

AGENDA

Thursday, October 4, 2018 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2018-100

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

1. Presentation Regarding Hunger in our Community and Announcing the Results of the 2018 Health, Housing & Human Services Food Drive (Rich Swift, Director, H3S)

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

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

A. Health, Housing & Human Services

1. Approval of a Professional, Technical, Personal Services Agreement with the Conduent Healthy Communities Corporation for the Public Health Community Data Dashboard – *Public Health*
2. Approval of an Intergovernmental Agreement with North Clackamas Parks & Recreation District for the Cooperative use of the Concord Building in Milwaukie for the Law Enforcement Assisted Diversion (LEAD) Program – *H3S Administration*
3. Approval of Intergovernmental Agreement No. 146873-2 with the State of Oregon, Department of Human Services, Seniors and People with Disabilities Division for the Provision of Non-Medical Transportation for Medicaid Eligible, Case Managed Clients – *Social Services*

B. Department of Transportation & Development

1. Approval of an Intergovernmental Agreement for Right- of-Way Services with Oregon Department of Transportation for the Canby (M.J. Lee) Ferry Bank Stabilization and Intelligent Transportation System (ITS) Project

C. County Counsel

1. Approval of a Settlement Agreement in the Case of *Davis v. Roberts, et al*

D. Business & Community Services

1. Resolution No. _____ Approval of Property Disposition Amended Policies and Procedures for the Sale, Transfer and Administration of Tax Foreclosed and Surplus County Property

IV. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of an Intergovernmental Agreement with Clackamas County's Health, Housing and Human Services Department to Provide Law Enforcement Assisted Diversion (LEAD) Program Space at the Concord School Property

V. COUNTY ADMINISTRATOR UPDATE

VI. COMMISSIONERS COMMUNICATION

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

October 4, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

**Presentation regarding Hunger in our Community and
announcing the results of the 2018 H3S Food Drive**

Purpose/Outcomes	Every year, Clackamas County Health, Housing and Human Services holds a food drive to help support the Oregon Food Bank and the many organizations here in Clackamas County that rely on donations.
Dollar Amount and Fiscal Impact	\$10,380. Equivalent to 31,140 meals
Funding Source	N/A
Safety Impact	Reduction of food insecurity
Previous Board Action	None
Strategic Plan Alignment	1. H3S – Individuals and families in need are healthy and safe 2. County – Ensure safe, healthy and secure communities
Contact Person	Richard Swift, Director, 503-650-5697
Contract No.	N/A

Background:

Even in a nation as wealthy as ours, hunger is a serious issue. According to the U.S. Department of Agriculture, 50.1 million Americans live in food-insecure households – 33 million adults and 17.2 million children.

Hunger is a particularly serious problem in Oregon. In an average month, an estimated 260,000 people are receiving food from a food pantry.

- The rate of food insecurity (being without access to a sufficient quantity of affordable, nutritious food) in Oregon is 14.6 percent.
- About 552,900 Oregonians are food insecure, of those 194,070 are children.
- About 72 percent of the people who receive food have incomes below the federal poverty level.
- Of households utilizing food pantries, about 80 percent of them are able to meet their food needs for the month with the help of a pantry.

Record numbers of people are seeking food assistance. In an average month, 92,000 children eat meals from emergency food boxes. An additional 3.9 million emergency meals were served at soup kitchens and shelters.

Most adult emergency food recipients are looking for work, working, retired or disabled. 34 percent of those receiving emergency food are children.

Food provided by the Oregon Food Bank is extremely important for people in need here in Clackamas County. Donations are what keeps places like the Clackamas Service Center on Southeast 80th Avenue, the Sandy Community Action Center, the Estacada Area Food Bank and the Colton Community center up and running and able to feed the hungry.

Healthy Families. Strong Communities.

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

www.clackamas.us

Every year, Clackamas County Health, Housing and Human Services holds a food drive to help support the Oregon Food Bank and the many organizations here in Clackamas County that rely on donations.

In our first food drive in 2009, we collected the equivalent of 15,440 pounds of food. In 2010, we collected 11,859 pounds, followed by 17,283 pounds in 2011, 18,481 pounds in 2012, 28,343 pounds in 2013, 26,277 pounds in 2014, 34,850 pounds in 2015, 42,226 pounds in 2016 and 60,533 pounds last year.

This year, we collected \$10,380 for the Oregon Food Bank, resulting in 31,140 meals.

Since 2009, H3S has collected nearly 268,000 pounds of food, resulting in 223,333 meals.

One of the highlights of the food drive was the carnival. On Aug. 2, several department directors volunteered their time to sit in a dunk tank. Employees paid for the chance to dunk directors, commissioners and others. We want to specifically thank Commissioner Jim Bernard, PGA Director Gary Schmidt, Water Environment Services Department Director Greg Geist for their willingness to brave the cold water to help make a difference in the lives of Clackamas County residents. All told, more than \$1,000 was raised from the dunk tank alone.

This year, we also extended the H3S Food Drive to other departments. We want to thank the following for their participation in the food drive: the Board of County Commissioners, Public and Government Affairs Department, Department of Transportation and Development, Juvenile Department, Human Resources Department, Water Environment Services Department,

We also want to thank the following food trucks who were on campus throughout the summer and donated a portion of their sales to the food drive: Tamale Boy, Café de Crepe, Pepe Caliente, Chicagoland Deep Dish, Koi Fusion, Retrolicious and Chop Chop Chicken Sundaes.

On behalf of H3S, I want to thank all of the staff who participated, along with the coordinators in each division, who helped to make the food drive a success. We know that in difficult times, it is important for communities to come together to help each other. The H3S Food Drive is a great example of this, and we look forward to beating our record next year.

Recommendation:

No action needed.

Respectfully submitted,



Richard Swift, Director
Health, Housing & Human Services

October 4, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a Professional, Technical, Personal Services Agreement with the Conduent Healthy Communities Corporation for the Public Health Community Data Dashboard

Purpose/Outcomes	This Agreement is to develop a data portal to Conduent's database which houses Community Health Assessments (CHA) and Community Health Improvement plans (CHIP) data that assist in Public Health's strategic plan and implementation of Blueprint for Healthy Clackamas Initiative.
Dollar Amount and Fiscal Impact	Contract maximum value is \$147,500.
Funding Source	No County General Funds are involved.
Duration	Effective upon signature and terminates September 30, 2023
Strategic Plan Alignment	1. Efficient and Effective Services 2. Build a strong infrastructure.
Previous Board Action	No previous action.
Contact Person	Dawn Emerick, Public Health Director – 503-742-8479
Contract No.	8510

BACKGROUND:

Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of a Professional, Technical, Personal Services Agreement with the Conduent Healthy Communities Corporation for the Public Health Community Data Dashboard.

This Agreement is to develop a data portal to Conduent's database which houses Community Health Assessments (CHA) and Community Health Improvement plans (CHIP) data that assist in Public Health's strategic plan and implementation of Blueprint for Healthy Clackamas Initiative. This includes mapping and data visualization tools, dashboard of over 100 health and quality of life indicators, promising practices, social needs index, local resources and community engagement. This is housed in a central repository.

This Agreement has a maximum value of \$147,500. This Agreement is effective upon signature and will terminate September 30, 2023. This Agreement has been reviewed by County Counsel on September 19, 2018.

Recommendation

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

Respectfully submitted

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

Richard Swift, Director
Health, Housing, and Human Services



CLACKAMAS COUNTY TECHNOLOGY SERVICES CONTRACT

This Technology Services Contract (this "Contract") is entered into between Conduent Healthy Communities Corporation. ("Contractor" or "HCI"), and Clackamas County, a political subdivision of the State of Oregon ("County"), on behalf of its Health, Housing, and Human Services Department. Contractor and County are each a "Party" and together the "Parties."

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on September 30, 2023. However, such expiration shall not extinguish or prejudice a Party's right to enforce this Contract with respect to: (a) any breach of a warranty or representation of the other Party; or (b) any breach, default or defect in the performance of any obligation of the other Party that has not been cured.

2. Statement of Work. Contractor will grant the licenses as further described in **Article III** (collectively "the License") and will provide the related services further described in **Article IV** ("the Services"). The License and the Services are also collectively referred to herein as "the Work" and terms of Article IV also referred to herein as "the Statement of Work."

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum of \$147,500.00 for the term of this Agreement through September 30, 2023, for accomplishing the Work required by this Contract, not including any additional licenses purchased on the rates set forth herein. Annual fees shall be due annually in advance and paid in accordance with ORS 293.462. Contractor shall be paid in accordance with the following fee schedule:

Item	Annual or One Time	Fee
Setup Fee	One Time Fee	\$10,000.00
License – Standalone Platform	Annual Fee	\$25,000.00
License – Customer Expenditure	Annual Fee	\$2,500.00
Year 1 Total		\$37,500.00
Years 2-5 Total	Annual Fee	\$27,500.00

4. Travel and Other Expense. Authorized: Yes No

Travel expenses are not pre-authorized under this Contract and any must be pre-approved by County for reimbursement.

5. Contract Documents. This Contract consists only of this Contract and there are no other exhibits or attachments other than any website terms expressly referenced herein. In the event any website terms conflict with the terms of this Contract, the terms of this Contract shall take precedent.

6. Contractor Data.

Name: Conduent Healthy Communities Corporation
Address: 100 Campus Drive, Suite 200, Florham Park, New Jersey 07932

Contractor Contract Administrator: Sheila Baxter
Phone No.: (510) 710-5101

Email: Sheila.baxter@conduent.com

MWESB Certification: DBE # MBE # WBE # ESB #

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

ARTICLE II.

1. NO EFFECT OF CLICK-THROUGH TERMS

In no event will Contractor include any “click-through” terms nor shall the use of the Services be made subject to any terms and conditions in accessing or using the Services other than those that are contained or referenced in this Contract or imposed by federal, state, or local laws applicable to the obligations of Contractor in the performance of the Work, or the terms of use of the HCI Platform (“the Website Terms”) referenced at Article III Section 1.2 (collectively “the Permissible Terms”). Moreover, in the event such terms and conditions other than the Permissible Terms are ever presented to the authorized user, they shall not be binding and will have no force or effect.

2. ACCESS TO RECORDS. Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all reimbursable costs hereunder anticipated to be incurred in the performance of this Contract. Upon not less than 14 days’ advance written notice, Contractor, at its place of business during normal business hours or, at its option, electronically, shall provide to County and their duly authorized representatives access to the books, documents, papers, and records of Contractor which are reasonable and directly pertinent to this Contract for the purpose of audit examination of the compliance of Contractor in the performance of its obligations under this Contract. 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.

3. 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 full payments due under this Contract which decision shall be sent in writing to Contractor. If there is no appropriation made the County shall provide written notice of termination to Contractor. The termination will be effective, without penalty, thirty (30) days from the date mailed by County. Contractor shall be entitled to receive all amounts due hereunder accrued and prorated through the effective date of such termination. Notwithstanding anything to the contrary herein, the Parties acknowledge and agree that the provisions of this Section 3 or Sections 19.2 or 19.4, do not permit the County to partially reduce the scope and the fees of the Work (full termination is the sole option in such event(s)).

4. **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.
5. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the performance by Contractor hereunder for the Work to be done under this Contract. If and to the extent applicable to Contractor in the performance of its obligations of 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.
6. **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.
7. **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.
8. **INDEMNIFICATION**
 - 8.1 **IP Indemnity.** Each Party ("the Indemnifying Party"), and to the extent permitted by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300) as applicable to County, will indemnify, defend and hold the other Party and its officers, elected officials, employees and agents (collectively "the Indemnified Party"), harmless from and against any and all Losses resulting from, arising out of or relating to any third party claims that the Services or the HCI Platform, in the case of Contractor, or, in the case of either Party, any data provided by, or intellectual property rights licensed from, one Party to the other Party hereunder, or use thereof, infringe or violate any intellectual property rights under the laws of the United States of any third party. If Contractor believes at any time that the Work infringes a third party's intellectual property rights, Contractor may: (i) upon receipt of County's prior written consent, which County will not unreasonably withhold, replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for County the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the Work continues to function in material conformance with the specifications set forth in this Contract; and Contractor's failure or inability to accomplish any of the foregoing, within a reasonable period of time, will be

deemed a material breach of this Contract, and County may pursue any rights and remedies available to it under this Contract, including termination.

8.2 Damages to County Property and Employees. Contractor shall be liable, for all claims, suits, actions, losses, damages, liabilities, costs and expenses (collectively, "Damages") for personal injury, including death, damage to real property and damage to tangible personal property of the County or any of its employees proximately caused by the negligent, physical acts or omissions of Contractor, its officers, employees, subcontractors, or agents ("Contractor Personnel") under this Contract while on premises that are owned or controlled by the County ("County Premises").

8.3 Control of Defense and Settlement. A Party's obligation to indemnify under this Section 8 is conditioned on the Indemnified Party providing to the Indemnified Party notification within thirty (30) days of any third party claim or potential claim of which the Indemnified Party becomes aware that may be the subject of this Section 8. The Indemnifying Party will have control of the defense and settlement of any claim; however, neither the Indemnifying Party nor any attorney engaged by the Indemnifying Party will defend the claim in the name of the Indemnified Party, nor purport to act as legal representative of the Indemnified Party without the approval of the Indemnified Party, nor will the Indemnifying Party settle any claim on behalf of the County without the prior approval of the Indemnified Party if such settlement involves a financial obligation of the Indemnified Party or admits wrongdoing on the part of the Indemnified Party.

9. INDEPENDENT CONTRACTOR STATUS. The Work to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (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, if and to the extent applicable with respect to the performance of the obligations of Contractor hereunder.

10. INSURANCE. Contractor shall provide insurance as indicated on **Article V**, attached hereto and by reference is incorporated herein.

11. LIMITATION OF LIABILITIES.

11.1. Neither Party's liability with respect to any single incident arising out of or related to this Contract (whether in contract or tort or under any other theory of liability) shall: (A) exceed the amounts paid by County in the twelve (12) months preceding the incident giving rise to the claim; or (B) include lost profits and indirect special, and/or consequential damages, regardless of whether the possibility of the existence of such

damages has been communicated to the Party and regardless whether that Party has or gains knowledge of the existence of such damages.

11.2. Notwithstanding anything to the contrary herein, the limitations of Section 11.1 shall not apply to or limit a Party's: (a) confidentiality obligations, including without limitation, data security obligations which cause a breach of Confidential Information, (b) indemnification obligations, or (c) in the case of the County, a violation of the license restrictions hereunder.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us, or to Contractor or at the address or number set forth in Article I of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. REPRESENTATIONS AND WARRANTIES. Each Party represents and warrants that (1) it 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 the Party enforceable in accordance with its terms; (3) in the case of 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.

