be terminated by mutual consent of both parties, or by either party, upon **ninety (90) days'** notice, in writing or delivered by certified mail or in person.

6.2 Termination With Cause. COUNTY may terminate this contract effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:

6.2.1 Terms of the HealthShare Risk Accepting Entity Agreement 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.

6.2.2 The termination, suspension or expiration of the HealthShare Risk Accepting Entity Agreement.

6.2.3 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.

6.2.4 COUNTY has evidence that AGENCY has endangered or is endangering the health or safety of clients, staff or the public. AGENCY shall ensure the orderly and reasonable transfer of care in progress with consumers and shall work with COUNTY staff to accomplish the same.

6.2.5 The lapse, relinquishment, suspension, expiration, cancellation or termination of any required license, certification or qualification of AGENCY, or the lapse relinquishment, suspension, expiration, cancellation or termination of AGENCY's insurance as required in this contract.

6.2.6 AGENCY's filing for protection under United States Bankruptcy Code, the appointment of a receiver to manage AGENCY's affairs, or the judicial declaration that AGENCY is insolvent.

6.2.7 AGENCY fails to perform any of the other provisions of this contract, or fails to pursue the work of this contract in accordance with its terms, and after written notice from the COUNTY, fails to correct such failures within ten (10) business days or such longer period as COUNTY may authorize.

6.2.8 Debarment and Suspension. COUNTY shall not permit any person or entity to be an AGENCY if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. COUNTY shall require all AGENCYS with awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

6.3 Notice of Default. COUNTY may also issue a written notice of default (including breach of contract) to AGENCY and terminate the whole or any part of this contract if AGENCY substantially fails to perform the specific provisions of this contract. The rights and remedies of COUNTY related to default (including breach of contract) by AGENCY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

6.4 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.

**7.0 Notices**

IF TO AGENCY:  
Cascadia Behavioral Healthcare  
Attn: Hali Mendez, Risk Manager  
PO Box 8459  
Portland, OR 97207

IF TO COUNTY:  
Clackamas County Behavioral Health Division  
Attention: Contract Administration  
2051 Kaen Road, #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	Scopes of Work
Exhibit C	Compensation
Exhibit D	Statement of General Conditions
Exhibit E	OHP Required Federal Terms and Conditions

**(Signature page follows)**

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

**CASCADIA BEHAVIORAL HEALTHCARE**

By:   
\_\_\_\_\_  
(Derald Walker, CEO/President)

Date 7/5/2017

847 NE 19<sup>th</sup> Avenue, Suite 100  
Street Address

Portland, Oregon 97207  
City / State / Zip

(503) 963-7766  
Phone / Fax

**CLACKAMAS COUNTY**

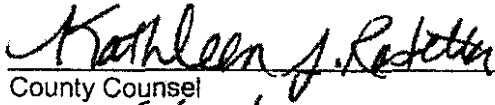
Commissioner: Jim Bernard, Chair  
Commissioner: Sonya Fischer  
Commissioner: Ken Humberston  
Commissioner: Paul Savas  
Commissioner: Martha Schrader

**Signing on Behalf of the Board:**

\_\_\_\_\_  
Richard Swift, Director  
Health, Housing & Human Service Department

\_\_\_\_\_  
Date

**Approved to Form:**

  
\_\_\_\_\_  
County Counsel

6/29/17  
\_\_\_\_\_  
Date

July 27, 2017

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of a Federal Subrecipient Grant Agreement with CODA, Inc. for  
Housing Assistance and Services for Residents in Alcohol and Drug Recovery

<b>Purpose/Outcomes</b>	This contractor provides housing assistance and treatment services for Clackamas County residents in alcohol and drug recovery.
<b>Dollar Amount and Fiscal Impact</b>	The agreement maximum is \$121,500 for two years.
<b>Funding Source</b>	\$78,354.00 in federal funds are provided through the Intergovernmental Agreement for the Financing of Community Addictions and Mental Health Services (CFDA 93.959) issued by the State of Oregon acting by and through its Oregon Health Authority. \$43,146 in state general funds. No County general funds are involved.
<b>Duration</b>	Effective July 1, 2017 and terminates on June 30, 2019
<b>Previous Board Action</b>	Previous agreement #7724 (17-033) approved by the Board on March 23, 2017, Board #032317-A1
<b>Strategic Plan Alignment</b>	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.
<b>Contact Person</b>	Mary Rumbaugh, Director—Behavioral Health Division (503) 742-5305
<b>Contract No.</b>	H3S # 8198; Subrecipient grant # 18-002

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of a Subrecipient Grant Agreement with CODA, Inc. for housing assistance and treatment services for residents in alcohol and drug recovery. CODA is a not-for-profit organization that provides a wide range of opioid-addictions treatment services as well as both inpatient and outpatient evidence-based alcohol and drug treatment services. CODA will provide detoxification for individuals with substance use disorders including supportive pharmacotherapy to manage the symptoms and adverse consequences of withdrawal, based on a systematic assessment of symptoms and risk of serious adverse consequences related to the withdrawal process. These Services shall be provided to individuals who are not eligible for the Oregon Health Plan, who demonstrate a need for financial assistance and have inadequate healthcare coverage.

This agreement is effective July 1, 2017 and terminates on June 30, 2019 with a maximum expenditure of \$121,500. This contract was reviewed and approved by County Counsel on July 5, 2017.

This agreement is retroactive due to a delayed receipt of funding from our grantor, combined with processing capacity.

**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing and Human Services Department



**CLACKAMAS COUNTY, OREGON  
SUBRECIPIENT GRANT AGREEMENT 18-002**

Project Name: ***A&D Withdrawal Management Services/Tigard Recovery Center***  
Project Number: 36006 – A&D Block Grant

This Agreement is between **Clackamas County**, Oregon, acting by and through its Department of Health, Housing and Human Services (COUNTY), and **CODA, Inc. ("CODA")** (SUBRECIPIENT), an Oregon Non-profit Organization.

**Clackamas County Data**

Grant Accountant: <b><i>Ed Jones</i></b>	Program Manager: <b><i>Elise Thompson</i></b>
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 (503) 742-5410 ejones@clackamas.us	Clackamas County – Behavioral Health Division 2051 Kaen Road, Suite 154 Oregon City, OR 97045 (503) 742-5353 ethompson@clackamas.us

**Subrecipient Data**

Finance/Fiscal Representative: <b><i>Eric Knopf</i></b>	Program Representative: <b><i>Flori Hall</i></b>
CODA, Inc. 1027 E Burnside Portland, OR 97214 503-239-8400 ericknopf@codainc.org	CODA, Inc. 1027 E Burnside Portland, OR 97214 503-239-8400 florihall@codainc.org
DUNS: 093490142	

**RECITALS**

WHEREAS, Clackamas County ("COUNTY"), is a political subdivision of the State of Oregon;

WHEREAS, COUNTY holds an Intergovernmental Agreement ("IGA") for the Financing of Community Addictions and Mental Health Services (Agreement No. 153117) with the State of Oregon acting by and through its Oregon Health Authority ("OHA") for the biennium term of 2017-2019;

WHEREAS, ORS 430.610(4) and 430.640(1) authorize OHA to assist Oregon counties and groups of Oregon counties in the establishment and financing of community addictions and mental health programs operated or contracted for by one or more counties;

WHEREAS, COUNTY has established and proposes, during the term of the IGA, to operate or contract for the operation of community addictions and mental health programs in accordance with the policies, procedures and administrative rules of OHA;

WHEREAS, COUNTY has requested financial assistance from OHA to operate or contract for the operation of its community addictions and mental health programs;

WHEREAS, OHA is willing, upon the terms of and conditions of the aforementioned IGA, to provide financial assistance to COUNTY to operate or contract for the operation of its community addictions and mental health programs;

WHEREAS, various statutes authorize OHA and COUNTY to collaborate and cooperate in providing for basic **community addictions and mental health programs and incentives** for community-based care in a manner that ensures appropriate and adequate statewide service delivery capacity, subject to availability of funds;

WHEREAS, CODA, Inc. ("SUBRECIPIENT") is a not-for-profit behavioral health agency founded in 1969. CODA, Inc. provides a wide range of opioid-addictions treatment services as well as both inpatient and outpatient evidence-based alcohol and drug treatment services.

THEREFORE, the parties seek to provide withdrawal management for Clackamas County residents in alcohol and drug recovery through this Subrecipient Grant Agreement of federal financial assistance, which sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

According to the terms of this Subrecipient Grant Agreement (this "Agreement") the COUNTY and SUBRECIPIENT agree as follows:

#### AGREEMENT

1. **Term and Effective Date.** This Agreement 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 subrecipient for expenses approved in writing by COUNTY relating to the project incurred no earlier than **July 1, 2017** 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 is described in attached **Exhibit A**. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the Community Mental Health Program ("CMHP") IGA No. 153117 awarded on July 1, 2017 which is/are the source of the grant funding, in addition to compliance with requirements of Title 42 of the *Code of Federal Regulations* (CFR), Part 6A, Sub-Part II & III. A copy of the relevant sections of that grant award have been provided to SUBRECIPIENT by the COUNTY, which are attached to and made a part of this Agreement by reference.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the 2017-2019 Intergovernmental Agreement for the Financing of Community Service Addictions and Mental Health Services (Agreement No. 153117) and Clackamas County General funds. The maximum, not to exceed, grant amount that the COUNTY will pay is **\$121,500.00**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in **Exhibit D** and **Exhibit E**. Failure to comply with the terms of this Agreement may result in withholding of payment. Funding for this Agreement is from the following sources:
  - 4.1. **Federal Funds: \$78,354.00** in federal funds are provided through the Intergovernmental Agreement for the Financing of Community Addictions and Mental Health Services (Agreement No. 153117) (CFDA 93.959) issued to the COUNTY by the State of Oregon acting by and through its OHA. The State of Oregon receives Block Grants for Substance Abuse Services ("SABG") funds from the U.S. Department of Health and Human Services, Office of Substance Abuse and Mental Health Services Administration.
  - 4.2. **Other Funds: \$43,146.00** in State funds are provided for funding of other items in the program budget.

5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. SUBRECIPIENT must submit a written request including a justification for any amendment to COUNTY in writing at least **forty-five (45) calendar days** before this Agreement expires. No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement except for the final payment. The final request for payment must be submitted to COUNTY no later than fifteen (15) days after the end date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.
6. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other upon thirty (30) business days-notice. This notice may be transmitted in person, by certified mail, facsimile, or by email.
7. **Funds Available and Authorized.** COUNTY certifies that funds sufficient to pay for this Agreement have been obligated to COUNTY. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
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 Section 7.
9. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
  - a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—Post Federal Award Requirements, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
  - b) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not the SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
  - c) **Cost Principles.** The SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal Government shall be the liability of the SUBRECIPIENT.
  - d) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
  - e) **Match.** Matching funds are not required for this Agreement.
  - f) **Budget.** The SUBRECIPIENT's use of funds may not exceed the amounts specified in the **Exhibit B**. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.
  - g) **Indirect Cost Recovery.** SUBRECIPIENT chooses to forego indirect cost recovery on this Agreement.

- h) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
- i) **Payment.** The SUBRECIPIENT must submit a final request for payment **no later than fifteen (15) days after the end date of this Agreement**. Routine requests for reimbursement should be submitted as specified in **Exhibit D**.
- j) **Performance Reporting.** The SUBRECIPIENT must submit Performance Reports as specified in **Exhibit E** for each period (monthly, quarterly, and final) during the term of this Agreement.
- k) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance with Treasurer Regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed **Exhibit D** requirements on a monthly basis.
- l) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (**Exhibits F, G & H**), performance, and other reports as required by the terms and conditions of the federal award and/or COUNTY, no later than 90 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for all equipment with remaining value over \$5,000 and residual supplies valued over \$5,000 in the aggregate that were purchased with federal funds authorized by this Agreement. Compensation to the federal agency may be required for equipment or residual supplies valued over \$5,000 per 2 CFR 200.313 & 314.
- m) **Universal Identifier and Contract Status.** The SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System ("DUNS") as required for receipt of funding. In addition, the SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- n) **Suspension and Debarment.** The SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- o) **Lobbying.** SUBRECIPIENT certifies (**Exhibit C**) that no portion of the federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, the SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (4) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- p) **Audit.** The SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. SUBRECIPIENTS of federal awards are

required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse ("FAC") within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, the SUBRECIPIENT will also submit a copy of the audit to the COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.

- q) **Monitoring.** The SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring in accordance with 2 CFR 200.331. The COUNTY, the Federal Government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.
- r) **Record Retention.** The SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings that are directly related to this Agreement for a minimum of **six (6) years**, or such longer period as may be required by the federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.
- s) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for Intergovernmental Agreement for the Financing of Community Addictions and Mental Health Services Agreement No. 153117, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as grantee, under those grant documents.
- t) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original Agreement and all associated amendments.

#### 10. Compliance with Applicable Laws

- a) **Public Policy.** The SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal Government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse; and (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2

CFR Part 200 as applicable to SUBRECIPIENT. Additional requirements are as specified in 45 CFR Part 96; also portions of the 2 CFR Part 200/45 CFR Part 75.

- b) **Rights to Inventions Made Under a Contract or Agreement.** SUBRECIPIENT agrees that contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any further implementing regulations issued by SUBRECIPIENT.
- c) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency. SUBRECIPIENT shall include and require all Providers to include in all contracts with subcontractors receiving more than \$150,000, language requiring the subcontractor to comply with the federal laws identified in this section.
- d) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- e) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request COUNTY to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) creates a problem for the design or delivery of other Services required under the Agreement. The COUNTY shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. The SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by the COUNTY shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- f) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by the SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- g) **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of COUNTY, mileage must be paid at the rate established by SUBRECIPIENT'S written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.
- h) **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:
  - 1) Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
  - 2) Procure a commercial sex act during the period of time the award is in effect; or
  - 3) Used forced labor in the performance of the Agreement or subaward under this Agreement, as such terms are defined in such regulation.

SUBRECIPIENT must inform COUNTY immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this Agreement. COUNTY may terminate this Agreement, without penalty, for violation of these provisions. COUNTY's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must include these requirements in any subaward made to public or private entities under this Agreement.

#### 11. Federal and State Procurement Standards

- a) All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements must receive prior written approval from COUNTY in addition to any other approvals required by law applicable to the SUBRECIPIENT. Justification for sole-source procurement should include a description of the project and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
- b) COUNTY's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public contracts under the Oregon Public Contracting Code and applicable Local Contract Review Board rules, as they pertain to the purchase of goods and services under this Agreement and which are incorporated by reference herein.
- c) SUBRECIPIENT must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. If SUBRECIPIENT has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFP) for a proposed procurement must be excluded by SUBRECIPIENT from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.
- d) The SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

#### 12. General Agreement Provisions

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into the COUNTY's next fiscal year, the COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c) **Insurance.** COUNTY shall enforce SUBRECIPIENT 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 Agreement as permitted herein, or pursuing legal action to enforce such requirements. During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:

- 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury, 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, elected officials, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement and personal injury liability, products and completed operations. 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.** SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000, or SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of the agreement, Personal auto coverage. The limits shall be no less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000 property damage.
- 3) **Professional Liability.** If this Agreement involves the delivery of professional services, SUBRECIPIENT shall obtain and furnish the 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 the COUNTY, its officers, elected officials 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) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Pollution Liability Insurance, shall include "Clackamas County, its agents, elected officials, officers, and employees" and "the State of Oregon and its officers, employees and agents" as additional insureds, but only with respect to SUBRECIPIENT's activities performed under this Agreement.
- 5) **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 days-notice of cancellation provision shall be physically endorsed on to the policy.
- 6) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 7) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. The COUNTY and its officers, and the State of Oregon and its officers, employees and agents must be named as additional insureds on the Certificate of Insurance. 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.

Certificates of Insurance should be submitted electronically to:

BHcontracts@clackamas.us

Or by mail to:

Clackamas County Behavioral Health Division  
Attn: Contracts  
2051 Kaen Road, # 154  
Oregon City, OR 97045

- 8) **Primary Coverage Clarification.** SUBRECIPIENT 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.
  - 9) **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.
  - 10) **Waiver of Subrogation.** SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.
  - 11) **"Tail Coverage".** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the SUBRECIPIENT shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the SUBRECIPIENT Agreement, for a minimum of 24 months following the later of : (i) the SUBRECIPIENT's completion and COUNTY's acceptance of all Services required under the Provider Contract; or (ii) the expiration of all warranty periods provided under the SUBRECIPIENT Agreement. Notwithstanding the foregoing 24-month requirement, if the SUBRECIPIENT elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the SUBRECIPIENT may request and OHA may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If OHA approval is granted, the SUBRECIPIENT shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
- d) **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of the COUNTY.
  - e) **Independent Status.** SUBRECIPIENT is independent of the COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT 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. SUBRECIPIENT shall not seek or have the power to bind the COUNTY in any transaction or activity.
  - f) **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.

- g) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
- h) **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.
- i) **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.
- j) **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.
- k) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- l) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.

This Agreement consists of twelve (12) sections plus the following exhibits which by this reference is incorporated herein.

- Exhibit A: Subrecipient Scope of Work
- Exhibit B: Subrecipient Program Budget
- Exhibit C: Lobbying Certificate
- Exhibit D: Required Financial Reporting and Reimbursement Request
- Exhibit E: Monthly/Quarterly/Final Performance Report
- Exhibit F: Final Financial Report
- Exhibit G: CMHP Required State and Federal Terms and Conditions
- Exhibit H: CMHP Required Subrecipient Provisions
- Exhibit I: CMHP Service Element Requirements

*(signature page follows)*

**SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT**

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

**CODA, INC.**

By:   
\_\_\_\_\_  
(Timothy Hartnett, Executive Director)

7/6/17  
\_\_\_\_\_  
Date

1027 E. Burnside  
\_\_\_\_\_  
Street Address

Portland, OR 97214  
\_\_\_\_\_  
City / State / Zip

503.239.8400                      503.239.8407  
\_\_\_\_\_  
Phone                                      / Fax

**CLACKAMAS COUNTY**

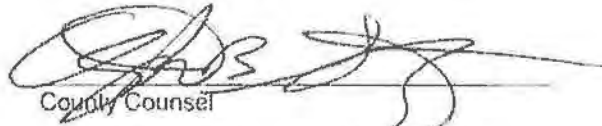
Commissioner: Jim Bernard, Chair  
Commissioner: Sonya Fischer  
Commissioner: Ken Humberston  
Commissioner: Paul Savas  
Commissioner: Martha Schrader

**Signing on Behalf of the Board:**

\_\_\_\_\_  
Richard Swift, Director  
Health, Housing & Human Service Department

\_\_\_\_\_  
Date

**Approved to Form:**

  
\_\_\_\_\_  
County Counsel

5 July 2017  
\_\_\_\_\_  
Date

July 27, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Subrecipient Agreement with City of  
Sandy/Sandy Senior & Community Center to Provide Social Services for  
Clackamas County Residents age 60 and over

<b>Purpose/Outcomes</b>	Subrecipient Agreement with the City of Sandy/Sandy Senior & Community Center to provide Older American Act (OAA) funded services for persons in the cities of Oregon City and West Linn.
<b>Dollar Amount and Fiscal Impact</b>	The maximum agreement is \$153,678. The contract is funded through the Social Services Division Program agreements with the Oregon Department of Human Services, Oregon Housing & Community Resources; and various transportation agreements with TriMet & Ride Connection, Inc.
<b>Funding Source</b>	The Older American Act (OAA), State Special Program Allocation funds, Ride Connection pass-through STF funds, and LIHEAP funds- no County General Funds are involved.
<b>Duration</b>	Effective July 1, 2017 and terminates on June 30, 2018
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	H3S #8362; Subrecipient #18-010

**BACKGROUND:**

The Social Services Division of the Health, Housing and Human Services request approval of the Subrecipient Agreement with the City of Sandy/Sandy Senior & Community Center to provide Older American Act (OAA) funded services for persons living in the Sandy Senior & Community Center service area. The services provided include congregate and home delivered meals, evidence-based health promotion activities, transportation, and information and referral activities. These services link residents with resources to meet their individual needs. This helps them to remain independent and interactive in the community.

In the December 2015 Social Services advertised for a contractor to provide Older American Act services for older persons in Clackamas County during Fiscal Year 2016-17, with an option for renewal for four additional years. No agency other than City of Sandy/Sandy Senior & Community Center showed an interest in providing these services in the Sandy/Boring area, so an intergovernmental subrecipient agreement with the City of Sandy/Sandy Senior & Community Center was negotiated. This is the second agreement under this RFP.

This agreement is retroactive to July 1, 2017 and terminates on June 30, 2018. Execution of this agreement was delayed due to procedural changes for issuance of subrecipient agreements for fiscal year 2017-18.

**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

**CLACKAMAS COUNTY, OREGON  
SUBRECIPIENT GRANT AGREEMENT 18-010**

This Agreement is between Clackamas County, Oregon, acting by and through its  
Health Housing & Human Services Department,  
Social Services Division – Area Agency on Aging (COUNTY), and  
City of Sandy on behalf of its Sandy Senior & Community Center (SUBRECIPIENT), a Municipal  
Corporation.

**Clackamas County Data**

Grant Accountant: Sue Aronson	Project Manager: Stefanie Reid-Danielson
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 503-742-5421 <a href="mailto:suea@co.clackamas.or.us">suea@co.clackamas.or.us</a>	Clackamas County – Social Services Division 2051 Kaen Road Oregon City, OR 97045 503-655-8330 <a href="mailto:stefanierei@co.clackamas.or.us">stefanierei@co.clackamas.or.us</a>

**Subrecipient Data**

Finance/Fiscal Representative: Lisa Young	Program Representative: Tanya Richardson
Lisa Young, Finance Manager 39250 Pioneer Blvd Sandy, OR 97055 503-668-5533 <a href="mailto:lyoung@ci.sandy.or.us">lyoung@ci.sandy.or.us</a> FEIN: 93-6002250	Tanya Richardson, Community/Senior Ctr. Dir. 38348 Pioneer Blvd Sandy, OR 97055 503-668-5569 <a href="mailto:trichardson@cityofsandy.com">trichardson@cityofsandy.com</a> DUNS: 03-708-5651

**RECITALS**

1. Project description: This project is a cooperative effort by parties in providing the Area Agency on Aging's designated services of nutrition services, outreach, assessment, information and assistance, case management, reassurance, transportation, health promotion and legal consultation for Clackamas County residents age 60 and older.
2. This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Subrecipient Grant Agreement the COUNTY and SUBRECIPIENT 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 subrecipient for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2017** and not later than **June 30, 2018**, 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 is described in Attached Exhibit 1 - Purpose, Service Descriptions and Service Objectives. SUBRECIPIENT agrees to perform the services in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the Older Americans Act and 45 CFR 1321 (collectively "OAA"), that is the source of the grant funding, in addition to compliance with requirements of State of Oregon, Department of Human Services, State Unit on Aging Older Americans Act Program Standards.
4. **Grant Funds.** The maximum, not to exceed, agreement amount that the COUNTY will pay is **\$153,678**. This is a cost reimbursement agreement and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. (The split between funding sources is outlined in Exhibit 6 – Budget and Units of Services.)
  - a. **Grant Funds.** The COUNTY's funding of **\$40,133** in grant funds for this Agreement is the Older Americans Act (CFDA: 93.043, 93.044, 93.052, 93.053) issued to the COUNTY by the State of Oregon, Department of Human Services, State Unit on Aging and **\$33,140** from Federal Transportation Administration funds (Federal Statute: 49 USC 5310; CFDA: 20.513) issued to the COUNTY by Ride Connection, Inc., an Oregon nonprofit corporation.
  - b. **Other Funds.** The COUNTY's funding of **\$65,670** for transportation services outlined in this agreement are from Elderly and Disabled Transportation funds issued to the COUNTY by Ride Connection, Inc. and TriMet. The COUNTY's funding of **\$4,100** for Physical Activity/Falls Prevention outlined in this agreement are from State of Oregon, Department of Human Services, State Unit on Aging, Special Program Allocation; **\$10,082** in Medicaid funds for Medicaid Home Delivered Meals issued to the SUBRECIPIENT by the State of Oregon, Department of Human Services, Adults and Persons with Disabilities and **\$553** for Low Income Home Energy Assistance application assistance outlined in this Agreement are from HEAT Oregon, an Oregon nonprofit organization.
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to 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 SUBRECIPIENT performs work subject to the amendment.

6. **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 upon thirty (30) business days' notice. This notice may be transmitted in person, by certified mail, facsimile, or by email.
7. **Funds Available and Authorized.** The COUNTY certifies that it has received an award sufficient to fund this Agreement. SUBRECIPIENT 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 sole administrative discretion, to continue to make payments under this Agreement.
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 Section 7.
9. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
  - a. **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred. In addition, the SUBRECIPIENT agrees to comply with the standards set forth in the OAA.
  - b. **Revenue Accounting.** 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 agreement have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned." All agreement 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. **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not the SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
  - d. **Cost Principles.** The SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of the SUBRECIPIENT.



- e. **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from services provided during the funding period.
- f. **Match.** SUBRECIPIENT agrees to provide matching funds for the services provided as outlined in Exhibit 6 – Budget and Units of Services.
- g. **Budget.** SUBRECIPIENT's use of funds may not exceed the amounts specified in the Exhibit 6 – Budget and Units of Services. The SUBRECIPIENT may not transfer funds between services without the prior written approval of the COUNTY. At no time may budget modifications change the scope of the original agreement application or Agreement.
- h. **Research and Development.** COUNTY certifies that this award is not for research and development purposes.
- i. **Payment.** The SUBRECIPIENT must submit a final request for payment no later than ten (10) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in Exhibit 5 – Reporting Requirements.
- j. **Performance Reporting.** The SUBRECIPIENT must submit Performance Reports as specified in Exhibit 5 – Reporting Requirements for each period (monthly, quarterly, and final) during the term of this Agreement.
- k. **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasurer Regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed Reimbursement Request on a monthly basis as specified in Exhibit 5 – Reporting Requirements.
- l. **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (Exhibit 5 – Reporting Requirements), performance, and other reports as required by the terms and conditions of the Federal award and/or the COUNTY, no later than 10 calendar days after the end date of this agreement.
- m. **Universal Identifier and Contract Status.** The SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number (DUNS) as required for receipt of funding. In addition, the SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, located at <http://www.sam.gov>.

- n. **Suspension and Debarment.** The SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- o. **Lobbying.** The SUBRECIPIENT certifies (Exhibit 7: Lobbying and Litigation) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and *the Byrd Anti-Lobbying Amendment* 31 U. S. C. 1352, which prohibits the use of Federal grant funds for litigation against the United States. SUBRECIPIENT certifies that it does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- p. **Audit.** The SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse (FAC) within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <http://harvester.census.gov/sac/>. At the time of submission to the FAC, the SUBRECIPIENT will also submit a copy of the audit to the COUNTY. If SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- q. **Monitoring.** The SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.330-331. The COUNTY, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be

performed onsite or offsite, at the COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.

- r. **Record Retention.** The SUBRECIPIENT 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, or such longer period as may be required by the Federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.
- s. **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for OAA Funding, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as grantee, under those grant documents.
- t. **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original contract and this agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT funds until compliance is met or to terminate this relationship including the original contract and all associated amendments.

#### **10. Compliance with Applicable Laws**

- a. **Federal Terms.** The SUBRECIPIENT shall comply with the federal terms and conditions as outlined in Exhibit 3 - Required Federal Terms and Conditions, and incorporated herein.
- b. **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the agreement.
- c. **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request County to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. The County shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. The SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by the County shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.

- d. **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by the SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- e. **Criminal Records and Abuse Checks.** SUBRECIPIENT agrees to meet requirements set forth in OAR 407-007-0200 through 407-007-0370 and ORS 181.534 through 181.537 and ORS 443.004. Subject individuals are employees of the SUBRECIPIENT; volunteers of the SUBRECIPIENT; employees and volunteers of SUBRECIPIENT's subcontractors and direct care providers of clients for which SUBRECIPIENT provides service authorization.
- County will assist SUBRECIPIENT to meet this requirement by processing criminal record checks utilizing the Oregon Department of Human Services ("DHS") Criminal Records Information Management System ("CRIMS") for SUBRECIPIENT's subject individuals as requested.
- f. **Mandatory Reporting of Elder Abuse.** SUBRECIPIENT shall ensure compliance with the mandatory reporting requirements of ORS 124.050 through 124.095 and OAR Chapter 411, Division 20 for employees and volunteers of the SUBRECIPIENT's clients to whom the SUBRECIPIENT provides services.
- g. **Americans with Disabilities Act.** SUBRECIPIENT will ensure facilities used for the provision of OAA funded services meet the requirements as stated in Title II of the Americans with Disabilities Act of 1990, as amended ("ADA"), Section 504 of the Rehabilitation Act and DHS Policy #010-005.
- h. **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:
- i. Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
  - ii. Procure a commercial sex act during the period of time the award is in effect; or
  - iii. Used forced labor in the performance of the Agreement or subaward under this Agreement, as such terms are defined in such regulation.

SUBRECIPIENT must inform COUNTY immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this Agreement. COUNTY may terminate this Agreement, without penalty, for violation of these provisions. COUNTY's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must

include these requirements in any subaward made to public or private entities under this Agreement.

**i. Confidentiality of Client Information.**

- i. All information as to personal facts and circumstances obtained by the SUBRECIPIENT on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, the responsible parent of a minor child, or his or her guardian except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- ii. The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.
- iii. DHS, County and SUBRECIPIENT will share information as necessary to effectively serve DHS Clients.

**11. SUBRECIPIENT Standard Terms and Conditions.** The SUBRECIPIENT shall comply with the terms and conditions as incorporated hereto in Exhibit 4 – Subrecipient Standards Terms and Conditions.

**12. Federal and State Procurement Standards**

- a. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements must receive prior written approval from County in addition to any other approvals required by law applicable to the SUBRECIPIENT. Justification for sole-source procurement should include a description of the project and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
- b. COUNTY's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public contracts under the Oregon Public Contracting Code and applicable Local Contract Review Board rules, which are incorporated by reference herein.
- c. The SUBRECIPIENT must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. If the SUBRECIPIENT has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements

of work, and/or Requests for Proposals (RFP) for a proposed procurement must be excluded by SUBRECIPIENT from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.

- d. The SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

### 13. General Agreement Provisions.

- a. **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into the COUNTY's next fiscal year, the COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b. **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
  - i. **Ride Connection/Tri-Met funds:** To the fullest extent permitted by law, SUBRECIPIENT agrees to fully indemnify, hold harmless and defend Ride Connection, its directors, officers, employees and agents, TriMet, its officers employees and agents, and the State of Oregon, its officers, employees and agents, from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees resulting from or arising out of the activities of SUBRECIPIENT, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement.
  - ii. **Non-Medical rides for Medicaid clients funds:** SUBRECIPIENT shall defend, save, hold harmless, and indemnify the State of Oregon, Human Services Division and their officers, agents, and employees 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 SUBRECIPIENT or its officers, employees, subcontractors, or agents, in performance of this contract
- c. **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:

- i. **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
  - (a) Required for State of Oregon for non-medical rides for Medicaid clients – Commercial General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided for this funding source.
  - (b) Required for Ride Connection/Tri-Met Transportation Funding – Broad form comprehensive general liability coverage, \$1,000,000 combined single limit bodily injury and property damage
  
- ii. **Commercial Automobile Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.
  - (a) Required for State of Oregon for non-medical rides for Medicaid clients – Commercial General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided for this funding source.
  - (b) Required for Ride Connection/Tri-Met Transportation Funding – Broad form comprehensive general liability coverage, \$1,000,000 combined single limit bodily injury and property damage
  
- iii. **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability, shall include "Clackamas County, its agents, elected officials, officers, and employees" as an additional insured.
  - (a) Required by State of Oregon for non-medical rides for Medicaid clients – Insurance must provide that the State of Oregon, Department of Human Services, and its divisions, officers and employees are Additional Insured but only with respect to the transportation services funded under Agreement between the State of Oregon and Clackamas County Social Services.
  - (b) Required for Ride Connection/Tri-Met Transportation Funding – the insurance shall:

- (i) include Ride Connection and Tri-Met and its directors, officers, representatives, agents, and employees as additional insured with respect to work or operations connected with providing transportation;
    - (ii) give Ride Connection and Tri-Met not less than thirty (30) days notice prior to termination or cancellation of coverage; and
    - (iii) include an endorsement providing that the insurance is primary insurance and that no insurance that may be provided by Ride Connection or Tri-Met may be called in to contribute to payment for a loss.
  - iv. **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to the 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.
  - v. **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
  - vi. **Certificates of Insurance.** As evidence of the insurance coverage required by this agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. The COUNTY and its officers must be named as an additional insured on the Certificate of Insurance. No agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. The certificate will specify that all insurance-related provisions within the Agreement have been compiled with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
  - vii. **Primary Coverage Clarification.** SUBRECIPIENT 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.
  - viii. **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.
  - ix. **Waiver of Subrogation.** SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.
- d. **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of the COUNTY.



- e. **Independent Status.** SUBRECIPIENT is independent of the COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT 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. SUBRECIPIENT shall not seek or have the power to bind the COUNTY in any transaction or activity.
- f. **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. .
- g. **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 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.
- h. **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.
- i. **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.
- j. **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. .
- k. **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- l. **Integration.** This Agreement contains the entire agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or agreements. When a requirement is listed both in the main boilerplate of the agreement and in an Exhibit, the Exhibit shall take precedence.

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SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE TO SUBRECIPIENT AGREEMENT

This Agreement consists of thirteen (13) sections plus the following exhibits which by this reference are incorporated herein:

- Exhibit 1 Scope of Work: Purpose Service Description, Service Objectives, and Elements of Completion
- Exhibit 2 Transportation Provider Standards
- Exhibit 3 Required Federal Terms and Conditions
- Exhibit 4 Subrecipient Standard Terms and Conditions
- Exhibit 5 Reporting Requirements
- Exhibit 6 Budget and Units of Service
- Exhibit 7 Transportation Reaching People, Volunteer Driver Program
- Exhibit 8 Congressional Lobbying Certificate
- Exhibit 9 Subrecipient Information

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

**CLACKAMAS COUNTY**

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

**Signing on Behalf of the Board:**

By: \_\_\_\_\_  
 Rich Swift, Director  
 Health, Housing and Human Services

Dated: \_\_\_\_\_

**City of Sandy**

**Sandy Senior & Community Center**

By: Kim Yamashita  
 Kim Yamashita, City Manager

Dated: 7/17/17

**Approved as to Content:**

By: Tanya Richardson  
 Tanya Richardson, Community/Senior Ctr. Dir.

Dated: 7/17/17

**Approved to Form:**

By: [Signature]  
 County Counsel

Dated: 26 June 2017

July 27, 2017

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of a Local Grant Agreement with  
Children’s Center for Child Abuse Medical Assessments

<b>Purpose/Outcomes</b>	Child abuse medical assessment will be provided for a minimum of 48 children suspected of being abused.
<b>Dollar Amount and Fiscal Impact</b>	\$202,000 No County staff are funded through this contract
<b>Funding Source</b>	County General Fund
<b>Duration</b>	July 1, 2017 through June 30, 2018
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Individuals and families in need are healthy and safe</li> <li>• Ensure safe, healthy and secure communities</li> </ul>
<b>Contact Person</b>	Rodney A. Cook 503-650-5677
<b>Contract No.</b>	CYF-8331

**BACKGROUND:**

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of Local Grant Agreement with Children’s Center to provide Child Abuse Medical Assessments to a minimum of 48 children. Children who are determined to have been abused and their families will be referred to resources, services, and treatment, as appropriate.

This Agreement has been reviewed and approved by County Counsel. Its funding source is County General Funds and it has a maximum value of \$202,000. The Agreement is effective as of July 1, 2017 and it terminates June 30, 2018.

**RECOMMENDATION:**

Staff recommends 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

<b>CLACKAMAS COUNTY, OREGON</b> <b>LOCAL RECIPIENT GRANT AGREEMENT CYF-8331</b>	
Program Name: <b>Child Abuse Medical Assessment</b> Program/Project Number: CYF-8331	
This Agreement is between <u>Clackamas County, Oregon</u> , acting by and through its Children, Youth & Families Division (COUNTY) and <u>Children's Center</u> (RECIPIENT), an Oregon Non-profit Organization.	
COUNTY Data	
Grant Accountant: <b>Michael Morasko</b>	Program Manager: <b>Kimberly Lopez</b>
Clackamas County Finance 2051 Kaen Rd. Oregon City, OR 97045 503-742-5435 mmorasko@clackamas.us	Clackamas County Children, Youth & Families Division 150 Beaver Creek Rd. Oregon City, OR 97045 503-650-5680 klopez@clackamas.us
RECIPIENT Data	
Finance/Fiscal Representative: <b>Leslie Everson</b>	Program Representative: <b>Leslie Everson</b>
Children's Center 1713 Penn Lane Oregon City, OR 97045 503-655-7725 leslie@childrenscentercc.org	Children's Center 1713 Penn Lane Oregon City, OR 97045 503-655-7725 leslie@childrenscentercc.org
FEIN: 75-3027143	

### RECITALS

1. Child abuse is defined as physical injury, general and/or severe neglect, sexual abuse, sexual assault, exploitation, emotional maltreatment and or willful harm or endangerment. Without treatment, child victims of abuse are likely to suffer long-term trauma that can adversely affect the course of their lives. In 2016, there were a total of 662 substantiated cases of child abuse and neglect in Clackamas County.
2. Children's Center will provide child abuse medical assessments and forensic interviews for children suspected of experiencing abuse to determine whether or not abuse has occurred and if there is a need for further treatment. A total of 48 children will be served under this award. The children and their families will be connected to other treatment, as appropriate.
3. County General Fund dollars will be used to finance this Agreement as part of its commitment to end Child Abuse in Clackamas County. Children's Center is a private, non-profit child abuse intervention center accredited by the National Children's Alliance. It supports Clackamas County Children and families experiencing suspected physical abuse, sexual abuse, emotional abuse and neglect, including drug endangerment and witness to violence.
4. Children's Center is the only agency located in Clackamas County able to provide this unique and specialized service to children and families in crisis due to child abuse. It has demonstrated capacity and expertise to provide the services outlined in this Agreement.
5. 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 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, 2017** and not later than **June 30, 2018**, 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 Fund. The maximum, not to exceed, grant amount that the COUNTY will pay is \$202,000. This is a cost-per-assessment grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibits B and D.

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

5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **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.
6. **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.
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 Agreement.
8. **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 15<sup>th</sup> 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, 2018), 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.

**9. 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.

**10. General Agreement Provisions.**

- a) **Indemnification.** RECIPIENT agrees to indemnify and hold COUNTY, its elected officials, officers, employees and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including 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 elected officials, 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. 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**  
Children's Center  
1713 Penn Lane  
Oregon City, OR 97045

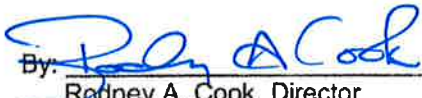
**CLACKAMAS COUNTY**  
Commissioner Jim Bernard, Chair  
Commissioner Sonya Fischer  
Commissioner Ken Humberston  
Commissioner Paul Savas  
Commissioner Martha Schrader

By:   
Tom Soma, Executive Director

**Signing on behalf of the Board:**  
By: \_\_\_\_\_  
Richard Swift, Director  
Health, Housing & Human Services

Dated: 7-11-17

Dated: \_\_\_\_\_

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

Dated: 7-17-17

Approved to Form

By:  Date 30 June 2016  
County Counsel

- 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

## **EXHIBIT A-1: SCOPE OF WORK**

### **Program Description**

Work to be conducted through this funding includes child abuse medical assessments and forensic interviews for children suspected of experiencing abuse to determine whether or not abuse has occurred and if there is a need for further treatment. The children and their families will be connected to other treatment, as appropriate.

Approximately 48 children and their families will be served.

48 Children will receive a psychosocial history assessment by clinical professionals with training and expertise handling child abuse cases.

48 Children will receive a medical examination by a clinical professional with specific training and expertise to detect, document, and treat child abuse cases.

48 Children will receive a professional forensic child interview, characterized by non-leading questions, appropriate rapport building, assessment of safety risks and disclosure of specific information obtained.

48 Children and their families will be referred to appropriate treatment per linkage agreements with treatment partners.

### **Outcomes**

100% of children served will have psychosocial history in their file.

100% of children served will have complete medical examination documentation in their file.

95% of families will report satisfaction with the quality of assessment.

95% of families will report satisfaction with quality of forensic interview.

90% of children and their families will be connected to appropriate treatment.

### **Funder Recognition**

Marketing, educational, promotional, and outreach materials and flyers describing services, workshops, and other activities funded through this Agreement must acknowledge Clackamas County Children, Youth & Families Division and include its logo. Media communications should also acknowledge CYF.

Marketing materials produced using these grant funds must be submitted with quarterly reports.

July 27, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Amendment #1 of the Intergovernmental Agreement with  
Gladstone School District for Kindergarten Partnership Innovation Services

<b>Purpose/Outcomes</b>	Programming will increase kindergarten readiness skills for students transitioning from Pre-K to kindergarten and build staff capacity to implement The Habits of Mind and Story Workshops curricula.
<b>Dollar Amount and Fiscal Impact</b>	Adds \$15,250 for a revised maximum value of \$56,530 No County General Funds are involved and no fiscal impact to the County
<b>Funding Source</b>	Oregon Department of Education – Early Learning Division
<b>Duration</b>	July 1, 2017 and terminates September 30, 2017.
<b>Previous Board Action</b>	031617-A1
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Individuals and families in need are healthy and safe</li> <li>• Ensure safe, healthy and secure communities</li> </ul>
<b>Contact Person</b>	Rodney A. Cook 503-650-5677
<b>Contract No.</b>	CYF-8096

**BACKGROUND:**

Children, Youth & Families Division of the Health, Housing and Human Services Department requests approval of Amendment #1 of the Intergovernmental Agreement with Gladstone School District to provide preschool kindergarten transition supports and professional development opportunities to kindergarten and preschool teachers to build capacity for staff to implement the *Habits of Mind* and *Story Workshop* inquiry curricula to promote kindergarten readiness and school success.

This Amendment adds \$15,250 for a revised maximum value of \$56,530. No County General funds are involved and no match is required. It becomes effective upon signature for services from July 1, 2017 through September 30, 2017. It has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing & Human Services

Subrecipient Amendment (FY 17-18)  
**H3S – Children, Youth & Families Division**

Subrecipient Agreement Number: 8096

Board Order Number: 031617-A1

Department/Division: H3S-CYF

Amendment No. 1

Subrecipient: Gladstone School District

Amendment Requested By: Rodney Cook

Changes:  Scope of Service  
 Agreement Time

Agreement Budget  
 Other:

**Justification for Amendment:** This Agreement funds high quality, innovative preschool programming in Gladstone preschool and kindergarten settings to promote readiness for kindergarten and school success, and shared professional development activities to increase knowledge of inquiry approaches to learning for educators. The County's funding for this Agreement is from the State of Oregon Department of Education Early Learning Division for services through September 30, 2017.

This Amendment extends the services and agreement term through September 30, 2017, aligning it with the term of the County's Agreement with Oregon Department of Education Early Learning Division. Funding is increased by \$15,250 for a maximum value of \$56,530.

This Amendment is effective **July 1, 2017** and continues through **September 30, 2017**.

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

**AMEND:**

1. **Term and Effective Date.** This Agreement shall be effective as of January 1, 2017 and shall expire on June 30, 2017, unless sooner terminated or extended pursuant to the terms hereof.

**TO READ:**

1. **Term and Effective Date.** This Agreement shall be effective as of January 1, 2017 and shall expire on ***September 30, 2017***, unless sooner terminated or extended pursuant to the terms hereof.

**AMEND:**

4. **Grant Funds.** The COUNTY's funding for this Agreement is the State of Oregon Department of Education Early Learning Division #5803 issued to the COUNTY by the Oregon Department of Education Early Learning Division. The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is \$41,280.

**TO READ:**

4. **Grant Funds.** The COUNTY's funding for this Agreement is the State of Oregon Department of Education Early Learning Division #5803 issued to the COUNTY by the Oregon Department of Education Early Learning Division. The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is ***\$56,530***.

**REPLACE:**

Exhibit B: Gladstone School District KPI Program Budget

**WITH:**

Exhibit B: BUDGET KPI Services (Amended)			
<p><b>Subrecipient:</b> Gladstone School District  <b>Address:</b> 17789 Webster Road            Gladstone OR 97027  <b>Contact Person:</b> Lennie Bjomsen  <b>Phone Number:</b> 503-780-2658  <b>E-mail:</b> <a href="mailto:bjomsen@gladstone.k12.or.us">bjomsen@gladstone.k12.or.us</a>  <b>Term:</b> January 1, 2017 - September 30, 2017  <b>Agreement #:</b> CYF-8096</p>			
Budget Category	Budget	Extension July 1 - Sept 30, 2017	Total Budget
<b>Personnel</b>			
Lead Preschool Teacher	\$ 24,000.00	\$ 12,000.00	\$ 36,000.00
Substitutes for Workshops	\$ 5,280.00		\$ 5,280.00
<b>Personnel Total</b>	<b>\$ 29,280.00</b>	<b>\$ 12,000.00</b>	<b>\$ 41,280.00</b>
Administration	\$ -		
<b>Administration Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Program</b>			
Professional Development GSD kinder teachers (Jan-June)	\$ 11,475.00		\$ 11,475.00
Professional Development and coaching OC preschool teachers (July-Sept)		\$ 2,500.00	\$ 2,500.00
Story Workshop Materials for Kindergarten Teachers	\$ 525.00		\$ 525.00
Year 2 Story Workshop GSD kinder teachers		\$ 750.00	\$ 750.00
<b>Program Total</b>	<b>\$ 12,000.00</b>	<b>\$ 3,250.00</b>	<b>\$ 15,250.00</b>
<b>Total Budget</b>	<b>\$ 41,280.00</b>	<b>\$ 15,250.00</b>	<b>\$ 56,530.00</b>
<p><b>Project Officer:</b> Kimberly Lopez  <b>Department:</b> Children, Youth @ Families Division  <b>Phone:</b> 503-650-5680  <b>Email:</b> <a href="mailto:klopez@clackamas.us">klopez@clackamas.us</a></p>			

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

**SUBRECIPIENT**

Gladstone School District  
17789 Webster Road  
Gladstone, OR 97027

By:   
Bob Stewart, Superintendent *Director of Finance & Operations*

07/14/2017  
Dated

**CLACKAMAS COUNTY**

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

**Signing on Behalf of the Board:**

Richard Swift, Director  
Health, Housing & Human Services

Dated

  
Rodney A. Cook  
Children, Youth & Families Division

7-17-17  
Dated

Approved to Form:

  
County Counsel

11 July 2017  
Dated



July 27, 2017

Board of County Commissioners  
Clackamas County

Approval of Amendment #2 of the Subrecipient Agreement with Metropolitan Family Services  
for Family Resource Coordination Services

<b>Purpose/Outcomes</b>	Programming connects families to needed resources and services as well as appropriate early childhood screens and assessments with the goals of increasing school readiness, family stability, and system coordination
<b>Dollar Amount and Fiscal Impact</b>	Adds \$27,141 for a revised maximum value of \$132,141 No County General funds are involved and no impact to the County
<b>Funding Source</b>	Oregon Department of Education Early Learning Division
<b>Duration</b>	July 1, 2017 through September 30, 2017
<b>Previous Board Action</b>	062916-A4
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Individuals and families in need are healthy and safe</li> <li>• Ensure safe, healthy and secure communities</li> </ul>
<b>Contact Person</b>	Rodney A. Cook 503-650-5677
<b>Contract No.</b>	7799

**BACKGROUND:**

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests approval of Amendment #2 of the Subrecipient Agreement with Metropolitan Family Services to connect families to care-coordination entities, schools, family advocates, home visitors, early childhood specialists, behavioral health, employment specialists, and pediatricians in order to achieve outcomes related to kindergarten readiness, stable and attached families and system coordination.

This Amendment adds \$27,141 for a maximum value of \$132,141 and extends services through September 30, 2017. There are no County general funds involved in this Amendment and it has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing & Human Services

Subrecipient Amendment (FY 16-17)  
**Health, Housing & Human Services**

Subrecipient Agreement Number: 7799

Board Order Number: 062916-A4

Department/Division: H3S/CYF

Amendment No. 2

Subrecipient: Metropolitan Family Services

Amendment Requested By: Rodney Cook

Changes:  Scope of Service

Agreement Budget

Agreement Time

Other:

**Justification:** The Agreement by and between Clackamas County and Metropolitan Family Services entered into on 06/29/16 (the Agreement) funds Family Resource Coordinators, who work with at-risk families with young children to promote family stability and kindergarten readiness by connecting them to care-coordination entities, school staff, family advocates, home visitors, early childhood specialists, behavioral health, employment specialists or natural helpers, early childhood screening and assessments, and other resources identified as necessary.

This Amendment extends the services and term of the Agreement through September 30, 2017 and increases the maximum compensation, aligning it with the terms of the County's Agreement with the State of Oregon Department of Education Early Learning Division.

Compensation is increased by **\$27,141** to a revised maximum value of **\$132,141**. This amendment is effective **July 1, 2017** and extends the Agreement through **September 30, 2017**.

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

**AMEND:**

I. SCOPE OF SERVICES

- B. Term. This Contract covers activities beginning July 1, 2016 through June 30, 2017 and becomes effective when signed by all necessary parties.

**TO READ:**

I. SCOPE OF SERVICES

- B. Term. This Contract covers activities beginning ***July 1, 2017 through September 30, 2017*** and becomes effective when signed by all necessary parties.

**AMEND:**

II. COMPENSATION AND RECORDS

- A. Compensation. COUNTY shall compensate the AGENCY for satisfactorily performing the services identified in Section I as follows:

On a cost reimbursement basis as described in Exhibit F, attached hereto. Up to a maximum compensation of \$105,000.