13.1. Services Warranty. Contractor warrants that the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with applicable industry standards. Except as provided for herein, Contractor's liability and County's remedy under this Section 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 its facilities and third party vendor software for purposes of repair or replacement under this Services warranty.

13.2. Warranty Against Infringement.

Each Party warrants that to its knowledge, the Work, in the case of Contractor, or in the case of either Party, any data provided by, or intellectual property rights licensed from, the Party to the other Party hereunder, will be free of the rightful claim of any third party by way of infringement or misappropriation of patent, copyright, trade secret, trademark or other rights arising under the laws of the United States. Contractor further warrants that to its knowledge, no act or omission of the Contractor will result in a third party holding a claim that interferes with the County's use of the Work. Contractor warrants that it owns or possesses the necessary rights, title and licenses necessary to perform its obligations hereunder. Notwithstanding the forgoing, the forgoing warranty does not extend to: (i) use of the Work in combination with modules, apparatus, hardware, software, or Services not authorized by the Contractor or contemplated for use with the Work; (ii) use of the Work in a manner that is not in accordance with this Contract or (iii) the alteration or modification of the Work by a party other than the Contractor, unless such alterations and modifications were authorized in writing by the Contractor.

13.3. No Other Warranties.

Contractor cannot guarantee that every error in or problem with the Work raised by County will be resolved. THE SERVICES ARE PROVIDED "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE WORK, OR THIS CONTRACT AND HEREBY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OR UNINTERRUPTED OPERATION AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. CONTRACTOR DOES NOT WARRANT THAT THE WORK PROVIDED HEREUNDER MEET LOCAL, STATE, OR FEDERAL REGULATORY REQUIREMENTS FOR CONDUCTING COMMUNITY HEALTH NEEDS ASSESSMENTS OR PROVIDING HEALTH INFORMATION TO COMMUNITIES. To the extent that a party may not as a matter of Applicable Law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

13.4. Liens.

Contractor shall hold the County harmless from claimants supplying labor or materials to the Contractor or its subcontractors in the performance of this Contract.

14. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 2, 7, 8, 11, 12, 13, 14, 15, 17, 20, 21, 22, 23, 26, and 28.

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

16. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the Work required by this Contract other than with a then affiliate of Contractor, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County which may not be unreasonably withheld or delayed; provided, however, without the prior written approval of the County, Contractor may assign this Contract in connection with a sale, merger, reorganization or other transfer involving substantially all of the assets of Contractor. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. For the avoidance of doubt, the use of vendors shall not be subject to this Section.

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

18. TAX COMPLIANCE CERTIFICATION. In accordance with ORS 279B.045, Contractor represents and warrants that during the term of this contract, and for a period no fewer than six (6) calendar years preceding the effective date of this Contract, it has complied with:

- 18.1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- 18.2. Any tax provision imposed by a political subdivision of this state that applies to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation of any work performed by Contractor;
- 18.3. Any tax provision imposed by a political subdivision of this state applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
- 18.4. Any rules, regulations, charter provisions, or ordinances that implemented or enforces of the forgoing taxes, laws, or provisions.
- 18.5. County hereby represents and warrants that, to the best of its knowledge, there are no Oregon taxes in the nature of sales or use taxes applicable to any amounts payable by County to Contractor hereunder.

19. TERMINATIONS. This Contract may be terminated for the following reasons:

- 19.1. This Contract may be terminated at any time by mutual consent of the Parties, or by either party upon written notice to the other party, if the other party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other Party's receipt of such notice from the non-breaching Party.
- 19.2. County may terminate this Contract effective thirty (30) days from the delivery (receipt) of notice to Contractor, or at such later date as may be stated in such notice by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) any material 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.
- 19.3. This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor materially fails to provide Services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor materially 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, (iii) and after receipt of notice from the County, materially fails to correct such failure within thirty (30) business days from the receipt of such notice.
- 19.4. 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 penalty by giving Contractor not less than thirty (30) days' notice.

20. EFFECT OF TERMINATION. In the event of any termination or expiration of this Contract:

- 20.1. County will pay all Contractor invoices for the Work that were provided or accrued up to the effective termination date as provided under the provisions of this Contract with respect to the given termination.
- 20.2. All rights and licenses granted hereunder to County (as well as all rights granted to any authorized users of County) will immediately cease as of the effective termination date;
- 20.3. Contractor will provide records to County in accordance with its transition assistance Services (“**Transition Assistance**”) to the extent applicable as set forth in Section 22 below; and
- 20.4. The Parties will, upon written request of the other Party, either return to the requesting Party or destroy any Confidential Information or Data of requesting Party that are in other Parties possession or control.

21. REMEDIES.

- 21.1. In the event of termination pursuant to Article II Sections 19.2 or 19.4, and the County has not previously committed an uncured breach of this Contract, Contractor’s sole remedy shall be a claim for the sum of all unpaid amounts accrued on a prorated basis through the effective date of termination less any claim(s) which the County has against Contractor for any uncured breach of Contractor hereunder; and if previous amounts paid to Contractor exceed the amount then due to Contractor, Contractor shall pay any excess to County on demand.
- 21.2. In the event of termination for any other reason, each party shall have any remedy available to it in law or equity.
- 21.3. As of the effective date of termination for the given termination as provided in this Contract, Contractor shall immediately cease all activities under this Contract, unless required for Transition Assistance.

22. TRANSITION ASSISTANCE.

Upon termination of the Agreement for any reason, and subject to all fees due being paid in full, Contractor will return County’s Data in a CSV, PDF or other mutually agreeable format for each record (“**Record**”) and provide them to the County for download. Records can be uploaded to County’s new records management system by the County or its new vendor.

Transition Assistance as outlined in this Section is included in the fees charged to County for the Services.

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

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.

25. **FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, war, internet service interruptions, slowdowns, vandalism, or "hacker" attacks where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make 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 a Party to enforce any provision of this Contract shall not constitute a waiver by such Party 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, to the extent applicable, the following terms and conditions are made a part of this Contract:
 - 27.1. 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; and (iv) pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
 - 27.2. If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or Services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or Services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.
 - 27.3. The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which by reference is incorporated herein. 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.
 - 27.4. The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such Services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such Services.
28. **CONFIDENTIALITY.**
 - 28.1. **Definition of Confidential Information.** For the purposes of this Contract, "Confidential Information" means:
 - 28.1.1. With respect to Contractor, the proprietary or confidential information of Contractor, including without limitation, the Services and the HCI Platform and any and all related source code and documentation and non-public information

or material regarding Contractor's legal or business affairs, financing, customers, properties or data, including, without limitation, Contractor Data (hereinafter defined), and all analytics, algorithms or other comparative relationships, and;

28.1.2. With respect to the County, the proprietary or confidential information of the County, including without limitation, any non-public information or material regarding the County's legal or business affairs, financing, customers, property or data, including without limitation, the County Data (hereinafter defined).

28.1.3. Notwithstanding any of the forgoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by or involvement of, the party to which the Confidential Information is disclosed (the "Receiving Party"); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the "Disclosing Party"); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the Disclosing Party.

28.2 Use and Disclosure of Confidential Information. The Receiving Party will, with respect to any Confidential Information disclosed by the Disclosing Party before or after the effective date: (i) use such Confidential Information only in connection with the Receiving Party's performance of this Contract; (ii) subject to Section 28.5 below, restrict disclosure of such Confidential Information within the Receiving Party's organization to only those of the Receiving Party's employees, affiliates, agents and independent contractors who have a reasonable need to know such Confidential Information in connection with the Receiving Party's performance of this Contract and are bound to confidentiality restrictions at least as stringent as those applicable to the Party otherwise hereunder; and (iii) except as provided herein, not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.

28.3 Protection of Confidential Information. The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care). Each Party shall notify the other Party as soon as reasonably practicable in the event that Confidential Information of the Party is believed to have been the subject of unauthorized disclosure or use.

28.4 Employee and Independent Contractor Compliance. The Receiving Party will, prior to providing any employee, affiliate, agent, or independent contractor access to any Confidential Information of the Disclosing Party, the Receiving Party shall require such person or entity to have executed a written confidentiality agreement with provisions at least as stringent as the obligations of the Receiving Party hereunder and covering the potential receipt of the Disclosing Party's Confidential Information.

28.5 Required Disclosures. In the event that either Party is requested or required (without limitation, by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or similar process or by any law, rule or regulation of any governmental agency or regulatory authority) (for the purposes of this paragraph, each, a "Request") to disclose any of the Confidential

Information of the other Party, such Party shall provide the other Party with prompt written notice of any such request or requirement so that such other Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Contract. If, in the absence of a protective order or other remedy or the receipt of a waiver, and if one Party is nonetheless, legally compelled to disclose Confidential Information, such Party may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information which such counsel advises it is legally required to be disclosed, provided that such Party shall use its best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the other Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded the Confidential Information by such tribunal.

28.6 Public Records. Contractor acknowledges and agrees that Oregon Public Record Law may apply to certain information disclosed hereunder and that County will promptly comply with such disclosures to the extent required by law. County acknowledges that certain exemptions to the Oregon Public Record Law may apply to information disclosed hereunder. Accordingly, County will contact Contractor within three (3) business days after County receives a public records request for Contractor records. Once the County identifies records it is prepared to release in response to the request, the County will notify the Contractor and provide copies of the documents the County plans to release. The County will provide the Contractor no more than three (3) business days an opportunity to object to the release of the Contractor information, providing sufficient time to review the documents in light of the volume of responsive documents. If County chooses to release the Contractor's information over the objection of the Contractor, then County will provide written notice to the Contractor. The written notice must be received by the Contractor at least ten calendar days before the date the County intends to release the Contractor's records. Notwithstanding any provisions of this Section 28.6 or other provisions of this Contract, at any time Contractor may take independent action to defend against the requested or attempted disclosure of any of its information pursuant to the Oregon Public Record Law or any other law.

29. Acceptance Testing. Prior to accepting the HCI Platform, the County and Contractor shall perform any acceptance testing in accordance with the Statement of Work. Acceptance by County shall not constitute a waiver of any applicable warranty. Payment for the Work does not constitute Acceptance, nor does it constitute a waiver of any applicable warranty.

30. Changes to Work. Contractor may make changes and updates to the Work, provided that it does not materially derogate the overall quality of the Work. Contractor does not guarantee that the Work or will remain compatible with any particular third party software or equipment, and may, upon written notice, terminate its support for, any software or equipment of County that Contractor determines are incompatible with the operation of the Work .

31. Non-Solicitation. Without the prior written consent of the other Party, until at least twelve (12) months have passed since the date a given employee, agent, or subcontractor of the other Party was last involved in any Services (whether providing or receiving such Services) under this Contract ("Personnel"), County and Contractor each agree to refrain from employing or engaging the services of such Personnel, as a result of a direct or indirect solicitation of such Personnel. If a Party is interested in hiring or engaging any Personnel of the other Party, such interest will be discussed first with the other Party prior to discussing such an offer with the Personnel. In no event shall this Section apply with respect to Personnel of the other Party who

independently approaches the other Party or are recruited through use of employment advertising made to the public.

ARTICLE III.

1. SOFTWARE LICENSE PROVISIONS

- 1.1. License.** During the Term of this Contract and in exchange for the payment of the fees due hereunder, Contractor hereby grants a non-exclusive, non-transferable, non-sublicensable license to County and its authorized users ("Authorized Users") to access and use the Work through the HCI Platform in accordance with the terms and conditions of this Contract. Contractor will be responsible for hosting the HCI Platform on servers operated by or for Contractor accessible at the URL address owned by County ("the Website"), and County and its Authorized Users will be responsible for obtaining internet connections and other third party software and services necessary for it to access the Website.
- 1.2. Authorized Users.** County will be responsible to Contractor for compliance with the restrictions on use and other terms and conditions of this Contract by any of its Authorized Users. County will either incorporate HCI's terms of use into its terms of use, as will be displayed on the Website, or allow Contractor to maintain a terms of use link and document on the Website. Authorized Users must agree to the terms of use or will not be allowed to use the HCI Platform. County's staff shall have first line responsibility for dealing with Authorized User support inquiries in a commercially reasonable manner agreed to by Contractor. Contractor will provide second tier support directly to County through the internet, email and telephone support during normal business hours (9AM to 5PM Pacific Time) with an initial response within one business day that includes an estimated time for final resolution. County will designate and Contractor will train one support person who will be County's interface with Contractor on support matters.
- 1.3. Other Licenses.** County grants to Contractor a worldwide, non-exclusive, non-transferrable, non-sublicensable, royalty-free license to use, reproduce, distribute, perform and display any and all County Data it provides to Contractor in connection with the HCI Platform. Contractor and County each grant to the other a limited, non-exclusive, non-sublicensable, worldwide license to use the other's trademarks, trade names, copyrights and logos and trade dress (collectively, "Trademarks") only as necessary to fulfill each Party's obligations under this Contract during its term. Contractor and County each agree that the quality of its manner of use of the other's Trademarks shall be high and Contractor and County may each terminate the other's license to use its Trademarks if it determines that the other's use of such Trademarks tarnishes, blurs or dilutes the quality or good will associated with such Trademarks and such problem is not cured within ten (10) days of notice thereof. Each Party agrees not to contest the other Party's ownership of its Trademarks, not to disparage or call into question the validity, value or ownership thereof, and not to use any of the other Party's Trademarks in any manner so as to create a combined trademark. Except as expressly granted in this Contract, no other rights or licenses or uses whatsoever in or to the HCI Platform or Contractor's Trademarks are granted to County. Contractor is, and at all times shall remain, the sole and exclusive owner of all right, title and interest, throughout the world (including all intellectual property and other proprietary rights), in and to the original and copies of the HCI Platform and any associated and derivative intellectual property, all website usage statistics (system utilization data), all new

features and enhancements to the HCI Platform, and any reports and supporting services provided by Contractor under this Contract.