**TO READ:**

II. COMPENSATION AND RECORDS

- A. Compensation. COUNTY shall compensate the AGENCY for satisfactorily performing the services identified in Section I as follows:

On a cost reimbursement basis as described in Exhibit F, attached hereto. Up to a maximum compensation of ***\$132,141***.

**Metropolitan Family Services – Family Resource Coordination**

Subrecipient Agreement 7799 – Amendment # 2

Page 2 of 3

**REPLACE:**

**Exhibit E: MFS FRC Budget**

**WITH:**

<b>Exhibit E: MFS FRC Budget (Amended)</b>					
<b>Organization: Metropolitan Family Services</b>					
<b>Service: Family Resource Coordination</b>					
<b>Program Contact: Meghan Zook</b>					
<b>Contract Term: July 1, 2016 - September 30, 2017</b>					
<b>Category</b>	<b>Approved Grant Amount</b>	<b>Budget Adjustment</b>	<b>6/13/17 Approved Adjusted Budget</b>	<b>FRC Extension Budget 7/1/17-9-30/17</b>	<b>Total Budget</b>
<b>Personnel (List salary, FTE &amp; Fringe costs for each position)</b>					
Program Manager (\$3,696 Salary .075 FTE)	\$ 3,696.00	\$ (1,293.60)	\$ 2,402.40	\$ 1,474.00	\$ 3,876.40
Family Resource Navigators (\$68,643 Salary 1.75 FTE)	\$ 68,644.00	\$ (24,160.00)	\$ 44,484.00	\$ 19,307.00	\$ 63,791.00
Taxes & Benefits	\$ 17,790.00	\$ (6,226.40)	\$ 11,563.60	\$ 2,456.00	\$ 14,019.60
<b>Total Personnel Svcs</b>	\$ 90,130.00	\$ (31,680.00)	\$ 58,450.00	\$ 23,237.00	\$ 81,687.00
<b>Administration</b>					
	\$ 10,500.00		\$ 10,500.00	\$ 2,714.00	\$ 13,214.00
<b>Total Administration</b>	\$ 10,500.00	\$ -	\$ 10,500.00	\$ 2,714.00	\$ 13,214.00
<b>Supplies</b>					
Program Supplies and Food	\$ 840.00	\$ 29,330.00	\$ 30,170.00	\$ 310.00	\$ 30,480.00
<b>Equipment</b>					
Equipment Maint/Rental			\$ -		
Non-Capital Equip Purchases	\$ 1,800.00	\$ (1,738.00)	\$ 62.00		\$ 62.00
<b>General Office</b>					
Rent			\$ -		
Postage			\$ -		
Printing			\$ -		
Phone	\$ 600.00		\$ 600.00	\$ 180.00	\$ 780.00
Insurance(s)			\$ -		
<b>Professional Fees &amp; Contract Svcs</b>					
Audit			\$ -		
<b>Travel</b>					
Conferences & Training	\$ 500.00	\$ 1,738.00	\$ 2,238.00	\$ 400.00	\$ 2,638.00
Mileage	\$ 630.00		\$ 630.00		\$ 630.00
<b>Additional (please specify)</b>					
Client Aid and Transportation		\$ 2,350.00	\$ 2,350.00	\$ 300.00	\$ 2,650.00
<b>Total Program Costs</b>	\$ 4,370.00	\$ 31,680.00	\$ 36,050.00	\$ 1,190.00	\$ 37,240.00
<b>Total Grant Costs</b>	\$ 105,000.00	\$ -	\$ 105,000.00	\$ 27,141.00	\$ 132,141.00

**ADD:**

Except as set forth herein, the County and Subrecipient ratify the remainder of the Agreement.



July 27, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Amendment #1 of the Subrecipient Agreement with Northwest Family Services  
for Kindergarten Partnership Innovation Services

<b>Purpose/Outcomes</b>	Programming includes intensive support services to families with children with developmental delays.
<b>Dollar Amount and Fiscal Impact</b>	Adds \$21,632 for a revised maximum value of \$80,016 No County General Funds are involved and no fiscal impact to the County
<b>Funding Source</b>	Oregon Department of Education – Early Learning Division
<b>Duration</b>	July 1, 2017 and terminates September 30, 2017.
<b>Previous Board Action</b>	030917-A6
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Individuals and families in need are healthy and safe</li> <li>• Ensure safe, healthy and secure communities</li> </ul>
<b>Contact Person</b>	Rodney A. Cook 503-650-5677
<b>Contract No.</b>	CYF-8094

**BACKGROUND:**

Children, Youth & Families Division of the Health, Housing and Human Services Department requests approval of Amendment #1 of the Subrecipient Agreement with Northwest Family Services to provide intensive support to 35 families with children with developmental delays.

This Amendment adds \$21,632 for a revised maximum value of \$80,016. No County General funds are involved and no match is required. It becomes effective upon signature for services from July 1, 2017 through September 30, 2017. It has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends 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

Subrecipient Amendment (FY 16/17)  
**H3S – Children Youth & Families Division**

<u>Subrecipient Agreement Number: 8094</u>	<u>Board Order Number: 030917-A6</u>
<u>Department/Division: H3S/CYF</u>	<u>Amendment No. 1</u>
<u>Subrecipient: Northwest Family Services</u>	<u>Amendment Requested By: Rodney Cook</u>
Changes: <input type="checkbox"/> Scope of Service	<input checked="" type="checkbox"/> Agreement Budget
<input checked="" type="checkbox"/> Agreement Time	<input type="checkbox"/> Other:

**Justification for Amendment:** The Agreement by and between Clackamas County and Northwest Family Services, entered into on 03/09/17 (the Agreement) funds home visitation, parent coaching, and child development assessments to families of children with developmental delays to connect them to the resources and supports they need to facilitate their children's successful entry into school, as well as a series of trainings to Pre-K child care providers to improve their service to and care for children with social emotional and/or developmental delays

This Amendment extends the services and term of the Agreement through September 30, 2017, and adds to the maximum compensation, aligning it with the terms of the County's Agreement with the State of Oregon Department of Education Early Learning Division.

Compensation is increased by \$21,632 to a revised maximum value of \$80,016. This Amendment becomes effective July 1, 2017 and continues through September 30, 2017.

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

**AMEND:**

1. **Term and Effective Date.** This Agreement shall be effective as of January 1, 2017 and shall expire on **June 30, 2017**, unless sooner terminated or extended pursuant to the terms hereof.

**TO READ:**

1. **Term and Effective Date.** This Agreement shall be effective as of ***January 1, 2017*** and shall expire on ***September 30, 2017***, unless sooner terminated or extended pursuant to the terms hereof.

**AMEND:**

4. **Grant Funds.** The COUNTY's funding for this Agreement is the State of Oregon Department of Education Early Learning Division #5803 issued to the COUNTY by the Oregon Department of Education Early Learning Division. The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is \$58,384.

**TO READ:**

4. **Grant Funds.** The COUNTY's funding for this Agreement is the State of Oregon Department of Education Early Learning Division #5803 issued to the COUNTY by the Oregon Department of Education Early Learning Division. The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is ***\$80,016***.

**REPLACE:**

Exhibit B: Northwest Family Services KPI Budget

**WITH:**

<b>Exhibit B: Northwest Family Services KPI BUDGET (Amended)</b>			
<p><b>Subrecipient:</b> Northwest Family Services  <b>Address:</b> 6200 SE King Road                      Portland, OR 97222  <b>Contact Person:</b> Rose Fuller  <b>Phone Number:</b> 503-546-6377  <b>E-mail:</b> <a href="mailto:fuller@nwfs.org">fuller@nwfs.org</a>  <b>Term:</b> January 1, 2017 - September 30, 2017  <b>Agreement #:</b> CYF-8094</p>			
<b>Budget Category</b>	<b>Budget</b>	<b>Extension 7/1/17 to 9/30/17</b>	<b>Total Budget</b>
<b>Personnel</b>			
Case Coordinator (1 FTE @ \$34,000 for 6 months)	\$ 17,000.00	\$ -	\$ 17,000.00
Project Lead (1 FTE @ \$38,000 for 6 months)	\$ 19,000.00	\$ 9,311.00	\$ 28,311.00
Child Care providers (3 events, 3 providers @ \$10/hour) and Event Support Staff	\$ 270.00	\$ 3,352.00	\$ 3,622.00
Supervision (.10 FTE @ \$58,000 for 6 months)	\$ 2,900.00	\$ 1,366.00	\$ 4,266.00
Taxes and Benefits (.24)	\$ 9,401.00	\$ 4,430.00	\$ 13,831.00
<b>Personnel Total</b>	<b>\$ 48,571.00</b>	<b>\$ 18,459.00</b>	<b>\$ 67,030.00</b>
<b>Administration @ 10%</b>	\$ 5,308.00	\$ 2,132.00	\$ 7,440.00
<b>Administration Total</b>	<b>\$ 5,308.00</b>	<b>\$ 2,132.00</b>	<b>\$ 7,440.00</b>
<b>Program</b>			
Postage	\$ 200.00	\$ -	\$ 200.00
Supplies	\$ 375.00	\$ 100.00	\$ 475.00
Telecommunications	\$ 360.00	\$ 150.00	\$ 510.00
Mileage	\$ 1,620.00	\$ 441.00	\$ 2,061.00
3 Workshop Events @ \$650 each	\$ 1,950.00	\$ 350.00	\$ 2,300.00
<b>Program Total</b>	<b>\$ 4,505.00</b>	<b>\$ 1,041.00</b>	<b>\$ 5,546.00</b>
<b>Total Budget</b>	<b>\$ 58,384.00</b>	<b>\$ 21,632.00</b>	<b>\$ 80,016.00</b>
<p><b>Clackamas County Children, Youth &amp; Families Division</b>  <b>Clackamas Early Learning Hub Coordinator:</b> Kimberly Lopez                      503-650-5680  <a href="mailto:klopez@clackamas.us">klopez@clackamas.us</a></p>			

**ADD:**

Except as set forth herein, the County and Subrecipient ratify the remainder of the Agreement.

---

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

**SUBRECIPIENT**

Northwest Family Services  
6200 SE King Rd.  
Portland, OR 97222

By:   
Rose Fuller, Executive Director

7/12/17  
Dated

**CLACKAMAS COUNTY**


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

**Signing on behalf of the Board:**

Richard Swift, Director  
Health, Housing & Human Services

Dated

Approved to Form:

By:   
County Counsel

11 July 2017  
Dated

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

7-17-17  
Dated



July 27, 2017

Board of County Commissioners  
Clackamas County

Approval of Amendment #2 of the Subrecipient Agreement with Northwest Family Services  
for Family Resource Coordination Services

<b>Purpose/Outcomes</b>	Programming connects families to needed resources and services as well as appropriate early childhood screens and assessments with the goals of increasing school readiness, family stability, and system coordination
<b>Dollar Amount and Fiscal Impact</b>	Adds \$16,796 for a revised maximum value of \$77,547 No County General funds are involved and no impact to the County
<b>Funding Source</b>	Oregon Department of Education Early Learning Division
<b>Duration</b>	July 1, 2017 through September 30, 2017
<b>Previous Board Action</b>	081116-A3
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Individuals and families in need are healthy and safe</li> <li>• Ensure safe, healthy and secure communities</li> </ul>
<b>Contact Person</b>	Rodney A. Cook 503-650-5677
<b>Contract No.</b>	7803

**BACKGROUND:**

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests approval of Amendment #2 of the Subrecipient Agreement with Northwest Family Services to connect families to care-coordination entities, schools, family advocates, home visitors, early childhood specialists, behavioral health, employment specialists, and pediatricians in order to achieve outcomes related to kindergarten readiness, stable and attached families and system coordination.

This Amendment adds \$16,796 for a maximum value of \$77,547 and extends services through September 30, 2017. There are no County general funds involved in this Amendment and it has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing & Human Services

**Subrecipient Amendment (FY 16-17)  
Health, Housing & Human Services**

Subrecipient Agreement Number: 7803

Board Order Number: 081116-A3

Department/Division: H3S/CYF

Amendment No. 2

Subrecipient: Northwest Family Services

Amendment Requested By: Rodney Cook

Changes:  Scope of Service  
 Agreement Time

Agreement Budget  
 Other:

**Justification:** The Agreement by and between Clackamas County and Northwest Family Services, entered into on 08/11/16 (the Agreement) funds Family Resource Coordinators, who work with at-risk families with young children to promote family stability and kindergarten readiness by connecting them to care-coordination entities, school staff, family advocates, home visitors, early childhood specialists, behavioral health, employment specialists or natural helpers, early childhood screening and assessments, and other resources identified as necessary.

This Amendment extends the work and term of the Agreement through September 30, 2017 and increases the maximum compensation, and aligns it with the terms of the County's Agreement with the State of Oregon Department of Education Early Learning Division.

Compensation is increased by **\$16,796** to a revised maximum value of **\$77,547**. This amendment is effective **July 1, 2017** and extends the Agreement through **September 30, 2017**.

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

**AMEND:**

1. **Term and Effective Date.** Pursuant to the terms of the grant award, this Agreement shall be effective as of the July 1, 2016 and shall expire on June 30, 2017, unless sooner terminated or extended pursuant to the terms hereof.

**TO READ:**

1. **Term and Effective Date.** Pursuant to the terms of the grant award, this Agreement shall be effective as of the July 1, 2016 and shall expire on ***September 30, 2017***, unless sooner terminated or extended pursuant to the terms hereof.

**AMEND:**

4. **Grant Funds.** The COUNTY's funding for this Agreement is the Oregon Department of Education Early Learning Division Hub Contract (Catalogue of Federal Domestic Assistance [CFDA] #: 93.556) issued as Title IV B-2 Family Support Funds by the U.S. Department of Health and Human Services.

The maximum, not to exceed, grant amount that the COUNTY will pay is **\$60,751**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request and Exhibit E: Monthly/Quarterly/Final Performance Report. Failure to comply with the terms of this Agreement may result in withholding of payment.

**TO READ:**

4. **Grant Funds.** The COUNTY's funding for this Agreement is the Oregon Department of Education Early Learning Division Hub Contract (Catalogue of Federal Domestic Assistance [CFDA] #: 93.556) issued as Title IV B-2 Family Support Funds by the U.S. Department of Health and Human Services.

**Northwest Family Services – Family Resource Coordination**

Subrecipient Agreement 7803 – Amendment # 2

Page 2 of 3

The maximum, not to exceed, grant amount that the COUNTY will pay is **\$77,547**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request and Exhibit E: Monthly/Quarterly/Final Performance Report. Failure to comply with the terms of this Agreement may result in withholding of payment.

**REPLACE:**

**Exhibit B: NWFS FRC Budget (Amended)**

**WITH:**

Exhibit B: NWFS FRC BUDGET (Amended-2)			
<p><b>Subrecipient</b> <u>Northwest Family Services</u></p> <p><b>Address:</b> <u>6200 SE King Rd</u> <b>Report Period:</b> <u>7/1/16-6/30/17</u>  <u>Portland, OR 97222</u> <b>Contract #:</b> <u>7803</u></p> <p><b>Contact Person:</b> <u>Rose Fuller</u> <b>Federal Award #:</b> _____  <b>Phone Number:</b> <u>503-546-6377</u> <b>CFDA(s):</b> <u>93.556</u>  <b>E-mail:</b> <u>rfuller@nwfs.org</u></p>			
Budget Category	Budget	July 1-Sept 30 Extension	Approved Extension Budget
<b>Personnel</b>			
FRC 1.0 FTE	\$ 38,500.00	\$ 9,556.24	\$ 48,056.24
FRC fringe @ .24	\$ 9,240.00	\$ 3,017.76	\$ 12,257.76
Program Supervision .08 FTE	\$ 4,000.00	\$ 1,366.48	\$ 5,366.48
Prgram Supevision Fringe @.24	\$ 960.00	\$ 431.52	\$ 1,391.52
<b>Administration</b>			\$ -
Admin costs	\$ 2,898.00	\$ 1,527.00	\$ 4,425.00
<b>Program</b>			\$ -
Materials/Supplies	\$ 992.00	\$ 220.00	\$ 1,212.00
Telecommunications	\$ 360.00	\$ 75.00	\$ 435.00
Insurance	\$ 150.00		\$ 150.00
Conference/Training/Travel	\$ 1,251.00		\$ 1,251.00
Mileage	\$ 2,400.00	\$ 602.00	\$ 3,002.00
<b>Total Grant Funds Requested</b>	<b>\$ 60,751.00</b>	<b>\$ 16,796.00</b>	<b>\$ 77,547.00</b>
<p><b>Project Officer Name:</b> Kimberly Lopez  <b>Department:</b> H3S-CYF  503-650-5680  klopez@clackamas.us</p>			

**ADD:**

Except as set forth herein, the County and Subrecipient ratify the remainder of the Agreement.

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

**SUBRECIPIENT**

Northwest Family Services  
6200 SE King Rd.  
Portland, OR 97222

By:   
Rose Fuller, Executive Director

7/12/17  
Dated

**CLACKAMAS COUNTY**

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

**Signing on behalf of the Board:**

Richard Swift, Director  
Health, Housing & Human Services

Dated

Approved to Form:

By:   
County Counsel

11 July 2017  
Dated

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

7-17-17  
Dated

July 27, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Amendment #1 of the Subrecipient Agreement with Todos Juntos for  
Kindergarten Partnership Innovation Services

<b>Purpose/Outcomes</b>	Programming includes kindergarten readiness activities, structured playgroups and engagement events for families with preschool aged children.
<b>Dollar Amount and Fiscal Impact</b>	Adds \$21,632 for a total of \$55,312 No County General Funds are involved and no fiscal impact to the County
<b>Funding Source</b>	Oregon Department of Education – Early Learning Division
<b>Duration</b>	July 1, 2017 and terminates September 30, 2017.
<b>Previous Board Action</b>	032317-A2
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Individuals and families in need are healthy and safe</li> <li>• Ensure safe, healthy and secure communities</li> </ul>
<b>Contact Person</b>	Rodney A. Cook 503-650-5677
<b>Contract No.</b>	CYF-8100

**BACKGROUND:**

Children, Youth & Families Division of the Health, Housing and Human Services Department requests approval of Amendment #1 of the Subrecipient Agreement with Todos Juntos to provide kindergarten readiness activities, literacy and social emotional support to preschool and kindergarten students in Sandy and Estacada.

This Amendment adds \$21,632 for a maximum value of \$55,312. No County General funds are involved and no match is required. It is effective upon signature for services from July 1, 2017 through September 30, 2017. It has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends 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

Subrecipient Amendment (FY 16/17)  
**H3S – Children Youth & Families Division**

Subrecipient Agreement Number: 8100

Board Order Number: 032317-A2

Department/Division: H3S/CYF

Amendment No. 1

Subrecipient: Todos Juntos

Amendment Requested By: Rodney Cook

Changes:  Scope of Service  
 Agreement Time

Agreement Budget  
 Other:

**Justification for Amendment:** The Agreement by and between Clackamas County and Todos Juntos, entered into on 03/23/17 (the Agreement) funds programming in Sandy and Estacada, including Kindergarten readiness activities for preschool aged children, literacy and social emotional support for kindergarten students, structured playgroups for children and their parents, parent engagement workshops, and intensive services and supports for at-risk students.

This Amendment extends the services and term of the Agreement through September 30, 2017, and adds to the maximum compensation, aligning it with the terms of the County's Agreement with the State of Oregon Department of Education Early Learning Division.

Compensation is increased by \$21,632 to a revised maximum value of \$55,312. This Amendment becomes effective July 1, 2017 and continues through September 30, 2017.

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

**AMEND:**

1. **Term and Effective Date.** This Agreement shall be effective as of January 1, 2017 and shall expire on **June 30, 2017**, unless sooner terminated or extended pursuant to the terms hereof.

**TO READ:**

1. **Term and Effective Date.** This Agreement shall be effective as of ***January 1, 2017*** and shall expire on ***September 30, 2017***, unless sooner terminated or extended pursuant to the terms hereof.

**AMEND:**

4. **Grant Funds.** The COUNTY's funding for this Agreement is the State of Oregon Department of Education Early Learning Division #5803 issued to the COUNTY by the Oregon Department of Education Early Learning Division. The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is \$33,680.

**TO READ:**

4. **Grant Funds.** The COUNTY's funding for this Agreement is the State of Oregon Department of Education Early Learning Division #5803 issued to the COUNTY by the Oregon Department of Education Early Learning Division. The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is ***\$55,312***.

**REPLACE:**

Exhibit B: Todos Juntos KPI Budget

**WITH:**

Exhibit B: Todos Juntos KPI BUDGET (Amended)			
<b>Subrecipient:</b> Todos Juntos			
<b>Address:</b> PO Box 645			
Canby, OR 97013			
<b>Contact Person:</b> Eric Johnston			
<b>Phone Number:</b> 503-544-1315			
<b>E-mail:</b> <a href="mailto:ejtodosjuntos@comcast.net">ejtodosjuntos@comcast.net</a>			
<b>Term:</b> January 1, 2017 - September 30, 2017			
<b>Agreement #:</b> CYF-8100			
Budget Category	Budget	Extension 7/1/17 to 9/30/17	Amended Budget
<b>Personnel</b>			
KPI Coordinator @ .75 FTE		\$ 5,400.00	\$ 5,400.00
Fringe		\$ 621.00	\$ 621.00
Support Staff @ .425 FTE		\$ 1,632.00	\$ 1,632.00
Fringe		\$ 187.70	\$ 187.70
Supervision @.8 FTE		\$ 11,250.00	\$ 11,250.00
		\$ 1,293.75	\$ 1,293.75
KPI Coordinators(2 @ .45 FTE), Supervision @ .04FTE, fringe @.115	\$ 25,980.00	\$ -	\$ 25,980.00
<b>Personnel Total</b>	<b>\$ 25,980.00</b>	<b>\$ 20,384.45</b>	<b>\$ 46,364.45</b>
<b>Administration @ 10% of staffing</b>	\$ 2,500.00		\$ 2,500.00
<b>Administration Total</b>	<b>\$ 2,500.00</b>	<b>\$ -</b>	<b>\$ 2,500.00</b>
<b>Program</b>			
Telecommunications	\$ 300.00		\$ 300.00
Supplies	\$ 600.00		\$ 600.00
Audit/Insurance	\$ 1,000.00	\$ 1,247.55	\$ 2,247.55
Mileage	\$ 800.00		\$ 800.00
Transportation for participants	\$ 2,500.00		\$ 2,500.00
<b>Program Total</b>	<b>\$ 5,200.00</b>	<b>\$ 1,247.55</b>	<b>\$ 6,447.55</b>
<b>Total Budget</b>	<b>\$ 33,680.00</b>	<b>\$ 21,632.00</b>	<b>\$ 55,312.00</b>
<b>Project Officer Name:</b> Kimberly Lopez			
<b>Division:</b> Clackamas County Children, Youth & Families Division			
<b>Email:</b> klopez@clackamas.us			
<b>Phone:</b> 503-650-5680			


**ADD:**

Except as set forth herein, the County and Subrecipient ratify the remainder of the Agreement.

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

**SUBRECIPIENT**

Todos Juntos  
PO Box 645  
Canby, OR 97013

By:   
Eric Johnston, Executive Director  
7/12/17  
Dated



**CLACKAMAS COUNTY**

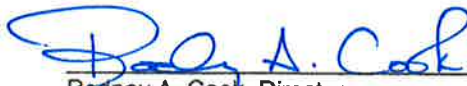
Commissioner: Jim Bernard, Chair  
Commissioner: Sonya Fischer  
Commissioner: Ken Humberston  
Commissioner: Paul Savas  
Commissioner: Martha Schrader

**Signing on behalf of the Board:**

Richard Swift, Director  
Health, Housing & Human Services

Dated

Approved to Form:   
By:   
County Counsel  
11 July 2017  
Dated

  
Rodney A. Cook, Director  
Children, Youth & Families Division  
7-17-17  
Dated



July 27, 2017

Board of County Commissioners  
Clackamas County

Approval of Amendment #2 of the Subrecipient Agreement with Todos Juntos for  
Family Resource Coordinator Services

<b>Purpose/Outcomes</b>	Programming connects families to needed resources and services and facilitates appropriate early childhood screens and assessments to achieve outcomes related to school readiness, stable and attached families and system coordination.
<b>Dollar Amount and Fiscal Impact</b>	Adds \$18,465 for a revised maximum value of \$79,967 No County General funds are involved and no impact to the County
<b>Funding Source</b>	Oregon Department of Education Early Learning Division
<b>Duration</b>	July 1, 2017 through September 30, 2017
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Individuals and families in need are healthy and safe</li> <li>• Ensure safe, healthy and secure communities</li> </ul>
<b>Contact Person</b>	Rodney A. Cook 503-650-5677
<b>Contract No.</b>	7802

**BACKGROUND:**

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests approval of Amendment #2 of the Subrecipient Agreement with Todos Juntos to connect families with children ages 0-6 to care-coordination entities, schools, family advocates, home visitors, early childhood specialists, behavioral health, employment specialists, and pediatricians and to facilitate appropriate early childhood screens and assessments to achieve outcomes related to kindergarten readiness, stable and attached families and system coordination.

This Amendment adds \$18,465 for a maximum value of \$79,967 and extends services through September 30, 2017. There are no County general funds involved in this agreement and it has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends 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

Subrecipient Amendment (FY 16-17)  
**Health, Housing & Human Services**

Subrecipient Agreement Number: 7802

Board Order Number: 081116-A4

Department/Division: H3S/CYF

Amendment No. 2

Subrecipient: Todos Juntos

Amendment Requested By: Rodney Cook

Changes:  Scope of Service

Agreement Budget

Agreement Time

Other:

**Justification:** The Agreement by and between Clackamas County and Todos Juntos, entered into on 08/11/16 funds Family Resource Coordinators, who work with at-risk families with young children to promote family stability and kindergarten readiness by connecting them to care-coordination entities, school staff, family advocates, home visitors, early childhood specialists, behavioral health, employment specialists or natural helpers, early childhood screening and assessments, and other resources identified as necessary.

This Amendment extends the services and term of the Agreement through September 30, 2017 and increases the maximum compensation, aligning it with the terms of County's Agreement with the State of Oregon Department of Education Early Learning Division.

Compensation is increased by **\$18,465.30** for a maximum value of **\$79,967.30**. This Amendment becomes effective **July 1, 2017** and extends the Agreement through **September 30, 2017**.

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

**AMEND:**

1. **Term and Effective Date.** Pursuant to the terms of the grant award, this Agreement shall be effective as of the July 1, 2016 and shall expire on June 30, 2017, unless sooner terminated or extended pursuant to the terms hereof.

**TO READ:**

1. **Term and Effective Date.** Pursuant to the terms of the grant award, this Agreement shall be effective as of the July 1, 2016 and shall expire on ***September 30, 2017***, unless sooner terminated or extended pursuant to the terms hereof.

**AMEND:**

4. **Grant Funds.** The COUNTY's funding for this Agreement is the Oregon Department of Education Early Learning Division Hub Contract (Catalogue of Federal Domestic Assistance [CFDA] #: 93.556) issued as Title IV B-2 Family Support Funds by the U.S. Department of Health and Human Services.

The maximum, not to exceed, grant amount that the COUNTY will pay is \$61,502. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request and Exhibit E: Monthly/Quarterly/Final Performance Report. Failure to comply with the terms of this Agreement may result in withholding of payment.

**TO READ:**

4. Grant Funds. The COUNTY's funding for this Agreement is the Oregon Department of Education Early Learning Division Hub Contract (Catalogue of Federal Domestic Assistance [CFDA] #: 93.556) issued as Title IV B-2 Family Support Funds by the U.S. Department of Health and Human Services.

The maximum, not to exceed, grant amount that the COUNTY will pay is **\$79,967.30**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request and Exhibit E: Monthly/Quarterly/Final Performance Report. Failure to comply with the terms of this Agreement may result in withholding of payment.

**REPLACE:**

**Exhibit B: Todos Juntos FRC Budget (Amended)**

**WITH:**

<b>Exhibit B: Todos Juntos FRC BUDGET (Amended-2)</b>			
<b>Note: This form derives from the approved budget in your grant agreement. All expenditures must have adequate supporting documentation.</b>			
<b>Subrecipient</b> <u>Todos Juntos - Family Resource Coordination</u>			
<b>Address:</b> <u>PO Box 645</u>		<b>Agreement Term:</b> <u>7/1/16-9/30/17</u>	
<u>Canby, OR 97013</u>		<b>Contract #:</b> <u>7802</u>	
<b>Contact Person:</b> <u>Eric Johnston</u>		<b>Federal Award #:</b> _____	
<b>Phone Number:</b> <u>503-544-1513</u>		<b>CFDA(s):</b> <u>93.556</u>	
<b>E-mail:</b> <u><a href="mailto:ejtodosjuntos@comcast.net">ejtodosjuntos@comcast.net</a></u>		_____	
Budget Category	Budget	Extension July 1 - Sept 30, 2017	Approved Extension Budget
<b>Personnel</b>			
FRC 1.0 FTE	\$ 40,000.00	\$ 11,000.00	\$ 51,000.00
FRC fringe @ .115%	\$ 4,600.00	\$ 1,320.00	\$ 5,920.00
Planning and Development .10FTE	\$ 5,000.00	\$ 1,500.00	\$ 6,500.00
Planning and Development Fringe@ .115%	\$ 575.00	\$ 180.00	\$ 755.00
Program Supervision .056FTE	\$ 3,500.00		\$ 3,500.00
Prgram Supervision Fringe @.115%	\$ 402.50		\$ 402.50
<b>Administration</b>			\$ -
Contract Services -bookkeeper/fringe, ED	\$ 2,500.00	\$ 1,678.66	\$ 4,178.66
<b>Program</b>			\$ -
Office Supplies	\$ 600.00		\$ 600.00
Program Materials/Supplies	\$ 522.50	\$ 832.00	\$ 1,354.50
Phone	\$ 300.00	\$ 75.00	\$ 375.00
Insurance	\$ 1,000.00	\$ 1,200.00	\$ 2,200.00
Mileage	\$ 1,000.00	\$ 679.64	\$ 1,679.64
Conference/Travel	\$ 1,502.00		\$ 1,502.00
<b>Total Budget</b>	<b>\$ 61,502.00</b>	<b>\$ 18,465.30</b>	<b>\$ 79,967.30</b>
<b>Project Officer Name:</b> Kimberly Lopez			
<b>Department:</b> H3S-CYF			

**ADD:**

Except as set forth herein, the County and Subrecipient ratify the remainder of the Agreement.

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

**SUBRECIPIENT**

Todos Juntos  
PO Box 645  
Canby, OR 97013

By:   
Eric Johnston, Executive Director

7/12/17  
Date

**CLACKAMAS COUNTY**

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

**Signing on Behalf of the Board:**

Richard Swift, Director  
Health, Housing & Human Services

Date

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

7-17-17  
Date

Approved to form:

By:  11 July 2017  
County Counsel Date



M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

July 27, 2017

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of a Supplemental Project Agreement No. 31952 with  
Oregon Department of Transportation for the  
Trolley Trail Bridge: Gladstone to Oregon City Project

<b>Purpose/Outcomes</b>	Using Federal Surface Transportation Program (STP) funds, this agreement allows Clackamas County to proceed with a feasibility study for replacing a bridge crossing the Clackamas River between the City of Gladstone and Oregon City. The feasibility study will identify costs for a bridge that will enhance bicycle and pedestrian connectivity.
<b>Dollar Amount and Fiscal Impact</b>	Overall Project Cost Estimate: \$225,000 Federal Surface Transportation Program funds: \$201,892 City of Gladstone match (10.27% min): \$23,108
<b>Funding Source</b>	Federal Surface Transportation Program (STP) and City of Gladstone Funds. No Clackamas County funds are included.
<b>Duration</b>	Completion of the feasibility study.
<b>Previous Board Action</b>	01/01/17: BCC Approval of Master Certification Agreement No. 30923 for County implementation of federally funded projects
<b>Strategic Plan Alignment</b>	This project will “Build a strong infrastructure” and “Ensure safe, healthy and secure communities” by studying a bicycle and pedestrian bridge.
<b>Contact Person</b>	Joel Howie, Civil Engineering Supervisor 503-742-4658

This is a three-party project agreement between Clackamas County, City of Gladstone and the Oregon Department of Transportation (ODOT) to perform a feasibility study for replacing a bridge crossing the Clackamas River to connect the City of Gladstone and Oregon City. The City of Gladstone was awarded Surface Transportation Program funds from the Regional Flexible Funds Allocation to study the feasibility of rebuilding an abandoned trolley bridge crossing the Clackamas River in the City that collapsed in 2014 as an extension of the Trolley Trail.

The City requested that Clackamas County complete the feasibility study on its behalf as a Supplemental Project under the County’s Local Agency Certification Program Agreement No. 30923 with ODOT. This project will be financed mostly with federal Surface Transportation Program funds matched by City of Gladstone Funds. No Clackamas County funds are expected to be expended on this project.

This agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners approve the attached Supplemental Project Agreement with ODOT for the Trolley Trail Bridge: Gladstone to Oregon City Project as listed in the agreement.

Respectfully submitted,

Mike Bezner  
Assistant Director of Transportation

**COOPERATIVE IMPROVEMENT AGREEMENT  
LOCAL AGENCY CERTIFICATION PROGRAM  
Trolley Trail Bridge: Gladstone to Oregon City**

THIS COOPERATIVE IMPROVEMENT AGREEMENT (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" or "ODOT," CLACKAMAS COUNTY, acting by and through its elected officials, hereinafter referred to as "Agency," and the CITY OF GLADSTONE acting by and through its elected officials, hereinafter referred to as "City," all herein referred to individually as "Party" or collectively as "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into Cooperative Improvement Agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. State and Agency entered into a Local Agency Certification Program Agreement No. 30923, executed on January 30, 2017 (Local Agency Certification Program Agreement). The Certification Program allows State to certify a Local Agency's procedures and delegates authority to the certified Local Agency to administer federal-aid projects. The Local Agency Certification Program Agreement also allows for a certified agency to perform work on behalf of a non-certified agency. The certified agency is a sub-recipient of federal funds and will be eligible for reimbursement as the delivering agency. The non-certified agency is a third party and is not eligible for federal reimbursement.
3. The City was awarded Surface Transportation Program funds from the Regional Flexible Funds Allocation to study the feasibility of rebuilding an abandoned trolley bridge crossing the Clackamas River in the City that collapsed in 2014 as an extension of the Trolley Trail. The City requested that Agency complete the feasibility study on its behalf as a Supplemental Project under the Local Agency Certification Program. The purpose of this Agreement is to establish the Parties' terms and obligations to deliver the Trolley Trail Bridge: Gladstone to Oregon City Project through the LOCAL CERTIFICATION PROGRAM as an Agency Supplemental Project.
4. ODOT and Agency agree that the Project in this Cooperative Improvement Agreement is one of the required test projects Agency must perform in order to obtain conditional certification in the areas of Informal consultant selection, described in Local Agency Certification Program (Certification Program) Agreement No. 30923.

5. The project was selected as part of the Surface Transportation Program, and it may be funded with a combination of eligible federal and state funds.

**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. The Parties agree that Agency shall perform work for the City in accordance with the Local Agency Certification Program Agreement No. 30923, which is hereby incorporated by reference, and the terms of this Cooperative Improvement Agreement. City acknowledges that City is not a Party to Agreement No. 30923 and that Agreement No. 30923 confers no obligations or benefits to City.
2. The Parties agree to Agency hiring and managing a consultant to complete a feasibility study to look at the feasibility of replacing the Portland Avenue Historic Trolley Bridge as an extension of the Trolley Trail, a shared-use path for bicycles and pedestrians, located within the City hereinafter referred to as "Project." The study will take into account all requirements for federally funded projects, including the Americans with Disabilities Act of 1990 requirements. The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
3. The Parties acknowledge the Federal funds are provided under Title 23, United States Code and agree to meet all applicable federal requirements.
4. The total Project cost is estimated at \$225,000, which is subject to change. The federal and state funds for this Project are limited to \$201,892. City shall be responsible for all remaining costs, including the 10.27 percent match for all eligible costs, any non-participating costs, and all costs in excess of the federal or state funds. Any unused federal or state funds will be retained by State, and will not be available for use by Agency or City for this Agreement or any other projects. Agency will report the total Project cost at the end of the Project to the State Local Agency Liaison.
5. Agency shall make all payments for work performed on the Project, including all consultant costs, and invoice State for one-hundred (100) percent of its costs. State shall reimburse Agency invoices at the pro-rated federal share. For purposes of processing invoices under this Agreement, Agency is responsible for all costs beyond the federal and state reimbursement including the 10.27 percent match for all eligible costs, any non-participating costs, and all costs in excess of the federal or state funds. State will invoice FHWA and Agency for State's Project costs, and Agency agrees to reimburse State for the federal-aid matching state share and any non-participating costs as determined in accordance with paragraph number 4, above upon receipt of invoice. Failure of Agency to make such payments to State may result in withholding of Agency's proportional allocation of State Highway Trust Funds until such costs are paid.



6. Agency shall invoice City for the federal match share, any non-participating costs, and all costs expended for the Project not reimbursed by State. Upon receipt of Agency invoice(s), City shall reimburse Agency for the federal match share, any non-participating costs, and all costs expended for the Project not reimbursed by State. Failure of City to make such match payments to Agency may result in State withholding of City's proportional allocation of State Highway Trust Funds until such costs are paid.
7. City and Agency agree that any disputes arising on this Project regarding Agency's invoices or City payment of invoices listed in this paragraph are to be resolved between the City and Agency only.
8. Parties agree the State will perform oversight to administer the Project, State will provide Agency and City with a preliminary estimate for the cost of State's work. Agency and City understand that State's costs are estimates only and City and Agency agree to pay State's actual cost incurred per the Terms of this Agreement.
9. Agency guarantees the availability of Agency funding in an amount required to cover the federal match share, any non-participating costs and all those costs in excess of the available federal and state funds identified in paragraph 4 above.
10. City guarantees the availability of City funding in an amount required to fully reimburse Agency for the match, any non-participating costs, and any costs not covered by state and federal funding that Agency expends on behalf of the Project.
11. City grants State and Agency the authority to enter onto City right of way as needed to complete this Project.
12. Information required by 2 CFR 200.331(a)(1) shall be contained in the USDOT FHWA Federal Aid Project Agreement between State and FHWA for this Project, a copy of which shall be provided by State to Agency with the Notice to Proceed.
13. Indirect Cost rate
  - a. As required by 2 CFR 200.331(a)(4), the indirect cost rate for this Project at the time the agreement is written is 35.57%. This rate may change upon notice to ODOT and ODOT's subsequent written approval.
  - b. If the approved rate changes during the term of this Agreement, Agency shall invoice ODOT using the current indirect cost rate(s) for the project on file with ODOT at the time the work is performed. If Agency does not have an approved indirect cost rate on file with ODOT at the time the work is performed, Agency shall invoice ODOT using a zero percent (0%) rate.

14. Agency shall perform formal consultant selection. Agency understands that this Project is a test project for formal consultant selection.
15. State will submit the requests for federal funding to the Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance approved by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
16. State's Regional Local Agency Liaison or designee will provide Agency with a written notice to proceed for the Project when FHWA approval has been secured and funds are available for expenditure on this Project.
17. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
18. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
19. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
20. If City fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the City's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such City breach.
21. By signing this Agreement, Agency agrees to comply with the provisions of the Federal Funding Accountability and Transparency Act (FFATA) and is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>. If, in the preceding fiscal year, Agency or City received more than 80% of its gross revenues from the federal government, those federal funds exceed \$25,000,000 annually, and the public does not have access to information about the compensation of executives through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986, Agency and City shall report the total compensation and names of its top five executives to State. Agency and City shall report said information to State within 14 calendar days of execution of this Agreement and annually thereafter, utilizing the FFATA form attached hereto as Exhibit "B".
22. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save

and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.

23. Any such indemnification shall also provide that neither Agency's contractor and subcontractor(s) nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's or City's contractor if the State of Oregon elects to assume its own defense.
24. This Agreement may be terminated by mutual written consent of all Parties.
25. State may terminate this Agreement effective upon delivery of written notice to Agency and City, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency or City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency or City 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 Agency or City fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, 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 if State is prohibited from paying for such work from the planned funding source.
26. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
27. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires State to return funds to the FHWA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
28. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, 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 Agreement did not contain the particular term or provision held to be invalid.
29. Agency certifies and represents that each individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
30. City certifies and represents that each individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of City, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind City.
31. State certifies and represents that each individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of State, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind State.
32. 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.

33. This Agreement and the Local Agency Certification Program (Certification Program) Agreement No. 30923, as amended and all attached exhibits constitutes the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached Exhibits will control over Project application and documents provided by Agency or City to State. 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 a Party unless in writing and signed by all 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. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.
34. State's Project Liaison for the Agreement is Mahasti Hastings, Local Agency Liaison, 123 NW Flanders Street, Portland, OR 97209, 503-731-8595, Mahasti.v.hastings@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.
35. Agency's Project Liaison for this Agreement is Joel Howie, Civil Engineering Supervisor, 150 Beavercreek Road, Oregon City, OR 97045, 503-742-4658, jhowie@co.clackamas.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
36. City's Project Liaison for this Agreement is Jacque Betz, Acting City Administrator, 525 Portland Avenue, Gladstone, OR 97027, 503-557-2766, betz@ci.gladstone.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

**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.

This Project is in the 2015-2018 Statewide Transportation Improvement Program (STIP), (Key #19278) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

**SIGNATURE PAGE TO FOLLOW**

Agency/State  
Agreement No. 31952

**CLACKAMAS COUNTY**, acting by and  
through its elected officials

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED**

By \_\_\_\_\_  
County Legal Counsel

Date \_\_\_\_\_

**CITY OF GLADSTONE**, acting by and  
through its elected officials

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED**

By \_\_\_\_\_  
City Legal Counsel

Date \_\_\_\_\_

**County Contact:**

Joel Howie, Civil Engineering Supervisor  
150 Beaver Creek Road  
Oregon City, OR 97045  
503-742-4658  
jhowie@co.clackamas.or.us

**City Contact:**

Jacque Betz, Acting City Administrator  
525 Portland Avenue  
Gladstone, OR 97027  
503-557-2766  
betz@ci.gladstone.or.us

**STATE OF OREGON**, acting by and  
through its Department of Transportation

By \_\_\_\_\_

Region 1 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Certification Program Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_

Assistant Attorney General

Date \_\_\_\_\_

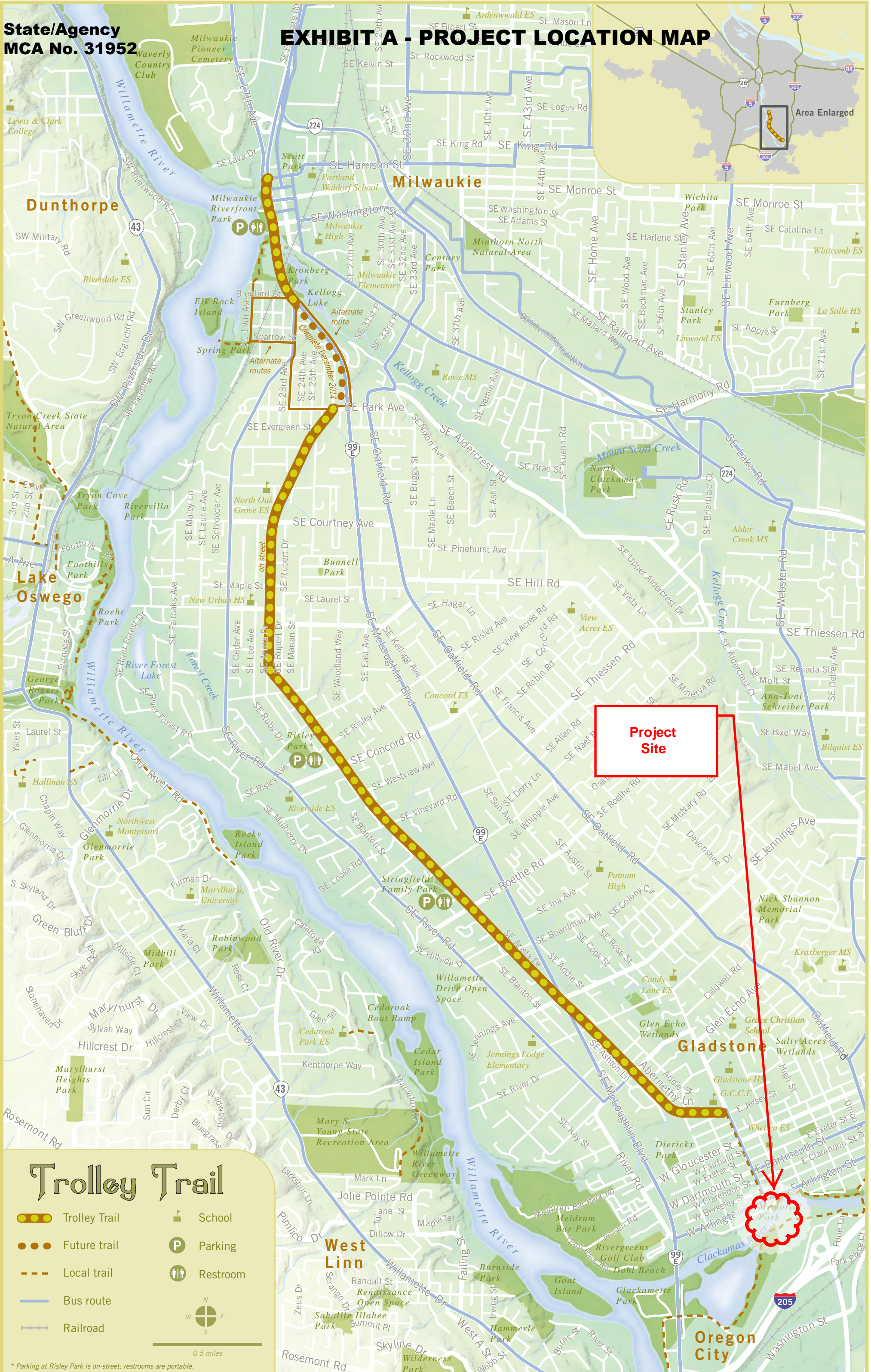
**State Contact:**

Mahasti Hastings  
123 NW Flanders Street  
Portland, OR 97209  
503-731-8595  
Mahasti.v.hastings@odot.state.or.us



State/Agency  
MCA No. 31952

# EXHIBIT A - PROJECT LOCATION MAP



**Project Site**

## Trolley Trail

- Trolley Trail
- Future trail
- Local trail
- Bus route
- Railroad
- School
- Parking
- Restroom



0.5 miles

\* Parking at Risley Park is on-street; restrooms are portable.



**Exhibit B**  
**Federal Funding Accountability and Transparency Act (FFATA)**  
**Subaward Reporting**

(For purposes of this Exhibit, references to “your organization” shall mean “Agency” and references to “ODOT” shall mean “State.”)

The Oregon Department of Transportation (ODOT) is required to fulfill a federal requirement for contracting under the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS). FFATA reporting is a requirement for subawards (also known as subrecipients) of federal awards in excess of \$25,000. Your organization will enter into an agreement with ODOT where the funding source is a federal grant with a subrecipient relationship. Your organization is required to submit the information below to the Oregon Department of Transportation within fourteen calendar days of execution of the Agreement and annually thereafter, if applicable. (See the following page for further details.)

**Legal entity name:**

---

**Data Universal Number System (DUNS) number:**

---

**Executive compensation**

Executive compensation information is also required to determine whether or not the following information must be reported in FSRS:

- a. In your organization’s previous fiscal year, did your organization receive 80% or more of its annual gross revenue and \$25,000,000 or more in federal procurement contracts, subcontracts, loans, grants, subgrants, cooperative agreements and federal financial assistance awards subject to the Transparency Act? (Include parent organization, all branches, and all affiliates worldwide.)  
 Yes  No If “yes,” proceed to b. If “no,” no further action is required and submittal of this form is not required.
- b. Does the public have access to information about the compensation of the senior executives in your organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?  
 Yes  No If “yes,” provide a link to the SEC: <http://www.sec.gov> where this information is located and return form to the ODOT contact shown at the bottom of this form.  
Provide link here:

If “no,” provide compensation information below.

**Names and annual compensation amounts of the five most highly compensated executives:**

1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

**Business entity contact information (person completing form):**

Type name	Title	Date
734-5075 (10-28-2016)	10	



Agency/State  
Agreement No. 31952

**Return completed form to: Jeff Flowers, Program and Funding Services Manager; Oregon Department of Transportation; 555  
13<sup>th</sup> Street NE; Salem, OR 97301; [Jeffrey.A.FLOWERS@odot.state.or.us](mailto:Jeffrey.A.FLOWERS@odot.state.or.us)**

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State/Agency  
Agreement No.

**Background on FFATA requirements**

The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of the Act is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is [www.USASpending.gov](http://www.USASpending.gov).

**Definition of compensation**

Your organization is considered a subrecipient of federal funds. Unless your organization is exempt, FFATA requires you to report total compensation for each of your five most highly compensated executives for the preceding completed year. Total compensation means the cash and non-cash dollar value earned by the executive during the subrecipient's preceding fiscal year and includes the following: salary and bonus; awards of stock, stock options, and stock appropriation rights; earnings for services under non-equity incentive plans; change in pension value; above-market earnings on deferred compensation which is not tax-qualified; and other compensation as defined in 2 CFR Part 170, Section 170.330(b)(5)(vi).

More detailed information about the FFATA can be found at: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>

**If you have any questions, contact:**

Jeff Flowers  
Program and Funding Services Manager  
Oregon Department of Transportation  
555 13th Street NE  
Salem, OR 97301  
[Jeffrey.A.FLOWERS@odot.state.or.us](mailto:Jeffrey.A.FLOWERS@odot.state.or.us)  
Telephone: 503-986-4453



M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

July 27, 2017

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of Amendment No. 1 to the Intergovernmental  
Agreement No. 30447 with Oregon Department of Transportation for the  
OR-213 at Union Mills Road Project

<b>Purpose/Outcomes</b>	The amendment will modify the deliverables on the project and clarify maintenance responsibilities for the water quality facility to be constructed with the project.
<b>Dollar Amount and Fiscal Impact</b>	Overall Project Cost Estimate: \$900,484 Federal-Aid Multimodal Transportation Enhance Program (MTEP): \$808,004 County match (10.27% min): \$92,120
<b>Funding Source</b>	Federal MTEP and County Road Funds.
<b>Duration</b>	Upon execution through completion of the project
<b>Previous Board Action</b>	04/30/2015 – Approval of Agreement No. 30447 with Oregon Department of Transportation for the OR-213 at Union Mills Road Project
<b>Strategic Plan Alignment</b>	This work promises to Ensure safe, healthy and secure communities by constructing a dedicated right-turn lane that will increase the capacity and function of the intersection and likely decrease intersection-related accidents
<b>Contact Person</b>	Joel Howie, DTD Project Manager 503-742-4658

The Department of Transportation and Development (DTD) received a federal grant to construct roadway improvements on Union Mills Road just prior to its intersection with Oregon Highway 213 (OR-213). The County entered into an agreement with the Oregon Department of Transportation (ODOT) to implement the project with oversight from DTD. An amendment is required to modify the deliverables on the project to include relinquishment of right of way acquired by ODOT on behalf of the County and clarify the maintenance responsibilities for the water quality facility to be constructed as part of the Project. The County will be responsible for 62.4 percent of any future maintenance costs of the water quality facility, which was determined by the proportion of storm water runoff coming from Union Mills Road (County facility) and OR-213 (ODOT facility).

The improvements will consist of a 300-foot long, dedicated right-turn lane westbound on Union Mills Road. ODOT has a project on OR-213 to increase sight distance at the Union Mills Intersection and will combine the projects into one construction project to provide economies to scale and less disruption to the area. Funding for the project will be from Multimodal

Transportation Enhance Program (89.73%) with the match (10.27%) coming from the County's road fund. This agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners approve the attached amendment to the Intergovernmental Agreement for the OR-213 at Union Mills Road Project.

Respectfully submitted,

Mike Bezner  
Assistant Director of Transportation

**AMENDMENT NUMBER 01  
LOCAL AGENCY AGREEMENT  
MULTIMODAL TRANSPORTATION ENHANCE PROGRAM (MTEP)  
Project Name: OR-213 at Union Mills Road**

This is Amendment No. 01 to the Agreement 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 "Agency," entered into on May 19, 2015.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to revise deliverables, revise Attachment No. 1 Special Provisions to specify right of way ownership upon Project completion, and identify maintenance responsibilities.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendment to Agreement.**

**Insert new Exhibit B – MAP, CIA & STORMWATER QUALITY TREATMENT FOR THE OR213 @ S. UNION MILLS ROAD PROJECT**

**TERMS OF AGREEMENT, Paragraph 2, Page 2, which reads:**

2. The Project Description and Deliverables are as follows:

Description: Design, acquire right-of-way (ROW) for, and construct a widened right turn lane at the intersection of Union Mills Rd and OR-213.

Deliverables:

- Construct approximately 300-foot right-turn lane westbound on Union Mills Rd
- Right-of-way acquisition to accommodate widening
- Landscaping and sign replacement

**Shall be deleted in its entirety and replaced with the following:**

2. The Project Description and Deliverables are as follows:

Description: Design, acquire right-of-way (ROW) for, and construct a widened right turn lane at the intersection of Union Mills Rd and OR-213.

Deliverables:

- Construct approximately 300-foot right-turn lane westbound on Union Mills Rd
- Construct water quality treatment facility to treat runoff from Union Mills Rd and OR213. (Water quality treatment facility will be on ODOT ROW.)
- Right-of-way acquisition to accommodate widening

- Landscaping and sign replacement
- Right of way acquired on behalf of the Agency will be relinquished to the Agency upon Project completion
- Identify maintenance responsibilities for water quality facility constructed as part of Project identified in Attachment No. 1 Revised Special Provisions

**ATTACHMENT NO. 1 to Agreement No. 30447 SPECIAL PROVISIONS, Paragraph 2, Page 8, which reads:**

2. The State shall consult with the Agency prior to performing the right of way acquisition work.

**Shall be deleted in its entirety and replaced with the following:**

**ATTACHMENT NO. 1 to Agreement No. 30447 REVISED SPECIAL PROVISIONS, Paragraph 2, Page 8:**

2. The State shall consult with the Agency prior to performing the right of way acquisition work. Right of way acquired on behalf of the Agency will be relinquished to the Agency upon Project completion.

**Insert new paragraphs, ATTACHMENT NO. 1 to Agreement No. 30447 REVISED SPECIAL PROVISIONS, Paragraphs 13 and 14, to read as follows:**

13. State will be responsible for routine maintenance of the water quality treatment facility, including mowing and litter removal. Maintenance above and beyond routine maintenance (e.g. regrading, replanting, and valve replacement) will be performed by State, and will be billed to Clackamas County based on the proportion of stormwater contributed from County facilities, which is 62.4 percent (62.4%) at the time of the writing of this Agreement. A subsequent project or an adjustment between the Parties documented in writing may modify this percentage in the future without requiring an amendment to this Agreement. State will be responsible for responding to hazardous material spills on OR-213, including notification of the appropriate authorities and clean-up.
14. Clackamas County will be responsible for responding to hazardous material spills on S. Union Mills Road, including notification of the appropriate authorities and clean-up.
3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Agency certifies that the representations, warranties and certifications in the original Agreement are true and

Agency/State  
Agreement No. 30447-01

correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

**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.

**This Project** is in the 2015-2018 Statewide Transportation Improvement Program, (Key #18826) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

**SIGNATURE PAGE TO FOLLOW**

Agency/State  
Agreement No. 30447-01

**Clackamas County**, by and through its  
Board of Commissioners

By \_\_\_\_\_  
Chair

Date \_\_\_\_\_

By \_\_\_\_\_  
Recording Secretary

Date \_\_\_\_\_

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

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

Joel Howie, Civil Engineering Supervisor  
Clackamas County - Engineering Division  
Development Services Building  
150 Beaver Creek Road  
Oregon City, OR 97045  
(503) 742-4658  
[jhowie@co.clackamas.or.us](mailto:jhowie@co.clackamas.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Enhance Program Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date: \_\_\_\_\_

**State Contact:**

Kelly Brooks, Policy & Development Manager  
123 NW Flanders Street  
Portland, OR 97225  
(503) 731-8245  
[kelly.brooks@odot.state.or.us](mailto:kelly.brooks@odot.state.or.us)



### EXHIBIT B – MAP, CIA & STORMWATER QUALITY TREATMENT FOR THE OR213 @ S. UNION MILLS ROAD PROJECT



**ATTACHMENT NO. 1 to Agreement No. 30447  
REVISED SPECIAL PROVISIONS**

1. State, or the consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, hydraulic studies, acquire necessary right of way and easements; obtain all required permits and arrange for all utility relocations/adjustments. State or the consultant shall conduct all work components necessary to complete the Project.
2. The State shall consult with the Agency prior to performing the right of way acquisition work. Right of way acquired on behalf of the Agency will be relinquished to the Agency upon Project completion.
3. Agency shall have the right to review all Project plans, legal descriptions and impact maps, specifications and cost estimates. Agency may, at project expense, review and approve, the documents related to the improvements located on Agency right of way prior to advertising for bids.
4. Upon State's award of the construction contract, State, or the consultant, shall be responsible for all required materials testing and quality documentation; and prepare necessary documentation with ODOT-qualified personnel, and State will make all contractor payments. Contract administration, construction engineering and inspection will follow the most current version of the ODOT Construction Manual and the ODOT Inspector's Manual.
5. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
6. State will perform work throughout the duration of the Project and shall provide a preliminary estimate of State costs for this work. Prior to the start of each Project phase State shall provide an updated estimate of State costs for that phase. Such phases generally consist of Preliminary Engineering, Right of Way, Utility, and Construction. Agency understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per of this Agreement.
7. State and Agency agree that the useful life of this Project is defined as 20 years.
8. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
9. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach. Agency will be ineligible to receive or apply for any Title 23, United States Code funds until State receives full reimbursement of the costs incurred.

10. Prior to Contract Final Approval, Agency and State agree to conduct a final inspection of the Project together to determine if the project improvements were constructed in a manner consistent with the contract specifications and requirements and are acceptable to both Parties.
11. Agency shall, upon Contract Final Approval, accept all improvements on Agency facilities made by State on Agency's behalf and agrees to be responsible for ongoing maintenance of such improvements.
12. Maintenance responsibilities will survive any termination of this Agreement.
13. State will be responsible for routine maintenance of the water quality treatment facility, including mowing and litter removal. Maintenance above and beyond routine maintenance (e.g. regrading, replanting, and valve replacement) will be performed by State, and will be billed to Clackamas County based on the proportion of stormwater contributed from County facilities, which is 62.4 percent (62.4%) at the time of the writing of this Agreement. A subsequent project or an adjustment between the Parties documented in writing may modify this percentage in the future without requiring an amendment to this Agreement. State will be responsible for responding to hazardous material spills on OR-213, including notification of the appropriate authorities and clean-up.
14. Clackamas County will be responsible for responding to hazardous material spills on S. Union Mills Road, including notification of the appropriate authorities and clean-up.



**RANDALL A. HARMON**  
MANAGER

**TRANSPORTATION MAINTENANCE DIVISION**

**McCoy Building**

902 ABERNETHY ROAD | OREGON CITY, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Goods and Services Contract with Moore Excavation, Inc.  
for Trenchless Technology

<b>Purpose/ Outcomes</b>	We have found trenchless technology to be beneficial in the maintenance of road culverts. It is used for repairing culverts that are buried deeply under roadways instead of doing the open trenching that Clackamas County crews are set up to do.
<b>Dollar Amount and Fiscal Impact</b>	Transportation Maintenance will use available funds under Contracted Services
<b>Funding Source</b>	215-7433-00-431900. \$150,000 per budget year, not to exceed \$750,000.
<b>Duration</b>	Effective upon signature, expires June 30, 2022. 5 year contract
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Helps keep a strong infrastructure and ensures safe communities</li> <li>2. Provides maintenance to the traveling public so they can experience a clean, attractive and healthy community.</li> </ol>
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Shane Abbott, Road Operations Supervisor, 503-650-3218

**BACKGROUND:**

Clackamas County Transportation Maintenance is responsible for drainage along County maintained roads to keep water off the public right-of-way.

The advantages of using trenchless technology include lower cost, a hard road closure is not required, the pavement surface is not disturbed and it is a safer construction procedure due to the fact that you don't have people working in a deep, open ditch.

On May 7<sup>th</sup>, 2017, Request for Proposals No. 2017-29 was issued for Trenchless Technology Services. Two proposals were received and evaluated based on the criteria established in the RFP. Proposals were received from Armadillo Boring, Inc. of Salem, Oregon and Moore Excavation, Inc. of Fairview, Oregon. Both proposals met all requirements of the solicitation and, as allowed in the RFP, the Transportation Maintenance Division elected to award contracts to both proposers. Awarding contracts to both proposers is in the County's best interest as services are provided on an as-needed basis. Having two contractors available provides back up if one contractor is not available when the work is needed.

**RECOMMENDATION:**

Staff recommends Board Approval of the Goods and Services Contract with Moore Excavation, Inc.

Respectfully submitted,

Randall A. Harmon  
Transportation Operations Manager  
Transportation Maintenance Division

\*Placed on the \_\_\_\_\_ Agenda by the Procurement Division



## CLACKAMAS COUNTY GOODS AND SERVICES CONTRACT

This Goods and Services Contract (this "Contract") is entered into between Moore Excavation, Inc. ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") for the purposes of providing Trenchless Technology Services on an as-needed basis.

### **I. TERM**

This Contract shall become effective upon signature of both parties and shall remain in effect until June 30, 2022. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

### **II. SCOPE OF WORK**

This Contract covers the Scope of Work as described in RFP No. 2017-29 issued May 9, 2017 attached and hereby incorporated by reference as Attachment "A." This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Attachment "A", and the Contractor's Proposal attached and hereby incorporated by reference as Attachment "B." Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County's Representative for this contract is Shane Abbott.

### **III. COMPENSATION**

- 1. PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed \$150,000.00 and the total Contract compensation shall not exceed \$750,000.00.
- 2. TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
- 3. INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Attachment A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. Invoices shall be submitted to the County Representative at: Attn: Shane Abbott 902 Abernethy Road, Oregon City, OR 97045 [tabbott@clackamas.us](mailto:tabbott@clackamas.us)

### **IV. CONTRACT PROVISIONS**

**1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of

this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**2. AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

**3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

**4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

**5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

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

**7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

**8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors,

agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

**9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

**10. INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

**A. COMMERCIAL GENERAL LIABILITY**

The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that



no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

**11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and County's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

**16. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

**18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of

Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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

**20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work.

**22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third

persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

**25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

**27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**28. DELIVERY.** All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the County except as to latent defects, fraud and Contractor's warranty obligations.

**29. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time



**ATTACHMENT A**

**REQUEST FOR PROPOSALS NO. 2017-29  
TRENCHLESS TECHNOLOGY SERVICES**

**ATTACHMENT B**  
**CONTRACTOR'S PROPOSAL**



**RANDALL A. HARMON**  
MANAGER

**TRANSPORTATION MAINTENANCE DIVISION**

**McCoy Building**

902 ABERNETHY ROAD | OREGON CITY, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Goods and Services Contract with Armadillo Boring, Inc.  
for Trenchless Technology

<b>Purpose/ Outcomes</b>	We have found trenchless technology to be beneficial in the maintenance of road culverts. It is used for repairing culverts that are buried deeply under roadways instead of doing the open trenching that Clackamas County crews are set up to do.
<b>Dollar Amount and Fiscal Impact</b>	Transportation Maintenance will use available funds under Contracted Services
<b>Funding Source</b>	215-7433-00-431900. \$150,000 per budget year, not to exceed \$750,000.
<b>Duration</b>	Effective upon signature, expires June 30, 2022. 5 year contract
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Helps keep a strong infrastructure and ensures safe communities</li> <li>2. Provides maintenance to the traveling public so they can experience a clean, attractive and healthy community.</li> </ol>
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Shane Abbott, Road Operations Supervisor, 503-650-3218

**BACKGROUND:**

Clackamas County Transportation Maintenance is responsible for drainage along County maintained roads to keep water off the public right-of-way.

The advantages of using trenchless technology include lower cost, a hard road closure is not required, the pavement surface is not disturbed and it is a safer construction procedure due to the fact that you don't have people working in a deep, open ditch.



On May 7<sup>th</sup>, 2017, Request for Proposals No. 2017-29 was issued for Trenchless Technology Services. Two proposals were received and evaluated based on the criteria established in the RFP. Proposals were received from Armadillo Boring, Inc. of Salem, Oregon and Moore Excavation, Inc. of Fairview, Oregon. Both proposals met all requirements of the solicitation and, as allowed in the RFP, the Transportation Maintenance Division elected to award contracts to both proposers. Awarding contracts to both proposers is in the County's best interest as services are provided on an as-needed basis. Having two contractors available provides back up if one contractor is not available when the work is needed.

**RECOMMENDATION:**

Staff recommends Board Approval of the Goods and Services Contract with Armadillo Boring, Inc.

Respectfully submitted,

Randall A. Harmon  
Transportation Operations Manager  
Transportation Maintenance Division

\*Placed on the \_\_\_\_\_ Agenda by the Procurement Division



## CLACKAMAS COUNTY GOODS AND SERVICES CONTRACT

This Goods and Services Contract (this "Contract") is entered into between Armadillo Boring, Inc. ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") for the purposes of providing Trenchless Technology Services on an as-needed basis.

### **I. TERM**

This Contract shall become effective upon signature of both parties and shall remain in effect until June 30, 2022. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

### **II. SCOPE OF WORK**

This Contract covers the Scope of Work as described in RFP No. 2017-29 issued May 9, 2017 attached and hereby incorporated by reference as Attachment "A." This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Attachment "A", and the Contractor's Proposal attached and hereby incorporated by reference as Attachment "B." Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County's Representative for this contract is Shane Abbott.

### **III. COMPENSATION**

- PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed \$150,000.00 and the total Contract compensation shall not exceed \$750,000.00.
- TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
- INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Attachment A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. Invoices shall be submitted to the County Representative at: Attn: Shane Abbott 902 Abernethy Road, Oregon City, OR 97045 [tabbott@clackamas.us](mailto:tabbott@clackamas.us)

### **IV. CONTRACT PROVISIONS**

**1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of

this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**2. AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

**3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

**4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

**5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

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

**7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

**8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors,

agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

**9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

**10. INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

**A. COMMERCIAL GENERAL LIABILITY**

The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that

no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

**11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and County's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

**16. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

**18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of

Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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

**20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work.

**22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third

persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

**25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

**27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**28. DELIVERY.** All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the County except as to latent defects, fraud and Contractor's warranty obligations.

**29. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time





**ATTACHMENT A**

**REQUEST FOR PROPOSALS NO. 2017-29  
TRENCHLESS TECHNOLOGY SERVICES**

**ATTACHMENT B**  
**CONTRACTOR'S PROPOSAL**



Jeff Jorgensen  
Manager

**FACILITIES MANAGEMENT**

**CENTRAL UTILITY PLANT**

1710 Red Soils Court, #200 \ Oregon City, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of the Contract Documents with Johnson Controls, Inc.  
for Planned Services to Central Cooling System on the Red Soils Campus**

<b>Purpose</b>	Request to approve new contract.
<b>Fiscal Impact</b>	\$57,488 for FY 2017/18 \$59,961 for FY 2018/19 \$87,510 for FY 2019/20 \$90,136 for FY 2020/21 \$92,841 for FY 2021/22 Total contract value not to exceed \$387,936.
<b>Funding Source</b>	Facilities Management Budget as allocated to beneficiaries
<b>Duration</b>	July 1, 2017, through June 30, 2022
<b>Previous BCC Action</b>	None
<b>Strategic Plan Alignment</b>	These services provide essential preventative maintenance of Clackamas County facilities, in order to preserve operational environments, the value of these assets.
<b>Contact Person</b>	Jeff Jorgensen, Facilities Manager, 503-734-6248 mobile

**Background**

On March 28, 2017, the County terminated the Performance Contract for the Public Services Building (PSB), Development Services Building (DSB), and the Central Utility Plant (CUP), at the Red Soils Campus with Johnson Controls, Inc., (JCI) in order to bring some of the planned maintenance and corrective repair services in house in order to reduce overall costs to taxpayers, while improving maintenance levels and operational readiness to all County facilities by redirecting resources.

Terms were restructured with JCI for only essential contracted services to provide for preventative maintenance of the central building cooling system, including equipment and controls, on the Red Soils Campus in Oregon City. Currently, this system yet serves the PSB, DSB, and CUP buildings, but future expansions to other buildings on the campus are planned.

**Recommendation**

Staff recommends the Board approve attached contract.

Respectfully Submitted,

Marc Gonzales  
Finance Director



## CLACKAMAS COUNTY GOODS AND SERVICES CONTRACT

This Goods and Services Contract (this "Contract") is entered into between Johnson Controls, Inc. ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") for the purposes of providing **planned services to the central cooling system on the Red Soils campus.**

### **I. TERM**

This Contract shall become effective upon signature of both parties and shall remain in effect until **June 30, 2022**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

### **II. SCOPE OF WORK**

This Contract covers the Scope of Work as described in Scope of Work, attached and hereby incorporated by reference as Attachment "A." This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Attachment "A", and the Contractor's Proposal attached and hereby incorporated by reference as Attachment "B." Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County's Representative for this contract is: Gabe Tafoya.

### **III. COMPENSATION**

- PAYMENT.** The County agrees to compensate the Contractor on a fixed fee basis as detailed in this Contract. The maximum compensation authorized under this Contract shall not exceed **\$387,936.00**. Maximum annual compensation is described within Attachment "B".
- TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
- INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Attachment A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. Invoices shall be submitted to the County Representative at: 1710 Red Soils Court, Oregon City OR 97045 or via email at

### **IV. CONTRACT PROVISIONS**

- ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and

termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**2. AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

**3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

**4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

**5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

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

**7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

**8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its

subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

**9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

**10. INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

**A. COMMERCIAL GENERAL LIABILITY**

The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that

no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

**11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating



to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and County's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

**16. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

**18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and

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

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

**20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be

deliverables had the Contract work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work.

**22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

**25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

**27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**28. DELIVERY.** All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or

damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the County except as to latent defects, fraud and Contractor's warranty obligations.

**29. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

**30. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

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

Johnson Controls, Inc.  
4011 SE International Way, Suite 605  
Milwaukie, Oregon

Clackamas County Board of County  
Commissioners

\_\_\_\_\_  
Authorized Signature                              Date

\_\_\_\_\_  
Chair    Date

\_\_\_\_\_  
Name / Title (Printed)

\_\_\_\_\_  
Recording Secretary                              Date

000864-21  
Oregon Business Registry #

Approved as to Form:

FBC/Wisconsin  
Entity Type / State of Formation

\_\_\_\_\_  
County Counsel                                      Date

**ATTACHMENT A**  
**SCOPE OF WORK**

**ATTACHMENT B  
CONTRACTOR'S PROPOSAL**



Capt. Jenna Morrison  
Director

**CLACKAMAS COUNTY COMMUNITY CORRECTIONS**  
**1024 MAIN STREET • OREGON CITY • OREGON • 97045**  
**TELEPHONE 503-655-8603 • • • FAX 503-650-8942**

July 27, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval Intergovernmental Agreement between Clackamas County  
Community Corrections and the Housing Authority of Clackamas County

<b>Purpose/Outcomes</b>	This IGA allows Community Corrections to provide offender work service crews for the Housing Authority of Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	The IGA will provide approximately \$5,000 in revenue to support the Community Service program.
<b>Funding Source</b>	Housing Authority of Clackamas County
<b>Safety Impact</b>	Work Crews improve public areas by cleaning up trash and clearing vegetation.
<b>Duration</b>	Effective July 1, 2017 and terminates June 30, 2018.
<b>Previous Board Action/Review</b>	No previous action.
<b>Contact Person</b>	Capt. Jenna Morrison, Director - Community Corrections – 503-655-8866

**BACKGROUND:** Clackamas County Community Corrections will provide supervised offender work crews for sites under the control of the Housing Authority of Clackamas County. Crews consisting of a minimum of three offenders perform landscaping and cleanup for generally six hours per day. Community Corrections provides a Park Maintenance Specialist or Work Crew Specialist to supervise and work alongside each crew. This Agreement provides a way for offenders to give back to the communities they have victimized while generating revenue for the program. The \$450 per crew fee helps to offset the cost of staff supervision, tools, and transportation to and from the site.

**RECOMMENDATION:** Community Corrections respectfully requests that the Board of County Commissioners approves this Agreement to provide work service crews to the Housing Authority of Clackamas County.

Respectfully submitted,

Captain Jenna Morrison, Director  
Community Corrections

**INTER-AGENCY AGREEMENT**  
**BETWEEN**  
**CLACKAMAS COUNTY COMMUNITY CORRECTIONS**  
**AND**  
**HOUSING AUTHORITY OF CLACKAMAS COUNTY**  
**REGARDING**  
**COMMUNITY SERVICE WORK CREWS**

**I.** Purpose

This Inter-departmental agreement (this “Agreement”) provides the basis for a cooperative working relationship between Clackamas County Community Corrections (Community Corrections) and Housing Authority of Clackamas County (Housing Authority) for the purpose of providing supervised Corrections Work Crews to perform general labor at sites under the control of Housing Authority. This Agreement is intended to memorialize the expectations of the departments involved but does not constitute a binding legal contract.

**II.** Agreements of Departments

A. Housing Authority agrees to:

- i. Identify Work Crew projects, such as litter patrol, trail, and landscape maintenance in Clackamas County.
- ii. Schedule Work Crew projects on a mutually agreed-upon schedule.

B. Community Corrections agrees to:

- i. Provide a Work Crew Supervisor to supervise the Work Crews.
- ii. Provide a minimum of three (3) clients to perform general labor on a mutually agreed-upon schedule. Total labor hours per crew is a minimum of twenty-four (24) labor hours.



- iii. Provide all basic equipment needed by the Work Crew. If special equipment is necessary, it shall be provided by Housing Authority.

### **III. Amendments**

This Agreement may be amended at any time with the written agreement of both parties. Amendments become a part of this Agreement only after any written amendment has been signed by the proper signatories for each department.

### **IV. Term of Agreement**

This Agreement is effective upon signature of all parties and will terminate on June 30, 2018. This Agreement may be renewed for two (2) additional one (1) year terms upon written approval by both parties.

### **V. Termination**

This Agreement may be terminated by either party upon 30 days written notice to the other party.

### **VI. Compensation**

Housing Authority agrees to pay \$450 per day for the services outlined in Section II. B.

Payments shall be made on a basis of requests for payment submitted as follows:

1. Community Corrections will bill Housing Authority within one week following the last working day of each calendar month in which work is performed.
2. Housing Authority agrees to pay Community Corrections within 30 days of receipt of the Community Corrections invoice.

### **IV. Liaison Responsibility**

Tim Guynes, 503-650-3128, or his designee will act as liaison from MAINTENANCE for this project. Ryan Brown, 503-650-8929 will act as liaison from CORRECTIONS.

## V. Special Requirements

- A. Community Corrections and Housing Authority agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
  
- B. Subject to the limits of the Oregon Tort Claims Act, Article 11 Section 10 of the Oregon Constitution, Clackamas County shall indemnify, defend and hold harmless Housing Authority, its officers, employees, and agents from all claims, suits, actions or expenses of any nature resulting from or arising out of the acts, errors or omissions of Community Corrections personnel acting pursuant to the terms of this agreement.

Housing Authority shall indemnify, defend and hold harmless Community Corrections, its officers, employees, and agents from all claims, suits, actions or expenses of any nature resulting from or arising out of the acts, errors or omissions of Housing Authority personnel acting pursuant to the terms of this agreement

- B. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
  
- C. Access to Records. Community Corrections, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Housing Authority which are directly pertinent to the agreement for the purpose of making audit, examination, excerpts, and transcripts.
  
- D. 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 which would conflict with law are deemed inoperative to that extent.

- F. No Work Crew provided under this agreement shall be required to clean up any dump site when known or suspected hazardous materials are present.
  
- E. In the event the Work Crew discovers known or suspected hazardous materials at any work site, the Work Crew Supervisor shall immediately cease the activities until such time as the site is inspected and declared or made safe by the appropriate hazardous materials authority.
  
- H. Independent Contractor Status. Community Corrections is engaged under this Agreement as an independent contractor. Community Corrections, its employees and members of the Work Crews are not employees of Housing Authority and are not eligible for any benefits through Housing Authority.
  
- I. Personnel. Community Corrections may assign such personnel as it deems necessary to do the work or services to be rendered under this agreement.

*Signatures*

**Clackamas County  
Community Corrections**

**Housing Authority of  
Clackamas County  
503-969-2590**

\_\_\_\_\_  
Captain Jenna Morrison/Director

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to form

\_\_\_\_\_  
County Counsel



**OFFICE OF COUNTY COUNSEL**

**PUBLIC SERVICES BUILDING**  
 2051 KAEN ROAD OREGON CITY, OR 97045

July 27, 2017

Board of County Commissioners  
 Clackamas County

Members of the Board:

Transfer of a Surplus Parcel of Land Located on Salmonberry Drive  
in the Vicinity of South End Road

**Stephen L. Madkour**  
 County Counsel

**Kathleen Rastetter**  
**Chris Storey**  
**Scott C. Ciecko**  
**Alexander Gordon**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Christina Thacker**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
 Assistants

<b>Purpose/Outcome</b>	Transfer of a parcel of land to Casey Elstad
<b>Dollar Amount and Fiscal Impact</b>	\$4,800 purchase price to be applied to the County Road Fund.
<b>Funding Source</b>	Not applicable
<b>Duration</b>	Indefinitely
<b>Previous Board Action/Review</b>	None
<b>Strategic Plan Alignment</b>	Build public trust through good government.
<b>Contact Person</b>	Nate Boderman, 503-655-8364
<b>Contract No.</b>	None

**BACKGROUND:**

In 1980, Clackamas County, through the Department of Transportation and Development, acquired a parcel of land by deed dedication after the plat of Asquith Estates, Plat No. 2498 was created. The parcel is now within the city limits of the City of Oregon City and the City of Oregon City has stated that they are not interested in obtaining the property for any public purpose.

The remnant serves no public purpose and has an assessed value of \$13,496. Therefore, staff has proposed a sale of the property. ORS 275.225 permits a private sale of property where the parcel has an assessed value of less than \$15,000, and is unsuitable for the placement of a dwelling under applicable zoning and building codes. This remnant parcel meets the criteria set forth in ORS 275.225.

Notice of the availability of the parcel was published in the Clackamas Review and Oregon City News on July 12, 2017 pursuant to the requirements set forth in ORS 275.225(2). Staff evaluated the responses to the advertisement and determined that the offer submitted by Case Elstad to purchase the property for \$4,800 was the best offer and is a reasonable price for the remnant parcel.

**RECOMMENDATION:**

Staff recommends the Board authorize the Chair to execute the attached Bargain and Sale deed and direct staff to close the transaction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nate Bodeman". The signature is fluid and cursive, with the first name being more prominent.

Nate Bodeman  
Assistant County Counsel

Attachment: Bargain and Sale Deed

**MAIL TAX STATEMENTS TO:**

Casey Elstad  
11520 S. Salmonberry Dr  
Oregon City, OR 97045

**AFTER RECORDING RETURN TO:**

Casey Elstad  
11520 S. Salmonberry Dr  
Oregon City, OR 97045

**GRANTOR'S ADDRESS:**

2051 Kaen Road  
Oregon City, OR 97045

**GRANTEE'S ADDRESS:**

11520 S. Salmonberry Dr  
Oregon City, OR 97045

---

**STATUTORY BARGAIN AND SALE DEED**

Clackamas County, an Oregon political subdivision, acting by and through its Department of Transportation and Development "**Grantor**," conveys to Casey Elstad, an individual, "**Grantee**," the real property described in **Exhibit "A"**, which is attached hereto and incorporated herein.

The true and actual consideration paid for this conveyance is Four Thousand Eight Hundred Dollars (\$4,800).

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

Clackamas County

By \_\_\_\_\_  
Chair

STATE OF OREGON )  
County of Clackamas ) ss.

This instrument was acknowledged before me on \_\_\_\_\_, 2017, by  
\_\_\_\_\_ as Chair of the Clackamas County Board of County Commissioners.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

## Exhibit A

A parcel of land lying in the Northwest One-Quarter of Section 12 in Township 3 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon described in Warranty Deed 80-13412 to Clackamas County, dated February 8, 1980 Clackamas County Deed Records, More particularly described as follows:

All of Tract "A", Asquith Estates Subdivision as described in said Warranty Deed 80-13412, Clackamas County Deed Records.

Containing 4,060 sq.ft, more or less.





**DAN JOHNSON**  
MANAGER

**DEVELOPMENT AGENCY**

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

July 27, 2017

Board of County Commissioners  
Development Agency Board

Members of the Board:

Approval of an Intergovernmental Agreement with CCSD #1 to Transfer  
Easements for Wetland Mitigation Services and Option to Purchase Property

<b>Purpose/Outcomes</b>	Execution of an Intergovernmental Agreement (IGA) with CCSD #1 that will require the Development Agency to provide temporary construction easements and a staging area, permanent pipe and access easements and a wetland mitigation site in exchange for design, construction and management of a wetland mitigation site and an option to purchase property from CCSD#1.
<b>Dollar Amount and Fiscal Impact</b>	Approximately \$330,000 in value exchanged from each agency to the other.
<b>Funding Source</b>	No Fiscal Impact. The value provided by each agency to the other is equivalent.
<b>Duration</b>	Ten years from the effective date of the IGA or at the time the wetland mitigation requirements have been completed by CCCSD #1, whichever is sooner. The temporary construction easements will be for a 1 year term. The other easement to be granted by the Development Agency is permanent.
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	Grow a vibrant economy Build a strong infrastructure Honor, utilize, promote and invest in our nature resources
<b>Contact Person</b>	Dan Johnson, Development Agency Manager 503.742.4325

**BACKGROUND:**

In January 2012, Clackamas County Service District No. 1 (“CCSD #1”) purchased a 15-acre property owned by the Carli family to construct a regional stormwater facility in support of water quality and stream health. The project also fulfills state and federal regulatory requirements to improve stormwater treatment in older areas that drain to urban creeks, like Carli Creek, which discharges into the Clackamas River. The main elements of the Carli Creek Enhancement and Water Quality Project (“Carli Creek Project”) include:

1. Re-routing stormwater conveyance systems along SE 120<sup>th</sup> Street and SE Capps Road;
2. Regional water quality treatment facility;
3. Wetlands and upland habitat enhancement; and
4. Carli Creek habitat restoration for fish.

The Carli Creek Project will require the construction of a new stormwater pipeline to divert runoff currently discharged to Carli Creek to the new water quality treatment facility. The new stormwater pipeline is to be located on adjacent property to the east of the Carli Creek Project site. The adjacent property is currently owned by the Clackamas County Development Agency. The Development Agency is actively marketing the adjacent property as a part of the Capps Road/Clackamas Industrial Area Opportunity Project. In order to fill wetlands on this property to facilitate development, the Agency is required to perform wetland mitigation. This mitigation has been incorporated as part of the Carli Creek Project.

CCSD #1 and the Development Agency have identified a number of benefits in the coordination of these projects which will result in cost savings and efficiencies for both agencies. Accordingly, the Development Agency is willing to grant certain easements and transfer certain parcels of land to CCSD #1 in exchange for CCSD #1 incorporating and managing the wetland mitigation as part of the Carli Creek Project and granting an option to the Development Agency to allow them exclusive rights to purchase certain property owned by CCSD #1 adjacent to the Capps Road/Clackamas Industrial Area Opportunity Project. The value provided by each agency to the other is equivalent, and is broken down as follows:

Agency to CCSD #1

Temporary Construction Easement: \$51,242  
Temporary Construction Staging: \$130,823  
Permanent Pipe and Access Easement (Upland): \$129,182  
Permanent Pipe and Access Easement (Lowland): \$5,458  
Mitigation Site: \$14,096

Total: \$330,801

CCSD #1 to Agency

Engineering/Design: \$65,400  
Mitigation Construction:  
Planting: \$24,000  
Low Perm Soils (%of total based on wetland area): \$18,837  
Habitat Structures (1-Type 1; 4-Type 2; 7-Type 3): \$16,700  
5 Year Mitigation Permit Management (\$15,000/yr): \$75,000  
Temporary Easement Improvement: \$30,000  
Option to purchase (amount to be applied to future purchase price): \$100,000

Total: \$329,937

**RECOMMENDATION:**

Staff recommends that the Board of County Commissioner, in its capacity as the Clackamas County Development Agency Board, approve the IGA with CCSD #1.

Respectfully submitted,

Dan Johnson, Assistant Director - Department of Transportation and Development  
Manager - Development Agency

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 and  
CLACKAMAS COUNTY DEVELOPMENT AGENCY For  
CARLI CREEK RESTORATION AND MITIGATION**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is entered into and between Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County (hereafter called “Agency”), and Clackamas County Service District No. 1 (“District”), a county service district formed pursuant to ORS Chapter 451, collectively referred to as the “Parties” and each a “Party.”

**RECITALS**

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform;

WHEREAS, the District is planning to construct the Carli Creek Water Quality and Enhancement Project (“Project”) to meet state and federal regulations; and

WHEREAS, the District desires to construct a portion of the Project on property located at 11436 SE Capps Rd on Tax lot 22E15A 01800 (“Capps Property”) owned by Agency; and

WHEREAS, the Agency is required to perform wetland mitigation (“Mitigation”) as a part of the Capps Road/Clackamas Industrial Area Opportunity Project (“CIAO Project”) pursuant to Permit No. NWP-2012-181-1, attached hereto as Exhibit “C,” issued by the U.S. Army Corps of Engineers (“Permit”); and

WHEREAS, the Agency is interested in incorporating wetland mitigation areas as part of the Carli Creek Restoration Project in order to meet the requirements of the Mitigation; and

WHEREAS, the District is willing to include additional wetland mitigation areas as a component of the Project in return for easements and land transfer from the Agency;

WHEREAS, the value of the property interests transferred from the Agency to the District is approximately \$330,000.00, and the value of the Mitigation provided by the District to the Agency is approximately \$330,000.00, as more specifically set forth in Exhibit “D”; and

WHEREAS, the coordination of these projects will be mutually beneficial, resulting in cost savings, while promoting efficiency and effectiveness in local government administration.

NOW, THEREFORE, IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. **Term.** This Agreement shall be effective upon execution, and shall expire ten (10) years from the effective date or at the time the Mitigation requirements have been fulfilled under the Permit, whichever is sooner.
2. **Obligations of Clackamas County Development Agency**
  - A. Agency agrees to provide a temporary construction easement to the District for the duration of construction of the Project on the Capps Property, 35 feet in width and in the location shown in Exhibit A.
  - B. Agency agrees to provide a permanent pipeline, access and maintenance easement to the District on the portion of the Capps Property that contains the Project, fifteen (15) feet in width, as shown in Exhibit A, prior to completion of the Project. This easement shall include the right to operate and maintain a new stormwater pipeline.

- C. Agency agrees to provide a permanent access easement to the District related to the new stormwater pipeline located in the Capps Property, fifteen (15) feet in width and as shown in Exhibit A. The Parties acknowledge that, depending on the future development of the Capps Property, it may be necessary to relocate the access easement described herein and agree to negotiate in good faith to amend the easement to provide the District sufficient access to the new stormwater pipeline, and to mitigate the impacts such easement could have on future development.
  - D. Agency agrees to provide a Right of Entry to the District on Tax Lot 22E15A 01700 for use as a construction staging area throughout the duration of the Project.
  - E. Agency agrees to accept up to 20,000 cubic yards of clean fill material from the Project site. The location for placement of the fill material shall be as shown in Exhibit B. Costs associated with the relocation of the fill materials will be the responsibility of the District and shall include transportation, grading and compaction. Any fill material, and placement of such fill material, shall comply with the following standards:
    - i. All fills must be placed consistent with the excavation and grading provisions of the Clackamas County Code (Title 9). Site preparation must include the removal of vegetation, non-complying fill, topsoil, or other unsuitable materials prior to placement of the fill. Fill slopes shall not exceed a grade of two horizontal to one vertical.
    - ii. All cuts shall be made consistent with the excavation and grading provisions of the Clackamas County Code. No cut shall exceed a grade of two horizontal to one vertical unless approved beforehand by the project geotechnical engineer and Clackamas County.
    - iii. Appropriate benching of fills is required for fills over five feet in height on slopes in excess of five horizontal to one vertical. Bench must be done in accordance with the approved plans. Clackamas County shall inspect benches prior to fill placement.
    - iv. Cut and fill slopes shall be protected from erosion. Such control may consist of appropriate revegetation or other acceptable means and methods. Erosion control measures shall be in place prior to earthwork or site stripping as required by the local surface water management authority.
    - v. Placement and compaction of fill material shall be placed consistent with the relevant provisions of the Oregon Structural Specialty Code sections 330.42 and 330.43.
  - F. Agency, or its successor, assign, or designee, shall remain the permittee under the Permit related to the wetland mitigation requirements imposed on the Agency. The District shall be responsible for those requirements imposed under the Permit that are specifically related to the Mitigation component of the Permit. Under no circumstances shall the District be responsible or held liable for any Agency non-compliance with any condition or requirement unrelated to the Mitigation component of the aforementioned permit, including but not limited to, those conditions and requirements affecting impacts to wetlands or construction on Tax Lot 22E15A 01900.
3. **Obligation of the District.**
- A. District agrees to oversee the administration of Project and manage the construction of the Project.

- B. District agrees to meet the requirements of the Mitigation, including the design and construction of 1.3 acres of mitigation wetlands as part of the Project to be used as compensatory mitigation on behalf of the Agency for impacts to wetlands related to construction of the CIAO Project, as shown in Exhibit C.
  - C. District is solely responsible for ensuring compliance with the Mitigation requirements specifically identified in this section that have been imposed on the Agency as a result of the CIAO Project. District agrees to complete the following compensatory wetland mitigation monitoring and reporting requirements for the Agency, consistent with **Special Conditions Nos. 3, 5, 6, 7 and 8 of the Permit**. Where materials identified in the preceding special conditions of the permit require Agency to submit materials directly to the U.S. Army Corps of Engineers, District shall timely submit those materials on behalf of the Agency and provide a copy to the Agency.
  - D. The District acknowledges that there may be opportunities to develop approximately one acre on the upland portion of property on which the Project will be located. The District shall grant to the Agency an option to purchase the one acre upland portion of property, approximately identified by red outline in Exhibit A, for fair market value. As set forth in Exhibit D, the Parties agree that the sum of \$100,000 shall be applied to any future acquisition by the Agency of the upland portion of the property referred to herein in the event the Agency chooses to exercise its option to purchase. The District agrees to work with the Agency to facilitate development opportunities that do not jeopardize the District's ability to complete the Project.
  - E. Upon termination of the right of entry, the District agrees to return the construction staging area on Tax Lot 22E15A 01700 to the Agency in a condition that would support development of Tax Lot 22E15A 01700 in a manner consistent with the rest of the Capps Property. This may require the District to improve Tax Lot 22E15A 01700 to ensure it is vacant, graded and compacted in a manner that would permit building construction as permitted in the applicable zone.
4. **Work Plan and Scheduling of Work.**
- A. District will manage the Project and intends to complete construction of the Project by December 31, 2018. Agency acknowledges that said schedule is dependent on many conditions and may be subject to change. District will provide prompt notice to Agency of any anticipated delays in the schedule.
  - B. With the exception of the monitoring requirements, District will ensure that the Mitigation is substantially complete no later than November 30, 2017 and that "as-built" reports are available to be submitted to the U.S. Army Corps of Engineers by December 2017, consistent with Special Condition No. 5 contained in the Permit.
  - C. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
  - D. In the event either Party changes plans or specifications, approves change orders or extends unit prices that affect Project costs following the execution of the construction contract, the Party requesting the change may be held financially responsible for any additional direct or indirect costs associated with the change. Notwithstanding the foregoing, District shall be liable for the additional Project costs if changes in plans or specifications are made due to an act of God or other circumstances beyond the reasonable control of District.

## 5. **Early Termination of Agreement**

- i. The District and Agency, by mutual written agreement, may terminate this Agreement at any time.
  - ii. Either the District or Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
6. **Indemnification.** Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, each of the Parties agrees to hold harmless and indemnify the others, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees.
  7. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
  8. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
  9. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
  10. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
  11. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.

12. **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.
13. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
14. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
15. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
16. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
17. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the District.
18. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
19. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, 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.
20. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.

21. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

**IN WITNESS HEREOF**, the Parties have executed this Agreement by the date set forth opposite their names below.

**Clackamas County Development Agency**

**Clackamas County Service District No. 1**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Recording Secretary

Exhibit List:

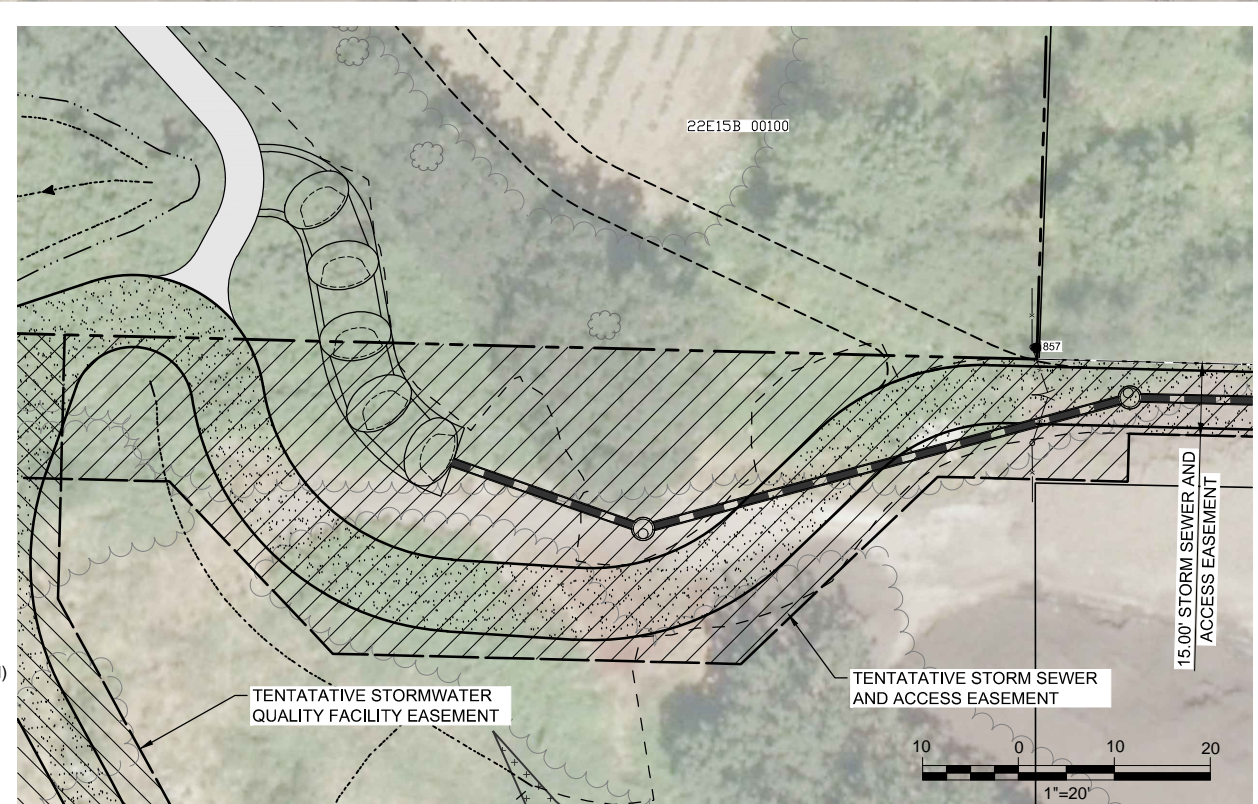
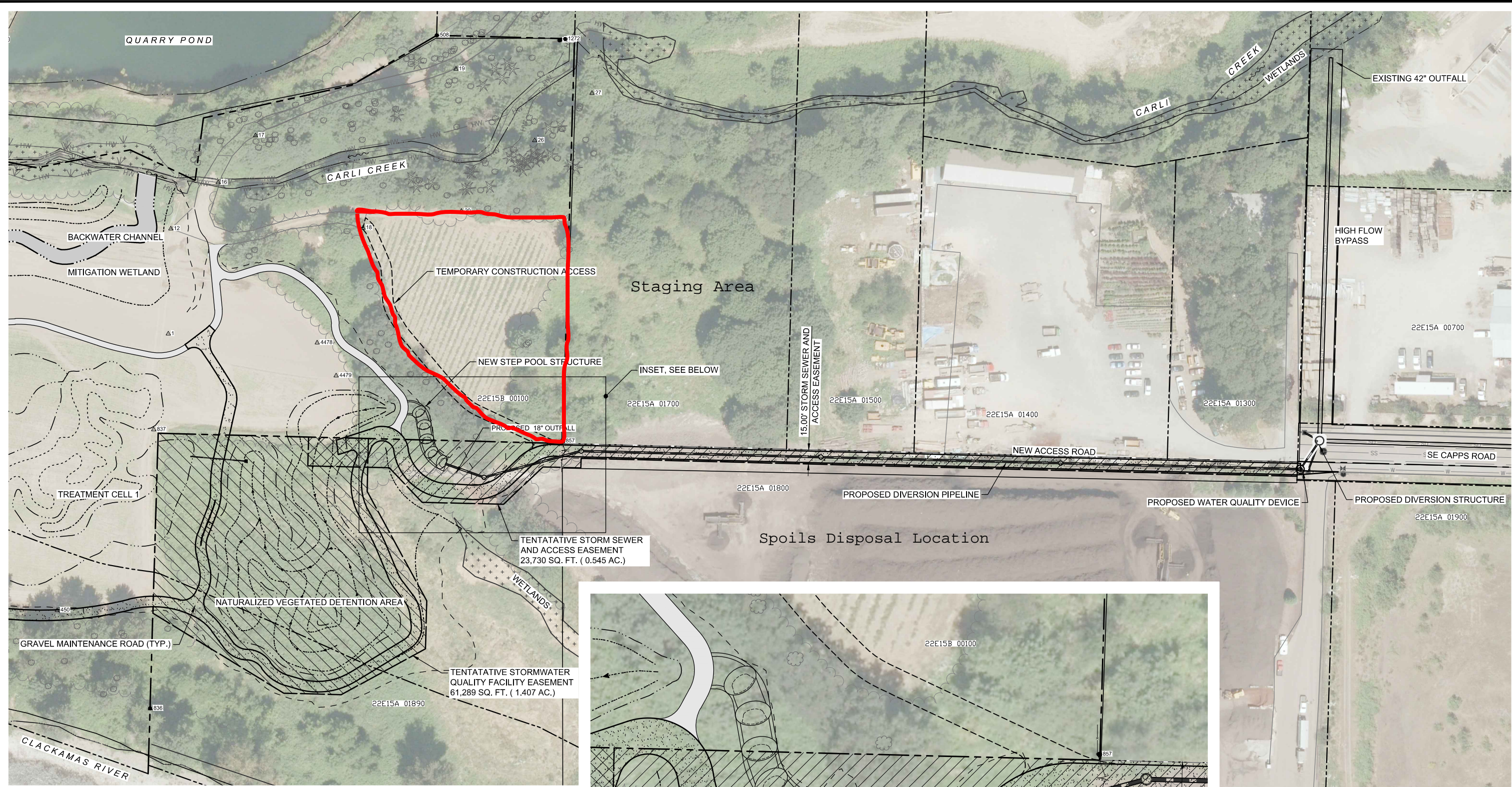
Exhibit A: Easement Map

Exhibit B: Fill Material Location Map

Exhibit C: U.S. Army Corps of Engineers Permit No. NWP-2012-181-1

Exhibit D: Value of Assets and Services





**SHEET LEGEND**

△#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	- - - - -	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY	▨	GRAVEL MAINTENANCE ROAD
- - - - -	PROPERTY LINE (TAX LOT)	▩	ACCESS PATH
---	SECTION LINE	- - - - -	CONSTRUCTED WETLANDS
- - - - -	QUARTER SECTION LINE	---	WATERS EDGE (PLAN)
---	R/W CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
- - - - -	TENTATIVE PROPOSED EASEMENT	— — — — —	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	⊙	STORM MANHOLE
		+	JURISDICTIONAL WETLANDS

**CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN**

PERMIT SET  
FIGURE 1  
EASEMENT EXHIBIT

FIGURE: 1 OF 1



EXHIBIT B





## DEPARTMENT OF THE ARMY PERMIT

**Permittee:** Clackamas County Development Agency; Attention Mr. Dan Johnson

**Permit No:** NWP-2012-181-1

**Issuing Office:** U.S. Army Corps of Engineers

NOTE: The term "you" and its derivatives as used in this permit means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** The project will permanently place 7,851 cubic yards of fill in 1.02 acres of Wetland A. The site will be levelled for complete build-out of two industrial pads, each with a warehouse, loading area, storage, and parking. The northern pad includes a 294,000 square-foot industrial building. The southern pad includes a 246,000 square-foot building. Stormwater will be collected and treated through an existing stormwater facility constructed under previous authorization in 2015.