- 1.4. Copies of Documentation.** Contractor will provide County via the Website or other means with access to the documentation, as may be updated from time to time. During the term of this Contract, County may reproduce the documentation provided that each copy thereby produced shall be marked with Contractor's proprietary markings as delivered to the County. County may use the documentation solely in connection with the use of the Work.
- 1.5. Title.** As between Contractor and County, Contractor retains title to and ownership of the Work and related source code and documentation, including all intellectual property rights relating thereto (collectively, "Contractor Intellectual Property"). County will have no rights with respect to the Work and related source code and documentation other than those expressly granted under this Contract. Any suggestions for changes or improvements to the Work that County provides to Contractor, whether solicited by Contractor or not, shall be owned by Contractor and Contractor hereby irrevocably assigns, and shall assign, to Contractor all right, title, and interest in and to such suggestions. Contractor shall have no obligation to incorporate such suggestion into its present or future products or services.
- 1.6. Restrictions on Use.** County and its Authorized Users will not (and will not permit any third party to), (i) share County's or any Authorized User's login credentials; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the Work or of any files contained in or generated by the Work ; (iii) copy, modify adapt or translate the Work , or otherwise make any use, resell, distribution or sublicense the Work other than in connection with this Contract; (iv) make the Work available on a "service bureau" basis or allow any third party to use the Work ; (v) disclose the Work or any of its components to third parties; (vi) remove or modify any proprietary marking or restrictive legends placed on the Work ; (vii) use the Work in violation of any Applicable Law; (viii) create or augment any mapping-related dataset including a mapping or navigation dataset, business listings database, mailing list, or telemarketing list) for use in an implementation that is not connected to the Work ; (ix) introduce into the Work any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature; (x) use the Work to post advertising or listings; (xi) use the Work to defame, abuse, harass, stalk, or threaten others; (xii) permit access or use of the Work by any individual outside the United States; (xiii) hide or obscure any authorized user's location; (xiv) permit access or use of the Work , for any activities other than for County's own business; or (xv) ,permit access or use of the Work, where reliance solely on, or failure to use, the Work could lead to death, personal injury, or property damages. County and its Authorized Users will not access the Work if in direct competition with Contractor, and will not allow access to the Work by any party who is in direct competition with Contractor, except with Contractor's prior written consent.
- 1.7. County Data.** As between Contractor and County, County owns and shall retain all rights, title, and interest, including, without limitation, all intellectual property rights, in and to all data and information that County provides to Contractor for accessibility through the HCI Platform ("the County Data"). County shall have the sole responsibility for the accuracy, quality, and legality of the County Data, including obtaining all rights and consents necessary to share the County Data with Contractor as set forth in this Contract. Contractor shall not access County user accounts or County Data, except; (i) in the course of data center operations, (ii) in response to the Work or technical issues, (iii)

as required by the express terms of this Contact, (iv) at County written request. Contractor shall not collect, access, or use user-specific County information except as strictly necessary to provide the Work to the County. Notwithstanding anything to the contrary contained herein, County hereby grants to Contractor an irrevocable, worldwide, royalty free, non-exclusive license to use the County Data to: (a) provide the Work to County and other Contractor clients; and (b) if the Parties later amend Article III to add necessary and appropriate provisions for Contractor to provide County such additional services, analyze the County Data in anonymized and/or aggregate form in order to operate, maintain, manage, and improve the Work , create new products and services for other Contractor present and future clients; and for Contractor's internal purposes to improve its applications, software, and related services for other Contractor present and future clients.

- 1.8. Export of County Data.** The County will have ability to directly query a near-live copy of their database in order to extract County Data stored in the HCI Platform. Furthermore, the County will have the ability to export common datasets directly from the Contractor user interface.
- 1.9 Contractor Data.** As between Contractor and County, Contractor owns, or has license rights to, the various data and information Contractor provides for access through the HCI Platform other than County Data ("Contractor Data"). County retains ownership of all data County supplies for access through the HCI Platform. Contractor shall retain all rights, title, and interest, including, without limitation, all intellectual property rights, in and to all Contractor Data.

2. SECURITY

- 2.1. Data Protection.** The Contractor shall use reasonable commercial efforts to protect against the unauthorized use of County Data or County Confidential Information at any time. Notwithstanding anything to the contrary herein, County agrees not to provide or give access to the Contractor of any County Data or County Confidential Information which is the subject of state, federal or international privacy laws, including without limitation, the Health Insurance Portability and Accountability Act ("HIPAA") or the European Union General Data Privacy Regulations ("GDPR"). To this end, the Contractor shall safeguard the confidentiality, integrity and availability of County Confidential Information or County Data by complying with the following conditions:
 - 2.1.1.** The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures designed to safeguard against unauthorized access, disclosure or theft of non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own non-public data of similar kind.
 - 2.1.2.** All County Data and County Confidential Information obtained by the Contractor in the performance of the Contract shall become and remain the property of the County.
 - 2.1.3.** Except as otherwise provided herein, Contractor shall not use any County Data or County confidential Information collected in connection with the Work issued from this Contract for any purpose other than fulfilling the Work; provided, however, County understands and agrees that when it uses certain features of the Work , certain information and data may be collected from

County's users, including monitoring and recording activity, and tracking physical location, which may include personal identifying information as to location or website addresses and County agrees that Contractor may use such information to (i) provide more effective Services, or (ii) to develop and test its Work

2.2. Data Location.

Contractor shall store County Data and County Confidential Information in data centers in the U.S. Contractor shall permit its personnel and contractors to access County data remotely from the U.S., as required to perform the Work or provide technical support.

2.3. Security Incident or Data Breach Notification.

2.3.1. Incident Response. Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law, contained in the contract or as otherwise determined by the Contractor. Discussing security incidents with the County should be handled on an urgent as needed basis, as part of Contractor's communication and mitigation processes as mutually agreed upon, defined by law as otherwise determined by the Contractor.

2.3.2. Security Incident Reporting Requirements. Each Party shall report a security incident to the other Party's identified contact promptly without out reasonable delay.

2.3.3. Breach Reporting Requirements.

2.3.3.1. Each Party shall promptly notify the other Party of any such security breach actually becoming known to the Party that materially compromises the systems and/or data of the other Party. Both Parties agree to cooperate in any investigation of such a security breach.

2.3.3.2. Each Party shall promptly notify the other Party of any unauthorized access or unauthorized disclosure or use by a third party of data of the other Party collected or obtained by the Party under this Contract. Contractor shall provide such notice following actual knowledge of discovery and without unreasonable delay.

2.4. Access to Security Logs and Reports.

Contractor shall provide security reports upon County's reasonable written request. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all public jurisdiction files related to this Contract.

ARTICLE IV - STATEMENT OF WORK

HCI will make available to Clackamas County Public Health (Client) a version of the HCI Standalone Platform ("HCI Platform") as follows (this Article IV also referred to as "the Statement of Work"):

HCI Features

The HCI Platform will be configured for Clackamas County, Oregon and will include the following features:

1. **Data and Analysis Features**

- **Community Dashboard** - Data dashboard that houses all of the indicators on your site. Search and filter by geography, topic and subpopulation groups (race/ethnicity, age, and gender) when available. Client can add local data into the Community Dashboard (see "#4-Customization Tools & Options").
 - **Core List**: 100+ health and quality of life indicators as available from public, online state or national data sources and dependent upon statistical validity for a geography. Core indicator list is subject to change from time to time depending upon data availability and strategy.
 - **Consumer Expenditure Data**: 10 indicators of per capita health-related expenditures.
- **Demographics** - Nielsen Claritas Demographic Profile Data - Tier 2/250 demographic elements for the one County (Clackamas). Single year estimates provided at the state, county, and zip code level. Allows local administrator to create custom charts using demographic data.
- **SocioNeeds Index** - A measure of socioeconomic need correlated with preventable hospitalizations and poor health outcomes; counties and zip codes within your selected area are given an Index Value based on a national distribution and then mapped relative to your area to show degrees of socioeconomic need within your community.
- **Data Scoring Tool** - Rank indicators on the HCI Community Dashboard according to a systematic summary of comparisons, grouping indicators into topic areas for a higher level ranking of community health needs. Reports are downloaded from the administrative system at the County level.
- **GIS Maps** - Quickly visualize health and quality of life indicators within your community; GIS Maps display indicators available for standard geographies (county, zip code and census tract).
- **Data Extracts** - Provides the local administrator with tools to download the indicators into an Excel spreadsheet for import into other applications.

2. **Evaluation and Tracking Tools**

- **Healthy People 2020 Tracker** - HCI-maintained progress tracker for key Healthy People 2020 targets
- **Local Progress Trackers** - Allows local administrator to create a curated list of indicators to quickly identify and track progress on local initiatives.
- **Locally Added Targets** - Client can add local targets to HCI-maintained and locally-maintained indicators using the self-service tool.

3. Resource Features

- Promising Practice - Database of 2,000+ health and quality of life programs and policies from across the country classified by effectiveness
- Resource Library - Central repository for local resources, including reports, community health assessments, community profiles, 211 resources (when available, single county systems only) and other local content. Content must be uploaded and maintained by client.
- Funding Opportunities - HCI-maintained collection of national grants and funding opportunities.
- CHNA Guide- Interactive, step-by-step guide designed to assist organizations in assessing community health needs and designing strategies and programs to address prioritized needs
 - Report Assistant - Quickly create content summary reports that can be exported and shared with others. These reports can be emailed or saved as a PDF.
- Topic Centers- Topic index pages that bring together all the resources in the site on a particular topic area.

4. Customization Tools and Options

- Standalone Website Branding - Client can select the website name, URL, color palette and fonts. HCI will work with Client to design the banner.
- Navigation Menu - Client can customize website navigation. Includes ability to link to platform features provided by HCI as well as custom pages created by client.
- Tiles - HCI's custom content management system. Allows client to easily create and administer pages without having to know HTML. Client can select from more than 15 unique tile options to highlight HCI's core tools (indicators, maps, related content, etc.) as well as locally maintained content (client pictures, videos, health improvement plans, resources, etc.). Client can stack and assemble tiles to create custom pages.
- Homepage - Homepage designed using Tiles (HCI's custom content management system); includes ability to customize homepage content such as images, text, tools and sponsor logos.
- Custom Web Pages - Allows local administrator to create unlimited custom web pages using Tiles (HCI's custom content management system); system does not require HTML knowledge.
- Locally Maintained Indicators - Client can add local data into the Community Dashboard using the self-service tool. Please note the anticipated time to setup and maintain will vary depending on data complexity, quantity, and user capacity. HCI provides training and guidance to support local content addition.
- Language Translation - Automated translation of website for 40+ languages supported by Google

HCI Services

The HCI Platform comes with the following services:

1. Account Manager Training and Support Services*

HCI and your Account Manager will provide the following services to assist in implementation and maintenance of the HCI Platform:

- Orientation Call - An initial phone call to meet your Account Manager, review timeline and discuss next steps.
- Kickoff Meeting (optional) - An initial project kickoff meeting to introduce the platform and the implementation process.
- Branding Meeting - A webinar with a small group of key decision-makers. Includes overview of the branding process, review of client examples and key decisions that client must make to establish the brand and style of their HCI Platform.
- Local Administrator Training - Personalized webinar trainings on website features and system administration. Webinar trainings are tailored to client needs and may include overall approach / process for adding local indicators, how to use the system's dashboards / data analysis tools and how to upload and create content such as priority pages or reports.
- Site Orientation - A meeting to introduce your custom-designed HCI Platform. Includes overview of site features and topics aligned with client's goals and objectives. Participants include key decision-makers and (optionally) partners, stakeholders and other end users.
- Quarterly Meetings- Regularly scheduled, quarterly check-in meetings after site launch. Topics may include indicator -updates, product updates, upcoming webinars, or discussions designed, to understand and help support client's goals and objectives.
- Help Center- 24/7 access to an online client Help Center with step-by-step written instructions, training videos and client examples.

*Account Manager support services are conducted via phone/webinar; however, client may receive 1-2 site visits at client's expense. In-person meetings can be arranged to provide on-site training, conduct a kickoff meeting, lead a site orientation, launch a site or attend/conduct another meeting as specified by the client.

2. HCI Peer Network

The HCI Peer Network consists of hospitals, health departments and community coalitions licensing the HCI Platform and provides access to the following benefits:

- Community Resources – 24/7 access to a variety of examples from HCI clients, including client success stories, sample CHNA reports implementation strategies and approaches for marketing your HCI Platform to your community.
- Webinars - Access to on-demand and live webinars led by public health professionals at HCI in conjunction with the HCI Peer Network. Webinars highlight new product features, client success stories and trending population health topics.
- Newsletter- Subscription to client email communications featuring indicator updates,

product updates, webinar announcements, client success stories, HCI news and more.

- Client Meetings- Invitation to national or regional meetings.

3. **HCI Maintenance Services**

HCI's ongoing responsibilities:

- Keep the site up and running with high availability - response time to mission critical website failures is 24/7
- Respond to questions from the client during regular business hours regarding usual operations of the website
- Update core indicators within one calendar quarter of public, online source data updates
- Maintain integrity of links for the promising practices database
- Fix any defects or bugs that are identified in the system
- Respond to change orders in a timely fashion; initial response within one business day for urgent requests.

Client responsibilities: County will have the following responsibilities to assist in the launch and maintenance of the site:

- Maintain one project manager to serve as the point of contact with HCI. Client has assigned Dawn Emerick as the primary point of contact to lead implementation, receive website administration training and interact with HCI during the implementation and maintenance of the HCI Platform.
- Provide feedback and review of site developments in a timely manner
- Regularly update locally maintained content
- Respond to brief, occasional surveys to provide feedback on HCI product and services.

Changes and Additions to the Statement of Work

If new requirements or expanded requirements are identified during the specifications phase, this Statement of Work may be amended and agreed to in writing by the parties and in advance of development. HCI reserves the right to change the content, indicators (subject to relevance, availability, and input by local partners), software and functionality of the HCI Platform from time to time, and in accordance with any regulatory requirements and then-current product specifications.

Schedule of Deliverables / Timeline

The following timeline outlines the typical implementation process. The timeline will be refined upon Agreement signing and is dependent on each party meeting defined project dates for milestones.

Work Step	Task Owner	Completion Date
Contract Signed	HCI/Client	Agreement Sign Date
Orientation Call	HCI/Client	Upon Agreement signing
Kickoff Meeting (optional)	HCI/Client	1-4 weeks from Effective Date
Site Branding Completed	HCI/Client	10-14 weeks from Effective Date
Access to training materials and ability to add local content begins	HCI/Client	10-14 weeks from Effective Date
Completion of core system content/ Beginning of licensing period	HCI	14-16 weeks from Effective Date; exact date to be notified to Client by HCI and to be referred to as the "Licensing Period Start Date"
Project completion sign-off by client	Client	14-16 weeks from Effective Date
Ongoing site maintenance and content updates	HCI	Ongoing
Soft launch of system to internal review team	Client	Date TBD by Client
Public launch of system (optional)	Client	Date TBD by Client

Terms of Payment

Pricing:

Basic HCI Platform

State: Oregon

County: Clackamas

Description	Fee
Setup (one-time fee)	\$10,000
Annual License - Standalone Platform	\$25,000
Annual License - Consumer Expenditure (Supplemental)	\$2,500

The County has assigned Sherry Olson as the billing contact to receive invoices and interact with HCI on billing matters. HCI understands the billing contact may change from time to time upon notice.