**Purpose:** The overall purpose of the project is to provide industrial facilities that would meet statewide industrial development goals and to provide economic stimulus to Clackamas County. This project would address the need for large industrial sites greater than 20 acres and less than 50 acres in size. This project is Phase 2 of a multi-phase development project located in the former rock quarry.

**Project Location:** The project is located on a wetland near the Clackamas River, Mile 4.5. The site is in Section 15 of Township 2 South, and Range 2 East, in the City of Happy Valley, Clackamas County, Oregon (Lat. 45.398128; Lon. -122.540758).

**Drawings:** There are 13 drawings labelled NWP-2012-181-1 (Enclosure 1).

**General Conditions:**

1. The time limit for completing the work authorized ends on October 31, 2021. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. Permittee must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition No. 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions (Enclosure 2).

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

#### **Special Conditions:**

1. Permittee shall notify the Regulatory Branch with the start date when the activities authorized in waters of the U.S. are scheduled to begin. Notification shall be sent by email to [cenwp.notify@usace.army.mil](mailto:cenwp.notify@usace.army.mil) or mailed to the following address:

U.S. Army Corps of Engineers  
CENWP-OD-GC  
Permit Compliance, Clackamas County  
P.O. Box 2946  
Portland, Oregon 97208-2946

The subject line of the message shall contain the name of the county in which the project is located followed by the Corps of Engineers permit number.

2. Permittee shall submit a signed certification regarding the completed work and any required mitigation. A "Compliance Certification" is provided (Enclosure 3).

3. Permittee shall fully implement the "Final Compensatory Wetland Mitigation Plan for Impacts to Wetlands for the Capps Road Industrial Site in Clackamas, Oregon" (Plan) dated January 28, 2016 (Enclosure 4). The mitigation site shall be constructed prior to or concurrently with the work authorized by this permit. The initial planting component of the Plan shall be completed by Fall 2017.

4. The fully executed Conservation Easement for the mitigation site shall be recorded with the Registrar of Deed or other appropriate official charged with maintaining records on real property. A copy of the fully executed Conservation Easement and proof of recording shall be submitted to the U.S. Army Corps of Engineers, Portland District, Regulatory Branch within 60 days from the date of permit issuance.

5. Permittee shall submit an "as-built" report by December 2017. The contents of the report shall include a narrative summary of the mitigation actions completed as well as pre- and post-construction photos from fixed locations. Photos shall be sufficient in number and spacing to represent the site in its entirety. Photos shall be labelled with the date and location taken. A map showing the location and orientation of the photos shall also be provided.

6. The permittee shall monitor the mitigation site for a five-year period following completion of the initial construction and plantings. Monitoring reports shall be provided by December 31 of each year of monitoring. The expected first year monitoring report is due 2018. The contents of the monitoring reports shall be consistent with Regulatory Guidance Letter 08-03 (Enclosure 5). Photos of the site from locations established in the as-built report shall also be provided.

7. The permittee shall achieve 80% percent total cover with native vegetation by Year 3 without maintenance for one year. Dead or dying plants may be replaced within the first two years of monitoring. The permittee shall achieve a minimum of 1280 stems per acre by the end of the five-year monitoring period. Target species may include both planted and recruited native individuals. The permittee shall ensure less than 15% total cover by invasive species and less than 5% of total area bare ground.

8. The permittee shall submit a wetland delineation of the mitigation site to demonstrate a minimum of 1.27 acres have been created. The delineation report shall follow the most recent version of the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains Valleys and Coast Region. The delineation shall be submitted with the final fifth-year monitoring report.

9. Permittee's responsibility to complete the required compensatory mitigation as set forth in Special Conditions "3" through "9" will not be considered fulfilled until Permittee has demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers Portland District, Regulatory Branch.

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- ( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
- ( ) Section 103 of the Marine Protection, Research Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this Authorization:

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33

CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition No. 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below as permittee indicates that you accept and agree to comply with the terms and conditions of this permit.

  
\_\_\_\_\_  
(PERMITTEE SIGNATURE)                      10/26/2016  
\_\_\_\_\_  
(DATE)

Don Johnson  
\_\_\_\_\_  
(PRINTED NAME)                      Development Agency Manager  
\_\_\_\_\_  
(TITLE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

**FOR THE COMMANDER, JOSE L. AGUILAR, COLONEL, CORPS OF ENGINEERS,  
DISTRICT COMMANDER:**

*FOR*   
\_\_\_\_\_  
(DISTRICT COMMANDER)                      16 Nov 2016  
\_\_\_\_\_  
(DATE)

Shawn H. Zinszer  
Chief, Regulatory Branch

When the structures or work authorized by this individual permit are still in existence at the time the property is transferred and/or a new party obtains this permit, the terms and conditions of this permit will continue to be binding on the new permittee. The new permittee should sign and date below to accept the liabilities associated with complying with the terms and conditions of this permit, and to validate its transfer.

**PERMIT TRANSFEREE:**

\_\_\_\_\_  
**Transferee Signature**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**Name (Please print)**

\_\_\_\_\_  
**Street Address**

\_\_\_\_\_  
**City, State, and Zip Code**

**NEW PROPERTY OWNER:**

\_\_\_\_\_  
**Property Owner Signature**

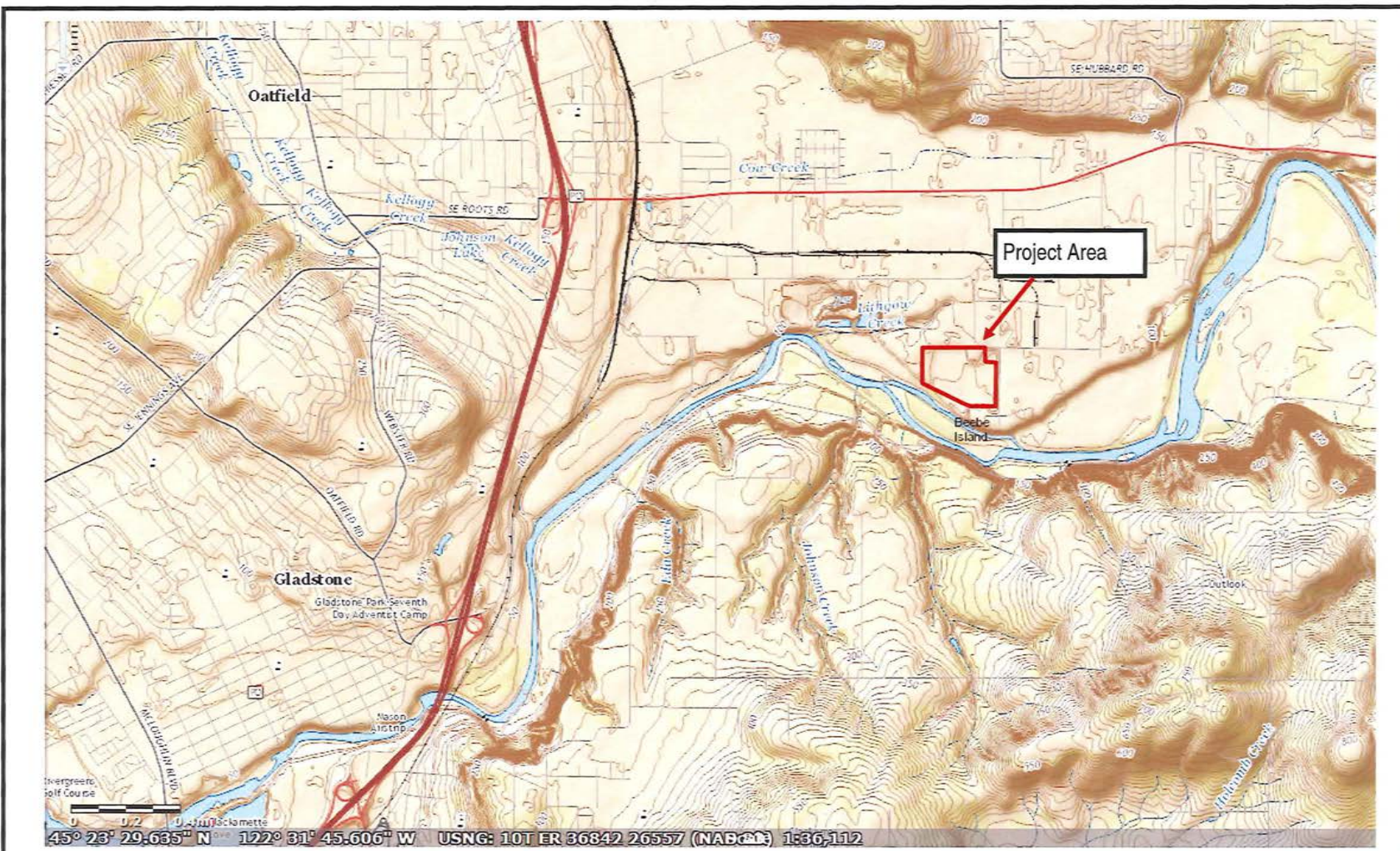
\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**Name (Please print)**

\_\_\_\_\_  
**Street Address**

\_\_\_\_\_  
**City, State, and Zip Code**





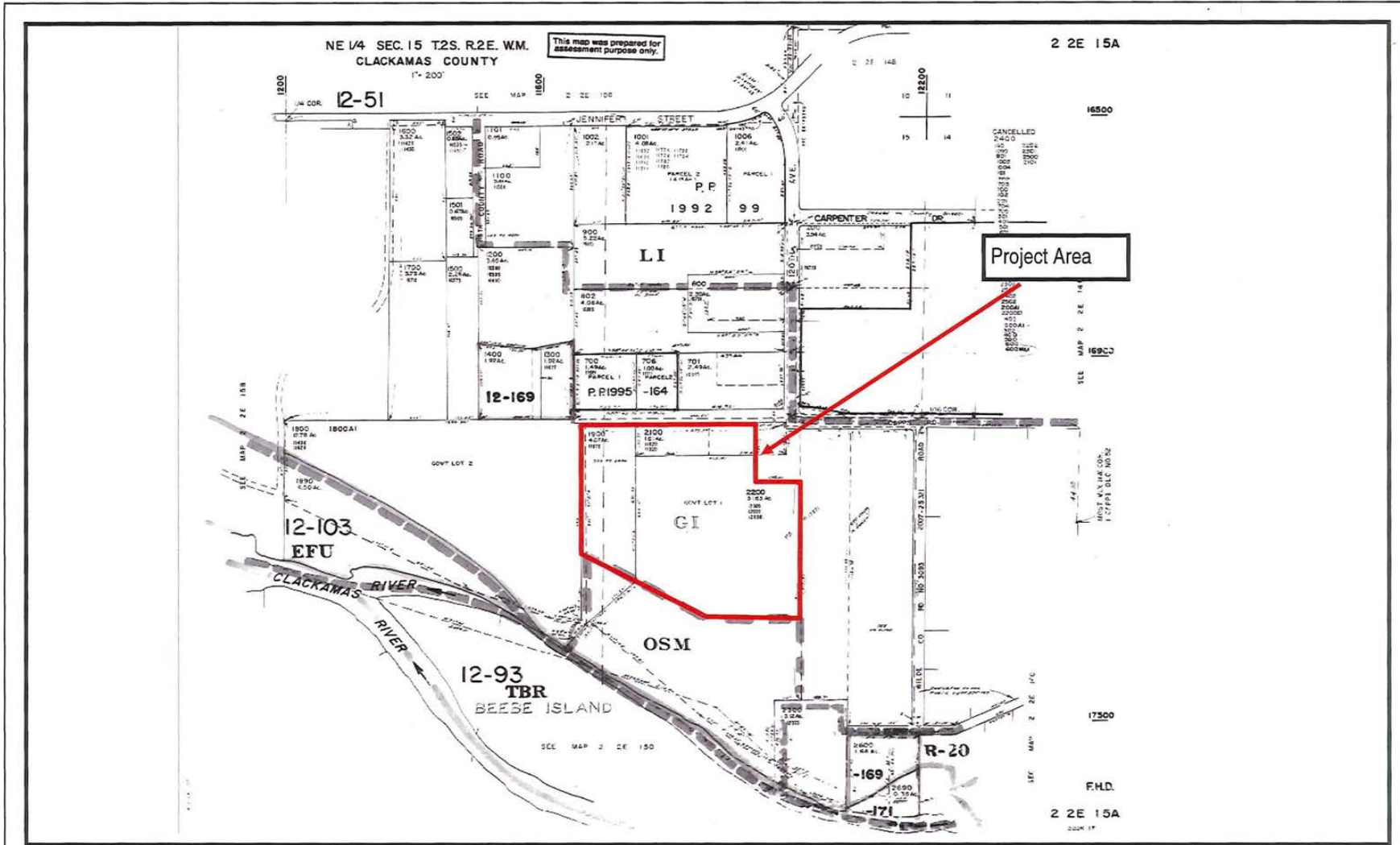
Project # 4870  
 Date 10/27/15



Pacific Habitat Services, Inc.  
 9450 SW Commerce Circle, Suite 180  
 Wilsonville, OR 97070

General Location and Topography  
 Clackamas Industrial Area Opportunity Site in Clackamas County, Oregon  
 United States Geographical Survey (USGS), 2015

FIGURE  
 1



Project # 4870  
Date 10/27/15

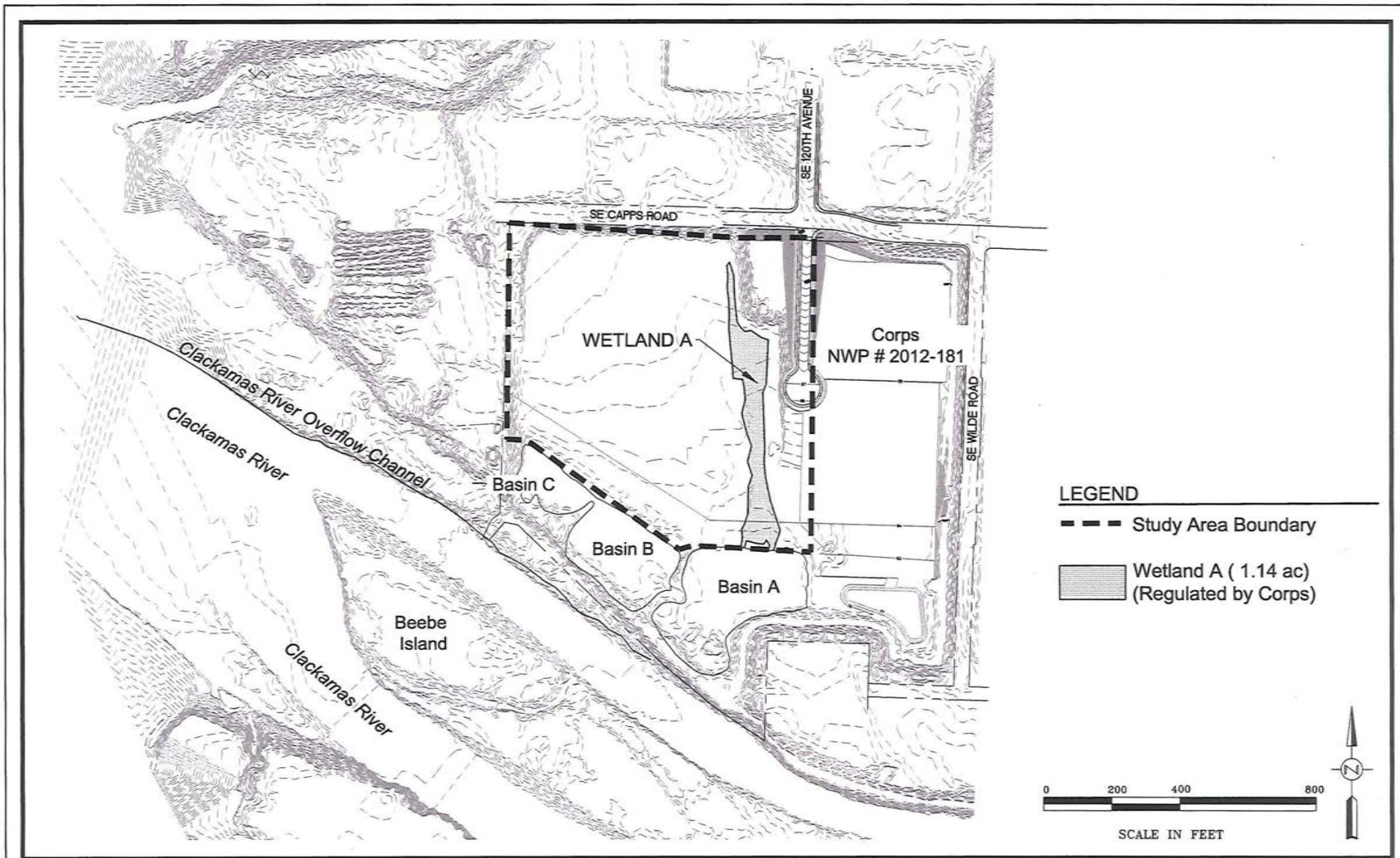


Pacific Habitat Services, Inc.  
9450 SW Commerce Circle, Suite 180  
Wilsonville, OR 97070

Tax Lot Map, Section 15A, Township 2 South, Range 2 East  
Clackamas Industrial Area Opportunity Site in Clackamas County, Oregon  
OrMap.net, 2015

FIGURE  
2



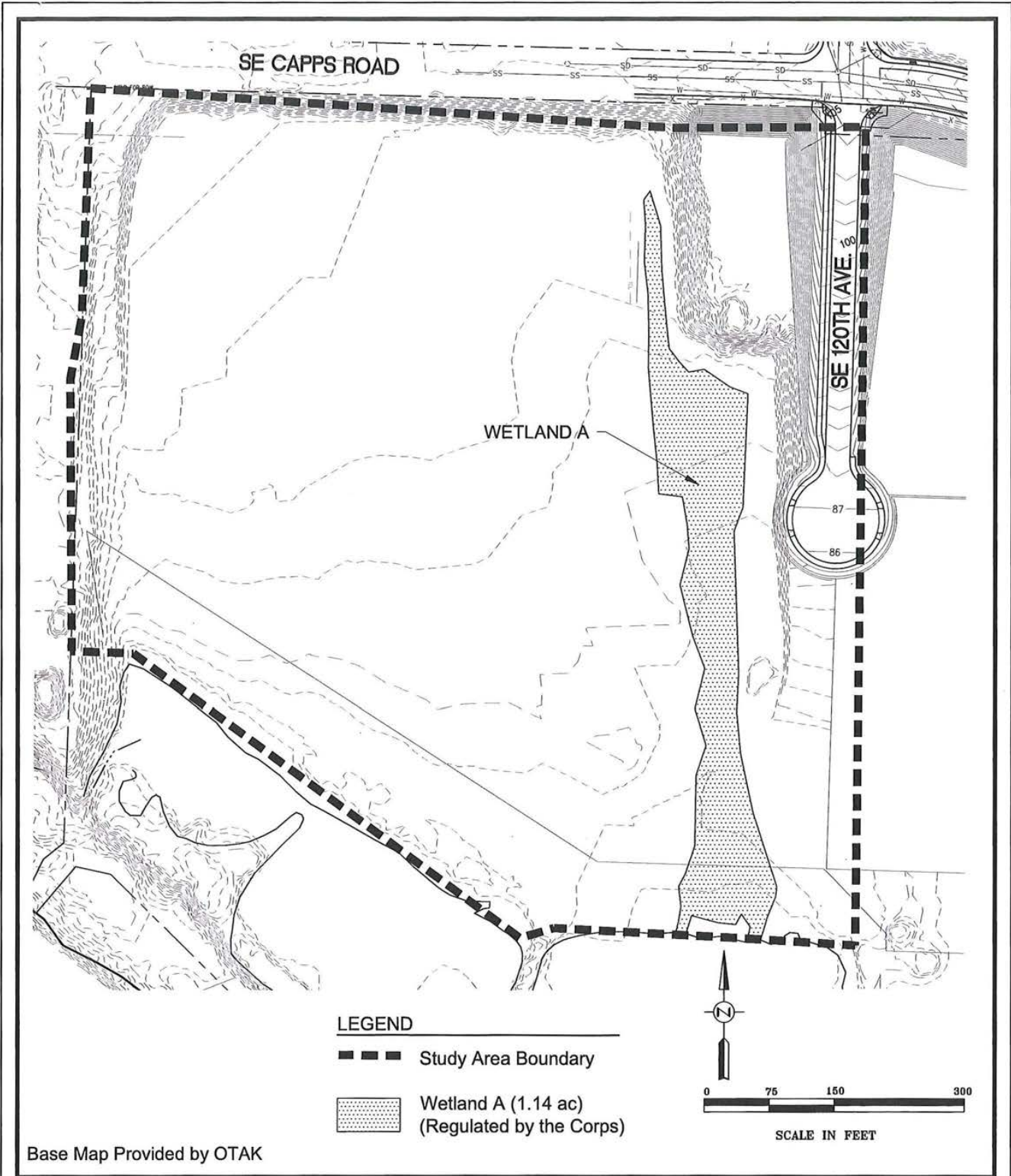


Base Map Provided by OTAK

Existing Conditions Site Overview  
Capps Road Improvement Project - Oregon City, Oregon

FIGURE  
**4**  
1-22-2016

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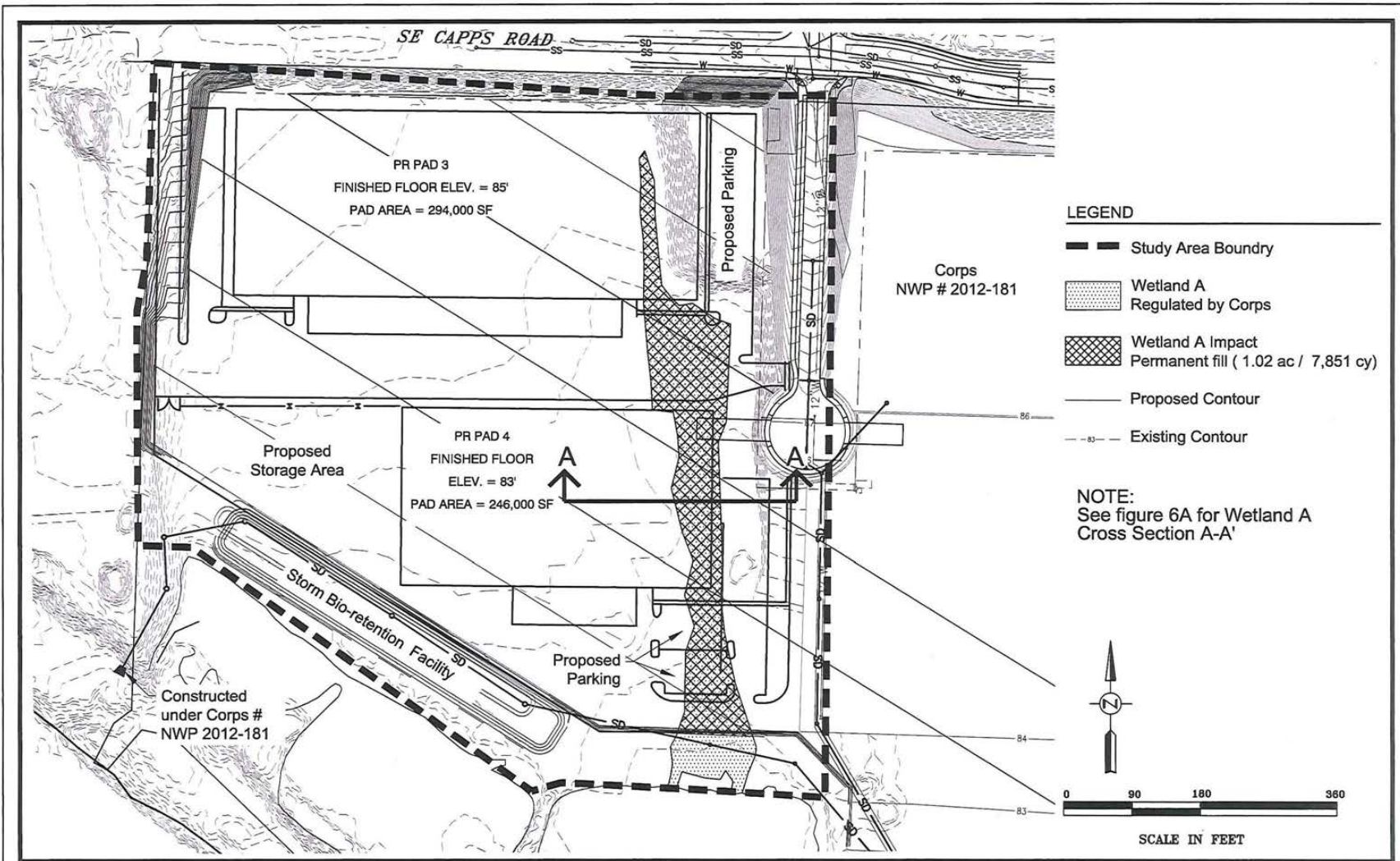
Pacific Habitat Services, Inc.  
 9455 SW Commerce Circle, Suite 100 Wilsonville, Oregon 97070  
 Phone: (503) 570-0850 Fax (503) 570-0855

Existing Conditions  
 Capps Road Improvement Project - Oregon City, Oregon

FIGURE  
**4A**

1-22-2016



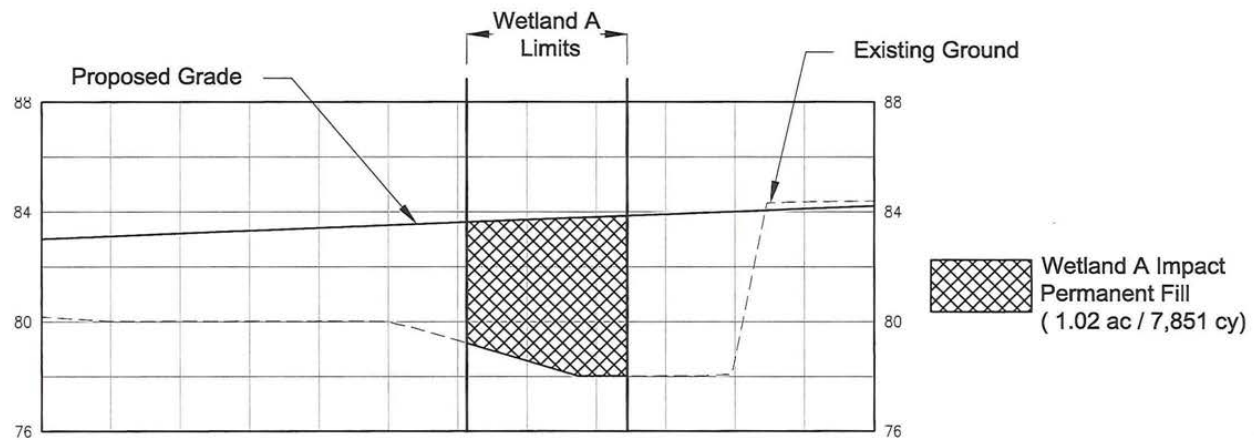


Site Plan Provided by  
Clackamas County

Proposed Site Plan, Wetland Impact and Cross Section Location  
Capps Road Improvement Project - Oregon City, Oregon

**FIGURE**  
**6**

2-16-2016



WETLAND A CROSS SECTION A-A'

Cross Section Provided by OTAK



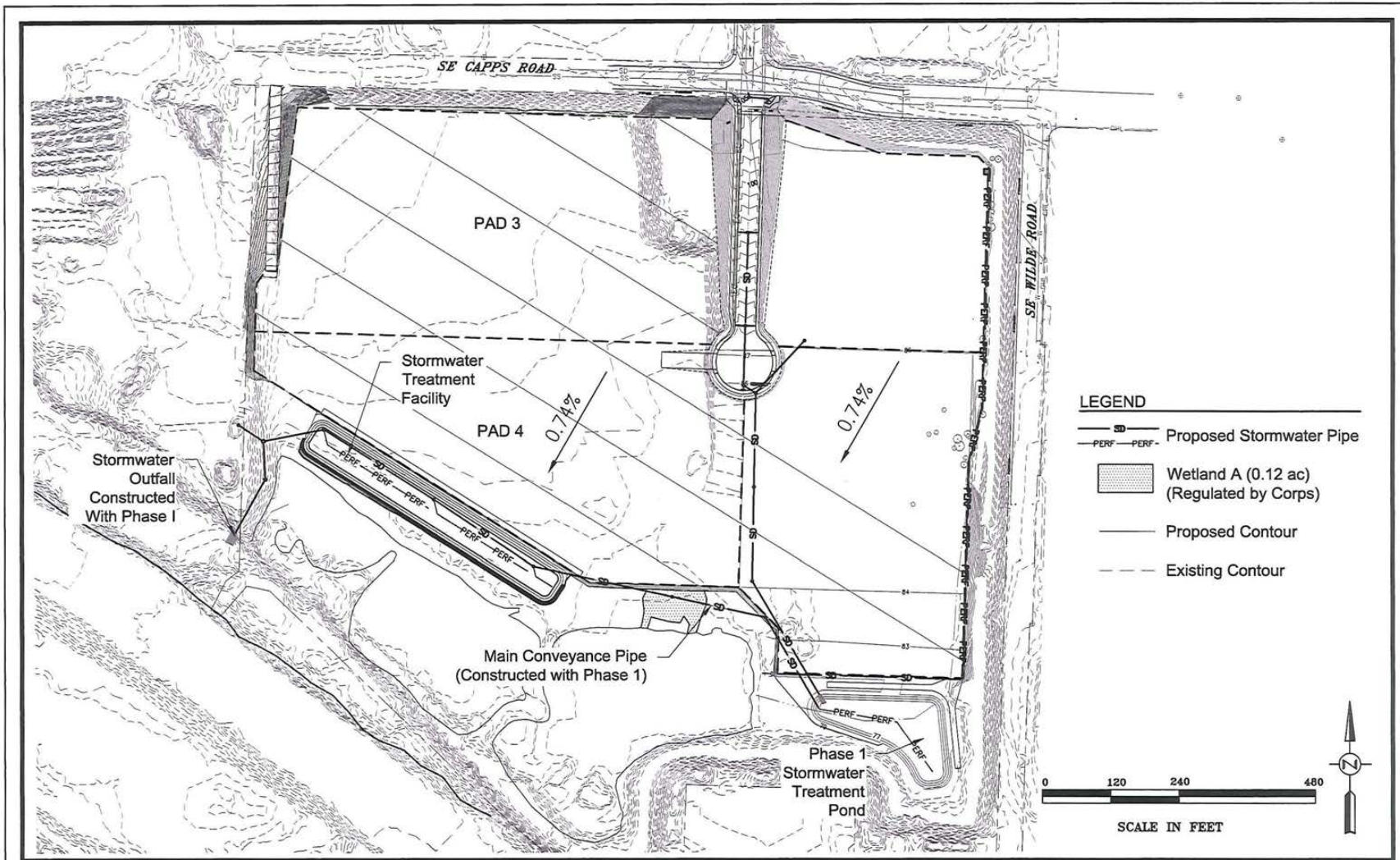
Pacific Habitat Services, Inc.  
 9450 SW Commerce Circle, Suite 180 Wilsonville, Oregon 97070  
 Phone: (503) 570-0800 Fax: (503) 570-0855

Wetland Impact Cross Section A-A'  
 Capps Road Improvement Project - Oregon City, Oregon

FIGURE  
**6A**

1-22-2016



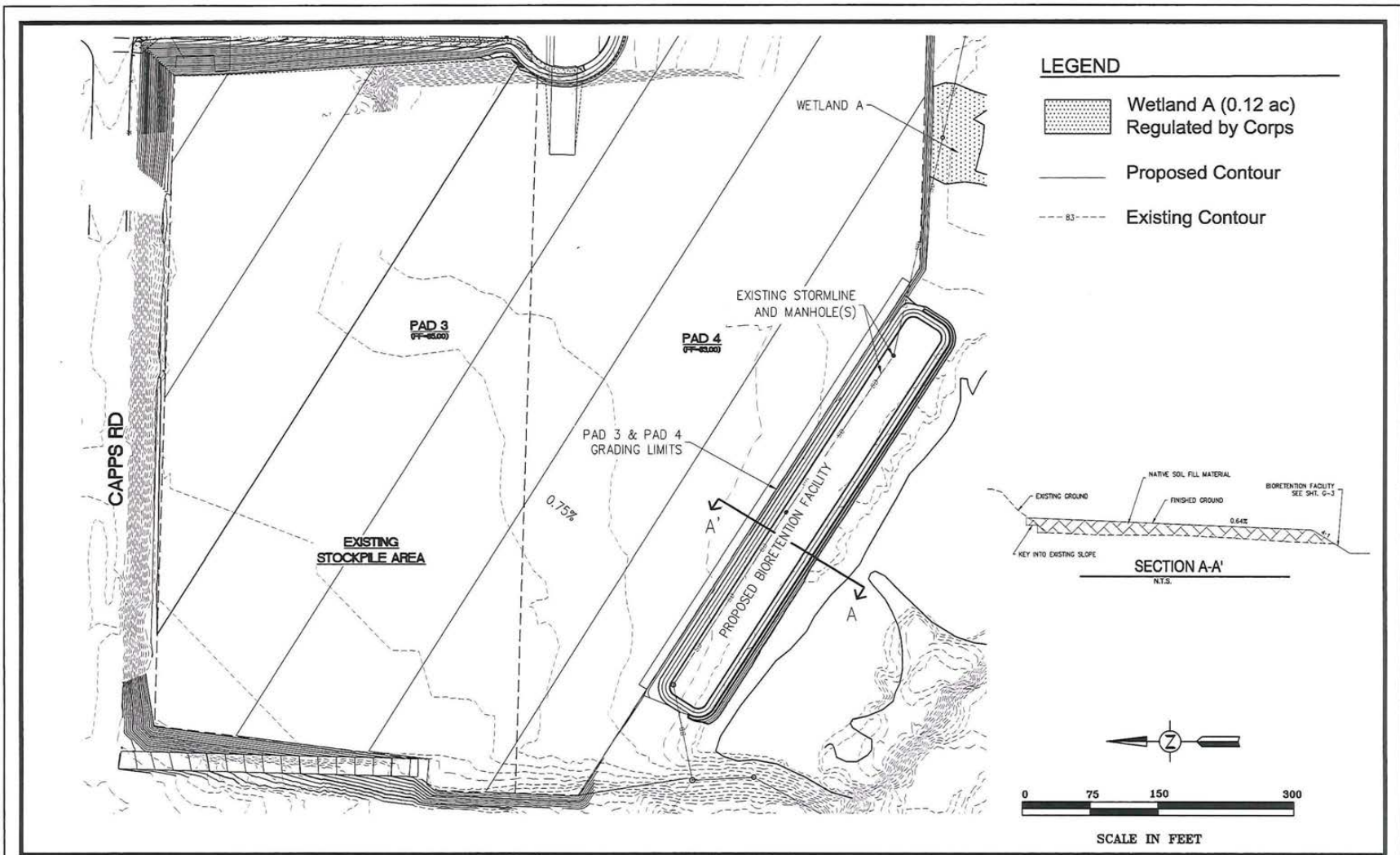


Plan Provided by OTAK

Proposed Stormwater Plan  
Capps Road Improvement Project - Oregon City, Oregon

FIGURE  
**7**

2-16-2016

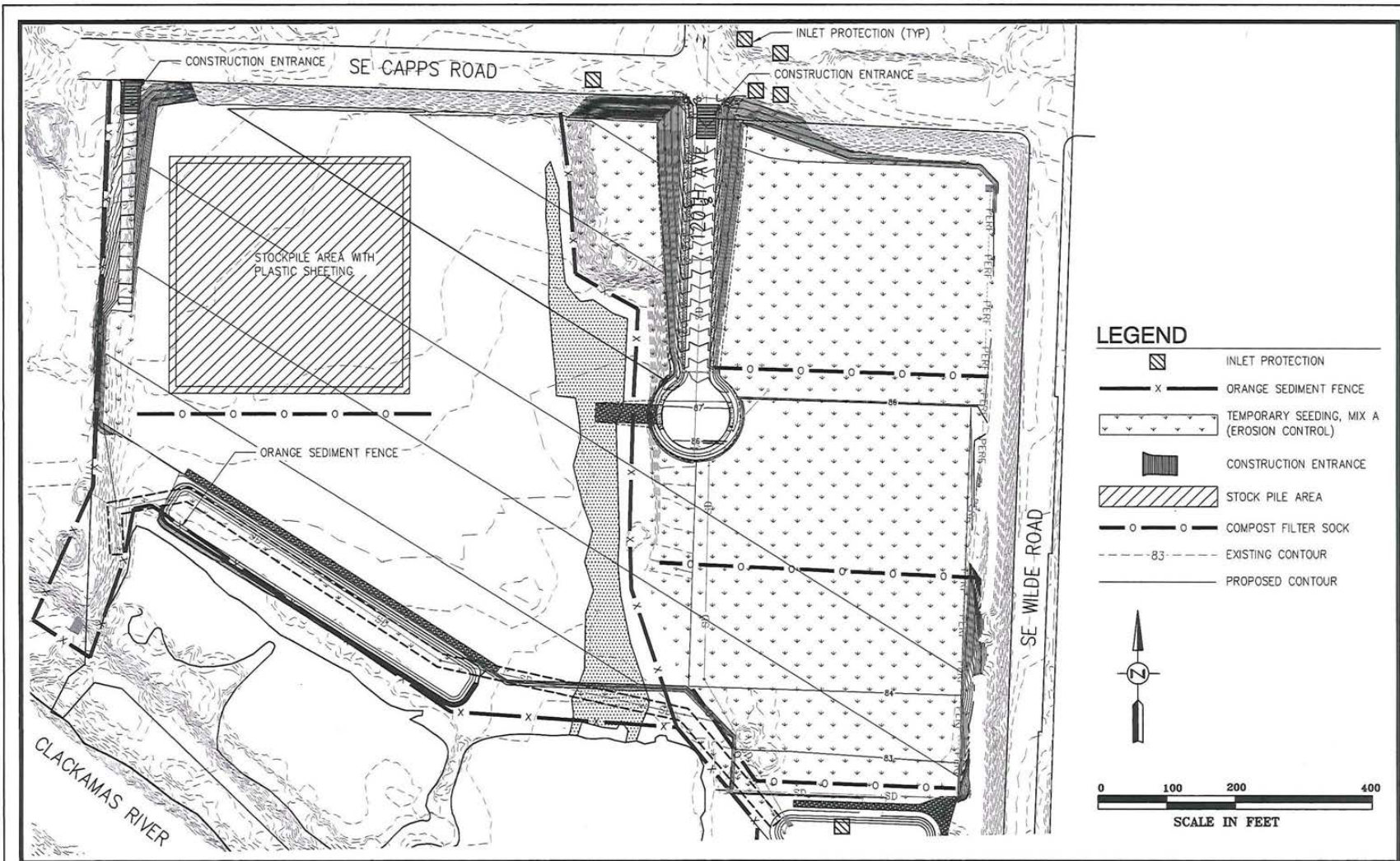


Plan Provided by OTAK

Proposed Grading Plan  
Capps Road Improvement Project - Oregon City, Oregon

**FIGURE**  
**8**  
2-16-2016





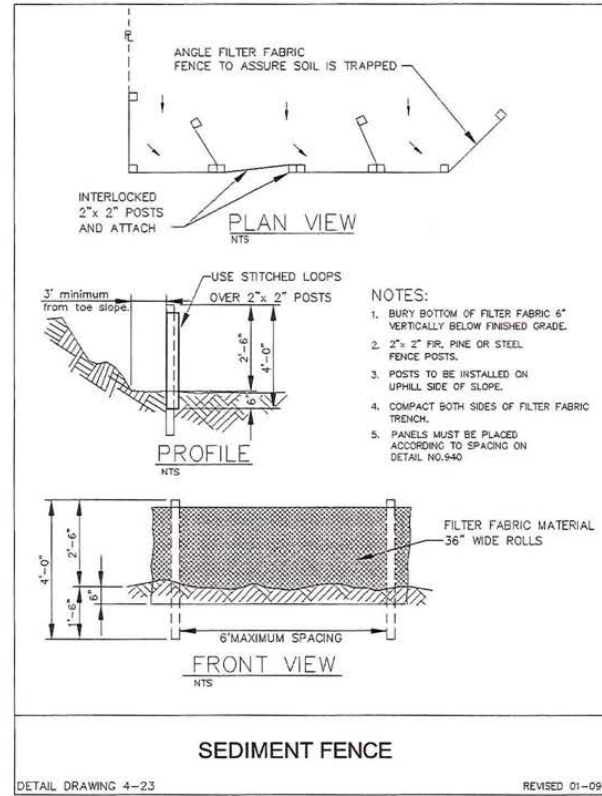
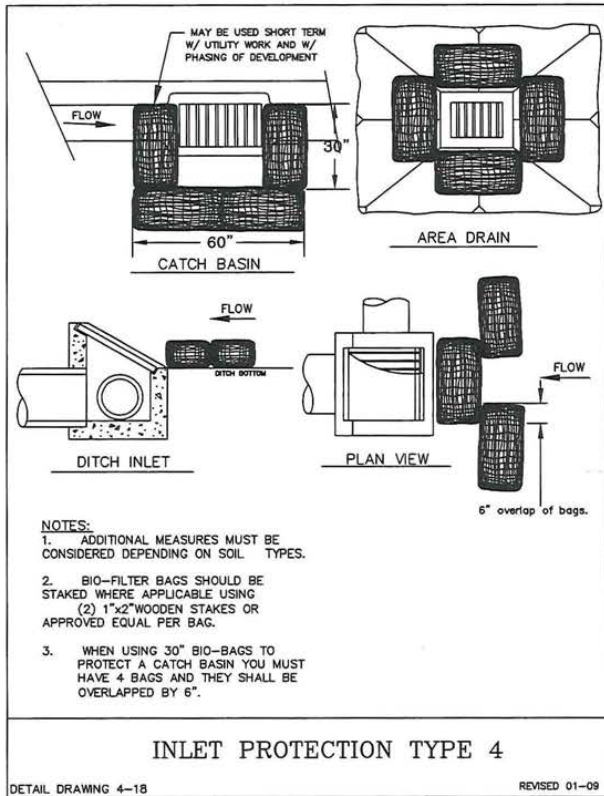
Plan Provided by OTAK

Erosion and Sediment Control Plan  
Capps Road Improvement Project - Oregon City, Oregon

FIGURE  
**9**

1-22-2016

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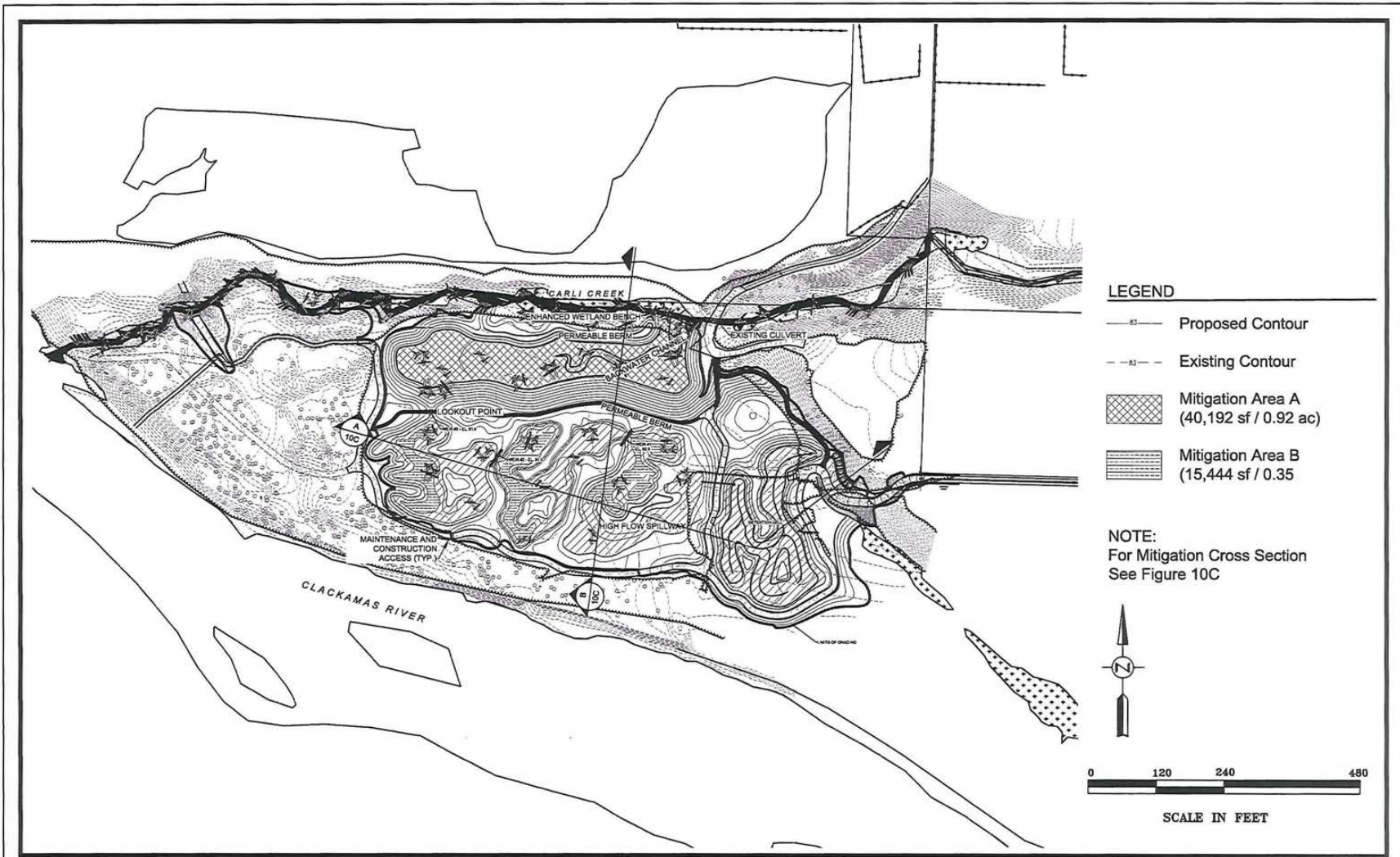
Details Provided By OTAK

Erosion Control Details  
Capps Road Improvement Project - Oregon City, Oregon

FIGURE  
9A

1-22-2015





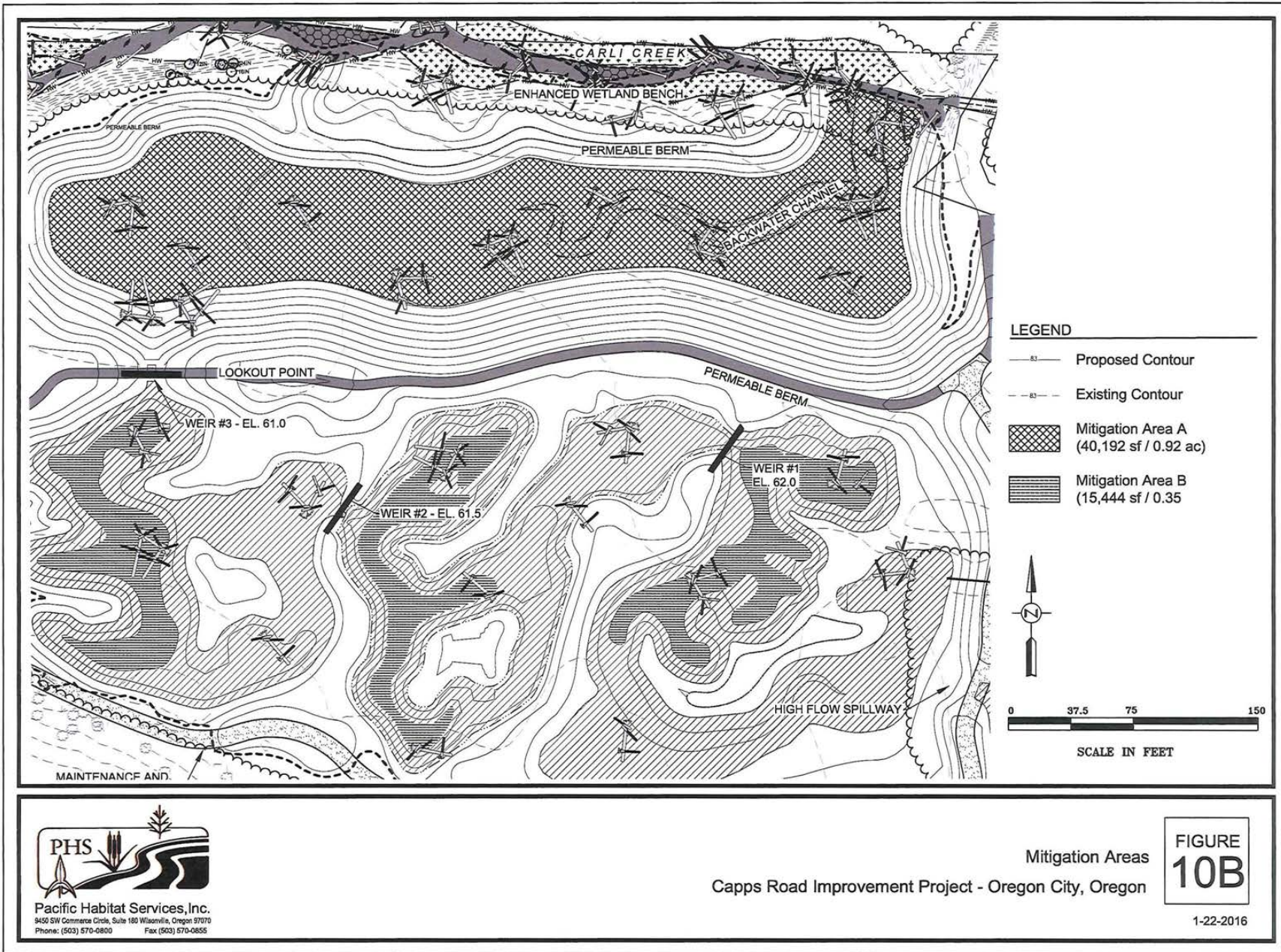
Carli Creek Enhancement and Water Quality Project and Mitigation Cross Section Locations  
Capps Road Improvement Project - Oregon City, Oregon

**FIGURE 10A**

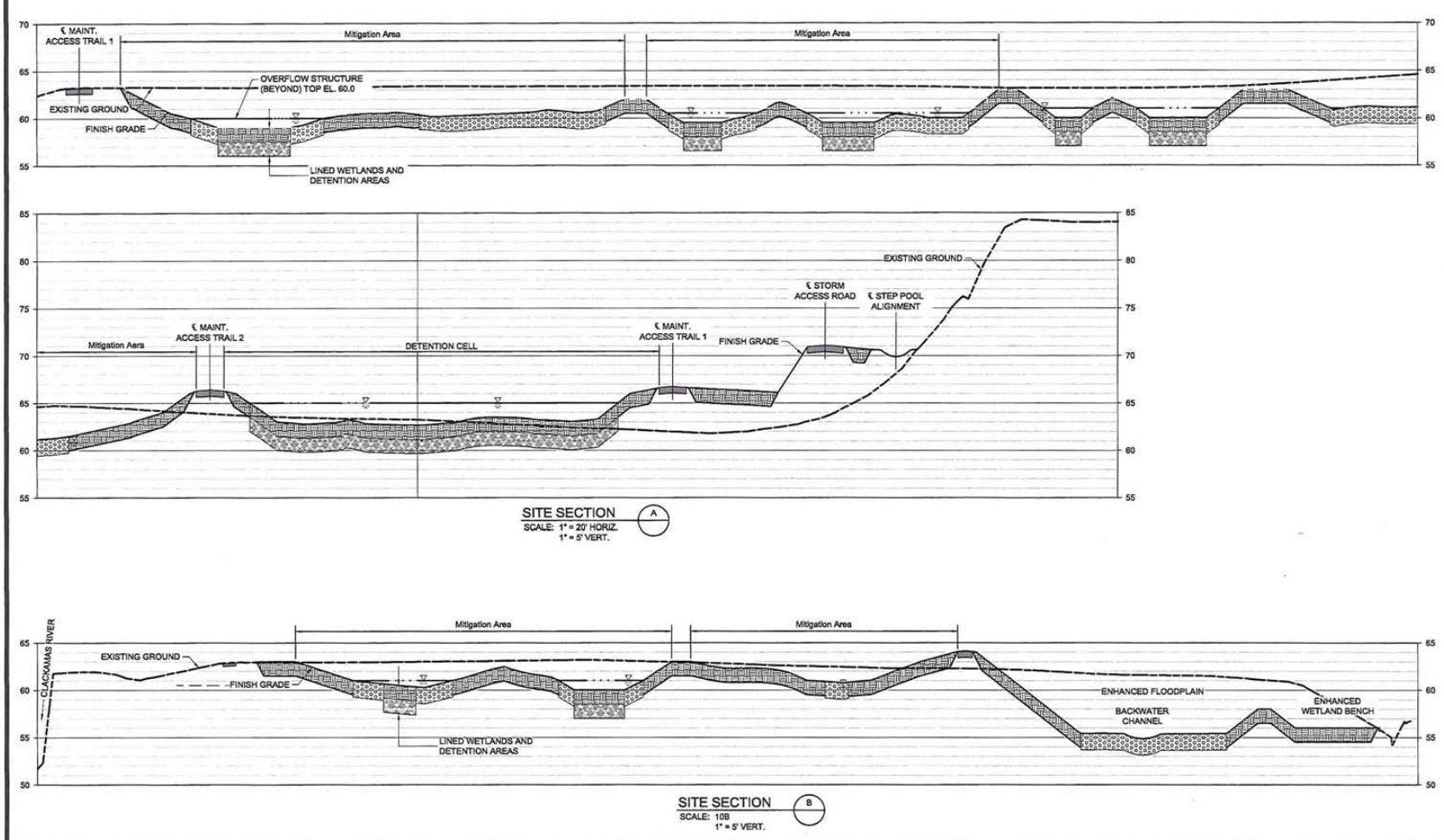
2-16-2016

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Mitigation Cross Section  
 Capps Road Improvement Project - Oregon City, Oregon

**FIGURE 10C**

2-2-2016

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# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Northwest Region  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232  
(503) 229-5263  
FAX (503) 229-6945  
TTY 711

September 8, 2016

Clackamas County Industrial Park  
Attn: Dan Johnson  
150 Beaver Creek Road  
Oregon City, OR 97045

## **RE: 2012-00181-1; Clackamas County Industrial Area 401 Water Quality Certification**

The Department of Environmental Quality (DEQ) has reviewed the U.S. Army Corps of Engineers (USACE) Permit application #2012-00181-1, pursuant to a request for a Clean Water Act Section 401 Water Quality Certification (WQC) received on March 11, 2016. DEQ's 401 WQC public comment opportunity was circulated with the USACE public notice, and DEQ received no water quality comments.

According to the application, Clackamas County Industrial Park ("the Applicant") proposes to construct the second phase of an industrial development to provide facilities for future industrial tenants. The project is located at 1200 SE Capps Road adjacent to the Clackamas River, in the City of Happy Valley, Clackamas County, Oregon (Section 15, Township 2 South, Range 2 East).

**Project Description:** The Applicant will permanently impact 1.02 acres of palustrine forested wetlands to complete the build-out of two industrial pads, each with a warehouse, loading area, storage and parking. A total of 0.012 acres of wetlands will remain on-site. A stormwater detention pond that was constructed under a separate Nationwide Permit (NWP-2012-00181) will treat the runoff generated at the site. The Applicant proposes to mitigate for impacts by creating a total of 1.27 acres of wetlands located west of the project site adjacent to Carli Creek and the Clackamas River.

**Status of Affected Waters of the State:** The Clackamas River is classified as water quality limited under the federal Clean Water Act for flow and habitat modification. The Clackamas River is on the Section 303(d) list of impaired water bodies for dissolved oxygen, *E. coli*, biological criteria, and has Environmental Protection Agency (EPA) approved Total Maximum Daily Loads (TMDLs) that have been developed for bacteria, mercury and temperature.

The above listed parameters impair the following beneficial uses in the Clackamas River: aquatic life, water contact recreation, anadromous fish passage and fish rearing. Additional beneficial uses designated in the Clackamas River include public domestic water supply, private domestic water supply, industrial water supply, irrigation, livestock watering, fish & aquatic life, wildlife & hunting, fishing, boating, water contact recreation, aesthetic quality, and hydro power.

**Certification Decision:** Based on the information provided by the Applicant and the USACE, DEQ is reasonably assured that implementation of the project will be consistent with applicable

provisions of Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, state water quality standards set forth in Oregon Administrative Rules Chapter 340 Division 41, and other appropriate requirements of state law, provided the following conditions strictly adhered to by the Applicant.

#### **401 WQC GENERAL CONDITIONS**

- 1) **Responsible Parties:** This 401 WQC applies to the Applicant. The Applicant is responsible for the work of its contractors and sub-contractors, as well as any other entity that performs work related to this 401 WQC.
- 2) **Work Authorized:** Work authorized by this 401 WQC is limited to the work described in the Joint Permit Application signed on January 27, 2016 and additional application materials, unless otherwise authorized by DEQ. If the project is operated in a manner not consistent with the project description contained in the permit application materials, the Applicant is not in compliance with this 401 WQC and may be subject to enforcement.
- 3) **Duration of Certificate:** This 401 WQC for impacts to waters, including dredge and fill activities, is valid for five years from the date of issuance of the USACE 404 permit. A new or modified 401 WQC must be requested prior to any modification of the USACE 404 permit. Post-construction stormwater facilities must be maintained for the life of the facility.
- 4) A copy of this 401 WQC letter must be kept on the job site and readily available for reference by the Applicant or its contractors, as well as by DEQ, USACE, National Marine Fisheries Service (NMFS), Oregon Department of Fish and Wildlife (ODFW), and other appropriate state and local government inspectors.
- 5) **Modification:** Any approved modifications to this 401 WQC will incur a Tier 1 fee of \$985 at a minimum. Complex modifications may be charged a higher fee.
- 6) The Applicant must notify DEQ of any change in ownership or control of this project and obtain DEQ review and approval before undertaking any change to the project that might affect water quality.
- 7) DEQ may modify or revoke this 401 WQC, in accordance with OAR 340-048-0050, if the project changes or project activities are having an adverse impact on state water quality or beneficial uses.
- 8) The Applicant and its contractors must allow DEQ access to the project site, staging areas, and mitigation sites to monitor compliance with these 401 WQC conditions, including:
  - a. Access to any records, logs, and reports that must be kept under the conditions of this 401 WQC;
  - b. To inspect best management practices (BMPs), monitoring or operational equipment or methods;
  - c. To collect samples or monitor any discharge of pollutants.

- 9) Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

### **CONSTRUCTION SPECIFIC CONDITIONS**

- 10) **Erosion Control:** During construction, erosion control measures must be implemented to prevent or control movement of soil into waters of the state. The Applicant is required to develop and implement an effective erosion and sediment control plan. **Any project that disturbs more than one acre is required to obtain an NPDES 1200-C construction stormwater permit from DEQ.** In addition, the Applicant (or responsible party) must do the following, unless otherwise authorized by DEQ in writing:
- a. Maintain an adequate supply of materials necessary to control erosion at the project construction site.
  - b. Deploy compost berms, impervious materials, or other effective methods during rain events or when stockpiles are not moved or reshaped for more than 48 hours. Erosion of stockpiles is prohibited.
  - c. Inspect erosion control measures daily and maintain erosion control measures as often necessary to ensure the continued effectiveness of measures. Erosion control measures must remain in place until all exposed soil is stabilized.
    - i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, the Applicant must mobilize immediately to make repairs, install replacements, or install additional controls as necessary.
    - ii. If sediment has reaches 1/3 of the exposed height of a sediment or erosion control, the Applicant must remove the sediment to its original contour.
  - d. Use removable pads or mats to prevent soil compaction at all construction access points through, and staging areas in, riparian or wetland areas to prevent soil compaction, unless otherwise authorized by DEQ.
  - e. Flag or fence off wetlands not specifically authorized to be impacted to protect from disturbance and/or erosion.
  - f. Place dredged or other excavated material on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands.
  - g. Place clean aggregate at all construction entrances, and utilize other BMPs, including, but not limited to as truck or wheel washes, when earth moving equipment is leaving the site and traveling on paved surfaces. The tracking of sediment off site by vehicles is prohibited.
  - h. This 401 WQC *does not* authorize the placement of BMPs into waters of the state unless specifically outlined in the application and authorized by DEQ.



- 11) **Deleterious Waste Materials:** The Applicant is prohibited from placing biologically harmful materials and construction debris including, but not limited to: petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, asphalt and waste concrete where such materials could enter waters of the state, including wetlands (wetlands are waters of the state). The Applicant must do the following:
- a. Ensure concrete, cement, or grout is cured for at least 24 hours prior to any contact with flowing waters;
  - b. Use only clean fill, free of waste and polluted substances;
  - c. Employ all practicable controls to prevent discharges of spills of deleterious materials to surface or ground water;
  - d. Maintain at the project construction site, and deploy as necessary, an adequate supply of materials needed to contain deleterious materials during a weather event;
  - e. Remove all foreign materials, refuse, and waste from the project area; and
  - f. Employ general good housekeeping practices at all times.
- 12) **Spill Prevention:** The Applicant must fuel, operate, maintain and store vehicles, and must store construction materials, in areas that will not disturb habitat either directly or due to potential discharges. In addition, the following specific requirements apply:
- a. Vehicle staging, cleaning, maintenance, refueling, and fuel storage must take place in a vehicle staging area placed 150 feet or more from any waters of the state. An exception to this distance may be authorized upon written approval by DEQ if all practicable prevention measures are employed and this distance is not possible because of any of the following site conditions:
    - i. Physical constraints that make this distance not feasible (e.g., steep slopes, rock outcroppings);
    - ii. Natural resource features would be degraded as a result of this setback;  
or
    - iii. Equal or greater spill containment and effect avoidance is provided even if staging area is less than 150 feet of any waters of the state.
  - b. If staging areas are within 150 feet of any waters of the state, as allowed under subsection (a) of this condition, full containment of potential contaminants must be provided to prevent soil and water contamination, as appropriate.
  - c. All vehicles operated within 150 feet of any waters of the state must be inspected daily for fluid leaks before leaving the vehicle staging area. Any leaks detected in

the vehicle staging area must be repaired before the vehicle resumes operation.

- d. Before operations begin and as often as necessary during operation, equipment must be steam cleaned (or undergo an approved equivalent cleaning) until all visible external oil, grease, mud, and other visible contaminants are removed if the equipment will be used below the bank of a waterbody.
- e. All stationary power equipment (e.g., generators, cranes, stationary drilling equipment) operated within 150 feet of any waters of the state must be covered by an absorbent mat to prevent leaks, unless other suitable containment is provided to prevent potential spills from entering any waters of the state.
- f. An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) needed to contain spills must be maintained at the project construction site and deployed as necessary.
- g. All equipment operated in state waters must use bio-degradable hydraulic fluid.

13) **Spill & Incident Reporting:**

- a. In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the Applicant must promptly report the discharge to the Oregon Emergency Response System (OERS, 1-800-452-0311). The Applicant must immediately begin containment and complete cleanup as soon as possible.
- b. If the project operations cause a water quality problem which results in distressed or dying fish, the Applicant must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, ODFW and other appropriate regulatory agencies.

14) **Vegetation Protection and Restoration:**

- a. The Applicant must protect riparian, wetland, and shoreline vegetation in the authorized project area from disturbance through one or more of the following:
  - i. Minimization of project and impact footprint;
  - ii. Designation of staging areas and access points in open, upland areas;
  - iii. Fencing and other barriers demarcating construction areas; and/or
  - iv. Use of alternative equipment (e.g., spider hoe or crane).
- b. If authorized work results in vegetative disturbance and the disturbance has not been accounted for in planned mitigation actions, the Applicant must successfully reestablish vegetation to a degree of function equivalent or better than before the disturbance. The standard for success is 80% cover for native plant species. The vegetation must be reestablished by the completion of authorized work and

include the following:

- i. Restore damaged streambanks to a natural slope, pattern, and profile suitable for establishment of permanent woody vegetation, unless precluded by pre-project conditions (e.g., a natural rock wall).
  - ii. Replant or reseed each area requiring revegetation before the end of the first planting season following construction.
  - iii. Plant disturbed areas with native plants and trees in all cases except where the use of non-native plant materials may be essential for erosion control.
  - iv. The use of invasive species to re-establish vegetation is prohibited.
  - v. Herbicides, pesticides and fertilizers must be applied per manufacturer's instructions, and only if necessary for vegetation establishment.
    1. Unless otherwise approved in writing by DEQ, applying surface fertilizer within stormwater treatment facilities or within 50 feet of any stream channel is prohibited.
    2. Other than spot application to cut stems, no herbicides are allowed within stormwater treatment facilities or within 150 feet of waters of the state. Mechanical, hand, or other methods may be used to control weeds and unwanted vegetation within stormwater treatment facilities or within 150 feet of waters of the state.
    3. No pesticides may be used within stormwater treatment facilities or within 150 feet of waters of the state.
  - vi. Install wildlife-friendly fencing as necessary to prevent access to revegetated sites by livestock or unauthorized persons.
  - vii. Minimize soil compaction, especially in areas that are designated to be replanted. If soils are compacted, decompact staging areas and work construction areas prior to replanting. Leave topsoil when possible. Chip materials from clear and grub operation and spread on soil surface, unless cleared areas contained invasive species.
- 15) Provide a minimum 50-foot buffer zone to protect existing riparian areas and wetlands, unless otherwise authorized in writing by DEQ.
- 16) **Notification to DEQ:** The Applicant must provide pre-construction notification to DEQ one week prior to the start of construction. Contact information can be found at the end of this 401 WQC.

**SPECIFIC CONDITIONS FOR POST CONSTRUCTION STORMWATER MANAGEMENT**

- 17) **Post Construction Stormwater Management:** The Applicant must implement and comply with the terms of the approved post-construction stormwater management plan, which describes best management practices (BMPs) to prevent or treat pollution in stormwater anticipated to be generated by the project, in order to comply with state water quality standards. The Applicant must implement BMPs as proposed in the stormwater management plan, including operation and maintenance, dated January 27, 2016. If proposed stormwater facilities change due to site conditions, the Applicant must notify DEQ, and receive approval in writing

To treat stormwater, the Applicant has constructed a stormwater detention pond that was previously permitted for the first phase of this project (USACE Project # NWP-2012-00181). The pond will treat runoff from the parcels of both phases of the development based on no more than 85% impervious area. Runoff will be treated in the vegetated stormwater pond and then will be piped through a conveyance system to an approved discharge location on the Clackamas River.

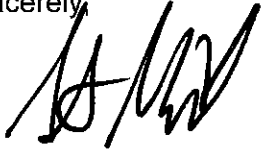
**Within 30 days of project completion, the Applicant must submit a copy of the 'As-Builts' or red-lined construction drawings showing all stormwater management facilities.**

- 18) **Stormwater Management & System Maintenance:** The Applicant is required to implement effective operation and maintenance practices for the lifetime of the proposed facility. These include but are not limited to:
- a. Maintenance techniques and frequency for each system component must follow appropriate recommendations in accepted manuals.
  - b. Long-term operation and maintenance of stormwater treatment facilities will be the responsibility of the Clackamas County Development Agency, unless and until an agreement transferring that responsibility to another entity is submitted to DEQ.
- 19) **Corrective Action May Be Required:** The Department retains the authority to require corrective action in the event the stormwater management facilities are not built or performing as described in the plan.

If the Applicant is dissatisfied with the conditions contained in this 401 WQC, a contested case hearing may be requested in accordance with OAR 340-048-0045. Such request must be made in writing to the DEQ Office of Compliance and Enforcement at 811 SW 6<sup>th</sup> Avenue, Portland Oregon 97204 within 20 days of the mailing of this 401 WQC.

DEQ hereby certifies this project in accordance with the Clean Water Act and state rules, with the above conditions. If you have any questions, please contact Roxann Nayar at [nayar.roxy@deq.state.or.us](mailto:nayar.roxy@deq.state.or.us), by phone at 503-229-6414, or at the address on this letterhead.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Mrazik', written in a cursive style.

Steve Mrazik  
Water Quality Manager  
Northwest Region

*2012-00181-1\_ClackamasCoIndustrialPark\_401 WQC\_Final.docm*

cc: Dominic Yballe, USACE  
Anita Huffman, DSL  
Marc Liverman, NOAA FISHERIES  
Ashley Cantlon, OTAK



# Compliance Certification

1. **Permit Number:** NWP-2012-181-1
2. **Permittee Name:** Clackamas County Development Agency
3. **County Location:** Clackamas

Upon completing the activity authorized by the permit, please complete the sections below, sign and date this certification, and return it to the U.S. Army Corps of Engineers, Portland District, Regulatory Branch. The certification can be submitted by email at [cenwp.notify@usace.army.mil](mailto:cenwp.notify@usace.army.mil) or by regular mail at the following address:

U.S. Army Corps of Engineers  
CENWP-OD-GL  
P.O. Box 2946  
Portland, OR 97208-2946

4. **Corps-required Compensatory Mitigation (see permit special conditions):**
  - a. Mitigation Bank / In-lieu Fee Credit Transaction Documents:  
 Not Applicable       Submitted       Enclosed
  - b. Permittee-responsible mitigation (e.g., construction and plantings) has been constructed (not including future monitoring). As-built report:  
 Not Applicable       Submitted       Enclosed
5. **Endangered Species Act – Standard Local Operating Procedures (SLOPES)**  
(see permit special conditions):
  - a. SLOPES Action Completion Report:  
 Not Applicable       Submitted       Enclosed
  - b. SLOPES Fish Salvage Report:  
 Not Applicable       Submitted       Enclosed
  - c. SLOPES Site Restoration / Compensatory Mitigation Report:  
 Not Applicable       Submitted       Enclosed

I hereby certify the work authorized by the above-referenced permit has been completed in accordance with all of the permit terms and conditions.

---

**Signature of Permittee**

**Date**

# Attachment 5

## Compensatory Wetland Mitigation Plan



**FINAL COMPENSATORY WETLAND MITIGATION PLAN  
FOR IMPACTS TO WETLANDS FOR THE CAPPS ROAD INDUSTRIAL  
SITE IN CLACKAMAS, OREGON**

**U.S. Army Corps of Engineers Permit No. NWP 2012-181(1)  
January 28, 2016**

Below is a description of the Clackamas County Development Agency's proposed Compensatory Wetland Mitigation (CWM) Plan following the provisions of 33 CFR 332.4(c) 2 through (c) 14.

**Objectives:**

The primary objective is to provide wetland habitat as compensation for 1.02 acres of wetland impact. Four areas of wetland will be created, one area that is permanently inundated, and three areas that are seasonally inundated. The water for these wetlands will come from a stormwater facility associated with Carli Creek to the north of the mitigation site. The permanently inundated wetland will be also augmented with backwater flows from Carli Creek.

**Site Selection:**

Several options for mitigation of the impact were examined.

- 1) Filling the dragline quarried ponds (Basins A, B and C) (45.3967, -122.5406) located south of the impact site from their existing considerable depth to form a shallow wetland was considered and deemed unfeasible because of the significant amount of soil materials required to fill the ponds.
- 2) Extend a thin sliver of wetland (45.3989, -122.5459) at the base of a western slope of the recycling facility to the west of the former gravel pit was considered. The groundwater gradient to the Clackamas River along the terrace edge near the river probably makes the possibility of persistent wetland conditions over the requisite area unlikely.
- 3) Preferred Option: A regional stormwater plan (45.4001, -122.5487) for Carli Creek discharging to the Clackamas River to the west of the proposed project. This includes the possibility of wetland creation adjacent to stormwater treatment cells fed by treated stormwater discharge from nearby industrial facilities. Stormwater is to be treated in cells that will maintain hydrology for the adjacent created wetland.

**Site Protection Instrument:**

Clackamas County will record a conservation easement over the mitigation site. The easement will ensure long term protection of the mitigation areas. The conservation easement will be recorded at the completion of the monitoring period and will include the following:



- a. Identification of a third-party easement holder with a summary of the selected holder's capacity to ensure the WES's compliance with the Long-term Maintenance and Management Plan;
- b. Provisions for ensuring the maintenance and protection of the mitigation site from any conflicting uses; and
- c. Provisions requiring a 60-day advance notification to the Corps before any action is taken to void or modify the site protection instrument, or establish any other legal claims over the mitigation site.

**Baseline Information:**

The proposed mitigation site is along the north side of the Clackamas River south of the historic channel of Carli Creek, which discharges to the Clackamas River west of the proposed mitigation site. The site is east of a meander in the Clackamas River where the river appears to meet the northern edge of its meander belt (along the trajectory of Carli Creek). Several terrace scarps east of the mitigation site trend northwest-southeast from the edge of the meander belt to the Clackamas River. Terrace materials consist of Clackamas River alluvium that has been quarried for aggregate in several nearby areas (including the impact site). Historic aerial photographs suggest that the site has been used for pasture and haying for several decades. Herrera, Inc., which prepared the overall plan under contract with Water Environment Services (WES), has proposed a regional stormwater plan for industrial runoff that is discharged to Carli Creek along the north side of the proposed mitigation site.

After initial treatment near the creek, water will be discharged to mitigation areas south of the creek. These shallow basins are a maximum of 3 feet deep. Geotechnical investigations of the proposed mitigation site suggest that permeability of soil surface horizons can be made sufficiently low to maintain wetland hydrology. The stormwater inputs from Carli Creek that provide hydrology for the mitigation area will be seasonal with late summer drying of the mitigation site. Hydrologic modeling by Herrera indicates that the excavated wetland cells will remain inundated between 0.5 and 2.5 feet for 30 days during the wettest portion of the year. The site adjoins the Clackamas River riparian zone and the mitigation can be considered an extension of the river riparian zone. The total area of permanent wetland creation is 0.92 acre.

An additional area of mitigation is located just north of the shallow, stormwater treatment basins. This area is adjacent to a backwater channel of Carli Creek, and is separated from the stormwater treatment basins by a permeable berm. This area is expected to be permanently inundated throughout most years. The total area of seasonal wetland creation is 0.35 acre.

**Determination of Credits:**

The wetland to be impacted totals 1.02 acres. The areas of wetland designated by Herrera as wetland mitigation area totals 1.27 acres, and additional areas of emergent, scrub-shrub, and forested riparian areas will be created along Carli Creek, contributing to increased water quality and wildlife habitat adjacent to the mitigation wetlands.

An HGM rating of the proposed site was compared to an HGM rating of the impacted area. All of the wetland functions in the proposed site were greater than the functions in the impacted wetland except Nitrogen Removal, Primary Production, and Amphibian and Reptile Habitat. However, these functions are only slightly lower in the created wetlands as compared to the impact wetland. The proposed mitigation site will be contiguous with the riparian zone of the Clackamas River and may be considered an extension of the riparian zone.

	Calculated Function Capacity for SF sites					
	Wetland A (Existing)		Permanent Wetland Creation		Seasonal Wetland Creation	
Function:	if HFR:	if LAR:	if HFR:	if LAR:	if HFR:	if LAR:
Water Storage & Delay (ws)	0.50	1.11	0.50	1.11	0.75	1.67
Sediment Stabilization & Phosphorus Retention (sp)	0.57	0.61	0.74	0.79	1.00	1.07
Nitrogen Removal (n)	0.73	0.86	0.57	0.67	0.84	0.99
Primary Production (pp)	0.67	0.67	0.52	0.52	0.62	0.82
Invertebrate Habitat Support (i)	0.22	0.22	0.23	0.23	0.30	0.30
Amphibian & Turtle Habitat (at)	0.60	0.79	0.53	0.70	0.58	0.76
Breeding Waterbird Support (bw)	0.00	0.00	0.98	1.13	0.00	0.00
Wintering & Migrating Waterbird Support (ww)	0.41	0.47	0.43	0.50	0.54	0.62
Songbird Habitat Support (sb)	0.34	0.53	0.89	1.36	0.66	1.01
Support of Characteristic Vegetation (v)	0.39	0.41	0.63	0.65	0.55	0.57

**Mitigation Work Plan:**

Construction of the proposed mitigation areas will be done in conjunction with construction of the Carli Creek stormwater treatment system. Construction of the mitigation site will be done in late summer before Carli Creek is allowed to flood into the site. Seeding of the created wetland areas will be done by the first of September 2016. Planting of the woody plants in the constructed mitigation site will be done during the late winter and early spring after construction is complete and stormwater from Carli Creek has been diverted into the site. Emergent plantings will be installed in late spring immediately before temporary irrigation is begun.

The wetland creation area will be planted with a minimum stem count of 1,600 stems per acre. The following table shows the native species to be planted within the mitigation wetland areas.

**Table 1. Wetland Mitigation Areas A and B (55,636 sq. ft.)**

Botanical Name	Common Name	Stock Type
<b>Trees</b>		
<i>Fraxinus latifolia</i>	Oregon ash	Seedling 3”+
<i>Populus balsamifera</i>	Black cottonwood	Seedling 3”+
<i>Alnus rubra</i>	Red alder	Seedling 3”+
<b>Shrubs</b>		
<i>Cornus sericea</i>	Red-osier dogwood	6’ live stake
<i>Physocarpus capitatus</i>	Pacific ninebark	Seedling 36”+
<i>Rosa nutkana</i>	Nootka rose	Seedling 36”+

<b>Botanical Name</b>	<b>Common Name</b>	<b>Stock Type</b>
<i>Rosa pisocarpa</i>	Swamp rose	Seedling 36"+
<i>Spiraea douglasii</i>	Douglas spiraea	Seedling 12"-18"
<i>Salix hookeriana</i>	Piper's willow	6' live stake
<i>Salix scouleriana</i>	Scouler willow	6' live stake
<i>Salix sitchensis</i>	Sitka willow	6' live stake
<b>Herbs</b>		
<i>Camassia quamash</i>	Camas	Bulb
<i>Carex amplifolia</i>	Big-leaf sedge	10" plug
<i>Carex deweyana</i>	Dewey's sedge	10" plug
<i>Carex obnupta</i>	Slough sedge	10" plug
<i>Carex unilateralis</i>	One-side sedge	10" plug
<i>Eleocharis obtuse</i>	Ovate spikerush	10" plug
<i>Juncus acuminatus</i>	Tapertip rush	10" plug
<i>Juncus ensifolius</i>	Dagger-leaf rush	10" plug
<i>Juncus patens</i>	Spreading rush	10" plug
<i>Juncus tenuis</i>	Slender rush	10" plug
<i>Schoenoplectus acutus</i>	Hard-stemmed bulrush	10" plug
<i>Scirpus microcarpus</i>	Small-fruited bulrush	10" plug

**Maintenance Plan:**

A temporary irrigation system will be installed for the first 2 years of plant establishment. The irrigation system will be operated weekly and provide the equivalent of 1.5 inches of rainfall at a rate no greater than 2 inches per hour. Weed control will be done on a monthly basis through the growing season.

**Performance Standards:**

At the end of 2 years after construction of the mitigation site, 80% of the installed woody plants will be alive. Native groundcover will cover 80% of the area at the end of 3 years. The mitigation site will meet wetland criteria at the end of 5 years.

**Monitoring Requirements:**

***As-Built Report:***

An as-built of the constructed facility surface elevations will be submitted to the Corps within 60 days of the construction completion.

***Annual Monitoring Reports:***

Annual monitoring reports will be submitted to the Corps by the end of the calendar year for each of the 5 years following the construction of the mitigation site. The reports will document survival of the woody plantings and provide estimates of the areal fraction of groundcover species. Sampling of the woody vegetation will be done with randomly positioned 15-foot radius discs throughout the mitigation site covering at least 5% of the mitigation area. Forb sampling will be done with 2 square meter quadrats for each of the woody plant sampling points.

The emergent wetland will be sampled with square meter quadrats covering at least 1% of the emergent wetland area. Hydrology of the mitigation area will be monitored between the vernal equinox and the summer solstice. Photographs of the mitigation site from established photopoints will be submitted with each annual monitoring report. Analyses of temporal vegetation changes and recommendations for vegetation management will be submitted with each report. During the 5<sup>th</sup> year, a delineation of the mitigation site will be done to determine if the mitigation site meets wetland criteria.

**Long-term Maintenance and Management Plan:**

Long-term maintenance of the mitigation site will be done by WES. Continuing maintenance will mainly consist of weed management after the 5-year establishment period.

**Financial Assurances:**

Should the Corps feel that financial assurance is required, WES will financially commit (e.g. bond) to ensure the mitigation is a success.



US Army Corps  
of Engineers®

# REGULATORY GUIDANCE LETTER

No. 08-03

Date: 10 October 2008

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**SUBJECT:** Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources.

## **1. Purpose and Applicability**

**a. Purpose.** This Regulatory Guidance Letter (RGL) provides the Districts and regulated public guidance on minimum monitoring requirements for compensatory mitigation projects, including the required minimum content for monitoring reports. This RGL replaces RGL 06-03.

**b. Applicability.** The final Mitigation Rule published on April 10, 2008, states that the submission of monitoring reports to assess the development and condition of compensatory mitigation projects is required, but the content and level of detail for those reports must be commensurate with the scale and scope of the compensatory mitigation projects as well as the compensatory mitigation project type (see 33 CFR 332.6(a)(1)).

This RGL applies to all Department of the Army (DA) permit authorizations under Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act that contain special conditions requiring compensatory mitigation provided through aquatic resource restoration, establishment and/or enhancement. This guidance also applies to monitoring reports that are prepared for mitigation bank sites and in-lieu-fee project sites.

This RGL supports the Program Analysis and Review Tool (PART) program goals for the Regulatory Program. Specifically, this RGL supports the PART performance measures for mitigation site compliance and mitigation bank/ in-lieu-fee compliance. These measures apply to active mitigation sites, mitigation banks, and in-lieu-fee project sites that still require monitoring.

## **2. Background**

Recent studies by the Government Accountability Office (GAO) and National Research Council (NRC) indicated that the U.S. Army Corps of Engineers (Corps) was not providing adequate oversight to ensure that compensatory mitigation projects were successfully replacing the aquatic resource functions lost as a result of permitted activities. For example, the GAO study determined that many project files requiring

mitigation lacked monitoring reports despite the fact that such reports were required as a condition of the permit. Similarly, the NRC study documented that a lack of clearly stated objectives and performance standards in the approved compensatory mitigation proposals made it difficult to ascertain whether the goal of no net loss of wetland resources was achieved.

On April 10, 2008, the Corps and Environmental Protection Agency published the “Compensatory Mitigation for Losses of Aquatic Resources: Final Rule” (Mitigation Rule) which governs compensatory mitigation for activities authorized by permits issued by the Department of the Army (33 CFR Parts 325 and 332). This RGL complements and is consistent with the final Mitigation Rule.

### **3. Discussion**

Inconsistent approaches to monitoring compensatory mitigation projects are one of several factors that have affected the ability of Corps project managers (PMs) to adequately assess achievement of the performance standards of Corps-approved mitigation plans. Standardized monitoring requirements will aid PMs when reviewing compensatory mitigation sites, thereby allowing the Corps to effectively assess the status and success of compensatory mitigation projects.

This RGL addresses the minimum information needed for monitoring reports that are used to evaluate compensatory mitigation sites. Monitoring requirements are typically based on the performance standards for a particular compensatory mitigation project and may vary from one project to another.

Monitoring reports are documents intended to provide the Corps with information to determine if a compensatory mitigation project site is successfully meeting its performance standards. Remediation and/or adaptive management used to correct deficiencies in compensatory mitigation project outcomes should be based on information provided in the monitoring reports and site inspections.

### **4. Guidance**

#### **a. Monitoring guidelines for compensatory mitigation.**

**i. Performance Standards.** Performance standards, as defined in 33 CFR 332.2, and discussed in more detail at 33 CFR 332.5, will be consistent with the objectives of the compensatory mitigation project. These standards ensure that the compensatory mitigation project is objectively evaluated to determine if it is developing into the desired resource type and providing the expected functions. The objectives, performance standards, and monitoring requirements for compensatory mitigation projects required to offset unavoidable impacts to waters of the United States must be provided as special conditions of the DA permit or specified in the approved final mitigation plan (see 33 CFR 332.3(k)(2)). Performance standards may be based on functional, conditional, or other suitable assessment methods and/or criteria and may be incorporated into the

special conditions to determine if the site is achieving the desired functional capacity. Compensatory mitigation projects offset the impacts to diverse types of aquatic resources, including riverine and estuarine habitats. Special conditions of the DA permits will clearly state performance standards specific to the type and function of the ecosystem in relation to the objectives of the compensatory mitigation project.

**ii. Monitoring Timeframe.** The special conditions of the DA permit (or the mitigation plan as referenced in the special conditions) must specify the length of the monitoring period (see 33 CFR 332.6(a)(1)). For mitigation banks, the length of the monitoring period will be specified in either the DA permit, mitigation banking instrument, or approved mitigation plan. For in-lieu fee projects, the length of the monitoring period will be specified in either the DA permit or the approved in-lieu fee project plan.

The monitoring period must be sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years (see 33 CFR 332.6(b)). The District determines how frequently monitoring reports are submitted, the monitoring period length, and report content. If a compensatory mitigation project has met its performance standards in less than five years, the monitoring period length can be reduced, if there are at least two consecutive monitoring reports that demonstrate that success. Permit conditions will support the specified monitoring requirement and include deadlines for monitoring report submittal. Longer monitoring timeframes are necessary for compensatory mitigation projects that take longer to develop (see 33 CFR 332.6(b)). For example, forested wetland restoration may take longer than five years to meet performance standards.

Annual monitoring and reporting to the Corps is appropriate for most types of compensatory mitigation projects, though the project sponsor may have to monitor progress more often during the project's early stages. Certain compensatory mitigation projects may require more frequent monitoring and reporting during the early stages of development to allow project managers to quickly address problems and/or concerns. Annual monitoring can resume once the project develops in accordance with the approved performance standards. In cases where monitoring is required for longer than five years, monitoring may be conducted on a less than annual timeframe (such as every other year), though yearly monitoring is recommended until the project becomes established as a successful mitigation project. In this case, off-year monitoring should include some form of screening assessment such as driving by the mitigation site, telephone conversations regarding condition of the mitigation site, etc. On-site conditions, the complexity of the approved mitigation plan, and unforeseen circumstances will ultimately determine whether the monitoring period should be extended beyond the specified monitoring time frame for a particular project. Complex and/or ecologically significant compensatory mitigation projects should have higher priority for site visits.

As discussed above, the remaining monitoring requirements may be waived upon a determination that the compensatory mitigation project has achieved its performance standards. The original monitoring period may be extended upon a determination that

performance standards have not been met or the compensatory mitigation project is not on track to meet them (e.g., high mortality rate of vegetation). Monitoring requirements may also be revised in cases where adaptive management or remediation is required.

**iii. Monitoring Reports.** Monitoring requirements, including the frequency for providing monitoring reports to the District Commander and the Interagency Review Team (IRT), will be determined on a case-by-case basis and specified in either the DA permit, mitigation banking instrument, or approved mitigation plan. The content of the monitoring reports will be specified in the special conditions of the DA permit so that the requirements are clearly identified for the permittee or third-party mitigation sponsor. In addition, the monitoring reports should comply with the timeframes specified in the special conditions of the DA permit. Monitoring reports will not be used as a substitute for on site compliance inspections. The monitoring report will provide the PM with sufficient information on the compensatory mitigation project to assess whether it is meeting performance standards, and to determine whether a compliance visit is warranted. The party responsible for monitoring can electronically submit the monitoring reports and photos for review.

Visits to mitigation sites will be documented in the administrative record and will count toward District performance goals. An enforcement action may be taken if the responsible party fails to submit complete and timely monitoring reports.

**b. Contents of Monitoring Reports.** Monitoring reports provide the PM with a convenient mechanism for assessing the status of required compensatory mitigation projects. The PM should schedule a site visit and determine potential remedial actions if problems with the compensatory mitigation project are identified in a monitoring report.

The submittal of large bulky reports that provide mostly general information should be discouraged. While often helpful as background, reiteration of the mitigation and monitoring plan content, lengthy discussions of site progress, and extensive paraphrasing of quantified data are unnecessary. Monitoring reports should be concise and effectively provide the information necessary to assess the status of the compensatory mitigation project. Reports should provide information necessary to describe the site conditions and whether the compensatory mitigation project is meeting its performance standards.

Monitoring reports will include a Monitoring Report Narrative that provides an overview of site conditions and functions. This Monitoring Report Narrative should be concise and generally less than 10 pages, but may be longer for compensatory mitigation projects with complex monitoring requirements. Monitoring Report Narratives may be posted on each District's Regulatory web site.

Monitoring reports will also include appropriate supporting data to assist District Commanders and other reviewers in determining how the compensatory mitigation project is progressing towards meeting its performance standards. Such supporting data may include plans (such as as-built plans), maps, and photographs to illustrate site



conditions, as well as the results of functional, condition, or other assessments used to provide quantitative or qualitative measures of the functions provided by the compensatory mitigation project site.

**c. Monitoring Report Narrative:**

**i. Project Overview (1 page)**

- (1) Corps Permit Number or Name of the Mitigation Bank or In-Lieu Fee Project
- (2) Name of party responsible for conducting the monitoring and the date(s) the inspection was conducted.
- (3) A brief paragraph describing the purpose of the approved project, acreage and type of aquatic resources impacted, and mitigation acreage and type of aquatic resources authorized to compensate for the aquatic impacts.
- (4) Written description of the location, any identifiable landmarks of the compensatory mitigation project including information to locate the site perimeter(s), and coordinates of the mitigation site (expressed as latitude, longitudes, UTM's, state plane coordinate system, etc.).
- (5) Dates the compensatory mitigation project commenced and/or was completed.
- (6) Short statement on whether the performance standards are being met.
- (7) Dates of any recent corrective or maintenance activities conducted since the previous report submission.
- (8) Specific recommendations for any additional corrective or remedial actions.

**ii. Requirements (1 page)**

List the monitoring requirements and performance standards, as specified in the approved mitigation plan, mitigation banking instrument, or special conditions of the DA permit, and evaluate whether the compensatory mitigation project site is successfully achieving the approved performance standards or trending towards success. A table is a recommended option for comparing the performance standards to the conditions and status of the developing mitigation site.

**iii. Summary Data (maximum of 4 pages)**

Summary data should be provided to substantiate the success and/or potential challenges associated with the compensatory mitigation project. Photo documentation may be provided to support the findings and recommendations referenced in the monitoring report and to assist the PM in assessing whether the compensatory mitigation project is meeting applicable performance standards for that monitoring period. Submitted photos should be formatted to print on a standard 8 ½" x 11" piece of paper, dated, and clearly labeled with the direction from which the photo was taken. The photo location points should also be identified on the appropriate maps.

**iv. Maps and Plans (maximum of 3 pages)**

Maps should be provided to show the location of the compensatory mitigation site relative to other landscape features, habitat types, locations of photographic reference points, transects, sampling data points, and/or other features pertinent to the mitigation plan. In addition, the submitted maps and plans should clearly delineate the mitigation site perimeter(s), which will assist PMs in locating the mitigation area(s) during subsequent site inspections. Each map or diagram should be formatted to print on a standard 8 ½" x 11" piece of paper and include a legend and the location of any photos submitted for review. As-built plans may be included.

**v. Conclusions (1 page)**

A general statement should be included that describes the conditions of the compensatory mitigation project. If performance standards are not being met, a brief explanation of the difficulties and potential remedial actions proposed by the permittee or sponsor, including a timetable, should be provided. The District Commander will ultimately determine if the mitigation site is successful for a given monitoring period.

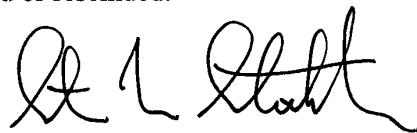
**d. Completion of Compensatory Mitigation Requirements.** For permittee-responsible mitigation projects, compensatory mitigation requirements will not be considered fulfilled until the permittee has received written concurrence from the District Commander that the compensatory mitigation project has met its objectives and no additional monitoring reports are required. PMs will review the final monitoring reports to make this determination. A final field visit should be conducted to verify that on-site conditions are consistent with information documented in the monitoring reports.

**e. Special Condition.** The following condition should be added to all DA permits that require permittee-responsible mitigation. This condition does not apply to mitigation banks or in-lieu-fee programs:

*Your responsibility to complete the required compensatory mitigation as set forth in Special Condition X will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers.*

**5. Duration**

This guidance remains in effect unless revised or rescinded.



STEVEN L. STOCKTON, P.E.  
Director of Civil Works

EXHIBIT D  
Carli Creek IGA

**Development Agency Considerations**

Easement Type	Width	Length	Area	Market Value (PSF)	% of Market	Multiplier (2 years)	Value	Note:
Temporary Construction Easement (Upland)	35	1230	43060.5	\$7.00	8.50%	2	\$51,242.00	Actual TCE 50 ft, width is delta between TCE and Permanent
Permanent Pipe/Access (Upland)	15	1230	18454.5	\$7.00	100.00%	Permanent	\$129,181.50	Area along northern property line.
Temporary Construction Staging	366.45	300	109935	\$7.00	8.50%	2	\$130,822.65	
Permanent Pipe/Access (Lowland)			23730	\$0.23	100.00%	Permanent	\$5,457.90	Market Value: Per Carli Appraisal
Land Value (Mitigation Site)			61289	\$0.23	100.00%	Permanent	\$14,096.47	Market Value: Per Carli Appraisal
<b>Total Consideration</b>							<b>\$330,800.52</b>	

**CCSD No. 1 Considerations**

Item	Cost
Engineering/Design (Herrera Contract)	\$ 65,400.00
Mitigation Construction	
Planting	\$ 24,000.00
Low Perm Soils (% of total based on wet)	\$ 18,837.00
Habitat Structures (1-Type1; 4-Type2; 7-Type3)	\$ 16,700.00
Option to Purchase with \$100,000 Purchase Credit	\$ 100,000.00
Temporary Easement Improvement	\$ 30,000.00
5 Year Mitigation Permit Management (\$15,000)	\$ 75,000.00
<b>Total</b>	<b>\$ 329,937.00</b>



Gregory L. Geist  
Director

July 27, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Amendment No. 2 to the Intergovernmental Agreement  
between Clackamas County Service District No. 1 and Water Environment Services  
and Clackamas County  
for Facilities Management and Maintenance

<b>Purpose/Outcomes</b>	This Amendment is to renew the term of contracted services from the County Facilities Department for maintenance and repair of selected facilities in Clackamas County Service District No. 1 (“CCSD #1”) with a new scope and budget and to add Water Environment Services as a party to the Agreement.
<b>Dollar Amount and Fiscal Impact</b>	210,000 for Fiscal Year 2017-18.
<b>Funding Source</b>	A proportional split between CCSD#1 and WES Funds. No General Funds are impacted.
<b>Duration</b>	July 1, 2017 – June 30, 2018
<b>Previous Board Action/Review</b>	Approved the original Intergovernmental Agreement—051514 VIII. 1. Amendment 1 approved—060916 IV. 1 & 2
<b>Strategic Plan Alignment</b>	1. WES customers will benefit from a well-managed utility, and WES priorities and policy recommendations will reflect optimum economies of scale. 2. Build trust through good government
<b>Contact Person</b>	Greg Eyerly, WES Operations Manager, 503-557-2802

**BACKGROUND:**

In 2014, Clackamas County Service District No. 1 (“CCSD#1”), the Tri-City Service District (“TCSD”) (collectively “Districts”) and Clackamas County (“County”) entered into an Intergovernmental Agreement for Facilities Management and Maintenance (“Agreement”) for an annual total of \$270,000 that covered all the facilities excluding pump stations within the two Districts. The Agreement was amended and extended in June of 2016 and scope negotiated for an annual contract amount of \$200,000.

Moving forward for fiscal year FY 2017-18, the Districts wish to renew the Agreement, including an updated scope that adds the Training Center modular trailer at the Tri-City Water Resource Recovery Facility and the chemical building locker room and facility lunchroom at the Kellogg Creek Water Resource Recovery Facility for the receipt of services. These additions increase the annual agreement by \$10,000 for a total contract amount of \$210,000.

Additionally, the amendment clarifies that Water Environment Services has assumed the duties of TCSD under the Agreement.

**RECOMMENDATION:**

CCSD #1 staff recommends the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No. 1, approve the Amendment . No. 2 to the Intergovernmental Agreement between Clackamas County Service District No. 1 and Water Environment Services and Clackamas County for Facilities Management and Maintenance for an annual amount not to exceed \$210,000.00, to be split proportionately between CCSD #1 and WES.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. Geist', is written over the typed name below.

Greg Geist, Director  
Water Environment Services

**AMENDMENT No. 2  
TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN  
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 and  
WATER ENVIRONMENT SERVICES  
AND CLACKAMAS COUNTY FOR  
FACILITIES MANAGEMENT AND MAINTENANCE**

This AMENDMENT NO. 2 to the INTERGOVERNMENTAL AGREEMENT (this "Amendment No. 2") is made and entered into on the \_\_\_\_ of \_\_\_\_\_, 2017, by and between CLACKAMAS COUNTY SERVICE DISTRICT NO.1, a county service district formed under ORS Chapter 451, and WATER ENVIRONMENT SERVICES, an intergovernmental partnership formed under ORS Chapter 190 (collectively, the "Districts"), and CLACKAMAS COUNTY, a political subdivision of the State of Oregon ("County"), for providing facilities management and maintenance services, hereinafter referred to as the "Services."