Sherry L. Olson (Whitehead)
Public Health Business Services Manager PH:
2051 Kaen Road, Oregon City, Oregon 97045
(503) 742-5342
Cell: (971) 804-1012
SOlson4@co.clackamas.or.us

ARTICLE V - INSURANCE

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.

Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

2. Required by County Not required by County

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

Technology Errors & Omissions. The Contractor agrees to furnish the County evidence of Technology Errors & Omissions insurance coverage including Professional Liability, Risk, Data Breach and Privacy/Cyber in the amount of \$2,000,000 in the aggregate.

At Contractor's election, (i) the policies must provide extending reporting period coverage for claims made within two years after the contract is completed or (ii) Contractor will renew professional liability insurance and technology errors & omissions for two years after contract is completed or (iii) Contractor will purchase a two-year extended reporting period in the event the insurance is not renewed.

3. Required by County Not required by County

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

4. Required by County Not required by County

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for hired, or non-owned vehicles, as applicable.

5. Certificates of Insurance. Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to County

acceptance. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

- 6. **Notice of cancellation or change.** There shall be no cancellation or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or purchasing@clackamas.us.

ARTICLE VI – SIGNATURES

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

Conduent Healthy Communities Corporation

Clackamas County

DocuSigned by:



9/19/2018 9:02:18 AM PDT

Authorized Signature

Date

Richard Swift, Director

Date

Steve Roden
Executive Vice President

Approved as to Form:

Oregon Business Registry #144294899

County Counsel

Date

A State of California Corporation

October 4, 2018

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between Health, Housing & Human Services and the North Clackamas Parks and Recreation District on use of Concord Elementary building for Law Enforcement Assisted Diversion program.

Purpose/Outcomes	<ul style="list-style-type: none"> • Reduce incarceration and recidivism rates and improve health and housing outcomes for program participants • Improve inter-departmental cooperation in meeting the needs of vulnerable residents • Improve neighborhood livability
Dollar Amount and Fiscal Impact	\$9,600 (estimated rental value over two years of classroom space donated to the LEAD program) No county staff are funded through this agreement. No County General Funds are involved.
Funding Source	N/A,
Duration	October 4, 2018 – October 4, 2020
Previous Board Action	N/A
Strategic Plan Alignment	<ul style="list-style-type: none"> • Improve community safety and health • Ensure safe, healthy and secure communities
Contact Person	Vahid Brown, 503-742-5345
Contract No.	# 9050

BACKGROUND:

The Health, Housing and Human Services Department (H3S) requests the approval of an Agreement with the North Clackamas Parks and Recreation District (NCPRD) for cooperative use of classroom space at the NCPRD-owned facility at 3811 SE Concord Road, Oak Grove, Oregon 97267. H3S has already entered into an inter-departmental partnership with the Clackamas County Sheriff's Office and the Clackamas County District Attorney to implement a Law Enforcement Assisted Diversion (LEAD) program. H3S has contracted with Central City Concern to provide case management services to this program. LEAD is an evidence based policy innovation now in use in multiple jurisdictions nationwide and has proven effective in reducing incarceration and recidivism rates and in improving the connection to needed services for vulnerable community members. Under LEAD, a pre-arrest referral to Central City Concern case managers for individuals found by Clackamas County Sheriff deputies to be in possession of a controlled substance will be offered to persons who would otherwise face arrest. Under the proposed agreement with NCPRD, individuals who chose to accept that referral and participate in LEAD will be introduced to the Central City Concern case manager by the Sheriff's deputy in the classroom space offered for this purpose by NCPRD. The Central City Concern case manager will then

Healthy Families. Strong Communities.

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

www.clackamas.us

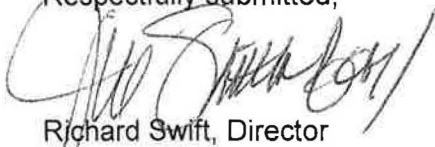
work with H3S and community partners to provide services to LEAD participants, including physical and behavioral health care, addiction and recovery services, housing transition services, and other such services as needed.

The Agreement is effective October 4, 2018 and terminates October 4, 2020. It has been approved by County Counsel.

RECOMMENDATION:

Staff recommends the Board approval of this Agreement.

Respectfully submitted,

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

Richard Swift, Director
Health, Housing & Human Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN NORTH CLACKAMAS PARKS & RECREATION DISTRICT
AND CLACKAMAS COUNTY ON BEHALF OF THE CLACKAMAS COUNTY HEALTH, HOUSING &
HUMAN SERVICES DEPARTMENT FOR COOPERATIVE USE OF THE NCPRD-OWNED FACILITY AT
3811 SE CONCORD ROAD, OAK GROVE, OR 97267**

This Agreement is entered into pursuant to the authority granted in Oregon Revised Statutes, Chapter 190, between the North Clackamas Parks & Recreation District (NCPRD), a parks and recreation county service district organized and existing under the authority of Oregon Revised Statutes Chapter 451, and Clackamas County (COUNTY) on behalf of the Clackamas County Health, Housing & Human Services Department (H3S), to provide for cooperative use of classroom space located within the NCPRD owned Concord building for use in temporarily hosting the H3S (LEAD) program.

In reliance and on the terms and conditions set forth below, the parties hereby agree that:

1. PURPOSE

NCPRD owns the Concord building located at 3811 SE Concord Rd, Oak Grove, Oregon, 97267. Each party desires to cooperate to provide effective and efficient services to the public by allowing use of the Concord building to co-locate H3S (LEAD) program space. H3S will benefit by having access to a single classroom near the west entrance (as assigned by NCPRD). H3S will be allowed to use several parking spaces near the west entrance (see Attachment A), as well as the restroom facilities located nearest to the assigned classroom.

2. FACILITY USE

2.1 TERMS

2.1.1 NCPRD agrees to provide H3S the shared use of a designated classroom space in the Concord building for use as H3S program space and associated parking space(s). The ownership and control of these facilities will remain with NCPRD. H3S agrees that its use of the NCPRD owned Concord facility is conditioned upon the building being available and not needed for other NCPRD uses at the current time. It is agreed by both parties that the shared use by H3S of the NCPRD Concord facility is a temporary arrangement. H3S understands this and will begin searching for a long-term facility option for the LEAD program at least six months prior to the termination of the 2 year agreement.

2.1.2 Additional program space and/or technology equipment installation may be requested by H3S and may be approved by NCPRD on a case-by-case basis with associated costs to H3S.

2.1.3 NCPRD agrees to provide the following services to H3S:

- A. "Utilities" including natural gas, water services, sewer services, electricity, refuse removal, heating and air conditioning.

B. Restroom facilities.

C. Parking spaces as designated in Exhibit A.

Building maintenance (roof, paint, HVAC, etc.) as funding is available based on NCPRD's capital asset repair & replace program. A power source and facility access for H3S owned internet and WiFi equipment location and maintenance.

- 2.1.4 H3S will have use of designated program space and will limit its use of the facility to those services necessary to provide and support H3S activities. H3S personnel will be responsible for unlocking and locking/securing doors and/or gates as necessary to gain access to NCPRD facilities upon each use. NCPRD will provide appropriate key card and access codes to H3S as needed for these purposes. H3S access will be limited to those areas identified on a site map ("Exhibit A").
- 2.1.5 H3S use of the NCPRD facilities will in no case interfere with the primary purpose of the facility to serve as a recreation area. H3S personnel should alert NCPRD staff, tenants or contractors of their presence when entering an NCPRD facility, especially during non-business hours if they are also occupying the facility.
- 2.1.6 Appropriate H3S vehicle parking locations will be identified on a site map attached as ("Exhibit A") in order to avoid conflicts with NCPRD staff or public use, and also to maximize visibility of H3S vehicles to the general public.
- 2.1.7 All H3S technology equipment installations will require NCPRD approval to limit any potential interference with NCPRD technology systems.
- 2.1.8 H3S is responsible to provide telephone equipment and telephone service in all H3S utilized program spaces within the Concord building.
- 2.1.9 H3S at its option and own expense may provide printers in H3S program spaces.
- 2.1.10 H3S shall provide and maintain any necessary internet and Wi-Fi equipment.
- 2.1.11 H3S will provide ordinary and regular cleaning for the program spaces designated as H3S spaces in the Concord building.. The offices are expected to be maintained in the condition as when originally occupied.
- 2.1.12 H3S agrees that no hazardous material/substances will be brought into or stored inside a NCPRD facility at any time.
- 2.1.13 H3S will provide any additional furniture located within their program space.
- 2.1.14 NCPRD is not responsible for any loss of H3S property or data from any cause.

2.1.15 Due to the proximity of children and NCPRD clients, H3S will in no case serve clients at the Concord site who are registered sex offenders, or felons convicted of violent offenses, or any other individual which is known to Clackamas County Sheriff's Office to be dangerous or pose a threat to the safety of other persons for any reasons.

2.1.16 H3S shall make no improvements or alterations on the premises of any kind without first obtaining NCPRD's written consent. All alterations shall be made in a good and workman like manor, in accordance with the best practices of the trades, and in compliance with applicable laws and building codes. Alterations include installation of computer and telecommunications wiring, cables, and conduit.

3. TERM OF AGREEMENT

3.1 This Agreement shall be in effect for up to two (2) years upon execution. Either party may terminate this Agreement at any time, and for any reason, by giving a minimum of sixty (60) days advance written notice to the other.

3.2 NCPRD and H3S agree that upon termination the office spaces will be restored to the same condition as when originally occupied, excepting normal wear and tear. H3S equipment installed in designated office space will remain property of H3S.

4. FORCED LIMITATIONS

In the event there is a state-wide legislation beyond the control of either party, limiting either property tax or the services provided by H3S or NCPRD, this Agreement may be renegotiated. Renegotiating shall begin upon the written request of either party.

5. INDEMNITY AND INSURANCE

5.1 Each party agrees solely to be liable for and hold the other harmless from any claims, actions or suits arising from its acts or those of its employees, officers, directors, agents, or volunteers in carrying out the purpose of this Agreement. Each party agrees to maintain liability insurance or self-insurance for risks arising out of this Agreement, which covers the other party as an additional insured.

5.2 Each party agrees to provide workers' compensation insurance for its employees, and to hold the other party harmless for injuries and work-related illnesses to its employees.

5.3 NCPRD agrees to insure its buildings with the coverage provided through the County self-insurance program for any damage and destruction of building, tenant improvements and betterments.

5.4 Each party agrees that neither party shall act as the agent of the other, and no employee of one party shall be considered to be an employee of the other party for any purpose.

6. COMPENSATION

This is a cooperative agreement; no compensation is required between the parties.

7. AMENDMENT

This Agreement may be amended only in writing upon the mutual consent of both parties.

8. TERMINATION OF PREVIOUS AGREEMENT

This Agreement supersedes all previous agreements for the provision of shared use of NCPRD facilities between NCPRD and H3S. Any former agreements are terminated on the effective date of the signing of this agreement.

WHEREAS, all the aforementioned is hereby agreed upon by the parties and executed by the duly authorized signatures below.