WHEREAS, the parties entered into that certain Intergovernmental dated May 15, 2014 for providing facilities management and maintenance services (the "Agreement"); and

WHEREAS, Water Environment Services ("WES") assumed ownership over the contracts and assets of Tri-City Service District as of July 1, 2017;

WHEREAS, the parties have continued to perform under the conditions of the Agreement after the expiration of the Agreement's term on June 30, 2017; and

WHEREAS, the parties desire to ratify the work completed since the expiration of the original Agreement term and continue the arrangement with a modified scope of Services by extending the term of the Agreement, modifying Exhibit A and increasing the maximum compensation contained therein;

NOW, THEREFORE, for good and sufficient consideration, the parties hereby agree that:

1. To reflect an extension of the term, the Agreement's Paragraph 2.1 is hereby replaced in its entirety with:

**2.1 Term.** Unless earlier terminated, this Agreement shall commence July 1, 2017 and remain in full force and effect until June 30, 2018.

2. To reflect a change in the Scope, the Agreement's Exhibit A is hereby replaced in its entirety with the following, which shall be effective as of July 1, 2017:

See Exhibit A attached hereto and incorporated therein.

3. To reflect an increase in the total annual compensation by \$10,000, the Agreement's Article 3.1 is hereby replaced in its entirety with:

**3.1 Compensation.** The Districts agree to pay the County an amount not to exceed TWO HUNDRED TEN THOUSAND and 00/100 Dollars (\$210,000.00) annually in accordance with the Scope of Services. Notwithstanding anything else to the contrary herein, no changes in the Maximum Amount shall be made without prior written approval of the Districts. The costs shall be apportioned to the Districts based on the scope and frequency of services provided by the County. The exact level of compensation for services performed during fiscal year 2017-2018 shall be determined after the parties evaluate the detailed accounting provided in section 3.2.2 of this Agreement.

4. Districts and the County ratify the remainder of the Agreement and affirm that no other changes are made hereby.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 2 to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

**CLACKAMAS COUNTY SERVICE DISTRICT NO. 1:**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

**WATER ENVIRONMENT SERVICES:**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

**CLACKAMAS COUNTY:**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Recording Secretary



## **EXHIBIT A – SCOPE OF SERVICES**

As of June 30, 2017, the scope of services shall be limited to maintenance and the facilities management of the three facilities identified below. The scope of services does not include the costs associated with any capital improvements to any facility.

### **TRI-CITY SERVICE DISTRICT**

#### **TRI-CITY WASTEWATER TREATMENT PLANT - ADMINISTRATION AND WATER QUALITY LABORATORY BUILDINGS, TRAINING CENTER MODULAR TRAILER**

- Facilities overhead
- Select security system product updates
- Janitorial paper products
- General building maintenance supplies
- Building repairs & maintenance
- Plumbing repairs & maintenance
- HVAC repair & maintenance
- Painting – interior only
- Security system repairs & maintenance
- Janitorial
- Grounds maintenance
- Landscape
- Vandalism/graffiti removal & repair

### **CLACKAMAS COUNTY SERVICE DISTRICT NO. 1**

#### **KELLOGG CREEK WATER RESOURCE RECOVERY FACILITY - ADMINISTRATION BUILDING, CHEMICAL BUILDING LOCKER ROOM AND LUNCHROOM**

- Facilities overhead
- Janitorial paper products
- General building maintenance supplies
- Building repairs & maintenance
- Plumbing repairs & maintenance
- HVAC repair & maintenance
- Painting – interior only
- Janitorial
- Grounds maintenance
- Landscape
- Vandalism/graffiti removal & repair

#### **HOODLAND**

- Work as requested. Additional project costs not included in the allocated budget.

#### **BORING**

- Work as requested. Additional project costs not included in the allocated budget.

#### **82<sup>ND</sup> DRIVE BRIDGE (GLADSTONE & OREGON CITY BRIDGE)**

- Work as requested. Additional project costs not included in the allocated budget.



Gregory L. Geist  
Director

July 27, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Amendment No. 2 to the Intergovernmental Agreement  
between Clackamas County Service District No. 1 and Water Environment Services  
and Clackamas County  
for Facilities Management and Maintenance

<b>Purpose/Outcomes</b>	This Amendment is to renew the term of contracted services from the County Facilities Department for maintenance and repair of selected facilities in Water Environment Services (“WES”) with a new scope and budget and to add Water Environment Services as a party to the Agreement.
<b>Dollar Amount and Fiscal Impact</b>	210,000 for Fiscal Year 2017-18.
<b>Funding Source</b>	A proportional split between CCSD#1 and WES Funds. No General Funds are impacted.
<b>Duration</b>	July 1, 2017 – June 30, 2018
<b>Previous Board Action/Review</b>	Approved the original Intergovernmental Agreement—051514 VIII. 1. Amendment 1 approved—060916 IV. 1 & 2
<b>Strategic Plan Alignment</b>	1. WES customers will benefit from a well-managed utility, and WES priorities and policy recommendations will reflect optimum economies of scale. 2. Build trust through good government
<b>Contact Person</b>	Greg Eyerly, WES Operations Manager, 503-557-2802

**BACKGROUND:**

In 2014, Clackamas County Service District No. 1 (“CCSD#1”), the Tri-City Service District (“TCSD”) (collectively “Districts”) and Clackamas County (“County”) entered into an Intergovernmental Agreement for Facilities Management and Maintenance (“Agreement”) for an annual total of \$270,000 that covered all the facilities excluding pump stations within the two Districts. The Agreement was amended and extended in June of 2016 and scope negotiated for an annual contract amount of \$200,000.

Moving forward for fiscal year FY 2017-18, the Districts wish to renew the Agreement, including an updated scope that adds the Training Center modular trailer at the Tri-City Water Resource Recovery Facility and the chemical building locker room and facility lunchroom at the Kellogg Creek Water Resource Recovery Facility for the receipt of services. These additions increase the annual agreement by \$10,000 for a total contract amount of \$210,000.

Additionally, the amendment clarifies that Water Environment Services has assumed the duties of TCSD under the Agreement.

**RECOMMENDATION:**

WES staff recommends the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve the Amendment No. 2 to the Intergovernmental Agreement between Clackamas County Service District No. 1 and Water Environment Services and Clackamas County for Facilities Management and Maintenance for an annual amount not to exceed \$210,000.00, to be split proportionately between CCSD #1 and WES.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'M L M', is written over the text 'Respectfully submitted,'.

Greg Geist, Director  
Water Environment Services

**AMENDMENT No. 2  
TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN  
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 and  
WATER ENVIRONMENT SERVICES  
AND CLACKAMAS COUNTY FOR  
FACILITIES MANAGEMENT AND MAINTENANCE**

This AMENDMENT NO. 2 to the INTERGOVERNMENTAL AGREEMENT (this "Amendment No. 2") is made and entered into on the \_\_\_\_ of \_\_\_\_\_, 2017, by and between CLACKAMAS COUNTY SERVICE DISTRICT NO.1, a county service district formed under ORS Chapter 451, and WATER ENVIRONMENT SERVICES, an intergovernmental partnership formed under ORS Chapter 190 (collectively, the "Districts"), and CLACKAMAS COUNTY, a political subdivision of the State of Oregon ("County"), for providing facilities management and maintenance services, hereinafter referred to as the "Services."

WHEREAS, the parties entered into that certain Intergovernmental dated May 15, 2014 for providing facilities management and maintenance services (the "Agreement"); and

WHEREAS, Water Environment Services ("WES") assumed ownership over the contracts and assets of Tri-City Service District as of July 1, 2017;

WHEREAS, the parties have continued to perform under the conditions of the Agreement after the expiration of the Agreement's term on June 30, 2017; and

WHEREAS, the parties desire to ratify the work completed since the expiration of the original Agreement term and continue the arrangement with a modified scope of Services by extending the term of the Agreement, modifying Exhibit A and increasing the maximum compensation contained therein;

NOW, THEREFORE, for good and sufficient consideration, the parties hereby agree that:

1. To reflect an extension of the term, the Agreement's Paragraph 2.1 is hereby replaced in its entirety with:

**2.1 Term.** Unless earlier terminated, this Agreement shall commence July 1, 2017 and remain in full force and effect until June 30, 2018.

2. To reflect a change in the Scope, the Agreement's Exhibit A is hereby replaced in its entirety with the following, which shall be effective as of July 1, 2017:

See Exhibit A attached hereto and incorporated therein.

3. To reflect an increase in the total annual compensation by \$10,000, the Agreement's Article 3.1 is hereby replaced in its entirety with:

**3.1 Compensation.** The Districts agree to pay the County an amount not to exceed TWO HUNDRED TEN THOUSAND and 00/100 Dollars (\$210,000.00) annually in accordance with the Scope of Services. Notwithstanding anything else to the contrary herein, no changes in the Maximum Amount shall be made without prior written approval of the Districts. The costs shall be apportioned to the Districts based on the scope and frequency of services provided by the County. The exact level of compensation for services performed during fiscal year 2017-2018 shall be determined after the parties evaluate the detailed accounting provided in section 3.2.2 of this Agreement.

4. Districts and the County ratify the remainder of the Agreement and affirm that no other changes are made hereby.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 2 to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

**CLACKAMAS COUNTY SERVICE DISTRICT NO. 1:**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

**WATER ENVIRONMENT SERVICES:**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

**CLACKAMAS COUNTY:**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Recording Secretary

## **EXHIBIT A – SCOPE OF SERVICES**

As of June 30, 2017, the scope of services shall be limited to maintenance and the facilities management of the three facilities identified below. The scope of services does not include the costs associated with any capital improvements to any facility.

### **TRI-CITY SERVICE DISTRICT**

#### **TRI-CITY WASTEWATER TREATMENT PLANT - ADMINISTRATION AND WATER QUALITY LABORATORY BUILDINGS, TRAINING CENTER MODULAR TRAILER**

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- Grounds maintenance
- Landscape
- Vandalism/graffiti removal & repair

### **CLACKAMAS COUNTY SERVICE DISTRICT NO. 1**

#### **KELLOGG CREEK WATER RESOURCE RECOVERY FACILITY - ADMINISTRATION BUILDING, CHEMICAL BUILDING LOCKER ROOM AND LUNCHROOM**

- Facilities overhead
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- Janitorial
- Grounds maintenance
- Landscape
- Vandalism/graffiti removal & repair

#### **HOODLAND**

- Work as requested. Additional project costs not included in the allocated budget.

#### **BORING**

- Work as requested. Additional project costs not included in the allocated budget.

#### **82<sup>ND</sup> DRIVE BRIDGE (GLADSTONE & OREGON CITY BRIDGE)**

- Work as requested. Additional project costs not included in the allocated budget.



Gregory L. Geist  
Director

July 27, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between  
Clackamas County Service District No. 1 and Oak Lodge Water Services District  
for Sanitary Sewer and Surface Water Management Services

<b>Purpose/Outcomes</b>	Clearly determine the services provided by both districts with similar services that overlap in one area.
<b>Dollar Amount and Fiscal Impact</b>	Clackamas County Service District No. 1 Operating Budget. No general funds impacted.
<b>Funding Source</b>	CCSD1 Operating Budget
<b>Duration</b>	Indefinite
<b>Previous Board Action/Review</b>	None
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"><li>1. This supports the WES Strategic Plan that customers will continue to benefit from a well-managed utility.</li><li>2. This project supports the County Strategic Plan to build public trust through good government.</li></ol>
<b>Contact Person</b>	Ron Wierenga, WES Surface Water Manager, 503-742-4581 <i>RW</i>

**BACKGROUND:**

Within the unincorporated portion of Clackamas County known as Oak Lodge, drinking water, sanitary sewer, and surface water management services are provided by the Oak Lodge Water Services District (OLWSD). The OLWSD recently consolidated the separate Oak Lodge Sanitary District (OLSD) and Oak Lodge Water District (OLWD) into one entity. The two districts did not have the same boundaries, therefore the new boundary of the OLWSD overlaps with another service district. OLWSD only provides sanitary and stormwater services, however, to the portion of the district previously served by OLSD.

The boundary of the newly formed OLWSD partially overlaps with the boundary of Clackamas County Service District No. 1 (CCSD1). District staff agree that CCSD1 should continue to provide sanitary and surface water services in this overlapping area. Therefore, the purpose of this agreement is to outline that the service provider for sanitary sewer and surface water management in this overlapping area of the OLWSD is CCSD1.

This agreement has been reviewed and approved by County Counsel.



**RECOMMENDATION:**

District staff recommends the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No. 1, approve the Intergovernmental Agreement between Clackamas County Service District No. 1 and Oak Lodge Water Services District for Sanitary Sewer and Surface Water Management Services.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. Geist", is written over the typed name.

Greg Geist, Director  
Water Environment Services

**INTERGOVERNMENTAL AGREEMENT**  
**RELATING TO PROVISION OF SANITARY SEWER AND**  
**SURFACE WATER MANAGEMENT SERVICES**

This Intergovernmental Agreement (“Agreement”) is hereby entered into by and between Clackamas County Service District No. 1 (CCSD), a County Service District formed under ORS Chapter 451, and Oak Lodge Water Services District (OLWSD), successor in interest to Oak Lodge Sanitary District (OLSD), a sanitary district formed under ORS Chapter 450 [collectively, “the Parties”].

**RECITALS**

A. The Parties have the authority to enter this Agreement pursuant to their respective Principal Acts, ORS 195.060 to 195.085 and ORS 190.003 through 190.030;

B. The Parties desire to enter into an agreement with regard to the provision of sanitary sewer service and surface water management services (“services”) in their respective service territories as of the date of this Agreement as part of formation of Oak Lodge Water Services District, a consolidated entity of OLSD and the Oak Lodge Water District, and Water Environment Services, a consolidated entity of CCSD and the Tri-City Service District. The Parties agree that setting forth the intention of the Parties with regard to the provision of service is in the best interest of the citizens and customers served by the respective entities;

C. The Parties have a common interest in coordinating the planning, permitting, construction, operation and maintenance of necessary infrastructure within their respective service territories. The Parties further recognize the need to establish coordinated service to prevent overlapping jurisdictional boundaries and to assign service areas where the boundary of Oak Lodge Water Services District may span across the Parties.

D. CCSD and the Tri-City Service District (TCSD) entered into a 190 partnership agreement to form Water Environment Services (WES), with the intent of those parties for WES to ultimately become the regional sanitary sewer and surface water service provider in those areas;

E. CCSD and OLWSD have sufficient resources and facilities, either currently in place or that may be constructed, to provide urban level of service within their current boundaries, consistent with the County’s Comprehensive Plan and land use regulations;

F. The Parties desire to enter into this Agreement to establish an urban services agreement under ORS 195.060 to 195.085 for the provision of services between them and as an obligation assumed by Oak Lodge Water Services District as provided by ORS 198.890 and assumed by WES as provided for by ORS 190.080;

G. The Parties have considered the factors of ORS 195.070 and are satisfied that those requirements are met by this Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. **SERVICES PROVIDED.** Except as otherwise noted, during the term of this Agreement, the Parties intend and agree that CCSD and OLWSD shall be the exclusive providers of sanitary sewer and surface water management services within the boundaries as set forth on Exhibit A, attached hereto and incorporated by reference. The Parties further intend that all services will be provided to properties within their boundaries subject to the respective Rules and Regulations for Service adopted by either CCSD or OLWSD; moreover, such rules may be amended from time to time by the respective governing Boards. Furthermore, the Parties agree that each party shall be wholly responsible for the construction, operation, repair and maintenance of all related infrastructure and facilities within their ownership or control, including any labor and materials, which are required to provide service under this Agreement.

2. **OAK LODGE WATER SERVICES DISTRICT.** The consolidation to create Oak Lodge Water Services District includes the combined boundaries of Oak Lodge Water District and OLSD. A portion of the Oak Lodge Water District is providing services as defined in this Agreement by CCSD. In as much as the Oak Lodge Water Services boundary crosses into portions of CCSD's or OLSD's service area set forth on Exhibit A, all sanitary sewer and surface water services located within the boundaries of CCSD shall be provided by CCSD, unless otherwise agreed to in writing. However, in no instance will the creation of Oak Lodge Water Services District force withdrawal of existing service to any property by CCSD unless mutually agreed in writing by all Parties. Moreover, in no instance, shall one of the providers under this Agreement serve any customers within the boundaries of the other provider, unless agreed to in writing. Notwithstanding anything to the contrary, nothing in this Agreement shall impair or alter any existing agreements the parties may have related to provision of services.

3. **WATER ENVIRONMENT SERVICES.** On November 3, 2016, CCSD and TCSD entered into a 190 partnership agreement to form WES, who will ultimately become the regional provider of sanitary sewer and surface water services within the boundaries of CCSD and TCSD collectively, including managing the assets and operations of all facilities for the service districts. The transition of these assets and responsibilities will occur gradually over an 18 month period, with a full implementation date of July 1, 2018.

4. **FINANCIAL IMPACT.** The execution of this Agreement shall not require any financial remuneration among the Parties, and CCSD and OLWSD may assess and collect all legally permissible fees and charges for services provided to any existing or future property within their boundaries.

5. **COORDINATION.** The Parties hereby establish a cooperative, coordinated approach to infrastructure planning, land use permitting, building permitting, development review, and capital planning, especially as those activities relate to existing and future service or associated utility development. CCSD and OLWSD are responsible for the ongoing operation, development and amendment of any needed facilities to ensure continued service within their boundaries. CCSD and OLWSD will consult with each other and provide opportunity for review and comment on any plans or amendments to such facilities that would affect services provided.

The Parties further agree to share data and information relevant to such planning, including but not limited to economic growth; demographics, housing and building details, land use and zoning; planned annexations, building activity and planned transportation improvements; major capital improvements,

opportunities for joint development of sites; and other information that may be relevant to conduct or complete the necessary planning by all Parties.

6. **APPROVAL; AMENDMENT.** This Agreement, and any amendments thereto, must be approved by Resolution of the governing body of each Party, and signed by an authorized representative of each Party. This Agreement shall be reviewed by the Parties within 30 days of each anniversary hereof to determine any need for modification.

7. **TERM OF AGREEMENT.** This Agreement shall continue in full force and effect indefinitely, unless terminated under mutual agreement in writing by all Parties or superseded by an Urban Services Agreement as set forth in paragraph 9 of this Agreement.

8. **DISPUTE RESOLUTION.** The Parties hereby agree that resolution of any and all disputes arising out of the terms of this Agreement or interpretation thereof shall follow a prescribed process beginning with negotiation and subsequently moving to mediation, provided the dispute remains unresolved. Within thirty (30) days following receipt of written notice regarding a dispute, the Disputing Parties shall assign a representative to participate in good faith negotiations for a period not to exceed sixty (60) days.

If after the sixty (60) day period of negotiation (or a period not to exceed ninety (90) days following the original date of receipt of notice regarding the dispute), the dispute(s) cannot be resolved, the Disputing Parties agree to submit the matter to non-binding mediation. The Disputing Parties shall attempt to agree on a mediator in a period not to exceed thirty (30) days (or a period not to exceed one hundred twenty (120) days following the original date of receipt of notice regarding the dispute) and proceed accordingly.

After exhaustion of the preceding processes, the Disputing Parties or any Disputing Party may initiate litigation in the Circuit Court of the State of Oregon for Clackamas County. Moreover, each Disputing Party shall bear its own legal and expert witness fees at all stages of the dispute resolution process, including at trial or on any appeals. In addition, nothing shall prevent the Disputing Parties from waiving any of the steps by mutual consent.

9. **ADDITIONAL PROVISIONS.**

9.1 **Other Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

9.2 **Severability.** If one or more of the provisions contained in this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall continue in full force and effect.

9.3 **Notices.** Any notice herein required or permitted to be given shall be given in writing, shall be effective when actually received, and may be given by hand delivery or by United States mail, first class postage prepaid, addressed to the parties as follows:

Attn: District Director  
Clackamas County Service District No. 1  
150 Beaver Creek Road  
Oregon City, Or 97045

General Manager  
Oak Lodge Water Services District  
14496 SE River Road  
Oak Grove, Or. 97267

These addresses may be changed by written notice to the other Parties.

**9.4 No Third-Party Beneficiaries.** The Parties to this Agreement are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons. However, Water Environment Services shall be a beneficiary

**9.5 Nonwaiver.** Failure by any Party at any time to require performance by any other Party or Parties of any of the provisions of this Agreement shall in no way affect such Party's rights hereunder to enforce the same, nor shall any waiver by any Party or Parties of the breach of this Agreement be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

**9.6 Applicable Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

**9.7 Compliance with Laws.** In connection with their activities under this Agreement, all Parties shall comply with all federal, state, and local laws, comprehensive plans and ordinances applicable to this Agreement, or any work performed pursuant to this Agreement.

**9.8 Indemnification.** To the maximum extent permitted by law and subject to the limitations of the Constitution and laws of the State of Oregon regarding units of local government, the Parties shall hold harmless, defend, and indemnify each other, its governing bodies, officers and employees, from any claims for damages to property or injury to persons or for any penalties or fines, which may be occasioned in whole or in part by the indemnitor's performance or failure to perform under this Agreement.

**9.9 Assignment.** No Party shall assign this Agreement, in whole or in part, or any right or obligation hereunder, without written approval of the other Party, which shall not be unreasonably withheld. CCSD will assign responsibilities related to this Agreement to WES throughout the transition period as the internal infrastructure is developed to support it, which shall be deemed assigned without need of written approval.

**9.10 Binding Effect.** The covenants, conditions, and terms of this agreement shall extend to and be binding upon and inure to the benefit of the successors of the parties hereto and specifically upon Oak Lodge Water Services District and Water Environment Services.

## **10. URBAN SERVICES AGREEMENT.**

Notwithstanding any other provision of this Agreement, the Parties recognize and agree that the terms of this Agreement may be superseded by a subsequent Urban Services Agreement entered into pursuant to ORS 195.060 to 195.085 if Clackamas County and/or Metro initiate the process to create such a multi-party Urban Services Agreement. In such case, the Parties shall only take positions in negotiations for such an agreement that are consistent with this Agreement.

IN WITNESS WHEREOF, the parties have, pursuant to official action, duly authorized their respective officers to execute this Agreement on their behalf.

Dated this 6<sup>th</sup> day of JUNE, 2017.



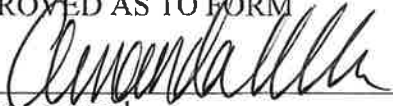
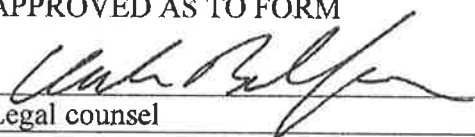
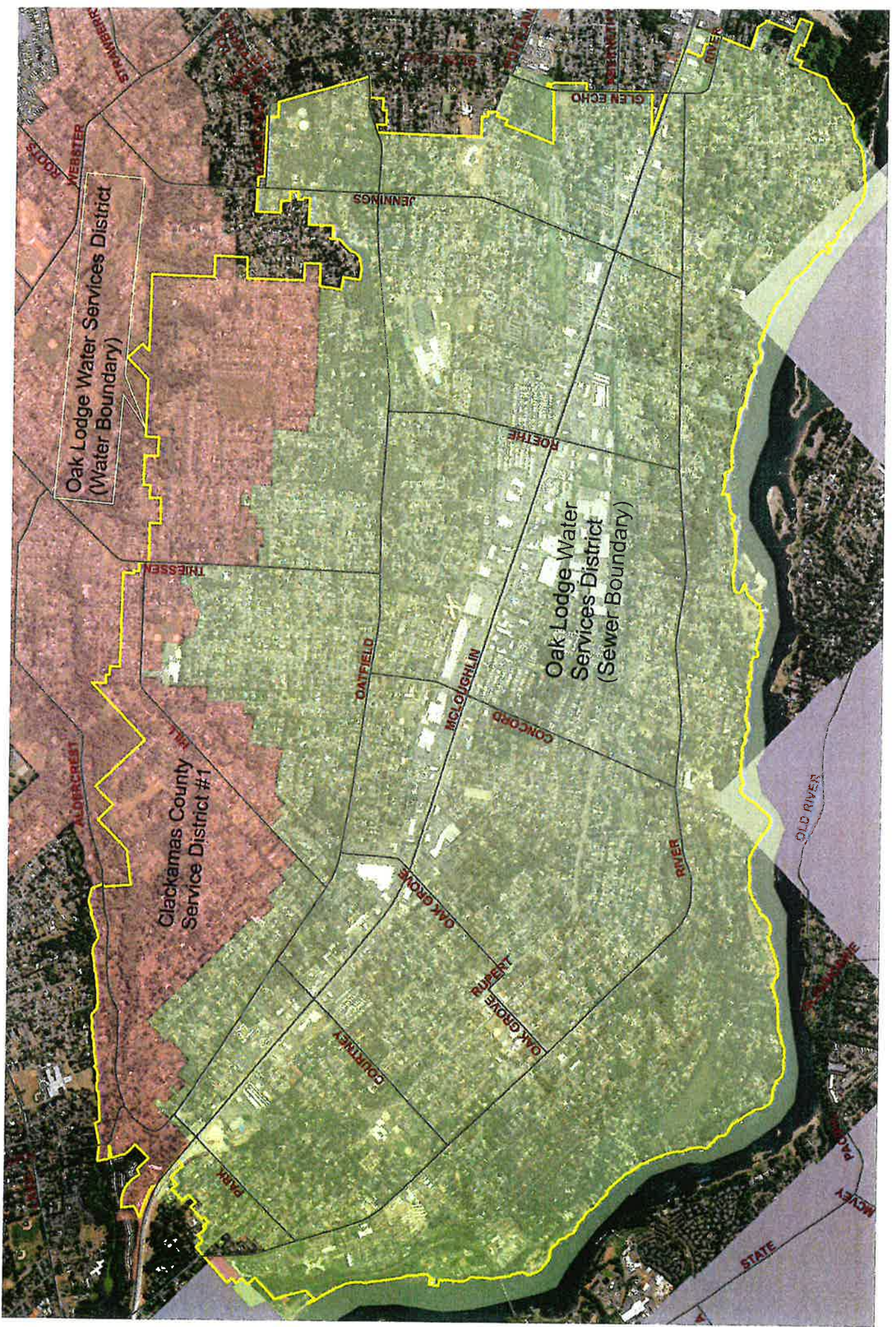
<b>Clackamas County Service District No. 1</b>	<b>Oak Lodge Water Services District As Successor to Oak Lodge Sanitary District</b>
 	
Attest: _____	Attest:  Secretary
APPROVED AS TO FORM	APPROVED AS TO FORM
	
County counsel	Legal counsel



EXHIBIT A







Gregory L. Geist  
Director

July 27, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the Clackamas County Development Agency to Provide Wetland Mitigation as a Component of the Carli Creek Enhancement and Water Quality Project in Return for Easements and Land Transfer

<b>Purpose/Outcomes</b>	Execution of an intergovernmental agreement with the Clackamas County Development Agency that secures temporary and permanent easements for construction of the Carli Creek Enhancement and Water Quality Project and grants an option to allow exclusive rights to purchase certain property owned by CCSD #1 adjacent to the Capps Road/Clackamas Industrial Area Opportunity Project.
<b>Dollar Amount and Fiscal Impact</b>	Approximately \$330,000 in value exchanged from each agency to the other.
<b>Funding Source</b>	No Fiscal Impact. The value provided by each agency to the other is equivalent.
<b>Duration</b>	Ten years from the effective date of the IGA or at the time the wetland mitigation requirements have been completed by CCSD #1, whichever is sooner. The temporary construction easements will be for a 1-year term. The other easement to be granted by the Development Agency is permanent.
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	Grow a vibrant economy. Build a strong infrastructure. Honor, utilize, promote and invest in our natural resources.
<b>Contact Person</b>	Dan Johnson, Development Agency, 503-742-4325 Ron Wierenga, Water Environment Services, 503-742-4581

**BACKGROUND:**

In January 2012, Clackamas County Service District No. 1 (“CCSD #1”) purchased a 15-acre property owned by the Carli family to construct a regional stormwater facility in support of water quality and stream health. The project also fulfills state and federal regulatory requirements to improve stormwater treatment in older areas that drain to urban creeks, like Carli Creek, which discharges into the Clackamas River. The main elements of the Carli Creek Enhancement and Water Quality Project (“Carli Creek Project”) include:

- 1) Re-routing stormwater conveyance systems along SE 120<sup>th</sup> St and SE Capps Road;
- 2) Regional water quality treatment facility;



- 3) Wetlands and upland habitat enhancement; and
- 4) Carli Creek habitat restoration for fish.

The Carli Creek Project will require the construction of a new stormwater pipeline to divert runoff currently discharged to Carli Creek to the new water quality treatment facility. The new stormwater pipeline is to be located on adjacent property to the east of the Carli Creek Project site. The adjacent property is currently owned by the Clackamas County Development Agency. The Development Agency is actively marketing the adjacent property as a part of the Capps Road/Clackamas Industrial Area Opportunity Project. In order to fill wetlands on this property to facilitate development, the Agency is required to perform wetland mitigation. This mitigation has been incorporated as part of the Carli Creek Project.

CCSD #1 and the Development Agency have identified a number of benefits in the coordination of these projects, which will result in cost savings and efficiencies for both agencies. Accordingly, the Development Agency is willing to grant certain easements and transfer certain parcels of land to CCSD #1 in exchange for CCSD #1 incorporating and managing the wetland mitigation as part of the Carli Creek Project and granting an option to the Development Agency to allow them exclusive rights to purchase certain property owned by CCSD #1 adjacent to the Capps Road/Clackamas Industrial Area Opportunity Project. The value provided by each agency to the other is equivalent, and is broken down as follows:

Agency to CCSD #1

Temporary Construction Easement: \$51,242  
Temporary Construction Staging: \$130,823  
Permanent Pipe and Access Easement (Upland): \$129,182  
Permanent Pipe and Access Easement (Lowland): \$5,458  
Mitigation Site: \$14,096

Total: \$330,801

CCSD #1 to Agency

Engineering/Design: \$65,400  
Mitigation Construction:  
    Planting: \$24,000  
    Low Perm Soils (% of total based on wetland area): \$18,837  
    Habitat Structures (1-Type1; 4-Type2; 7-Type3): \$16,700  
    5 Year Mitigation Permit Management (\$15,000/yr): \$75,000  
Temporary Easement Improvement: \$30,000  
Option to purchase (amount to be applied to future purchase price): \$100,000

Total: \$329,937

**RECOMMENDATION:**

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No. 1, approve the IGA with the Clackamas County Development Agency to Provide Wetland Mitigation as a Component of the Carli Creek Enhancement and Water Quality Project in Return for Easements and Land Transfer.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. Geist', is written over the typed name.

Greg Geist, Director  
Water Environment Services

Attachments: Intergovernmental Agreement

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 and  
CLACKAMAS COUNTY DEVELOPMENT AGENCY For  
CARLI CREEK RESTORATION AND MITIGATION**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is entered into and between Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County (hereafter called “Agency”), and Clackamas County Service District No. 1 (“District”), a county service district formed pursuant to ORS Chapter 451, collectively referred to as the “Parties” and each a “Party.”

**RECITALS**

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform;

WHEREAS, the District is planning to construct the Carli Creek Water Quality and Enhancement Project (“Project”) to meet state and federal regulations; and

WHEREAS, the District desires to construct a portion of the Project on property located at 11436 SE Capps Rd on Tax lot 22E15A 01800 (“Capps Property”) owned by Agency; and

WHEREAS, the Agency is required to perform wetland mitigation (“Mitigation”) as a part of the Capps Road/Clackamas Industrial Area Opportunity Project (“CIAO Project”) pursuant to Permit No. NWP-2012-181-1, attached hereto as Exhibit “C,” issued by the U.S. Army Corps of Engineers (“Permit”); and

WHEREAS, the Agency is interested in incorporating wetland mitigation areas as part of the Carli Creek Restoration Project in order to meet the requirements of the Mitigation; and

WHEREAS, the District is willing to include additional wetland mitigation areas as a component of the Project in return for easements and land transfer from the Agency;

WHEREAS, the value of the property interests transferred from the Agency to the District is approximately \$330,000.00, and the value of the Mitigation provided by the District to the Agency is approximately \$330,000.00, as more specifically set forth in Exhibit “D”; and

WHEREAS, the coordination of these projects will be mutually beneficial, resulting in cost savings, while promoting efficiency and effectiveness in local government administration.

NOW, THEREFORE, IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. **Term.** This Agreement shall be effective upon execution, and shall expire ten (10) years from the effective date or at the time the Mitigation requirements have been fulfilled under the Permit, whichever is sooner.
2. **Obligations of Clackamas County Development Agency**
  - A. Agency agrees to provide a temporary construction easement to the District for the duration of construction of the Project on the Capps Property, 35 feet in width and in the location shown in Exhibit A.
  - B. Agency agrees to provide a permanent pipeline, access and maintenance easement to the District on the portion of the Capps Property that contains the Project, fifteen (15) feet in width, as shown in Exhibit A, prior to completion of the Project. This easement shall include the right to operate and maintain a new stormwater pipeline.

- C. Agency agrees to provide a permanent access easement to the District related to the new stormwater pipeline located in the Capps Property, fifteen (15) feet in width and as shown in Exhibit A. The Parties acknowledge that, depending on the future development of the Capps Property, it may be necessary to relocate the access easement described herein and agree to negotiate in good faith to amend the easement to provide the District sufficient access to the new stormwater pipeline, and to mitigate the impacts such easement could have on future development.
  - D. Agency agrees to provide a Right of Entry to the District on Tax Lot 22E15A 01700 for use as a construction staging area throughout the duration of the Project.
  - E. Agency agrees to accept up to 20,000 cubic yards of clean fill material from the Project site. The location for placement of the fill material shall be as shown in Exhibit B. Costs associated with the relocation of the fill materials will be the responsibility of the District and shall include transportation, grading and compaction. Any fill material, and placement of such fill material, shall comply with the following standards:
    - i. All fills must be placed consistent with the excavation and grading provisions of the Clackamas County Code (Title 9). Site preparation must include the removal of vegetation, non-complying fill, topsoil, or other unsuitable materials prior to placement of the fill. Fill slopes shall not exceed a grade of two horizontal to one vertical.
    - ii. All cuts shall be made consistent with the excavation and grading provisions of the Clackamas County Code. No cut shall exceed a grade of two horizontal to one vertical unless approved beforehand by the project geotechnical engineer and Clackamas County.
    - iii. Appropriate benching of fills is required for fills over five feet in height on slopes in excess of five horizontal to one vertical. Bench must be done in accordance with the approved plans. Clackamas County shall inspect benches prior to fill placement.
    - iv. Cut and fill slopes shall be protected from erosion. Such control may consist of appropriate revegetation or other acceptable means and methods. Erosion control measures shall be in place prior to earthwork or site stripping as required by the local surface water management authority.
    - v. Placement and compaction of fill material shall be placed consistent with the relevant provisions of the Oregon Structural Specialty Code sections 330.42 and 330.43.
  - F. Agency, or its successor, assign, or designee, shall remain the permittee under the Permit related to the wetland mitigation requirements imposed on the Agency. The District shall be responsible for those requirements imposed under the Permit that are specifically related to the Mitigation component of the Permit. Under no circumstances shall the District be responsible or held liable for any Agency non-compliance with any condition or requirement unrelated to the Mitigation component of the aforementioned permit, including but not limited to, those conditions and requirements affecting impacts to wetlands or construction on Tax Lot 22E15A 01900.
3. **Obligation of the District.**
- A. District agrees to oversee the administration of Project and manage the construction of the Project.

- B. District agrees to meet the requirements of the Mitigation, including the design and construction of 1.3 acres of mitigation wetlands as part of the Project to be used as compensatory mitigation on behalf of the Agency for impacts to wetlands related to construction of the CIAO Project, as shown in Exhibit C.
- C. District is solely responsible for ensuring compliance with the Mitigation requirements specifically identified in this section that have been imposed on the Agency as a result of the CIAO Project. District agrees to complete the following compensatory wetland mitigation monitoring and reporting requirements for the Agency, consistent with **Special Conditions Nos. 3, 5, 6, 7 and 8 of the Permit**. Where materials identified in the preceding special conditions of the permit require Agency to submit materials directly to the U.S. Army Corps of Engineers, District shall timely submit those materials on behalf of the Agency and provide a copy to the Agency.
- D. The District acknowledges that there may be opportunities to develop approximately one acre on the upland portion of property on which the Project will be located. The District shall grant to the Agency an option to purchase the one acre upland portion of property, approximately identified by red outline in Exhibit A, for fair market value. As set forth in Exhibit D, the Parties agree that the sum of \$100,000 shall be applied to any future acquisition by the Agency of the upland portion of the property referred to herein in the event the Agency chooses to exercise its option to purchase. The District agrees to work with the Agency to facilitate development opportunities that do not jeopardize the District's ability to complete the Project.
- E. Upon termination of the right of entry, the District agrees to return the construction staging area on Tax Lot 22E15A 01700 to the Agency in a condition that would support development of Tax Lot 22E15A 01700 in a manner consistent with the rest of the Capps Property. This may require the District to improve Tax Lot 22E15A 01700 to ensure it is vacant, graded and compacted in a manner that would permit building construction as permitted in the applicable zone.

#### 4. **Work Plan and Scheduling of Work.**

- A. District will manage the Project and intends to complete construction of the Project by December 31, 2018. Agency acknowledges that said schedule is dependent on many conditions and may be subject to change. District will provide prompt notice to Agency of any anticipated delays in the schedule.
- B. With the exception of the monitoring requirements, District will ensure that the Mitigation is substantially complete no later than November 30, 2017 and that "as-built" reports are available to be submitted to the U.S. Army Corps of Engineers by December 2017, consistent with Special Condition No. 5 contained in the Permit.
- C. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- D. In the event either Party changes plans or specifications, approves change orders or extends unit prices that affect Project costs following the execution of the construction contract, the Party requesting the change may be held financially responsible for any additional direct or indirect costs associated with the change. Notwithstanding the foregoing, District shall be liable for the additional Project costs if changes in plans or specifications are made due to an act of God or other circumstances beyond the reasonable control of District.

## 5. **Early Termination of Agreement**

- i. The District and Agency, by mutual written agreement, may terminate this Agreement at any time.
  - ii. Either the District or Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
6. **Indemnification.** Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, each of the Parties agrees to hold harmless and indemnify the others, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees.
  7. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
  8. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
  9. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
  10. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
  11. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.

12. **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.
13. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
14. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
15. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
16. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
17. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the District.
18. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
19. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, 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.
20. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.

21. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

**IN WITNESS HEREOF**, the Parties have executed this Agreement by the date set forth opposite their names below.

**Clackamas County Development Agency**

**Clackamas County Service District No. 1**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Recording Secretary

Exhibit List:

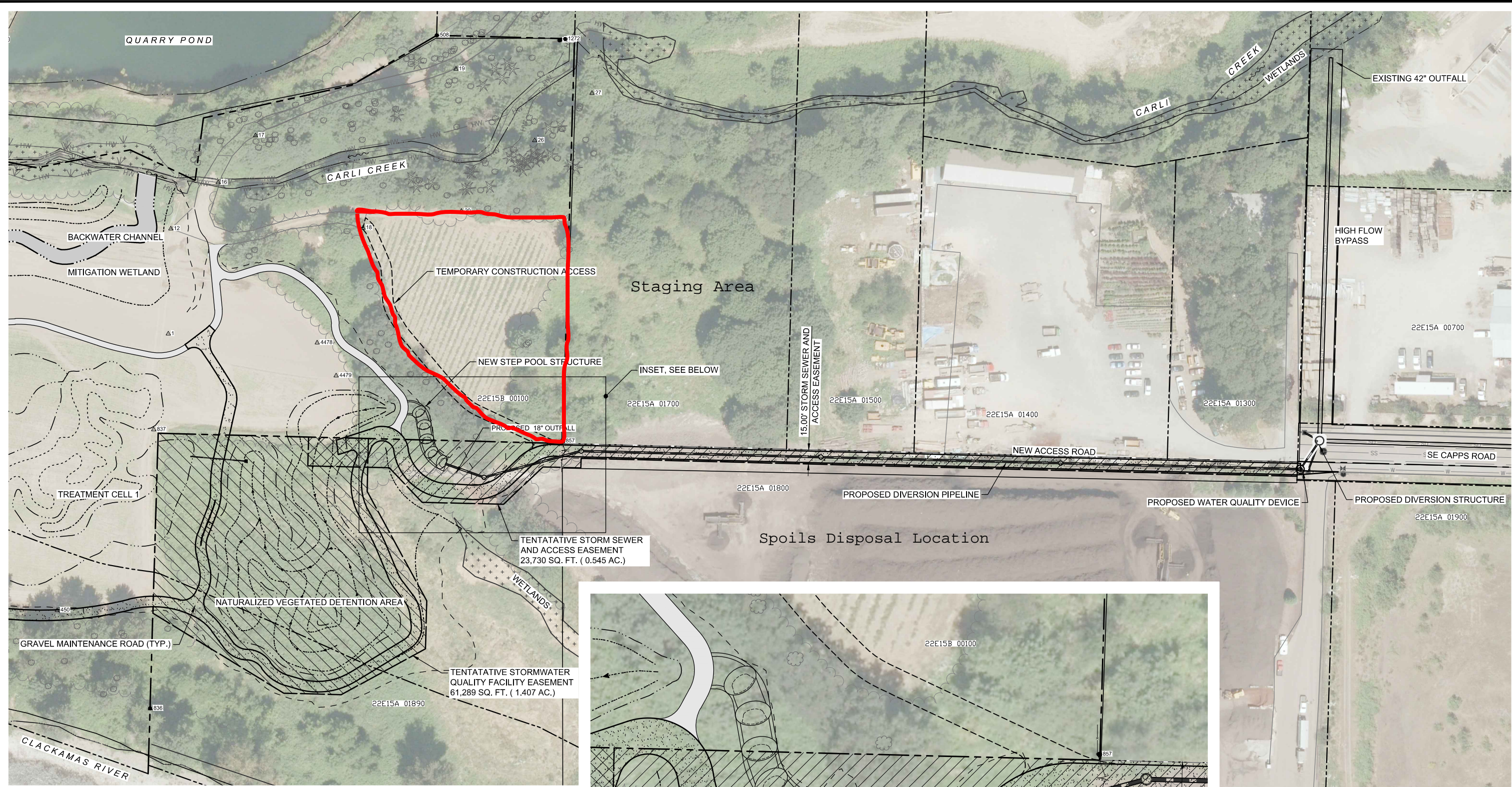
Exhibit A: Easement Map

Exhibit B: Fill Material Location Map

Exhibit C: U.S. Army Corps of Engineers Permit No. NWP-2012-181-1

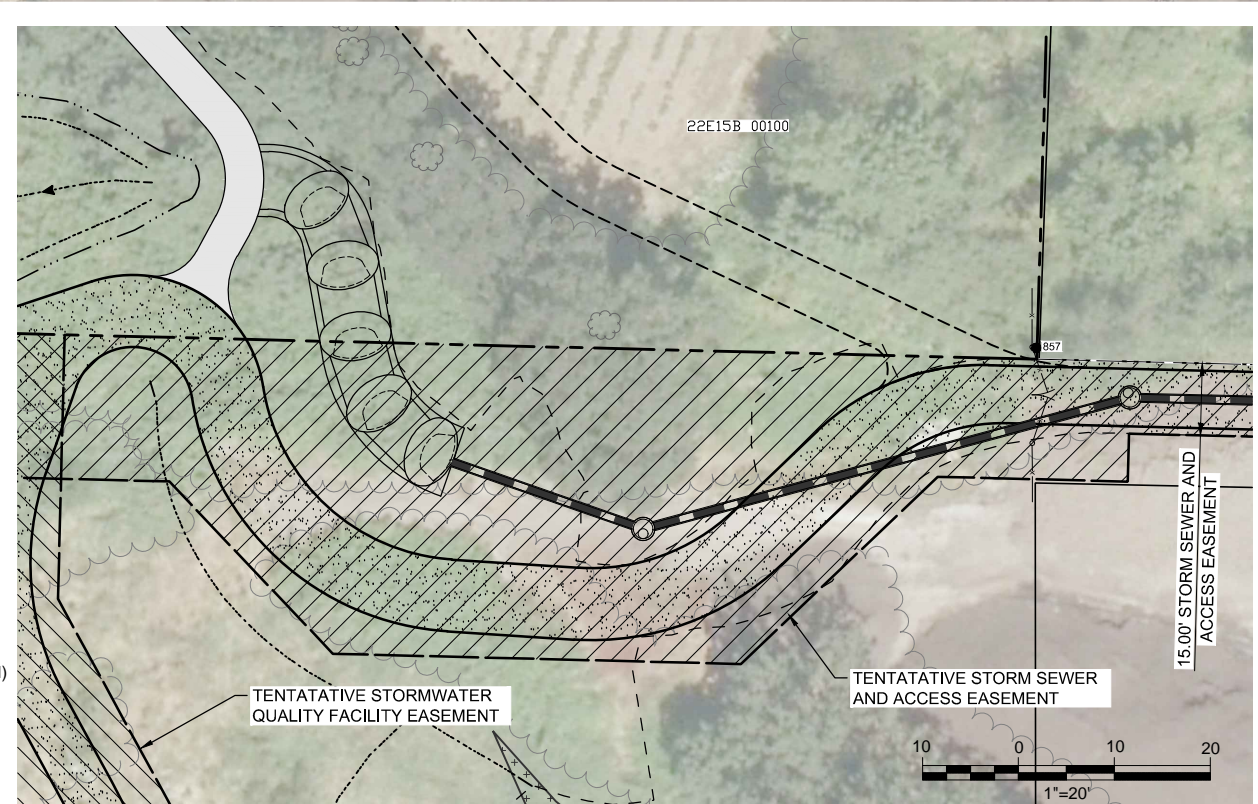
Exhibit D: Value of Assets and Services





**SHEET LEGEND**

△#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	- - - - -	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY	[Stippled Box]	GRAVEL MAINTENANCE ROAD
- - - - -	PROPERTY LINE (TAX LOT)	[Hatched Box]	ACCESS PATH
---	SECTION LINE	- - - - -	CONSTRUCTED WETLANDS
- - - - -	QUARTER SECTION LINE	---	WATERS EDGE (PLAN)
---	R/W CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
- - - - -	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	⊙	STORM MANHOLE
		[Cross-hatched Box]	JURISDICTIONAL WETLANDS



**CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN**

PERMIT SET  
FIGURE 1  
EASEMENT EXHIBIT

FIGURE: 1 OF 1

Plotted: September 23, 2015  
 C:\Portland\Proj\2014\14-09930-000\CAD\DWG\FIGURES\EASEMENT EXHIBIT.dwg



EXHIBIT B





## DEPARTMENT OF THE ARMY PERMIT

**Permittee:** Clackamas County Development Agency; Attention Mr. Dan Johnson

**Permit No:** NWP-2012-181-1

**Issuing Office:** U.S. Army Corps of Engineers

NOTE: The term "you" and its derivatives as used in this permit means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** The project will permanently place 7,851 cubic yards of fill in 1.02 acres of Wetland A. The site will be levelled for complete build-out of two industrial pads, each with a warehouse, loading area, storage, and parking. The northern pad includes a 294,000 square-foot industrial building. The southern pad includes a 246,000 square-foot building. Stormwater will be collected and treated through an existing stormwater facility constructed under previous authorization in 2015.

**Purpose:** The overall purpose of the project is to provide industrial facilities that would meet statewide industrial development goals and to provide economic stimulus to Clackamas County. This project would address the need for large industrial sites greater than 20 acres and less than 50 acres in size. This project is Phase 2 of a multi-phase development project located in the former rock quarry.

**Project Location:** The project is located on a wetland near the Clackamas River, Mile 4.5. The site is in Section 15 of Township 2 South, and Range 2 East, in the City of Happy Valley, Clackamas County, Oregon (Lat. 45.398128; Lon. -122.540758).

**Drawings:** There are 13 drawings labelled NWP-2012-181-1 (Enclosure 1).

**General Conditions:**

1. The time limit for completing the work authorized ends on October 31, 2021. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. Permittee must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition No. 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions (Enclosure 2).

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

#### **Special Conditions:**

1. Permittee shall notify the Regulatory Branch with the start date when the activities authorized in waters of the U.S. are scheduled to begin. Notification shall be sent by email to [cenwp.notify@usace.army.mil](mailto:cenwp.notify@usace.army.mil) or mailed to the following address:

U.S. Army Corps of Engineers  
CENWP-OD-GC  
Permit Compliance, Clackamas County  
P.O. Box 2946  
Portland, Oregon 97208-2946

The subject line of the message shall contain the name of the county in which the project is located followed by the Corps of Engineers permit number.

2. Permittee shall submit a signed certification regarding the completed work and any required mitigation. A "Compliance Certification" is provided (Enclosure 3).

3. Permittee shall fully implement the "Final Compensatory Wetland Mitigation Plan for Impacts to Wetlands for the Capps Road Industrial Site in Clackamas, Oregon" (Plan) dated January 28, 2016 (Enclosure 4). The mitigation site shall be constructed prior to or concurrently with the work authorized by this permit. The initial planting component of the Plan shall be completed by Fall 2017.

4. The fully executed Conservation Easement for the mitigation site shall be recorded with the Registrar of Deed or other appropriate official charged with maintaining records on real property. A copy of the fully executed Conservation Easement and proof of recording shall be submitted to the U.S. Army Corps of Engineers, Portland District, Regulatory Branch within 60 days from the date of permit issuance.

5. Permittee shall submit an "as-built" report by December 2017. The contents of the report shall include a narrative summary of the mitigation actions completed as well as pre- and post-construction photos from fixed locations. Photos shall be sufficient in number and spacing to represent the site in its entirety. Photos shall be labelled with the date and location taken. A map showing the location and orientation of the photos shall also be provided.

6. The permittee shall monitor the mitigation site for a five-year period following completion of the initial construction and plantings. Monitoring reports shall be provided by December 31 of each year of monitoring. The expected first year monitoring report is due 2018. The contents of the monitoring reports shall be consistent with Regulatory Guidance Letter 08-03 (Enclosure 5). Photos of the site from locations established in the as-built report shall also be provided.

7. The permittee shall achieve 80% percent total cover with native vegetation by Year 3 without maintenance for one year. Dead or dying plants may be replaced within the first two years of monitoring. The permittee shall achieve a minimum of 1280 stems per acre by the end of the five-year monitoring period. Target species may include both planted and recruited native individuals. The permittee shall ensure less than 15% total cover by invasive species and less than 5% of total area bare ground.

8. The permittee shall submit a wetland delineation of the mitigation site to demonstrate a minimum of 1.27 acres have been created. The delineation report shall follow the most recent version of the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains Valleys and Coast Region. The delineation shall be submitted with the final fifth-year monitoring report.

9. Permittee's responsibility to complete the required compensatory mitigation as set forth in Special Conditions "3" through "9" will not be considered fulfilled until Permittee has demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers Portland District, Regulatory Branch.

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- ( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
- ( ) Section 103 of the Marine Protection, Research Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this Authorization:

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33

CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition No. 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below as permittee indicates that you accept and agree to comply with the terms and conditions of this permit.

 \_\_\_\_\_ 10/26/2016 \_\_\_\_\_  
(PERMITTEE SIGNATURE) (DATE)

Don Johnson \_\_\_\_\_ Development Agency Manager \_\_\_\_\_  
(PRINTED NAME) (TITLE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

**FOR THE COMMANDER, JOSE L. AGUILAR, COLONEL, CORPS OF ENGINEERS,  
DISTRICT COMMANDER:**

**FOR** Jamiee W. Davis \_\_\_\_\_ 16 Nov 2016 \_\_\_\_\_  
(DISTRICT COMMANDER) (DATE)

Shawn H. Zinszer  
Chief, Regulatory Branch

When the structures or work authorized by this individual permit are still in existence at the time the property is transferred and/or a new party obtains this permit, the terms and conditions of this permit will continue to be binding on the new permittee. The new permittee should sign and date below to accept the liabilities associated with complying with the terms and conditions of this permit, and to validate its transfer.

**PERMIT TRANSFEREE:**

\_\_\_\_\_  
**Transferee Signature**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**Name (Please print)**

\_\_\_\_\_  
**Street Address**

\_\_\_\_\_  
**City, State, and Zip Code**

**NEW PROPERTY OWNER:**

\_\_\_\_\_  
**Property Owner Signature**

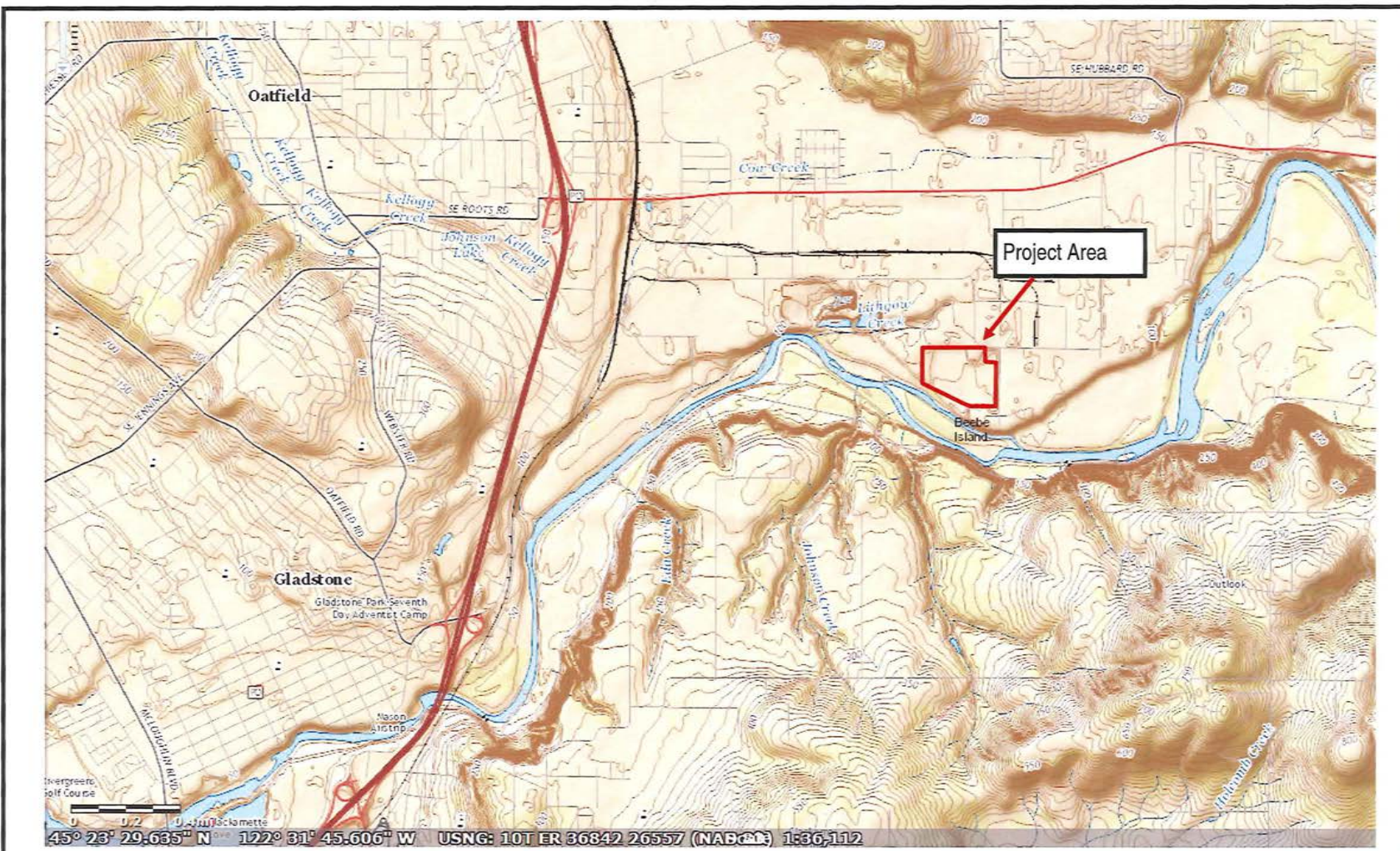
\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**Name (Please print)**

\_\_\_\_\_  
**Street Address**

\_\_\_\_\_  
**City, State, and Zip Code**





45° 23' 29.635" N 122° 31' 45.606" W USNG: 10T ER 36842 26557 (NAD83) 1:36,112

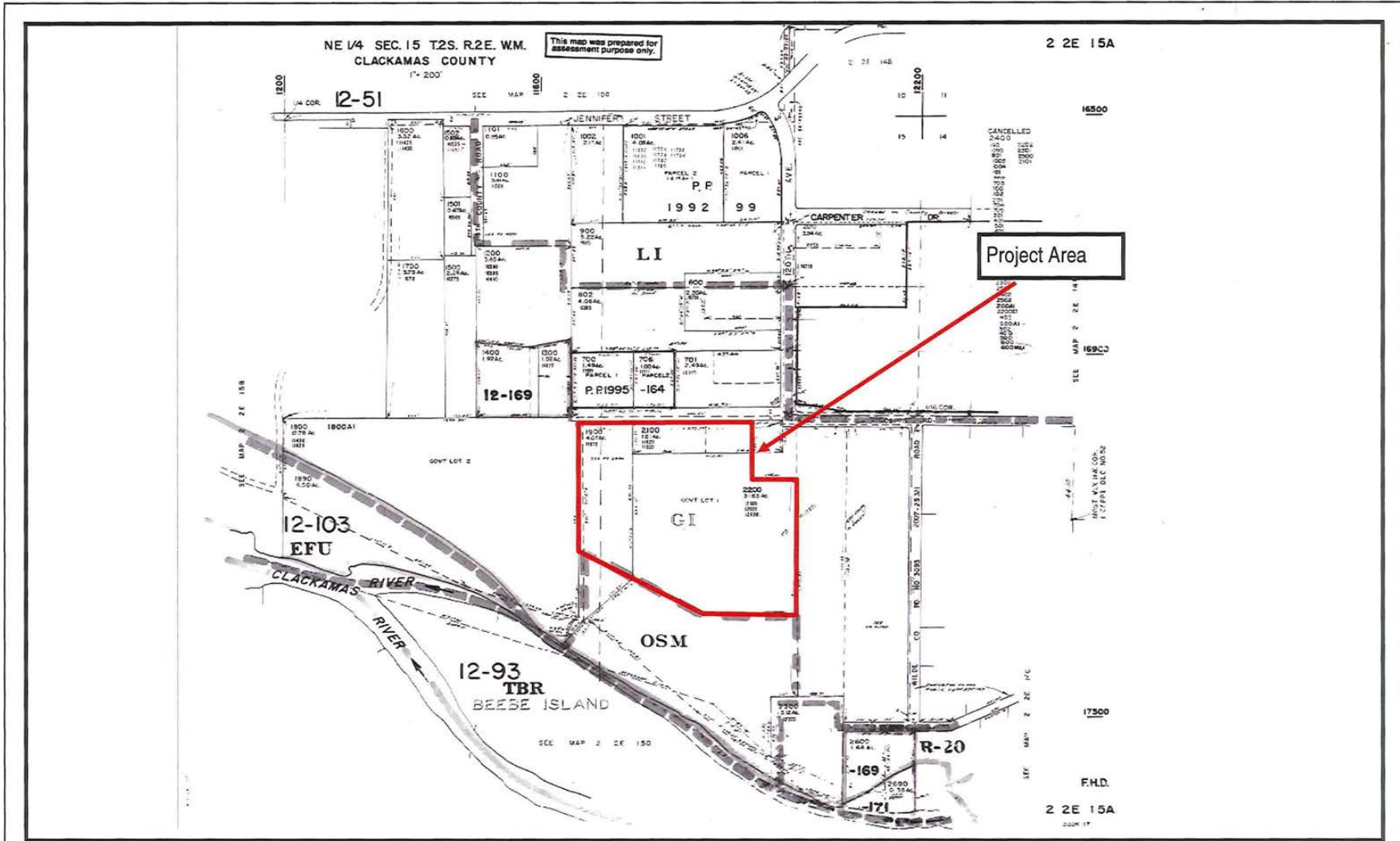
Project # 4870  
 Date 10/27/15



Pacific Habitat Services, Inc.  
 9450 SW Commerce Circle, Suite 180  
 Wilsonville, OR 97070

General Location and Topography  
 Clackamas Industrial Area Opportunity Site in Clackamas County, Oregon  
 United States Geographical Survey (USGS), 2015

FIGURE  
 1



Project # 4870  
Date 10/27/15

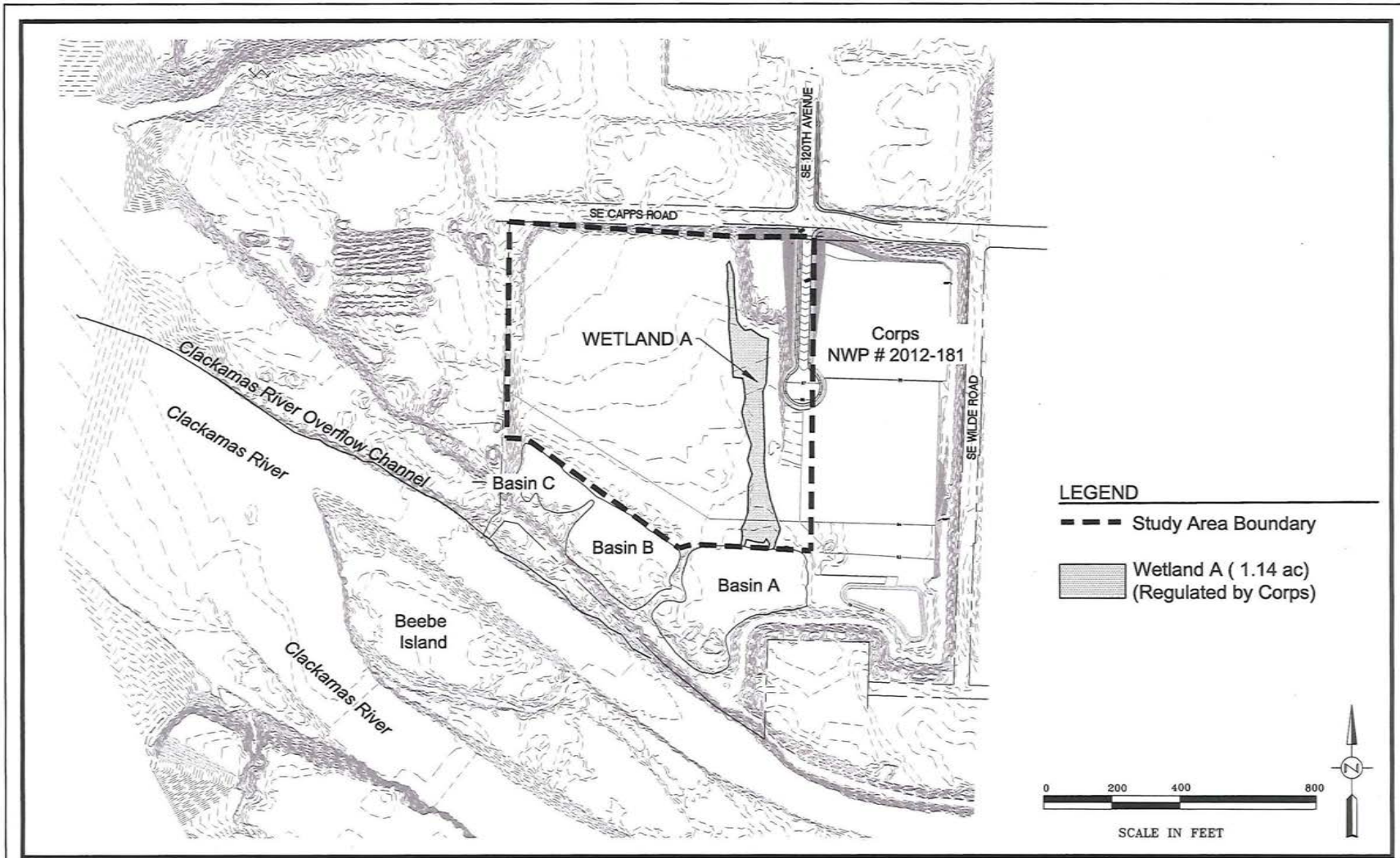


Pacific Habitat Services, Inc.  
9450 SW Commerce Circle, Suite 180  
Wilsonville, OR 97070

Tax Lot Map, Section 15A, Township 2 South, Range 2 East  
Clackamas Industrial Area Opportunity Site in Clackamas County, Oregon  
OrMap.net, 2015

FIGURE  
2





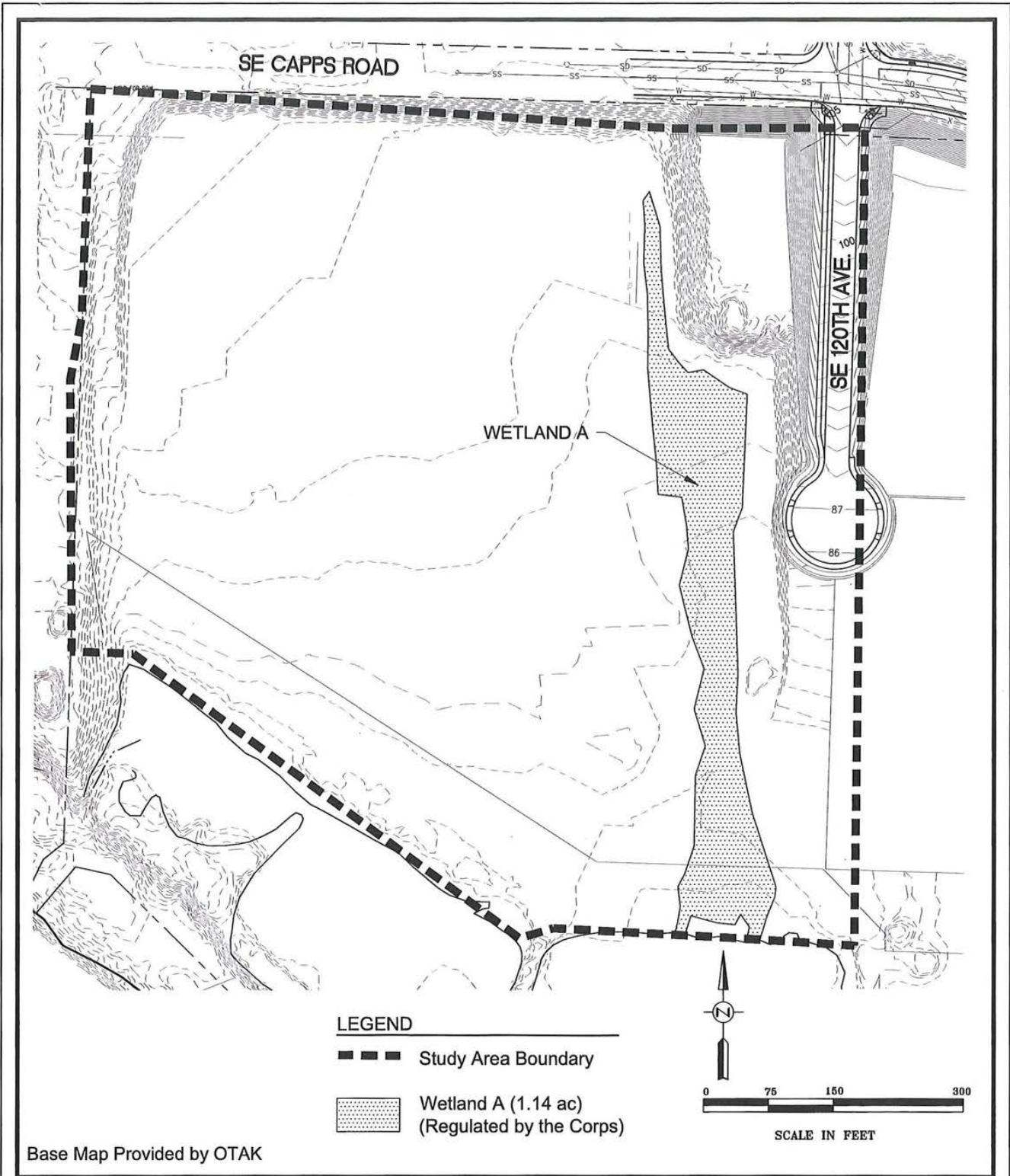
Base Map Provided by OTAK

Existing Conditions Site Overview  
 Capps Road Improvement Project - Oregon City, Oregon

**FIGURE**  
**4**

1-22-2016

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Pacific Habitat Services, Inc.  
 9455 SW Commercial Circle, Suite 100 Wilsonville, Oregon 97170  
 Phone: (503) 570-0850 Fax (503) 570-0855

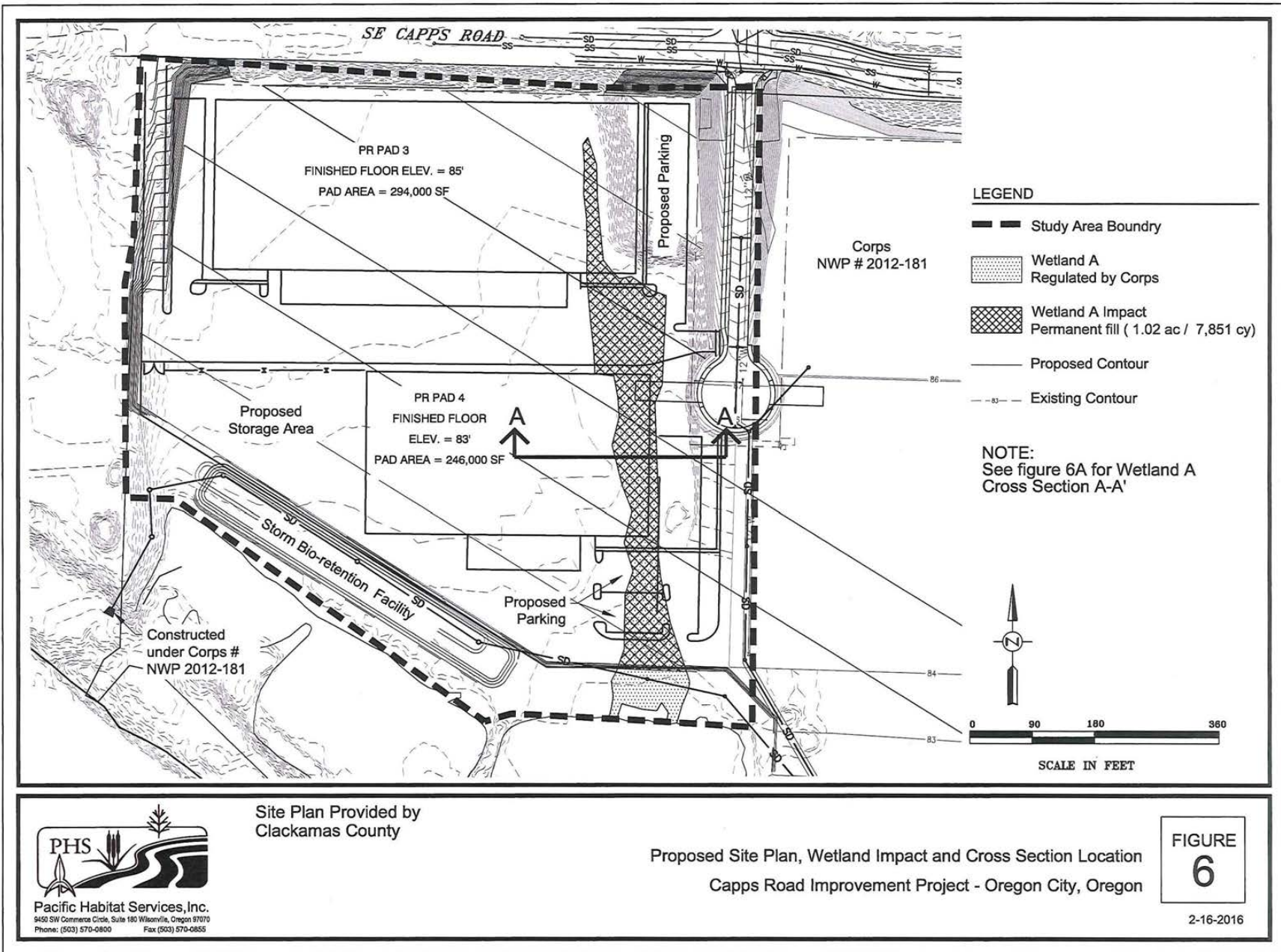
Existing Conditions  
 Capps Road Improvement Project - Oregon City, Oregon

FIGURE  
**4A**

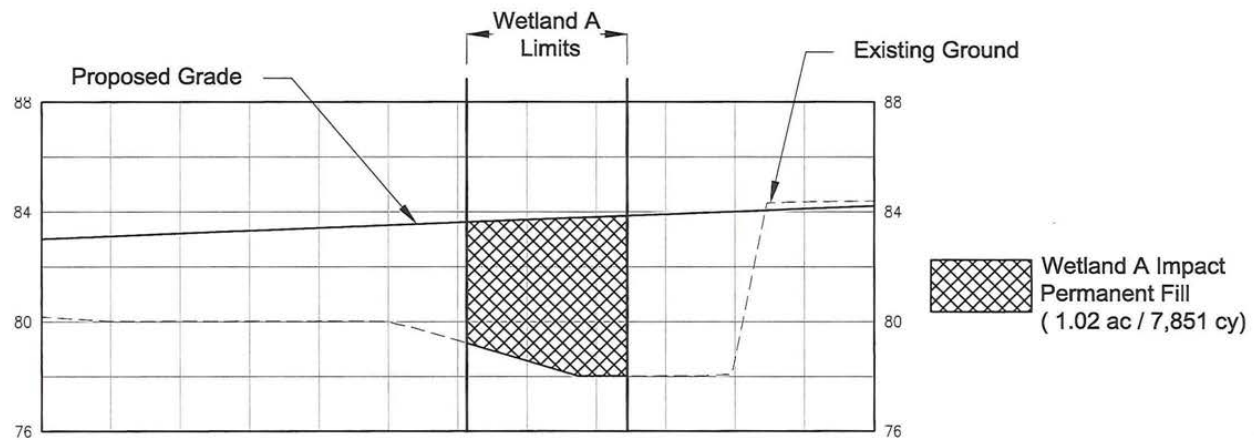
1-22-2016

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WETLAND A CROSS SECTION A-A'

Cross Section Provided by OTAK



Pacific Habitat Services, Inc.  
 9450 SW Commerce Circle, Suite 180 Wilsonville, Oregon 97070  
 Phone: (503) 570-0800 Fax: (503) 570-0855

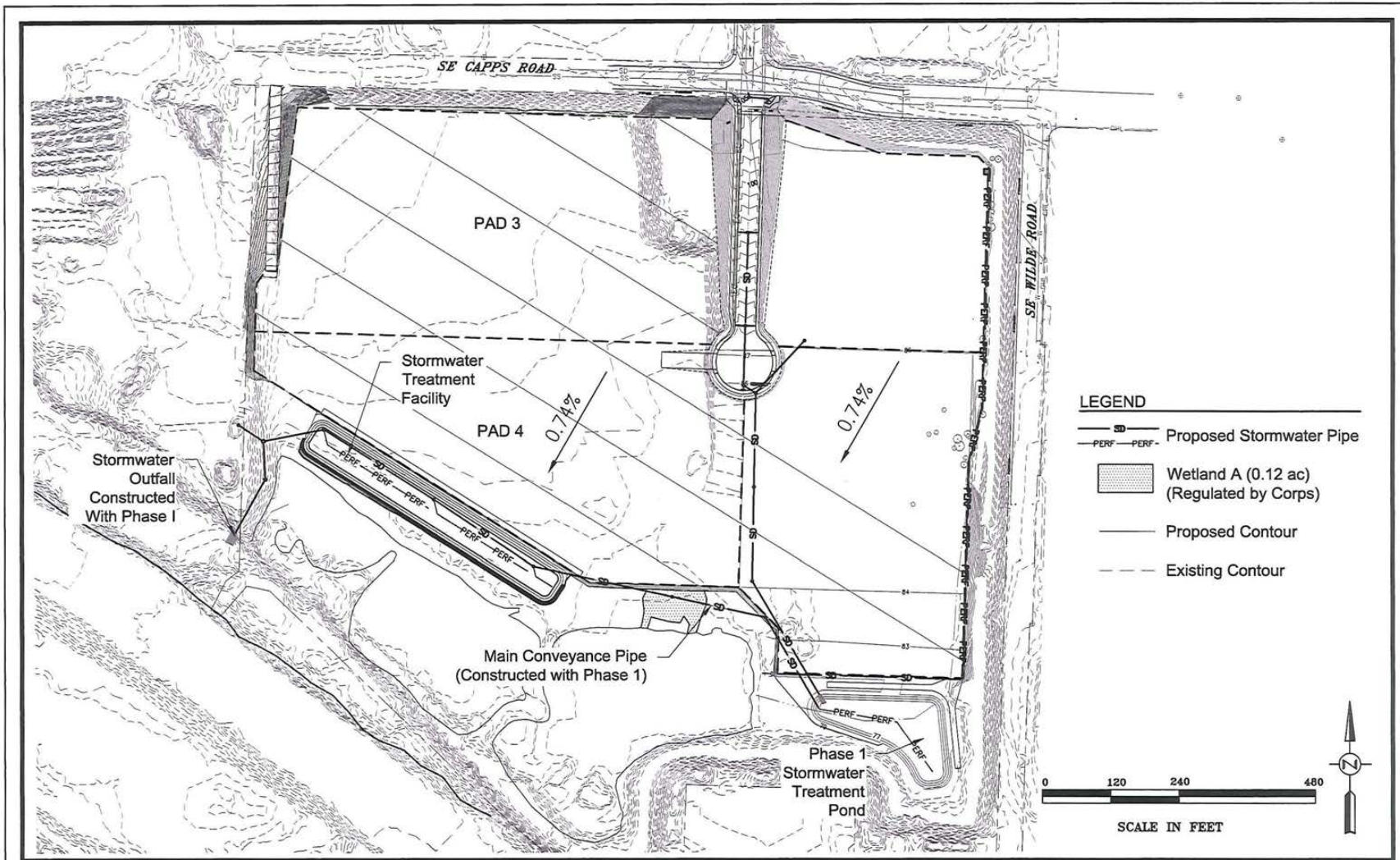
Wetland Impact Cross Section A-A'  
 Capps Road Improvement Project - Oregon City, Oregon

FIGURE  
**6A**

1-22-2016

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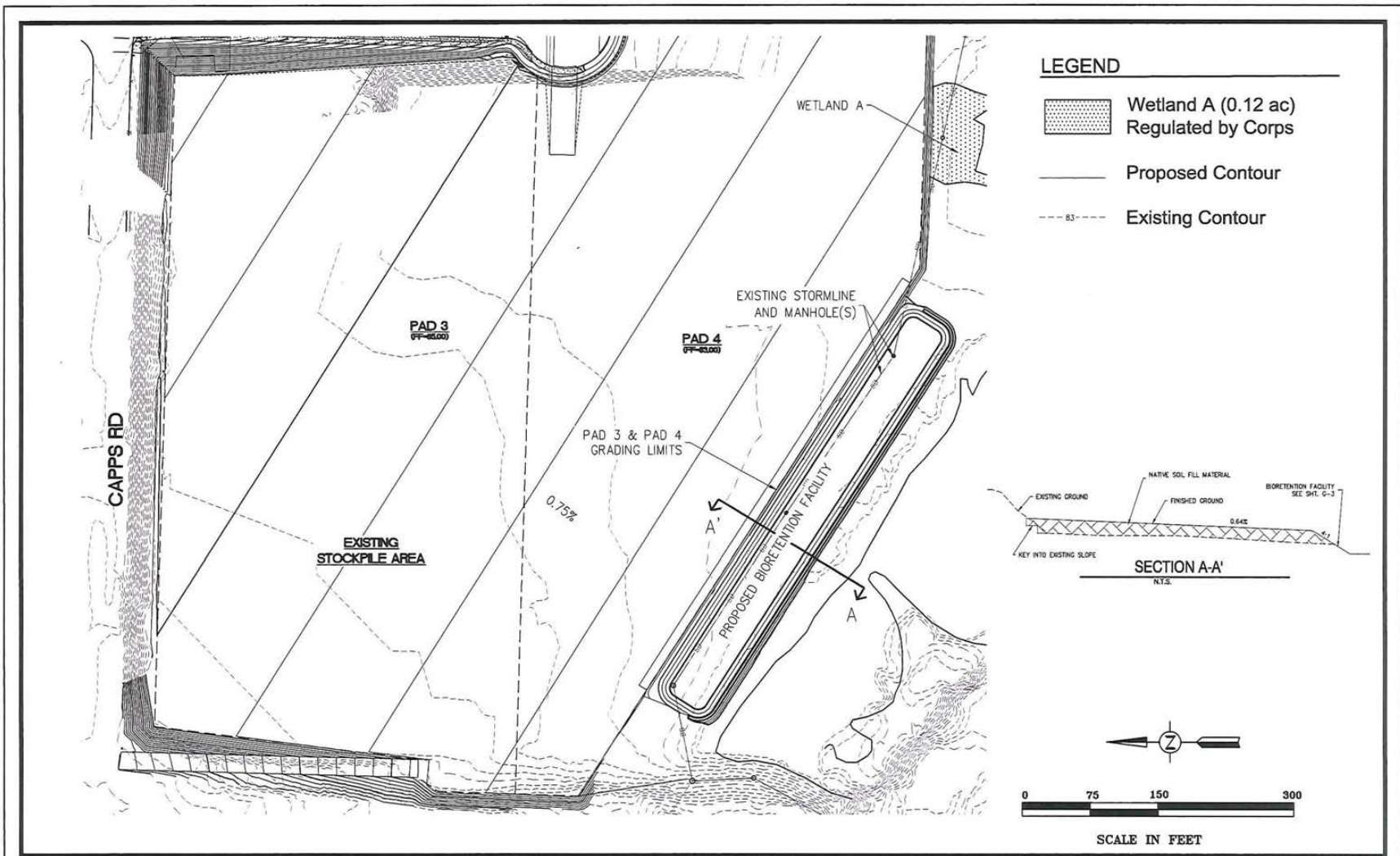


Plan Provided by OTAK

Proposed Stormwater Plan  
Capps Road Improvement Project - Oregon City, Oregon

FIGURE  
**7**

2-16-2016

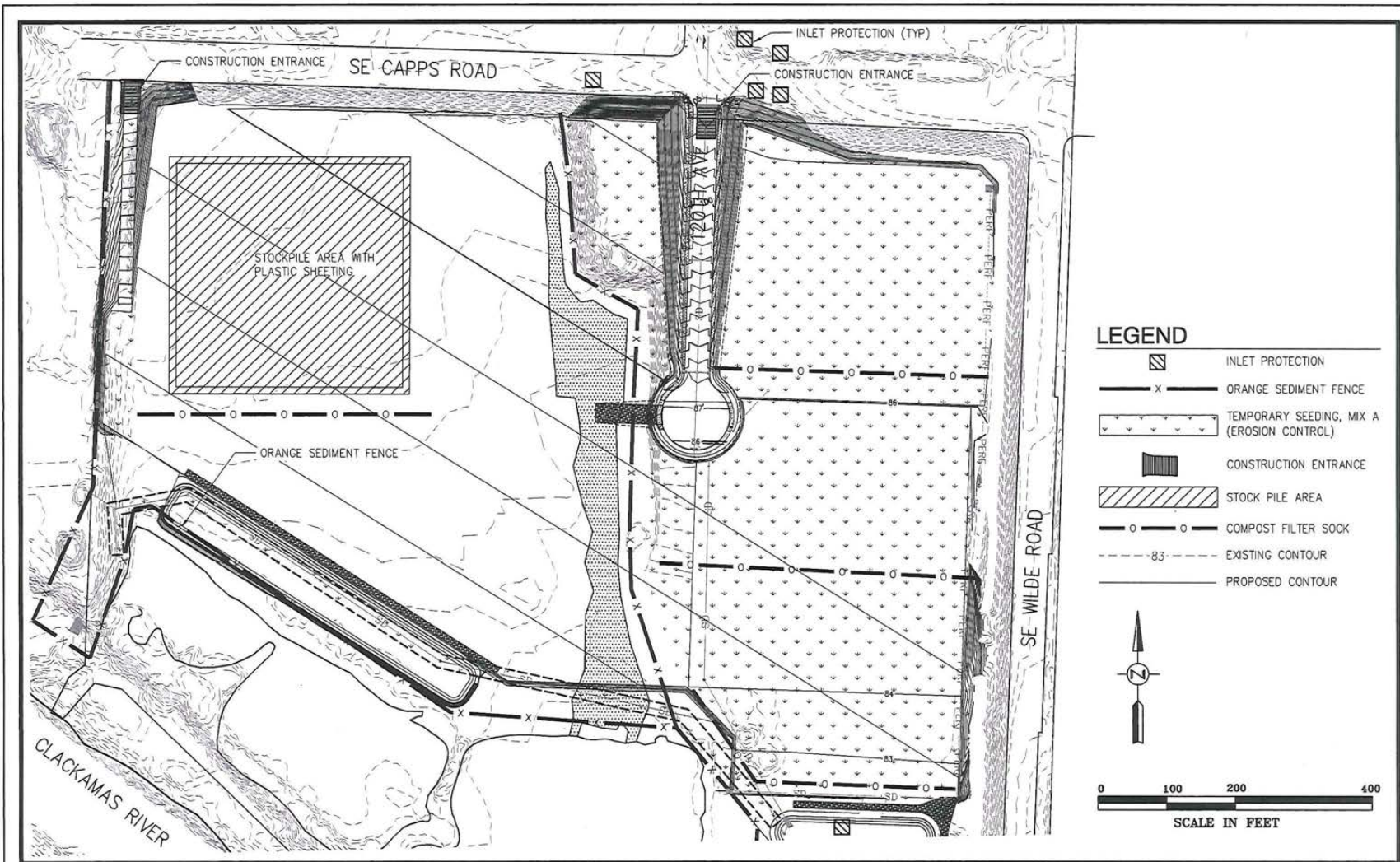


Plan Provided by OTAK

Proposed Grading Plan  
Capps Road Improvement Project - Oregon City, Oregon

**FIGURE**  
**8**  
2-16-2016





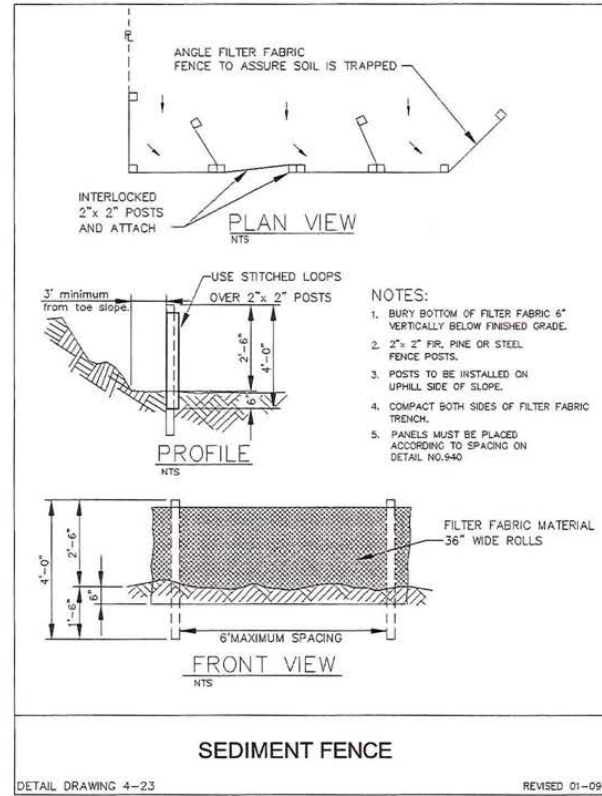
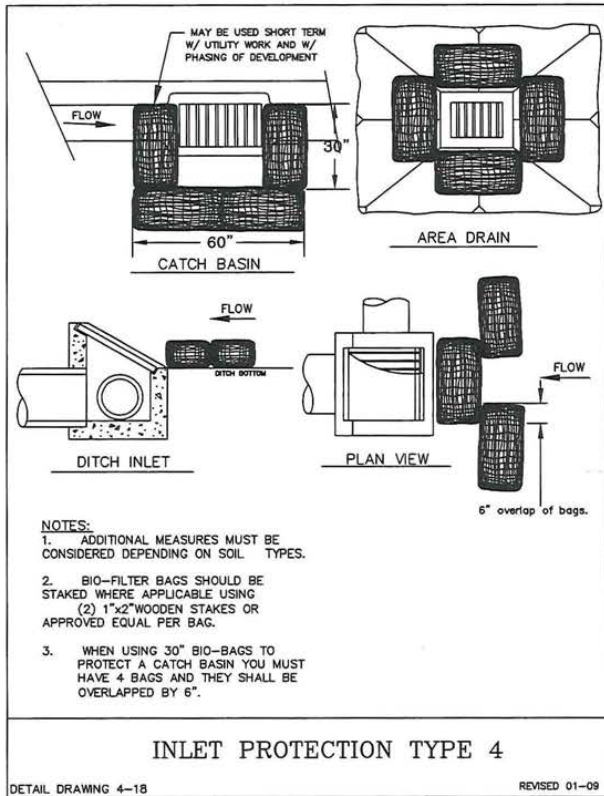
Plan Provided by OTAK

Erosion and Sediment Control Plan  
Capps Road Improvement Project - Oregon City, Oregon

FIGURE  
**9**

1-22-2016

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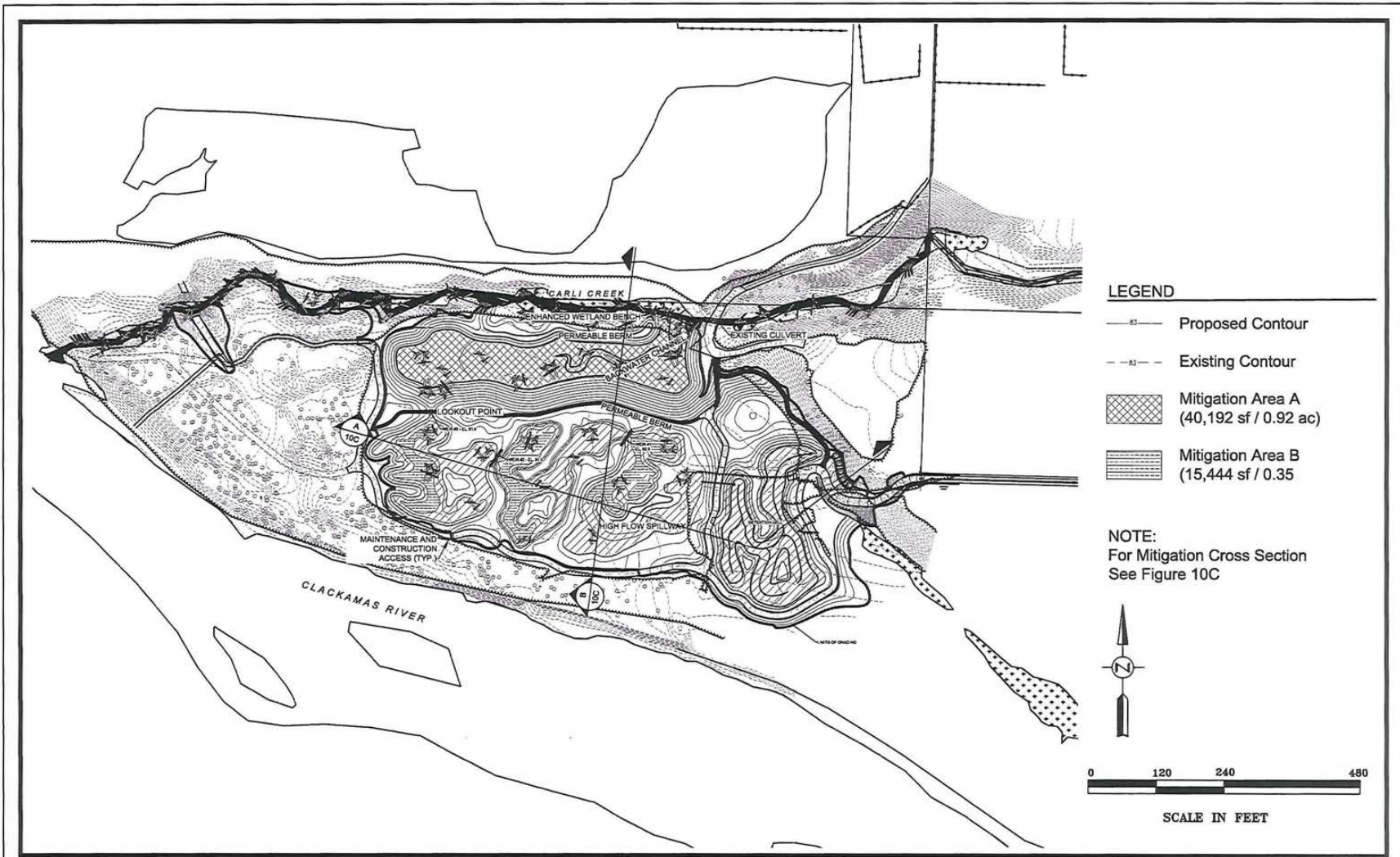
Details Provided By OTAK

Erosion Control Details  
Capps Road Improvement Project - Oregon City, Oregon

FIGURE  
9A

1-22-2015





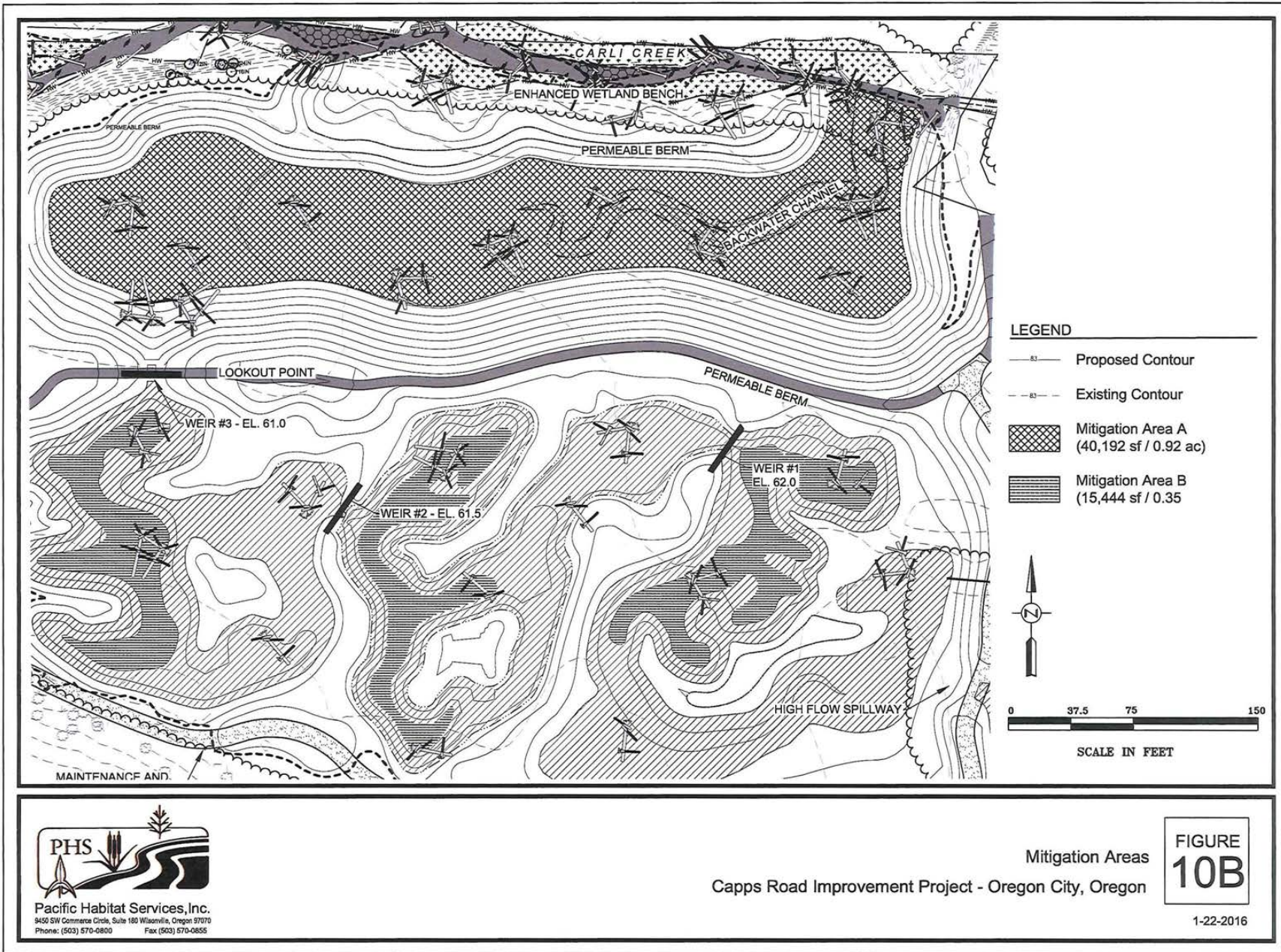
Carli Creek Enhancement and Water Quality Project and Mitigation Cross Section Locations  
Capps Road Improvement Project - Oregon City, Oregon

**FIGURE 10A**

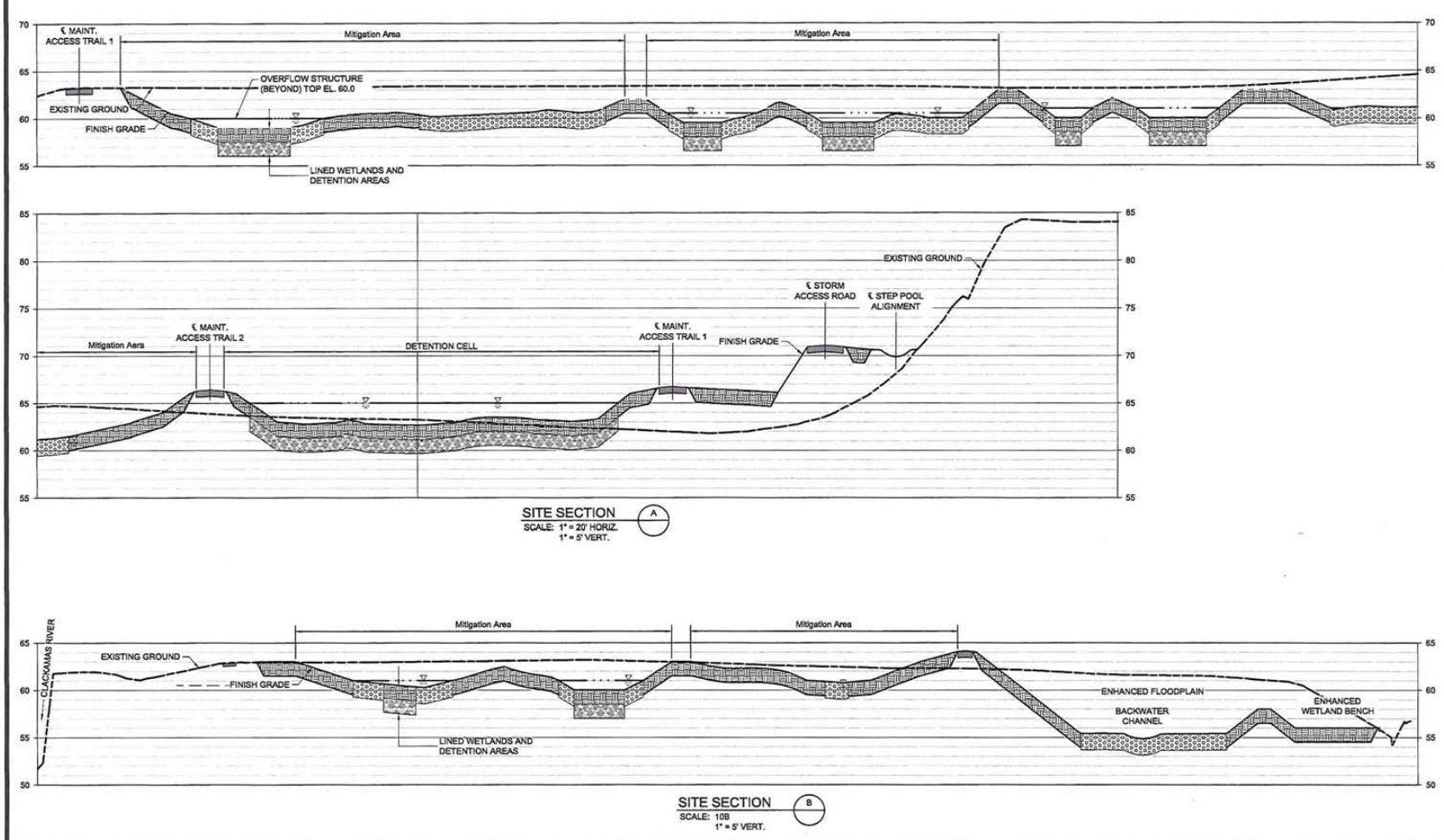
2-16-2016

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Mitigation Cross Section  
 Capps Road Improvement Project - Oregon City, Oregon

**FIGURE 10C**

2-2-2016

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# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Northwest Region  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232  
(503) 229-5263  
FAX (503) 229-6945  
TTY 711

September 8, 2016

Clackamas County Industrial Park  
Attn: Dan Johnson  
150 Beaver Creek Road  
Oregon City, OR 97045

## **RE: 2012-00181-1; Clackamas County Industrial Area 401 Water Quality Certification**

The Department of Environmental Quality (DEQ) has reviewed the U.S. Army Corps of Engineers (USACE) Permit application #2012-00181-1, pursuant to a request for a Clean Water Act Section 401 Water Quality Certification (WQC) received on March 11, 2016. DEQ's 401 WQC public comment opportunity was circulated with the USACE public notice, and DEQ received no water quality comments.