BOARD OF DIRECTORS
NORTH CLACKAMAS PARKS AND
RECREATION DISTRICT

BOARD OF COUNTY COMMISSIONERS
CLACKAMAS COUNTY
HEALTH, HOUSING AND HUMAN
SERVICES DEPARTMENT

Jim Bernard
Board Chair

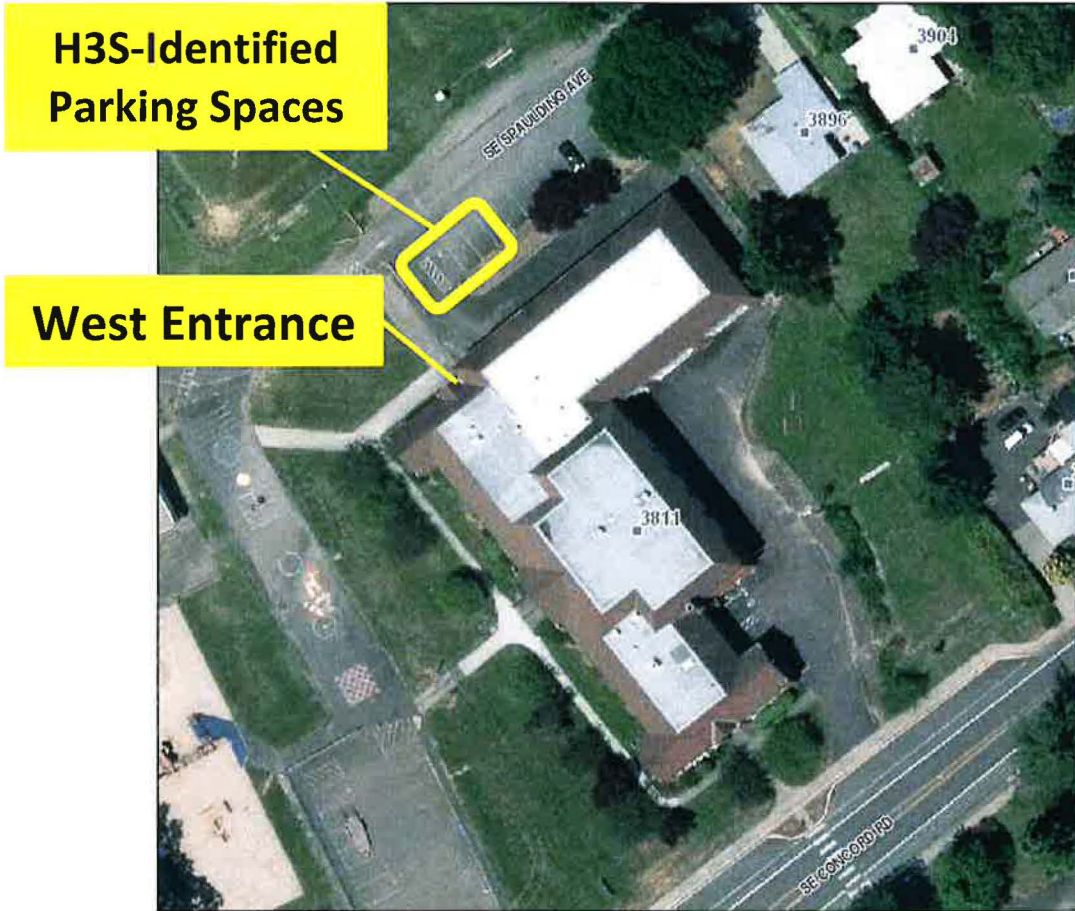
Jim Bernard
Board Chair

Date

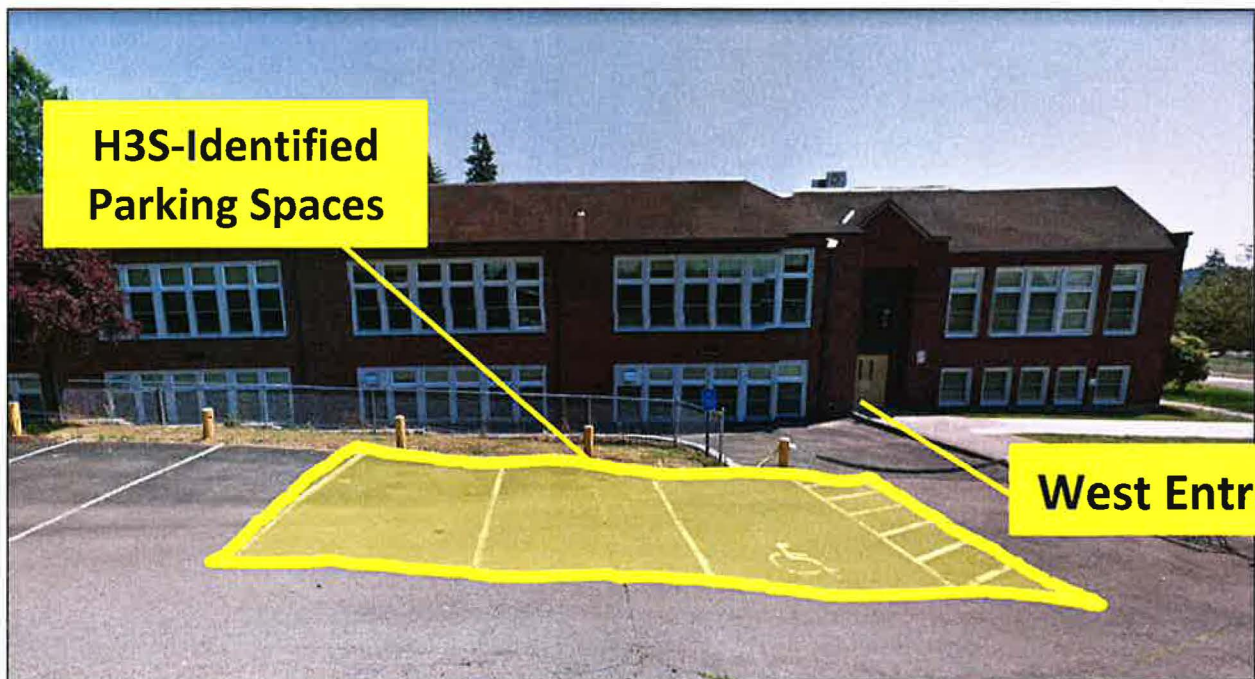
Date

ATTACHMENT A

Concord Property – Aerial View



West Entrance



October 4, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement#146873-2 with The State of Oregon, Department of Human Services, Seniors and People with Disabilities Division for the Provision of Non-medical Transportation for Medicaid Eligible, Case Managed Clients

Purpose/Outcomes	Social Services-Transportation Reaching People and Senior Center based transportation services to assist older and disabled county residents in meeting their transportation needs to conduct their personal business, grocery shop and/or other appointments.
Dollar Amount and Fiscal Impact	Agreement total is \$390,000. The contract is funded through the agreements with State of Oregon, Dept. of Human Service (DHS). Program match provided by Elderly and Disabled Transportation Fund (STF) and Tri-County Metropolitan Transportation District of Oregon (Tri-Met).
Funding Source	State of Oregon, ODOT-STF and Tri-Met General funds. No County General Funds are involved
Duration	Effective October 1, 2014 and terminates on September 30, 2020
Previous Board Action	100214-A1
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S# 6925

BACKGROUND:

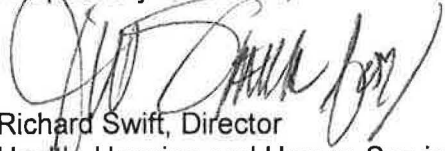
The Social Services Division of the Health, Housing, & Human Services department requests approval of Intergovernmental Agreement#146873, Amendment 2, with the State of Oregon, acting by and through its Department of Human Services, Adults and People with Disabilities (DHS-APD) Division for the provision of non-medical transportation for Medicaid eligible, case managed clients. This IGA provides funding for non-medical transportation services for Medicaid eligible clients of DHS-APD who have these services authorized by their DHS-APD case managers. The goal in providing these services is to assist Medicaid eligible residents to live independent lives for as long as possible. The required match is paid for through a separate contract with TriMet and is funded by Elderly and Disabled Transportation Fund (STF) funds.

This amendment extends the term of the agreement and adds \$150,000 for a new agreement maximum of \$390,000. No County General Funds are involved. This agreement was effective October 1, 2014 and now terminates on September 30, 2020.

RECOMMENDATION:

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Swift", written over a faint, illegible background.

Richard Swift, Director
Health, Housing and Human Services



Agreement Number 146873

**AMENDMENT TO
STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This is amendment number **02** to Agreement Number **146873** between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS" and

**Clackamas, County of
by and through its Social Services
PO Box 2950
Oregon City, OR 97035
Attn: Stefanie Reid
Phone number: 503-655-8330
Fax number: 503-655-8889
Email: stefanierei@co.clackamas.or.us**

hereinafter referred to as "County."

1. Upon signature by all applicable parties, this Amendment shall be effective on the later of September 30, 2018 or when required, the date this Amendment has been approved by the Department of Justice, regardless of the date the Amendment is actually signed by all other parties.
2. The Agreement is hereby amended as follows:
 - a. Section **1. Effective Date and Duration** to change the expiration date from September 30, 2018 to September 30, 2020.
 - b. Section **3. Consideration** paragraph **a.** to change the not to exceed amount from \$240,000.00 to \$390,000.00.
 - c. **Exhibit B, Standard Terms and Conditions, Section 25.** "Notice" DHS address only, is amended as follows: Deleted language is ~~struck through~~ and new language is **underlined and bold**.

DHS: Office of Contracts & Procurement
~~250 Winter Street, Room 309~~635 Capitol Street NE, Suite 350
Salem, OR 97301
Telephone: 503-945-5818
Facsimile: 503-378-4324

- d. September 30, 2018, **Exhibit D, “Federal Terms and Conditions”** is hereby superseded and restated in its entirety, as set forth in **Exhibit D, “Federal Terms and Conditions”**, attached hereto and incorporated herein by this reference.
3. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect. County certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.
4. **Certification.** Without limiting the generality of the foregoing, by signature on this Agreement amendment, the County hereby certifies under penalty of perjury that:
- a. The County is in compliance with all insurance requirements in Exhibit C of the original Agreement and notwithstanding any provision to the contrary, County shall deliver to the DHS Agreement Administrator (see page 1 of this Agreement) the required Certificate(s) of Insurance for any extension of the insurance coverage, within 30 days of execution of this Agreement Amendment. By certifying compliance with all insurance as required by this Agreement, County acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. County may also be in breach of the Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;
 - b. The County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) the County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the County;
 - c. The information shown in County Data and Certification, of original Agreement or as amended is County’s true, accurate and correct information;
 - d. To the best of the undersigned’s knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;

- e. County and County's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- f. County is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Nonprocurement Programs" found at: <https://www.sam.gov/portal/public/SAM/>;
- g. County is not subject to backup withholding because:
 - (1) County is exempt from backup withholding;
 - (2) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (3) The IRS has notified County that County is no longer subject to backup withholding.
- h. County Federal Employer Identification Number (FEIN) provided to DHS is true and accurate. If this information changes, County is required to provide DHS with the new FEIN within 10 days.

5. Signatures.

COUNTY: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS

Clackamas County

By:

_____	Richard Swift
Authorized Signature	Printed Name
Director; Health, Housing & Human Services Dept.	_____
Title	Date

State of Oregon acting by and through its Department of Human Services

By:

_____	_____
Authorized Signature	Printed Name
_____	_____
Title	Date

Approved for Legal Sufficiency:

Via e-mail by Jeffrey J. Wahl, Assistant Attorney General	09/21/2018
Department of Justice	Date

EXHIBIT D

Federal Terms and Conditions

General Applicability and Compliance. Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, County shall comply and, as indicated, require all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to County, or to the Work, or to any combination of the foregoing. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

- 1. Miscellaneous Federal Provisions.** County shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, County expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.
- 2. Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then County shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- 3. Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$100,000 then County shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to DHS, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental

Protection Agency. County shall include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

4. **Energy Efficiency.** County shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).
5. **Truth in Lobbying.** By signing this Agreement, the County certifies, to the best of the County's knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - c. The County shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
 - d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - e. No part of any federal funds paid to County under this Agreement shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.

- f. No part of any federal funds paid to County under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
 - g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
 - h. No part of any federal funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
6. **Resource Conservation and Recovery.** County shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
7. **Audits.**
- a. County shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
 - b. If County expends \$750,000 or more in federal funds (from all sources) in a federal fiscal year, County shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to DHS within 30 days of completion. If County expends less than \$750,000 in a federal fiscal year, Recipient is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, "Records Maintenance, Access".
8. **Debarment and Suspension.** County shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or

Non-procurement Programs” in accordance with Executive Orders No. 12549 and No. 12689, “Debarment and Suspension”. (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

9. **Drug-Free Workplace.** County shall comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) County certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in County's workplace or while providing services to DHS clients. County's notice shall specify the actions that will be taken by County against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, County's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify DHS within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither County, or any of County's employees, officers, agents or subcontractors may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the County or County's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the County or County's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to DHS clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of this Agreement.
10. **Pro-Children Act.** County shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).

11. **Medicaid Services.** County shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
 - a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a(a)(27); 42 CFR Part 431.107(b)(1) & (2).
 - b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR Part 455 Subpart (B).
 - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 489 subpart I.
 - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. County shall acknowledge County's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
 - e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).
12. **Agency-based Voter Registration.** If applicable, County shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
13. **Disclosure.**
 - a. 42 CFR Part 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed

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

- b. 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- d. County shall make the disclosures required by this Section 13. to DHS. DHS reserves the right to take such action required by law, or where DHS has discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

14. Federal Intellectual Property Rights Notice. The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The County agrees that it has been provided the following notice:

- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work developed under a grant, subgrant or agreement under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
- b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”

- c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or agreement under a grant or subgrant.



DAN JOHNSON
DIRECTOR

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

October 4, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement for Right of Way Services with Oregon Department of Transportation for the Canby (M.J. Lee) Ferry Bank Stabilization and Intelligent Transportation System (ITS) Project

Purpose/Outcomes	Defines the roles and responsibilities of the County and ODOT relating to acquiring right of way for the Canby (M.J. Lee) Ferry Bank Stabilization and Intelligent Transportation System (ITS) Project.
Dollar Amount and Fiscal Impact	Not to exceed \$5,000 Ferry Boat Discretionary Program (FBDP) funds: \$3,565.00 (71.3%) Road Fund Match: \$1,435.00 (28.7%)
Funding Source	FBDP and County Road Funds.
Duration	Completion of the Project or ten (10) years following the date of final execution, whichever is sooner.
Previous Board Action	11/9/16 – BCC Approval of a Supplemental Project Agreement No. 31087 with Oregon Department of Transportation for the Canby (M.J. Lee) Ferry Bank Stabilization and Intelligent Transportation System (ITS) Project, which provides funding for the project. 09/06/18 – BCC Approval of Amendment No. 1 to the Supplemental Project Agreement No. 31087 with Oregon Department of Transportation for the Canby (M.J. Lee) Ferry Bank Stabilization and Intelligent Transportation System (ITS) Project, which provides additional funding for the project.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Ensure safe, healthy and secure communities.
Contact Person	Bikram Raghubansh, Project Manager 503-742-4706

BACKGROUND:

Clackamas County was awarded Federal Boat Discretionary Program Funds (FBDP) to construct an Advanced Traffic Management System (ATMS) to remotely monitor and control Canby Ferry boat ramps traffic signals and existing advanced electronic roadway signs approaching the ferry ramps. The proposed ATMS will allow County staff and boat operators to remotely control, view, and monitor existing traffic signals at the two boat ramps and electronic signs approaching the ferry area using fiber optic network communication and CCTV surveillance cameras. In addition to Intelligent Transportation System work, the project will complete minor road bank slope stabilization work on the northerly approach.

This agreement is to define the roles and responsibilities of the County and the Oregon Department of Transportation (ODOT) relating to acquiring right of way for the project. This is a

customary step in the project delivery process for federally funded projects. Normally on a federally funded project, ODOT retains responsibility for all right of way negotiations and acquisitions. Through this agreement, and as part of the Local Agency Certification Program, ODOT is allowing County staff to take on some of this responsibility. This agreement results in no additional cost to the County above budgeted County and ODOT staff and consultant costs that would be incurred through the regular course of the project.

This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement for Right of Way Services with ODOT for the Canby (M.J. Lee) Ferry Bank Stabilization and ITS Project.

Respectfully,

Joel Howie, Civil Engineering Supervisor
Transportation and Development

**INTERGOVERNMENTAL AGREEMENT
FOR RIGHT OF WAY SERVICES**

Canby (M J Lee) Ferry Bank Stabilization and ITS Project

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

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain South Terminal Holly Street and North Terminal Mountain Road are County roads under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding is further described in IGA Agreement number 31087. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."
5. As of this time there are no local public agencies (LPAs) certified to independently administer federal-aid projects for right of way services. Therefore, State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement (except as provided under "Agency Obligations" for LPAs in State's certification program for consultant selection).

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

TERMS OF AGREEMENT

1. Under such authority, to accomplish the objectives in Agreement No. 31087, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. For the right of way services

State performs on behalf of the Agency, under no conditions shall Agency's obligations exceed a maximum of \$5,000.00, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than 10 calendar years following the date of final execution, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."