According to the application, Clackamas County Industrial Park ("the Applicant") proposes to construct the second phase of an industrial development to provide facilities for future industrial tenants. The project is located at 1200 SE Capps Road adjacent to the Clackamas River, in the City of Happy Valley, Clackamas County, Oregon (Section 15, Township 2 South, Range 2 East).

**Project Description:** The Applicant will permanently impact 1.02 acres of palustrine forested wetlands to complete the build-out of two industrial pads, each with a warehouse, loading area, storage and parking. A total of 0.012 acres of wetlands will remain on-site. A stormwater detention pond that was constructed under a separate Nationwide Permit (NWP-2012-00181) will treat the runoff generated at the site. The Applicant proposes to mitigate for impacts by creating a total of 1.27 acres of wetlands located west of the project site adjacent to Carli Creek and the Clackamas River.

**Status of Affected Waters of the State:** The Clackamas River is classified as water quality limited under the federal Clean Water Act for flow and habitat modification. The Clackamas River is on the Section 303(d) list of impaired water bodies for dissolved oxygen, *E. coli*, biological criteria, and has Environmental Protection Agency (EPA) approved Total Maximum Daily Loads (TMDLs) that have been developed for bacteria, mercury and temperature.

The above listed parameters impair the following beneficial uses in the Clackamas River: aquatic life, water contact recreation, anadromous fish passage and fish rearing. Additional beneficial uses designated in the Clackamas River include public domestic water supply, private domestic water supply, industrial water supply, irrigation, livestock watering, fish & aquatic life, wildlife & hunting, fishing, boating, water contact recreation, aesthetic quality, and hydro power.

**Certification Decision:** Based on the information provided by the Applicant and the USACE, DEQ is reasonably assured that implementation of the project will be consistent with applicable

provisions of Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, state water quality standards set forth in Oregon Administrative Rules Chapter 340 Division 41, and other appropriate requirements of state law, provided the following conditions strictly adhered to by the Applicant.

#### **401 WQC GENERAL CONDITIONS**

- 1) **Responsible Parties:** This 401 WQC applies to the Applicant. The Applicant is responsible for the work of its contractors and sub-contractors, as well as any other entity that performs work related to this 401 WQC.
- 2) **Work Authorized:** Work authorized by this 401 WQC is limited to the work described in the Joint Permit Application signed on January 27, 2016 and additional application materials, unless otherwise authorized by DEQ. If the project is operated in a manner not consistent with the project description contained in the permit application materials, the Applicant is not in compliance with this 401 WQC and may be subject to enforcement.
- 3) **Duration of Certificate:** This 401 WQC for impacts to waters, including dredge and fill activities, is valid for five years from the date of issuance of the USACE 404 permit. A new or modified 401 WQC must be requested prior to any modification of the USACE 404 permit. Post-construction stormwater facilities must be maintained for the life of the facility.
- 4) A copy of this 401 WQC letter must be kept on the job site and readily available for reference by the Applicant or its contractors, as well as by DEQ, USACE, National Marine Fisheries Service (NMFS), Oregon Department of Fish and Wildlife (ODFW), and other appropriate state and local government inspectors.
- 5) **Modification:** Any approved modifications to this 401 WQC will incur a Tier 1 fee of \$985 at a minimum. Complex modifications may be charged a higher fee.
- 6) The Applicant must notify DEQ of any change in ownership or control of this project and obtain DEQ review and approval before undertaking any change to the project that might affect water quality.
- 7) DEQ may modify or revoke this 401 WQC, in accordance with OAR 340-048-0050, if the project changes or project activities are having an adverse impact on state water quality or beneficial uses.
- 8) The Applicant and its contractors must allow DEQ access to the project site, staging areas, and mitigation sites to monitor compliance with these 401 WQC conditions, including:
  - a. Access to any records, logs, and reports that must be kept under the conditions of this 401 WQC;
  - b. To inspect best management practices (BMPs), monitoring or operational equipment or methods;
  - c. To collect samples or monitor any discharge of pollutants.



- 9) Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

### **CONSTRUCTION SPECIFIC CONDITIONS**

- 10) **Erosion Control:** During construction, erosion control measures must be implemented to prevent or control movement of soil into waters of the state. The Applicant is required to develop and implement an effective erosion and sediment control plan. **Any project that disturbs more than one acre is required to obtain an NPDES 1200-C construction stormwater permit from DEQ.** In addition, the Applicant (or responsible party) must do the following, unless otherwise authorized by DEQ in writing:
- a. Maintain an adequate supply of materials necessary to control erosion at the project construction site.
  - b. Deploy compost berms, impervious materials, or other effective methods during rain events or when stockpiles are not moved or reshaped for more than 48 hours. Erosion of stockpiles is prohibited.
  - c. Inspect erosion control measures daily and maintain erosion control measures as often necessary to ensure the continued effectiveness of measures. Erosion control measures must remain in place until all exposed soil is stabilized.
    - i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, the Applicant must mobilize immediately to make repairs, install replacements, or install additional controls as necessary.
    - ii. If sediment has reaches 1/3 of the exposed height of a sediment or erosion control, the Applicant must remove the sediment to its original contour.
  - d. Use removable pads or mats to prevent soil compaction at all construction access points through, and staging areas in, riparian or wetland areas to prevent soil compaction, unless otherwise authorized by DEQ.
  - e. Flag or fence off wetlands not specifically authorized to be impacted to protect from disturbance and/or erosion.
  - f. Place dredged or other excavated material on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands.
  - g. Place clean aggregate at all construction entrances, and utilize other BMPs, including, but not limited to as truck or wheel washes, when earth moving equipment is leaving the site and traveling on paved surfaces. The tracking of sediment off site by vehicles is prohibited.
  - h. This 401 WQC *does not* authorize the placement of BMPs into waters of the state unless specifically outlined in the application and authorized by DEQ.

- 11) **Deleterious Waste Materials:** The Applicant is prohibited from placing biologically harmful materials and construction debris including, but not limited to: petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, asphalt and waste concrete where such materials could enter waters of the state, including wetlands (wetlands are waters of the state). The Applicant must do the following:
- a. Ensure concrete, cement, or grout is cured for at least 24 hours prior to any contact with flowing waters;
  - b. Use only clean fill, free of waste and polluted substances;
  - c. Employ all practicable controls to prevent discharges of spills of deleterious materials to surface or ground water;
  - d. Maintain at the project construction site, and deploy as necessary, an adequate supply of materials needed to contain deleterious materials during a weather event;
  - e. Remove all foreign materials, refuse, and waste from the project area; and
  - f. Employ general good housekeeping practices at all times.
- 12) **Spill Prevention:** The Applicant must fuel, operate, maintain and store vehicles, and must store construction materials, in areas that will not disturb habitat either directly or due to potential discharges. In addition, the following specific requirements apply:
- a. Vehicle staging, cleaning, maintenance, refueling, and fuel storage must take place in a vehicle staging area placed 150 feet or more from any waters of the state. An exception to this distance may be authorized upon written approval by DEQ if all practicable prevention measures are employed and this distance is not possible because of any of the following site conditions:
    - i. Physical constraints that make this distance not feasible (e.g., steep slopes, rock outcroppings);
    - ii. Natural resource features would be degraded as a result of this setback;  
or
    - iii. Equal or greater spill containment and effect avoidance is provided even if staging area is less than 150 feet of any waters of the state.
  - b. If staging areas are within 150 feet of any waters of the state, as allowed under subsection (a) of this condition, full containment of potential contaminants must be provided to prevent soil and water contamination, as appropriate.
  - c. All vehicles operated within 150 feet of any waters of the state must be inspected daily for fluid leaks before leaving the vehicle staging area. Any leaks detected in

the vehicle staging area must be repaired before the vehicle resumes operation.

- d. Before operations begin and as often as necessary during operation, equipment must be steam cleaned (or undergo an approved equivalent cleaning) until all visible external oil, grease, mud, and other visible contaminants are removed if the equipment will be used below the bank of a waterbody.
- e. All stationary power equipment (e.g., generators, cranes, stationary drilling equipment) operated within 150 feet of any waters of the state must be covered by an absorbent mat to prevent leaks, unless other suitable containment is provided to prevent potential spills from entering any waters of the state.
- f. An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) needed to contain spills must be maintained at the project construction site and deployed as necessary.
- g. All equipment operated in state waters must use bio-degradable hydraulic fluid.

13) **Spill & Incident Reporting:**

- a. In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the Applicant must promptly report the discharge to the Oregon Emergency Response System (OERS, 1-800-452-0311). The Applicant must immediately begin containment and complete cleanup as soon as possible.
- b. If the project operations cause a water quality problem which results in distressed or dying fish, the Applicant must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, ODFW and other appropriate regulatory agencies.

14) **Vegetation Protection and Restoration:**

- a. The Applicant must protect riparian, wetland, and shoreline vegetation in the authorized project area from disturbance through one or more of the following:
  - i. Minimization of project and impact footprint;
  - ii. Designation of staging areas and access points in open, upland areas;
  - iii. Fencing and other barriers demarcating construction areas; and/or
  - iv. Use of alternative equipment (e.g., spider hoe or crane).
- b. If authorized work results in vegetative disturbance and the disturbance has not been accounted for in planned mitigation actions, the Applicant must successfully reestablish vegetation to a degree of function equivalent or better than before the disturbance. The standard for success is 80% cover for native plant species. The vegetation must be reestablished by the completion of authorized work and

include the following:

- i. Restore damaged streambanks to a natural slope, pattern, and profile suitable for establishment of permanent woody vegetation, unless precluded by pre-project conditions (e.g., a natural rock wall).
  - ii. Replant or reseed each area requiring revegetation before the end of the first planting season following construction.
  - iii. Plant disturbed areas with native plants and trees in all cases except where the use of non-native plant materials may be essential for erosion control.
  - iv. The use of invasive species to re-establish vegetation is prohibited.
  - v. Herbicides, pesticides and fertilizers must be applied per manufacturer's instructions, and only if necessary for vegetation establishment.
    1. Unless otherwise approved in writing by DEQ, applying surface fertilizer within stormwater treatment facilities or within 50 feet of any stream channel is prohibited.
    2. Other than spot application to cut stems, no herbicides are allowed within stormwater treatment facilities or within 150 feet of waters of the state. Mechanical, hand, or other methods may be used to control weeds and unwanted vegetation within stormwater treatment facilities or within 150 feet of waters of the state.
    3. No pesticides may be used within stormwater treatment facilities or within 150 feet of waters of the state.
  - vi. Install wildlife-friendly fencing as necessary to prevent access to revegetated sites by livestock or unauthorized persons.
  - vii. Minimize soil compaction, especially in areas that are designated to be replanted. If soils are compacted, decompact staging areas and work construction areas prior to replanting. Leave topsoil when possible. Chip materials from clear and grub operation and spread on soil surface, unless cleared areas contained invasive species.
- 15) Provide a minimum 50-foot buffer zone to protect existing riparian areas and wetlands, unless otherwise authorized in writing by DEQ.
- 16) **Notification to DEQ:** The Applicant must provide pre-construction notification to DEQ one week prior to the start of construction. Contact information can be found at the end of this 401 WQC.

**SPECIFIC CONDITIONS FOR POST CONSTRUCTION STORMWATER MANAGEMENT**

- 17) **Post Construction Stormwater Management:** The Applicant must implement and comply with the terms of the approved post-construction stormwater management plan, which describes best management practices (BMPs) to prevent or treat pollution in stormwater anticipated to be generated by the project, in order to comply with state water quality standards. The Applicant must implement BMPs as proposed in the stormwater management plan, including operation and maintenance, dated January 27, 2016. If proposed stormwater facilities change due to site conditions, the Applicant must notify DEQ, and receive approval in writing

To treat stormwater, the Applicant has constructed a stormwater detention pond that was previously permitted for the first phase of this project (USACE Project # NWP-2012-00181). The pond will treat runoff from the parcels of both phases of the development based on no more than 85% impervious area. Runoff will be treated in the vegetated stormwater pond and then will be piped through a conveyance system to an approved discharge location on the Clackamas River.

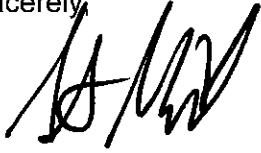
**Within 30 days of project completion, the Applicant must submit a copy of the 'As-Builts' or red-lined construction drawings showing all stormwater management facilities.**

- 18) **Stormwater Management & System Maintenance:** The Applicant is required to implement effective operation and maintenance practices for the lifetime of the proposed facility. These include but are not limited to:
- a. Maintenance techniques and frequency for each system component must follow appropriate recommendations in accepted manuals.
  - b. Long-term operation and maintenance of stormwater treatment facilities will be the responsibility of the Clackamas County Development Agency, unless and until an agreement transferring that responsibility to another entity is submitted to DEQ.
- 19) **Corrective Action May Be Required:** The Department retains the authority to require corrective action in the event the stormwater management facilities are not built or performing as described in the plan.

If the Applicant is dissatisfied with the conditions contained in this 401 WQC, a contested case hearing may be requested in accordance with OAR 340-048-0045. Such request must be made in writing to the DEQ Office of Compliance and Enforcement at 811 SW 6<sup>th</sup> Avenue, Portland Oregon 97204 within 20 days of the mailing of this 401 WQC.

DEQ hereby certifies this project in accordance with the Clean Water Act and state rules, with the above conditions. If you have any questions, please contact Roxann Nayar at [nayar.roxy@deq.state.or.us](mailto:nayar.roxy@deq.state.or.us), by phone at 503-229-6414, or at the address on this letterhead.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Mrazik', written in a cursive style.

Steve Mrazik  
Water Quality Manager  
Northwest Region

*2012-00181-1\_ClackamasCoIndustrialPark\_401 WQC\_Final.docm*

cc: Dominic Yballe, USACE  
Anita Huffman, DSL  
Marc Liverman, NOAA FISHERIES  
Ashley Cantlon, OTAK



# Compliance Certification

1. **Permit Number:** NWP-2012-181-1
2. **Permittee Name:** Clackamas County Development Agency
3. **County Location:** Clackamas

Upon completing the activity authorized by the permit, please complete the sections below, sign and date this certification, and return it to the U.S. Army Corps of Engineers, Portland District, Regulatory Branch. The certification can be submitted by email at [cenwp.notify@usace.army.mil](mailto:cenwp.notify@usace.army.mil) or by regular mail at the following address:

U.S. Army Corps of Engineers  
CENWP-OD-GL  
P.O. Box 2946  
Portland, OR 97208-2946

4. **Corps-required Compensatory Mitigation (see permit special conditions):**
  - a. Mitigation Bank / In-lieu Fee Credit Transaction Documents:  
 Not Applicable       Submitted       Enclosed
  - b. Permittee-responsible mitigation (e.g., construction and plantings) has been constructed (not including future monitoring). As-built report:  
 Not Applicable       Submitted       Enclosed
5. **Endangered Species Act – Standard Local Operating Procedures (SLOPES)**  
(see permit special conditions):
  - a. SLOPES Action Completion Report:  
 Not Applicable       Submitted       Enclosed
  - b. SLOPES Fish Salvage Report:  
 Not Applicable       Submitted       Enclosed
  - c. SLOPES Site Restoration / Compensatory Mitigation Report:  
 Not Applicable       Submitted       Enclosed

I hereby certify the work authorized by the above-referenced permit has been completed in accordance with all of the permit terms and conditions.

---

**Signature of Permittee**

**Date**



# Attachment 5

## Compensatory Wetland Mitigation Plan



**FINAL COMPENSATORY WETLAND MITIGATION PLAN  
FOR IMPACTS TO WETLANDS FOR THE CAPPS ROAD INDUSTRIAL  
SITE IN CLACKAMAS, OREGON**

**U.S. Army Corps of Engineers Permit No. NWP 2012-181(1)  
January 28, 2016**

Below is a description of the Clackamas County Development Agency's proposed Compensatory Wetland Mitigation (CWM) Plan following the provisions of 33 CFR 332.4(c) 2 through (c) 14.

**Objectives:**

The primary objective is to provide wetland habitat as compensation for 1.02 acres of wetland impact. Four areas of wetland will be created, one area that is permanently inundated, and three areas that are seasonally inundated. The water for these wetlands will come from a stormwater facility associated with Carli Creek to the north of the mitigation site. The permanently inundated wetland will be also augmented with backwater flows from Carli Creek.

**Site Selection:**

Several options for mitigation of the impact were examined.

- 1) Filling the dragline quarried ponds (Basins A, B and C) (45.3967, -122.5406) located south of the impact site from their existing considerable depth to form a shallow wetland was considered and deemed unfeasible because of the significant amount of soil materials required to fill the ponds.
- 2) Extend a thin sliver of wetland (45.3989, -122.5459) at the base of a western slope of the recycling facility to the west of the former gravel pit was considered. The groundwater gradient to the Clackamas River along the terrace edge near the river probably makes the possibility of persistent wetland conditions over the requisite area unlikely.
- 3) Preferred Option: A regional stormwater plan (45.4001, -122.5487) for Carli Creek discharging to the Clackamas River to the west of the proposed project. This includes the possibility of wetland creation adjacent to stormwater treatment cells fed by treated stormwater discharge from nearby industrial facilities. Stormwater is to be treated in cells that will maintain hydrology for the adjacent created wetland.

**Site Protection Instrument:**

Clackamas County will record a conservation easement over the mitigation site. The easement will ensure long term protection of the mitigation areas. The conservation easement will be recorded at the completion of the monitoring period and will include the following:

- a. Identification of a third-party easement holder with a summary of the selected holder's capacity to ensure the WES's compliance with the Long-term Maintenance and Management Plan;
- b. Provisions for ensuring the maintenance and protection of the mitigation site from any conflicting uses; and
- c. Provisions requiring a 60-day advance notification to the Corps before any action is taken to void or modify the site protection instrument, or establish any other legal claims over the mitigation site.

**Baseline Information:**

The proposed mitigation site is along the north side of the Clackamas River south of the historic channel of Carli Creek, which discharges to the Clackamas River west of the proposed mitigation site. The site is east of a meander in the Clackamas River where the river appears to meet the northern edge of its meander belt (along the trajectory of Carli Creek). Several terrace scarps east of the mitigation site trend northwest-southeast from the edge of the meander belt to the Clackamas River. Terrace materials consist of Clackamas River alluvium that has been quarried for aggregate in several nearby areas (including the impact site). Historic aerial photographs suggest that the site has been used for pasture and haying for several decades. Herrera, Inc., which prepared the overall plan under contract with Water Environment Services (WES), has proposed a regional stormwater plan for industrial runoff that is discharged to Carli Creek along the north side of the proposed mitigation site.

After initial treatment near the creek, water will be discharged to mitigation areas south of the creek. These shallow basins are a maximum of 3 feet deep. Geotechnical investigations of the proposed mitigation site suggest that permeability of soil surface horizons can be made sufficiently low to maintain wetland hydrology. The stormwater inputs from Carli Creek that provide hydrology for the mitigation area will be seasonal with late summer drying of the mitigation site. Hydrologic modeling by Herrera indicates that the excavated wetland cells will remain inundated between 0.5 and 2.5 feet for 30 days during the wettest portion of the year. The site adjoins the Clackamas River riparian zone and the mitigation can be considered an extension of the river riparian zone. The total area of permanent wetland creation is 0.92 acre.

An additional area of mitigation is located just north of the shallow, stormwater treatment basins. This area is adjacent to a backwater channel of Carli Creek, and is separated from the stormwater treatment basins by a permeable berm. This area is expected to be permanently inundated throughout most years. The total area of seasonal wetland creation is 0.35 acre.

**Determination of Credits:**

The wetland to be impacted totals 1.02 acres. The areas of wetland designated by Herrera as wetland mitigation area totals 1.27 acres, and additional areas of emergent, scrub-shrub, and forested riparian areas will be created along Carli Creek, contributing to increased water quality and wildlife habitat adjacent to the mitigation wetlands.

An HGM rating of the proposed site was compared to an HGM rating of the impacted area. All of the wetland functions in the proposed site were greater than the functions in the impacted wetland except Nitrogen Removal, Primary Production, and Amphibian and Reptile Habitat. However, these functions are only slightly lower in the created wetlands as compared to the impact wetland. The proposed mitigation site will be contiguous with the riparian zone of the Clackamas River and may be considered an extension of the riparian zone.

	Calculated Function Capacity for SF sites					
	Wetland A (Existing)		Permanent Wetland Creation		Seasonal Wetland Creation	
Function:	if HFR:	if LAR:	if HFR:	if LAR:	if HFR:	if LAR:
Water Storage & Delay (ws)	0.50	1.11	0.50	1.11	0.75	1.67
Sediment Stabilization & Phosphorus Retention (sp)	0.57	0.61	0.74	0.79	1.00	1.07
Nitrogen Removal (n)	0.73	0.86	0.57	0.67	0.84	0.99
Primary Production (pp)	0.67	0.67	0.52	0.52	0.62	0.82
Invertebrate Habitat Support (i)	0.22	0.22	0.23	0.23	0.30	0.30
Amphibian & Turtle Habitat (at)	0.60	0.79	0.53	0.70	0.58	0.76
Breeding Waterbird Support (bw)	0.00	0.00	0.98	1.13	0.00	0.00
Wintering & Migrating Waterbird Support (ww)	0.41	0.47	0.43	0.50	0.54	0.62
Songbird Habitat Support (sb)	0.34	0.53	0.89	1.36	0.66	1.01
Support of Characteristic Vegetation (v)	0.39	0.41	0.63	0.65	0.55	0.57

**Mitigation Work Plan:**

Construction of the proposed mitigation areas will be done in conjunction with construction of the Carli Creek stormwater treatment system. Construction of the mitigation site will be done in late summer before Carli Creek is allowed to flood into the site. Seeding of the created wetland areas will be done by the first of September 2016. Planting of the woody plants in the constructed mitigation site will be done during the late winter and early spring after construction is complete and stormwater from Carli Creek has been diverted into the site. Emergent plantings will be installed in late spring immediately before temporary irrigation is begun.

The wetland creation area will be planted with a minimum stem count of 1,600 stems per acre. The following table shows the native species to be planted within the mitigation wetland areas.

**Table 1. Wetland Mitigation Areas A and B (55,636 sq. ft.)**

Botanical Name	Common Name	Stock Type
<b>Trees</b>		
<i>Fraxinus latifolia</i>	Oregon ash	Seedling 3”+
<i>Populus balsamifera</i>	Black cottonwood	Seedling 3”+
<i>Alnus rubra</i>	Red alder	Seedling 3”+
<b>Shrubs</b>		
<i>Cornus sericea</i>	Red-osier dogwood	6’ live stake
<i>Physocarpus capitatus</i>	Pacific ninebark	Seedling 36”+
<i>Rosa nutkana</i>	Nootka rose	Seedling 36”+

<b>Botanical Name</b>	<b>Common Name</b>	<b>Stock Type</b>
<i>Rosa pisocarpa</i>	Swamp rose	Seedling 36"+
<i>Spiraea douglasii</i>	Douglas spiraea	Seedling 12"-18"
<i>Salix hookeriana</i>	Piper's willow	6' live stake
<i>Salix scouleriana</i>	Scouler willow	6' live stake
<i>Salix sitchensis</i>	Sitka willow	6' live stake
<b>Herbs</b>		
<i>Camassia quamash</i>	Camas	Bulb
<i>Carex amplifolia</i>	Big-leaf sedge	10" plug
<i>Carex dewyana</i>	Dewey's sedge	10" plug
<i>Carex obnupta</i>	Slough sedge	10" plug
<i>Carex unilateralis</i>	One-side sedge	10" plug
<i>Eleocharis obtuse</i>	Ovate spikerush	10" plug
<i>Juncus acuminatus</i>	Tapertip rush	10" plug
<i>Juncus ensifolius</i>	Dagger-leaf rush	10" plug
<i>Juncus patens</i>	Spreading rush	10" plug
<i>Juncus tenuis</i>	Slender rush	10" plug
<i>Schoenoplectus acutus</i>	Hard-stemmed bulrush	10" plug
<i>Scirpus microcarpus</i>	Small-fruited bulrush	10" plug

**Maintenance Plan:**

A temporary irrigation system will be installed for the first 2 years of plant establishment. The irrigation system will be operated weekly and provide the equivalent of 1.5 inches of rainfall at a rate no greater than 2 inches per hour. Weed control will be done on a monthly basis through the growing season.

**Performance Standards:**

At the end of 2 years after construction of the mitigation site, 80% of the installed woody plants will be alive. Native groundcover will cover 80% of the area at the end of 3 years. The mitigation site will meet wetland criteria at the end of 5 years.

**Monitoring Requirements:**

***As-Built Report:***

An as-built of the constructed facility surface elevations will be submitted to the Corps within 60 days of the construction completion.

***Annual Monitoring Reports:***

Annual monitoring reports will be submitted to the Corps by the end of the calendar year for each of the 5 years following the construction of the mitigation site. The reports will document survival of the woody plantings and provide estimates of the areal fraction of groundcover species. Sampling of the woody vegetation will be done with randomly positioned 15-foot radius discs throughout the mitigation site covering at least 5% of the mitigation area. Forb sampling will be done with 2 square meter quadrats for each of the woody plant sampling points.

The emergent wetland will be sampled with square meter quadrats covering at least 1% of the emergent wetland area. Hydrology of the mitigation area will be monitored between the vernal equinox and the summer solstice. Photographs of the mitigation site from established photopoints will be submitted with each annual monitoring report. Analyses of temporal vegetation changes and recommendations for vegetation management will be submitted with each report. During the 5<sup>th</sup> year, a delineation of the mitigation site will be done to determine if the mitigation site meets wetland criteria.

**Long-term Maintenance and Management Plan:**

Long-term maintenance of the mitigation site will be done by WES. Continuing maintenance will mainly consist of weed management after the 5-year establishment period.

**Financial Assurances:**

Should the Corps feel that financial assurance is required, WES will financially commit (e.g. bond) to ensure the mitigation is a success.



US Army Corps  
of Engineers®

# REGULATORY GUIDANCE LETTER

No. 08-03

Date: 10 October 2008

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**SUBJECT:** Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources.

## **1. Purpose and Applicability**

**a. Purpose.** This Regulatory Guidance Letter (RGL) provides the Districts and regulated public guidance on minimum monitoring requirements for compensatory mitigation projects, including the required minimum content for monitoring reports. This RGL replaces RGL 06-03.

**b. Applicability.** The final Mitigation Rule published on April 10, 2008, states that the submission of monitoring reports to assess the development and condition of compensatory mitigation projects is required, but the content and level of detail for those reports must be commensurate with the scale and scope of the compensatory mitigation projects as well as the compensatory mitigation project type (see 33 CFR 332.6(a)(1)).

This RGL applies to all Department of the Army (DA) permit authorizations under Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act that contain special conditions requiring compensatory mitigation provided through aquatic resource restoration, establishment and/or enhancement. This guidance also applies to monitoring reports that are prepared for mitigation bank sites and in-lieu-fee project sites.

This RGL supports the Program Analysis and Review Tool (PART) program goals for the Regulatory Program. Specifically, this RGL supports the PART performance measures for mitigation site compliance and mitigation bank/ in-lieu-fee compliance. These measures apply to active mitigation sites, mitigation banks, and in-lieu-fee project sites that still require monitoring.

## **2. Background**

Recent studies by the Government Accountability Office (GAO) and National Research Council (NRC) indicated that the U.S. Army Corps of Engineers (Corps) was not providing adequate oversight to ensure that compensatory mitigation projects were successfully replacing the aquatic resource functions lost as a result of permitted activities. For example, the GAO study determined that many project files requiring



mitigation lacked monitoring reports despite the fact that such reports were required as a condition of the permit. Similarly, the NRC study documented that a lack of clearly stated objectives and performance standards in the approved compensatory mitigation proposals made it difficult to ascertain whether the goal of no net loss of wetland resources was achieved.

On April 10, 2008, the Corps and Environmental Protection Agency published the “Compensatory Mitigation for Losses of Aquatic Resources: Final Rule” (Mitigation Rule) which governs compensatory mitigation for activities authorized by permits issued by the Department of the Army (33 CFR Parts 325 and 332). This RGL complements and is consistent with the final Mitigation Rule.

### **3. Discussion**

Inconsistent approaches to monitoring compensatory mitigation projects are one of several factors that have affected the ability of Corps project managers (PMs) to adequately assess achievement of the performance standards of Corps-approved mitigation plans. Standardized monitoring requirements will aid PMs when reviewing compensatory mitigation sites, thereby allowing the Corps to effectively assess the status and success of compensatory mitigation projects.

This RGL addresses the minimum information needed for monitoring reports that are used to evaluate compensatory mitigation sites. Monitoring requirements are typically based on the performance standards for a particular compensatory mitigation project and may vary from one project to another.

Monitoring reports are documents intended to provide the Corps with information to determine if a compensatory mitigation project site is successfully meeting its performance standards. Remediation and/or adaptive management used to correct deficiencies in compensatory mitigation project outcomes should be based on information provided in the monitoring reports and site inspections.

### **4. Guidance**

#### **a. Monitoring guidelines for compensatory mitigation.**

**i. Performance Standards.** Performance standards, as defined in 33 CFR 332.2, and discussed in more detail at 33 CFR 332.5, will be consistent with the objectives of the compensatory mitigation project. These standards ensure that the compensatory mitigation project is objectively evaluated to determine if it is developing into the desired resource type and providing the expected functions. The objectives, performance standards, and monitoring requirements for compensatory mitigation projects required to offset unavoidable impacts to waters of the United States must be provided as special conditions of the DA permit or specified in the approved final mitigation plan (see 33 CFR 332.3(k)(2)). Performance standards may be based on functional, conditional, or other suitable assessment methods and/or criteria and may be incorporated into the

special conditions to determine if the site is achieving the desired functional capacity. Compensatory mitigation projects offset the impacts to diverse types of aquatic resources, including riverine and estuarine habitats. Special conditions of the DA permits will clearly state performance standards specific to the type and function of the ecosystem in relation to the objectives of the compensatory mitigation project.

**ii. Monitoring Timeframe.** The special conditions of the DA permit (or the mitigation plan as referenced in the special conditions) must specify the length of the monitoring period (see 33 CFR 332.6(a)(1)). For mitigation banks, the length of the monitoring period will be specified in either the DA permit, mitigation banking instrument, or approved mitigation plan. For in-lieu fee projects, the length of the monitoring period will be specified in either the DA permit or the approved in-lieu fee project plan.

The monitoring period must be sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years (see 33 CFR 332.6(b)). The District determines how frequently monitoring reports are submitted, the monitoring period length, and report content. If a compensatory mitigation project has met its performance standards in less than five years, the monitoring period length can be reduced, if there are at least two consecutive monitoring reports that demonstrate that success. Permit conditions will support the specified monitoring requirement and include deadlines for monitoring report submittal. Longer monitoring timeframes are necessary for compensatory mitigation projects that take longer to develop (see 33 CFR 332.6(b)). For example, forested wetland restoration may take longer than five years to meet performance standards.

Annual monitoring and reporting to the Corps is appropriate for most types of compensatory mitigation projects, though the project sponsor may have to monitor progress more often during the project's early stages. Certain compensatory mitigation projects may require more frequent monitoring and reporting during the early stages of development to allow project managers to quickly address problems and/or concerns. Annual monitoring can resume once the project develops in accordance with the approved performance standards. In cases where monitoring is required for longer than five years, monitoring may be conducted on a less than annual timeframe (such as every other year), though yearly monitoring is recommended until the project becomes established as a successful mitigation project. In this case, off-year monitoring should include some form of screening assessment such as driving by the mitigation site, telephone conversations regarding condition of the mitigation site, etc. On-site conditions, the complexity of the approved mitigation plan, and unforeseen circumstances will ultimately determine whether the monitoring period should be extended beyond the specified monitoring time frame for a particular project. Complex and/or ecologically significant compensatory mitigation projects should have higher priority for site visits.

As discussed above, the remaining monitoring requirements may be waived upon a determination that the compensatory mitigation project has achieved its performance standards. The original monitoring period may be extended upon a determination that

performance standards have not been met or the compensatory mitigation project is not on track to meet them (e.g., high mortality rate of vegetation). Monitoring requirements may also be revised in cases where adaptive management or remediation is required.

**iii. Monitoring Reports.** Monitoring requirements, including the frequency for providing monitoring reports to the District Commander and the Interagency Review Team (IRT), will be determined on a case-by-case basis and specified in either the DA permit, mitigation banking instrument, or approved mitigation plan. The content of the monitoring reports will be specified in the special conditions of the DA permit so that the requirements are clearly identified for the permittee or third-party mitigation sponsor. In addition, the monitoring reports should comply with the timeframes specified in the special conditions of the DA permit. Monitoring reports will not be used as a substitute for on site compliance inspections. The monitoring report will provide the PM with sufficient information on the compensatory mitigation project to assess whether it is meeting performance standards, and to determine whether a compliance visit is warranted. The party responsible for monitoring can electronically submit the monitoring reports and photos for review.

Visits to mitigation sites will be documented in the administrative record and will count toward District performance goals. An enforcement action may be taken if the responsible party fails to submit complete and timely monitoring reports.

**b. Contents of Monitoring Reports.** Monitoring reports provide the PM with a convenient mechanism for assessing the status of required compensatory mitigation projects. The PM should schedule a site visit and determine potential remedial actions if problems with the compensatory mitigation project are identified in a monitoring report.

The submittal of large bulky reports that provide mostly general information should be discouraged. While often helpful as background, reiteration of the mitigation and monitoring plan content, lengthy discussions of site progress, and extensive paraphrasing of quantified data are unnecessary. Monitoring reports should be concise and effectively provide the information necessary to assess the status of the compensatory mitigation project. Reports should provide information necessary to describe the site conditions and whether the compensatory mitigation project is meeting its performance standards.

Monitoring reports will include a Monitoring Report Narrative that provides an overview of site conditions and functions. This Monitoring Report Narrative should be concise and generally less than 10 pages, but may be longer for compensatory mitigation projects with complex monitoring requirements. Monitoring Report Narratives may be posted on each District's Regulatory web site.

Monitoring reports will also include appropriate supporting data to assist District Commanders and other reviewers in determining how the compensatory mitigation project is progressing towards meeting its performance standards. Such supporting data may include plans (such as as-built plans), maps, and photographs to illustrate site

conditions, as well as the results of functional, condition, or other assessments used to provide quantitative or qualitative measures of the functions provided by the compensatory mitigation project site.

**c. Monitoring Report Narrative:**

**i. Project Overview (1 page)**

- (1) Corps Permit Number or Name of the Mitigation Bank or In-Lieu Fee Project
- (2) Name of party responsible for conducting the monitoring and the date(s) the inspection was conducted.
- (3) A brief paragraph describing the purpose of the approved project, acreage and type of aquatic resources impacted, and mitigation acreage and type of aquatic resources authorized to compensate for the aquatic impacts.
- (4) Written description of the location, any identifiable landmarks of the compensatory mitigation project including information to locate the site perimeter(s), and coordinates of the mitigation site (expressed as latitude, longitudes, UTM's, state plane coordinate system, etc.).
- (5) Dates the compensatory mitigation project commenced and/or was completed.
- (6) Short statement on whether the performance standards are being met.
- (7) Dates of any recent corrective or maintenance activities conducted since the previous report submission.
- (8) Specific recommendations for any additional corrective or remedial actions.

**ii. Requirements (1 page)**

List the monitoring requirements and performance standards, as specified in the approved mitigation plan, mitigation banking instrument, or special conditions of the DA permit, and evaluate whether the compensatory mitigation project site is successfully achieving the approved performance standards or trending towards success. A table is a recommended option for comparing the performance standards to the conditions and status of the developing mitigation site.

**iii. Summary Data (maximum of 4 pages)**

Summary data should be provided to substantiate the success and/or potential challenges associated with the compensatory mitigation project. Photo documentation may be provided to support the findings and recommendations referenced in the monitoring report and to assist the PM in assessing whether the compensatory mitigation project is meeting applicable performance standards for that monitoring period. Submitted photos should be formatted to print on a standard 8 ½" x 11" piece of paper, dated, and clearly labeled with the direction from which the photo was taken. The photo location points should also be identified on the appropriate maps.

**iv. Maps and Plans (maximum of 3 pages)**

Maps should be provided to show the location of the compensatory mitigation site relative to other landscape features, habitat types, locations of photographic reference points, transects, sampling data points, and/or other features pertinent to the mitigation plan. In addition, the submitted maps and plans should clearly delineate the mitigation site perimeter(s), which will assist PMs in locating the mitigation area(s) during subsequent site inspections. Each map or diagram should be formatted to print on a standard 8 ½" x 11" piece of paper and include a legend and the location of any photos submitted for review. As-built plans may be included.

**v. Conclusions (1 page)**

A general statement should be included that describes the conditions of the compensatory mitigation project. If performance standards are not being met, a brief explanation of the difficulties and potential remedial actions proposed by the permittee or sponsor, including a timetable, should be provided. The District Commander will ultimately determine if the mitigation site is successful for a given monitoring period.

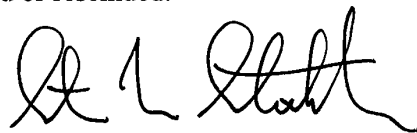
**d. Completion of Compensatory Mitigation Requirements.** For permittee-responsible mitigation projects, compensatory mitigation requirements will not be considered fulfilled until the permittee has received written concurrence from the District Commander that the compensatory mitigation project has met its objectives and no additional monitoring reports are required. PMs will review the final monitoring reports to make this determination. A final field visit should be conducted to verify that on-site conditions are consistent with information documented in the monitoring reports.

**e. Special Condition.** The following condition should be added to all DA permits that require permittee-responsible mitigation. This condition does not apply to mitigation banks or in-lieu-fee programs:

*Your responsibility to complete the required compensatory mitigation as set forth in Special Condition X will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers.*

**5. Duration**

This guidance remains in effect unless revised or rescinded.



STEVEN L. STOCKTON, P.E.  
Director of Civil Works

EXHIBIT D  
Carli Creek IGA

**Development Agency Considerations**

Easement Type	Width	Length	Area	Market Value (PSF)	% of Market	Multiplier (2 years)	Value	Note:
Temporary Construction Easement (Upland)	35	1230	43060.5	\$7.00	8.50%	2	\$51,242.00	Actual TCE 50 ft, width is delta between TCE and Permanent
Permanent Pipe/Access (Upland)	15	1230	18454.5	\$7.00	100.00%	Permanent	\$129,181.50	Area along northern property line.
Temporary Construction Staging	366.45	300	109935	\$7.00	8.50%	2	\$130,822.65	
Permanent Pipe/Access (Lowland)			23730	\$0.23	100.00%	Permanent	\$5,457.90	Market Value: Per Carli Appraisal
Land Value (Mitigation Site)			61289	\$0.23	100.00%	Permanent	\$14,096.47	Market Value: Per Carli Appraisal
<b>Total Consideration</b>							<b>\$330,800.52</b>	

**CCSD No. 1 Considerations**

Item	Cost
Engineering/Design (Herrera Contract)	\$ 65,400.00
Mitigation Construction	
Planting	\$ 24,000.00
Low Perm Soils (% of total based on wet)	\$ 18,837.00
Habitat Structures (1-Type1; 4-Type2; 7-Type3)	\$ 16,700.00
Option to Purchase with \$100,000 Purchase Credit	\$ 100,000.00
Temporary Easement Improvement	\$ 30,000.00
5 Year Mitigation Permit Management (\$15,000)	\$ 75,000.00
<b>Total</b>	<b>\$ 329,937.00</b>



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Public Improvement Contract between  
Clackamas County Service District No. 1, the Tri-City Service District,  
Water Environment Services and Stettler Supply Company  
for the Tri-City Blower Systems Upgrades Project

<b>Purpose/Outcomes</b>	The replacement and installation of two membrane bioreactor and three conventional activated sludge process blowers at the Tri-City Water Resource Recovery Facility.
<b>Dollar Amount and Fiscal Impact</b>	Total contract value not to exceed \$392,745.00, to be split proportionately between CCSD No. 1 and Water Environment Services.
<b>Funding Source</b>	Clackamas County Service District No.1 and WES FY 2016-17 and 2017-18 annual budget. No General Funds impacted.
<b>Duration</b>	Upon approval to October 31, 2017
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Assignment</b>	<ol style="list-style-type: none"> <li>1. This project supports the WES Strategic Plan to provide partner communities with reliable waste water infrastructure to serve existing customers and support future growth.</li> <li>2. This project supports the County Strategic Plan of building a strong infrastructure that delivers services to customers.</li> </ol>
<b>Contact Person</b>	Randy Rosane PE, Project Manager – Water Environment Services – 503-742-4573 <span style="float: right;"><i>RW</i></span>

**BACKGROUND:**

On February 4, 2016 the Board of County Commissioners authorized Clackamas County Service District No. 1 and the Tri-City Service District (“Districts”) to replace the failing HSI high speed turbo blowers at the Tri-City Water Resource Recovery Facility. A contract was awarded to Stettler Supply Company to purchase and replace the existing blowers. During the submittal process HSI Blower Company was purchased by Atlas Copco. Before Districts purchased new blowers as part of the Stettler Supply contract, Atlas Copco approached the Districts with a good faith offer to supply all new centrifugal blowers at no cost to the Districts. The Districts were unable to negotiate a reasonable deductive change order with Stettler Supply Company and was forced to re-bid the project to install the Atlas Copco blowers that are now on site.

On May 16, 2017, the Districts publicly advertised for bids, through County Procurement, for replacement and installation of two (2) Membrane Bioreactor and three (3) Conventional Activated Sludge Process Blowers.



On June 8, 2017, two (2) bids were received and evaluated. It was determined that Stettler Supply Company DBA Stettler Supply & Construction was the lowest responsive bidder and is eligible to perform work in the State of Oregon.

The contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

CCSD#1 staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No. 1, a political subdivision of the State of Oregon, approve and execute the Public Improvement Contract between Clackamas County Service District No. 1, the Tri-City Service District, Water Environment Services and Stettler Supply Company for the Tri-City Blower Systems Upgrades Project in a total contract amount not to exceed \$392,745.00, to be split proportionately between CCSD#1 and WES

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. Geist', is written over a faint dotted line.

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Procurement.



WATER ENVIRONMENT SERVICES
PUBLIC IMPROVEMENT CONTRACT

This Public Improvement Contract for the Tri-City Blower Systems Upgrades Project (the "Contract"), is made by and between the Clackamas County Service District No. 1, Tri-City Service District, and Water Environment Services, all three political subdivisions of the State of Oregon, hereinafter called "Owner," and Stettler Supply 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.

WITNESSETH:

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of Three Hundred Ninety-Two Thousand Seven Hundred and Forty-Five Dollars (\$392,745.00) (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 Clackamas County General Conditions for Public Improvement Contracts (1/1/2017)("General Conditions") 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, as indicated in the accepted 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
• Clackamas County General Conditions
• Prevailing Wage Rates
• Plans, Specifications and Drawings
• Instructions to Bidders
• Bid Bond
• Performance Bond and Payment Bond
• Supplemental General Conditions
• Payroll and Certified Statement Form

2. Representatives.

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

[X] Unless otherwise specified in the Contract Documents, the Owner designates Randy Rosane 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: Trevor Spires shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

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

**Job Superintendent:** Jeff Tarter shall be the Contractor's on-site job superintendent throughout the project term.

**Project Engineer:** Dawn Tow 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: Within 120 days from NTP

FINAL COMPLETION DATE: Within 150 days from NTP

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.**

In accordance with Section G.3.5 of the General Conditions, Contractor shall furnish proof of the required insurance naming Clackamas County, Clackamas County Service District No. 1, and Tri-City Service District as additional insureds. Insurance certificates may be returned with the signed Contract or may emailed to [Procurement@clackamas.us](mailto:Procurement@clackamas.us).

#### **6. 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 Owner's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Owner 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 Owner 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.

#### **7. 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.

**8. 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.

**9. 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.

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

Contractor DATA:

**Stettler Supply Company**  
**4420 Ridge Drive NE**  
**Salem, OR 97301**

Contractor CCB # 33228 Expiration Date: 10/17/17

Oregon Business Registry # 053528-10 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.*

Stettler Supply Company

Clackamas County Service District No. 1

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Chair Date

\_\_\_\_\_  
Name / Title Printed

Tri-City Service District

\_\_\_\_\_  
Chair Date

Water Environment Services

\_\_\_\_\_  
Chair Date

\_\_\_\_\_  
Recording Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
County Counsel Date






Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Public Improvement Contract  
between Clackamas County Service District No. 1 and Elting Northwest, Inc.  
for the Carli Creek Enhancement and Water Quality Project

<b>Purpose/Outcomes</b>	Execution of the contract between Clackamas County Service District No. 1 and Elting Northwest Inc., for Construction of the Carli Creek Enhancement and Water Quality Project.
<b>Dollar Amount and Fiscal Impact</b>	The contract amount is \$2,770,174.50. The Clackamas County Service District No. 1 capital budget includes \$2M for the project for FY 2017-18, with an additional \$1M proposed in FY 2018-19 pending Board approval.
<b>Funding Source</b>	Clackamas County Service District No.1 Construction Fund. No General Funds are impacted.
<b>Duration</b>	July 2017 to July 2019
<b>Previous Board Action</b>	<ul style="list-style-type: none"> <li>• Execute Funding Agreement with Portland General Electric Company (121814 VIII.1.)</li> <li>• Agreement with Herrera Environmental to Furnish Engineering Services (121114 VII. 1.)</li> <li>• Agreement to Furnish Engineering Services (031413 VI.1.)</li> <li>• Execution of Purchase and Sale Agreement (010512 VI.1.)</li> <li>• Execution of Purchase and Sale Agreement (010512 VI.1.)</li> <li>• Carli Property Acquisition Proposal (Executive Session 110811)</li> </ul>
<b>Strategic Plan Assignment</b>	<ol style="list-style-type: none"> <li>1. This project supports the WES Strategic Plan goal to provide properly functioning infrastructure that supports healthy streams and reduces flooding.</li> <li>2. This project supports the County's Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invests in our natural resources.</li> </ol>
<b>Contact Person</b>	Ron Wierenga, WES Division Manager – 503-742-4581 

**BACKGROUND:**

In January 2012, Clackamas County Service District No. 1 (“CCSD #1”) purchased a 15-acre property owned by the Carli family to construct a regional stormwater facility in support of water quality and stream health. The project also fulfills state and federal regulatory requirements to improve stormwater treatment in older areas that drain to urban creeks, like Carli Creek, which discharges into the Clackamas River. The main elements of the Carli Creek Enhancement and Water Quality Project (“Carli Creek Project”) include:

- 1) Re-routing stormwater conveyance systems along SE 120<sup>th</sup> St and SE Capps Road;

- 2) Regional water quality treatment facility;
- 3) Wetlands and upland habitat enhancement; and
- 4) Carli Creek habitat restoration for fish.

Construction is expected to begin this summer and continue into 2018, with maintenance of the treatment wetland and habitat restoration components completing in 2019. WES and PGA staff sent construction notices to surrounding neighborhoods and Community Planning Organizations (“CPOs”), and are engaging property owners and businesses in the area on project goals, schedule, and potential interruptions of service.

**PROCUREMENT PROCESS:**

This project was requested by Ron Wierenga and Leah Johanson. Bids were requested to complete specified work on the above-mentioned projects. This project was advertised in accordance with ORS and LCRB Rules On May 11, 2017. On June 7, 2017, three (3) bids were received: Elting Northwest, Inc. \$2,770,174.50; K&E Excavating, Inc. \$2,982,076.60; and LKE Corporation \$3,160,161.00. After review of all bids, Elting Northwest, Inc. was determined to be the lowest responsive and responsible bidder. The total contract amount is not to exceed \$2,770,174.50.

The contract was reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No. 1, approve and execute the Public Improvement Contract between Clackamas County Service District No. 1 and Elting Northwest, Inc. for the Carli Creek Enhancement and Water Quality Project for a total contract amount not to exceed \$2,770,174.50.

Respectfully submitted,



Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Procurement.