STATE OBLIGATIONS

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is Shannon Fish, Right of Way Project Manager, 123 NW Flanders St Portland, OR 97209; 503-731-8433; Shannon.FISH@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. Agency's needed right of way services, as identified in Exhibit A, may be performed by qualified individuals from any of the following sources:

- a. Agency staff,
- b. State staff,
- c. Staff of another local public agency, as described in ODOT's Right of Way Manual and approved by the State's Region Right of Way Office;
- d. Consultants from State's Full Service Architectural and Engineering (A&E) Price Agreement 2 Tier Selection Process. Tier 2 procurements must be requisitioned through State's Local Agency Liaison (LAL) with solicitation process administered by State Procurement Office. Forms and procedures for Tier 2 process are located at: <http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc>;
- e. *Appraiser services procured by Agency from State's Qualified Appraiser List (on line at <http://www.oregon.gov/ODOT/HWY/ROW/Pages/index.aspx>);
- f. *Other right of way related services procured by Agency from any source of qualified contractors or consultants.

* Selections may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** by Agency for right of way services must be conducted under State's certification program for consultant selection and must comply with requirements in the [LPA A&E Requirements Guide](#) (and must use the State's standard [A&E Contract Template for LPAs](#) which may be modified to include State-approved provisions required by Agency). **State and local funded procurements** by Agency must be in conformance with applicable State rules and statutes for A&E "Related Services" (and Agency may use its own contract document).

- 4. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform right of way services scheduled under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.
- 5. The LPA A&E Requirements Guide and A&E Contract Template referenced above under paragraph 3 are available on the following Internet page: [http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local_Public_Agency_\(LPA\)_Consultant_Templates_and_Guidance_Docs](http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local_Public_Agency_(LPA)_Consultant_Templates_and_Guidance_Docs).
- 6. Agency or its subcontractor will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."
- 7. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
- 8. Agency's right of way contact person for this Project is Sharan Hams-LaDuca, Clackamas County - Sr. Right of Way Agent, 150 Beaver Creek Road, Suite 325, Oregon City, OR 97045, 503-742-4675, Shamsladuca@clackamas.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.

PAYMENT FOR SERVICES AND EXPENDITURES:

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$5,000.00. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. Agency agrees to reimburse salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures.

GENERAL PROVISIONS:

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
 - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If either Party 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 fails to correct such failures within ten (10) days or such longer period as may be authorized.
 - c. If Agency 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 State is prohibited from paying for such work from the planned funding source.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

4. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
5. All employers that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Parties shall ensure that each of its subcontractors complies with these requirements.
6. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
7. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and

reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. When federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. When federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the 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 the State to return funds to the Federal Highway Administration, hold harmless and indemnify the 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.
12. 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.
13. 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.
14. This Agreement and attached exhibits and Agreement No. 31087 constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all

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

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

Signature Page to Follow

CLACKAMAS COUNTY, by and through
its Elected Officials

By _____
Commisioner

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____

Date _____

Agency Contact:

Sharan Hams-LaDuca
150 Beaver creek Road, Suite 325
Oregon City, OR 97045
503-742-4675
shamsladuca@clackamas.us

State Contact:

Shannon Fish
123 NW Flanders St
Portland, OR 97209
503-731-8433
Shannon.Fish@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
State Right of Way Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Right of Way Manager

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By N/A
Assistant Attorney General

Date _____

APPROVED

(If Litigation Work Related to Condemnation is
to be done by State)

By N/A
Chief Trial Counsel

Date _____

SPECIAL PROVISIONS EXHIBIT A
Right of Way Services

THINGS TO BE DONE BY STATE OR AGENCY

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, the State or a State Flex Services consultant, as listed under Agency Obligations, paragraph 3 of this Agreement. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 1 Right of Way Manager.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.

Instructions: Insert either: State, Agency, or N/A on each line.

A. Preliminary Phase

1. Agency shall provide preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and provide data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help provide field location and Project data.

B. Acquisition Phase

1. General:
 - a. When doing the Acquisition work, as described in this Section, Agency shall provide State with a status report of the Project Monthly.
 - b. Title to properties acquired shall be in the name of the Agency.
 - c. The Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof. If the Oregon Department of Justice is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

- a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. Agency shall provide construction plans and cross-section information for the Project.
- c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
- d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
- b. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- c. Agency shall conduct a Level 1 Initial Site Assessment, according to State Guidance, within Project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the Project design as possible, but at a minimum prior to property acquisition or approved design.
- d. Agency shall conduct a Level 2 Preliminary Site Investigation, according to State Guidance, of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties.
 - If contamination is found, a recommendation for remediation will be presented to State.

- e. Agency shall be responsible for proper treatment and cost of any necessary remediation.
 - f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.
4. Appraisal:
- a. Agency shall conduct the valuation process of properties to be acquired.
 - b. Agency shall perform the Appraisal Reviews to set Just Compensation.
 - c. Agency shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.
5. Negotiations:
- a. Agency shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Agency shall have sole authority to negotiate and make all settlement offers. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions.
 - b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising for any construction contract, unless exceptions have been agreed to by Agency and State.
 - c. Agency agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.
6. Relocation:
- a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
 - b. Agency shall make all relocation and moving payments for the Project.
 - c. Agency shall facilitate the relocation appeal process.

C. Closing Phase

1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. If State is working as a consultant for the Agency, State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.
2. Agency shall record conveyance documents, only upon acceptance by appropriate agency.

D. Property Management

1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. Agency shall dispose of all improvements and excess land consistent with State and Agency prevailing laws and policies.

E. Condemnation

1. Agency may offer mediation if the Agency and property owners have reached an impasse.
2. Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. Agency shall perform all legal and litigation work related to the condemnation process. Agency is responsible for passage of a resolution substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.
4. When State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project which is the subject of this Agreement.

F. Transfer of Right of Way to State

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all

recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

G. Transfer of Right of Way to Agency

When right of way is being acquired in State's name, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility, subject to concurrence from FHWA at the time of the transfer. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

APPLICABLE ONLY IF FEDERAL FUNDS INVOLVED

For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Agency, and references to Contract shall mean Agreement.

EXHIBIT B (Local Agency or State Agency)

CONTRACTOR CERTIFICATION

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

DEPARTMENT OFFICIAL CERTIFICATION

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

Exhibit C
Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- 2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or

local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the

certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered

Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower

Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
 - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
 - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of

materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all

necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in

the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

\$100,000 and that all such subrecipients shall certify and disclose accordingly.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed

FOR INQUIRY CONCERNING
DEPARTMENT'S DBE PROGRAM
REQUIREMENT CONTACT OFFICE OF
CIVIL RIGHTS AT (503)986-4354.

RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D
Right of Way Services

(Instructions, please delete before completing form)Regions: This portion of the document is unlocked. The LPA should block and copy to incorporate this language into their own standard resolution form **OR** fill in an “attested to” line or signature line at the bottom and use this form.

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in “Exhibit A,” attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The (insert title of agency)'s staff and the (Agency's Attorney, Counsel, or District's Counsel (or) (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).
4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this _____ day of _____, 20__



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

October 4, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Settlement Agreement in the Case of
Davis v. Roberts, et al.

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Jeff Heinrich
Assistants

Purpose/Outcomes	Authorize settlement of lawsuit brought by Jeff Davis against Sheriff Craig Roberts, Undersheriff Matt Ellington, and Clackamas County
Dollar Amount and Fiscal Impact	\$82,500 plus PERS contributions
Funding Source	County Risk Fund
Duration	Full and Final Release and Settlement
Previous Board Action	The Board has been apprised of various developments in this case over the course of the litigation, the most recent being on September 25, 2018.
Strategic Plan Alignment	Build public trust through good government
Contact Person	Stephen L. Madkour, County Counsel at smadkour@clackamas.us or 503/655-8362
Contract No.	N/A

BACKGROUND:

Jeff Davis was a Lieutenant with the Clackamas County Sheriff's Office. Davis was on a medical layoff. Davis filed suit in federal court against Sheriff Roberts, Undersheriff Ellington, and Clackamas County. In that lawsuit he alleged claims of civil rights violations, wrongful discharge, emotional distress, and whistleblower retaliation.

The Risk Manager, County Counsel, and the County Administrator have settlement authority up to \$100,000. The Board of County Commissioners has exclusive settlement authority of those settlements in excess of \$100,000.

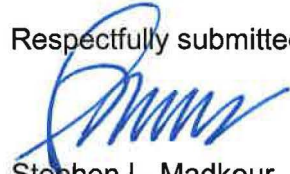
The proposed settlement reached by the parties in this case is \$82,500. Board approval is required because the terms of the settlement call for the County to make PERS contributions for a specific period when Davis was on medical layoff. Those PERS contributions are estimated to be approximately \$24,000. The agreed settlement amount plus the PERS contributions exceed the \$100,000 and, therefore, requires Board approval.

The terms of the proposed settlement are set forth in the attached draft Release and Settlement Agreement. Once settled, plaintiff will dismiss all claims alleged in the suit.

RECOMMENDATION:

Staff respectfully requests that the Board of County Commissioners authorize the settlement as proposed and as set forth in the Release and Settlement Agreement.

Respectfully submitted,



Stephen L. Madkour
County Counsel

Attachment:
Release and Settlement Agreement

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement is entered into between Jeffrey Davis (“Davis” or “Plaintiff”), Sheriff Craig Roberts (“Roberts”), Undersheriff Matt Ellington (“Ellington”), hereinafter referred to collectively as “County Defendants” and Clackamas County (“County”)

1. Meaning of Terms.

(a) As used in this Agreement, “Davis” or “Plaintiff” shall mean Jeffrey Davis, his spouse, heirs, executors, administrators, agents, insurers, attorneys, assigns, and anyone claiming through him.

(b) As used in this Agreement, “County Defendants” shall mean Roberts and Ellington, their spouse, heirs, executors, administrators, agents, insurers, attorneys, assigns, and anyone claiming through him.

(c) As used in this Agreement, “County” shall mean Clackamas County, its current and former commissioners, current and former managers, current and former County Counsel, current and former County Administrators, current and former employees (in their individual and representative capacities), attorneys, insurers, and current and former agents.

(d) As used in this Agreement, “Defendants” shall mean County Defendants and County as defined above.

(e) As used in this Agreement, “parties” shall mean Davis, County Defendants, and County as defined above.

2. Consideration.

The parties agree and acknowledge that this agreement is entered into in consideration of the mutual promises and covenants contained herein:

- (a) County will pay Davis \$82,500 (Eighty-Two Thousand and Five Hundred Dollars) as full and final settlement of all claims;
- (b) County will report this \$82,500 to PERS as lost wages for the period of April 8, 2017-September 27, 2018;
- (c) Davis will return to duty on September 28, 2018 and formally retire on September 30, 2018;
- (d) County will assume responsibility for Davis’ PERS contribution;
- (e) The County and County Defendants will file an amended F4 Form with the Department of Public Safety Standards and Training to state that Davis retired pursuant to a settlement agreement;
- (f) The County and County Defendants will suspend the Professional Standards Unit (PSU) investigation;
- (g) The PSU investigation will be subject to a judicial seal enforced by Hon. Papak. County and County Defendants further agree to keep that file exempted from disclosure to the extent provided by law;

- (h) The County and County Defendants will provide Davis with a retiree badge and a retired commission card indicating he retired in good standing which will allow him to carry concealed national;
- (i) The County and County Defendants will prepare and circulate an email to all Clackamas County Sheriff's Office employees stating that Lt. Davis retired effective October 1, 2018, or proximate date;
- (j) The County and County Defendants will provide Davis a neutral job reference to future employers;
- (k) The County will complete the necessary paperwork necessary to initiate Davis' retiree medical benefits eligibility; and
- (l) County Defendants also agree to provide any back contributions to the Retiree Medical Trust, if the Trust so requires, to make Mr. Davis eligible for Retiree Medical coverage.

3. **Releases.**

- (a) Davis' Release to County and County Defendants. Davis hereby waives any legal rights and releases and forever discharges County and County Defendants as defined above from any and all liability, demands, claims, suits, actions, charges, damages, judgments, levies or executions, whether known or unknown, liquidated, fixed, contingent, direct or indirect, which have been or could have been raised against County and County Defendants which relate in any way to Davis's employment by County or County Defendants or separation of that employment, or for any act or thing done or omitted to be done up to the date of execution of this Agreement, except for his right to enforce the Agreement according to its terms.
- (b) Davis agrees to dismissal with prejudice of any and all claims against County and County Defendants.
- (c) Davis also agrees to a full and final waiver and release of all such claims which Davis has or may have against County and County Defendants specifically including, but not limited to, all claims for relief or remedy of any type under any state or federal laws, including but not limited to claims based upon ORS 659A.112, et seq, ORS 659A.118, et seq, ORS 659A.109, et seq, ORS 659A.133, et seq, ORS 659A.136, et seq, ORS 659A.203, ORS 659A.030, et seq, (including Oregon statutory claims for discrimination, retaliation, and aiding and abetting discrimination), 42 USC § 1983 - deprivation of name clearing hearing, deprivation of due process required by the Fourteenth Amendment to the United States Constitution, Title VII of the Civil Rights Act of 1964, the Post-Civil War Civil Rights Acts, the Civil Rights Act of 1991, the Equal Pay Act, the Workers Adjustment and Retraining Notification Act, the Americans with Disabilities Act, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act (ADEA), the Vietnam Era Veterans Readjustment Assistance Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act, Executive Order 11246, as amended, the civil rights, employment and labor laws of any state or the United States, all as amended, and any regulations under such authorities; claims based on alleged breach of employment contract or any other contract or tort or other common law theories, claims for wrongful termination, claims for intentional interference with economic relations or prospective economic advantage; and including but not limited to any claims for additional compensation, back pay or benefits of any type, claims for attorney fees or costs, claims for

retaliation, claims for reinstatement to active employment or reemployment, or for compensatory or punitive damages under any applicable statutes or common law theories. In addition to the foregoing, Davis acknowledges that he has received all wages, compensation and benefits owing to him from his employment and that he has no claim that he has not been paid in full and in a timely manner.

4. No Reinstatement or Reemployment Rights.

Davis acknowledges and agrees that other than the terms set forth under Section 2(C) above, he shall have no reinstatement or reemployment rights with County and shall not seek reinstatement or reemployment rights with County as defined above.

5. No Representations and Acknowledgements.

Davis acknowledges that the County and County Defendants have made no promises or representations concerning the County's responsibility to provide, or Davis' entitlement or eligibility to receive any of the following benefits or coverages:

- (a) Any benefits under the Independent Retiree Medical Trust;
- (b) County Medical, Dental, Employee Assistance Program, Life (Group Term Life and Group Universal Life), and Disability;
- (c) COBRA Medical benefits;
- (d) County 457 Deferred compensation;
- (e) HRA VEBA;
- (f) Sick time accumulation;
- (g) Vacation time accumulation;
- (h) PERS (other than the considerations set forth in Section 2 above); and
- (i) Lookback requirements under the Affordable Care Act.

Davis acknowledges that there may be taxable consequences and other financial penalties associated with the terms of this Release and Settlement Agreement and agrees that he will remain responsible for any payments or penalties resulting from acts or events contemplated or authorized by this Release and Settlement Agreement.

6. Dismissal of Litigation.

This release is given in full compromise and settlement of Civil Case No. 3:18-CV-00346-YY in the United States District Court for the District of Oregon wherein Jeffrey Davis appears as Plaintiff and Roberts and Ellington and Clackamas County appear as Defendants. In consideration of the foregoing, Davis, County Defendants, and County direct entry of a judgment of dismissal with prejudice and without costs or attorneys' fees as to all claims in Case No. 3:18-CV-00346-YY that certain action in a form set forth as Exhibit 1 attached hereto and incorporated herein by reference. The parties further agree to execute such other documents as may reasonably be necessary to dismiss the referenced lawsuit.

7. Indemnity and Hold Harmless.

Employee agrees to indemnify and hold harmless County and County Defendants, its insurers, employees, officers, directors, and agents for any and all claims and liabilities associated

with any benefits paid to or on behalf of plaintiff as a result of the incidents alleged in the Litigation, including but not limited to any liens, unpaid bills for medical or other treatments, insurance benefits, COBRA payments, insurance subrogation claims, recovery of costs, and claims for attorney fees, including any attorney fee liens.

8. Compliance With Older Workers Protection Act.

This Agreement is subject to the terms of the Older Workers Benefit Protection Act of 1990 ("OWBPA"). The OWBPA provides that an individual cannot waive a right or claim under the Age Discrimination in Employment Act ("ADEA") unless the waiver is knowing and voluntary. Pursuant to the terms of the OWBPA, Davis acknowledges and agrees that he has executed this Agreement voluntarily, and with full knowledge of its consequences. In addition, Davis hereby acknowledges and agrees as follows:

- (a) This Agreement has been written in a manner that is calculated to be understood, and is understood by Davis.
- (b) The release provisions of this Agreement apply to any rights Davis may have under the ADEA.
- (c) The release provisions of this Agreement do not apply to any rights or claims Davis may have under the ADEA that arise after the date he executes this Agreement.
- (d) County and County Defendants hereby advise Davis to consult with an attorney prior to executing this Agreement.
- (e) County and County Defendants are giving Davis a period of twenty-one (21) days to consider this Agreement. Davis may accept and sign this Agreement before the expiration of the twenty-one (21) day time period, but he is not required to do so by County or County Defendants (see attached Waiver of 21-Day Review form).
- (f) For a period of seven (7) days following the signing of this Agreement, Davis may revoke this Agreement. Davis will provide written notice of any such revocation to County and County Defendants. This Agreement shall become effective on the eighth day after Davis signs it, if it has not been revoked during the revocation period.

9. Integration.

The parties agree that this Agreement states the entire agreement of the parties and supersedes all prior and contemporaneous negotiations and agreements, oral or written. Each party expressly acknowledges that the other party did not, directly or indirectly, make any promises, representations, or warranties whatsoever, express or implied, other than those contained in this Agreement. The parties further agree that this Agreement may be amended only by a subsequent writing signed by the parties.

10. Severability and Governing Law.

The parties agree that any provision of this Agreement that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid, and enforceable shall be automatically added to this Agreement in lieu of the illegal, invalid, or unenforceable provision. The parties also agree that Oregon law shall govern the validity and enforceability of this Agreement.

11. No Admission.

The parties agree that, by entering into this Agreement, neither party admits, and specifically denies, any violation of any local, state, or federal law, common or statutory. The parties recognize that this Agreement has been entered into in order to achieve an orderly separation and nothing contained herein shall be construed to be an admission of liability or a concession of any kind.

12. Deny Liability.

This settlement is made to settle and compromise doubtful and disputed claims, to avoid protracted litigation, and to minimize the incurring of additional attorney fees. Neither this Agreement, the final settlement documents, or the negotiation, execution, or performance of the foregoing is, or shall be construed as, an admission of liability or wrongdoing by the parties. The parties, and each of them, deny absolutely any and all liability whatsoever in connection with the claims asserted in the litigation or any other claims between them.

13. No Assignment, Subrogation, or Transfer.

The parties represent and warrant that there has not been and there will be no assignment, subrogation or other transfer of any interest in any of the released claims. The parties agree to indemnify and hold the released parties, and each of them, harmless from any liability, claims, demands, costs, expenses and attorneys' fees incurred by the released parties, or any of them, as a result of any person asserting any such assignment or transfer or any rights to claims under any such assignment or transfer.

14. Attorney Fees and Costs.

Each party to this Agreement shall bear its own attorney fees and costs incurred before and through the date of this Agreement.

15. Execution of this Agreement.

This Agreement may be executed in one or more identical counterparts, including facsimile and scanned and electronically transmitted counterparts, each of which shall be deemed an

original. All counterparts shall constitute one Agreement, binding on all the parties, notwithstanding that all of the parties have not signed the same counterpart.

16. Review by Counsel.

Counsel for the parties have reviewed these terms with their respective clients and have advised their clients accordingly.

17. Dispute Resolution.

In the event a dispute arises between the parties in connection with this Agreement, the dispute shall be submitted to Hon. Paul Papak, who shall act as the sole arbitrator. Any decision rendered by Judge Papak shall be final and binding. If Judge Papak is not available, the Settling Parties shall mutually agree on an alternative arbitrator. This agreement, and all disputes arising out of or relating thereto, shall be governed by the law of the State of Oregon. The Settling Parties hereto agree that any arbitration, suit, or action arising out of or relating to this Agreement shall be conducted in Portland, Oregon.

APPROVED AS TO FORM:

Daniel E. Thenell
Attorney for Jeffrey Davis

Jeffrey Davis
Dated: _____, 2018

APPROVED AS TO FORM:

Stephen L. Madkour
Attorney for Clackamas County

CLACKAMAS COUNTY
By: _____
Dated: _____, 2018

COUNTY DEFENDANTS

Craig Roberts
Dated: _____, 2018

Matt Ellington
Dated: _____, 2018

WAIVER OF 21-DAY REVIEW

I, Jeffrey Davis, understand that I may take up to 21 days from receipt of the Release and Settlement Agreement to review the document and determine whether to accept it. I hereby knowingly and voluntarily waive the 21-day review provision of the Agreement. I acknowledge and understand that this Waiver is part of the Release and Settlement Agreement between myself, Clackamas County, and County Defendants as such includes all rights and claims arising prior to or on the effective date of the Release and Settlement Agreement including, but not limited to, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, and any public policies of the State of Oregon.

Prior to executing this Waiver and the Release and Settlement Agreement, I acknowledge that I have had an opportunity to consult with an attorney and I fully understand the terms of this Waiver and the Agreement. I have not been compelled into signing it by the County or County Defendants or anyone associated with Clackamas County and have entered into the Agreement and Waiver voluntarily and of my own free will.

Jeffrey Davis

_____, 2018
Date



October 4, 2018

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Property Disposition Amended Policies and Procedures for the Sale, Transfer and Administration of Tax Foreclosed and Surplus County Property.

Purpose/Outcomes	Property Disposition will have the delegated authority for the management and administration of tax foreclosed properties including the sale and/or transfer of these properties.
Dollar Amount and Fiscal Impact	Net proceeds from property sales and transfers in excess of the actual expenses, including management, administration and reserves incurred by Property Disposition to annually operate the program, are distributed by the County Treasurer to all taxing entities within Clackamas County. Actual distribution and dollar amounts will vary year to year.
Funding Source	No General Fund resources are currently allocated to this program.
Duration	Management and disbursement of tax foreclosed and surplus properties are ongoing.
Previous Board Action	A Policy Session with the Board of County Commissioners was held on September 25, 2018 to discuss the amended policies and procedures. The Board approved the policy and procedures.
Strategic Plan Alignment	1. Management of Tax Foreclosed properties. 2. Build public trust through good government.
Contact Person	Rick Gruen, Property Disposition Manager, 503.742.4345

BACKGROUND: Clackamas County’s Department of Assessment and Taxation annually forecloses on tax-delinquent properties. The foreclosure process is a six year process – taxes must be delinquent for three years, then a two year judgment is filed and in the sixth year foreclosure occurs and the property is deeded to the County in lieu of uncollected taxes. Following the recording of the deed in the County’s name, the management and disposition is then transferred to the Property Disposition Division of the Department of Business & Community Services (BCS).

BCS Property Disposition Division is tasked with managing, administering and dispersing of tax foreclosed real property assets in a cost effective manner that will provide a County public benefit. No General Fund resources are allocated to this program. Oregon Revised Statutes provides for Property Disposition Division to recover annual operational expenses. The County is liable and responsible for any preexisting or unknown hazards occurring on the property and must budget reserves for these types of unknown expenses. No General Fund resources are currently allocated to this program.

Net proceeds from property sales and transfers in excess of the actual expenses, including management, administration and reserves incurred by BCS Property Disposition to annually operate the program, are distributed by the County Treasurer to all taxing entities within Clackamas County. Actual distribution and dollar amounts will vary year to year.

County Counsel has reviewed and approved the amended policies and procedures consistent with Oregon Revised Statutes.

RECOMMENDATION: Staff respectfully recommends Board approval of the proposed BCS Property Disposition policies and procedures for the sale, transfer and administration of tax foreclosed and surplus county properties.

Respectfully submitted,

A handwritten signature in cursive script that reads "Laura Zentner". The signature is written in black ink and is positioned above the printed name.

Laura Zentner, Director
Business & Community Services

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

In the Matter of a Resolution
Adopting Revised Disposition
Policies and Procedures



Resolution No. _____

WHEREAS, the Property Disposition Division of the Business and Community Services Department of Clackamas County has policies and procedures related to the sale or transfer of certain property; and

WHEREAS, on September 25, 2018 the Board of County Commissioners met to discuss proposed changes to the Policies and Procedures for the Sale, Transfer and Administration of Tax Foreclosed and Surplus County Property; and

Now, therefore, it is hereby ordered:

1. That the Clackamas County Board of County Commissioners hereby adopts the Policies and Procedures for the Sale, Transfer and Administration of Tax Foreclosed and Surplus County Property as shown on Attachments A and B to this board order.

DATED this 4th day of October, 2018

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



Business & Community Services Department

TITLE: PROPERTY DISPOSITION POLICIES

Attachment A

Originally Adopted: March 11, 2014

Last Updated: September 12, 2018

PURPOSE:

Establish Policies for the Sale, Transfer and Administration of Tax Foreclosed and Surplus County Property.

POLICY STATEMENT:

Real property acquired by Clackamas County (the County) in any manner which is not needed for County use shall be declared surplus, except as otherwise provided for by Oregon law.

The Property Disposition Manager and BCS Director/Deputy Director will annually review and recommend to the Board of County Commissioners those real properties to be declared surplus and considered for transfer or sale. Surplus real properties shall be sold or transferred according to the procedures adopted by the County, which follow Oregon law where applicable.

The Board of County Commissioners will authorize by Board Order the list of surplus properties to be transferred or sold through the auction process. The Board of County Commissioners delegates its authority to the Business and Community Services Director and Deputy Director to develop and implement the procedures necessary and by which surplus property is transferred or sold in accordance with ORS 275 and other applicable Oregon laws.

The costs incurred by the County in the maintenance, management and administration of properties acquired by the County will be determined annually by the BCS Director. As Property Disposition is not general fund supported, the BCS Director shall ensure at all times that the necessary operational and capital reserve requirements are maintained prior to releasing excess funds as follows:

- Four (4) years of operating expenses are held in reserve and calculated annually
- Capital requirements in the amount of \$100,000.00 shall be held in reserve
- Property Cleanup and Unknown Liabilities Reserve Funds shall be held in the amount of \$500,000.00 for those assets that do not qualify as a Brownfield (i.e. site mitigation, building teardowns, legal, etc.)

RELATED RULE:

The Board of County Commissioners further delegates under Board Order 2015-27 its authority to authorize final sales to the Director or Deputy Director of the Business and Community Services Department and Clackamas County Administration





Business & Community Services Department

TITLE: PROPERTY DISPOSITION PROCEDURES

Attachment B

Originally Adopted: March 11, 2014

Last Updated: September 12, 2018

PURPOSE:

Establish procedures for the Sale, Transfer and Administration of Tax Foreclosed and Surplus County Property consistent with adopted Policy.

The Director of Business and Community Services has directed the Property Disposition Division to manage tax foreclosed properties to secure the Highest Permanent Value benefitting the citizens of Clackamas County. Highest Permanent Value is defined as managing, administering and dispersing of tax foreclosed and surplus real property assets in a timely and cost effective manner that can provide a full range of social, economic and environmental benefits for the citizens of Clackamas County.

PROCEDURES:

A. General

1. Property Disposition Division shall annually:
 - a. Review its real property inventory of assets and identify tax foreclosed properties to consider for sale or transfer.
 - b. Review its budget and reserve requirements to determine available net real property revenue for distribution to the taxing districts within Clackamas County.
2. The sale or transfer of tax foreclosed properties shall be made by the Property Resources Division in accordance with ORS275.000 to ORS 275.340 and ORS 271.300 to 271.360 and the following Highest Permanent Value criteria:
 - a. Transfer of property to taxing districts and other eligible entities – to meet local resource and public benefit needs (i.e. parks, open space, Brownfield sites)
 - b. Return property to tax rolls
 - c. Board of County Commissioners, or those with delegated authority, shall have final approval of those properties considered for transfer or sale.
 - d. At the discretion of the County, and with extenuating circumstances, the record owner or contract purchaser may be given the opportunity to repurchase the property pursuant to ORS 275.180. Said repurchase shall be in the amount of the total back taxes, interest, penalties and County administrative fee. Such repurchase or agreement to repurchase must occur within six (6) months following the expiration of the statutory redemption period commencing with the filing of the foreclosure deed.





Business & Community Services Department

TITLE: PROPERTY DISPOSITION PROCEDURES

B. Transfer Objective

Property Disposition Management Team will consider the tax foreclosed property assets to be declared as surplus and develop a list of available properties which will be distributed to County Departments, local Municipalities, County agencies and Special Districts.

1. Should any of the eligible entities above request a transfer of a property, transfers will be based on the following conditions:
 - a. Subject to final approval of the Board of County Commissioners.
 - b. Property will be used for a perpetual public use benefit (i.e. park, open space, greenway, trail, easement, Brownfield sites, etc.) consistent with an adopted strategic plan, master plan or other long term management plan of the requesting entity.
 - c. Property shall be conveyed for the Transfer Value as calculated on the back taxes, interest, penalties owed, plus associated costs (title report, deed recording, etc.) and Property Disposition administrative fee as determined under Section E. In certain cases, the set value of the property will be based on an appraised value (i.e. public benefit value) in consideration of its limited use under ORS 271.310 to 271.330.
 - d. Brownfield sites transferred to Land Bank Authority subject to ORS 271.310 and 271.335 and:
 - i. Transfer Value is paid in the amount of back taxes, penalties, interest, and administration fee in compliance with ORS 275.275 and as determined in Section E below.
2. Properties in excess of \$15,000 (Assessor's Estimate of Real Market Value – ARMV) are assigned to public auction; properties with an ARMV of less than \$15,000 will be considered for private marketing or assigned to public auction under ORS 275.225 (a)

C. Tax Roll Objective

Board of County Commissioners will declare tax foreclosed property assets as surplus and the Property Disposition Management Team will put them up for public auction. Public Oral Auction considerations include:

1. Value will be based on the Assessor's estimate of Real Market Value (ARMV) and/or Independent Appraised Value (IAV) at the discretion of Property Resources Division.
2. Minimum bid amounts will generally be set, but not limited to, the following criteria:
 - a. 25% of ARMV:
 - i. Property is not buildable
 - ii. Property is constrained by one or more of the following:
 - Identified wetlands or riparian overlays
 - Identified septic limitations
 - iii. Review of adjacent parcels show no existing improvements
 - iv. No public access or deeded easement for access
 - b. 50% of ARMV:
 - i. Property may be buildable





Business & Community Services Department

TITLE: PROPERTY DISPOSITION PROCEDURES

- ii. Property is constrained by one or more of the following:
 - Identified wetlands or riparian overlays
 - Identified septic limitations
 - iii. Review of adjacent parcels show no, or minimal existing improvements
 - iv. Limited public access or deeded easement.
- c. 75% of ARMV:
- i. Property is buildable or has existing improvements
 - ii. Review of adjacent parcels show existing improvements
 - iii. Public access or deeded easements are identified
- d. 100% of Appraised Value
- i. Property is of high value and has considerable interest
 - ii. Independent Third Party Verification will be obtained. The Property Resources Manager will obtain an Opinion of Value/Salability or Appraisal from qualified professionals on high value or significant parcels, in order to validate setting minimum bid price.
 - iii. Third party verification may be considered for all properties at the Property Resources Manager's discretion.

D. Properties not selling at the Oral Public Auction

The Property Disposition Management Team will review and consider the tax foreclosed property assets and consider the following options:

1. Property may be placed with a private real estate broker (market value)
2. Property may be considered for transfer to a qualifying special district or non-profit organization per ORS 271.330
 - a. Properties being transferred will be conveyed for a minimum of back taxes, interest, penalties owed, plus associated costs (title report, deed recording) and a Property Disposition administrative fee as set by Property Resources Manager.
 - b. A property list may be made available and distributed to qualifying nonprofit organizations.
3. Property may be removed from the current surplus inventory list at any time by the Property Disposition Management Team and/or Board of County Commissioners.

E. Property Disposition Division - Cost Recovery and Administrative Fee Schedule

Oregon Revised Statutes (ORS275.275) provides for Property Disposition Division to recover annual operational expenses. With consideration that the Property Disposition Division is not general fund supported, the Property Disposition Division shall be entitled to recover the direct and indirect costs associated with managing, selling, and transferring tax foreclosed and surplus real properties.





Business & Community Services Department

TITLE: PROPERTY DISPOSITION PROCEDURES

1. Direct costs include such services related to property inspections, title and property history searches, document and legal review, document preparation, accounting, sale/transfer preparation, deed recording, property liability mitigation, and other property management services as needed. The property account will be charged for the direct costs for title reports, property appraisals, deed recording and for those direct property management services performed at the established billable rates set by the Business and Community Services Department.
2. Indirect costs will be assessed to the sale or transfer of properties for administration of Property Disposition allocated cost services (reporting, accounting, legal, liability, etc.) using the following fee schedule (based on property sale or transfer value):
 - a. \$1 to \$15,000 – 15% (minimum \$150.00)
 - b. \$15,001 to \$50,000 – 12%
 - c. \$50,001 to \$100,000 – 10%
 - d. \$100,001 to \$500,000 – 8%
 - e. \$500,001 to \$1,000,000 – 5%
 - f. > \$1,000,001 – 3%
3. Former Record Owner or Contract Purchaser Repurchase fee – no less than 2% of property assessed value plus back taxes, interest, and penalties.

RELATED RULE:

The Board of County Commissioners further delegates under Board Order 2015-27 its authority to authorize final sales to the Director or Deputy Director of the Business and Community Services Department and Clackamas County Administration.





October 4, 2018

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of an Intergovernmental Agreement with Clackamas County's Health, Housing and Human Services Department to Provide Law Enforcement Assisted Diversion (LEAD) Program Space at the Concord School Property

Purpose/Outcomes	Allows NCPRD to form an agreement with H3S to provide program space for the LEAD Program at no cost.
Dollar Amount and Fiscal Impact	Donated value of space estimated at \$4,800 per year (\$9,600 total).
Funding Source	N/A
Duration	2 years from date of execution.
Previous Board Action	N/A
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Ensure safe, healthy and secure communities
Contact Person	Scott Archer, NCPRD Director, 503-742-4421

BACKGROUND:

North Clackamas Parks and Recreation District (NCPRD) is seeking approval of an Intergovernmental Agreement (IGA) with Clackamas County's Health, Housing and Human Services Department (H3S) to provide space for the Law Enforcement Assisted Diversion (LEAD) Program at the NCPRD-owned facility located at 3811 SE Concord Road, Oak Grove, OR 97267.

The LEAD Program is an evidence based policy innovation now in use in multiple jurisdictions nationwide and has proven effective in reducing incarceration and recidivism rates and in improving the connection to needed services for vulnerable community members. Under LEAD, a pre-arrest referral to Central City Concern case managers for individuals found by Clackamas County Sheriff deputies to be in possession of a controlled substance will be offered to persons who would otherwise face arrest.

Under the proposed agreement, NCPRD has agreed to provide space for the LEAD Program on a temporary basis for up to two years. The donated value of this space is estimated at \$4,800 annually, or a total of \$9,600.

County Counsel has approved the language of this agreement.

RECOMMENDATION:

Staff recommend the Board approve this Intergovernmental Agreement between North Clackamas Parks and Recreation District (NCPRD) and Clackamas County's Health, Housing and Human Services Department (H3S) to provide space for the LEAD program at the NCPRD-owned facility located at 3811 SE Concord Road, Oak Grove, OR 97267.

ATTACHMENT:

Intergovernmental Agreement between North Clackamas Parks and Recreation District and Clackamas County on Behalf of the Clackamas County Health, Housing & Human Services Department for Cooperative Use of the NCPRD-Owned Facility at 3811 SE Concord Road, Oak Grove, OR 97267.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott Archer', with a large, stylized flourish at the end.

Scott Archer, Director
North Clackamas Parks and Recreation District

**INTERGOVERNMENTAL AGREEMENT
BETWEEN NORTH CLACKAMAS PARKS & RECREATION DISTRICT
AND CLACKAMAS COUNTY ON BEHALF OF THE CLACKAMAS COUNTY HEALTH, HOUSING &
HUMAN SERVICES DEPARTMENT FOR COOPERATIVE USE OF THE NCPRD-OWNED FACILITY AT
3811 SE CONCORD ROAD, OAK GROVE, OR 97267**

This Agreement is entered into pursuant to the authority granted in Oregon Revised Statutes, Chapter 190, between the North Clackamas Parks & Recreation District (NCPRD), a parks and recreation county service district organized and existing under the authority of Oregon Revised Statutes Chapter 451, and Clackamas County (COUNTY) on behalf of the Clackamas County Health, Housing & Human Services Department (H3S), to provide for cooperative use of classroom space located within the NCPRD owned Concord building for use in temporarily hosting the H3S (LEAD) program.

In reliance and on the terms and conditions set forth below, the parties hereby agree that:

1. PURPOSE

NCPRD owns the Concord building located at 3811 SE Concord Rd, Oak Grove, Oregon, 97267. Each party desires to cooperate to provide effective and efficient services to the public by allowing use of the Concord building to co-locate H3S (LEAD) program space. H3S will benefit by having access to a single classroom near the west entrance (as assigned by NCPRD). H3S will be allowed to use several parking spaces near the west entrance (see Attachment A), as well as the restroom facilities located nearest to the assigned classroom.

2. FACILITY USE

2.1 TERMS

2.1.1 NCPRD agrees to provide H3S the shared use of a designated classroom space in the Concord building for use as H3S program space and associated parking space(s). The ownership and control of these facilities will remain with NCPRD. H3S agrees that its use of the NCPRD owned Concord facility is conditioned upon the building being available and not needed for other NCPRD uses at the current time. It is agreed by both parties that the shared use by H3S of the NCPRD Concord facility is a temporary arrangement. H3S understands this and will begin searching for a long-term facility option for the LEAD program at least six months prior to the termination of the 2 year agreement.

2.1.2 Additional program space and/or technology equipment installation may be requested by H3S and may be approved by NCPRD on a case-by-case basis with associated costs to H3S.

2.1.3 NCPRD agrees to provide the following services to H3S:

- A. "Utilities" including natural gas, water services, sewer services, electricity, refuse removal, heating and air conditioning.

B. Restroom facilities.

C. Parking spaces as designated in Exhibit A.

Building maintenance (roof, paint, HVAC, etc.) as funding is available based on NCPRD's capital asset repair & replace program. A power source and facility access for H3S owned internet and WiFi equipment location and maintenance.

- 2.1.4 H3S will have use of designated program space and will limit its use of the facility to those services necessary to provide and support H3S activities. H3S personnel will be responsible for unlocking and locking/securing doors and/or gates as necessary to gain access to NCPRD facilities upon each use. NCPRD will provide appropriate key card and access codes to H3S as needed for these purposes. H3S access will be limited to those areas identified on a site map ("Exhibit A").
- 2.1.5 H3S use of the NCPRD facilities will in no case interfere with the primary purpose of the facility to serve as a recreation area. H3S personnel should alert NCPRD staff, tenants or contractors of their presence when entering an NCPRD facility, especially during non-business hours if they are also occupying the facility.
- 2.1.6 Appropriate H3S vehicle parking locations will be identified on a site map attached as ("Exhibit A") in order to avoid conflicts with NCPRD staff or public use, and also to maximize visibility of H3S vehicles to the general public.
- 2.1.7 All H3S technology equipment installations will require NCPRD approval to limit any potential interference with NCPRD technology systems.
- 2.1.8 H3S is responsible to provide telephone equipment and telephone service in all H3S utilized program spaces within the Concord building.
- 2.1.9 H3S at its option and own expense may provide printers in H3S program spaces.
- 2.1.10 H3S shall provide and maintain any necessary internet and Wi-Fi equipment.
- 2.1.11 H3S will provide ordinary and regular cleaning for the program spaces designated as H3S spaces in the Concord building.. The offices are expected to be maintained in the condition as when originally occupied.
- 2.1.12 H3S agrees that no hazardous material/substances will be brought into or stored inside a NCPRD facility at any time.
- 2.1.13 H3S will provide any additional furniture located within their program space.
- 2.1.14 NCPRD is not responsible for any loss of H3S property or data from any cause.

2.1.15 Due to the proximity of children and NCPRD clients, H3S will in no case serve clients at the Concord site who are registered sex offenders, or felons convicted of violent offenses, or any other individual which is known to Clackamas County Sherrif's Office to be dangerous or pose a threat to the safety of other persons for any reasons.

2.1.16 H3S shall make no improvements or alterations on the premises of any kind without first obtaining NCPRD's written consent. All alterations shall be made in a good and workman like manor, in accordance with the best practices of the trades, and in compliance with applicable laws and building codes. Alterations include installation of computer and telecommunications wiring, cables, and conduit.

3. TERM OF AGREEMENT

3.1 This Agreement shall be in effect for up to two (2) years upon execution. Either party may terminate this Agreement at any time, and for any reason, by giving a minimum of sixty (60) days advance written notice to the other.

3.2 NCPRD and H3S agree that upon termination the office spaces will be restored to the same condition as when originally occupied, excepting normal wear and tear. H3S equipment installed in designated office space will remain property of H3S.

4. FORCED LIMITATIONS

In the event there is a state-wide legislation beyond the control of either party, limiting either property tax or the services provided by H3S or NCPRD, this Agreement may be renegotiated. Renegotiating shall begin upon the written request of either party.

5. INDEMNITY AND INSURANCE

5.1 Each party agrees solely to be liable for and hold the other harmless from any claims, actions or suits arising from its acts or those of its employees, officers, directors, agents, or volunteers in carrying out the purpose of this Agreement. Each party agrees to maintain liability insurance or self-insurance for risks arising out of this Agreement, which covers the other party as an additional insured.

5.2 Each party agrees to provide workers' compensation insurance for its employees, and to hold the other party harmless for injuries and work-related illnesses to its employees.

5.3 NCPRD agrees to insure its buildings with the coverage provided through the County self-insurance program for any damage and destruction of building, tenant improvements and betterments.

5.4 Each party agrees that neither party shall act as the agent of the other, and no employee of one party shall be considered to be an employee of the other party for any purpose.

6. COMPENSATION

This is a cooperative agreement; no compensation is required between the parties.

7. AMENDMENT

This Agreement may be amended only in writing upon the mutual consent of both parties.

8. TERMINATION OF PREVIOUS AGREEMENT

This Agreement supersedes all previous agreements for the provision of shared use of NCPRD facilities between NCPRD and H3S. Any former agreements are terminated on the effective date of the signing of this agreement.

WHEREAS, all the aforementioned is hereby agreed upon by the parties and executed by the duly authorized signatures below.

BOARD OF DIRECTORS
NORTH CLACKAMAS PARKS AND
RECREATION DISTRICT

BOARD OF COUNTY COMMISSIONERS
CLACKAMAS COUNTY
HEALTH, HOUSING AND HUMAN
SERVICES DEPARTMENT

Jim Bernard
Board Chair

Jim Bernard
Board Chair

Date

Date

ATTACHMENT A

Concord Property – Aerial View



West Entrance

